

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'बी', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ B ” BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER And
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.1684/Ahd/2018
(निर्धारण वर्ष / Assessment Year : 2015-16)

Sagar Yeswantrai Mehta Laxmi House Swagat Cross Road Hotel Rock Regency C.G. Road, Ahmedabad	बनाम/ Vs.	The ACIT Circle-2(1)(2) Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACCPM 8669 B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Mehul K. Patel, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri M.S.A. Khan, CIT-DR

सुनवाई की तारीख / Date of Hearing	18/02/109
घोषणा की तारीख/Date of Pronouncement	19/02/2019

आदेश / O R D E R

PER SHRI RAJPAL YADAV, JUDICIAL MEMBER :

The Assessee is in appeal before us against the order of Ld.Commissioner of Income Tax(Appeals)-XI, Ahmedabad [‘CIT(A)’ in short] dated 07/06/2018 passed for Assessment Year (AY) 2015-16.

2. In the first ground of appeal, assessee has pleaded that ld. CIT(A) has erred in deciding his appeal *ex-parte* without giving proper opportunity of hearing.

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3. However, at the time of hearing, the ld.counsel for the assessee did not advance any argument on this issue. Hence, it is rejected.

4. In ground No.2, the assessee has pleaded that Ld.CIT(A) has erred in confirming the addition of Rs.8,05,856/- which was added by the Assessing Officer with the help of Section 14A r.w.r.8D of the Income Tax Rules, 1962.

5. With the assistance of Ld.Representative, we have gone through the record carefully. It emerges out from the record that assessee has filed his return of income on 30/10/2015 declaring total income of Rs.1,57,94,530/-. The case was selected for scrutiny assessment and notice u/s.143(2) of the Act was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the Assessing Officer that assessee has declared dividend income of Rs.22,697/- which was claimed as exempt from taxes u/s.10(35) of the Act. The Ld.AO made an analysis of the expenditure required to be disallowed for earning this tax free income. He worked out the disallowance with the help of Rule 8D of the Income Tax Rules, 1962. Such disallowance has been worked out at Rs.8,05,856/-. It is pertinent to observe that the Hon'ble Gujarat High Court on the issue in the case of CIT vs. Corrttech Energy Pvt.Ltd. reported in (2014) 223 Taxman 0130 and Hon'ble Delhi High Court in the case Cheminvest Ltd. vs. CIT reported in 378 ITR 033 have

concluded with each other that if there is no dividend income or tax free income in a year, then no disallowance u/s.14A can be made. This explanation was amplified and employed subsequently by the ITAT to construe that working of expenditure for disallowance u/s.14A of the Act should not exceed more than dividend income itself. In the case of Joint Investments Pvt.Ltd. vs. CIT (ITA No.117/Ahd/2015 decided on 25/02/2015), the Hon'ble Delhi High Court has observed that by no stretch of imagination section 14A or Rule 8D could be interpreted so as to mean that entire tax-free income is to be disallowed. The ITAT Ahmedabad has restricted the disallowance equivalent to exempt income (a reference could be made to ITA No.3266/Ahd/2015 decided on 7/12/2016 and ITA No.750/Ahd/2016 in the case of CIT vs. Nirma Chemical Works Pvt.Ltd. decided on 03/12/2018).

6. Following the above, we are of the view that ends of justice would meet if we restrict the disallowance equivalent to the tax-free income shown by the assessee i.e. Rs.22,697/-. This ground is accordingly partly allowed. The Ld.AO consider the disallowance at Rs.22,697/- instead of Rs.8,05,856/-.

7. In ground No.3, the assessee has pleaded that the Ld.CIT(A) has erred in confirming the addition of Rs.10,80,088/-. With the assistance of Ld.Representative, we have gone through the record carefully. The Ld.AO has recorded a finding that assessee failed to make payment of

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employees' contribution to PF account within the due date provided under the PF Act. Hence, he disallowed the claim of the assessee with the help of section 36(1)(va) r.w.s.2(24)(x) of the Act.

8. On appeal, the Ld.CIT(A) confirmed this disallowance following the judgement of Hon'ble High Court of Gujarat in the case of CIT vs. GSRTC reported in 366 ITR 170 (Guj.). Since the ld.first appellate authority has based his order on the decision of Hon'ble Gujarat High Court and Hon'ble High Court has held that if an assessee failed to pay employees' contribution to PF and ESI account within the due date provided under those Acts, then assessee will not be entitled for deduction of such expenditure. The Ld.CIT(A) has rightly placed reliance on the decision of Hon'ble Gujarat High Court and no interference is called for in the finding of the Ld.CIT(A). Accordingly this ground of appeal is rejected.

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

Order pronounced in the Court on 19th February-2019 at Ahmedabad.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad; Dated 19/ 02 /2019

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-2, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER.

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad