

आयकर अपीलिय अधिकरण, मुंबई "ई" खंडपीठ

Income-tax Appellate Tribunal "E" Bench Mumbai

सर्वश्री राजेन्द्र, लेखा सदस्य एवं पवन सिंह, न्यायिक सदस्य

Before S/Sh. Rajendra, Accountant Member & Pawan Singh, Judicial Member

आयकर अपील सं./I.T.A./5342/Mum/2015, निर्धारण वर्ष /Assessment Year: 2011-12

DCIT-2(3)(1) Room No.552, 5 th Floor, Aayakar Bhavan M.K. Road, Mumbai-400 020.	Vs.	M/s. Tariff Advisory Committee General Insurance, 1,2 Floor, Adore House 6 K Dubhash Marg, Fort Mumbai-400 023. PAN:AABFT 9908 K
--	-----	---

(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Shri V. Justin -DR

Assessee by: None

सुनवाई की तारीख / **Date of Hearing:** 13/03/2018

घोषणा की तारीख / **Date of Pronouncement:** 04/04/2018

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 21/08/2015 of CIT(A)-6, Mumbai, the Assessing Officer(AO) has filed the present appeal. Assessee, a Regulatory Authority for Insurance, filed its return of income, on 30/09/2011, declaring Loss at Rs.18.96 crores. The AO completed assessment u/s. 143(3) of the Act, on 28/02/2014, determining its income at Rs.3.04 crores.

2. Solitary Ground of appeal is about deleting the disallowance made, u/s. 14A r.w. Rule 8D 2(i) of the Income tax Rules, 1962 (Rules). During the assessment proceedings, the AO found that the assessee had declared loss of Rs.18.96 crores, that it had filed the Return on the basis of provisional income and expenditure account, that the accounts of the assessee were audited by the office of the Indian Audit and Accountant General, that a revised return was filed declaring Loss of Rs.5.879 crores, that the assessee had claimed exemption of Rs.9.13 crores u/s. 10(23BBE) of the Act. As per the AO, the entire business income of the assessee was exempt. He directed the assessee to explain as to why disallowance should not be made as per the provisions of section 14A. After considering submission of the assessee, the AO made a disallowance of Rs.8.83 crores invoking provisions of section 14A r.w. 8D of the Rules.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA) and made submissions. After considering available material, he held

that the assessee had not claimed any income as exempt from the business, that in absence of the exemption claimed there was no justification for any disallowance. He referred to the case of Corrttech Energy Pvt.Ltd(45taxmann 116) Lakhani Markeitng Inc.(49 taxmann 257) and Winsome Textile Industries (319ITR204) and held that where the assessee did not make any claim for exemption,section 14A would have no application,that from the income and expen - diture account,it was clear that the assessee had offered the fee collected from the insurers (Rs.9.13crores)as its income,that it had not claimed any exemption,while computing the income.He directed the AO to delete the disallowance.

4.During the course of hearing before us,the Departmental Representative (DR) stated that the issue could be decided on merits.As stated earlier, none appeared on behalf of the assessee.

We find that the FAA has given the categorical finding of fact that assessee had not claimed any exemption.As per the settled law,provisions of section 14A of the Act r.w.r. 8D of the Rules can be invoked only if an assessee claims expenditure against exempt income. In other words,if no expenditure is claimed in respect of exempt income no disallowance can be made u/s. 14A.Considering the facts of the case,we are of the opinion that order of the FAA does not suffer from any legal or factual infirmity. Therefore, confirming the same, we decide the effective Ground of appeal against the AO.

As a result, appeal filed by AO is dismissed.

फलतः निर्धारिती अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है।

Order pronounced in the open court on 4th April, 2018.

आदेश की घोषणा खुले न्यायालय में दिनांक 04 अप्रैल,2018 को की गई।

Sd/-

Sd/-

(पवन सिंह /Pawan Singh)

(राजेन्द्र / RAJENDRA)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक/Dated : 04.04.2018.

Jv.Sr.PS.

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 “ E” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, 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.