

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

श्री डी. करुणाकरा राव, लेखा सदस्य,
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष।

BEFORE SHRI D. KARUNAKARA RAO, AM
AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.1709/PUN/2016
निर्धारण वर्ष / Assessment Year : 2009-10

Dilip Hari Amdekar,
C/o. Amdekar & Associates,
Flat No.302, Jai Ravi Appt.,
CTS No.1002/2/44,
Rajendra Nagar,
Behind Tendulkar Jogging Track,
Navi Peth, Pune – 411 030
PAN : AAPPA3065J

.....अपीलार्थी / Appellant

बनाम / V/s.

The Asstt. Commissioner of Income Tax,
Range-3, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.H. Amdekar
Revenue by : Dr. Vivek Aggarwal

सुनवाई की तारीख / Date of Hearing : 18-06-2018
घोषणा की तारीख / Date of Pronouncement : 14-08-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-5, Pune dated 13-06-2016 for the assessment year 2009-10 passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The solitary issue raised by the assessee in appeal is against addition of Rs.1,69,116/- u/s.14A read with Rule 8D of the Income Tax Rules, 1962 sustained by CIT(A).

3. Shri S.H. Amdekar appearing on behalf of the assessee submitted that the assessee is engaged in manufacturing of chemicals and is also acting as commission agent. In scrutiny assessment proceedings, the Assessing Officer made disallowance of Rs.1,69,116/- u/s.14A read with Rule 8D of the Income Tax Rules, 1962. The assessee has earned exempt income of Rs.1,63,53,895/-, from interest on PPF, interest on RBI Bonds, interest on UTI bonds and dividend. The assessee has not incurred any expenditure in earning exempt income nor any borrowed funds were used by the assessee for making such investments. The assessee is maintaining separate books of account for business and the personal investments. The assessee has earned exempt income in respect of the investments in personal account. Thus, no disallowance u/s.14A r.w. Rule 8D is warranted. The ld. Authorized Representative further submitted that for invoking the provisions of Rule 8D, the Assessing Officer has to record satisfaction. In the case of assessee, no such satisfaction has been recorded by the Assessing Officer before invoking the provisions of Rule 8D. To support his submissions, ld. Authorized Representative placed reliance on the following decisions :

1. Godrej & Boyce Manufacturing Co. 394 ITR 449 (SC)
2. Maxopp Investment Ltd. Vs. CIT 247 CTR 162 (Delhi)
3. CIT Vs. Hero Cycle Ltd. 323 ITR 518 (P&H)

4. On the other hand, Dr. Vivek Aggarwal representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of the authorities below. A perusal of the assessment order shows that the assessee has earned exempt income to the tune of Rs.1,63,53,895/-. The assessee has not made

any suo moto disallowance for earning exempt income. The Assessing Officer has made disallowance under Rule 8D(2)(iii). The assessee has not furnished any document either before the authorities below or before us to show that the assessee is maintaining two separate portfolios. The assessee has earned substantial amount of income exempt from tax. The Assessing Officer in a well reasoned order has only invoked clause (iii) of Rule 8D(2) to make disallowance. No disallowance has been made on account of interest expenditure. The judgments cited by the ld. Authorised Representative of assessee are distinguishable on facts. We do not find any infirmity in the impugned order. Accordingly, the same is upheld and the appeal of assessee is dismissed.

6. In the result, appeal of the assessee is dismissed.

Order pronounced on Tuesday, the 14th day of August, 2018.

Sd/-
(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 14th August, 2018
Satish

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)-5, Pune
4. आयकर आयुक्त / The Pr.CIT-4, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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