

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 191/JP/2018
निर्धारण वर्ष/Assessment Years : 2013-14

M/s Trimurty Colonizers & Builders Pvt. Ltd., 601, Geeta Enclave, Vinoba Marg, C-Scheme, Jaipur.	बनाम Vs.	The ITO, Ward-6(4), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACT 6613 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rohan Sogani (C.A.)
राजस्व की ओर से / Revenue by : Smt. Roonipal (JCIT)

सुनवाई की तारीख / Date of Hearing : 05/12/2019
उदघोषणा की तारीख / Date of Pronouncement : 06/12/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-II, Jaipur dated 14.11.2017 for the Assessment Year 2013-14 wherein the sole ground raised by the assessee related to sustenance of disallowance of Rs. 1,49,445/- U/s 14A r/w Rule 8D(2)(iii).

2. During the course of hearing, the Id AR submitted that the assessee had made investment in the previous financial years in M/s Trimurty Landcon India (P) Ltd., SBBJ and a partnership firm. All the investments were made out of interest free funds available with the

assessee. There is no expenditure which has been incurred by the assessee in earning the exempt income. It was further submitted that it is a settled legal proposition of law that the disallowance made by the Assessing Officer cannot exceed the exempt income and in the instant case, the total exempt income which has been earned by the assessee is only 7,109/- against which Rs. 5,67,268 was disallowed by the Assessing Officer and which has been restricted to Rs 149,445 by the Id CIT(A). In support, reliance was also placed on the Coordinate Bench decision in case of ACIT vs. M/s Mahindra World City (Jaipur) Ltd. (*in ITA No. 697/JP/2018 dated 04.02.2019*) wherein it was held as under:-

"12. The disallowance on account of common/indirect administrative expenditure being 0.5% of the average investment as per Rule 8D(2)(iii) of the Rules. Since the dividend income during the year is only Rs. 1,81,392/-, therefore, in view of the binding precedents on this issue, the disallowance made U/s 14A read with Rule 8D(2)(iii) of the Rules, cannot be more than the exempt income. The Hon'ble Delhi High Court in the case of Cheminvest Ltd. v. Commissioner of Income-tax-IV 378 ITR 33 has held that if there is no exempt income earned by the assessee during the year, no disallowance can be made on account of administrative expenditure, therefore, we find that the disallowance restricted by the Id. CIT(A) to the extent of exempt income is proper and justified."

3. Per contra, the Id. DR has relied on the finding of the lower authorities. It was submitted that the assessee must have incurred

certain expenditure to take care of its investment and therefore, it cannot be accepted that no expenditure has been incurred by the assessee. It was accordingly submitted that the Id. CIT(A) has rightly sustained the disallowance under Rule 8D(2)(iii) of the IT Rules.

4. We have heard the rival contentions and pursued the material available on record. Undisputedly, the investments have been made in the previous financial, there is no fresh investment which has been made during the year and income which has been claimed as exempt is Rs 7,109. Following the binding precedents on the issue as also held by the Coordinate Bench in case of ACIT vs. M/s Mahindra World City (Jaipur) Ltd. (supra), the disallowance made U/s 14A read with Rule 8D(2)(iii) of the Rules cannot be more than the exempt income. Therefore, the disallowance made by the Assessing Officer is hereby restricted to the extent of exempt income and the balance disallowance is hereby by directed to be deleted.

In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 06/12/2019.

Sd/-

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 06/12/2019.

*Santosh

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

1. अपीलार्थी / The Appellant- M/s Trimurty Colonizers & Builders Pvt. Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward-6(4), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 191/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar