

**IN THE INCOME TAX APPELLATE TRIBUNAL 'B' BENCH, KOLKATA**

**Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Godara, Judicial Member**

**I.T.A. No.1512/Kol/2018**

(Assessment Year: 2013-14)

**Ratanlal Gagar.....Appellant**  
*[PAN : ADVPG 9976 H]*

*Vs.*

**DCIT, Circle-22, Kolkata.....Respondent**

**Appearances by:**

*Shri Ajay Gagar, AR, appearing on behalf of the appellant.*

*Shri Robin Choudhury, Sr. DR, Addl.CIT, appearing on behalf of the Respondent.*

Date of concluding the hearing : April 9<sup>th</sup>, 2019

Date of pronouncing the order : May 10<sup>th</sup>, 2019

**O R D E R**

**Per J. Sudhakar Reddy :-**

This appeal by the assessee directed against the order of the Id. Commissioner of Income Tax (Appeals)-6, Kolkata (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dated 03.05.2018 for Assessment Year 2013-14.

2. The assessee is individual and is a solicitor. He filed his return of income on 16.09.2013 declaring a total income of Rs.1,57,48,506/-. The Assessing Officer completed assessment u/s 143(3) of the Act on 31.03.2016 determining total income at Rs.1,79,91,190/-, inter alia, making a disallowance u/s 14A of the Act of Rs.5,64,869/- and further adding an amount of Rs.16,77,816/- as interest on undisclosed income derived from Allahabad Bank and Standard Chartered Bank.

3. Aggrieved the assessee carried the matter in appeal without success. Both the Assessing Officer as well as Id. CIT(A) noted that the assessee chose not to respond

either before the Assessing Officer or before the Id. CIT(A). Aggrieved the assessee is in appeal before us on the following grounds:

*1. That the Id. Commissioner(Appeals) has erred in upholding the disallowances to the tune of Rs.5,64,869/- made by the Assessing Officer by invoking section 14A read with Rule 8D(2)(iii) of the I.T. Acts and Rules.*

*2. That the Id. Commissioner (Appeals) erred in upholding the addition made by the Assessing Officer of an amount of Rs.6,61,606/- as undisclosed interest income of the appellant.”*

4. We have heard Mr. Ajay Gaggar, Id. Counsel for the assessee and Shri Robin Choudhury, Addl. CIT, Id. Senior DR, on behalf of the Revenue. On a careful consideration on the facts and circumstances of the case, perusing the papers on record and orders of the authorities below, we hold as follows.

5. On the first issue of disallowance u/s 14A, we find that the assessee has suo moto disallowed Rs.25,000/-. The A.O at Para 5 stated as follows:

*“5. On perusal of records as well as submissions it is observed from the return that the assessee had exempted income from dividend. The A.R of assessee was asked to explain why sec.14A will not be applicable to this case. He had nothing to state in this respect.*

*In the light of above discussion Rs.5,89,969/- [1/2% of (11,69,75,148 + 11,89,72,589)/2] is treated as the assessee’s expenditure with earning from exempted income. As the assessee had disallowed Rs.25,000/- in this respect, Rs.5,64,869/- (Rs.5,89,869/- - Rs.25,000/-) is added to the total income of the assessee.”*

6. On appeal, the Id. CIT(A) at Para 4 held as follows:

*“4. Ground No.1 is against the action of the A.O in adding Rs.5,64,869/- u/s 14A. The A.O in the order has categorically observed that explanation was called for from the appellant for having not disallowed any sum for the exempt income so earned, the appellant did not reply and hence the A.O has duly recorded its satisfaction for invocation of sec.14A r.w.r 8D(2)(iii) and disallowed the sum of Rs.5,64,869/- (Rs.5,89,869/- - Rs.25,000/-). The Hon’ble Supreme Court in Maxopp Ltd. 402 ITR 401 (SC) has held that satisfaction needs to be recorded by the A.O and as observed earlier in this paragraph, the A.O had duly recorded his satisfaction and hence the A.O’s action cannot be held as unjustified. As regards quantum of the disallowance, the A.O has rightly followed Rules prescribed in the IT Rules, 1962 and particularly Rule 8D(2)(iii) has been invoked and I find no reason to differ with the disallowance so made by the A.O. Hence this ground of the appellant is treated as disallowed.”*

7. In our view, the A.O has not recorded satisfaction as required in law, prior to invoking Rule 8D of the I.T. Rules for the purpose of disallowance u/s 14A of

the Act. The Hon'ble Supreme Court in the case of *Maxopp Ltd.* [2018] 402 ITR 640 held as follows:

*"41 Having regard to the language of section 14A(2) of the Act, read with rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the Assessing Officer needs to record satisfaction that having regard to the kind of the assessee, suo motu disallowance under section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the Assessing Officer was not accepted the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, the nature of the loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the Assessing Officer.*

8. In the case on hand, as can be seen, the Assessing Officer had not applied his mind to the facts of this case. When the assessee had disallowed Rs.25,000/- suo moto, the Assessing Officer proceeds on a presumption that no disallowance was made by the assessee. What the Assessing Officer had to record, is his satisfaction that the suo moto disallowance made by the assessee is, in his opinion, not correct or justified on the particular set of facts. It is not the case of the assessee that section 14A is not applicable to his case as alleged by the Assessing Officer. Thus no proper satisfaction as required in law was recorded by the Assessing Officer prior to invoking Rule 8D of the I.T. Rules. . Hence we delete the disallowance u/s 14A and allow this appeal of the assessee.

9. Ground No.2 is against the addition made by the A.O on the ground that the assessee earned undisclosed interest. The assessee's contention is that the amounts, in question, was held by him as a trustee, in an escrow account, consequent to the orders passed by the Hon'ble Supreme Court in the legal proceedings. It was submitted that he has merely a custodian of the amounts and the amounts are returned back, along with interest accrued, to the respective parties upon direction by the Hon'ble Supreme Court. In other words it is the case of the assessee that the income from interest in question does not belong to him. It belongs to his clients.

10. We agree with the submissions of the assessee. In such facts no income can be brought to tax in the hands of the assessee. Nevertheless this issue requires enquiry to verify as to whether the assessee is merely a custodian of the funds under the directions of Hon'ble Court or not. Thus for the limited purpose, we set aside the matter to the file of A.O for fresh adjudication in accordance with law. The assessee is directed to appear before the Id. Assessing Officer and cooperate in the matter by producing all evidences, as may be directed by the Assessing Officer, in support of his claim.

11. In the result, this ground is allowed for statistical purposes.

12. In the result, the appeal of the assessee is allowed in part.

***Kolkata, the 10<sup>th</sup> May, 2019.***

Sd/-  
[S.S. Godara]  
Judicial Member

Sd/-  
[J. Sudhakar Reddy]  
Accountant Member

Dated : 10.05.2019  
(RS, Sr. PS)

***Copy of the order forwarded to:***

- 1. Ratanlal Gaggar, Temple Chamber, 3<sup>rd</sup> Floor, 6, Old Post Office Street, Kol-1.***
- 2. DCIT, Circle-22, Kolkata.***
- 3. CIT(A)-***
- 4. CIT- ,***
- 5. CIT(DR), Kolkata Benches, Kolkata.***

True copy

By order

Assistant Registrar  
ITAT, Kolkata Benches