

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri Shamim Yahya (AM)

I.T.A. No. 7179/Mum/2019 (Assessment Year 2014-15)

M/s. Alankar Optical Centre 381/C, Narottam Wadi Kalbadevi Road, Kalbadevi Mumbai-400 002. PAN : AAAFA0472C (Appellant)	Vs.	ITO-18(1)(1) 2 nd Floor Earnest House Nariman Point Mumbai-21. (Respondent)
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Assessee by	Shri Devendra Shah
Department by	Ms. Smita Verma
Date of Hearing	14.10.2021
Date of Pronouncement	21.10.2021

ORDER

This appeal by the assessee is directed against the order of learned CIT(A) dated 18.9.2019 pertaining to assessment year 2014-15.

2. The grounds of appeal read as under :-

1.(a) On the facts and in the circumstances of the case, the learned CIT(AJ, erred in confirming the disallowance made of Rs.6,87,838/-, U/S.14A of the I T Act which addition be deleted being contrary to provisions and facts on record .

2. Without Prejudice, and as an alternative ground, the addition be restricted to the dividend income earned of Rs.9,055/-.

3. Brief facts the assessee had shown receipt of gross dividend income of Rs. 9,054/- as exempt from taxation. Hence, the AO questioned the assessee regarding disallowance u/s 14A r.w.r. 8D. The assessee submitted that it had no unsecured loan and had not made any interest payments other than interest allowable u/s. 40(b) of the IT Act. The investment in mutual funds is out of the surplus lying with the partnership firm. The assessee wanted to expand its business activity and is planning to purchase immovable property to open the branch office. Hence, the surplus funds were invested in liquid

funds of mutual funds. The AO referred to the ITAT decision of Ahmedabad in ITA No. 379/Ahd/2008 dated 09.06.2001 in the case of Shankar Chemicals Works, Ahmedabad vs. DCIT Circle 12, where it was held that when no interest free funds were available to the assessee and the investments were made from capital of the partners on which interest was paid, disallowance u/s 14A was rightly made. The AO computed the disallowance u/s 14A r.w.r. 8D at Rs. 6,87,838/-.

4. Upon assessee's appeal learned CIT(A) confirmed the Assessing Officer's action as under :-

"In the appellate proceedings it was submitted that the appellant is not having any unsecured or borrowed funds and the only interest paid is to the partners allowable u/s 40(b) of the IT Act. There was no addition to the partners capital account in the year under consideration. The investment in mutual funds is out of the surplus lying with the partnership firm. It was further stated that the mutual funds on which dividend income earned outstanding as on 31.03.2013, was Rs. 53,98,236/-, and after addition of Rs. 16,50,000/- during the year, closing amount of investments as on 31.03.2014 was Rs. 70,48,236/-. The net profit before interest to partners and remuneration to partners was Rs. 25,58,074/-, out of which interest paid to partners was Rs. 18,05,890/- and remuneration paid to partners was Rs. 24,000/-. The capital of partners as on 31.03.2013 was Rs. 1,51,49,333/-and as on 31.03.2014 was Rs. 1,56,79,879/-. Thus increase in capital was Rs. 5,30,546. There was only a car loan of Rs. 3,17,619/- there was no claim of deduction on account of interest payment for any borrowing except for interest on car loan of Rs. 42,100/-. The only dividend earned during the year was Rs. 9,055/-, which was claimed as exempt. Disallowance made by the AO is excessive. On without prejudice basis, it was contended that disallowance made u/s 14A cannot exceed the exempt income.

4.3. I have considered the submissions and the facts on record carefully. The case law cited by the assessing officer squarely applies to the facts in this case. Admittedly, funds are used for investments from which income is earned which is claimed exempt. The investment is sourced out of funds which includes partners' capital. The capital carries interest. The appellant had not made any *suo motu* disallowance u/s. 14A."

5. Against the above order assessee is in appeal before ITAT.

6. I have heard learned Departmental Representative and perused the record. Learned Counsel of the assessee state that he should be only pressing the ground that disallowance should be restricted to exempt income.

7. Upon careful consideration I note that the issue as to restriction of disallowance under section 14A to the extent of exempt income is covered in favour of the assessee by the decision of Hon'ble Supreme Court in the case of Hon'ble Apex Court in the case of Maxopp Investment Ltd. Vs. CIT (208) 402 ITR 640. In the said decision Hon'ble Supreme Court upheld the order of Hon'ble Punjab & Haryana High Court decision in the case of CIT Vs. State Bank of Patiala (391 ITR 379) to the extent it held that disallowance should not exceed exempt income. Furthermore, similar proposition was decision by Hon'ble Bombay High Court in the case of CIT v. Delite Enterprises Ltd. (I.T.A. No. 110 of 2009 dated 26th June, 2007). Accordingly respectfully following the precedent I direct that disallowance be restricted to Rs. 9,055/- being the exempt income.

8. In the result, assessee's appeal is partly allowed.

Pronounced in the open court on 21.10.2021.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 21/10/2021

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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