

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND SHRI O.P. MEENA, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A No.6214/Del/2016
निर्धारणवर्ष/Assessment Year:2012-13**

The Panipat Urban Co-operative Bank Ltd. C/o Shri Saubhagya Agarwal Partner, A.S. Legal, Law Offices, K-185/14, Surya Plaza, First Floor, New Friends Colony, New Delhi.	बनाम Vs.	ACIT Circle, Panipat.
PAN No. AAALT0141K		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri Saubhagya Agarwal, Adv.
राजस्वकीओरसे /Revenue by	Shri S.S. Rana, CIT (DR)

सुनवाईकीतारीख/ Date of hearing:	06.11.2019
उद्घोषणाकीतारीख/Pronouncement on	03.02.2020

आदेश /O R D E R

PER AMIT SHUKLA, J.M.

1. The aforesaid appeal has been filed by the assessee against the impugned order dated 22.09.2016, passed by the Ld. CIT(Appeals), Karnal in relation to the order passed under section 154 passed u/s 143(3) of the Act for AY 2012-13. In various grounds of appeal the assessee has challenged the disallowance of Rs. 65,83,301/- made u/s 14A read with

Rule 8D and addition of Rs. 28,618/- made on account of suspense account.

2. The facts in brief are that assessee is a Co-operative Society engaged in the banking business activity. The main income of the assessee is from interest and has shown investment in mutual funds in its balance sheet from where it has earned tax free dividend of Rs. 27,68,083/-. The AO observed that no disallowance has been made for interest expense as per Rule 8D(2)(ii), even though assessee has incurred a huge expense of Rs. 10,09,15,163/-. He further observed that assessee could not establish the interest free funds having been used for investing in mutual funds. Accordingly, AO computed the disallowance amounting to Rs. 65,83,301/- which included disallowance under Rule 8D(2)(ii) of Rs. 60,50,520/- and disallowance of indirect expenses under Rule 8D(2)(iii) of Rs. 5,32,781/-.

3. Before the Ld. CIT(A), it was contended that even FMPs and debt fund instrument named as 'SBI Capital Protection Orientation Fund' was wrongly included in the dividend yielding mutual fund which has resulted in a wrong calculation of average investment for the purpose of Rule 8D. Assessee had also filed rectification application u/s 154 of the Act before the AO to point out that investment on these funds, income of which is taxable should be removed. However, same has been rejected by the AO. Ld. CIT(A), however, confirmed the disallowance made by the AO.

4. Before us the Ld. Counsel for the assessee contended that even the taxable investment has also been included while working of the average

investment which should be excluded and, further, assessee has also filed revised computation of disallowance u/s 14A at Rs. 6,21,297/-. The AO may be directed to verify the computation filed by the assessee for working of the disallowance. Ld. DR, on the other hand, relied upon the order of the AO and CIT(A) and submitted that AO has rightly computed the disallowance. However, the plea of Ld. Counsel needs to be verified and hence, matter can be restored to file of the AO.

5. After considering the aforesaid submissions, we find that, before the Ld. CIT(A), as well as before the AO in the rectification application u/s 154, the assessee has submitted that the average value of the investment has to be taken on account of those investments, whose income derived from are treated as exempt income u/s 10. But due to certain clerical mistakes while submitting the average value, the investment made in FMPs and debt instrument which does not form part of exempt income has also been considered and, accordingly, disallowance should be worked out after excluding these investments. Based on such working, revised computation of disallowance u/s 14A has been filed before us also. We are in tandem with contention of the assessee that only those investments should be considered for the purpose of disallowance which has rendered exempt income. Accordingly, we direct the AO to remove the investments while working out the average value whose income does not form part of the exempt income and only those investments should be considered whose income are exempt. AO is further directed to verify the calculation

and work out the disallowance; and in any case, disallowance should not be less than what has been disallowed *suo moto* by the assessee. With this direction appeal of the assessee is partly allowed for statistical purpose.

6. As regards the addition of Rs. 28,618/- out of suspense account, the AO has observed that no details and explanation have been provided by the assessee. The case of the assessee was that the said amount was actual and confirmed liability of the assessee paid in the subsequent year. The Ld. AO is thus, directed to verify the contention of the assessee that the said amount relates to any actual liability of the assessee and decide the same in accordance with law.

7. In the result, the appeal of assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 03.02.2020

Sd/-
(O.P. MEENA)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 03.02.2020
*Kavita Arora, Sr. P.S.

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi