

IN THE INCOME TAX APPELLATE TRIBUNAL  
“F” Bench, Mumbai  
Before S/Shri B.R. Baskaran (AM) & Sandeep Gosain (JM)

I.T.A. No. 5024/Mum/2017 (Assessment Year 2013-14)

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| ACIT-16(2)<br>Room No. 479<br>4 <sup>th</sup> Floor<br>Aayakar Bhavan<br>M.K. Road<br>Mumbai-400 020.<br>(Appellant) | Vs. | Shri Janak Dilip Dwarkadas<br>3 <sup>rd</sup> Floor, Mulla House<br>51, M.G. Road, Fort<br>Mumbai-400 001.<br><br>PAN :AAEPD8303R<br>(Respondent) |
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| Assessee by           | Ms. Bhavya Sandesh<br>& Shri Sunil M. Lala |
| Department by         | Shri Rajiv Gubgotra                        |
| Date of Hearing       | 4.2.2019                                   |
| Date of Pronouncement | 4.2.2019                                   |

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the Revenue is directed against the order dated 6.4.2017 passed by learned CIT(A)-5, Mumbai and it relates to A.Y. 2013-14. The Revenue is aggrieved by the decision of learned CIT(A) rendered on following issues :-

- (a) Determination of annual letting value of “Pune Farm House Property”.
- (b) Disallowance made u/s. 14A of the I.T. Act.

2. We have heard the parties and perused the record. The assessee herein is an advocate and he filed his return of income for the year under consideration declaring a total income of Rs. 32.54 crores. The assessee had held a property identified as “Pune farmhouse property” for self occupation and declared annual letting value of the same at Rs. 15,000/-, by treating the said property as deemed to be let out. The Assessing Officer, however, determined the annual letting value of property at 8% of the cost of the property and the same resulted in an addition of Rs. 4,21,694/-. The Learned CIT(A) followed the decision rendered by Hon'ble Bombay High Court in the case of M.V.

Sonawala Vs. CIT (246 ITR 177), wherein it was held that income from house property has to be computed on the basis of sum received by the property let out year to year and at municipal value and directed the AO to determine the Annual Letting Value by adopting Municipal Rateable value.

3. The Assessing Officer also noticed that the assessee has earned exempt income, but did not make any disallowance u/s. 14A of the Act. The Assessing Officer took the view that disallowance should be made in accordance with Rule 8D of the I.T. Rules and accordingly computed disallowance at Rs. 70.31 lakhs u/r. 8D(2)(iii) of the I.T. Rules. The Learned CIT(A) noticed that the assessee did not claim any expenditure relating to investment activities in his Profit and loss account. He also noticed that the assessee has debited all expenditure relating to share investment activity to his capital account. The Learned CIT(A) further noticed that an identical issue was considered by him in A.Y. 2012-13 and he has deleted an identical addition by him by following the decision rendered by the Tribunal in the case of ACIT Vs. Iqbal M. Chagla (ITA No. 377/Mum/2013). Accordingly he deleted the disallowance made by the Assessing Officer u/s. 14A of the Act.

4. Aggrieved by the order passed by learned CIT(A) on the above said issues, the Revenue has filed this appeal before us.

5. At the time of hearing, learned AR submitted that an identical additions were made by the Assessing Officer in A.Y. 2012-13 also and they were deleted by learned CIT(A) in that year also. The Revenue challenged the decision of learned CIT(A) by filing the appeal before the Tribunal and the Coordinate Bench, vide its order dated 11.5.2018 passed in ITA No. 4845/Mum/2016 has dismissed the appeal of the Revenue. He submitted that the facts are identical in this year also and accordingly prayed that the order passed by the Tribunal in A.Y. 2012-13 may be followed in this year also.

6. The Learned DR, on the contrary, supported the order passed by the Assessing Officer.

7. With regard to the first issue relating to determination of annual letting value of Pune Farm House property, we noticed that learned CIT(A) has followed the binding decision rendered by Hon'ble Bombay High Court in the case of M.V. Sonawala (supra) and further we noticed that the view taken by Ld CIT(A) on an identical issue in A.Y. 2012-13 has since been upheld by the Coordinate Bench in ITA No. 4845/Mum/2016 (referred supra) with following observations :-

*6. When this order was confronted to the learned Sr. Departmental Representative, he relied on the assessment order and particularly he relied on the concession given by assessee that ratable value of Pune Bungalow be taken as ₹ 5,46,000/-. We find that the Tribunal following the decision of Hon'ble Bombay High Court in the case of MV Sonawala Vs.CIT 246 ITR 177 (Bom.) directed the AO to compute the income of the assessee from house property taking the ALV on the basis of municipal ratable value. We find that the Tribunal has decided the issue and taking consistent view and respectfully following the same, we direct the Assessing Officer accordingly. This issue of Revenue's appeal is dismissed.*

Under these set of facts, we are of the view that the order passed by learned CIT(A) on this issue does not call for any interference.

8. The next issue relates to disallowance made u/s. 14A of the I.T. Act. We noticed that the assessee did not claim any expenditure relating to share investment activity in his profit and loss account. The assessee has charged all expenditure relating to share investment activity to his capital account. When the assessee did not claim any expenditure in the profit and loss account relating to share investment activity, in our view, the question of making any disallowance u/s. 14A of the Act does not arise. We noticed that an identical issue was considered by the Coordinate Bench in A.Y. 2012-13 (referred supra), and it has also taken view that the disallowance u/s. 14A of the Act is not called for, in the facts and circumstances of the case. The facts,

being identical in this year also, we uphold the view taken by Ld CIT(A) on this issue by following the decision of co-ordinate bench rendered in the assessee's own case, referred supra.

9. In the result, appeal filed by the Revenue is dismissed.  
Order has been pronounced in the Court on 4.2.2019.

Sd/-  
(SANDEEP GOSAIN)  
JUDICIAL MEMBER

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 4/2/2019

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Senior Private Secretary)  
ITAT, Mumbai

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