



आयकर अपीलीय अधिकरण “सी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI

माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।

BEFORE HON’BLE SHRI MAHAVIR SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.6932/Mum/2017
 (निर्धारण वर्ष / Assessment Year: 2013-14)

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आयकर अपील सं./ I.T.A. No.6931/Mum/2017
 (निर्धारण वर्ष / Assessment Year: 2014-15)

DCIT-Central Circle-3(3) Room no.1923 Air India Building, 19 th Floor Nariman Point Mumbai-400 021	बनाम/ Vs.	M/s. Passionate Investment Management Pvt.Ltd. Motilal Oswal Tower Opp. Parel S.T. Depot Near Prabhadevi, Dadar(W) Mumbai-400 025.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAACM-7085-N		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Appellant by	:	Abhirama Kartikeyan-DR
Respondent by	:	Malav P. Sheth-AR

सुनवाई की तारीख/ Date of Hearing	:	12/03/2019
घोषणा की तारीख / Date of Pronouncement	:	19/03/2019

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by revenue for Assessment Years [in short referred to as ‘AY’] 2013-14 and 2014-15 contest separate orders of first appellate authority on common grounds of appeal and therefore, disposed-off by way of this combined order for the sake of convenience



and brevity. The sole issue involved under appeals is disallowance u/s 14A.

ITA No.6932/Mum/2017- AY :2013-14:

2.1 The appeal arises out of the order of Ld. Commissioner of Income Tax (Appeals)-51, Mumbai [CIT(A)], *Appeal No. CIT(A)-51/DC CC-3(3)/IT-233/2016-17 dated 01/09/2017*. Facts *qua* the issue are that the assessee being *resident corporate assessee* stated to be engaged as *non-banking financial intermediary* during impugned AY was assessed in scrutiny assessment u/s 143(3) on 23/03/2016 by *Ld. Deputy Commissioner of Income Tax-Circle 3(3), Mumbai [AO]* wherein the income of the assessee was determined as Rs.253.53 Lacs under normal provisions after sole disallowance u/s 14A for Rs.148.97 Lacs as against returned income of Rs.104.56 Lacs filed by the assessee on 27/09/2013. The *Book Profits* u/s 115JB were computed at Rs.12.72 Crores, *inter-alia*, after adjustment of disallowance u/s 14A for Rs.148.97 Lacs.

2.2 During assessment proceedings, it transpired that the assessee earned exempt income of Rs.17.42 Crores and did not offer any *suo-moto* disallowance against the same. It was noted that the assessee was maintaining consolidated accounts for exempt income yielding investments as well as business assets in the *Balance Sheet*. There was common pool of funds and the assessee could not establish that the entire investments were out of own funds. All these factors led the Ld. AO to form an opinion that disallowance u/s 14A was called for under the given circumstances. Accordingly, applying Rule 8D(2)(iii), the



administrative expense disallowance was worked out to Rs.148.97 Lacs, being 0.5% of average investments held by the assessee.

3. Before first appellate authority, it was pointed out that out of common administrative expenses of Rs.117.10 Lacs as claimed in the Profit & Loss Account, the assessee has claimed expenditure only to the extent of Rs.0.73 Lacs in the computation of income and already disallowed the balance expenditure of Rs.116.37 Lacs and therefore, the disallowance was unjustified. After careful examination of factual matrix, Ld. first appellate authority concurred with assessee's submissions by observing as under: -

"9. In this case, the assessee has not debited / claimed any direct expenses related to earning of exempt income, Therefore, no disallowance can be made by invoking rule 8D(2)(i). Further, the assessee has not debited / claimed any interest expenditure, therefore, no disallowance can be made by invoking Rule 8D(2)(ii). As regards disallowance u/s 14A by invoking rule 8D(2)(iii), it is observed that the total expenditure claimed by the assessee in its P & L account is of Rs 165.22 lakhs (comprising of "administrative and other expenses" of Rs 117.10 lakhs and "depreciation" of Rs 48.11 lakhs). It is further observed that out of "administrative and other expenses" of Rs 117.10 lakhs, the assessee in the computation of income has considered donation (Rs 100 lakhs), security transaction tax (Rs 5.84 lakhs) and other expenses (Rs 10.53 lakhs), totally aggregating to Rs 116.37 lakhs for disallowance and added it back. Thus, out of the total administrative and other expenses, only an amount of Rs 0.73 lakhs has not been considered for disallowance and add back by the assessee in the computation of income. Further, the balance amount Rs 0.73 lakhs has been incurred wholly and exclusively for the purpose of the business of the assessee of share broking. Thus, no amount out of the administrative and other expenses of Rs 117.1 lakhs can be considered for disallowance u/s 14A by invoking rule 8D(2)(iii). It is also observed that in the computation of income, the entire depreciation claimed of Rs 48.11 lakhs has been added back and separately no depreciation as per the provisions of I T Act has been claimed. Thus, no amount can be considered for disallowance also out of the depreciation of Rs 48.11 lakhs claimed in the P & L account.

10. In view of the above discussion, no amount can be disallowed as per the provisions of Sec 14A. Accordingly, ground No 1 of the appeal is allowed."

Aggrieved the revenue is in further appeal before us.

4. Although Ld. Departmental Representative [DR], supported the computations made by Ld. AO, however, failed to controvert the above



factual matrix. The Ld. Authorized representative for assessee reiterated the submissions as made before first appellate authority.

5. Upon careful consideration, the undisputed position that emerges is that the assessee has claimed administrative expenditure only to the extent of Rs.0.73 Lacs in the computation of income and already disallowed the balance expenditure. The expenditure of Rs.0.73 Lacs is stated to be incurred towards *broking business* and the said fact remain unrebutted and therefore, the same was fully allowable to the assessee. This being the case, no interference is called for in the impugned order.

6. The appeal stands dismissed.

ITA No.6931/Mum/2017- AY :2014-15:

7. The assessee has similarly been assessed for this AY on 23/12/2016 wherein it has been saddled with disallowance u/r 8D(2)(iii) for Rs.180.25 Lacs. The same has been deleted by first appellate authority by observing that the assessee has claimed expenditure only to the extent of Rs.0.34 Lacs in the computation of income. Facts and circumstances being *pari-materia* the same, taking the same view, we dismiss the appeal.

Conclusion:

8. Both the appeals stand dismissed.

Order pronounced in the open court on 19th March, 2019.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 19/03/2019
Sr.PS, Jaisy Varghese

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.