

आयकर अपीलीय अधिकरण पुणे न्यायपीठ “एक-सदस्य” मामला पुणे में

**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH “SMC”, PUNE**

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

**आयकर अपील सं/ ITA No. 2958/PUN/2016  
निर्धारण वर्ष / Assessment Year : 2013-14**

Avinash Ramchandra Phadnis,  
1205/01/10,  
Shree Shivaji Nagar,  
Pune – 411 004  
PAN : ABQPP4715L

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward- 11(2), Pune

.....प्रत्यर्थी / Respondent

Appellant by : Shri Nikhil Pathak  
Respondent by : Shri Pankaj Garg

|  |   |
|--|---|
| सुनवाई की तारीख /<br><b>Date of Hearing : 16.05.2018</b> | घोषणा की तारीख /<br><b>Date of Pronouncement : 25.05.2018</b> |
|--|---|

**आदेश / ORDER**

**PER D. KARUNAKARA RAO, AM**

This appeal filed by the assessee is against the order of CIT(A)-1, Pune, dated 26-09-2016 for the A.Y. 2013-14.

2. The abridged grounds raised by the assessee are extracted as under :

“1. The Ld. CIT(A) erred in confirming disallowance of interest of Rs.16,01,364/- u/s. 14A r.w.r. 8D.

2. The Ld. CIT(A) erred in confirming disallowance of indirect expenditure of Rs.1,51,918/- u/s.14A r.w.r. 8D.

3. *Without prejudice, the assessee that if at all, any disallowance is warranted u/s.14A, the same should be restricted to the exempt income earned of Rs.11,347/-.*

4. *The Ld.CIT(A) erred in confirming an addition of Rs.68,053/- on account of interest income without appreciating that no such addition was warranted.*

5. *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

3. Briefly stated relevant facts include that the assessee is an individual and is a doctor (Gynaecologist) by profession. Assessee filed the return of income on 30-09-2013 declaring total income of Rs.9,27,183/-. AO notice that assessee received interest from Cosmos Cooperative Bank amounting to Rs.68,053/- and did not offer the same for taxation. On perusal of the balance sheet, AO noticed that assessee made investment in shares worth of Rs.2,93,39,573/- out of total interest free funds of Rs.3,06,43,617/-. Assessee further debited a sum of Rs.73,14,801/- to the profit and loss account towards interest on capital. Eventually, at the end of assessment u/s.143(3) of the Act, AO made couple of additions, i.e. (1) addition on account of investment u/s.14A of the Act amounting to Rs.17,53,282/- ; and (2) addition on account of interest received from Cosmos Cooperative Bank amounting to Rs.68,053/-.

4. Aggrieved by the order of the AO, assessee contested these additions before the First Appellate authority. Regarding the disallowance of Rs.17,53,282/- made by the AO u/s.14A of the Act, the CIT(A) upheld the action of the AO by observing as under :

*“7. I have carefully considered the facts of the case as well as the reply of the appellant. In this case, the appellant claimed that shares of Oyster & Pearl Hospitals Pvt. Ltd. (ONP) was purchased for*

*Rs.75,52,950/- from Phadnis Clinic Pvt. Ltd. (PCPL) out of loan of Rs.8 crores from Saraswat Coop. Bank Ltd. in F.Y. 2011-12 pertaining to A.Y. 2012-13. As the same was purchased out of business needs, section 14A is not applicable. This submission of the appellant is difficult to be appreciated as the appellant is a professional having professional income. He might be having interest in one or two companies but that in itself cannot prove commercial expediency as his professional interest cannot be treated like holding company required to maintain controlling interest in group companies. As far as appellant's contention that disallowance should be restricted to dividend income earned, I do not find any merit in the submission as there is no provision to restrict the disallowance u/s.14A in the above manner. Accordingly, action of the AO in disallowing Rs.17,53,282/- is upheld and the ground is dismissed."*

5. Regarding the interest amount of Rs.68,053/- earned by the assessee from Cosmos Cooperative Bank, the CIT(A) dismissed the ground raised by the assessee by holding as under :

*"9. I have carefully considered the facts of the case as well as reply of the appellant. The appellant claims that FD pertained to M/s. Phadnis Clinic Pvt. Ltd., however, the Bank erroneously put the name of the appellant and credited the interest in the appellant's name. The appellant has not been able to demonstrate that the said F.D. has been reflected in the books of the said company and interest on the fixed deposit has also been offered in the return of the said company with evidence. Unless the same is demonstrated with evidence, the contention of the appellant cannot be accepted. Therefore, the submission of the appellant is rejected being devoid of merit and the ground is dismissed."*

6. Aggrieved with the order of CIT(A) confirming both the additions, the assessee challenged the same before the Tribunal with the aforesaid grounds above.

7. Before me, at the outset, Ld. Counsel for the assessee brought my attention to Ground No.4 and submitted that the said ground is not pressed considering the smallness of the issue. On hearing both the parties, Ground Nos. 4 is dismissed as not pressed and Ground No.5 is dismissed as general in nature.

8. That leaves Ground Nos. 1 and 3 for adjudication and they relate to the disallowance u/s.14A r.w.r 8D of the Act. It is the submission of the Ld. Counsel for the assessee that consideration various decisions on the subject, the disallowance may be restricted to the exempt income included in the total income of the assessee for the year under consideration. Mentioning that only Rs.11,347/- is the exempt income earned by the assessee, making disallowance of Rs.17,53,282/- u/s.14A r.w.r. 8D of the Act is not sustainable legally.

9. I heard both the parties on this issue. It is an undisputed fact that the exempt income is only Rs.11,347/- whereas the disallowance made by the AO is to the tune of Rs.17,53,282/-. 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 formed part of the total income of the year under consideration. 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 various courts.

10. Further, I find the Mumbai Bench of the Tribunal in the case of M/s. Pest Control India Pvt. Ltd., Vs. DCIT and vice versa in ITA Nos. 5048 & ITA No.5608/Mum/2016, dated 31-10-2017 has restricted the disallowance to the exempt income earned by the assessee. The said finding of the Tribunal given in Para Nos. 7 to 11 is extracted here as under :

*"7. We have heard the rival submissions, perused the orders of the authorities below and the case laws relied upon. The Assessing Officer computed the disallowance u/s. 14A r.w. Rule 8D at ₹.38,43,918/- and the Ld.CIT(A) recomputed the disallowance at ₹.5,10,601/- which comprises of ₹.3,42,870/- under Rule 8D(2)(ii) and ₹ 1,67,731/- under Rule 8D(2)(iii). This calculation of the Ld.CIT(A) appears to be proper and justified.*

*8. Further, it has been held in various cases that the disallowance u/s. 14A r.w. Rule 8D cannot exceed the exempt income. The Hon'ble Punjab and Haryana High Court in the case of Principal Commissioner of Income Tax-I v. M/s Empire Package Pvt. Ltd in ITA.No. 415 of 2015 dated 12.01.2016, dismissed the appeal of the Revenue holding that there is no substantial question of law arise in the appeal on the following question raised by the Revenue: -*

*"Whether in the facts and circumstances of the case, the Hon'ble ITAT is justified in law to hold that the disallowance made under section 14A read with Rule 8D cannot exceed the exempt income, in the absence of any such restriction being there in the relevant section or rule?"*

*The Hon'ble High Court affirmed the order of the ITAT in holding that the disallowance u/s. 14A r.w. Rule 8D as worked out by the Assessing Officer is not in accordance with law for the reason that Assessing Officer has disallowed entire tax exempt income and this is not permissible in view of the judgment of the Hon'ble Delhi High Court.*

*9. The Hon'ble Delhi High Court in the case of Joint Investment Private Limited in ITA.No. 117/15 dated 25.02.2015 held that by no stretch of imagination can section 14A or Rule 8D be interpreted so as to mean that entire tax exempt income is to be disallowed.*

*10. Further, we find that considering the above two decisions the Coordinate Bench in the case of Sanghavi Exports International P. Ltd v. ACIT in ITA.No.3405/Mum/2015 dated 10.07.2017 held that disallowance should not be more than the dividend income by observing as under:*

4. We have perused the Assessment Order and find that the assessee earned exempt income of Rs. 1,70,000/- only during this Assessment Year and the Assessing Officer by invoking the provision of Section 14A made disallowance at Rs.54,66,813/-. The Hon'ble Delhi High Court in the case of Joint Investment Private Limited in ITA.No. 117/15 dated 25.02.2015 held that by no stretch of imagination can section 14A or Rule 8D be interpreted so as to mean that entire tax exempt income is to be disallowed. Similarly, Punjab and Haryana High court in the case of PCIT v. Empire Package Private Limited in ITA.No. 415/2015 held that disallowance should not exceed exempt income. In the case on hand since the assessee received dividend income of Rs.1,70,000/- as recorded in the Assessment Order the disallowance should not be more than Rs.1,70,000/-. **Thus we direct the Assessing Officer to restrict the disallowance to the extent of dividend income i.e. Rs.1,70,000/- and delete the balance amount and compute the incomes accordingly."**

11. Thus, respectively following the said decisions, we direct the Assessing Officer to restrict the disallowance u/s. 14A r.w. Rule 8D to the extent of dividend income of ₹.1,83,000/- received for the Assessment Year 2012-13 and compute the income accordingly."

Considering the above, 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 ground Nos. 1 to 3 raised by the assessee are allowed for statistical purposes.

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

Order pronounced on 25<sup>th</sup> day of May, 2018.

Sd/-

(**डी.करुणाकरा राव/D. KARUNAKARA RAO**)  
**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 25<sup>th</sup> May, 2018.  
Satisb

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Pune
4. The CIT-1, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बेंच, पुणे/ DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary

आयकर अपीलीय अधिकरण , पुणे / ITAT, Pune