

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI**

**BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 6111/Mum/2018  
(निर्धारण वर्ष / Assessment Years : 2008-09)

Shri Sunil Sudhir Kothari, 21-Spring Field, 19-V, Gandhi Road, Gamdevi, Mumbai	<b>बनाम/ Vs.</b>	DCIT – CC- 1(1) Old CGO BLDG, Pratistha Bhava, M.K Road, Mumbai.
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No. : AACPK3574H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Anant N Pai, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Akhtar H Ansari, DR

सुनवाई की तारीख / Date of Hearing	04/11/2019
घोषणा की तारीख/Date of Pronouncement	13/11 /2019

**आदेश / ORDER**

**PER R.C. SHARMA (AM):**

This is an appeal by the assessee against the order of the Ld. CIT(A) for the A.Y 2008-09 in the matter of order passed u/s 143(3) r.w.s 147 of the Act.

2. In this appeal assessee is basically aggrieved for reopening of assessment after expiry of 04 years from the

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end of the relevant assessment year, when the original assessment was framed u/s 143(3) of the Act

3. I have considered the rival contentions and carefully gone through the orders of the authorities below, I have also perused the reasons recorded for reopening. Following reasons were recorded for reopening of the assessment:

*“The assessee made investments in shares & securities and in registered firms. The assessee also earned income by way of dividend, share of profit from firm which is claimed as exempt in the return filed. The assessee incurred interest and other expenditure and claimed the same in the income and expenditure account filed on record. The provisions of Sec. 14A and Rule 8D are clearly attracted in this case. However in completing the scrutiny assessment, no disallowance as per the above provisions. The inadmissible expense u/s 14A worked out in accordance with Rule 8D of IT Rules 1962 in this case under:*

*This resulted in under assessment of taxable income to the extent Rs. 14,81,906/-*

*Therefore, I have reason to believe that income chargeable to tax for A.Y 2008-09 exceeding Rs. 1 lacs has escaped from assessment. Since the income has escaped assessment, therefore the case is required to be reopened u/s 147 of the Act”.*

4. There is no dispute of the fact that the original assessment was framed u/s 143(3) of the Act, wherein the assessee has filed details of expenditure incurred, part of which are offered for disallowance u/s 14A of the Act.

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Assessment was completed u/s 143(3) of the Act without pointing out any defect in the disallowance offered by the assessee u/s 14A of the Act. I found that neither in the reasons recorded for reopening nor in the notice issued u/s 148 of the Act, there is whisper of any failure on part of the assessee to disclose fully and truly all the material facts. Since the reopening was beyond the period of 04 years, reopening can be made only if there is failure on the part of the assessee to disclose fully and truly all the material facts necessary for assessment. However, there is no such mention by the A.O either in the notice issued u/s 148 of the Act nor in the reasons recorded for reopening. In terms of decision Hon'ble Jurisdictional High Court in the case of Hindustan Lever Ltd, reported in 268 ITR 332, the reopening of the assessment is invalid when the notice is issued after 04 years in respect of assessment completed u/s 143(3) of the Act.

5. In view of the above discussion, I set aside reopening made by the A.O without point out any failure on part of the assessee to disclose fully and truly all material facts necessary for assessment.

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6. Even on merit, I found that no expenditure was found to be incurred for earning the exempt income, accordingly the disallowance made by the A.O after reopening is not justified.

7. In the result the appeal of the assessee is allowed.

**This Order pronounced in Open Court on 13/11/2019**

Sd/-  
( R.C. SHARMA )  
ACCOUNTANT MEMBER

Mumbai, Dated 13/11/2019

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार ( Asst. Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Mumbai