

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2891/Del/2017
(Assessment Year: 2012-13)

Ajay Vohra, 13, Tolstoy Marg, Mohan Dev Building, First Floor, New Delhi PAN: AABPV9622L	Vs.	ACIT, Circle-61(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Rohit Jain, Adv
Revenue by:	Shri Arun Kumar Yadav, Sr. DR
Date of Hearing	03/07/2019
Date of pronouncement	18/09/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT(A)-20, New Delhi dated 14.03.2017 for the Assessment Year 2012-13, wherein the disallowance u/s 14A read with rule 8 D of the Act of Rs. 234213/- was upheld. The grounds of appeal raised by the assessee are also challenging the same on the issue of satisfaction of Id AO as well as absence of any expenditure incurred in relation to earning exempt income.
2. The assessee has raised the following grounds of appeal:-
 - “1. That the Commissioner of Income Tax (Appeals) [‘CIT(A)'] erred on facts and in law in upholding disallowance of Rs.2,34,213 made by the assessing officer under section 14A of the Income tax Act, 1961 (“the Act”) read with Rule 8D of the Income Tax Rules, 1962 (“the Rules”).
 - 1.1. That the CIT(A) erred on facts and in law in upholding the aforesaid disallowance without appreciating that mandatory satisfaction about expenditure having been actually claimed/ incurred in relation to earning of exempt income, was not recorded by the assessing officer.
 - 1.2. That the CIT(A)/ assessing officer erred on facts and in law in not appreciating that no expenditure relating to earning of exempt income was claimed as deduction by the appellant.

expenditure has been incurred by the assessee for earning exempt income. Even otherwise the expenditure of Rs. 234213/- made by the ld AO under Rule 8D(2)(iii) of the Act is not based on any working. He extensively referred to his submission before ld AO and CIT (A). he also referred to the details of expenditure incurred by the assessee. He otherwise submitted that assessee has not incurred total expenditure of the sum disallowed by the ld AO and confirmed by the ld CIT (A).

6. The ld AR supported the order of the lower authorities.
7. We have carefully considered the rival contentions and perused the orders of the lower authorities. In the present case, the assessee has specifically stated that it has not incurred any expenditure to earn exempt income. The assessee further submitted before the ld AO the details of each and every expenditure out of Rs. 1118354/- which has been debited in the books of account. The nature of expenditure shown by the assessee in the income and expenditure clearly shows that the major expenditure is of donation of Rs. 801000/- and depreciation of Rs. 1,99,694/-. All other expenditure in the form of insurance, books, audit fees, subscription and telephone etc , each of them being less than Rs. 20000/- was claimed. The ld AO without pointing out any instance of expenditure incurred by the assessee with regard to books of account of the assessee, adopted the disallowance computation u/r 8D of the IT Rules. Ld AO could not show that any of the expenditure is incurred for earning exempt income. Para 3.7 of the AO is merely a bald satisfaction of general expenses which by no stretch of imagination can be said to a proper satisfaction in terms of section 14 A (2) of the Act. Further the donation expenses of Rs 801000/- is not an allowable expenses so no disallowance can be made out of it.. The depreciation of Rs. 199694/- cannot be held to be an expenditure but a claim of depreciation, hence, in view of the decision of the special bench [137 ITD 189] same cannot be considered for disallowance u/s 14A and Rule 8D. All other expenditure are for specific purposes, such as books, stationery, audit fees etc. In view of the above facts, it is apparent that claim of the assessee that he has not incurred any expenditure for earning exempt income is correct. The ld AO did not dispute this fact but applied the provisions of Rule 8D of the Income Tax Rules, 1962. In view of

this, the satisfaction in para No. 3.7 is not the proper satisfaction recorded by the Id AO for invoking Rule 8D. Further, the Id CIT (A) also did not appreciate this argument in proper perspective and erroneously held that Id AO has correctly recorded the satisfaction. Further Id CIT (A) has also confirmed the addition merely because the assessee has accepted the order of the Id CIT (A) for earlier years. According to us merely on this basis, disallowance cannot be confirmed in this year. There may be innumerable reasons with the assessee to not to agitate an issue in one year but to agitate it in another year. Merely that cannot be a ground to confirm the disallowance. Accordingly, we direct the Id AO to delete the disallowance of Rs. 234213/- made u/s 14A of the Act read with Rule 8D and confirmed by the Id CIT(A). Accordingly, we reverse the order of the lower authorities and allow ground No. 1 of the appeal along with its sub grounds.

8. In the result appeal of the assessee is allowed

Order pronounced in the open court on 18/09/2019.

-Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 18/09/2019
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi