



**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"SMC-III" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA no.943/Mum./2019  
(Assessment Year :2008-09)

Bharat Chimanlal Parekh  
Flat no.1801-1802  
Boulevard-3 The Address  
LBS Marg, Ghatkoper (East)  
Mumbai 400 086  
PAN - AABPP6452C

..... Appellant

v/s

Income Tax Officer  
Ward-12(2)(1), Mumbai

..... Respondent

Assessee by : Shri Deepak Jain  
Revenue by : Shri Avaneesh Tiwari

Date of Hearing - 11.06.2020

Date of Order - 17.06.2020

**ORDER**

The captioned appeal has been filed by the assessee challenging the order dated 6<sup>th</sup> December 2018, passed by the learned Commissioner of Income Tax (Appeals)-55, Mumbai, pertaining to the assessment year 2008-09.

2. The assessee has raised in total five grounds. Ground no.5, being general in nature does not require separate adjudication.

3. In grounds no.1 and 2, the assessee has raised a legal issue regarding the validity of the assessment order passed under section

143(3) r/w section 147 of the Income Tax Act, 1961 (for short "*the Act*"). Whereas, in grounds no.3 and 4, the assessee has challenged the merits of disallowance made under section 14 r/w rule 8D.

4. Brief facts are, the assessee is an individual deriving income from salary, house property, capital gain and income from other sources. For the assessment year under dispute, the assessee filed his return of income on 29<sup>th</sup> July 2008, declaring total income of ₹ 8,47,950. The assessment in case of the assessee was completed under section 143(3) of the Act vide order dated 30<sup>th</sup> November 2012, accepting the income declared. Subsequently, the assessment was re-opened under section 147 of the Act on the reasoning that though the assessee had earned exempt income by way of dividend from companies and mutual fund amounting to ₹ 16,89,060, he has not disallowed any expenditure under section 14A r/w rule 8D. Accordingly, the Assessing Officer issued notice under section 148 of the Act on 11<sup>th</sup> December 2014, requiring the assessee to file the return of income. In response to the said notice, the assessee vide letter dated 20<sup>th</sup> March 2014, requested the Assessing Officer to treat the original return of income filed earlier as return of income for the purpose of section 148 of the Act. Further, the assessee also requested for supply of the reason recorded for re-opening of assessment and thereafter raised objections against the re-opening. Ultimately, the Assessing Officer completed the assessment

u/s 143(3) r/w section 147 of the Act disallowing the amount of ₹ 1,20,515, under section 14A r/w rule 8D comprising of disallowance of interest expenditure under section 8D(2)(ii) for an amount of ₹ 53,716. Against the assessment order so passed, the assessee filed appeal before learned Commissioner (Appeals) challenging both the validity of re-opening under section 147 of the Act as well as merits of the disallowance made under section 14A r/w rule 8D. However, learned Commissioner (Appeals) did not find merit in the grounds raised by the assessee and dismissed the appeal.

5. The learned Authorised Representative submitted, the assessee has filed all relevant and necessary details truly and correctly along with his return of income as well as in the course of original assessment proceedings. He submitted, during the original assessment proceedings, the Assessing Officer had made detailed enquiry with regard to various issues by issuing notices under section 142(1) and 143(3) of the Act. He submitted, in response to the query raised by the Assessing Officer the assessee had furnished all the details including the exempt income earned during the year. He submitted, since there is no failure on the part of the assessee to truly and correctly disclose all material fact relating to his assessment, the re-opening of assessment after expiry of four years from the end of the relevant assessment year is invalid. Further, he submitted, the

reasons recorded would reveal that the Assessing Officer had no tangible material available with him while re-opening the assessment. He submitted, merely on a change of opinion, that too, on the basis of audit objection, the Assessing Officer has mechanically re-opened the assessment under section 147 of the Act which is invalid. As regards the merits of the disallowance, he submitted, the assessee has not claimed any expenditure as such. He submitted, only expenditure incurred was towards interest which has been set off against the interest income offered as income from other sources. Further, he submitted, assessee also had sufficient interest free fund available with him.

6. The learned Departmental Representative submitted, in course of the original assessment proceedings, the Assessing Officer has not enquired into the applicability of section 14A r/w rule 8D to the expenditure relatable to the exempt income earned during the year. Therefore, the re-opening of assessment under section 147 of the Act is justified. As regards the merits, he relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

7. I have considered rival submissions and perused the material on record as well as relevant documents placed in the paper book which

were specifically brought to my notice by the learned Authorised Representative. Undisputedly, the assessee has voluntarily filed his return of income within the time prescribed under section 139(1) of the Act and the assessment was completed under section 143(3) of the Act. On a perusal of the documents placed in the paper book, it is very much evident, in course of original assessment proceedings the Assessing Officer from time to time has called for various details from the assessee by issuing statutory notices under section 142(1) and 143(2) of the Act and the assessee has duly complied with them. The aforesaid facts clearly indicate that the Assessing Officer while completing the assessment under section 143(3) of the Act has applied his mind not only to the return of income along with computation of total income filed by the assessee, wherein, various sources of income including the exempt income earned during the year have been duly disclosed, but has also made enquiries with regard to the source of interest income and expenditure. Undisputedly, the Assessing Officer has re-opened the assessment under section 147 after expiry of four years from the end of the impugned assessment year. Therefore, the proviso to section 147 of the Act would apply. As per the said proviso, only in a case where there is failure on the part of the assessee to disclose fully and truly all material facts, the Assessing Officer retains the power to re-open the assessment under section 147 of the Act, in

case, the original assessment has been completed under section 143(3) of the Act. In the present case, the reasons recorded for re-opening the assessment which has been reproduced in Para-2 of the assessment order clearly reveals that the Assessing Officer has not alleged any failure on the part of the assessee to truly and correctly disclose all material facts relating to his assessment. Rather, the reasons recorded clearly reveal that the Assessing Officer simply on perusal of materials already available on record i.e., the Balance Sheet and other material has formed a belief that due to non-disallowance of expenditure under section 14A r/w rule 8D, there is escapement of income. In my view, the aforesaid facts clearly established that basic conditions of the proviso to section 147 of the Act have not been fulfilled. That being the case, the re-opening of assessment under section 147 of the Act in the present case is invalid. Therefore, the assessment order passed under section 143(3) r/w section 147 of the Act deserves to be quashed. Accordingly, I do so.

8. In view of my decision rendered in Grounds no.1 and 2, as aforesaid, the other grounds raised on merits of the disallowance having become infructuous do not require adjudication.

9. In the result, appeal is allowed as indicated above.

Order pronounced through circulation in notice board under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962.

**Sd/-  
SAKTIJIT DEY  
JUDICIAL MEMBER**

**MUMBAI, DATED: 17.06.2020**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai