

आयकर अपीलिय अधिकरण, मुंबई "जी" खंडपीठ

Income-tax Appellate Tribunal "G" Bench Mumbai

सर्वश्री राजेन्द्र, लेखा सदस्य एवं रविश सूद, न्यायिक सदस्य

Before S/Sh. Rajendra, Accountant Member & Ravish Sood, Judicial Member

आयकर अपील सं./I.T.A./6301/Mum/2016, निर्धारण वर्ष /Assessment Year: 2012-13

Dy.CIT-3(3)(2) Room No.609, 6 th Floor, Aayakar Bhavan, M.K. Road Mumbai-400 020.	Vs.	M/s. Smart Chip Ltd. 714, Raheja Chambers, 213, Nariman Point, Mumbai-400 021. PAN:AABCS 2005 H
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

प्रत्याक्षेप/C.O. No.264/Mum/2017

M/s. Smart Chip Ltd. Mumbai-400 021.	Vs.	Dy.CIT-3(3)(2) Mumbai-400 020.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Shri Ram Tiwari-DR

Assessee by: Shri Sashi Tulsiyan

सुनवाई की तारीख / **Date of Hearing: 06/11/2017**

घोषणा की तारीख / **Date of Pronouncement: 03/01/2018**

आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश

Order u/s.254(1) of the Income-tax Act, 1961(Act)

लेखा सदस्य, राजेन्द्र के अनुसार /PER RAJENDRA, AM-

Challenging the order, dated 29/07/2016, of CIT (A)-8, Mumbai the Assessing Officer(AO) has filed the present appeal. The assessee has filed cross objection (CO). Assessee-company, engaged in the business of personalisation of smartcards and smartcard system, filed its return of income on 30/01/2012, declaring total income of Rs.12.10 crores. The AO completed the assessment, u/s. 143(3) of the Act, on 27/03/2015, determining its income at Rs. 12.49 crores.

2. Effective ground of appeal is about deleting the disallowance, made by the AO, u/s.14 A of the Act. During the assessment proceedings, the AO found that the assessee had made investment in shares which are capable of earning exempt income. He directed the assessee to explain as to why expenses, attributable for making investment, should not be computed as per the provisions of section 14A read with Rule 8D of the Income Tax Rules, 1962 (Rules). While completing the assessment, he added disallowance of Rs. 39.49 lakhs, u/s.14A read r.w. r.8D, to the normal income of the assessee as well as to the book profit computed u/s.115 JB of the Act.

3. Aggrieved by the order of the AO, the assessee filed an appeal before the First Appellate Authority (FAA) and made elaborate submissions. It also relied upon certain case laws. After considering the submission of the assessee and the assessment order, the FAA held that as

against average value of investment of Rs.16.95 crores,taken by the AO,assessee's own funds (share capital and reserves + surplus) stood at Rs. 43.19 crores, that the amount in question was way above the investments, that the AO had not established any nexus between the expenditure disallowed under rule 8D. He relied upon the cases of Reliance Utilities and Power Ltd.(313 ITR 340),Food Links Services (I) Pvt. Ltd. (ITA/2079 to 84/Mum/ 2011), Wimco Seedlings Ltd (107 ITD 267)and deleted the addition made by the AO under the regular provisions as well as under the MAT provisions.

4.Before us,the Departmental Representative(DR)supported the order of the AO. The Authorised Representative(AR)relied upon the order of the FAA and stated that the assessee had not earned any exempt income during the year under consideration, that the funds owned by it were more than the investments made.

5.We have heard the rival submissions and perused the material on record.We find that the assessee had not earned any exempt income nor had it claimed any expenditure against such income during the year under appeal,that the AO had made the disallowance invoking the provisions of section 14 A read with rule 8D of the Rules, that the FAA had given a categorical finding of fact that own funds of the assessee were far more than the investment made by it during the year under consideration.In our opinion,if no exempt income is earned by an assessee and no expenditure is claimed against such income, the AO.s are not entitled to make any disallowance.Considering the availability of the funds with the assessee and other above-mentioned circumstances,we are of the opinion that order of the FAA does not suffer from any legal or factual infirmity.So confirming the same, we decide the effective ground of appeal against the AO.

In the cross objection,the assessee has supported the order of the FAA.We have already dismissed the appeal filed by the AO in the earlier part of our order. So we allow the cross objection for statistical purposes.

As a result,appeal filed by the AO is dismissed and the cross objection is allowed for statistical purposes.

फलतः निर्धारिती अधिकारी की अपील नामंजूर की जाती है और निर्धारिती का प्रत्याक्षेप सांख्यिकी रूप से मंजूर किया जाता है.

Order pronounced in the open court on 3rd January, 2018.

आदेश की घोषणा खुले न्यायालय में दिनांक 03 जनवरी, 2018 को की गई।

Sd/-

(रविश सूद /Ravish Sood)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक/Dated : 03 .01.2018.

Jv.Sr.PS.

Sd/-

(राजेन्द्र / RAJENDRA)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

- 1.Appellant /अपीलार्थी
2. Respondent /प्रत्यर्थी
- 3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त
- 5.DR “ G ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, जी खंडपीठ,आ.अधि.मुंबई
- 6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई /**ITAT, Mumbai.**