

आयकर अपीलीय अधिकरण नागपुर न्यायपीठ, नागपुर में ।
IN THE INCOME TAX APPELLATE TRIBUNAL NAGPUR BENCH, NAGPUR

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.529/NAG/2014

निर्धारण वर्ष / Assessment Year : 2010-11

ACIT, Akola Circle,
Akola.

.....अपीलार्थी / Appellant

बनाम / V/s.

Dnyandeo Ninu Patil,
C/o Elite Udyog,
Near Radha Krishna Cinema,
Murtizapur Road,
Akola-444001.

PAN : ADPPP0651A

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.20/NAG/2015

निर्धारण वर्ष / Assessment Year : 2010-11

Shri Dnyandeo Ninu Patil,
C/o Elite Udyog,
Near Radha Krishna Cinema,
Murtizapur Road,
Akola-444107.

PAN : ADPPP0651A

.....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Akola Circle,
Akola.

.....प्रत्यर्थी / Respondent

Revenue by : Shri U. U. Kasar, CIT
Assessee by : Shri S. C. Thakar, Adv. &
Shri C. J. Thakar, Adv.

सुनवाई की तारीख / Date of Hearing : 28.03.2019
घोषणा की तारीख / Date of Pronouncement : 29.03.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

These are cross appeals filed by the Revenue as well as by the assessee against the order of the CIT(A)-I, Nagpur dated 19.08.2014 for the assessment year 2010-11.

2. The grounds raised by the Revenue as well as by the assessee are as under :-

“ITA No.529/NAG/2014 (By Revenue):

1. On the facts and circumstances of the case, the CIT(Appeals) erred in holding that there is a direct nexus between the funds borrowed on which interest was paid and the funds invested in the firm on which the interest was received, such interest has to be deducted u/s. 36(1)(iii) of the Act against the interest income whereas there was neither any interest income earned by the assessee on the capital invested nor there was any provision of payment of interest or salary to the assessee in the partnership deeds of the firm in which assessee was a partner.

2. On the facts and circumstances of the case the CIT(Appeals) has not appreciated that in para 6 of CBDT circular No.5/2014, wherein it has been clearly stated that Rule 8D r.w.s. 14A of the Act provides for disallowance of expenditure even where the tax payer in a particular year has not earned any exempt income.

3. Any other ground that may be urged at the time of hearing.”

ITA No.20/NAG/2015 (By Assessee):

“1] Learned C.I.T.(A)-I erred in disallowing part of interest amounting to Rs.31,99,090/-.

2] Learned C.I.T.(A)-I erred in restricted the disallowance of Interest amounting to Rs.33,99,090/- out of Interest claim by the appellant amounting to Rs.1,21,59,218/-.

3] Learned C.I.T.(A)-I and A.O. has not considered assessee's submission and various documentary filed before them.

4] Assessee craves to urge additional grounds at the time of hearing, if necessary.”

3. Briefly stated the relevant facts include that the assessee is an individual and is filed the return of income declaring total income of Rs.15,49,747/-. In the assessment proceedings u/s 143(3) r.w.s. 263 of the Act, the Assessing Officer made an addition of Rs.1,20,80,845/- on account of interest on IDBI FDR loan. The Assessing Officer completed the assessment determining the total income of the assessee at Rs.1,36,30,590/-. The CIT(A) partly allowed the appeal of the assessee.

4. Aggrieved with the said order of the CIT(A), the assessee as well as the Revenue are in appeal before the Tribunal with the above extracted respective grounds.

5. The solitary issue relates to the disallowance u/s 36(1)(iii) r.w.s. 14A of the Act in the respective grounds raised by the assessee as well as by the Revenue.

6. The ld. counsel for the assessee brought our attention to the facts and submitted that this is case where the assessee never earned exempt income thereby requirement of invoking the provisions of section 14A of the Act r.w. Rule 8D(2) of the I.T. Rules, 1962 does not exist. Relying on various decisions, the ld. counsel for the assessee submitted that such disallowance is uncalled for and unsustainable in law. Therefore, the addition made by the Assessing Officer amounting to Rs.1,21,59,218/- is required to be deleted in its entirety. In this regard, relying on the decision of the Tribunal in the assessee's case for assessment year 2009-10 vide ITA No.279/NAG/2014, order dated 28.08.2015, ld. counsel brought our attention to the contents of para 7 of the said order of the Tribunal (supra) and submitted that the disallowance is uncalled for when there is no exempt income earned by the assessee and the same is not found part of the total income of the assessee. For the sake of completeness, the said para 7 is extracted hereunder :-

*“7. We have heard both the sides at some length in the light of the orders of the Revenue authorities and the compilations filed from both the sides. Although the learned Departmental Representative has placed before us a copy of Circular dated 11th February 2014, for the legal proposition that even where tax payer has not earned any exempt income, then the provisions of section 14A r/w rule 8D are to be applied. However, few decisions of the Tribunal and the order of the Hon'ble Jurisdictional High Court are in direct contradiction of the CBDT circular. The question before the Hon'ble High Court in Delite Enterprises (supra) was that if there is no exempt income then whether the provisions of section 14A could be applied and in an answer to the said question, it was held that “on facts we find that there is no profit for the relevant assessment year. Hence, the question as framed would not arise”. So a view was expressed that if there is no income earned by the assessee which does not form part of the total income under the Act, then under those circumstances, the provisions of section 14A are not required to be invoked. In a group of cases, the Tribunal, Mumbai Bench, in Avshesh Mercantile (supra, has held that even if there was no income earned during the year which was said to be an exempt income, the **expenditure incurred on interest is not liable to be disallowed under section 14A of the Act. All the decision cited from** the side of the assessee are in support of this view. Otherwise also, while sitting under the jurisdiction of Hon'ble Jurisdictional High Court, we are expected to dutifully follow the said judgment. As far as this case is concerned, since the undisputed fact was that there was no earning of exempt income, then the natural consequence is that the provision of section 14A need not be invoked. The CBDT Circular is not binding upon us since we are following the decision of the Hon'ble High Court.”*

7. From the above, it is evident that the Jurisdictional High Court is very clear that the provisions of section 14A of the Act is inapplicable when the assessee has not earned an exempt income and/or the exempt income is not found part of the total income of the assessee. It is binding on our part to follow the said Jurisdictional High Court judgement. Therefore, we are of the opinion the grounds raised by the Revenue are required to be dismissed.

8. Since the grounds raised by the Revenue are dismissed, therefore, the grounds raised by the assessee being consequential in nature and the same are also required to be dismissed. Thus, the grounds raised by the assessee are dismissed as consequential.

9. In the result, the appeal filed by the assessee as well as cross appeal filed by the Revenue are dismissed.

Order pronounced on 29th March, 2019

Sd/-

(विकास अवस्थी / **VIKAS AWASTHY**)
न्यायिक सदस्य/**JUDICIAL MEMBER**
MEMBER

नागपुर / Nagpur; दिनांक / Dated : 29th March, 2019.

Sujeet

Sd/-

(डी. करुणाकरा राव/**D. KARUNAKARA RAO**)
लेखा सदस्य/**ACCOUNTANT**

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)
4. The CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर बेंच,
नागपुर / DR, ITAT, Nagpur Bench, Nagpur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, नागपुर / ITAT, Nagpur.