

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH 'B', CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं, एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SMT.DIVA SINGH, JM & SMT.ANNAPURNA GUPTA, AM

आयकर अपील सं./ ITA No.50/Chd/2018

निर्धारण वर्ष / Assessment Year : 2012-13

Sh.Vishal Garg, D-74, Phase-V, Focal Point, Ludhiana.	बनाम	The Income Tax Officer, Ward-1(3), Ludhiana.
स्थायी लेखा सं./PAN NO: AAVPG3984A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Pankaj Bhalla, CA

राजस्व की ओर से/ Revenue by : Shri Ankur Alya, JCIT DR

सुनवाई की तारीख/Date of Hearing : 08.08.2018

उदघोषणा की तारीख/Date of Pronouncement: 31.10.2018

आदेश/Order

PER ANNAPURNA GUPTA, A.M. :

The present appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-1, Ludhiana (in short CIT(A) dated 1.11.2017 passed u/s 143(3) of the Income Tax Act, 1961 (in short referred to as 'Act').

2. The sole issue in the present appeal relates to disallowance of expenses made, holding the same to have been incurred in relation to earning of exempt income, as per the provisions of section 14A of the Act.

3. The brief facts relating to the case are that the assessee is a partner in M/s Swati Industries and had derived income

from share of profit and interest from the partnership firm during the impugned year. The profit earned by the assessee from the partnership firm amounted to Rs.28,56,630/- which was claimed as exempt under the provisions of section 10(2A) of the Act , while the interest earned amounted to Rs.26,41,618/- which was returned to tax. Against the said interest earned the assessee had claimed deduction on account of interest paid on unsecured loans taken amounting to Rs.12,66,205/-, as per the provisions of section 36(1)(iii) of the Act on the premises that the interest income from the partnership firm was taxable as business income within the meaning of section of section 28(v) of the Act. The A.O. while framing the assessment invoked the provisions of section 14A of the Act r.w.r.8D of the Income Tax Rules, 1962 and disallowed the interest expenses of Rs.12,66,205/- holding the same to have been incurred for the purpose of earning the exempt income of share of profit from the partnership firm.

4. The matter was carried in appeal before the Ld.CIT(A) who upheld the order of the A.O.

5. Aggrieved by the same, the assessee has come up in appeal before us, raising the following effective grounds of appeal:

“2. *That the Ld. CTT(A)-1, Ludhiana erred in law & facts in confirming disallowance u/s 14A read with Rule 8D of the Income Tax Act, 1961 to the tune of 1% of the annual average of the monthly averages of the opening and closing balances of the capital investment in the Partnership Firm without any base and reasons thereof.*

- 2.1 *That the Ld. CIT(A)-1, Ludhiana erred in law and facts partly confirming disallowance u/s 14A of the Income Tax Act, 1961 without appreciating that A.O. failed to record a satisfaction based on examination of accounts with regard to correctness of claim of the assessee with respect to expenditure in relation to "exempt income, without any base & reasons thereof.*
 - 2.2 *That the Ld. CIT(A)-1, Ludhiana failed to appreciate that provisions of section 14A are not applicable on the investment in a Partnership Firm without any base & reasons thereof.*
 - 2.3 *That the Ld. CIT(A)-1, Ludhiana failed to appreciate that the Hon'ble ITAT Chandigarh in a binding precedent has held interest paid on borrower capital has no close proximity with the exempt profit whereas it has close proximity with interest earned which is taxable u/s 28. Accordingly no disallowance u/s 14A is called for with respect to interest income.*
 - 2.4 *That the Ld. CIT(A)-1, Ludhiana has failed to appreciate that the amendment in Rule 8D with effect from 02.06.2016 is prospective and not retrospective. Accordingly no disallowance can be made based upon amended provisions of Rule 8D of the Income Tax Rules.*
 - 2.5 *That no disallowance can be made as per pre-amended 8D(2)(ii) since interest income is much more than expenditure.*
 - 2.6 *That no disallowance of interest can be made under Rule 8D(2)(iii) particularly when there is a separate sub-clause in Rule 8D(2). Further that disallowance under Rule 8D(3) cannot exceed the expenditure other than interest, which is Nil."*
6. Taking up first ground No.2.1 raised by the assessee before us the Ld. counsel for assessee contended that while making disallowance u/s 14A the A.O. was required to record satisfaction as to why he was not satisfied with the claim of the assessee that no expenditure had been incurred in relation to the exempt income earned. The Ld. counsel for assessee contended that under sub-section (2) of section 14A of the Act the A.O. was required to examine the accounts of the assessee and only when he was not satisfied with the correctness of the claim in respect of the expenditure in respect of the exempt income, he could have resorted to the prescribed method for determining the

amount of expenditure disallowable u/s 14A of the Act, which was rule 8D of the Income Tax Rules. Reliance was placed on the following decisions of the Hon'ble High Courts and the I.T.A.T. in support of the contention of the assessee:

- 1) ACIT Vs. M/s Avon Cycles Ltd.,
ITA No.931/Chd/2013
- 2) CIT-I, Ludhiana Vs. Abhishek Industries Ltd.
(2005) 56 Taxmann.com 391 (P&H)
- 3) M/s Anshul Goyal Land & Housing Ltd. Vs. DCIT
ITA No.1428/Chd/2017
- 4) CIT-II Vs. Her Cycles Ltd. (2010)
189 Taxman 50 (P&H)
- 5) CIT, Jalandhar-I Vs. Deepak Mittal (2013)
38 Taxmann.com 83 (P&H)

7. The Ld. DR contended that the said issue had not been raised before the CIT(A) and, therefore, had not been dealt with by him also. It was, therefore, pleaded that the matter be restored back to the CIT(A) to adjudicate first on the issue of recording of satisfaction prior to making disallowance u/s 14A of the Act.

8. The Ld. counsel for assessee agreed to the same.

9. We have heard both the parties and gone through the orders of the authorities below. The issue in challenge before us is the disallowance of expenses made u/s 14A of the Act. Undoubtedly the proposition of law laid down by courts in various decisions, as cited by the Ld.Counsel for the assessee, is that the satisfaction of the A.O. vis-a-vis the incorrectness of the claim of the assessee is an

essential prerequisite for invoking the provisions of section 14A. This issue needs to be looked into and adjudicated upon before deciding the same on merits. In the present case, admittedly this aspect /issue has been raised for the first time before us and has thus remained unexamined and unadjudicated by the CIT(A). Since adjudicating the same will require examining the facts of the case and considering the plea of the parties we consider it fit to restore the appeal denovo to the CIT(A) to first adjudicate the issue of existence of satisfaction of the A.O. vis-a-vis the incorrectness of the claim of the assessee and thereafter decide the appeal in accordance with law. The CIT(A) is directed to pass a speaking order after giving due opportunity of hearing to the assessee in this regard.

10. In the result, the appeal of the assessee, therefore, stands allowed for statistical purposes.

Order pronounced in the Open Court.

Sd/-

दिवा सिंह
(DIVA SINGH)
न्यायकि सदस्य/ Judicial Member
दिनांक /Dated: 31st October, 2018

रती

Sd/-

अन्नपूर्णा गुप्ता
(ANNAPURNA GUPTA)
लेखा सदस्य/ Accountant Member

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar