



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

ITA no.953/Mum/2017  
(Assessment Year :2009-10)

Dy. Commissioner of Income Tax  
Central Circle-5(1), Mumbai

..... Appellant

v/s

M/s. Anand Rathi Financial Services Ltd.  
4<sup>th</sup> Floor, Silver Metropolis Building  
Western Express Highway  
Goregaon (E), Mumbai 400 063  
PAN – AABCA3577G

..... Respondent

Revenue by : Ms. N. Hemalatha  
Assessee by : None

Date of Hearing – 21.05.2018

Date of Order – 23.05.2018

**ORDER**

**PERSAKTIJIT DEY, J.M.**

Aforesaid appeal by the Revenue is against order dated 30<sup>th</sup> September 2016, passed by the learned Commissioner (Appeals)-53, Mumbai, for the assessment year 2009-10.

2. The Revenue has filed this appeal being aggrieved of the decision of the learned Commissioner (Appeals) in deleting the addition made under section 14A of the Income Tax Act, 1961 (for short "*the Act*")

and setting aside the assessment made under section 153A r/w section 143(3) of the Act.

3. Brief facts are, the assessee a company is engaged in the activity of investment and trading in shares and securities and commodities. For the assessment year under dispute, the assessee filed its original return of income under section 139(1) of the Act, which was selected for scrutiny and after verifying the return of income filed by the assessee the Assessing Officer passed an order under section 143(3) of the Act on 29<sup>th</sup> December 2011, determining the net loss at ₹ 1,17,84,440, after disallowing an amount of ₹ 32,99,751 under section 14A of the Act. Subsequently, a search and seizure operation under section 132(1) of the Act was conducted on the assessee on 24<sup>th</sup> September, 2013. As a consequence of such search and seizure operation, the Assessing Officer initiated proceedings under section 153A of the Act by issuing a notice dated 2<sup>nd</sup> February 2015, calling upon the assessee to file its return of income. In response to the said notice, assessee filed its return of income on 21<sup>st</sup> April 2015, declaring loss of ₹ 1,52,25,470. In course of the assessment proceedings under section 153A of the Act, the Assessing Officer found that the assessee had earned dividend income of ₹ 1,46,010, which has been claimed as exempt. He, therefore, called upon the assessee to explain why the expenditure attributable to such exempt income should not be

disallowed under section 14A r/w rule 8D. Though, the assessee objected to the proposed disallowance, however, the Assessing Officer rejecting the claim of the assessee proceeded to compute disallowance under section 14A r/w rule 8D at ₹ 1,18,90,436 and ultimately completed the assessment under section 153A r/w section 143(3) of the Act by determining the net loss at ₹ 35,49,920. Being aggrieved with the assessment order so passed, assessee preferred appeal before the first appellate authority.

4. The learned Commissioner (Appeals) after considering the submissions of the assessee and taking note of the fact that on the date of search operation on 24<sup>th</sup> September 2013, assessment in case of the assessee was already completed under section 143(3) of the Act and the addition made under section 14A r/w rule 8D was not on the basis of any incriminating material found as a result of search proceeded to follow the Special Bench decision of the Tribunal, Mumbai Bench, in case of All Cargo Global Logistics Ltd. v/s DCIT, 137 ITD 287 (SB) (Mum.) and the decisions of the Hon'ble Jurisdictional High Court in case of CIT v/s Murali Agro Products, ITA no.36 of 2009, judgment dated 26<sup>th</sup> October 2010, and CIT v/s Continental Warehousing Corporation Ltd., 374 ITR 645 (Bom.) and held that in the absence of any incriminating material found as a result of search, the Assessing Officer could not have made the addition under section 14A r/w rule

8D of the Act in the impugned assessment order. Accordingly, he deleted the addition made under section 14A r/w rule 8D and also set aside the assessment order passed under section 153A r/w section 143(3) of the Act while restoring the original assessment order passed under section 143(3) of the Act. Being aggrieved of the aforesaid order of the learned Commissioner (Appeals), the Revenue is in appeal before the Tribunal.

5. When the appeal was called for hearing no one was present for the assessee despite service of hearing notice as evident from the postal acknowledgement kept on record. Therefore, we proceed to dispose off the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material on record.

6. We have heard the learned Departmental Representative and perused the material on record. As could be seen from the facts on record, the assessee filed its return of income voluntarily under section 139(1) of the Act and on the basis of such return of income filed by the assessee, assessment under section 143(3) of the Act was originally completed on 29<sup>th</sup> December 2011. It is also evident, while completing such assessment, the Assessing Officer had made disallowance of ₹ 32,99,751 under section 14A of the Act. Thus, it is

clear from the facts on record, on the date of search and seizure operation on 24<sup>th</sup> September 2013, there was no pending assessment proceedings before the assessing officer for the impugned assessment year. A bare perusal of the impugned assessment order passed under section 153A r/w section 143(3) of the Act would make it clear that the only addition / disallowance made by the Assessing Officer is under section 14A r/w rule 8D. While making such addition / disallowance, he has not referred to any incriminating material available with him on the basis of which such disallowance was made. Thus, as per the ratio laid down by the Hon'ble Jurisdictional High Court in case of Continental Warehousing Corporation (supra) such disallowance under section 14A r/w rule 8D could not have been made in the absence of any incriminating material. Thus, in our considered opinion, the learned Commissioner (Appeals) by correctly applying the ratio laid down by the Hon'ble Jurisdictional High Court having decided the issue, no interference is called for. Accordingly, we dismiss the grounds raised by the Revenue.

7. In the result, Revenue's appeal is dismissed.

Order pronounced in the open Court on 23.05.2018

**Sd/-**  
**MANOJ KUMAR AGGARWAL**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 23.05.2018**

*Copy of the order forwarded to:*

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The CIT(A);*
- (4) The CIT, Mumbai City concerned;*
- (5) The DR, ITAT, Mumbai;*
- (6) Guard file.*

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

(Dy./Asstt.Registrar)  
ITAT, Mumbai