

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

**BEFORE SHRI M.BALAGANESH, AM**

**&**

**SHRI RAVISH SOOD, JM**

**ITA No.2228/Mum/2019  
(Assessment Year :2013-14)**

M/s. Nirshilp Securities Pvt. Ltd., 301-308, Bhagwati House Veera Desai Road Andheri (West) Mumbai – 400 058	Vs.	DCIT-10(3)(1) Room No.212, 2 <sup>nd</sup> Floor Aayakar Bhavan M.K.Road, Mumbai – 400 020
<b>PAN/GIR No. AABCN4361M</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

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

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.2228/Mum/2019 for A.Y.2013-14 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-17, Mumbai in appeal No.CIT(A)-17/IT-326/10523/16-17 dated 22/03/2019 (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

23/03/2016 by the Id. Dy. Commissioner of Income Tax-10(3)(1), Mumbai (hereinafter referred to as Id. AO).

2. The only effective issue to be decided in the original ground of appeal 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. At the outset, the Id. AR drew our attention to ground No.1 raised in the original grounds of appeal praying for setting aside of this appeal to the file of the Id. CIT(A) for denovo adjudication, in as much as the entire submissions made by the assessee before the Id. CIT(A) were not at all considered by the Id. CIT(A) on the aspect of issue of disallowance u/s.14A of the Act.

3.1. We find that the Id. AO had made disallowance u/s.14A of the Act in the sum of Rs.22,17,485/- while completing the assessment. We find that assessee had earned dividend income of shares of Rs.80,45,543/- and had made suomoto disallowance of Rs.8,04,554/- calculated @10% of dividend income from shares. We also find that assessee had dividend income on mutual funds of Rs.1,84,64,432/- for which no disallowance of expenses was made u/s.14A of the Act by the assessee.

3.2. We find that assessee had originally filed the appeal in manual form on 07/04/2016 before the Id. CIT(A) against the order of assessment framed u/s.143(3) of the Act dated 23/03/2016, which has been dismissed vide appeal No.CIT(A)-17/IT/31/16-17 dated 05/09/2018 by the Id. CIT(A). When this manual appeal filed was pending before the Id. CIT(A), the assessee had filed an appeal electronically before the Id. CIT(A) on 03/06/2016. We find that assessee had duly intimated the Id. CIT(A) to consider the written submission already filed by it in the appeal filed manually before him, while deciding the appeal filed electronically.

But we find that the Id. CIT(A) had not taken cognizance of the same and had decided the appeal ex parte without considering the submissions of the assessee. When this was put to the Id. DR, he also fairly agreed for remanding this appeal to the file of the Id. CIT(A) for denovo adjudication as the issue involved is more factual and certainly requires verification of facts. Accordingly, with the consent of both the parties, we deem it fit and appropriate to remand this issue raised in original grounds of appeal to the file of the Id. CIT(A) on the aspect of issue of disallowance u/s.14A of the Act for denovo adjudication in accordance with law. Accordingly, the original grounds raised by the assessee are allowed for statistical purposes.

4. We find that assessee had raised an additional ground of appeal for claiming deduction of Rs.16,62,083/-on account of primary and secondary education cess on Income Tax and surcharge paid by the assessee.

4.1. 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.

4.2. 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.

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

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

**Sd/-**  
**(RAVISH SOOD)**  
**JUDICIAL MEMBER**

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

**Sd/-**  
**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

**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