

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.3178/Bang/2018
Assessment Year : 2013-14

Shri Noratanmal Choraria, Nos. 175 & 176, 3 rd Floor, R T Street, Above Ravivarma Apartments, Bangalore – 560 053. PAN: AFFPC4543L	vs.	The Income Tax Officer, Ward – 2 [2] [5], Bangalore.
APPELLANT		RESPONDENT
Appellant by	:	Shri V. Srinivasan, Advocate
Respondent by	:	Shri A. Ramesh Kumar, JCIT (DR)
Date of hearing	:	17.01.2019
Date of Pronouncement	:	25.01.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. CIT(A)-2, Bangalore dated 19.09.2018 for Assessment Year 2013-14.

2. The grounds raised by the assessee are as under.

“[1] The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT[A] is not justified in upholding the disallowance u/s. 14A of the Act amounting to Rs. 3,58,787/- under the facts and in the circumstances of the appellant's case.

3. The learned CIT[A] failed to appreciate that the disallowance computed purportedly u/s. 14A of the Act was opposed to law as the appellant had not utilized interest bearing funds for making the investments that yield tax free income under the facts and in the circumstances of the appellant's case.

4. Without prejudice to the above, the disallowance made is highly excessive, opposed to law and facts of the appellant's case and therefore, the same deserves to be deleted.

5. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234-B of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.

6. For the above and other grounds that may be urged at the time of nearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund

of the institution fees as part of the costs.”

3. The Id. AR of assessee made various arguments. At this juncture, this was the observation by the bench that whether there is mixed funds or not and if there are mixed funds then for proportionate disallowance of interest expenditure, Rule 8D has to be followed. In reply, it was submitted by Id. AR of assessee that this is true that there are mixed funds but the AO has not followed Rule 8D also because as per Rule 8D, the amount of average investment in shares and average total assets has to be considered whereas the AO has considered investment in shares as on 31.03.2013 and total value of asset as per balance sheet as on 31.03.2013 and in this regard, he drawn my attention to page no. 3 of the assessment order. He submitted that the matter may be restored back to the file of AO for fresh decision as per Rule 8D. the Id. DR of revenue supported the orders of authorities below.
4. I have considered the rival submissions. In view of the discussion above, as per which, it is seen that the AO has not computed the amount of disallowance u/s 14A as per Rule 8D. Hence, I set aside the order of CIT(A) and restore the matter back to the file of AO for fresh decision as per Rule 8D after providing adequate opportunity of being heard to assessee.
5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 25th January, 2019.
/MS/

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| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.