

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.5253/Del/2018
Assessment Year: 2008-09

Pardeep Khanna,
W-60, Greater Kailash-2,
New Delhi.

Vs. ACIT,
Circle-30(1),
New Delhi.

PAN: AAQPK0771J

(Appellant)

(Respondent)

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|-----------------------|---|-----------------------------|
| Assessee by | : | Shri Rajesh Mahna, Advocate |
| Revenue by | : | Shri S.L. Anuragi, Sr. DR |
| Date of Hearing | : | 08.05.2019 |
| Date of Pronouncement | : | 13.05.2019 |

ORDER

This appeal by the assessee is directed against the order dated 29th June, 2018 passed by the CIT(A)-10, New Delhi, relating to Assessment Year 2008-09.

2. Although a number of grounds have been raised by the assessee, they all relate to the order of the CIT(A) in confirming the disallowance of Rs.1,21,805/- by the Assessing Officer u/s 14A r.w. Rule 8D of the IT Rules.

3. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 28th September, 2008 declaring the total income of Rs.26,76,240/-. The Assessing Officer completed the assessment u/s 143(3) of the Act on 9th December, 2010 wherein he made an addition of Rs.1,21,805/- u/s 14A

r.w. Rule 8D (2)(iii) of the IT Rules. The Tribunal upheld the action of the CIT(A) and on further appeal by the assessee, the Hon'ble High Court vide ITA No.953/2015, order dated 11th August, 2016, restored the issue to the file of the Assessing Officer, *inter alia*, with the following observations:-

“7. In the present case, we notice that the AO has not analysed objectively in terms of the decision in Shah. It was firstly incumbent upon him to in fact examine the accounts closely and determine if at all any expenditure could be ascribed to the tax exempt dividend/interest earned by the assessee. If indeed the tax exempted income was earned without the interference of any employee but rather through the solicitation and advertisement of the bank the question of attributing any expenditure cannot arise at all.

8. In the circumstances, the impugned order is set aside. The matter is remitted to the AO for fresh determination in accordance with the judgment of this court in *Taikisha Engineering Private Limited's case (supra)*.”

4. Subsequently, the Assessing Officer repeated the same addition. The Id.CIT(A) upheld the action of the Assessing Officer by observing as under:-

“5.3. The assessment order and the written submission and judicial pronouncements relied upon by the appellant have duly been considered. I have also gone through the order of the Hon'ble ITAT and the order of the Hon'ble High Court in this case for the year under consideration. I have also perused the order of the ITAT, Delhi in the case of the appellant for A.Y. 2009-10 & A.Y 2010-11. It is seen that in the assessment order of A.Y. 2009-10 & 2010-11 the AO has not recorded his satisfaction in respect of correctness of the claim of the assessee in respect of expenditure in relation to earning of dividend income. Therefore the ratio of CIT v Taikaisha Engineering India Ltd. 370 ITR 378 (Del) was applicable. However, in the matter under consideration, the AO has recorded his satisfaction that the claim of the assessee that no expenditure was incurred by him in relation to earning of dividend income was incorrect. He has also examined the expenses of the appellant and came to the conclusion that the assessee has been utilizing his administrative and managerial expenses for earning of dividend income. After giving the above mentioned specific finding, the AO has invoked the provisions of section 14A read with Rule 8D(2)(iii). Therefore, the ratio of CIT v Taikaisha Engineering India Ltd. 370 ITR 378 (Del) is not applicable in the present case. It has also been mentioned in the assessment order that administrative and managerial expenses remain inseparable from the expenses relating to earning of other taxable income. Since the expenses were

common, the AO has then computed the disallowance of Rs.1,21,805/- as per the provisions of Rule 8D(2)(iii). Considering the above, I am inclined to uphold the addition of Rs. 1,21,805/-. Accordingly, the above grounds of appeal are **dismissed.**”

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

6. I have considered the rival arguments made by both the sides and perused the material available on record. I find the Assessing Officer in the original assessment had made addition of Rs.1,21,805/- u/s 14A r.w. Rule 8D(2)(iii) which has been upheld by the CIT(A). I find despite the direction of the Hon'ble High Court that if the tax exempted income was earned without the interference of any employee but rather through the solicitation and advertisement of the bank the question of attributing any expenditure cannot arise at all, the Assessing Officer has proceeded to make the disallowance on the basis of rent, electricity, house tax, printing & stationery, travelling expenses, etc. which, according to him, have been used for earning exempt income. I find, identical issue had come up before the Tribunal in assessee's own case in the subsequent years and the Tribunal vide ITA No.1250/Del/2014, order dated 2nd June, 2016, for assessment year 2009-10 and vide ITA No.2956/Del/2014, order dated 11th August, 2016, for assessment year 2010-11, has deleted the disallowance made by the Assessing Officer and upheld by the CIT(A) u/s 14A r.w. Rule 8D(2)(iii). Since, in the instant case, despite direction of the Hon'ble High Court the Assessing Officer did not bother to follow the direction in letter and spirit and considering the fact that the Tribunal in assessee's own case for

the two succeeding years has deleted such disallowance, therefore, I am of the considered opinion that no disallowance u/s 14A r.w. Rule 8D(2)(iii) is called for in the instant case. I, therefore, set aside the order of the CIT(A) and direct the Assessing Officer to delete the addition of Rs.1,21,805/-. The grounds raised by the assessee are accordingly allowed.

7. In the result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court on 13.05.2019.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 13th May, 2019

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1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi