

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

**&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.6884/Mum/2018
(Assessment Year :2013-14)**

Raghuvir Devidayal 17, Seksaria Building 74, Marine Drive Mumbai-400 020	Ramkishan	Vs.	ACIT-17(3) 1 st Floor, Aaykar Bhawan M.K.Road Mumbai-400 020
PAN/GIR No.AFWPD7945L			
(Appellant)		..	Respondent)

Revenue by	Shri Kamal Mangal, JCIT-DR
Assessee by	None
Date of Hearing	15/01/2020
Date of Pronouncement	22/01/2020

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

This appeal filed by the assessee is directed against order of the Ld. Commissioner of Income Tax (Appeals)-28, Mumbai, dated 14/09/2018 and it pertains to Assessment Year 2013-14.

2. The assessee has raised the following grounds of appeal.

1. Learned Commissioner of Income Tax (Appeals) failed to consider the fact that the notice for bearing of Appeal was not received by the appellant and therefore an Order is passed without granting an opportunity of being heard. The file be restored to Commissioner of Income Tax (Appeals) for passing the Order after hearing the appellant. Without prejudice to this ground following grounds be considered and appropriate relief be granted;

2. Learned Commissioner of Income Tax (Appeals), while passing the order, failed to properly apply Section 14A and Rule 8D, Appellant had duly considered

, the facts and had on his own disallowed sum of Rs. 60,000/-, Thus the learned Commissioner of Income Tax erred in not following the clause (2) of Section 14A, which includes words "if the assessing officer, **having regard to the accounts** of the assessee, is not satisfied with the correctness of the claim" (FULL Section enclosed as Annexure -1) and Sub-rule (1) of rule 8D which includes words "Where the Assessing Officer, **having regard to the accounts of** the assessee of a previous year. is not satisfied" and sub-rule (2)(ii) of Rule 8D which includes words "in a case where the assessee has incurred **expenditure by way of interest during the previous year which is not directly attributable to any particular** income or receipt," (FULL Rule enclosed as Annexure -2) and has not allowed the disallowance made by appellants as returned at Rs. 60,000/- and to interest expenditure is incurred by the Assessee, has disallow Rs. 5,78,14/- be excluded for computing disallowance u/s 14A and relief of Rs. 5,78,140/- be allowed.

3. Learned Commissioner of Income Tax (Appeals) have confirmed the disallowance made for an erroneous journal entry and have confirmed addition of Rs, 3,05,664/-. Your appellant pray that relief of Rs. 3,05,664/- be allowed.

4. Appellants reserve his right to add alter or amend any of the grounds in appeal-

SECTION 14A:

ANNEXURE-1

"Section 14A (1) For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.

(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the assessing officer, **having regard to the accounts of the assessee**, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act:

Provided that nothing beginning on or before the 1st day of April, 2001,

RULE 8D;**ANNEXURE- 2**

Rule 8D. (1) Where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with -

(a) The correctness of the claim of expenditure made by the assessee; or
(b) The claim made by the assessee that no expenditure has been incurred, In relation to income which does not form part of the total income under this Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with (the provisions of sub-rule (2).

(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely :-

(i) the amount of expenditure directly relation to income which does not form part of the total income:

(ii) in a case where the assessee has incurred **expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt**, an amount computed in accordance with the following formula, namely :

$$A \quad X \quad \frac{B}{C}$$

Where A = amount of expenditure by way of interest other than the amount of included in clause (i) incurred during the previous year; B = the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;
C = the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

(iii) an amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year.

(3) For the purpose of this rule, the total assets shall mean total assets as appearing the balance sheet excluding the increase on account of revaluation of assets but including the decrease on account of revaluation of assets.

3. The brief facts of the case are that the assessee had filed his return of income for AY 2013-14 on 29/09/2013, declaring total income of Rs. 2,07,93,600/-. The case was selected for scrutiny and the assessment has been completed u/s 143(3) on 22/02/2016 and determined total income at Rs. 2,16,77,400/- by making

additions towards disallowances of expenditure incurred in relation to exempt income u/s 14A for Rs. 5,78,140/- and additions towards mistake in accounting in books for splitting of shares of one company for Rs. 3,05,664/-. The assessee carried the matter in appeal before the first appellate authority. The Ld.CIT(A) dismissed appeal filed by the assessee *ex-parte, in- lumine* without discussing the issues on merits. Aggrieved by the Ld.CIT(A) order, the assessee is in appeal before us.

4. None appeared for the assessee. We have heard the Ld. DR and perused the materials available on record. We find that the Ld.CIT(A) has dismissed appeal filed by the assessee *in-limine* for non appearance of the assessee for hearing on the dates fixed for disposal of appeal as noted by the Ld.CIT(A) in para 2.1 of his appellate order. As per the Ld.CIT(A), although four opportunities of hearing was given to the assessee, but the assessee except in one date, neither appeared, nor sought adjournment. Therefore, the Ld.CIT(A) disposed-off of the appeal *in-limine*, but such appeal has been disposed of without discussing the issues on merits, in light of various grounds of appeal taken by the assessee in its memorandum of appeal. No doubt, it is the duty of the person, who filed appeal to go before the authorities and present its case for speedy disposal of appeal. Further, if the person, who filed appeal does not appeared before the authorities on the dates fixed for disposal of appeal, then the appellate authorities are at liberty to dispose of appeal, but such appeals should be disposed of on merits on the basis of materials available on record. In this case, neither the assessee appeared before the Ld.CIT(A) to present its case, nor the Ld.CIT(A) disposed of the appeal on merits. Therefore, we are of the

considered view that in order to give one more opportunity to the assessee, the issue has been set aside to the file of the Ld.CIT(A) and direct him to decide the issue on merits in accordance with law. Needless to say, the assessee shall go before the Ld.CIT(A) and present its case.

5. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on this 22 /01/2020

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated : 22/01/2020
Thirumalesh Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai