

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 3508/Ahd/2016

(निर्धारण वर्ष / Assessment Year : 2008-09)

Shri Harish M. Kukreja 22, Shantinagar Society, Usmanpura, Ahmedabad 380013	बनाम/ Vs.	The Income-tax Officer Ward – 7(3), Now Ward – 1(3)(2), Pratyaksh Kar Bhavan, Nr. Panjara Pole, Ambawadi, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AFOPK6389P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Jaimin Shah, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Sumeet Kumar Verma, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	24/01/2019
घोषणा की तारीख /Date of Pronouncement	29/01/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Assessee against the order of the CIT(A)-III, Ahmedabad ('CIT(A)' in short), dated 28.06.2013 arising in the assessment order dated 03.12.2010 passed by the Assessing Officer (AO) under S. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2008-09.

2. The solitary issue in the captioned appeal agitated by the assessee is towards disallowance of interest amounting to Rs.11,47,958/- computed in terms of Rule 8D(2)(ii) under the umbrella of Section 14A of the Act confirmed in an *ex parte* order passed by the CIT(A).

3. When the matter was called for hearing, the learned AR for the assessee at the outset pointed out that there is a delay of 1191 days in filing the appeal on account of valid reasons as pointed out in the separate petition filed by way of affidavit. The learned AR submitted that the delay is broadly on account of application for rectification pending before the CIT(A). The learned AR thereafter submitted that the issue is squarely covered in favour of the assessee and endorsed by the Hon'ble Supreme Court and therefore there was no reason for the assessee not to prefer the appeal before the ITAT within the stipulated limitation period. Learned AR for the assessee thus sought condonation of the delay on the strength of palpable bonafides on the part of the assessee. Considering the circumstances narrated by the AR, we are satisfied towards the existence of sufficient cause for delay in filing appeal before the Tribunal. We also observe that no prejudice will be caused to the Revenue by such condonation *per se* as the issue involved is *prima facie* legal in nature and can be adjudicated on the basis of assertions made in the orders of the Revenue authorities itself without going into the factual aspects. The delay is thus condoned.

4. On merits, the learned AR adverted our attention to the assessment order and submitted that the assessee has earned dividend income of Rs.17,819/- which is claimed exempt under s.10(34) of the Act. As against the aforesaid exempted income, the

AO has embarked upon disallowance of proportionate interest expenditure to the tune of Rs.11,47,958/- under S. 14A of the Act. The learned AR pointed out that it is settled position of law that disallowance of expenditure in excess of exempt income is not permissible under S. 14A of the Act. The learned AR referred to the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. State Bank of Patiala 393 ITR 476 (2017) (P&H) wherein it has been clearly held that disallowance under S.14A of the Act cannot exceed the amount of exempt income. The learned AR thereafter submitted that the special leave petition filed by the Revenue against the aforesaid decision of the Hon'ble Gujarat High Court was dismissed on merits by the Hon'ble Supreme Court in SLP (civil) Diary No(s). 24323/2018 dated 08.10.2018. The learned AR accordingly submitted that action of the lower authorities for disallowance of interest expenditure in excess of exempt income is without authority of law. The learned AR accordingly submitted that the disallowance at best is required to be restricted to Rs.17,819/- instead of Rs.11,47,958/-.

5. The learned DR, on the other hand, relied upon the orders of the Revenue authorities.

6. We have carefully considered the rival submissions. The solitary issue involved in the present appeal is towards extent of disallowance permissible under s.14A of the Act. We find merit in the plea raised on behalf of the assessee that the disallowance under s.14A of the Act cannot surpass the quantum of exempt income in view of the long line of judicial precedents prevailing in this regard including the decision referred and relied upon by the assessee in State Bank of Patiala (supra) against which the SLP of the Revenue

stands dismissed by the Hon'ble supreme Court of India. Accordingly, we set aside the order of the CIT(A) in this regard and direct the AO to restrict the disallowance to the extent of the exempt income.

7. In the result, appeal of the Assessee is partly allowed.

This Order pronounced in Open Court on 29/01/2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad: Dated 29/01/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।