



IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.3269/Mum./2018
(Assessment Year : 2013-14)

Shri Atul S. Rajadhyaksha
415-416, Yusuf Building
M.G. Road, Flora Fountain
Fort, Mumbai 400 001
PAN – AABPR2644E

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-16(2), Mumbai

..... Respondent

Assessee by : Shri Manish Chulawal
Revenue by : Shri Udaya B. Jakke

Date of Hearing – 05.09.2019

Date of Order – 28.11.2019

ORDER

PER SAKTIJIT DEY, J.M.

The captioned appeal has been filed by the assessee challenging the order dated 29th January 2010, passed by the learned Commissioner of Income Tax (Appeals)-5, Mumbai, pertaining to the assessment year 2013-14.

2. In grounds no.1 to 5, the assessee has challenged the disallowance made of ₹ 7,33,580, under section 14A r/w rule 8D.

3. Brief facts are, the assessee, an individual, is a lawyer by profession. For the assessment year under consideration, the assessee filed his return of income on 29th September 2013, declaring total income of ₹ 5,88,32,580. In the course of assessment proceedings, the Assessing Officer noticed that during the year under consideration, the assessee had earned exempt income of ₹ 22,10,550, on investments made in mutual fund and shares. Whereas, the assessee has not disallowed any expenditure attributable to exempt income earned. Therefore, he called upon the assessee to explain as to why expenditure attributable to earning of exempt income should not be disallowed under section 14A r/w rule 8D. In response to the query raised by the Assessing Officer, the assessee submitted that since he has not incurred any expenditure for earning the exempt income, no disallowance under section 14A r/w rule 8D has to be made. The Assessing Officer, however, was not convinced with the submissions of the assessee and proceeded to disallow the amount of ₹ 7,33,580, under rule 8D(2)(iii) of the Act. Though, the assessee challenged the aforesaid disallowance before learned Commissioner (Appeals), however, he was unsuccessful.

4. The learned Authorised Representative submitted, the assessee has not incurred any expenditure for earning of exempt income as the investments in mutual fund and shares are totally managed by the portfolio managers and the assessee has not paid any charges to them for such services. Further, it was submitted, the entire activity relating to such investment was carried on by the assessee himself and no expenditure in that regard has been debited to the Income & Expenditure Account. Therefore, no part of administrative expenditure can be attributed towards earning of exempt income. He submitted, in fact, the assessee had not incurred any expenditure under the head "salary", "telephone" and other administrative charges for earning exempt income which has been specifically mentioned in the audit report. Thus, he submitted, without controverting assessee's claim with proper reasoning, no disallowance of administrative expenditure can be made under rule 8D(2)(iii), as the Assessing Officer, in terms of section 14A(2), has to record a satisfaction that the assessee's claim is incorrect having regard to the books of account maintained by him. Thus, he submitted, no disallowance under section 14A r/w rule 8D, should have been made. In support of such contention, the learned Authorised Representative relied upon the following decisions:—

- i) *ACIT v/s Shri Janak Dilip Dwarkadas, ITA no.6575/Mum./2017, dated 17.07.2019;*

- ii) *ACIT v/s Iqbal M. Chagala, [2014] 52 taxmann.com 94 (Mum. Trib.); and*
- iii) *Leena Kasbekar v/s ACIT, [2017] 85 taxmann.com 82 (Mum. Trib.).*

5. The learned Departmental Representative relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

6. We have considered rival submissions in the light of the decisions relied upon by the learned Authorised Representative and also perused the material on record. Undisputedly, the assessee is an individual and a lawyer by profession. It is also a fact that the assessee had made investment in mutual fund and shares on which the assessee has earned certain dividend income during the year. It is the contention of the assessee right from the assessment stage that he had not incurred any expenditure for earning the exempt income as the service relating to such investment was provided by the portfolio manager without charging any fee. It is also the contention of the assessee that the entire investment activity was managed by him independently, hence, no expenditure has been incurred. The Assessing Officer has not controverted the explanation of the assessee with any justifiable reasoning. It is well settled, before rejecting assessee's claim the Assessing Officer in terms of section 14A(2) of the Act has to record a

satisfaction that the claim of the assessee with regard to expenditure relating to the exempt income earned is incorrect having regard to his boA. It is a fact that assessee's books of account was under statutory audit and the auditor has not allocated any expenditure towards earning of exempt income to the Income & Expenditure Account. In other words, if at all there is any expenditure relatable to earning of exempt income, it is in the Personal / Capital Account of the assessee. Therefore, the expenditure debited to the Income & Expenditure Account cannot be attributed towards earning of exempt income. It is noticed that the Assessing Officer has computed disallowance of expenditure only under rule 8D(2)(iii), meaning thereby, the assessee has not incurred either any direct expenditure or interest expenditure for earning exempt income. In other words, the Assessing Officer has attributed a part of the administrative expenditure towards earning of exempt income. Considering assessee's claim that the entire activity relating to investment in mutual fund and shares was handled by him personally without taking aid or assistance of any of his employee / staff, no part of administrative expenditure under the head "salary", "telephone" and other administrative charges can be attributed towards earning of exempt income. This view of our gets support from the decisions of the Co-ordinate Bench cited before us by the learned Authorised Representative. Therefore, considering the overall facts and

circumstances of the case, we hold that no disallowance under section 14A r/w rule 8D can be made. Accordingly, the disallowance made is deleted. Grounds raised are allowed.

7. In grounds no.6, the assessee has challenged levy of interest under section 234C of the Act.

8. This ground being consequential in nature, does not require adjudication.

9. In the result, assessee's appeal is allowed.

Order pronounced in the open Court on 28.11.2019

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 28.11.2019

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