

**IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.7086/Mum/2018
(Assessment Year: 2015-16)**

Allana Sons Pvt.Ltd. Allana House, Allana Road Colaba Mumbai-400 001	Vs.	DCIT-1(1)(1) Aaykar Bhawan M.K.Road Mumbai-400 020
PAN/GIR No.AAACA4533D		
Appellant)	..	Respondent)

Assessee by	Shri Apurva R.Shah, AR
Revenue by	Shri Michael Jerald, DR
Date of Hearing	11/02/2020
Date of Pronouncement	14/02/2020

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

This appeal filed by the assessee is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)-02, Mumbai, dated 18/09/2018 and it pertains to Assessment Year 2015-16.

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

1. *In not adjudicating that no disallowance u/s 14A ought to be done on those investment that have not yet yielded any income during the year.*

3. The brief facts of the case are that the assessee has filed its return of income for AY 2015-16 on 27/11/2015, declaring total income at Rs. 231,88,17,060/-. The case has been selected for scrutiny and the assessment has been completed u/s 143(3) of the

I.T.Act, 1961 on 24/11/2017, determining the total income at Rs.231,97,51,290/- by making additions towards disallowances of expenditure incurred in relation to exempt income u/s 14A of the I.T.Act, 1961 for Rs. 3,19,101/-. The assessee carried the matter in appeal before the Ld.CIT(A). The Ld.CIT(A) for the reasons recorded in his appellate order, dated 18/09/2018, partly allowed appeal filed by the assessee, where he has restricted disallowances made by the Ld. AO towards expenditure incurred in relation to exempt income u/s 14A of the Act, to the extent of dividend income earned for the year amounting to Rs 2,28,150/-. Aggrieved by the Ld.CIT(A) order, the assessee is in appeal before us.

4. The Id. AR for the assessee, at the time of hearing submitted that the issue involved in the present appeal is covered in favour of the assessee by the decision of ITAT, Mumbai 'A' bench in assessee own case for AY 2013-14, where under identical set of facts, the Tribunal held that for the purpose of disallowances of expenditure incurred in relation to exempt income u/s 14A r.w.Rule 8D(2)(iii), only those investments, which yield exempt income needs to be considered. The Ld. DR, on the other hand strongly supported order of the Ld.CIT(A).

5. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We find that the Tribunal had considered an identical issue in assessee own case for AY 2013-14, where under identical set of facts, it has been held that for the purpose of computation of average value of investments, only those investments, which yield exempt income

needs to be considered. The relevant findings of the Tribunal are as under:-

6. Before us, the learned Counsel for the assessee stated that the issue is squarely covered by the Tribunal's decision in assessee's sister concern case (in the case of Allana Cold Storage Private Limited) in ITA No 2366 & 2377/Mum/2015 for AY 2010-11 & 2011-12 vide order dated 20.12.2017, wherein the Tribunal has directed the AO to follow the decision of Special Bench of this ITAT in the case of ACIT vs. Vireet Investments (P.) Ltd. [2017] 58 ITR(T) 313 (Delhi - Trib.) (SB) and consider only disallowance on those investment which are yielding exempt income and accordingly compute the average value of investment while computing the disallowance. The Tribunal observed as under at Para 4 as under: -

"4. We have heard the rival submissions, perused the orders of the authorities below and the decision of the Delhi Special Bench in the case of ACIT v. Vireet Investments Private Limited (supra). We observe that the Special Bench of the Delhi Tribunal held that only those investments are to be considered for computing average value of investments which yielded exempt income during the year. Therefore, respectfully following the said decision, we direct the Assessing Officer to compute the disallowance under Rule 8D(2)(iii) by considering only those investments which yielded exempt income during the year and recompute the income accordingly. Needless to say that the Assessing Officer shall give adequate opportunity of being heard to the assessee. Since we followed the order of the Special Bench Tribunal and held that the only the investments yielding dividend income should be considered for disallowance under Rule 8D(2)(iii) the other contentions raised by the assessee need not gone into as they are not relevant as submitted by Ld. A.R."

When a query was put to the learned Sr. Departmental Representative, he simply relied on the assessment order.

7. After considering the rival submissions and going through the facts of the case, we find that in all these appeals facts and circumstances are exactly identical. Hence, we also direct the AO to consider the investments which are giving exempt income for the purpose of computing disallowance under Rule 8D(2)(iii). Accordingly, all these appeals are partly allowed for statistical purposes in view of the above directions.

8. Similar are the facts in ITAs No. 922,924 & 926/Mum/2018 for AY 2014-15, 2013-14 & 2014-15 respectively, hence, the same are also partly allowed for statistical purposes in view of the above directions.

6. In this view of the matter and consistent with view taken by the co-ordinate bench in assessee own case for earlier years, we are of the considered view that for the purpose of computation of disallowances u/s 14A r.w.Rule 8D (2)(iii) of I.T.Rules, 1962, only those investments, which yield exempt income needs to be considered. Hence, we direct the Ld. AO to recompute disallowances by taking into account investments, which yield exempt income for the year under consideration.

7. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on this 14 /02/2020

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 14/02/2020
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