

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1109/JP/2018  
निर्धारण वर्ष / Assessment Year : 2011-12

D.C.I.T., Circle-7, Jaipur.	बनाम Vs.	M/s Mayur Leather Products Ltd., 65-67, Udhog Vihar, Jaitpura Industrial Area, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCM 1848 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri Anup Singh (JCIT)  
निर्धारिती की ओर से / Assessee by : Adj. application rejected.

सुनवाई की तारीख / Date of Hearing: 31/10/2018  
उदघोषणा की तारीख / Date of Pronouncement : 31/10/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.:

This appeal by the revenue is directed against the order dated 10/07/2018 of Id. CIT(A)-3, Jaipur for the A.Y. 2011-12. The revenue has raised following grounds of appeal:

- "1. On the facts and in the circumstances of the case, whether finding given by the Ld. CIT(A) in giving relief of Rs. 3,10,000/- out of total disallowance of Rs. 3,18,500/- made u/s 14A r.w. Rule 8D, was not in contravention to the provisions of Section 14A of the Income Tax Act, 1961 and clarification issued by the CBDT vide Circular 05/2014 dated 11.02.2014?"*
- 2. On the facts and in the circumstances of the case, whether Ld. CIT(A) was justified in giving relief of Rs. 3,10,000/- out of total disallowance of Rs. 3,18,500/- made u/s 14A r.w. Rule 8D by stating that disallowance u/s 14A cannot exceed more than exempt income declared during the relevant year even though this finding was in contravention to the CBDT's Circular 05/2014 dated 11.02.2014 wherein it has been clearly*

*mentioned that disallowance u/s 14A is applicable even where taxpayer in a particular year has not earned any exempt income?*

3. *On the facts and in the circumstances of the case, whether Ld. CIT(A) was justified in giving relief of Rs. 3,10,000/- out of total disallowance of Rs. 3,18,500/- made u/s 14A r.w. Rule 8D by ignoring the ratio of decision awarded by various courts including the Hon'ble Apex Court in the case of M/s Maxopp Investment Ltd. vs. CIT (2018) 91 Taxmann.com 154 wherein it is clearly held that the dominant purpose for which investment is made by the assessee is not relevant since this investment in shares resulted in exempt income?*
4. *The appellant craves leave to add, alter, amend, withdraw or insert any ground or grounds of appeal before or at the time of hearing of the appeal."*

2. The assessee sought adjournment of the hearing, however, the tax effect in the department's appeal is not exceeding the limit as provided in the CBDT Circular No. 3 of 2018 dated 11<sup>th</sup> July, 2018, therefore, the request for adjournment was turndown and appeal of the department is heard ex parte.

3. Though the Id. DR has accepted that the tax effect involved in this appeal is not exceeding Rs. 20.00 lacs as prescribed in the CBDT Circular No. 3/2018 dated 11<sup>th</sup> July, 2018, however, as it is mentioned in the grounds, the present case fall in the exception under para 10(b) of the said circular.

4. There is no dispute that that the tax effect in the revenue's appeal is very less as the relief of Rs. 3.10 lacs was given by the Id. CIT(A). However, the Id DR has contended that the matter falls in the exception under para 10(b) of the CBDT circular. We do not find merit in this contention of the Id AR as the issue of disallowance U/s 14A, which was deleted by the Id. CIT(A) does not involve any notification, instruction or circular issued by the CBDT has been held to be illegal

or ultra vires. Therefore, in our considered opinion that the present appeal is not covered by the exception in para 10(b) claimed by the department or any other exception prescribed in the said CBDT Circular No. 3 of 2018 dated 11<sup>th</sup> July, 2018. Accordingly, the appeal of the department is liable to be dismissed as not maintainable.

Order pronounced in the open court on 31/10/2018.

Sd/-  
(विक्रम सिंह यादव)  
(VIKRAM SINGH YADAV)  
लेखा सदस्य / Accountant Member

Sd/-  
(विजय पाल राव)  
(VIJAY PAL RAO)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur  
दिनांक / Dated:- 31<sup>st</sup> October, 2018

\*Ranjan

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

1. अपीलार्थी / The Appellant- The D.C.I.T., Circle-7, Jaipur.
2. प्रत्यर्थी / The Respondent- M/s Mayur Leather Products Ltd., Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1109/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar