

आयकर अपीलिय अधिकरण पुणे न्यायपीठ "SMC" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.1007/PUN/2017
निर्धारण वर्ष / Assessment Year : 2013-14

Santosh Chandulal Mandlecha,
D-1/2, MIDC, Exclo Point,
Ambad, Nashik – 422 010
PAN : ABTPM0294Q

.... अपीलार्थी/Appellant

Vs.

ITO, Ward-1(3),
Nashik

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : None
प्रत्यर्थी की ओर से / Respondent by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 17.05.2018	घोषणा की तारीख / Date of Pronouncement: 25.05.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This is the appeal filed by the assessee against the order of CIT(A)-1, Nashik, dated 02-03-2017 for the Assessment Year 2013-14.

2. The assessee raised the following grounds in the appeal :

"1. On the basis of facts and the circumstances of the case and as per law, the CIT(A)-1, Nashik is not justified in confirming the disallowance made by the AO of Rs.2,03,621/- by invoking the provisions of section 14A of the Act read with Rule 8D.

2. On the basis of facts and the circumstances of the case and as per law, the CIT(A)-1, Nashik is not justified in confirming the disallowance made by the AO of Rs.2,03,621/- by invoking the provisions of section 14A under the assumption that the appellant has used the interest bearing funds for making investment in tax free securities particularly when the said investment is not made by the appellant out of interest bearing funds and more particularly when non-applicability of the provision of section 14A was accepted in the assessment order pursuant u/s.143(3) for A.Y. 2011-12.

3. On the basis of facts and the circumstances of the case and as per law, the CIT(A)-1, Nashik is not justified in confirming the disallowance made by the AO of Rs.2,03,621/- by invoking the provisions of section 14A even in respect of

investments on which no any income is earned by the appellant during the year under review.

4. The Appellant craves for addition to, deletion, alteration, modification, change any of the above grounds of appeal."

3. Before me, there is none to represent the assessee despite service of notice. Acknowledgement is placed on record. However, considering the smallness of the issue, I proceed to decide the solitary issue of disallowance u/s.14A of the Act with the assistance of Ld. DR for the Revenue and the material available on record.

4. Briefly stated relevant facts of the case are that the assessee is an individual and is engaged in the business of manufacturing, supplying and repairing of electronic equipments under the name and style of M/s. Reliance Electronics. Assessee filed the return of income on 30-09-2013 declaring total income of Rs.22,40,010/-. On the basis of information supplied by the assessee, the AO found that the total turnover of the assessee is Rs.3,00,49,010 and the assessee declared net profit @ 4.29% which works out to Rs.12,87,957/-. AO further noticed that, during the year under consideration, the assessee earned exempt income and made investment. Assessee claimed interest expenditure in his profit and loss account without apportioning the expenses incurred for earning the said exempt income. At the end of assessment proceedings u/s.143(3) of the Act, the AO made addition of interest income of Rs.2,03,621/- by invoking the provisions of section 14A read with Rule 8D of the Act.

5. In the First Appellate proceedings, the CIT(A) relying on various judgments of High Court and the decisions of various Benches of the Tribunal upheld the action of the AO.

6. After hearing the Ld. DR for the Revenue and the perusal of the material available on record, I find that this solitary issue raised by the assessee is

squarely covered in favour of the assessee. It is an undisputed fact that the exempt income is only Rs.1,693/- whereas the disallowance made by the AO is to the tune of Rs.2,03,621/-. On the faces of it and considering the settled legal propositions, I find the disallowance made by the AO is not legally sustainable. Various decisions are in existence for the proposition that disallowance if any u/s.14A of the Act should not exceed the exempt income which form part of the total income. Considering these facts and relying on the Hon'ble Bombay High Court in the case of Reliance Utilities and Power Ltd. (supra), judgment in the case of CIT Vs. HDFC Bank Ltd., 366 ITR 505 and the judgment of the Hon'ble Delhi High Court in the said case Cheminvest Limited Vs. CIT 347 ITR 272 (Del.), I find it is obvious inference that assessee has adequate interest free funds and assessee also earned profits in the current year. All these interest free funds are sufficient enough to take care of the exempt income yielding investments considering the principle of presumption, laid down by the jurisdictional Hon'ble Bombay High Court in the case of Reliance Utilities and Power Ltd., (supra). Therefore, in my view, the order of the CIT(A) on this issue requires reversal on this issue. Accordingly, I direct the AO to re-compute the disallowance made by the AO after granting reasonable opportunity of being heard to the assessee. Further, the AO shall consider the above cited legal proposition in the set-aside proceedings. Thus, the grounds raised by the assessee are partly allowed for statistical purposes.

7. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on this 25th day of May, 2018.

Sd/-

(D.KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 25th May, 2018.

Satish

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune