

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.1201/PUN/2017

निर्धारण वर्ष / Assessment Year : 2010-11

M/s. Nyati Builders Pvt. Ltd.,
Nyati Commerce House,
Kalyani Nagar, Yerawada,
Pune - 411006

PAN : AAACN6418N

.....अपीलार्थी / Appellant

बनाम / V/s.

The Dy. Commissioner of Income Tax,
Circle - 2, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Vipin Gujarathi
Revenue by : Ms. Shabana Parveen

सुनवाई की तारीख / Date of Hearing : 20-08-2019

घोषणा की तारीख / Date of Pronouncement : 26-08-2019

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-3, Pune dated 19-12-2016 for the assessment year 2010-11.

2. The solitary issue raised in the appeal by the assessee is against confirming of disallowance of Rs.22,45,589/- u/s. 14A r.w. Rule 8D.

3. The appeal is time barred by six days. The assessee has filed an application seeking condonation of delay in filing of the appeal supported by an affidavit. After perusal of the same, we are satisfied that the delay in filing of the appeal is not intentional or deliberate but has been caused due to bonafide reasons as stated in the affidavit. Thus, the delay in filing of appeal is condoned and the appeal is admitted to be heard and disposed of on merits.

4. Shri Vipin Gujarathi appearing on behalf of the assessee submitted that the Assessing Officer has erred in making disallowance of Rs.22,45,589/- u/s. 14A r.w. Rule 8D without appreciating the facts of the case and the well settled law. The ld. AR submitted that the assessee has investments to the tune of Rs.15.29 crores during the period relevant to the assessment year under appeal. The assessee is having own interest free funds including Share Capital and Reserves and Surplus aggregating to Rs.67.53 crores. To substantiate his contentions the ld. AR referred to the table giving details of availability of interest free funds and investments at page 26 of the paper book. The ld. AR submitted that since own interest free funds of the assessee are much more than the investments made no disallowance under Rule 8D(2)(ii) was warranted. To support his contentions the ld. AR placed reliance on the decision of Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. HDFC Bank Ltd. reported as 366 ITR 505.

4.1 The ld. AR further submitted that during the period relevant to the assessment year under appeal the assessee earned exempt income of Rs.3,543/- only. The Hon'ble Punjab and Haryana High Court in the case of Pr. Commissioner of Income Tax Vs. State Bank of Patiala in Income Tax Appeal No. 359 of 2017 decided on 14-11-2017 has held that disallowance u/s. 14A cannot exceed exempt income earned. The aforesaid decision of Hon'ble High Court has been affirmed by the Hon'ble Supreme Court of India. The SLP filed by the Department against the aforesaid judgment was dismissed by the Hon'ble Apex Court. The ld. AR further submitted that the Co-ordinate Bench of Tribunal in the case of Karla Overseas and Precision Engineering Limited Vs. The Income Tax Officer in ITA No. 1328/PUN/2018 decided on 07-03-2019 by following the judgment of Hon'ble Apex Court in the case of Maxopp Investment Ltd. Vs. Commissioner of Income Tax reported as 402 ITR 640 has restricted the disallowance u/s. 14A to the extent of exempt income earned.

5. On the other hand Ms. Shabana Parveen representing the Department vehemently defended the impugned order.

6. Both sides heard. Orders of the authorities below perused. The only issue in appeal by the assessee is against disallowance u/s. 14A r.w. Rule 8D. The Assessing Officer has made disallowance under Rule 8D as under:

Rule 8D(2)(ii) (Interest expenditure)	Rs.14,58,563/-
Rule 8D(2)(iii) (1/2% of Avg. value of investment)	<u>Rs.7,87,296/-</u>
Total	Rs.22,45,859/-

7. The ld. AR has drawn our attention at page 26 of the paper book where details of interest free funds and investments made by the assessee during the period relevant to the assessment years 2007-08 to 2010-11 is given. A perusal of the same reveal that during the assessment year 2010-11, the total investments of the assessee were Rs.15.29 crores, as against Share Capital and Reserves and Surplus aggregating to Rs.67.53 crores. The Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. HDFC Bank Ltd. (supra) has held that where own interest free funds and borrowed funds are available and interest free funds are sufficient to cover the investments, it shall be presumed that the investments are made by utilizing interest free funds. Hence, in our considered view no disallowance on account of interest expenditure under Rule 8D(2)(ii) is warranted.

8. The second contention of the assessee is that during the relevant period the assessee has earned exempt income of Rs.3,543/-. This fact has not been rebutted by the Revenue. The assessee in computation of income for assessment year 2010-11 has disclosed dividend income of Rs.3,543/-. The Hon'ble Supreme Court of India in the case of PCIT Vs. State Bank of Patiala reported as 99 taxmann.com 286 has upheld the decision of Hon'ble Punjab and Haryana High Court in restricting the disallowance u/s. 14A to the extent of exempt income earned. Thus, in view of law laid down by the Hon'ble Apex Court, the Assessing Officer is directed to restrict the disallowance u/s. 14A to the extent of exempt income earned during the period relevant to assessment year under appeal.

9. In the result, the appeal of assessee is partly allowed in the terms aforesaid.

Order pronounced on Monday, the 26th day of August, 2019.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 26th August, 2019

RK

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)-3, Pune
4. The Pr. Commissioner of Income Tax-2, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune