

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B", MUMBAI**

BEFORE SHRI S. RIFAUZ RAHMAN (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 5141/MUM/2017
Assessment Year: 2010-2011**

Smt. Neena Naresh Singhi, 37, Apollo Endoscopy Centre, Hirnen Shopping Centre, S.V. Road, Goregaon (West), Mumbai - 400062 PAN:AAPPS1647G	Vs.	The Asst. Commissioner of Income Tax 31(2), Mumbai
(Appellant)		(Respondent)

Assessee by : Shri Bharat Shah (AR)
Revenue by : Ms. Kavita P. Kaushik (Sr. DR)

Date of Hearing: 14/11/2019
Date of Pronouncement: 31/01/2020

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 31.05.2017 passed by the Commissioner of Income Tax (Appeals)-42 (for short 'the CIT(A), Mumbai, which pertains to assessment year 2010-11, whereby the Ld. CIT(A) has dismissed the appeal filed by the assessee against the assessment order passed u/s 143 (3) r.w.s 263 of the Income Tax Act, 1961 (for short the 'Act').

2. In this case, the assessee had filed return of income for the assessment year 2010-11 on 29.09.2010 declaring total income of Rs. 50,83,105/-. The assessment order passed u/s 143 (3) of the Act determining the total income at Rs. 1,76,85,080/-. Subsequently, the Pr. CIT, Mumbai exercising powers u/s 263 of the Act set aside the assessment order on the ground that the assessee had shown interest income from FD Bonds saving account and claimed interest expenses. Since, there is no nexus with the earning of interest, the interest

expenditure amounting to Rs. 2,17,331/- needs to be disallowed and added to the total income. Secondly, the assessee had shown tax free income amounting to Rs. 1,62,503/-, therefore the expenses should be disallowed u/s 14A r.w.r. 8D which has not been done by the AO. Thirdly, it was observed that the assessee had made investment in new property being Flat No. 202/302 the exemption u/s 54F is allowable only with regard to one property and not to the properties claimed by the assessee and the AO has not considered the same. Accordingly, the AO passed the order u/s 143 (3) r.w.s. 263 of the Act dated 26.03.2016 disallowing the claim of expenditure of Rs. 2,17,181/- and making disallowance of Rs. 27,628/- u/s 14A of the Act. The assessee further challenged the assessment order passed u/s 143 (3) r.w.s. 263 of the Act before the Ld. CIT (A). The Ld. CIT (A) after hearing the assessee dismissed the appeal of the assessee.

3. Initially, the assessee challenged the impugned order on some other grounds. Thereafter, the assessee filed additional grounds on 15.11.2018 and 04.06.2019.

4. On the date of hearing, the Ld. counsel submitted that the assessee wants to challenge the impugned order on the additional grounds submitted on 04.06.2019. The additional grounds submitted on 04.06.2019 read as under:

1. *The disallowance of interest of Rs. 2,17,181/- should be deleted because:*
 - i. *The assessee has used borrowed funds in taxable interest earning assets BOI serving plus scheme*
 - ii *The assessee has used its own sufficient funds to advance interest free loan to the party.*
2. *The disallowance of expense of Rs. 27,628/- should be deleted because:*
 - i. *The assessee's own fund is much more than fund invested in assets which generate income which does not form part of total income*
 - ii *The assessing officer has not come to satisfaction that there is some expenditure pertaining to income which does not form part of total income. Assessing Officer has directly applied rule 8D without determining which expenditure he*

feels is pertaining to income which form part of total income and how such expenses he cannot directly quantify and so, he is using Rule 8D to quantify disallowance.”

5. Vide ground No. 1 the assessee has challenged the action of the Ld. CIT(A) in confirming the addition of Rs. 2,17,181/- made by the AO on account of disallowance of interest claimed by the assessee. The Ld. counsel for the assessee submitted before us that that Ld. CIT(A) has wrongly dismissed this ground of appeal holding that the assessee has not furnished any evidence regarding investment in Bank of India in fixed deposit amounting to Rs. 75,00,000/- from the funds of Rs. 32.80 lacs received from Naresh M Singhi, contrary to the fact that the assessee has furnished the entire details before the AO during the assessment proceedings. The Ld. counsel further submitted that the issue may be set aside to the file of AO for deciding the same afresh after proper verification of the details furnished by the assessee.

6. On the other hand, the Ld. Departmental Representative (DR) supporting the order passed by the Ld. CIT (A) submitted that since the Ld. CIT (A) has decided the issue after affording a reasonable opportunity of being heard to the assessee, there is no infirmity in the order passed by the Ld. CIT (A) to set aside the same to the file of AO for fresh adjudication.

7. We have heard the rival submissions and also perused the material on record. As pointed out by the Ld. counsel, the Ld. CIT (A) has dismissed this ground of appeal holding that the assessee did not furnish any evidence to prove that interest bearing funds received from Sh. Naresh M. Singhi were invested in Fixed Deposits with Bank of India. Perusal of the copy of balance sheet placed on record by the assessee reveals that the assessee apart from other investment made investment in saving plus scheme of Bank of India amounting to Rs. 99,000/- and in FD amounting to Rs. 75,00,000/-. However, we notice that the AO has not discussed about the investment made in FD aforesaid. Hence, in our considered view, the issue needs fresh determination by the AO after verification of the details in the light of the contention of the assessee. Hence, we set aside the findings of the Ld. CIT (A) and send the issue

back to the AO with the direction to decide the issue afresh in the light of the submissions made before us, after affording a reasonable opportunity of being heard to the assessee.

8. Vide Ground No. 2 the assessee has challenged the action of the Ld. CIT (A) in confirming the disallowance of Rs. 27,628/- made by the AO u/s 14A r.w.r. 8D of the Income Tax Rules (Rules). The Ld. counsel submitted before us that the Ld. CIT (A) has wrongly confirmed the disallowance u/s 14A r.w.r. 8D made by the AO as the AO had not come to any satisfaction that the expenditure pertain to the income which does not form part of the total income. The Ld. counsel further pointed out that the assessee's own fund were much more than the investments made by the assessee for earning exempt income. The Ld. counsel invited our attention to the balance sheet as on 31st March 2010 and pointed out that the assessee's own capital as on 31st March 2010 was 3,33,12,751/- against the total investment of Rs. 1,49,78,300/-. Placing reliance on the judgment of the Hon'ble Supreme Court in the case of CIT vs. HDFC Bank Ltd. submitted that since the AO has directly applied rule 8D without recording his dissatisfaction regarding the claim of the assessee. The Ld. counsel further submitted that Since the AO had determined the disallowance under Rule 8D(2)(iii) without excluding the investments which did not generate exempt income, the Ld. CIT(A) ought to have set aside the findings of AO.

9. On the other hand, the Ld. DR submitted that since the assessee has earned exempt income amounting to Rs. 1,62,503/- and had not made any *suo moto* disallowance, the Ld. CIT (A) has rightly confirmed the disallowance of Rs. 27,628/- made u/s 14A r.w.r. 8D (2)(iii) of the Rules. Since, the disallowance has been made in accordance with the provisions of law, there is no merit in the contention of the assessee.

10. We have heard the rival submissions and perused the material on record. The assessee has claimed the exempt income amounting to Rs. 1,62,503/-, however did not make any *suo moto* disallowance. Therefore, there is no merit in the contention of the assessee that the Ld. CIT (A) has wrongly

confirmed the addition made by the AO on the ground that the AO has applied sub-section 2 of section 14A of the Act without recording his dissatisfaction about the correctness of the claim of the assessee after having regard to the accounts. Since the assessee had claimed the expenses amounting to Rs. 1,62,503/-, the AO computed the disallowance under rule 8D (2)(iii) of the Rules, however, restricted the disallowance to the expenses claimed by the assessee. The Ld. CIT (A) has confirmed the same holding that disallowance as per rule 8D(2)(iii) is mandatory. So far as the contention of the assessee that the assessee has sufficient own funds for making investments in question is concerned, the AO has not made any disallowance under rule 8D (2) (i) and 8D(2) (ii) of the Rules.

11. In so far as the disallowance under rule 8D (2) (iii) is concerned, as per the settled law, the average value of only those investments are taken into consideration, for the purposes of computing disallowance under Rule 8D(2)(iii), which generated exempt income during the previous year. However, in the present case, the AO has taken into consideration the average value of the total investments made by the assessee. Hence, in our considered view, this issue requires fresh determination in accordance with law. We therefore, set aside the findings of the Ld. CIT (A) and send the issue back to the AO with the direction to re-compute the disallowance under rule 8D(2) (iii) in accordance with law after affording a reasonable opportunity of being heard to the assessee.

In the result, appeal filed by the assessee for assessment year 2010-2011 is allowed for statistical purposes.

Order pronounced in the open court on 31st January, 2020.

Sd/-

(S. RIFAUR RAHMAN)

ACCOUNTANT MEMBER

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 31/01/2020

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai