

IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER S RIFAUR

ITA No. 2109/Mum/2021
(A.Y: 2014-15)

Sonasta Resorts Pvt Ltd., 111, Small Scale Industrial, Prem Dev Co-oP Society Ltd, Udyog Nagar, SV Road, Goregaon, Mumbai – 400062.	Vs.	ITO – 5(3)(4) Aayakar Bhavan, MK Road, Mumbai – 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAECs0035L		
Appellant	..	Respondent

Appellant by :	Shri AshokKumar Suthar.AR
Respondent by :	Shri S.Anbuselvam.DR

Date of Hearing	11.07.2022
Date of Pronouncement	12.07.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE, JM:

The assessee has filed the appeal against the order passed by the Commissioner of Income Tax (Appeals)-10, Mumbai passed u/s 143(3) and 250 of the Act.

1.1 At the time of hearing, the Ld.AR of the assessee submitted that there is a delay in filing the appeal before the Hon’ble Tribunal and explained that due to

Covid-19 pandemic, the filling was delayed and relied on the decision of Hon'ble Supreme Court in respect of extension of period of limitation. Contra, the Ld. DR has no specific objections. We found the facts mentioned are reasonable and accordingly we condone the delay and admit the appeal. The assessee has raised the following grounds of appeal:

1 On the facts and circumstances of the case and in law, the Learned CIT(A) erred in upholding the order of Learned AO of making disallowance of Rs. 2,37,984 under section 14A of the Act r.w. Rule 8D without recording the satisfaction in regard to the correctness of the expenses claimed by the Appellant.

2. On the facts and circumstances of the case and in law, the Learned CIT(A) erred in upholding the Order of Learned AO of making disallowance of Rs. 2,37,984 under section 14A of the Act r.w. Rule 8D in respect of expenditure incurred for earning exempt income without considering the facts that no expenses were incurred by the Appellant for earning exempt income

3. Without prejudice to the above, on the facts and circumstances of the case and in law, the Learned CIT(A) erred in not restricting the disallowance under section 14A of the Act r Rule 8D to the extent of exempt income.

4. The Appellant prays that it may be allowed to add, alter or amend the above grounds of appeal and to make detailed submissions at the time of appeal.

2. The brief facts of the case are that the assessee company is engaged in the business of resorts and hospitality services and is also engaged in trading and providing funds on interest. The assessee has filed the return of income electronically for the A.Y 2014-15 on 29.11.2014 disclosing a total income of Rs. 29,35,850/-. Subsequently the case was selected for scrutiny under the CASS and the Assessing officer (A.O.) has issued notice u/s 143(2) and 142(1) of the Act. In compliance, the Ld. AR of the assessee appeared from time to time and submitted the details. The A.O on perusal of financial statements found that the assessee has received dividend income of Rs. 58,593/- and claimed exemption u/s 10(34) of the Act. The A.O found that the assessee has not made disallowance in respect of earning exempt income under Rule 8D of the Act and issued a show cause notice. The assessee has filed the detailed explanations/reply referred at page 2 of the assessment order. The contentions of the Ld.AR are that the assessee has not incurred any expenditure for earning dividend income and therefore no disallowance is warranted. Whereas the A.O. was not satisfied with

the clarifications and computed the disallowance under sec14A r.w.r 8D(2)(iii) of Rs. 2,37,984/- and assessed the total income of Rs.31,73,830/- and passed the order u/s 143(3) of the Act dated 26.10.2016.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, submissions of the assessee and findings of the AO and has confirmed the action of the AO and dismissed the appeal of the assessee. Aggrieved by the CIT(A)order, the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing the Ld. AR of the assessee submitted that the CIT(A) has erred in sustaining the addition made by the A.O. irrespective of the facts that the assessee has not incurred any expenditure for earning the dividend income and the assessee has utilized own funds for the purpose of investments. The Ld.AR has substantiated the submissions with the material information and judicial decisions and prayed for allowing the assessee appeal. Contra, the Ld. DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue is with respect to addition made by the AO invoking the provisions u/s 14A r.w.r 8D(2) of I T Rules. The contentions of the Ld.AR are that the assessee has own funds more than the investments and no barrowed funds/ interest bearing funds were utilized for the purpose of investments in shares & mutual funds. The assessee has disclosed the dividend income and claimed exempted u/sec10(34) of the Act and the disallowance u/sec14A r.w.r 8D(2) is excessive. We find that there are no observations of the A.O on the concept of own funds/ barrowed funds utilization and also that only dividend yielding investments were considered for the purpose of calculation of average investment value. Accordingly, we restore the disputed issue to the file of the A.O. for limited purpose to verify and examine the own funds utilization for investment in shares and mutual funds and to recompute the disallowance u/sec14A r.w.r 8D(2) IT Rules considering only those investments which yield exempted income and ratio of special bench ITAT decision of ACIT vs Vireet Investments(165 ITD 27)(SB Delhi) Further the

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assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information and allow the grounds of appeal of the assessee for statistical purposes.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 12.07.2022

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 12.07.2022
KRK, PS

Copy of the Order forwarded to :

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

//True Copy//

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आदेशानुसार / BY ORDER,

(Asst. Registrar)
ITAT, Mumbai