

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT),
'B' BENCH MUMBAI**

BEFORE SHRI M.BALAGANESH, AM

&

SHRI RAVISH SOOD, JM

**ITA No.3941/Mum/2019
(Assessment Year :2014-15)**

M/s. Nirpan Securities Pvt. Ltd., 301-308, Bhagwati House Veera Desai Road Andheri (W) Mumbai – 400 058	Vs.	Asst. Commissioner of Income Tax Circle 4(2)(1), Mumbai
PAN/GIR No.AAACN1329A		
(Appellant)	..	(Respondent)

Assessee by	Shri Vijay Mehta
Revenue by	Shri G.N.Makwana
Date of Hearing	17/12/2020
Date of Pronouncement	18/12/2020

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.3941/Mum/2019 for A.Y.2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-9, Mumbai in appeal No.CIT(A)-9/Cir-4/142/2016-17 dated 02/04/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 26/12/2016 by the

Id. Asst. Commissioner of Income Tax-4(2)(1), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in the original ground of appeal raised by the assessee is with regard to disallowance made u/s.14A of the Act.

3. We have heard rival submissions and perused the materials available on record. We find that assessee company is engaged in the business of share broking and sub-broking and had filed its return of income for the A.Y.2014-15 on 30/09/2014 declaring total income of Rs.12,68,45,040/-. This return was later revised on 11/12/2014 declaring total income of Rs.12,89,19,870/-.

3.1. We find that assessee company had earned exempt income in the form of dividend of Rs.54,000/- and had made suo moto disallowance of Rs.21,28,837/- u/s.14A of the Act in the return of income. We find that the Id. AO had sought to substitute this disallowance by applying the computation mechanism provided in Rule 8D(2)(ii) and Rule 8D(2)(iii) of the Rules and made disallowance of Rs.40,95,352/- over and above the disallowance voluntarily made by the assessee.

3.2. We find that assessee had contended before the Id. CIT(A) that it is flooded with own funds, hence, there cannot be any disallowance of interest under second limb of 8D(2) of the Rules in support of which the assessee placed reliance on the decisions of the Hon'ble Jurisdictional High Court in the case of Reliance Utilities and Power Ltd., reported in 313 ITR 340 and HDFC Bank Ltd., reported in 366 ITR 505. We find that the Id. CIT(A) appreciating the said contention of the assessee directed the Id. AO to delete the disallowance of interest of Rs.45,38,317/- made under second limb of Rule 8D(2) of the Rules.

3.3. With regard to disallowance of administrative expenses under the third limb of Rule 8D(2) of the Rules, the Id. CIT(A) directed the Id. AO to restrict the disallowance u/s.14A of the Act only to the extent of exempt income of Rs.54,000/-. The Id. CIT(A) also observed in his order that the suomoto disallowance made by the assessee u/s.14A of the Act in the revised return of Rs.21,28,837/- be ignored and also observed that the suomoto disallowance made by the assessee cannot be reduced while giving effect to the appellate order as the same was voluntarily done by the assessee in the return of income. With these directions, the Id. CIT(A) directed the Id. AO to restrict the disallowance u/s.14A of the Act to Rs.21,28,837/- being the suomoto disallowance made by the assessee.

4. Aggrieved, the assessee is in appeal before us.

5. It is not in dispute that the assessee company had earned exempt income only for Rs.54,000/- during the year under consideration. Its trite law that disallowance u/s.14A of the Act at any point in time cannot exceed exempt income. Reliance in this regard is placed on the decision of the Hon'ble Delhi High Court in the case of Joint Investments reported in 372 ITR 694 and also the decision of the Hon'ble Supreme Court in the case of Maxopp Investments reported in 402 ITR 640. It is not in dispute that assessee had made voluntarily disallowance in the return of income u/s.14A of the Act in the sum of Rs.21,28,837/-. Since the exempt income earned by the assessee is only Rs.54,000/-, the disallowance made u/s.14A of the Act cannot exceed the exempt income by following the aforesaid judicial precedents, even if the said disallowance was made suomoto by the assessee in the return of income. We are conscious of the fact that this would result in assessed income going below the returned income. However, only right taxes should be collected from the assessee in accordance with the provisions of the Act and settled judicial

pronouncements which would also be in consonance with the Article 265 of the Constitution of India. The CBDT Circular dated 11/04/1955 also categorially states that it is the duty of the Id. AO to educate the assessee on his legitimate rights and should not take advantage of the ignorance of the assessee. If the assessee is entitled for some relief / claim / deduction, then the same should be granted to the assessee even if it is not claimed by the assessee. The decision of Hon'ble Apex Court in the case of Goetze India Ltd reported in 284 ITR 323 (SC) that any claim of assessee could be entertained only by way of a valid return filed in that regard. However, the very same decision also states that the restriction imposed in that judgement shall not apply to appellate authorities. We also find that the Hon'ble Gujarat High Court in the case of Milton Laminates Ltd., vs. CIT reported in 37 Taxmann.com 249 had upheld the said proposition and had endorsed the view that assessed income could go below returned income if assessee is legally entitled for some relief even if erroneously offered by him in the return of income. In view of the aforesaid observations and respectfully following the judicial precedents referred hereinabove, we direct the Id. AO to restrict the disallowance u/s.14A of the Act to Rs.54,000/- only and reduce the differential sum of Rs.20,78,837/- (Rs.21,28,837/- - 50,000/-) from the final assessed income. Accordingly, the grounds raised by the assessee are allowed.

6. We find that assessee had raised an additional ground of appeal for claiming deduction of Rs.12,43,456/- on account of primary and secondary education cess on Income Tax and surcharge paid by the assessee.

6.1. We have heard rival submissions and perused the materials available on record. We find that the claim made by the assessee is purely a legal issue and does not involve verification of fresh facts. Hence, we

deem it fit and admit the additional ground and consider the same for our adjudication.

6.2. We find that the issue in dispute herein is squarely covered by the decision of the Hon'ble Jurisdictional High Court in the case of Sesa Goa Ltd., vs. JCIT reported in 117 Taxmann.com 96 wherein the Hon'ble High Court had categorically held that education cess paid on Income Tax and surcharge would be eligible for deduction u/s.37(1) of the Act. Respectfully following the said decision, we direct the Id. AO to grant deduction of Rs.12,43,456/- while framing the assessment pursuant to this Tribunal order. Accordingly, the additional ground raised by the assessee is allowed.

7. In the result, appeal of the assessee is allowed.

Order pronounced on 18/12/2020 by way of proper mentioning in the notice board.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 18/12/2020
KARUNA, *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.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai