



IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

ITA no.4566 & 4567/Mum./2018
(Assessment Year : 2012-13 & 2013-14)

Shri Prakash K. Shah
8B, Rajabhadur Mansion
11/43, Ramarind Lane
For, Mumbai 400 023
PAN – AACPS8291F

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-17(2), Mumbai

..... Respondent

Assessee by : Shri N.R. Agarwal
Revenue by : Shri Chaitanya Anjaria

Date of Hearing – 19.08.2019

Date of Order – 11.11.2019

ORDER

These are appeals by the assessee against common order 20th June 2018, passed by the learned Commissioner (Appeals)-25, Mumbai, pertaining to assessment year 2012-13 and 2013-14.

2. There are two common issues raised in these appeals. The 1st common issue raised relates to disallowance under section 14A of the Income Tax Act, 1961 (for short "*the Act*").

3. The Assessing Officer has made the disallowance in this case under section 14A of the Act, for the expenditure incurred for earning exempt income. The Assessing Officer in this regard has applied provisions of rule 8D. The Assessing Officer as well as the learned Commissioner (Appeals) have not followed decision of the Hon'ble Jurisdictional High Court in CIT v/s HDFC Bank Ltd., [2014] 366 ITR 505 (Bom.), for the proposition that if assessee's own funds are more than the investment which earned exempt income, no disallowance for interest is required under section 14A of the Act.

4. Upon hearing both the Counsel and perusing the record, I am of the considered opinion that it will be gross judicial misconduct, if I state that decision of Hon'ble Jurisdictional High Court in the case of HDFC Bank Ltd. (supra) needs not be followed. I find that Hon'ble Jurisdictional High Court has duly held that if own funds are more than investment which earned exempt income, no disallowance under section 14A of the Act is required. The same view was followed by the Tribunal in assessee's own case for earlier assessment year. Accordingly, I direct the Assessing Officer to examine this issue and if the own funds/non-interest-bearing funds are more than investment in exempt income, no disallowance for interest under section 14A of the Act is required. It is the further contention of assessee in this case that

the disallowance under section 14A of the Act should be considered only with respect to those investments which have earned exempt income. In this regard, the assessee has placed reliance upon the Special Bench decision of the Tribunal, Delhi Bench, in ACIT v/s Vireet Investments Pvt. Ltd., [2017] 82 taxmann.com 415 (Del.) (SB). Furthermore, it is the contention of the assessee that the disallowance under section 14A of the Act cannot exceed the exempt income. Upon careful consideration, I find that these contentions of the assessee are cogent and duly supported by higher judicial authorities. Hence, I direct the Assessing Officer to consider the issue after also taking into account the Special Bench decision of the Tribunal in Vireet Investments Pvt. Ltd. (supra) and also to limit the disallowance to the extent of exempt income earned.

5. Another common issue raised is with regard to the estimate of notional rent on properties which remain vacant by estimating 7% return.

6. Upon hearing both the learned Counsel for the assessee and perused the records, I find that the Hon'ble Jurisdictional High Court in the CIT v/s Tip Top Typography, [2015] 368 ITR 330 (Bom.), has expounded that municipal rateable value cannot be brushed aside unless the Assessing Officer is able to bring on record that there is

effort on the part of assessee to suppress the rental income. I find it appropriate to remit this issue to the file of Assessing Officer. The Assessing Officer shall consider the assessee's request of adopting municipal rateable value on the touchstone of the Hon'ble Jurisdictional High Court decision as above.

7. In the result, assessee's appeals are allowed for statistical purposes.

Order pronounced in the open Court on 11.11.2019

Sd/-
SHAMIM YAHYA
ACCOUNTANT MEMBER

MUMBAI, DATED: 11.11.2019

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai