

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

BEFORE SHRI MAHAVIR SINGH, VP & SHRI M. BALAGANESH, AM

ITA No. 1020/Mum/2019
(Assessment Year 2014-15)

Shri Champshi Devshi Shah 385, N.C. Kelkar Road, Dadar (W), Mumbai-400028	Vs.	ACIT-15(1)(2), R. No. AB 483A, Aayakar Bhavan, M.K. Road, Mumbai-400020.
(Appellant)		(Respondent)
PAN No. AAEPS5844C		

Appellant by	:	Shri Mayur Makadia (AR)
Respondent by	:	Shri Manpreet Duggal (Sr. DR)

Date of hearing:	07.04.2021
Date of pronouncement:	16.04.2021

ORDER

PER M. BALAGANESH, AM:

1. This appeal of the assessee arises out of the order of the Learned Commissioner of Income Tax (Appeals) -24, Mumbai [hereinafter referred to as the Id CITA] in Appeal No. CIT(A)-24/ACIT-15(1)(2)/IT-694/2016-17 dated 27.12.2018 against the order passed by the Learned Asstt. Commissioner of Income Tax, Range 15(1)(2), Mumbai [hereinafter referred to as the Id AO] under section [u/s] 143(3) of the Income Tax Act, 1961 [hereinafter referred to as the 'Act'] dated 19.12.2016 for the Assessment Year 2014-15.

2. The only issue to be decided in this appeal is as to whether the Id. Commissioner of Income Tax (Appeals [for short 'the CIT(A)] was justified in upholding the disallowance made under section 14A of the Income Tax Act (the Act) read with Rule 8D(2) of the Income Tax Rules (the Rules).

3. We have heard the rival submissions and perused the materials available on record. We find that assessee is an individual engaged in the business of builders and developers and had filed his return of income for the Assessment Year 2014-15 on 31.10.2014 declaring total income of Rs. 1,27,67,090/-. We find that assessee had earned exempt income to the tune of Rs. 8,64,141/- against which the assessee had made voluntary disallowance of expenses to the tune of Rs. 14,57,932/- under second limb of Rule 8D(2) of the Rules.

4. We find that assessee pleaded that separate books of account are maintained for his proprietary concern and for his personal activities. It was pleaded that in proprietary concern, no investments were made by the assessee and that all the investments were made only in the personal activities of the assessee. Accordingly, the assessee pleaded before the Assessing Officer (AO) that no further disallowance of expenses under section 14A of the Act need to be made.

5. We find that AO did not heed to the contentions of the assessee and directly proceeded to make disallowance by applying computation mechanism

provided in 2nd and 3rd limb of Rule 8D(2) of the Rules and arrived at the disallowance of Rs. 26,63,908/- and after reducing the voluntary disallowance made by the assessee, the net disallowance of Rs. 12,05,976/- was made under section 14A of the Act in the assessment.

6. This action of the AO was upheld by the Id. CIT(A). We find that the law is now very well by the decision of Hon'ble Supreme Court in the case of Maxopp Investments (402 ITR 640) wherein it has been held that disallowance under section 14A of the Act cannot exceed exempt income. There is no dispute that the exempt income derived by the assessee is only Rs. 8,64,141/-. The assessee before us is not seeking any reduction for disallowance of expenses made voluntarily in the sum of Rs, 14,57,932/- which itself is more than the exempt income. Hence, there is no need to make any further disallowance under section 14A of the Act. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 16.04.2021

Sd/-

MAHAVIR SINGH
(VICE-PRESIDENT)

Mumbai, Dated:16.04.2021

SK.PS

Sd/-

M. BALAGANESH
(ACCOUNTANT MEMBER)

Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त (अपील)/ The CIT(A)

4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधिआयकर ,अपीलीयअधिकरणमुंबई ,/
DR, ITAT, Mumbai
6. गार्डफाईल /Guard file.

BY ORDER,

(Asstt.Registrar)
ITAT, Mumbai