

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC-B" BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No. 1804/Bang/2017
Assessment Year :2009-10

M/s. Nirayu Pvt. Ltd., 1 st Main Road, Near Railway Station, Whitefield, Bangalore – 560 066. PAN: AAACN 7427K	Vs.	The Deputy Commissioner of Income Tax, Circle – 12(2), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Ravishankar, Advocate
Revenue by	:	Shri P.V. Pradeep Kumar, Addl. CIT (DR)

Date of hearing	:	06.12.2017
Date of Pronouncement	:	08.12.2017

ORDER

Per Shri A.K. Garodia, Accountant Member;

This appeal is filed by the assessee which is directed against the order of Id. CIT(A) – 5, Bangalore dated 31.05.2017 for Assessment Year 2009-10.

2. The grounds raised by the assessee are as under.

“1. Re: Disallowance under section 14A of Rs.15,57,350/-:

1.1 On the facts and circumstances of the case and in law, the learned CIT(A) grossly erred in upholding the disallowance made by the Assessing Officer under section 14A read with rule 8D of Rs.15,57,350/-.

1.2 The learned CIT(A) ought to have appreciated that the Assessing Officer had failed to reach proper satisfaction that the amount disallowed by the Appellant of Rs.20 04,447/- was not adequate.

1.3 The learned CIT(A) ought to have appreciated that own funds/interest free funds ought to be first considered for the purpose of investments and only balance investments. if any ought to be considered out of borrowed funds.

1.4 Without prejudice to the above, the learned CIT(A) grossly erred in considering total assets at Rs.36,07,13,760/- instead of Rs.38,84,72,831 as submitted by the Appellant in its submissions.

1.5 Without prejudice to the above, disallowance under section 14A ought to be substantially reduced.

2. The Appellant craves leave to add to, alter, amend or delete any ground of appeal.”

3. At the very outset, it was submitted by Id. AR of assessee that as per decision of Delhi Special bench of the Tribunal rendered in the case of ACIT Vs. Vireet Investment Pvt. Ltd. as reported in 154 DTR 241 (Delhi) (Special Bench), it was held in Para no. 11.18 that that the matter is restored back to the file of AO for recomputing the disallowance u/s. 14A in terms of observations in Para no. 11.16 and 11.17. He pointed out that as per para no. 11.16, it was held that only those investments are to be considered for computing average value of investments which yielded exempt income during the year. He also submitted that only in respect of three investments, dividend was received during the present year and therefore, only those three investments should be considered in the present year for the purpose of making disallowance u/s. 14A of the IT Act. The Id. DR of revenue submitted that the matter may be restored back to the file of AO for fresh decision in the light of this decision of special bench of the Tribunal.
4. I have considered the rival submissions and restore back this issue to the file of AO for fresh decision in the light of this decision of special bench of the Tribunal cited before us by the Id. AR of assessee.
5. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 08th December, 2017.
/MS/

Copy to:

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

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.