

IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'B' JAIPUR
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

ITA No. 311/JP/2019
Assessment Year :2012-13

Sanjay Prakash Kulshrestha, 20, Uniara Hospital & Research Center, Uniara Garden, Moti Doongri Road, Jaipur-302004	बनाम Vs.	ITO (T&J), O/o the Pr. CIT-2, Jaipur
PAN/GIR No.: ADCPK0616R		
Appellant		Respondent

ITA No. 312/JP/2019
Assessment Year : 2014-15

Sanjay Prakash Kulshrestha, 20, Uniara Hospital & Research Center, Uniara Garden, Moti Doongri Road, Jaipur-302004	बनाम Vs.	ITO, Ward 6(5), Jaipur
PAN/GIR No.: ADCPK0616R		
Appellant		Respondent

Assessee by : Akhilesh Kumar Jain (CA)
Revenue by : Smt. Runi Pal (JCIT)

Date of Hearing : 22/01/2020
Date of Pronouncement: 09/03/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

These are two appeals filed by the assessee against the orders of Id. CIT(A), Ajmer dated 10.12.2018 for A.Y 2012-13 and dated 14.12.2018 for A.Y 2014-15 respectively. Since common issues are involved, both these appeals were heard together and are being disposed off by this consolidated order.

2. First of all, we take up appeal of the assessee for A.Y 2012-13 wherein the assessee has taken the following grounds of appeal:

"1. The learned CIT(A) has erred in law and on facts in sustaining application of provisions of section 14A for and thus sustaining addition of Rs. 3,16,631/- as per formula prescribed in rule 8D.

2. The learned CIT(A) has further erred in law and on facts in sustaining addition of Rs. 30,000/- out of alleged interest payment on unsecured loans.

3. The learned CIT(A) again erred on facts sustaining addition of Rs. 36,965/- by enhancing the interest on income tax refund."

3. Regarding Ground No. 1, briefly stated, the facts of the case are that during the course of assessment proceedings, the Assessing Officer observed that the assessee has made investment in shares, mutual funds and agriculture land and on such investments, assessee is earning exempt income u/s 10 of the Income-tax Act, 1961. Thus, assessee is liable for disallowance u/s 14A which is automatic and comes into operation without any exception as soon as dividend income is claimed exempt. The possibility of incurring certain expenditure under the head administrative expenditure for earning dividend income cannot be ruled out. While allocating expenses relating to exempt income not only the direct expenses like receiving and depositing the dividend warrant has to be taken into consideration but also the indirect expenses including major managerial/clerical expenses which are involved in making and implementing the decision are also to be disallowed. The disallowance of administrative expenses and interest expenses on earning of dividend income claimed exempt is also held/permitted by the Hon'ble Supreme in case of CIT vs. United General Trust, 200 ITR 488 (SC). Accordingly, a show cause was issued to the assessee as to why disallowance u/s 14A should not be made. In response, it was submitted by the assessee that no amount of borrowing on which interest has been paid was utilized by the assessee in investments, income from which is either exempt or not includible in the total income. Thus

there is no case for applying provisions of section 14A in the case of the assessee while determining total income. Rule 8D is applicable only when there is common expenditure which cannot be linked with income which does not form part of total income and income which forms part of total income. In the present case there is no such income. Therefore, assessee contended that disallowance is not warranted u/s 14A of the Income Tax Act, 1961. The submission so filed by the assessee was considered but not found acceptable to the Assessing Officer. The Assessing officer stated that he is not satisfied with the correctness of the claim of assessee that it has not incurred any expenditure in relation to income which does not form part of the total income and disallowance was accordingly computed under Rule 8D amounting to Rs. 3,16,631/-.

4. Being aggrieved, the assessee carried the matter in appeal before the Id. Id. CIT(A) who has sustained the said disallowance and the relevant findings of the Id. CIT(A) read as under:-

"4.3 I have gone through the assessment order, statement of facts, grounds of appeal and written submission carefully. It is seen that the appellant had debited interest expenses of Rs. 72,59,552/-. The appellant has also made investment in shares, mutual funds and agricultural land. The appellant has not been able to substantiate with the help of documentary evidence his contention that no interest bearing borrowed funds were utilized for making investment in the assets income from which is exempt. The deduction in respect of interest paid can be allowed for the purpose of computing income under the head "profit & gains from business & profession only, if the appellant proves that the interest claimed as deduction was paid solely in respect of interest bearing borrowed funds utilized for business purposes. In the case under

consideration, the appellant has failed to prove that entire interest of Rs. 72,59,552/- was paid only in respect of interest bearing borrowed funds utilized for business purposes. There is investment in shares, mutual funds and agricultural land. The AO has worked out the disallowance u/s 14A strictly in accordance with Rule 8D. Therefore, it is held that a disallowance u/s 14A was required to be made by the AO and the disallowance worked out by the AO is correct and strictly in accordance with Rule 8D. Therefore, disallowance of Rs. 3,16,631/- (Rs. 2,96,671 + Rs. 19,960) made by the AO u/s 14A is hereby confirmed."

5. During the course of hearing, the Id. AR submitted that the assessee is engaged in trading in shares listed at BSE and NSE Stock Exchanges. The assessee had credit arrangement with Anand Rathi Global Finance Ltd. and assessee has been doing share transactions through Anand Rathi Share and Stock Brokers Ltd. It was submitted that Anand Rathi Global Finance Ltd was making direct payment from their account with HDFC Bank Ltd to account with HDFC Bank Ltd. of Anand Rathi Share and Stock Brokers Ltd towards purchase of shares by the assessee, as such diversion of fund for other purpose was not possible. It was submitted that as entire interest bearing borrowed funds were thus utilized in buying of stock in trade, there was no case for disallowance under section 14A read with Rule 8D. It was submitted that interest payment thus had live and direct nexus with the shares held and forming part of trading activity, generating taxable income computed under chapter IV of the Income Tax Act. It was accordingly submitted that charging provision of section 14A(1) is not attracted at all to invite addition by applying Rule 8D and reliance was placed on the decision of Hon'ble Supreme Court in case of Maxopp Investment Ltd. Vs. CIT, New Delhi (2018) 402 ITR 640(SC) besides various other decisions.

6. It was further submitted that both the lower authorities have applied provisions of Rule 8D in a mechanical manner without analyzing the applicability or otherwise of charging provisions contained in sub section 1 of section 14A of the Act. It was further submitted that there is no recording of satisfaction by the Assessing Officer as required by sub section (2) of section 14A read with Rule 8D(1). It was further submitted that the assessee had only earned dividend income of Rs. 20/- which does not form part of total income being exempt under chapter III of the Act and the disallowance, if at all required to be made should be restricted to exempt income so earned by the assessee.

7. Per contra, the Id. DR submitted that the restriction of disallowance to the amount of exempt income can be considered only in respect of indirect administrative expenses and not in respect of interest expenditure incurred by the assessee for making investments in the shares. It was further submitted that the interest expenditure is incurred for making the investment and does not depend upon earning of exempt income on such investment. The Id DR accordingly relied on the order of the lower authorities.

8. We have heard the rival contentions and perused the material available on record. The first contention of the Id AR is that since the shares were held by the assessee as stock-in-trade and entire interest bearing borrowed funds were utilized in buying such stock-in-trade, there was no case for disallowance under Sec. 14A r.w. Rule 8D. In our considered view, the aforesaid contention of the Id. A.R is absolutely misconceived and cannot be accepted. On a perusal of judgment of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. (supra), we find that the Hon'ble Supreme Court had disapproved the dominant purpose test that was pressed into service by the assessee for the purpose of interpreting the scope and gamut of Sec. 14A of the Act. Infact, the

Hon'ble Supreme Court had subscribed to the theory of the apportionment which was made available by the legislature by inserting Sec. 14A vide the Finance (Amendment) Act, 2001 with retrospective affect from 01.04.1962. In the aforesaid judgment, the Hon'ble Supreme Court had observed that where shares are held by an assessee as stock-in-trade, the earning of exempt dividend income on the same would trigger the applicability of Sec. 14A of the Act and the relevant findings of the Hon'ble Supreme Court reads as under:

"39. In those cases, where shares are held as stock-in-trade, the main purpose is to trade in those shares and earn profits therefrom. However, we are not concerned with those profits which would naturally be treated as "income" under the head "profits and gains from business and profession". What happens is that, in the process, when the shares are held as "stock-in-trade", certain dividend is also earned, though incidentally, which is also an income. However by virtue of Section 10(34) of the Act, this dividend income is not to be included in the total income and is exempt from tax. This triggers the applicability of Section 14A of the Act which is based on the theory of apportionment of expenditure between taxable and non-taxable income as held in Walfort Share and Stock Brokers P Ltd. case. Therefore, to that extent, depending upon the facts of each case, the expenditure incurred in acquiring those shares will have to be apportioned."

9. Accordingly, the shares which were held by the assessee as stock-in-trade were to be considered for the purpose of computing the disallowance under Sec. 14A of the Act and the contention so advanced by the assessee cannot be accepted. Now, given that the Id AR has submitted that as entire interest bearing borrowed funds were utilized in buying of stock in trade and interest payment during the year thus had live and direct nexus with the shares

held and forming part of trading activity, and inspite of that, where no disallowance was made by the assessee while computing the disallowance under section 14A and the AO records a categorical finding that he is not satisfied with the correctness of claim of the assessee, we see no infirmity in recording of satisfaction by the AO and therefore, the second contention so advanced by the Id AR cannot be accepted. Regarding the third contention of the Id AR that disallowance should be restricted to exempt dividend income, we find that such a contention can be advanced in the context of administrative expenses and not in the context of interest expense which in the instant case has been admitted to be have been incurred directly for purchase of shares. Therefore, disallowance on account of administrative expenses under Rule 8D(iii) can be restricted to the extent of exempt income so claimed by the assessee. On perusal of return of income, we find that besides dividend income of Rs 20/- which has been claimed exempt u/s 10(34), the assessee has also claimed exemption of long term capital gains u/s 10(38) of Rs 68,091/- and disallowance of administrative expenses under Rule 8D(iii) is only Rs 19,960 which is anyway less than the income claimed exempt. Thus, this contention of the Id AR therefore cannot be accepted in the facts and circumstances of the present case. In the result, the ground no. 1 of assessee's appeal is dismissed.

10. Regarding Ground No. 2, briefly stated, the facts of case are that during the course of assessment proceedings, the AO observed that the assessee has given interest free loan and advance amounting to Rs. 2,00,000/- to Sanjay Prakash Kulshrestha HUF and given that the assessee has not charged any interest on such loan and advance whereas his own capital is negative and he has taken huge unsecured interest bearing funds, in absence of any commercial expediency, interest expense @ 15% was disallowed, which on appeal has been sustained by the Id. CIT(A).

11. During the course of hearing, the Id. AR submitted that AO assumed that the amount borrowed from M/s Anand Rathi Global Finance Ltd. was utilized toward remitting loan to Sanjay Prakash Kulshrestha HUF, and disallowed interest @ 15% p.a on adhoc basis on such loan amount without establishing any nexus of such transaction. It was submitted that the amount borrowed from M/s Anand Rathi Global Finance Ltd was utilized for making investments in shares and the loan of Rs. 2,00,000/- was given to Sanjay Prakash Kulshrestha HUF out of past interest free funds of the assessee and therefore disallowance so made by the Assessing Officer should be deleted.

12. Heard both the parties and pursued the material available on record. We find that the assessee has own capital and interest free borrowed funds to the tune of Rs 4.74 crores besides interest bearing funds from M/s Anand Rathi Global Finance Ltd to the tune of Rs 4.34 crores and thus have mixed funds where interest free funds are more than interest bearing funds. In such a situation, a presumption can be drawn that amount advanced by the assessee is out of interest free funds. Such a presumption is however rebuttal where necessary nexus is established between the borrowed funds and subsequent advancement thereof. However, in the instant case, no such nexus has been established by the Revenue, thus, we find that it can be reasonably be presumed that funds have been lent out of interest free funds. Further, the assessee has submitted that whole of interest bearing funds from M/s Anand Rathi Global Finance have been utilized for making payment towards purchase of shares which also supports the case of the assessee. In the result, the addition made by the AO is hereby directed to be deleted. In the result, the ground No. 2 of the assessee's appeal is allowed.

13. In Ground No. 3, briefly stated, the facts of case are that interest on income tax refund was offered by the assessee of Rs. 8,899/- (derived from difference of the amount received i.e. Rs. 2,80,000/- and the amount claim as refund amounting to Rs. 2,71,101/-. However, as per the Assessing Officer, interest amount granted on refund was Rs. 48,594/- as per the Departmental records and accordingly, he added the differential amount of Rs. 36,965/- and brought the same to tax which on appeal has been confirmed by the Id CIT(A).

14. Heard both the parties. It is a matter of record as to quantum of income tax refund claimed by the assessee and finally determined and granted to the assessee for the respective assessment years and there cannot be any dispute that where interest on refund has been granted by the Department, the same is taxable in the hands of the assessee. In absence of relevant material on record, we deem it appropriate that the matter be remanded back to the file of the Assessing Officer to examine the same afresh after providing reasonable opportunity to the assessee. In the result, the ground No. 3 of the assessee's appeal is allowed for statistical purposes.

15. In the result, the appeal of the assessee is partly allowed in light of aforesaid directions.

16. In ITA No. 312/JP/2019 for A.Y 2014-15, the sole ground raised by the assessee relates to sustenance of disallowance of Rs. 55,452/- u/s 14A r/w rule 8D of the Income Tax Rules. Both the parties fairly submitted that the facts and circumstances of the case are identical as in ITA No. 311/JP/2019 and similar contentions have been advanced by both the parties. Therefore, our

findings and directions contained in ITA No. 311/JP/2019 shall apply *mutatis mutandis* to this matter and appeal of the assessee is accordingly disposed off.

17. In the result, both the appeals of the assessee are disposed off in light of above directions.

Order pronounced in the open Court on 09/03/2020.

Sd/-
(Sandeep Gosain)
Judicial Member

Sd/-
(Vikram Singh Yadav)
Accountant Member

Jaipur

Dated:- 09/03/2020

*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Sanjay Prakash Kulshrestha, Jaipur
2. The Respondent- ITO (T&J), O/o the Pr. CIT-2, Jaipur & ITO, Ward 6(5), Jaipur
3. CIT
4. CIT(A)
5. DR, ITAT, Jaipur.
6. Guard File {ITA No. 311 & 312/JP/2019}

By order,

Asst. Registrar

