

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

ITA NO. 7441/MUM/2019 : **A.Y : 2009-10**

Makhanlal Sekhsaria Family Trust Vs. Income Tax Officer – 16(2)(1),
19, Bhuleshwar Road, Mumbai. (Respondent)
Kalbadevi Road, Mumbai 400 002.
PAN : AAAAM1324N (Appellant)

Appellant by : **Shri Jay Bhansali**

Respondent by : **Shri Vaibhav Jain**

Date of Hearing : **28/10/2021**

Date of Pronouncement : **05/11/2021**

ORDER

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-21, Mumbai (in short 'CIT(A)') in Appeal No. CIT(A)-29/IT-110/18(2)(1)/17-18 dated 16.09.2019. The assessment was framed by Income Tax Officer – 16(2)(1), Mumbai for Assessment Year 2009-10 vide his order dated 09.12.2011 under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The first issue in this appeal of assessee is against the order of CIT(A) confirming the disallowance of interest expenses relatable to exempt income by invoking the provisions of Section 14A of the Act read with Rule 8D of the

Income Tax Rules, 1962 (hereinafter referred to as 'the Rules'). For this, assessee has raised the following Ground No. 1 :-

"1. The Commissioner of Income Tax (Appeals) [hereinafter referred to as "the CIT(A)] erred in upholding the action of the Assessing Officer [hereinafter referred to as "the AO"] in disallowing the interest of Rs.3,69,394 under section 14A of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] read with rule 8D of the Income Tax Rules, 1962 [hereinafter referred to as "the Rules"] for reasons which are wrong, contrary to facts of the case and position in law."

3. I heard the rival contentions and gone through the facts and circumstances of the case. I noted that the Assessing Officer while framing the assessment noted that the assessee has earned interest on Income tax refund of Rs.5,587/-being exempt income and dividend of Rs.4,52,000/-, which was claimed as exempt. The Assessing Officer by invoking the provisions of Section 14A of the Act disallowed interest expenses claimed at Rs.3,69,394/- under Rule 8D(2)(ii) of the Rules. Aggrieved, assessee preferred appeal before the CIT(A). The CIT(A) also confirmed the action of the Assessing Officer. Now, before me the learned counsel for the assessee filed paper book consisting of 18 pages wherein he has enclosed copy of computation of income, Profit & Loss account as well as interest account. The learned counsel for the assessee drew my attention to the Interest account wherein the interest paid is Rs.11,55,029/- as against interest receipt of Rs.10,03,769/- and the deficit of Rs.1,51,260/- is transferred to the Profit & Loss account. The learned counsel for the assessee stated that this deficit was carried over to the Profit & Loss account but in the computation of income, the assessee has disclosed the income from other sources, i.e. interest from Income tax refund of Rs.5,587/-, but has not claimed the interest expense of Rs.1,51,260/-. The learned counsel stated that once no expense is claimed, no disallowance can be made by

invoking the provisions of Section 14A of the Act read with Rule 8D(2)(ii) of the Rules. When these facts were confronted to the learned Sr. DR, he could not controvert the above stated facts.

4. After hearing the rival contentions, I noted that once the assessee has not claimed any expense in the computation of income or there is no effect of the income on the Profit & Loss account, no disallowance can be made *qua* the expenses relatable to the exempt income by invoking the provisions of Section 14A of the Act read with Rule 8D(2)(ii) of the Rules. Since there is no expenses claimed by assessee, no disallowance can be made. Hence, I allow this issue of assessee's appeal.

5. The next issue in the appeal of assessee is with regard to the order of CIT(A) confirming the action of Assessing Officer in not granting TDS credit of Rs.1,13,727/- deducted from the interest income received/accrued to the Trust. For this, assessee has raised the following Ground no. 2 :-

"2. The CIT(A)/AO erred in not granting TDS credit of Rs.1,13,727 deducted from interest income received/accrued to the Trust for reasons which are wrong, contrary to facts and position in law"

6. The brief facts are that the Assessing Officer noted that the assessee has received interest income of Rs.10,03,769/- during the year in which TDS of Rs.1,23,727/- was deducted. As according to him, the Trust is a discretionary Trust, income of the Trust is not liable to be taxed and hence, credit for TDS claimed in the hands of the assessee cannot be allowed. The CIT(A) confirmed the action of the Assessing Officer. Aggrieved, assessee came in appeal before the Tribunal.

7. Before me, the learned counsel for the assessee stated that the interest received is disclosed in the Interest account and as against the same, interest is paid to various parties and TDS is credited on the interest received amounting to Rs.1,13,727/-. The learned counsel stated that once this income is accounted for, credit for TDS has to be allowed. When these facts were confronted to the learned Sr. DR, he relied on the assessment order and the order of CIT(A).

8. After hearing the rival contentions, I noted that assessee has disclosed the interest income and the credit of the same has to be allowed. Hence, I direct the Assessing Officer to allow credit of TDS of Rs.1,13,727/-.

9. In the result, appeal of the assessee is allowed on these two issues.

Order pronounced in the open court on 5th November, 2021.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Mumbai, Date : 5th November, 2021

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Copy to .:

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar/Sr. PS
I.T.A.T, Mumbai