

आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री राजेश कुमार लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM

आयकर अपील सं./ ITA No. 7342/Mum/2016

(निर्धारण वर्ष / Assessment Year 2012-13)

M/s Inderlal Gerela C/o Jayesh Sanghrajka & Co. LLP Chartered Accountants Unit No. 405-408, Hind Rajasthan Centre, D.S. Phalke Road, Dadar (E), Mumbai-400 014	Vs.	The Income Tax Officer, Circle 29(1)(5) Bandra Kurla Complex, Mumbai-400 061
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AANPG4944J		

अपीलार्थी की ओर से / Appellant by	:	Shri Harshwardhan Datur, AR
प्रत्यर्थी की ओर से / Respondent by	:	Ms. Kusum Bansal, DR

सुनवाई की तारीख / Date of hearing:	25.06.2019
घोषणा की तारीख / Date of pronouncement :	19.07.2019

आदेश / ORDER

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

This appeal filed by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-40, in short CIT(A), in appeal No. CIT(A)-40/IT-702/2014-15 vide dated 16.09.2016. The Assessment was



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framed by the Income Tax Officer, Ward 29(1)(5), Mumbai (in short ITO/AO) for the A.Y. 2012-13 vide order dated 01.02.2015, under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The first issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in disallowing the expenses relatable to exempt income by invoking the provisions of section 14A of the Act read with Rule 8D(2) of the Rules. For this assessee has raised the following ground No. 1 and 2: -

"1. On the facts and circumstances of the case and in law, the learned CIT (Appeals) erred in confirming addition under section 14A to the extent of funds used for purpose other than business purpose even though the income claimed as exempt was less and hence such addition is erroneous in facts and bad in law and liable to be reduced.

2. On the facts and circumstances of the case and in law, the learned CIT (Appeals) erred in making addition under section 14A as the exempt income earned is less as compared to the disallowance made under section 14A and hence such addition is excessive and erroneous in facts and liable to be reduced to the extent of exempt income."

3. We have heard rival contentions and gone through the facts and circumstances of the case. The AO during the course of assessment



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proceedings noticed that the assessee has earned exempt income amounting to ₹ 1,18,040/- and thereby invoked the provisions of section 14A of the Act read with Rule 8D(2). Accordingly, the AO made disallowance under Rule 8D(2)(ii) of the Rules on account of interest expenditure amounting to ₹ 9,08,514/- and under Rule 8D(2)(iii) being average value of investment being an amount equal to 1½ % and the disallowance was to the tune of ₹ 22,252/-. Thereby, the total disallowance made by AO was to the tune of ₹ 9,30,766/-. The CIT(A) also confirmed the action of the Assessing Officer.

4. We noted that the assessee has earned exempt income at ₹ 1,18,040/- and the learned Counsel for the assessee before us fairly conceded that in case the disallowance is restricted to the exempt income in view of the decision of Hon'ble Bombay High Court in the case of in the case of Pr. CIT vs. Ballarpur Industries Limited in Income Tax Appeal No. 51 of 2016, wherein this issue has been considered following the judgment of Hon'ble Delhi High Court in the case of Chem invest 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.”

5. On the other hand, the learned Sr. Departmental Representative did not object to the same.

6. We noted that the assessee has earned income of ₹ 1,18,040/- and in view of the decision of Hon'ble Bombay High Court in the case of Ballarpur Industries Limited (supra), we restrict the disallowance to this extent only. We direct the AO accordingly.

7. The next issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in disallowing the interest



expenses. For this assessee has raised the following ground No. 3 and 4:

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“3. On the facts and circumstances of the case and in law, the learned CIT (appeals) erred in directing Ld. AO to verify whether the said amount was offered or not in the AY 2015-16 and such direction is bad in law and thereby your honour is requested to delete the same as it has already offered to tax.

4. On the facts and circumstances of the case and in law, the learned CIT (Appeals) erred in partly allowing the ground on addition on interest, and same should have been deleted as it has already been offered to tax in the AY 2014-15.”

8. At the outset, the learned Counsel for the assessee stated that he has instructions from the assessee not to press this issue and hence, the same is dismissed as not pressed.

9. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO in disallowing commission expenses. For this assessee has raised the following ground No 5 and 6:

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“5. On the facts and circumstances of the case and in law, the learned CIT(Appeals) erred in confirming addition on account of commission expense by treating the same as illegal



expenses, even though the same was incurred for business purposes and other party had offered the same as his income and such addition is erroneous in facts and bad in law and liable to be deleted.

6. *Without prejudice to above, on the facts and circumstances of the case and in law, the learned CIT(Appeals) erred in confirming addition on account of Commission expense by treating the same as illegal expenses, even though the same was incurred for business purposes and other party had offered the same as his income and such addition is excessive and liable to be reduced.”*

10. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the AO during the assessment proceedings noticed that the assessee has paid a commission of ₹ 8 lacs to one M/s Aashirwad Construction through proprietor one Shri Sunil D Khanna. Shri Sunil Khanna was assigned the job of getting services done for water connection, light connection, tree cutting and getting NOC for tree cutting, Road cutting, etc. Even, Shri Sunil Khanna before the AO admitted while recording the statement under section 131 of the Act that he was running the services in respect of obtaining NOC for assessee from forest officer at Thane for tree cutting, road cutting etc., NOC obtained from PWD Collector Office, Thane and for light connection of single phase and three phase connection from Maharashtra State Electricity Board, Vasai and Thane. Shri Sunil Khanna also admitted that



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for NOC's of tree cutting, obtaining light connection obtaining water connection and NOC for road cutting there was nominal charges which are used to be paid and deposited to the respective authorities. To carry out the above services, he used to charge commission from assessee. According to AO, this commission payment is in the nature of illegal payment and thereby hit by explanation of section 37(1) of the Act. Hence, the AO disallowed the commission paid of ₹ 8 lacs to Shri Sunil D Khanna. The CIT(A) confirmed the action of the Assessing Officer

11. We noted that Shri Sunil D Khanna clearly admitted during the examination under section 131 of the Act that vide question No. 12 and 13 as under: -

“Q 12. Kindly demonstrate the nature of services rendered for water connection, light connection, tree cutting and getting NOCs for tree cutting, road cutting etc.?”

Q 13. For obtaining the aforesaid NOCs what were the actual expenses incurred?

Ans. For this nominal expenses were incurred, like for obtaining NOC of tree cutting it was ₹ 5000/- (as per the Government Rate) for road cutting it was of ₹ 30,000/- (as per the government rate), for light connection it was the deposit made to MESB by the M/s Kailash Mital Construction.”

12. From the above, it is clear that the assessee has paid commission to Shri Sunil D Khanna who is a private person and in turns Shri Sunil D



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Khanna has not paid anything to the officials or Government Authorities so as to hit by the explanation to section 37(1) of the Act. He only acted as a liason officer of the company for obtaining NOC like tree cutting, water connection and road cutting through various authorities. In our view, this commission payment to a private person for the services rendered by him to the assessee. In our view, the assessee's case does not fall under explanation 1 to section 37(1) of the Act. The assessee has not incurred any expenditure for any purpose which is an offence or which is prohibited by law. But assessee has incurred expenditure for the purpose of business or profession and hence, the deduction is to be allowed. We direct the AO to allow the deduction. This issue of assessee's appeal is allowed.

13. The next issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in making addition of unexplained gift amounting to ₹ 5,62,850/-. For this assessee has raised the following ground No 7: -

“7. On the facts and circumstances of the case and in law, the learned CIT (Appeals) erred in confirming addition of Gift received from his son Mr. Vishal Gerela, by stating that source of gift from the Doner is not proved even though he had sufficient capital and cash balance and hence such addition is erroneous in facts and bad in law and liable to be deleted.”

14. Brief facts are that during the year under consideration, the assessee has received a sum of ₹ 5,62,850/- in cash from his son Shri Vishal I Gerela. The AO required the assessee to explain the



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genuineness, creditworthiness and identity of the party in relation to gift receipt. The assessee vide letter dated 27.03.2015 furnished the copy of return of income of his son Shri Vishal Gerela along with capital account and profit and loss account along with the schedules. Even the gift deed detailed dated 16.01.2015 was submitted. It was claimed by the assessee that this gift is out of capital account of Shri Vishal Garela. But the AO made addition by stating that the assessee is not able to prove the sources of the gift as the assessee has stated before him that this amount in assessee's capital account is on account of amount received in his engagement. The AO also required assessee to file the bank statement which can prove that the cash received was deposited by him. But the assessee could not file the bank statement. Aggrieved, assessee preferred the appeal before CIT(A), who also confirmed the action of the Assessing Officer. The CIT(A) noted that the gift is in cash, the sources and genuineness of the gift received from Vishal Garela remained unexplained. Even the creditworthiness of the donner is not proved. Aggrieved assessee came in appeal before Tribunal.

15. We have heard rival contentions and gone through the facts and circumstances of the case. We noted from the computation of income filed along with return of income before us that the assessee's income is only ₹ 1,67,730/-. Even the documents filed in the shape of capital account carry forward of balance of ₹ 33,93,287/- apart from which gift of ₹ 5,62,580/- was received by the donar and in turn again gift given to assessee amounting to ₹ 5,62,580/-. We are unable to understand who and how the son first received gift from somebody and the same amount is given to his father as gift. In our view, the gift received by assessee is unexplained and even genuineness of transaction is in doubt as the assessee is unable to explain. We confirm the orders of the lower



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authorities. This issue of assessee's appeal is dismissed.

16. In the result, the appeal of assessee is partly allowed.

Order pronounced in the open court on 19.07.2019.

Sd/-

(राजेश कुमार / RAJESH KUMAR)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 19.07.2019

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