

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH
MUMBAI**

**BEFORE: SHRI VIKAS AWASTHY, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.6772/Mum/2019
(Assessment Year :2019)**

Ashish Vaid 115, Maker Chambers III Nariman Point Mumbai – 400 021	Vs.	ITO-3(1)(1) Aaykar Bhavan M.G. Road, Mumbai – 400 020
PAN/GIR No.AACPV7792A		
(Appellant)	..	(Respondent)

Assessee by	Shri Pankaj Jain
Revenue by	Shri Hiren M Bhatt
Date of Hearing	12/07/2022
Date of Pronouncement	14/07/2022

आदेश / O R D E R

PER M. BALAGANESH (A.M.):

This appeal in ITA No.6772/Mum/2019 for A.Y.2013-14 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-8, Mumbai in appeal No.CIT(A)-8/IT-574/2015-16 dated 07/09/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) by the Id. Income Tax Officer- 3(1)(1), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the disallowance of Rs 4,65,120/- made u/s 14A of the Act read with Rule 8D of the Income Tax Rules, in the facts and circumstances of the case.

3. We have heard the rival submissions. We find that the assessee is a Chartered Accountant and is a stock broker and claimed to be competent enough to make the investment decisions without depending on third parties. The assessee had received dividend of Rs 78,96,483/- and claimed the same as exempt in the return of income. The assessee had incurred the following expenditure during the year in toto :-

Finance Charges		
- Bank Charges	Rs	2,946
- Interest paid	Rs	2,08,136
	-----	Rs 2,11,082
Administrative Expenditure		
- Electricity Charges	Rs	2,95,506
- Membership Fees	Rs	1,11,935
- Professional Tax	Rs	2,500
- Telephone Charges	Rs	41,480
- Other expenses	Rs	35,250
	-----	Rs 4,86,671

The assessee had derived income from salaries representing Directors Remuneration of Rs 5,00,000/- ; income from business and profession of Rs Nil after reducing the brought forward business losses ; income from capital gains representing capital gains on sale of mutual funds where STT is not paid and income from other sources. The various details of receipts derived by the assessee are as under:-

Salary	Rs	5,00,000
Rent	Rs	36,000
Profit from NSE Broking	Rs	9,34,641

Brokerage income	Rs 10,37,889	
Profit from Partnership firm	Rs 38,32,969	
Capital gain	Rs 24,48,751	
Dividend	Rs 78,96,483	
Interest received	Rs 6,60,862	
	-----	Rs 1,73,47,595

3.1. Against the aforesaid receipts of Rs 1,73,47,595/-, the total expenditure claimed by the assessee towards Administrative expenditure and finance charges works out to Rs 6,97,753/-. The assessee's own capital was Rs 35.21 crores and investments in shares and securities and in partnership firm was Rs 16.08 crores as is evident from the audited financial statements. The Id AR before us stated that apart from own capital of Rs 35.21 crores, the assessee is also having interest free borrowings of Rs 9.26 crores. The assessee had not charged any salaries for his services. It was stated that the expenditure incurred is in the nature of fixed cost like electricity, telephone, membership fees etc and therefore the same cannot be attributed to the investment activity. Under the above circumstances, the assessee pleaded that no expenditure was incurred by the assessee for the purpose of earning dividend income and hence no disallowance u/s 14A of the Act would be required to be made in the instant case. However, during the course of assessment proceedings, the assessee in order to purchase peace and to avoid protracted litigation, came forward to offer a sum of Rs 50,000/- for disallowance u/s 14A of the Act on an adhoc basis. The Id. AO however disregarded the aforesaid contentions of the assessee and proceeded to directly apply the computation mechanism provided in Rule 8D(2) of the Rules and worked out the disallowance u/s 14A of the Act as under :-

Towards interest under Rule 8D(2)(ii)

Rs 37,999

Towards indirect expenses under Rule 8D(2)(iii)	Rs 4,27,120
Total expenditure disallowed u/s 14A	Rs 4,65,120

3.2. This action of the Id. AO was upheld by the Id. CIT(A).

3.3. At the outset, we find that there is absolutely no dispute that the assessee is having sufficient own funds which are much more than the investments that had yielded exempt income and hence there cannot be any disallowance of interest under second limb of Rule 8D(2) of the Rules. The Id. AO is directed to delete the same accordingly.

3.4. With regard to the incurrence of administrative expenditure of Rs 4,86,671/-, we hold that we are not in agreement with the stand taken by the Id. AR that no expenditure is incurred for the purpose of earning exempt income. If this stand is accepted, then the purpose of introduction of provisions of section 14A of the Act itself becomes redundant and otiose. We also find from the aforesaid financials of the assessee that the administrative expenditure of Rs 4,86,671/- is incurred for earning both taxable as well as exempt income. Admittedly, the administrative expenditure incurred by the assessee are meant for running the establishment which derives both taxable as well as exempt income. In order to meet the ends of justice, we direct the Id. AO to recompute the disallowance u/s 14A of the Act in the following manner:-
Total Administrative expenditure * Dividend Income / Total Receipts
i.e. $486671 * 7896483 / 17347595 = \text{Rs } 2,21,529/-$

3.5. The Id. AO is directed to disallow Rs 2,21,529/- u/s 14A of the Act without applying the computation mechanism provided in Rule 8D(2) of the Rules, as in the instant case, the said application would result in

absurd results. Accordingly, the grounds raised by the assessee are partly allowed.

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

Order pronounced on 14/07/2022 by way of proper mentioning in the notice board.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 14/07/2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai