

आयकर अपीलिय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI PARTHA SARATHI CHAUDHURY, JM

Sl. No.	ITA No.	Name of Appellant	Name of Respondent	Asst. Year
1.	403/PUN/2018	Annuj Goel, San Mahu Complex, 5, Bund Garden Road, Opp: Poona Club, Pune- 411001. PAN : AHCPG8733F	DCIT, Circle-7, Pune.	2014-15
2.	535/PUN/2018	Rajendra Sitaram Goel, San Mahu Complex, 5, Bund Garden Road, Opp: Poona Club, Pune- 411001. PAN : AAWPG2105J	DCIT, Circle-7, Pune.	2014-15
3.	564/PUN/2018	Mr. Annuj Goel, (Legal heir of Late Umesh Goel), San Mahu Complex, 5, Bund Garden Road, Opp: Poona Club, Pune- 411001. PAN : AAWPG2098Q	DCIT, Circle-7, Pune.	2014-15
4.	565/PUN/2018	Mr. Subhash Goel, San Mahu Complex, 5, Bund Garden Road, Opp: Poona Club, Pune- 411001. PAN : AAWPG2100P	DCIT, Circle-7, Pune.	2014-15

Assessee by : Shri Krishna Gujarathi
Revenue by : Shri M. G. Jasnani

सुनवाई की तारीख / Date of Hearing : 19.01.2022
घोषणा की तारीख / Date of Pronouncement : 20.01.2022

आदेश / ORDER

PER BENCH :

These set of appeals filed by the different assesseees emanates from the respective orders of the Ld. CIT(A)-5, Pune as per the grounds of appeal on record.

2. At the very outset, ld. Counsel for the assessee submitted that for all these appeals the issues are common, grounds are similar and with similar set of facts and circumstances. The ld. Counsel further submitted that for all these appeals they are pressing only grounds of appeal no.3 and 5 whereas, all other grounds of appeal are not pressed.

3. After hearing the submissions of the ld. Counsel for the assessee, all these appeals are heard together and disposed of by this consolidated order.

4. That apart from the grounds of appeal no.3 and 5 for all these appeals, rest of the grounds of appeal are dismissed as not pressed as per the submissions recorded by the ld. AR.

5. Taking **ITA No.403/PUN/2018** as lead case, as agreed by the parties herein, the only dispute for all the appeals before us is the disallowance u/s 14A of the Act r.w. Rule 8D of the Income Tax Rules.

6. The brief facts, in this case, are that the assessee is an individual engaged in the business of real estate construction and land dealing and share credit. The assessee is also a partner in various partnership firms etc. which are engaged in the business of real estate i.e. construction and dealing in lands. During the course of assessment proceedings, it was found by the Assessing Officer that the assessee derived income on account of profits from the partnership firm. The Assessing Officer, however, found that the assessee has not disallowed any expenses u/s 14A relating to such exempt income. The Assessing Officer held that the provisions of section 14A were clearly applicable to the assessee's case. The Assessing Officer gave an opportunity to the assessee to explain why the provisions of section 14A of the Act r.w. Rule 8D of the Income Tax Rules should not be applied in his case. The assessee has given written reply to the Assessing Officer wherein, he submitted the list of investments made by him in various

companies/LLP/firms from which income not forming part of total income as per Chapter III of the Act was earned by him along with amount. It was also stated that the investments in the AOP forms part of the total income. It was also contended that the assessee has enough capital and interest free funds to invest in partnership firms. The assessee had relied on the following judgments :-

- (i) CIT vs. Reliance Utilities & Power Ltd., 313 ITR 340 (Bom.-HC).
- (ii) CIT vs. HDFC Bank Ltd., 366 ITR 505 (Bom.- HC).

7. This submission of the assessee did not find favour with the Assessing Officer. He opined that the provisions of section 14A were applicable in all cases where the assessee has earned exempt income and it did not exclude any such case of exempt income from the ambit of disallowance u/s 14A of the Act. The Assessing Officer held that the assessee has earned exempt income during the year under consideration and disallowed u/s 14A to the extent of half percent of average value of investments (as mandated by provisions of Rule 8D(2)(ii) of the Income Tax Rules). While justifying in assessee's own case he worked out the disallowance u/s 14A of Rs.3,82,395/- and added back the same to the total income of the assessee. The Id. CIT(A) at para 4.5 onwards of his order as per reasons appearing therein has upheld the addition made by the Assessing Officer and had rejected the contention of the assessee.

8. That, as evident in the grounds of appeal the assessee is aggrieved for application of provisions of section 14A of the Act r.w. Rule 8D of the Income Tax Rules and that the amount of disallowance far exceed the expenditure claimed by the assessee that may be even remotely linked to the earning of income not forming part of the total income.

9. At the time of hearing, Id. Counsel for the assessee submitted that under the similar set of facts and circumstances in the immediate preceding

year i.e. A.Y. 2013-14, the Pune Tribunal in ITA Nos.710, 711 & 712/PUN/2017 dated 29.03.2019 has dealt with the issue and he prayed that all these appeals may be sent back to the file of the Assessing Officer for verification and re-adjudication in the lines of the afore-stated judgment (supra).

10. The ld. DR fairly conceded that the matter may be sent back to the file of the Assessing Officer for verification and re-adjudication for the purposes and whether in the given set of facts the Pune Tribunal decision (supra), would be applicable in the case of the assessee or not.

11. Having heard the parties herein, in the interest of justice, we find it just and proper to remit the matter back to the file of the Assessing Officer to verify the facts and circumstances of the case in relation to the assessee vis-à-vis the disallowance made and the actual expenditure of the assessee in earning the income. The Assessing Officer may also verify the applicability, if any of the reported judgment (supra) as relied upon by the assessee. In view thereof, we set-aside the order of the ld. CIT(A) and remand the matter back to the file of the Assessing Officer as indicated hereinabove. Needless to mention, the principles of natural justice should be complied with by the Assessing Officer.

12. In the result, the appeal of the assessee in ITA No.403/PUN/2018 is allowed for statistical purposes.

ITA Nos.535, 564 & 565/PUN/2018 :

13. Since, the facts and issues involved in all the above four appeals are identical, therefore, our decision in ITA No.403/PUN/2018 shall apply *mutatis mutandis* to the remaining three appeals of the assessee in ITA Nos.535, 564 & 565/PUN/2018. Accordingly, the appeals of the assessee in ITA Nos.535, 564 & 565/PUN/2018 are allowed for statistical purposes.

14. Resultantly, all the above four appeals of the assessee are allowed for statistical purposes.

Order pronounced on this 20th day of January, 2022.

Sd/-

(INTURI RAMA RAO)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(PARTHA SARATHI CHAUDHURY)

न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 20th January, 2022.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-5, Pune.
4. The Pr. CIT-4, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.