

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5123/MUM/2016
Assessment Year: 2011-12**

M/s M.M. Poonjiaji Spices Ltd., Poonjiaji House, 42, Anandilal Podar Marg, Dhobi Talao, First Marine Street Mumbai-400002 PAN No. AACCM2635C Appellant	Vs.	DCIT-4(2) Mumbai Respondent
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Assessee by	: Mr. Rajesh S. Shah, AR
Revenue by	: Mr.M.C. Omi Ningshen, DR

Date of Hearing : 27/11/2017
Date of pronouncement : 30/11/2017

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-9, Mumbai and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The issue in the present case falls in a narrow compass. The issue is whether the Assessing Officer (AO) can make a disallowance u/s 14A

r.w. Rule 8D of Income Tax Rules, 1962 when the assessee has not earned any exempt income during the year under consideration.

3. Briefly stated, the facts of the case are that the AO made a disallowance of Rs.3,13,997/- u/s 14A r.w. Rule 8D relying on the CBDT Circular No. 5/2014 dated 11.02.2014 stating that disallowance of expenditure can be made under the above section and Rule even where taxpayer in a particular year has not earned any exempt income.

4. In appeal, the Ld. CIT(A) has confirmed the said disallowance made by the AO.

5. Before us, the Ld. counsel of the assessee submits that the assessee-company has not earned any income from the partnership firms during the year which can be claimed as exempt income. Therefore, no disallowance can be made u/s 14A.

6. On the other hand, the Ld. DR relies on the order of the Ld. CIT(A). Reliance is also placed by him on the CBDT Circular mentioned above.

7. We have heard the rival submissions and perused the relevant materials on record. The issue whether disallowance u/s 14A r.w. Rule 8D can be made in a case when there is no exempt income is no longer *res integra*. In the case of *CIT v. Shivam Motors (P) Ltd.* (2015) 55 taxmann.com 262 (All), it has been held that in absence of any tax free income earned by the assessee, disallowance u/s 14A could not be made. In a similar vein, it has been held in *Cheminvest Ltd. v. CIT* (2015) 61 taxmann.com 118 (Del) that section 14A will not apply if no exempt income is received or receivable during the relevant previous year.

7.1 Respectfully following the above decisions, we set aside the order of the Ld. CIT(A).

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 30/11/2017.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 30/11/2017

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai