

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya, Accountant Member

I.T.A. No. 726/Mum/2020
(Assessment Year 2013-14)

Rajeev S Reniwal 156, Maker Chamber VI 220, Jamnalal Bajaj Marg Nariman Point Mumbai-400 021 PAN : ADMPR3334D (Appellant)	Vs.	ITO, Circle-3(2)(3) Room No.673/674 6 th Floor Aaykar Bhawan M.K.Road Mumbai-400 020 (Respondent)
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Assessee by	None
Department by	Shri Abhirama Karthikeyan
Date of Hearing	15.12.2021
Date of Pronouncement	14.02.2022

ORDER

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-8 dated 27.11.2019 and pertains to assessment year 2013-14.

2. Grounds of appeal read as under:-

1. In law and in the facts and circumstances of the appellant's case, the Hon'ble CIT(A) erred in upholding the ad-hoc addition u/s 14A read with Rule 8D(2)(iii) of the Act made by the Id. A.O. of Rs. 2,46,413/-. Hence, the addition confirmed deserves to be deleted.

2. In law and in the facts and circumstances of the appellant's case, the Hon'ble CIT(A) has heavily relied on the decision of the hon'ble Supreme Court and completely ignored the facts of the case. The observation of the Hon'ble C.I.T.(A) that disallowance of 0.5% is out of administrative expenses lead to the situation of

total disallowances of expenditure under the said head and it denotes that no expenditure under administrative expenses is warranted against the business income. Thus, the order passed by the Hon'ble C.I.T.(A) unjust, unfair and unreasonable and deserves to be quashed.

3. In law and in the facts and circumstances of the appellant's case, the Hon'ble CIT(A) erred in determining the annual value of the property at 7% of the cost of the property without appreciating the fact that, the said commercial premises at Bhavnagar was used by the appellant for its business purposes as well as Inducto Steel Ltd., where appellant is director. Thus, the order passed on such ad hoc basis is bad in law and thus the pray of the appellant shall be accepted.

3. Brief facts of the case are that in the assessment order AO noted that assessee is deriving income from business and profession and capital gains on sale of shares. It was noted that assessee's business income is in nature of interest from financing business. The AO noted that assessee has earned exempt income being dividend received of Rs. 53,35,305/-. The AO's enquired as to why disallowance u/s. 14A has not been made. The assessee responded as under:-

“In response to the same the assessee vide letter dated 20.01.2016 submitted that they have offered the direct expenses under rule 8D(2)(i) in the form of share demat charges and STT. As regards the rule 8D(2)(ii), it is submitted by the assessee that no interest expenditure was incurred to earn the interest income. In respect of rule 8D(2)(iii) it is submitted by the assessee that the major portion of the investments were made in group companies with the motive to maintain control interest and not with the purpose to earn the dividend income on this investment. The assessee has also relied upon the following decisions:

- i. Garware Wall Ropes Ltd. Vs. ACIT (ITAT Mumbai)
- ii. Daga Global Chemicals Pvt. Ltd. Vs. ACIT (ITAT Mumbai) ITA No.5592 (2012) (A.Y. 2009-10) D Bench Order dated 01.01.2015
- iii. Cheminvest Ltd. Vs. CIT(Delhi High Court).”

4. AO was not satisfied with the above. He made disallowances as per Rule 8D(2)(iii) amounting to Rs. 2,46,143/-.

5. Upon assessee's appeal, Id.CIT(A) confirmed the AO's order. He held that as per Hon'ble Supreme Court decision in Maxopp Investments Ltd. 402 ITR 640. The argument of strategic investment as well as stock in trade is not to be considered. He also held that whether the dividend income has been earned of such investment is not relevant. Hence, he confirmed the addition by the AO.

6. Further AO noted that assessee has a residential flat at Mumbai and office flat at Bhavnagar. Assessee was asked to explain why income from house property has not been shown. Assessee responded that property at Bhavnagar is used by Inducto Steel Ltd. That the assessee is a director in that company, the AO was not satisfied about the explanation of the Bhavnagar property. He determined the annual value of same at 7% of the property value and after allowing deduction u/s. 24 made an addition of Rs. 5,25,613/-. Ld.CIT(A) confirmed the same.

7. Upon careful consideration, I note that assessee has submitted before the Id.CIT(A) that in assessee's own case, Id.CIT(A) in earlier year has decided the issue in favour of the assessee. However, Id.CIT(A) distinguished the same in view of the decision of Hon'ble Supreme Court in the case of Maxopp Investments Ltd.(supra). Further, Id.CIT(A) has rejected the submissions that where investment do not yield any exempt income, the same should be excluded for the purpose of Rule 8D(iii). In my considered opinion, this limb of Id.CIT(A) decision is not sustainable. Hon'ble Special Bench of ITAT in the case of Vireet investment(P) Ltd.82 taxmann.com 415 (Delhi)(SB)...has duly held that for the purpose of disallowance u/s. 8D(2)(iii) only those investments have to be considered, which have yielded exempt income. Hence, I remit the issue to the file of AO, AO is directed to decide the issue afresh in light of the decision of Special Bench of ITAT in the case of

Vireet investment(P)Ltd.(supra). As regards, the issue of deemed income from house property, Id.CIT(A) noted that AO has not called upon the municipal value of the property nor the assessee has submitted any comparable cases in the locality. Hence, he proceeded to confirm the AO 's order of above addition of 7% of value of the property. In my considered opinion, the orders of the authorities below are not in accordance with the decision in Hon'ble Bombay High Court in the case of Tip Top Typography 368 1TR 330. In the said case, the Hon'ble Bombay High court has expounded that unless the authorities below can bring on record cogent material that assessee is trying to unfairly reduce the value of rental income, the municipal ratable value has to be accepted. Hence, I remit this issue to the file of AO, AO is directed to consider the issue afresh in light of the aforesaid order of Hon'ble Bombay High Court.

8. In the result, this appeal by the assessee stands partly allowed for statistical purpose.

Pronounced in the open court on 14.02.2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 14 .02.2022

Thirumalesh, Sr.PS

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