

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1239/PUN/2017  
निर्धारण वर्ष / Assessment Year : 2012-13

Avinash Nivruti Bhosale,  
2, ABIL House,  
Range Hill Corner,  
GANesh Khind Road,  
Pune 411 007  
PAN : ABTPB8151F

Vs. DCIT, Circle-2,  
Pune

Appellant

Respondent

Appellant by

Shri Nikhil Pathak &  
Shri Nimit Gujrathi

Respondent by

Shri Pankaj Garg

Date of hearing

17-09-2019

Date of pronouncement

17-09-2019

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee arises out of the order passed by the Commissioner of Income-tax (Appeals)-3, Pune on 27.02.2017 in relation to the assessment year 2012-13.

2. The only issue raised in this appeal is against the confirmation of disallowance of Rs.54,50,000/- u/s.14A of the Income-tax Act, 1961 read with Rule 8D of the Income-tax Rules, 1962.

3. Briefly stated, the facts of the case are that the assessee earned exempt income of Rs.80.14 lakh as share from partnership firms and Rs.25.05 lakh as dividend and PPF interest etc. No disallowance u/s.14A was offered. The Assessing Officer, on getting satisfied, computed the disallowance u/s.14A read with Rule 8D(2)(iii) at Rs.54,50,000/-, being 0.5% of the average value of investments. The Id. CIT(A) affirmed the disallowance.

4. We have heard both the sides and gone through the relevant material on record. The Id. AR fairly admitted that the disallowance u/s.14A is called for. He, however, submitted that in computing such disallowance only those investments should be considered which have yielded exempt income.

5. Ordinarily the disallowance is made at 0.5% of the average value of investments under rule 8D(2)(iii). However, in this regard, it is relevant to note that the Hon'ble Delhi High Court in *ACB India Ltd. vs. CIT (2015) 374 ITR 108 (Del)* has held that the average value of investments, for the purposes of Rule 8D(2)(iii), should be confined to those securities in respect of which exempt income is earned and not the total investments. Similar view has been taken by the Special Bench of the Tribunal in the case of *ACIT vs. Vireet Investments (P) Ltd. (2017) 165 ITD 27 (Del) (SB)*

holding that only those investments should be considered for computing average value of investments which yield exempt income during the year. Respectfully following the precedents, we set-aside the impugned order and remit the matter to the file of the AO for computing the disallowance under Rule 8D(2)(iii) in accordance with our above observations.

6. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the Open Court on 17<sup>th</sup> September, 2019.

Sd/-  
**(S.S. VISWANETHRA RAVI)**  
**JUDICIAL MEMBER**

Sd/-  
**(R.S.SYAL)**  
**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 17<sup>th</sup> September, 2019  
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-3, Pune
4. The Pr. CIT-2, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे  
“बी” / DR ‘B’, ITAT, Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	17-09-2019	Sr.PS
2.	Draft placed before author	17-09-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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