

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G', NEW DELHI**

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
AND
SHRI K.N. CHARY, JUDICIAL MEMBER**

ITA Nos.6535/Del/2015 & 5343/Del/2016
Assessment Year: 2008-09

Shri Vijay Sachdev, C/o- M/s. RRA TAXINDIA, D-28, South Extension, Part- I, New Delhi	Vs.	Joint Commissioner of Income Tax, Range-32, New Delhi
PAN : AANPS6109F		
(Appellant)		(Respondent)

Appellant by	Dr. Rakesh Gupta, Adv. & Shri Somil Agarwal, Adv.
Respondent by	Shri N.K. Bansal , Sr. DR

Date of hearing	08.07.2019
Date of pronouncement	12.07.2019

ORDER

PER O.P. KANT, A.M.:

These two appeals filed by the assessee are against two different orders of learned CIT(A), i.e., dated 16.12.2011 arising out of order under Section 143(3) of the Income-tax Act, 1961 (in short 'the Act') and application u/s 154 of the Act filed before the learned CIT(A) respectively. Both the appeals being connected with one assessee, same were heard together and disposed off by way of this consolidated order for the sake of convenience. The

grounds of appeal raised in ITA No. 6535/Del/2015 are reproduced as under:

1. *That having regard to the fact and circumstances of the case, Ld. CIT(A) has erred in law and on facts in upholding the disallowance made by Ld. AO u/s 14A of Income Tax Act, 1961 read with rule 8D of Income Tax rules, 1962 amounting to Rs. 4,67,880/-.*
2. *That in any case and in any view of the matter, action of Ld. CIT(A) in upholding the disallowance made by Ld. AO u/s 14A of Income Tax Act, 1961 read with rule 8D of Income Tax rules, 1962 amounting to Rs. 4,67,880/- is bad in law, against the facts and circumstances of the case and without observing the principles of natural justice.*
3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance for a sum amounting to Rs.5,33,900/- being 1/6th of Telephone Expenses, Vehicle Expenses, Festival & Business Promotion Expenses and Travelling Expenses by treating the same as for personal use.*
4. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making disallowance for a sum amounting to Rs.5,33,900/- being 1/6th of Telephone Expenses, Vehicle Expenses, Festival & Business Promotion Expenses and Travelling Expenses by treating the same as for personal use is bad in law, against the facts and circumstances of the case and without observing the principles of natural justice.*
5. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.*

2. The grounds of appeal raised in ITA No.5343/Del/2016 are reproduced as under:

1. *That having regard to facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in rejecting the application u/s 154 seeking rectification of the disallowance made under Section 14A on the basis of the decision of the jurisdictional High Court.*
2. *That having regard to facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not taking the investment in shares which yielded tax exempt income but has erred in taking the investment of such shares which has not yielded tax exempt income.*

3. *In any view of the matter and any case, action of Ld. CIT(A) is not allowing the rectification application u/s 154 is bad in law and against the facts and circumstances of the case.*
4. *That the appellant craves to leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.*

3. Briefly stated facts of the case are that the assessee is a proprietor of M/s. Rise India and is engaged in the business of sale & purchase of shares and securities, futures and options. The assessee was also engaged in running petrol pump in the name of Proprietary concern M/s. Rajiv Station. The assessee filed its return of income on 29.09.2008, declaring total loss of Rs.51,36,450/-. The assessee shown income under the head "Profit and Gain" of Business or Profession, income from Capital Gains and income from Other Sources, which mainly included bank interest. The case of the assessee was selected for scrutiny and notice under Section 143(2) of the Act was issued and complied with. In the assessment completed u/s 143(3) of the Act, disallowance under Section 14A of the Act for expenses incurred towards exempt income and disallowance on account of personal expenses were made. The appeal filed by the assessee before the first appellate authority was dismissed by way of order dated 16.12.2011. The assessee further filed a rectification application which was also dismissed by the learned CIT(A) vide order dated 01.08.2016. Aggrieved by the action of the learned CIT(A), the assessee is before the Tribunal by way of filing aforementioned two appeals.

4. Before us, the assessee has withdrawn the appeal having ITA No. 6535/Del/2015 and thus, the same is dismissed as infructuous.

5. In respect of ITA No.5343/Del/2016, learned counsel of the assessee submitted that the issue in dispute is covered in favour of the assessee by the order of the Tribunal in ITA No. 5344 & 5345/Del/2016 for assessment years 2009-10 and 2011-12 respectively.

6. Ld. DR, on the other hand, relied on the order of the lower Authorities.

7. We find that the Assessing Officer made disallowance under Section 14A of the Act following the Rule 8D of the Income-tax Rules, 1962 (in short 'the Rules'). For the purpose of Rule 8D(2)(iii) of the Rules, the Assessing Officer adopted the total investments in shares which could earn exempt income. Learned CIT(A) also upheld the finding of the learned Assessing Officer in order dated 16.12.2011. The assessee filed rectification application against order of the learned CIT(A) and submitted that in view of the decision of the Hon'ble Delhi High Court dated 24.03.2015 in the case of ACB India Ltd. Vs. Asstt. Commissioner of Income Tax [2015] in ITA No. 615/2014 reported in 374 ITR 0108 (Del.), for the purpose of computing average investment under Rule 8D(2)(iii), only the investment which have yielded tax exempt income was to be considered. The assessee submitted that this being a mistake apparent from record in view of the decision of the Hon'ble Supreme Court in the case of ACIT Vs. Saurashtra Kutch Stock Exchange Ltd. [2008] 305 ITR 0227 (SC), the addition u/s 14A might be deleted. However, the learned CIT(A) held that considering the request of the assessee would amount to review of his own order which according to him was not permissible in accordance with law.

7.1 We find that identical issue has been decided in favour of the assessee by the Tribunal in ITA No. 5344 & 5345/Del/2016 for assessment year 2009-10 and 2011-12 respectively observing as under:

“After considering the rival submissions and in the light of the decision of Jurisdictional High Court in the case of ACB bids Ltd. (supra) and in the light of the decision of Hon’ble Supreme Court in the case of ACIT vs Saurashtra Kutch Stock Exchange Ltd. (supra), we are of the view that there appears mistake apparent on the record of Ld.CIT(A) in calculating the disallowance u/s 14A r.w. Rule 8D(2)(iii) of the Act. It would not amount to review of the order of Ld. CIT(A). It is well settled law that non-consideration of decision of Jurisdictional High Court is mistake apparent from record. Ld. Counsel for the assessee, therefore, rightly contended that Ld CIT(A) did not follow the judgment of the Jurisdictional High Court and shall have to rectify the mistake in his order in calculating the disallowance u/s 14A r.w. Rule 8D(2)(iii) of the Act. In view of the above discus sun and in the light of the above decisions, the order of Ld.CIT(A) is set .sure and matter in issue is restored to the file of Ld.CIT(A)-18, New Delhi um direction to re-decide the appeal of the assessee in the light of the decision of Jurisdictional High Court in the case of ACB India Ltd. (supra). Ld.CIT(A) shall re-decide the appeal after giving reasonable and sufficient opportunity of being heard to the assessee.”

7.2 The Tribunal in the above order has held that the request of the assessee of mistake apparent from record was a valid one and rectifiable by the learned CIT(A). Being identical issue involved in the present appeal, respectfully following the decision of the Tribunal passed in ITA No. 5344 & 5345/Del/2016 (supra), we set aside the order of the learned CIT(A) and restored the matter to the file of learned CIT(A) with the direction to decide the appeal afresh in the light of the decision of Jurisdictional High Court in the case of ACB India Ltd. (supra), after affording reasonable

opportunity of being heard to the assessee. The grounds of the appeal are accordingly allowed for statistical purposes.

8. In the result, the appeal bearing ITA No. 6535/Del/2015 is dismissed whereas ITA No. 5343/Del/2016 is allowed for statistical purposes.

Order is pronounced in the open court on 12th July, 2019.

Sd/-
[K.N. CHARY]
JUDICIAL MEMBER

Sd/-
[O.P. KANT]
ACCOUNTANT MEMBER

Dated: 12th July, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi