

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA  
BEFORE SHRI S.S. Viswanethra Ravi, JM & DR. A.L.SAINI, AM**

**ITA No. 348/Kol/2018  
(A.Y: 2013-14)**

<b>Mahendra Kumar Bachhawat</b> PAN: AEKPB3106Q	Vs.	<b>ACIT, Cir-33, Kolkata</b>
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>

Appellant by : Shri Anil Kochar, Advocate, Id.AR  
Revenue by : Shri Sankar Halder, Id. Sr.DR

सुनवाई की तारीख / Date of Hearing : 13/12/2018

घोषणा की तारीख/Date of Pronouncement : 19/12/2018

**आदेश / ORDER**

**Per Dr. Arjun Lal Saini, AM:**

The captioned appeal filed by the assessee, pertaining to assessment year 2013-14, is directed against the order passed by Id. Commissioner of Income Tax (Appeals)-9, Kolkata in ITA No. 308/CIT(A)-9/Cir-33/2015-16/Kol, dated 16-01-2018, which in turn arises out of an order passed by the Assessing Officer u/s. 143(3) of the Income-Tax Act, 1961 (in short, the Act), dated 15-01-2016.

2. The solitary grievance of the assessee in this appeal is that the Id. CIT(A) has erred in confirming the disallowance of Rs.2,84,534/- made by the AO u/s. 14A/r.w.r 8D of the IT Rules, 1962.

3. The brief facts qua the issue are that during the assessment proceedings, the assessing officer noted that the assessee in his books of accounts, has debited various expenses and some of those expenses were utilized for generating exempt income. All these expenses were to a certain extent related to investment in shares and capable of generating non-taxable income. Moreover, the assessee had to keep track of various dividend incomes declared by the invested companies and also to keep track of the dividend income having been regularly received by the assessee. The assessee also

could not furnish any explanation regarding the expenses related to exempted income. The Id AO noted that the assessee has no objection towards disallowance u/s 14A of the I.T. Act, 1961, read with rule 8D of the Income Tax Rules, 1962. In view of the above facts of the case, disallowance u/s. 14A of the Income-tax Act, 1961 read with Rule-8D of the Income-tax Rules, 1962 was computed by the AO as under:

1.	Direct Expenses on Investments	Rs. 5,442/-	(A)
2.	Interest Paid	NIL	(B)
3.	Value of Investments at the end of the Year	Rs.6,93,50,291/-	
4.	Value of Investments at the beginning of the Year	Rs.4,22,86,608/-	
5.	Average Value of Investments	Rs.5,58,18,449.50	(C)
6.	Total Assets at the end of the Year	Rs.17,57,91,627/-	
7.	Total Assets at the beginning of the Year	Rs.14,66,32,871/-	
8.	Average Value of Total Assets	Rs.16,12,12,249/-	(D)

$$\begin{aligned}
 \text{Disallowance u/s.14A} &= A + B \times C/D + 0.5\% \text{ of } C, \\
 &= \text{Rs.5,442} + 0 + \frac{1}{2} \% \text{ of Rs.5,58,18,449.50/-} \\
 &= \text{Rs.5,442} + \text{Rs.2,79,092} \\
 &= \text{Rs.2,84,534/-}
 \end{aligned}$$

Therefore, amount of Rs.2,84,534/- was disallowed and added to the income of the assessee.

4. Aggrieved by the stand so taken by the AO the assessee carried the matter in appeal before the Id. CIT(A), who has confirmed the addition made by the AO, observing the followings:-

*“4.1 I have gone through the Assessment order and submissions of the Appellant and case was discussed with the A/R of the appellant. The A/R has not been able to point out any infirmity in the disallowance made u/s. 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962”*

5. Aggrieved by the impugned order of the Id. CIT(A) the assessee is in appeal before us.

6. The Id. Counsel for the assessee submitted before us that the assessee is a salaried employee and earned income under the head ‘income from other sources’ by way of dividend and interest income. The assessee under consideration received dividend

income, which is exempted from tax. The assessee made disallowance *suo motu* of direct expenses to the tune of Rs.5,542/- on account of Deemat Charges. In addition to this, the assessee has debited the expenses in his Profit and Loss account to the tune of Rs.17,083/-. Therefore, the ld. Counsel for the assessee has submitted before the Bench that the disallowance, if any, under section 14A/r.w.r 8D should not exceed the expenditure debited in the Profit and Loss account.

7. On the other hand, the ld. DR for the revenue has primarily reiterated the stand taken by the AO, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

8. We have given a careful consideration to the rival submissions and perused the material available on record. We note that the AO made disallowance under Rule 8D(2)(iii) to the tune of Rs, 2,84,534/- taking into account, the average investments of all the investments. The assessee submitted before us that he has *suo motu* disallowed of Rs. 5,542/- under Rule 8D(2)(i) on account of Demat charges incurred by him. We noted from the profit and loss submitted by the assessee that the total expenses debited by the assessee is to the tune of Rs.17,083/-. Therefore, the maximum disallowance under section 14A read with rule 8D ( for earning exempt income) cannot be more than Rs.17,083/-. The ld DR for the Revenue fairly agreed with the Bench that maximum disallowance under section 14A read with rule 8D cannot exceed the total expenses debited by the assessee in his profit and loss account. Therefore, the expenses for earning exempt income could be disallowed to the extent of Rs.17,083/-, which has been debited in the Profit and loss account. Therefore, we direct the AO to disallow only the total expenditure to the tune of Rs.17,083/-, this is in addition to suo-moto expenses disallowed by assessee of Rs.5,442/-.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on this 19 /12/2018.

Sd/-

**( S.S. Vswanethra Ravi)**  
JUDICIAL MEMBER

Sd/-

**(A. L. Saini)**  
ACCOUNTANT MEMBER

कोलकाता /Kolkata;

Dated: 19/12/2018

\*\*PP, Sr.PS

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

1. अपीलार्थी / The Appellant- Shri Mahendra Kumar Bachhawat C/o S.L Kochar, Advocate, 5 Ashutosh Chowdhury Avenue, Kolkata-19.
2. प्रत्यर्थी / The Respondent.- ACIT, Circle-33,Kolkata,10B, Middleton Row, 3<sup>rd</sup> Fl., Kolkata-71.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file. //True Copy/ By Order

Assistant Registrar

I.T.A.T, Kolkata Benches,Kolkata.