

आयकर अपीलीय अधिकरण “C” न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI

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

BEFORE SRI MAHAVIR SINGH, JM AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 3881/Mum/2017

(निर्धारण वर्ष / Assessment Year 2013-14)

M/s Pioneer Embroideries Ltd. Abhishek Premises, Plot No. 5, Dalia Indl. Estate, New Link Road, Andheri West, Mumbai- 400 058	Vs.	Dy. Commissioner of Income Tax, Circle-13(1)(2), Mumbai
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AACP3869R		

आयकर अपील सं./ ITA No. 4759/Mum/2017

(निर्धारण वर्ष / Assessment Year 2013-14)

Dy. Commissioner of Income Tax, Circle-13(1)(2), Room No. 218, Aayakar Bhavan, M.K Road, Mumbai-400 020	Vs.	M/s Pioneer Embroideries Ltd. Abhishek Premises, 101B, Plot No. 5, Dalia Indl. Estate, New Link Road, Andheri West, Mumbai-400 058
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri S Rishabh Shah, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Abirama Karthikeyan, DR

सुनवाई की तारीख / Date of hearing:	20.03.2019
घोषणा की तारीख / Date of pronouncement :	20.03.2019



आदेश / ORDER

महावीर सिंह. न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:

These cross appeals are arising out of the order of Commissioner of Income Tax (Appeals)-21, Mumbai [in short CIT(A)], Appeal No. CIT(A)-21/DCIT-13(1)(2)/IT-113/2016-17 vide order dated 25.04.2017. The Assessment was framed by the Dy. Commissioner of Income Tax, Circle13(1)(2), Mumbai (in short 'DCIT/ITO/ AO') for the A.Y. 2013-14 vide order dated 22.03.2016 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of revenue is as regards to the order of CIT(A) restricting the disallowance of expenses relatable to exempt income under section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (hereinafter the 'Rules) to the extent of suo moto disallowance offered by assessee at Rs. 46,60,519/- as against the disallowance made by the AO at Rs. 1,24,00,214/-. The AO disallowed a sum of Rs. 1,11,72,829/- under the rule 8D(2)(ii) and a sum of Rs. 12,27,385/- under Rule 8D(2)(iii) of the Rules. Revenue has challenged the deletion by following ground No. 1: -

"1. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in restricting the disallowance u/s. 14A r.w.s 8D at Rs.46,60,519/- instead of Rs. 1,24,00,214/- which is computed as per the



aspects and the mechanism contained in rule 8D of I.T. Rule 1962.”

3. We have heard the rival contentions and gone through the facts and circumstances of the Case. We find from the assessment order that the assessee has suo moto disallowed expenses relatable to exempt income under section 14A of the Act to the extent of Rs. 46,60,590/-.

4. Now before us, the learned Counsel for the assessee produced copy of ITR acknowledgement, computation of income over the assessment year 2013-14 which are enclosed at assessee's paper book at pages 1-8. We find that the assessee has not offered any suo moto disallowance as claimed and also noted by AO and CIT(A). The facts are otherwise as we have noticed from the computation of income that this disallowance of expenses is under section 40A amounting to ₹ 46,60,519/- and the relevant is on account of provision for gratuity. Hence, there is no suo moto disallowance made by the assessee. The assessee also filed copy of financial statement for the FY 2012-13 relevant to the assessment year 2013-14 which are enclosed at pages 9-30. The learned Counsel for the assessee took us through the computation of income which is enclosed at pages 2-8 and stated that there is no claim of exempt income made by assessee because the assessee has not earned any exempt income. The learned counsel for the assessee further substantiated this proposition by drawing our attention to the profit and loss account, item to other incomes which are further given in note 22 to the balance sheet. We have gone through the note 22 which is enclosed at pages 23 of the assessee's paper book and noted that assessee has not earned any dividend income or any other income which is claimed as exempt.



5. We find that this issue is squarely covered by the decision of Hon'ble Bombay High Court, Nagpur Bench in the case of Pr. CIT vs. Ballarpur Industries Limited in Income Tax Appeal No. 51 of 2016, wherein this issue has been considered and finally following the judgment of Hon'ble Delhi High Court in the case of Cheminvest Limited vs. CIT (2015) 378 ITR 33 (Delhi) held as under: -

“On hearing the learned Counsel for the Department and on a perusal of the impugned orders, it appears that both the Authorities have recorded a clear finding of fact that there was no exempt income earned by the assessee. While holding so, the Authorities relied on the judgment of the Delhi High Court in Income Tax Appeal No. 749/2014, which holds that the expression “does not form part of the total income” in Section 14A of the Income Tax Act, 1961 envisages that there should be an actual receipt of the income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. The Income Tax Appellate Tribunal held that the provisions of Section 14A of the Income Tax Act, 1961 would not apply to the facts of this case as no exempt income was received or receivable during the relevant previous year. It is not the case of the Assessing Officer that any actual income was received by the assessee and the same was includible in the total income. In the facts of the case, the Authorities held that since the investments made by the assessee in the sister concerns were not the actual income



received by the assessee, they could not have been included in the total income.”

When this was confronted to the learned Departmental Representative he fairly conceded.

6. After hearing rival contentions and going through the facts and circumstances of the case, admitted position on facts is that there is no exempt income claimed by assessee. This fact is noted by the AO on the very first of the assessment order para 3 stating, “*the fact of the case is that assessee has not claimed any exempt income*” Once there is no exempt income, the issue is squarely covered by the decision of Hon’ble Bombay High Court in the case of Ballarpur Industries Limited (supra). Respectfully following the Hon’ble Jurisdictional High Court, we confirm the order of CIT(A) deleting the disallowance. Hence, Revenue’s appeal is dismissed.

7. Coming to assessee’s appeal in ITA No. 3881/Mum/2017 for AY 2013-14, is as regards to the order of CIT(A) confirming the suo moto disallowance of expenses of ₹ 46,60,519/- under section 14A of the Act read with section 8D of the Rules. The following grounds raised by assessee:

“1. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in not allowing the withdrawal of disallowance of expenses of Rs.46,60,519/- u/s.14A of the Income Tax Act,1961, wrongly made by the appellant while filing the Return of income.



2. On the facts and circumstances of the case as well as in Law, the Learned CIT(A) has erred in not appreciating the fact that no disallowance of expenses u/s.14A is to be made if there was no exempt income earned by the appellant during the year under consideration.

3. On the facts and circumstances of the case as well as in Law, the Learned CIT(A) has erred in not appreciating the fact that the appellant is entitled to make fresh claim for relief before the appellate authority."

8. At the outset, it is noticed from the statement of total income that the inadmissible disallowance of expenses, suo moto by assessee is under section 40A of the Act and the relevant column as mentioned in the statement of total income by the assessee read as under: -

<i>40A disallowance (Schedule 4)</i>	<i>46,60,519/-</i>
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When this Schedule 4 gone into, the same reads as under: -

Schedule 4

Disallowance of expenditure u/s 40A

<i>Description</i>	<i>Disallowance</i>
<i>40A(7) – Provision for gratuity</i>	<i>46,60,519/-</i>
<i>Total Disallowance</i>	<u><i>46,60,519</i></u>



ITAs Nos. 3881 & 4759/Mum/2017

From the above, it is clear that there is no disallowance made by the assessee under section 14A of the Act read with Rule 8D of the Rules but actually it is a provision under section 40A(7) of the Act in respect of gratuity. Hence, this claim of assessee is totally irrelevant and without any basis. Hence, the appeal of assessee is dismissed.

9. In the result, both, the appeals of assessee as well as Revenue are dismissed.

Order pronounced in the open court on 20-03-2019.

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)
(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 20-03-2019.

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai