

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

(THROUGH VIRTUAL COURT)

BEFORE SHRI D. KARUNAKARA RAO, AM AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 2606/PUN/2017

निर्धारण वर्ष / Assessment Year : 2014-15

M/s. Shewani Properties,  
375 Laxmi Road,  
Narayan Peth,  
Pune-411 030.  
PAN : AAZFS2853A

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Assistant Commissioner of Income Tax,  
Circle-2, Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri V.L. Jain

Revenue by : Shri S.P. Walimbe

सुनवाई की तारीख / Date of Hearing : 09.06.2020

घोषणा की तारीख / Date of Pronouncement : 11.06.2020

**आदेश / ORDER**

**PER PARTHA SARATHI CHAUDHURY, JM:**

This appeal preferred by the assessee emanates from the order of the  
Ld. CIT(Appeal), Pune-3 dated 28.09.2017 for the assessment year 2014-15  
as per the following grounds of appeal on record:

*"1. The learned CIT(A) erred in law and on facts in confirming the  
enhancement by an amount of Rs.7,05,641/- of the disallowance  
under section 14A of the Income Tax Act.*

*2. The appellant craves leave to amend or alter any of the grounds of appeal or add to the same, if deemed necessary.”*

2. The brief facts of the case are that the assessee is a Partnership Firm engaged in Promoters, builders and developers. The assessee filed return of income for A.Y.2014-15 on 31.07.2014 declaring total income of Rs.1,68,493/-. The case was selected for scrutiny under CASS under limited category and accordingly, notice/s 143(2) dated 28.08.2015 of the I.T. Act, 1961 was served on the assessee. In the return of income, the assessee calculated disallowance of interest as per sec 14A of the Act. However, while calculating the disallowance assessee has taken net interest paid. It was seen that assessee has received interest from Positive Lifestyle Developers Pvt. Ltd. The interest received has no connection with the interest paid on funds utilized for the investment in firms as assessee itself has submitted that borrowed funds were not utilized for giving loans and advances vide its submission dated 16.12 016. The Assessing Officer used interest paid instead of net interest paid for calculated disallowance of interest as per section 14A of the Act and disallowed an amount of Rs.57,35,291/-. The assessee claims that an amount of Rs.50,29,650/- has already been disallowed by him so the same should have been reduced by the Assessing Officer from the disallowed amount of Rs 57,35,291/-.

3. During First Appellate Proceedings, the Ld. CIT(Appeal) confirmed the enhancement of addition by an amount of Rs.7,05,641/- of the disallowance u/s.14A of the Act against which the assessee is in appeal before us.

4. At the very outset, the Ld. Counsel for the assessee through video conference submitted that this issue is covered by the decision of the Coordinate Bench of the Tribunal, Pune for the assessment year 2009-10 **in ITA**

**No.326/PUN/2016 dated 26.04.2018.** The Ld. Counsel for the assessee brought our attention to Paras 7 to 9 of the said order of the Tribunal which was not in existence before the Ld. CIT(Appeals) at the time of passing appellate order dated 28.09.2017. In effect, the case of the Ld. Counsel for the assessee is that only net expenditure should be considered after reducing interest income earned from Positive Lifestyle Developers Pvt. Ltd.

5. On the other hand, the Ld. DR has placed strong reliance on the order of the Ld. CIT(Appeal).

6. We have perused the case record and heard the rival contentions. This is a case where the assessee spent interest expenditure and also earned interest income. The assessee considered net interest expenditure for the purpose of Section 14A r.w.r 8D (2)(ii) of the Income Tax Rules, 1961. We find that the Assessing Officer keeping himself his findings for the assessment year 2009-10, considered gross interest expenditure while making disallowance under Clause (ii) sub section (2) of Rule 8D of the Income Tax Rules, 1962. We also peruse the order of the Tribunal dated 26.04.2018 (supra.) wherein this issue was decided in favour of the assessee by observing as follows:

*“7 . The case of assessee before us is that for computing disallowance under section 8D(2)(ii) of the Rules on account of interest expenses, net interest is to be considered in the hands of assessee and not gross interest paid.*

*8. We find that the Hon'ble Bombay High Court in CIT Vs. Jubilant Enterprises Pvt. Ltd. (supra) had settled the issue in this regard and have dismissed the appeal of Revenue against the order of Tribunal in holding that disallowance made under section 14A of the Act read with Rule 8D of the Rules is to be on the basis of netting of interest.*

*9. Similar issue has been decided by the Hon'ble High Court of Gujarat in Pr. CIT Vs. Nirma Credit and Capital Pvt. Ltd. (supra). Following the same parity of reasoning, we hold that for the purpose of applying the provisions of clause (ii) of sub-rule (2) of Rule 8D of the Rules, prior to its amendment w.e.f. 02.06.2006 what has to be considered as amount of expenditure by way of interest would be interest paid by the assessee on*

*borrowings minus interest income received during the financial year. Such is the proposition laid down by the Hon'ble High Court of Gujarat in Pr. CIT Vs. Nirma Credit and Capital Pvt. Ltd. (supra) and applying the same, we direct the Assessing Officer to delete disallowance made in the hands of assessee, since the assessee had suo motu made disallowance under section 14A of the Act read with rule 8D(2)(ii) of the Rules by considering the net interest. The ground of appeal raised by the assessee is thus, allowed."*

In view of the decision referred hereinabove, we remand this matter to the file of Assessing Officer for applying the order of the Tribunal dated 26.04.2018 (supra.) on the issue involved in this case. Needless to say, the Assessing Officer shall grant reasonable opportunity of hearing to the assessee as per law.

7. In the result, **appeal of the assessee is allowed for statistical purposes.**

Order pronounced on 11<sup>th</sup> day of June, 2020.

Sd/-  
**D. KARUNAKARA RAO**  
**ACCOUNTANT MEMBER**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 11<sup>th</sup> June, 2020.

SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeal), Pune-3.
4. The Pr. CIT-2, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	09.06.2020	Sr.PS/PS
2	Draft placed before author	09.06.2020	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		