

आयकर अपीलीय अधिकरण  
मुंबई पीठ "बी", मुंबई  
श्री जी.एस. पन्नु, अध्यक्ष एवं  
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH " B", MUMBAI  
BEFORE SHRI G.S.PANNU,PRESIDENT &  
SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
आअसं. 857/मुं/2021(नि. व.2016-17)  
ITA NO.857/MUM/2021(A.Y.2016-17)

Swapnil Vishwajit Kadam,  
2, ABIL House, Ganesh Khind Road,  
Range Hill Corner, Pune 411 007  
PAN; AGHPB-4402-E

..... अपीलार्थी /Appellant

बनाम Vs.

DCIT Central Cir.2(3),  
8<sup>th</sup> Floor, Room No.803,  
Old CGO Annexe Bldg.,  
Pratistha Bhavan, MK Road,  
Mumbai 400 020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Anuj Kisnadwala, Advocate

प्रतिवादी द्वारा/Respondent by : Shri Mahesh Akhade, CIT-DR

सुनवाई की तिथि/ Date of hearing : 02/12/2021

घोषणा की तिथि/ Date of pronouncement : 17/ 12/2021

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-48, Mumbai [in short 'the CIT(A)] dated 27/10/2020 for the assessment year 2016-17.

2. The assessee in appeal has raised primarily two issues:

(i) disallowance of Rs.2,76,797/- u/s. 14A r.w.r. 8D(2) of Income Tax Act, 1961 ( in short 'the Act'), and

(ii) addition of Rs.11,00,000/- u/s. 69B of the Act on protective basis.

3. Shri Anuj Kisnadwala appearing on behalf of the assessee submitted that in ground No.1 & 2 of appeal the assessee has assailed disallowance made under section 14A r.w.r.8D of the Act. The short prayer is that while computing average value of investments under section 14A r.w.r. 8D only exempt income yielding investments should be considered. To support his submissions he placed reliance on the decision of Special Bench in the case of ACIT vs. Vireet Investment Pvt. Ltd. 58 ITR(T) 313(Del).

In respect of issue No.2 raised in grounds No. 3 to 5, the Id.Authorized Representative of the assessee submitted that substantive addition was made in the hands of Shri Amit Avinash Bhosale. He has accepted the addition and has settled the issue under 'Vivad Se Vishwas Scheme, 2020'( in short 'VSVS'). The Id.Authorized Representative of the assessee furnished copy of Form-3 and made statement at Bar that the taxes has been paid by Shri Amit Avinash Bhosale in accordance with Form -3 issued under VSVS. Once the addition has been accepted by the assessee in whose hands substantive addition has been made, addition on protective basis does not survive in the hands of assessee.

4. Per contra, Shri Mahesh Akhade representing the Department vehemently supported the impugned order and prayed for dismissing appeal of the assessee.

5. Both sides heard, orders of authorities below examined. In grounds of appeal No.1 & 2, the assessee has assailed disallowance made under section 14A r.w.r. 8D. The Assessing Officer while computing disallowance has considered all the investments made by the assessee irrespective of the fact whether the investments has earned exempt income or not. The Special Bench in the case of ACIT vs.Vireet Investments Pvt. Ltd.(supra) has held that while computing average value of investments, only investments yielding exempt income should be considered for making disallowance under section 14A r.w.r. 8D(2)(iii). The short contention raised by the assessee is accepted. The issue is restored back to the file of Assessing Officer for recomputation of disallowance under section 14A r.w.r. 8D in accordance with the decision of Special Bench (supra). Consequently, ground No.1 & 2 of the appeal are allowed in the terms aforesaid.

6. In grounds of appeal No.3 to 5 the assessee has assailed addition of Rs.11,00,000/- under section 69B of the Act. The issue relates to purchase of jewellery in cash from Nirav Modi Store. The contention of assessee is that the addition has been made in the hands of assessee on protective basis. Substantive addition has been made in the hands of Amit Avinash Bhosale. This fact is evident from the assessment order passed in the case of Amit Avinash Bhosale dated 22/05/2019 for the assessment year 2016-17. The assessee has furnished Form-3 issued under VSVS alongwith the copy of challan to show that Amit Avinash Bhosale has accepted the addition and has settled the issue under VSVS. After examining the documents furnished by the assessee we deem it appropriate to restore this issue to the Assessing Officer for the limited purpose of verification of the fact whether Amit Avinash

Bhosale has accepted the addition of Rs.11,00,000/- and has settled the dispute under VSVS. Subject to above verification ground No.3 to 5 of the appeal are allowed.

7. In the result, appeal by the assessee is allowed in the terms aforesaid.

Order pronounced in the open court on Friday the 17<sup>th</sup> day of December, 2021.

Sd/-

(G.S.PANNU)

अध्यक्ष/ PRESIDENT

मुंबई/ Mumbai, दिनांक/Dated 17/12/2021  
Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai