

**IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI**

**BEFORE SHRI B. R. BASKARAN, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.102/Mum/2017  
(निर्धारण वर्ष / Assessment Year: 2011-12)

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| Shri Gulshan Haresh<br>Bakhtiani C/o Shri Suresh N.<br>Otwani, Advocate 305, 3 <sup>rd</sup><br>floor, Adami Building, 413,<br>Katha Bazar, Mumbai-<br>400009. | <b>बनाम/</b><br>Vs.    | ACIT,21(2), Mumbai 5 <sup>th</sup><br>Floor, Pratyakshkar Bhawan,<br>Bandra Kurla Complex,<br>Bandra (E), Mumbai-<br>400051. |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACUPB4663J  |                        |  |
| (अपीलार्थी /Appellant)   | ..                     | (प्रत्यर्थी / Respondent)  |
| Revenue by:  | Shri Suman Kumar ( DR) |  |
| Assessee by:   | Shri Suresh M. Otwani  |  |

सुनवाई की तारीख / Date of Hearing: 19.06.2018  
घोषणा की तारीख /Date of Pronouncement: 19.06.2018

**आदेश / O R D E R**

**PER AMARJIT SINGH, JM:**

The assessee has filed the present appeal against the order dated 21.10.2016 passed by the Commissioner of Income Tax (Appeals)-38 Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the AY. 2011-12.

2. The assessee has raised the following grounds: -

*1. The appellant therefore prays that the Disallowance u/s 14A may be restricted to Rs.81,789/- or any other relief, as may be granted as may be deemed fit and just under the facts and circumstances of the case.”*

**3.** The brief facts of the case are that the assessee filed his return of income on 30.09.2011 declaring total income to the tune of Rs.1,34,21,762/-. The return was processed u/s 143(1) of the I.T. Act, 1961. Thereafter, the case was selected for scrutiny under CASS. Notices u/s 143(2) & 142(1) of the I.T. Act were issued and served upon the assessee. The assessee was an individual and declared his salary income, house property income, business income, long term capital gain and income from other sources. It was observed that the assessee earned the exempt income, therefore, the Assessing Officer applied the provision u/s 14A r.w. Rule 8D of the Act and disallowed the expenses incurred to earn the exempt income to the tune of Rs.8,76,276/- and the total income of the assessee was assessed to the tune of Rs.1,43,41,320/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who confirmed the order of the AO, therefore, the assessee has filed the present appeal before us.

**4.** We have heard the arguments advanced by the Ld. Representative of the parties and perused the record. At the very outset, the Ld. Representative of the assessee has argued that the disallowance u/s 14A r.w. Rule 8D of the Act should have been restricted to the extent of Rs.81,789/- i.e. to the extent of exempt income but the AO has worked out the exempt income to the tune of Rs.8,76,276/- wrongly and illegally, therefore, in the said circumstances, the order passed by the CIT(A) is wrong against law and facts and is liable to be set aside. It is also argued that the case of the assessee has duly been covered by the order of the Hon'ble ITAT in the assessee's own case for the A.Y.2012-13 in ITA. No.101/M/2017 dated 22.08.2017, therefore, the expenses incurred to earn

the exempt income is liable to be restricted to the exempt income. However, on the other hand, the Ld. Representative of the Revenue has refuted the said contentions. On appraisal of the balance-sheet of the relevant assessment year, we find that the assessee has showed the dividend income to the tune of Rs.83624/-. The matter of controversy has been adjudicated by Hon'ble ITAT in the assessee's own case for the A.Y.2012-13 in ITA. No.101/M/2017 dated 22.08.2017 in which the expenses incurred to earn the exempt income has been restricted to the exempt income. The relevant finding is hereby reproduced below.:-

*"4. We have considered the rival submissions of the parties and have gone through the orders of authorities below. During the year under consideration, the assessee claimed the dividend income of Rs. 74,738/-. The assessee has shown investment as on 31.03.2011 of Rs. 3,13,84,404/-. Similarly, the total investment as on 31.03.2012 was Rs. 7,28,49,322/-. The AO while making the disallowance, disallowed the interest expenses of Rs. 7,78,745/- and 0.5% of average value of investment of Rs.135,228/- and worked out the disallowance of Rs.9,13,973/-.*

*5. We have seen that the AO has not recorded its satisfaction about the working of section 14A provided by assessee. The AO not disputed about interest free fund available with assessee. The investment made for earning the exempt income is less than the interest free funds available with assessee. The AO has not disputed the exempt income. The Hon'ble Delhi High Court in case of Joint Investments Pvt. Ltd. vs. CIT in ITA No. 117/2015 dated 25.02.2015 held that by no stretch of imagination section 14A or Rule 8D be interpreted so as to mean that entire tax exempt income is to be disallowed. The window for disallowance is indicated in Section 14A is only to the extent of disallowing expenditure "incurred by the assessee in relation to the tax exempt income". The proportionate or portion of the tax exempt income surely cannot swallow the entire amount. Thus, considering the facts of the present case and the submission made*

*by Id. AR of the assessee, we restrict the disallowance under section 14A for to the extent of exempt income earned by the assessee. The AO is directed accordingly.”*

5. In view of the said circumstances and by honoring the judgment of the Hon’ble ITAT in the assessee’s own case (supra) and in view of the decision of the Hon’ble Delhi High Court in the case of **Joint Investments Pvt. Ltd. Vs. CIT in ITA. No. 117/2015 dated 25.02.2015**, we restrict the disallowance u/s 14A r.w. Rule 8D(3) of the Act to the extent of exempt income. Accordingly, we set aside the finding of the CIT(A) on this issues and allowed the claim of the assessee.

6. In the result, the appeal filed by the assessee is hereby ordered to be allowed.

Order pronounced in the open court on 19.06.2018.

Sd/-

Sd/-

**(B. R. BASKARAN)**

**(AMARJIT SINGH)**

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 19.06.2018

VIJAY

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai