

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "बी" पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष  
**BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM**

**आयकर अपील सं. / ITA No.1419/PUN/2015**

**निर्धारण वर्ष / Assessment Year : 2011-12**

The Asst. Commissioner of Income Tax,  
Circle 3, Pune

.... अपीलार्थी/Appellant

Vs.

Shri Dnyandeo Ninu Patil,  
93B/6, Elite House,  
Senapati Bapat Road,  
Shivajinagar, Pune – 411016

.... प्रत्यर्थी / Respondent

PAN: ADPPP0651A

अपीलार्थी की ओर से / Appellant by

: Shri Mukesh Jha

प्रत्यर्थी की ओर से / Respondent by

: S/Shri Nikhil Pathak /  
Mahavir Jain

सुनवाई की तारीख / <b>Date of Hearing : 11.04.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement: 15.05.2018</b>
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

The appeal filed by the Revenue is against the order of CIT(A)-I, Nagpur, dated 28.07.2015 relating to assessment year 2011-12 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The Revenue has raised the following grounds of appeal:-

*On the facts and circumstances of the case & in law,*

1. *The Id. CIT(A) erred in deleting the addition u/s. 14A on pro-rata basis on account of interest paid on borrowed funds.*

2. *The Ld. CIT(A) erred in not appreciating that the issue of disallowance u/s. 14A is governed by Board's Circular No.5/2014 dated 11-2-2014, and in view of the said circular, disallowance u/s. 14A has to be made irrespective of any exempt income earned during the year.*
3. *The appellant prays that the order of the Id. CIT(A) to the extent of the above issue be held to be bad in law and quashed and that of the Assessing Officer be restored.*

3. The Revenue is in appeal against the order of CIT(A) and the only issue raised is against deletion of addition made under section 14A of the Act on proportionate basis on account of interest paid on borrowed funds.

4. Briefly, in the facts of the case, the assessee for the year under consideration had furnished return of income declaring total income of ₹ 38,90,531/- on 30.03.2012. The Assessing Officer during the course of assessment proceedings noted that the assessee was partner in a partnership firm M/s. DNV Reality, in which it had contributed capital and earned share of profit. The Assessing Officer invoked the provisions of section 14A of the Act and disallowed sum of ₹ 69,08,552/- being expenditure on account of interest payment.

5. The CIT(A) allowed the claim of assessee. The findings of CIT(A) are in para 8.3, wherein he noted that out of total investment of ₹ 10.03 crores, the assessee had deposited ₹ 6.83 crores with M/s. Elite Promoters and Builders, Pune and funds to the tune of ₹ 2.64 crores were invested with firm M/s. DNV Reality, from where the assessee has received share of profit. The capital investment was made from borrowed funds and the ratio of utilization of borrowed funds was only 26.31%. Therefore, the CIT(A) computed that interest to the extent of ₹ 18,17,640/- could be disallowed under section 14A of the Act.

6. The Revenue is in appeal against allowance of interest to the extent of ₹ 50,90,912/-. The assessee is not in appeal against upholding of disallowance of interest at ₹ 18,17,640/-.

7. The learned Departmental Representative for the Revenue pointed out that the assessee had paid interest on borrowed funds and hence, disallowance was warranted in the hands of assessee.

8. The learned Authorized Representative for the assessee on the other hand, pointed out that about ₹ 12 crores was invested in fixed deposits, on which the assessee had received interest of ₹ 83,03,458/-, the tax free income earned by the assessee was to the extent of ₹ 2,90,000/-. He further pointed out that interest which was paid to the bank on borrowings was ₹ 69,08,552/-. The learned Authorized Representative for the assessee in this regard pointed out that where interest received was more than the interest payment, there was no merit in making any disallowance under section 14A of the Act. However, he pointed out that the assessee was not in appeal against the order of CIT(A) in restricting disallowance to ₹ 18,17,640/-. The learned Authorized Representative for the assessee placed reliance on the ratio laid down by Pune Bench of Tribunal in M/s. Kunal Shelters Pvt. Ltd. Vs. DCIT in ITA No.1522/PUN/2014, relating to assessment year 2010-11, order dated 26.05.2017.

9. We have heard the rival contentions and perused the record. The issue which arises in the present appeal is against disallowance made under section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (in short 'the

Rules'). The issue which arises in the present appeal is whether where the assessee had received interest income of ₹ 83.02 lakhs and had incurred interest expenditure of ₹ 69.08 lakhs, that means, there was positive interest income, can any disallowance be made under section 14A of the Act read with Rule 8D(2)(ii) of the Rules. This is the limited issue which has been raised before us.

10. We find that the said issue stands covered by the decision of Pune Bench of Tribunal in M/s. Kunal Shelters Pvt. Ltd. Vs. DCIT (supra). In the facts of the present case, where interest received by the assessee is more than interest paid during the year, then no disallowance is warranted by invoking provisions of Rule 8D(2)(ii) of the Rules. However, the assessee is not in appeal against the order of CIT(A) in restricting disallowance to ₹ 18,17,640/-. Consequently, dismissing the grounds of appeal raised by the Revenue, we uphold the order of CIT(A) in restricting disallowance to ₹ 18,17,640/-.

11. In the result, the appeal of Revenue is dismissed.

Order pronounced on this 15<sup>th</sup> day of May, 2018.

**Sd/-**  
**(ANIL CHATURVEDI)**  
लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**  
**(SUSHMA CHOWLA)**  
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 15<sup>th</sup> May, 2018.  
GCVSR

**आदेश की प्रतिलिपि अद्येष्ठित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-I, Nagpur;
4. The CIT-I, Nagpur;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR  
'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune