

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

BEFORE SHRI M. BALAGANESH (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 7505/MUM/2016
Assessment Year: 2012-13**

Shri Rakesh Wadhawan, Thar & Co. 203, Capri Building, Opp. HDIL Towers, Anant Kanekar Marg, Bandra (E), Mumbai - 400051 PAN: AAEPW7656G	Vs.	The Asst. Commissioner of Income Tax, Central Circle- 5(4), Mumbai
(Appellant)		(Respondent)

Date of Hearing: 28/08/2019
Assessee by : Shri Nimesh Thar/Rahul Hakani (ARs)
Revenue by : Shri J. Saranavan (CIT)
Date of Hearing: 20/12/2019
Assessee by: None
Revenue by: Shri Akhtar H. Ansari (DR)
Date of pronouncement: 18/03/2020

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 29.07.2016 passed by the Commissioner of Income Tax (Appeals)-53 (for short 'the CIT(A), Mumbai, pertaining to the assessment year 2012-13, 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 engaged in the business of acquiring, developing and selling lands, filed its return of income for the assessment year under consideration declaring total income at Rs. 1,11,00,000/-. The AO passed the assessment order u/s 143 (3) of the Act determining the total income at Rs. 3,45,87,795/- *inter alia* making addition of Rs. 4,44,18,371/- on account of disallowance u/s 14A of the Act. In the first

appeal the Ld. CIT (A) restricted the disallowance made u/s 14A read with Rule 8D(2)(iii) of the Income Tax Rules (Rules) to Rs. 36,74,034/-, however, further directed the AO to recomputed the disallowance of expenses under Rule 8D(2)(i), holding that the interest on overdraft account of the assessee is directly relatable to his investment in shares of privilege health services Pvt. Ltd. Still aggrieved, the assessee is in appeal before the Tribunal.

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

- “1. The Learned CIT (A) has erred in law & on facts in partly upholding the disallowance made u/s 14A of the Income Tax Act, 1961 in the order of Income Tax passed by the Assessing Officer u/s 143 (3) of the Income Tax Act, 1961 which is invalid and bad in law.*
- 2. The Learned CIT (A) has erred in directing the learned AO to re-compute the quantum of disallowance of direct interest expenses under rule 8D(2)(1) being interest on overdraft account of the appellate bearing no. CA 1407/3216 directly relatable to his investment in shares of privilege Healthcare Services Pvt. Ltd.*
- 3. The Learned CIT (A) has erred in law & on facts in upholding imposition of interest under section 234B of the Act in the order of Income Tax passed by the Assessing Officer u/s 143 (3) of the Income Tax Act, 1961 which is bad in law.”*

4. This appeal was initially heard by this Bench on 28.08.2019 and thereafter certain clarifications were sought from the revenue on 20.12.2019. Since there is a delay of 51 days in filing the present appeal, the Ld. counsel for the assessee submitted that the assessee could not file the present appeal within limitation period as the assessee was expecting to receive order giving effect to appellate order of CIT (A) to challenge the same before the CIT(A). However, when the assessee did not receive the same the assessee filed the present appeal. The Ld. counsel further submitted that since there is no *mala fide* intention in filing the appeal after expiry of limitation period, the delay may

be condoned in the interest of justice and the assessee may be allowed to argue its case on merit.

5. On the other hand, the Ld. Departmental Representative (DR) opposed the application on the ground that there is no sufficient cause in to condone the delay in the present case.

6. We have heard the rival submissions. The assessee has filed an affidavit in support of its contention. The relevant para of the affidavit reads under:-

“The appeal was filed late because it was expected to receive order giving effect to Appellate Order of CIT (A_53 from the learned AO, which till date has not been passed, as the same has direct bearing on ground no. 2 of the present appeal, due to the fact that if recomputed disallowance of interest expense under rule 8D(2)(i) would have been infavourable, then it would have been challenged against CIT (A) and not ITAT.”

7. Sub-section 5 of section 253 of the Income Tax Act provides that the Tribunal may admit appeal or permit filing of memorandum of cross-objection of respondent after expiry of relevant period of limitation referred to in sub-section 3 and 4 section 253, if it is satisfied that there was sufficient cause for not presenting it within that period. The expression “sufficient cause” in this section has been used in section 5 of Indian Limitation Act, 1961. This expression has come for consideration before the Hon’ble Supreme Court as well as before the Hon’ble High Courts and the Hon’ble Courts are unanimous in holding that whenever such issue comes for consideration before adjudicating authority, the expression “sufficient cause” should be considered with justice oriented approach. The Hon’ble Supreme Court in the case of *Collector Land Acquisition vs. Mst. Katiji & Others*, 1987 AIR 1353, has laid down the following principles to be followed, while deciding the issue relating to condonation of delay in filing appeals. The relevant part of the judgment reads as under:

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

8. We do not find any *mala fide* intention of the assessee in not filing the present appeal. In our considered view, the action of the assessee is *bona fide*. Hence, taking into consideration, the principles laid down by the Hon'ble Supreme Court in the aforesaid judgment, we condone the delay of the 51 days in filing the present appeal in the interest of justice. Accordingly, we and allowed the Ld. counsel to argue the case of the assessee on merits.

9. The Ld. counsel for the assessee submitted before us that during the year relevant to the assessment year under consideration, the assessee had earned dividend income of Rs. 5,63,977/-. The assessee did not make suo moto disallowance as no expenditure was incurred other than the D-mat charges of Rs. 4,555/-. AO determined the disallowance u/s 14A read with Rule 8D(iii) of the Rules at Rs. 4,44,18,371/-. The Ld. counsel further submitted that since, the assessee had incurred expenditure in relation to the exempt income to the tune of Rs. 4,555/-, the Ld. CIT (A) ought to have restricted the disallowance to the said amount. However, the Ld. CIT (A) disallowed the D-mat expenses

under rule 8D(2)(i), restricted the disallowance under Rule 8D(2)(iii) to Rs. 36,74,034/-, which is 50% of the total amount of expenditure claimed by the assessee. The Ld. CIT(A) further directed the AO to re-compute the disallowance under Rule 8D(2)(i), holding that, interest on overdraft account of the appellant is directly relatable to his investments in shares and directed the assessee to furnish working of such interest on overdraft account to the AO for verification and making disallowance accordingly. The Ld. counsel further contended that the action of the Ld. CIT (A) is not in accordance with the law laid down by the Hon'ble Delhi High Court in the case of *Pr. CIT vs. Caraf Builders and Construction Pvt. Ltd.*, in which the Hon'ble Court has held that disallowance under section 14A cannot exceed exempt income of the relevant year. The Ld. counsel further contended that in view of the ratio laid down by the Hon'ble Delhi High Court, in the said case, the impugned order is bad in law and hence liable to be set aside.

10. On the other hand, the Ld. DR supported the order passed by the Ld. CIT (A) on the ground that since the Ld. CIT (A) has determined the disallowance in the light of the facts and evidence on record, there is no infirmity in the order passed by the Ld. CIT (A). The Ld. DR further submitted that since the interest on overdraft account of the assessee is directly related to his investment in shares the same is required to be disallowed under rule 8D(2)(i) of the Act.

11. We have heard the rival submissions and perused the material on record including the cases relied upon by the Ld. counsel and the authorities below. The Ld. CIT(A) has passed the impugned order holding as under:-

“5.3.4 Coming to the computation of disallowance u/s 14A, I am unable to accept the appellant's plea that such disallowance cannot exceed the exempt income because there is nothing in section 14A or Rule 8D to this effect and the computation of quantum of disallowance depends on application of the methodology laid down in Rule 8D. However, there is substance in the appellant's contention that the disallowance u/s 14A cannot exceed actual expenditure and no notional expenditure can be disallowed u/s 14A r.w. Rule 8D. It is observed from the record that the appellant had incurred demat expenses of Rs. 4,555/- which represent expenses

directly attributable to the earning of exempt income and are thus to be disallowed under Rule 8D(2)(i). Therefore, it is held that demat expenses of Rs. 4,555/- are liable to be disallowed under Rule 8D(2)(i). Further, as held above, interest on overdraft account of the appellant bearing No. CA1407/3216 directly relatable to his investment in shares of Privilege Health Care Services Pvt. Ltd. is required to be disallowed under Rule 8D(2)(i). The appellant is, therefore, directed to furnish working of such interest on overdraft account to the AO who will verify the same and make further disallowance under Rule 8D(2)(i) accordingly. As regards disallowance of Rs. 4,44,18,371/- made by the AO under Rule 8D(2)(iii), it is found that the same is far in excess of the actual administrative expenses debited by the appellant to his P & L Account. As stated above, that the appellant has debited administrative expenses aggregating to Rs. 73,48,067/- including rent, rates and taxes, society charges, electricity charges, legal expenses, professional fees, bank charges, printing and stationery expenses, Audit fees and miscellaneous expenses which are found to be attributable to the business as well as investment activities carried on by the appellant. Therefore, it is considered fair and reasonable to treat 50% of the said administrative expenses i.e. Rs. 36,74,034/- as relatable to the earning of exempt income. In other words, the disallowance of administrative expenses under rule 8D(2)(iii) will come to Rs. 36,74,034/- as against Rs. 4,44,18,371/- made by the AO. To sum up, the AO is directed to re-compute the quantum of disallowance of direct interest expenses under Rule 8D(2)(i) as mentioned above while giving effect to this order. Thereafter, the total disallowance under Rule 8D will be worked out which will be substituted for the amount of Rs. 4,44,18,371/- computed by the AO. With this direction, Ground No. 2 of the present appeal is treated as allowed to extent indicated above.”

12. As pointed out by the Ld. counsel for the assessee, the findings of the Ld. CIT(A) are contrary to the ratio laid down by the Hon'ble Delhi High Court in the case of *Pr. CIT vs. Caraf Builders & Construction Ltd.* [2019]101 taxmann.com 167 (Delhi) in which the Hon'ble Court has held that disallowance u/s 14A cannot exceed exempt income of the relevant year.

Similarly, in the case of Joint Investments Pvt. Ltd. ITA No. 117/2015, the Hon'ble Delhi High Court has held that section 14A read with Rule 8D cannot be interpreted so as to mean that the entire exempt income is to be disallowed. In view of the ratio of law laid down in the aforesaid cases, the findings of the Ld. CIT(A) are erroneous and bad in law. Hence, following the ratio laid down by the Hon'ble Delhi High Court, we allow ground No 1&2 of the assessee's appeal and set aside the impugned order passed by the Ld. CIT(A). Accordingly, we direct the AO to restrict the disallowance u/s 14A read with Rule 8D to the exempt income earned by the assessee during the previous year.

13. The remaining grounds are either consequential or of general nature, hence not required to be adjudicated.

In the result, appeal filed by the assessee for assessment year 2012-2013 is allowed.

Order pronounced in the open court on 18th March, 2020.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 18/03/2020

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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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