

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

(Before Sri Aby T. Varkey, Judicial Member & Sri Manish Borad, Accountant Member)

**I.T.A. No.: 223/Kol/2021
Assessment Year: 2017-18**

**Adarsh Kanoria.....Appellant
[PAN: AFNPK 7948 B]**

Vs.

ACIT, Circle-4(1), Kolkata.....Respondent

Appearances by:

Sh. Manish Tiwari, FCA, appeared on behalf of the Assessee.

Sh. Biswanath Das, Addl. CIT, appeared on behalf of the Revenue.

Date of concluding the hearing : February 24th, 2022

Date of pronouncing the order : March 03rd, 2022

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2017-18 is directed against the order of ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC) [in short ld. "CIT(A)"] dated 26.05.2021 vide Appeal No. CIT(A), Kolkata-2/10228/2019-20 which is arising out of the assessment order framed u/s 143(3) of the Income Tax Act, 1961 (in short the "Act") dated 30.09.2019 by ACIT, Circle-4(1), Kolkata.

2. The assessee is in appeal before the Tribunal raising the following grounds:

"1. That on the facts and in the circumstances of the case, ld. CIT(A), NFAC erred in confirming the addition of Rs.1,66,609/-.

2. That on the facts and in the circumstances of the case, ld. CIT(A), NFAC erred in confirming the action of the AO when it violates the basic provision of section 14A(1) and 14A(2) of the Income Tax Act, 1961.

3. That the appellant craves leave to add, alter, adduce or amend any ground(s) on or before the date of hearing of the appeal."

3. On perusal of grounds, we find that the sole grievance raised is disallowance u/s 14A of the Act at Rs.1,66,690/-.

4. We have heard rival contentions and perused the records and carefully gone through the documents filed before us. The issue in dispute is disallowance u/s 14A of the Act for the alleged expenditure incurred for exempt income. Ld. Counsel for the assessee has submitted that the assessee has not claimed any expenditure against the exempt income and this fact remains undisputed by the ld. Sr. D/R. We notice that the assessee has shown income under three heads, namely income from 'salary', income from 'capital gain' and income from 'other sources'. Against the income from 'salary' and income from 'other sources' no expenditure has been claimed. So far as the income from 'capital gain' is concerned the major portion of the income is from 'short term capital gain' on which the assessee has already paid taxes at the rate of 15% and against the income from 'long term capital gain' no such expenditure has been claimed. Under these given facts and circumstances, where no such expenditure has been claimed which could reduce the tax liability of the assessee, whether disallowance u/s 14A of the Act by AO is justified or not needs to be dealt with.

5. We find that this issue stands duly adjudicated by the co-ordinate Bench of Mumbai in the case of *M/s. Leena Kasbekar vs. ACIT, Circle-11(2), Mumbai*, ITA Nos. 5620 & 5621/Mum/2013 order dated 28.07.2017 and the relevant finding of the Tribunal is reproduced below:

"6. We have heard both the parties and perused the material available on record. The assessing officer invoked provisions of Rule 8D(2)(iii) and disallowed 0.5% of average value of investments towards expenditure in relation to earning exempt income. According to the assessing officer, from assessment year 2008-09 onwards, in view of specific provisions provided by way of Rule 8D(2) to determine the disallowance of expenditure incurred in relation to exempt income, the assessee cannot take a stand that there is no expenditure incurred to earn exempt income. The assessee claims that she had not incurred any expenditure to earn exempt income and the expenditure claimed in the P&L Account is directly attributable to her professional income. The assessee further claims that the assessing officer has not arrived at a satisfaction before invoking the provisions of Rule 8D which is a pre-condition for determination of disallowance, as per the provisions of Rule 8D when there is no expenditure is claimed against earning exempt income. In the absence of any satisfaction as to incorrectness of claim of the expenditure, the assessing officer cannot determine disallowance of expenditure by invoking the provisions of Rule 8D(2). We find force in the argument of the assessee for the reason that the provisions of section 14A(2) makes it mandatory on the part of the assessing officer to arrive at a satisfaction with regard to the correctness of the claim of the assessee in respect of expenditure in relation to income which does not form part of the total income under the Act. In this case, the assessee claims that she did not incur any

expenditure to earn exempt income. When the assessee claims no expenditure has been incurred to earn exempt income, the assessing officer has to establish a nexus between expenditure claimed by the assessee to the exempt income. In this case, on perusal of the details filed by the assessee, we find that the assessee has maintained separate books of account for her professional income. We further observe that the assessee has not claimed any indirect expenditure in relation to earning exempt income. On further verification of the P&L Account, we find that the assessee has claimed a minimum expenditure of Rs.3 lakhs against gross receipt of Rs.28,25,000/- which are in the nature of administrative expenses directly attributable to her professional activity except demat charges of Rs.574/-. Therefore, we are of the view that in the absence of any direct nexus between expenditure claim to the exempt income, the assessing officer cannot invoke the provisions of section 14A r.w.r. 8D(2) to disallow expenditure. Hence, we direct the assessing officer to delete disallowances made under section 14A r.w.r. 8D except demat charges of Rs.574/- which is directly incurred in relation to earning exempt income. On further verification of the P&L Account, we find that the assessee has claimed a minimum expenditure of Rs.3 lakhs against gross receipt of Rs.2,38,25,000/- which are in the nature of administrative expenses directly attributable to her professional activity except demat charges of Rs.574/-. Therefore, we are of the view that in the absence of any direct nexus between expenditure claim to the exempt income, the assessing officer cannot invoke the provisions of section 14A r.w.r. 8D(2) to disallow expenditure. Hence, we direct the assessing officer to delete disallowances made under section 14A r.w.r. 8D, except demat charges of Rs.574/- which is directly incurred in relation to earning exempt income.”

6. On going through the above finding, we find that in the absence of any direct nexus between the expenditure claimed against the exempt income, the AO cannot invoke the provisions of Section 14A read with Rule 8D of the Income Tax Rules, 1962. This finding is squarely applicable on the issue before us. Therefore, since no expenditure has been claimed to reduce any tax liability, there remains no basis to make any disallowance of expenditure against exempt income. We, therefore, delete the disallowance u/s 14A of the Act at Rs.1,66,690/- and allow the grounds raised by the assessee.

7. In the result, the appeal of the assessee is allowed.

Kolkata, the 03rd March, 2022.

Sd/-
[Aby T. Varkey]
Judicial Member

Sd/-
[Manish Borad]
Accountant Member

Dated: 03.03.2022

Bidhan (P.S.)

Copy of the order forwarded to:

1. **Adarsh Kanoria, 23, Ballygunge Park, Kolkata-700 019.**
2. **ACIT, Circle-4(1), Kolkata.**
3. CIT(A)- National Faceless Appeal Centre (NFAC).
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata