

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

BEFORE SHRI G. MANJUNATHA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 448/MUM/2019
Assessment Year: 2013-14**

Hariani & Co. 7 th Floor, Bakhtawar Building, Ramnath Goenka Marg, Nariman Point, Mumbai - 400021 PAN: AACFH4912J	Vs.	The Asstt. Commissioner of Income Tax 16(2), 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Assessee by : Shri V. Mohan (AR)

Revenue by : Shri Sachchidanand Dube (DR)

Date of Hearing: 06/01/2020

Date of Pronouncement: 10/01/2020

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 28.12.2018 passed by the Commissioner of Income Tax (Appeals)-5 (for short 'the CIT(A), Mumbai, for the assessment year 2013-14, whereby the Ld. CIT(A) has partly allowed the appeal filed by the assessee against the assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short the 'Act').

2. Brief facts of the case are that the assessee a firm of advocates and solicitors, filed its return of income for the assessment year under consideration declaring the total income at Rs. 4,78,75,010/-. The AO passed the assessment order u/s 143 (3) of the Act and determined the total income at Rs. 4,80,68,660/- after *inter alia* making addition of Rs. 83,100/- u/s 14A read with Rule 8D (2) (iii) of the Act.

3. The assessee challenged the assessment order before the Ld. CIT (A) *inter alia* on the ground that the AO has wrongly made addition of Rs. 83,100/- u/s

14A read with Rule 8D. The Ld. CIT (A) after hearing the assessee dismissed this ground of appeal and confirmed the addition. The assessee is in appeal before the Tribunal against the said findings of the Ld. CIT (A).

4. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective ground:-

“On the facts and in the circumstances of the case, Ld. CIT (Appeals) erred in confirming the order of A.O. making a disallowance of Rs. 83,100/- under section 14A of the Act.”

4. At the outset, the Ld. counsel for the assessee pointed out that this issues is covered in favour of the assessee by the order of the Tribunal rendered in the assessee’s own case for the Assessment Year (AY) 2011-12 and 2012-13. The Ld. counsel further submitted that since there is no change of facts in the present case, the Ld. CIT (A) ought to have followed the decision of the Tribunal for the AY 2011-12 and 2012-13. Since, the Ld. CIT(A) has passed the impugned order contrary to the decision of the Tribunal in assessee’s own cases aforesaid, the same is liable to be dismissed.

5. On the other hand, the Ld. Departmental Representative (DR) relying on the findings of the Ld. CIT (A) submitted that since the AO had made addition in accordance with the provisions of law, the Ld. CIT(A) has rightly confirmed the addition made by the AO. Hence, there is no infirmity in the order passed by the Ld. CIT (A) to interfere with.

6. We have heard the rival submissions and carefully perused the material on record including the orders passed by the coordinate Bench in assessee’s own case for the AY 2011-12 and 2012-13. We notice that the coordinate Bench has decided the identical issue in favour of the assessee in assessee’s own case ITA No. 1788/Mum/2017 for the AY 2012-13. The observations of the coordinate Bench read as under:-

“2.1 We have considered the rival submissions and perused the material available on record. The facts, in brief, are that the assessee firm declared taxable income of Rs. 3,66,75,300/- on 21/09/2011. The assessee made investment in a single script in mutual fund out of own funds by claiming

that no interest expenditure was attributable for such investment. It was also claimed that the assessee firm is of solicitor and advocates as such no person looks after investment portfolio either, meaning thereby, no expenses were claimed to be incurred on such investment. However, the ld. Assessing Officer made disallowance u/s 14A r.w.r. 8D, thus, he made disallowance of 0.5% of the average investment amounting to Rs. 22,235/- and added to the total income. On appeal, the Ld. Commissioner of Income Tax (Appeal) confirmed the addition. The assessee is in further appeal before this Tribunal. We find that the impugned issue is covered by the decision from Hon'ble Delhi High Court in CIT vs. Om Prakash Khetan (2015) 376 ITR 390 (Del), wherein it was held that in order to disallow the expenditure, there must be nexus between the expenditure incurred and the income not forming part of the total income. The disallowance made u/s 14A was deleted the Ld. Commissioner of Income Tax (Appeal). On appeal, the Tribunal confirmed the order of the Tribunal and the Hon'ble High Court affirmed the decision of the Tribunal. In view of this matter, since no expenditure was incurred by the assessee for earning exempt income, no disallowance u/s 14A is warranted. The ld. Assessing Officer is directed to delete the addition."

7. We further notice that the "H" Bench of the Tribunal has decided the identical issue in favour of the assessee in assessee's own case ITA No. 1788/Mum/2017 for the AY 2012-13 by following the decision of the coordinate Bench rendered in the assessee's case of the AY 2011-12 and directed the AO to delete the addition. In the present case, the assessee had made investments in two scripts of Mutual Funds of Birla Sunlife Income Fund and Birla Sunlife floating rate short term fund amounting to Rs. 1,82,86,782/- and Rs. 99,37,137/- respectively. From the said investments, the appellant received tax free income amounting to Rs. 12,07,869/-. As pointed out by the Ld. counsel the assessee made the investments in question out of its own funds and no borrowings were made for this purpose. As pointed out by the Ld. counsel, the assessee is a firm of solicitor and advocate as such no person was looking after the investment portfolio, therefore no expenses was incurred or either the investments or on the income earned. The coordinate Bench has

already decided the identical issue in favour of the assessee and since the revenue has not pointed out any change of facts in the present case, we find merit in the contention of the assessee that the impugned order is contrary to the decision of the coordinate Benches rendered in the assessee's cases discussed above. Hence, respectfully following the decisions of the coordinate Benches, we allow the sole ground of appeal of the assessee.

In the result, appeal filed by the assessee for assessment year 2013-2014 is allowed.

Order pronounced in the open court on 10th January, 2020.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 10/01/2020

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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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