

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI GAGAN GOYAL, AM

आयकर अपील सं/ I.T.A. No.1508/Mum/2021

(निर्धारण वर्ष / Assessment Years: 2012-13)

Prabhat Properties Pvt. Ltd. Office No.A702, 7 th Floor, Everest Nivara Infotech Park, Plot No. D/3 TTC Industrial Area MIDC, Turbhe, Navi Mumbai- 400705.	बनाम/ Vs.	ACIT-Central Circle-8(4) Aayakar Bhavan, Maharshi Karve Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAEC5792P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri J. P. Bairagra (Adv.)
Revenue by:	Shri R. A. Dhyani (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 12/05/2022

घोषणा की तारीख /Date of Pronouncement: 27/05/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-50, Mumbai dated 06.08.2021 for the assessment year 2012-13.

2. The grievance of the assessee is against the action of the Ld. CIT(A) confirming the disallowance made by the AO u/s 154 of the Income Tax Act, 1961 [hereinafter ('the Act')] (*rectification of mistake apparent on the face of record*).

3. The brief facts of the case are that the assessee had received exempt income of Rs.5,79,728/- in the form of dividend. The AO noted that the assessee has not made any suo-moto disallowance in respect of expenditure incurred by it for earning the exempt income, so he computed the disallowance u/s 14A r.w. Rule 8D to the tune of



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Rs.35,20,456/- at para 4 of the assessment order. However while computing the total income at para 7, he restricted the disallowance to the exempt income i.e. of Rs.5,79,728/- [as per the submission of the assessee before the AO citing this Tribunal decision in **M/s. Daga Global Chemicals Pvt. Ltd. Vs. ACIT-9(1) (ITA. No.5592/Mum/2012, wherein it was held that in such cases, similar to that of assessee, the disallowance u/s 14A of the Act, may be restricted to the extent of dividend income]**].

4. Later on, the AO invoked his jurisdiction u/s 154 of the Act (*rectification of mistake apparent on the face of record*) and was of the opinion that since he has made the disallowance u/s 14A r.w. Rule 8D at para no. 4 of his order [dated 27.02.2015 u/s 143(3) of the Act] at Rs.35,20,756/-, there was a mistake when he wrote it down at para no. 7 while making the computation of total income by adopting it only to be Rs.5,79,728/-. Resultantly, he made the addition on this account u/s 154 of the Act. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who confirmed the action of AO. Aggrieved, the assessee is before us.

5. We have heard the arguments put forth by both the parties and perused the record. We note that it is undisputed that the assessee has received an exempt income only to the tune of Rs.5,79,728/- (dividend) and contented before the AO that disallowance u/s 14A ought to be restricted to the extent of the exempt income citing the decision of this Tribunal in **M/s. Daga Global Chemicals Pvt. Ltd**



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(supra). We note that even though the AO made the disallowance to the tune of Rs.35,20,756/- at para no. 4 of his order, but he restricted the same while making the computation at para no. 7 of the assessment order to the tune of Rs.5,79,728/- which action of his has been suo-motto corrected by him (AO) u/s 154 of the Act. We find that the action of the AO restricting the disallowance to the tune of Rs.5,79,728/- (to the extent of the exempt income) in the assessment order was in line with the decision of this Tribunal **M/s. Daga Global Chemicals Pvt. Ltd. Vs. ACIT-9(1) (ITA. No.5592/Mum/2012)** and other judicial precedence on the issue. Therefore, the issue being debatable, there was no occasion for the AO to have invoked Section 154 of the Act. Therefore, we find force in the submission of Ld. AR and we allow the appeal of the assessee and direct deletion of the addition made by the impugned action of AO u/s 154 of the Act.

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

Order pronounced in the open court on this 27/05/2022.

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 27/05/2022
Vijay Pal Singh, (Sr. PS).



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai