

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.197/Chny/2022
निर्धारण वर्ष /Assessment Year: 2017-18

M/s.Rajsriya Automotive –
Industries Pvt. Ltd.,
Ground Floor,
95, Harrington Road, Chetpet,
Chennai-600 031.
[PAN: AABCR 4226 K]
(अपीलार्थी/Appellant)

v. The Dy. Commissioner –
of Income Tax,
Corporate Circle-5(1),
Chennai.
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.N.Arjunraj,
For S.Sridhar, Adv.
प्रत्यर्थी की ओर से /Respondent by : Mr.Guru Bashyam, CIT-DR
सुनवाई की तारीख/Date of Hearing : 25.07.2022
घोषणा की तारीख /Date of Pronouncement : 25.07.2022

आदेश / ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Principal Commissioner of Income Tax, Chennai-4, dated 13.03.2022, passed u/s.263 of the Income Tax Act, 1961, for the assessment year 2017-18.

2. The assessee has raised the following grounds of appeal:

1. The order of the PCIT, Chennai - 4 dated 13.03.2022 in DIN & order No. ITBA/REV/F/REV5/2021-22/1040660706(1) for the above assessment year is contrary to law, facts, and in the circumstances of the case.

2. The PCIT erred in assuming jurisdiction u/s.263 of the Act and consequently erred in passing the revision order without assigning proper reasons and justification.

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3. The PCIT failed to appreciate that the order of revision under consideration was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

4. The PCIT failed to appreciate that the twin conditions of error and prejudice were not concurrently satisfied so as to justify the assumption of jurisdiction for revising the assessment completed on scrutiny on 15.12.2019 and ought to have appreciated that the power of revision was assumed and implemented beyond its scope thereby vitiating the impugned revision order.

5. The PCIT failed to appreciate that the issue of applicability of Section 14A of the Act was thoroughly examined by the Assessing Officer while completing the scrutiny assessment and hence ought to have appreciated that the substitution of the view taken by the Assessing Officer in the scrutiny assessment order was beyond the scope of Section 263 of the Act.

6. The PCIT failed to appreciate that the overwhelming judicial trend on the scope of Section 14A of the Act was completely overlooked and brushed aside and ought to have appreciated that the said judicial trend was also brought to the notice of the Assessing Officer as well as the PCIT thereby establishing the substitution of the view taken by the Assessing Officer in the assessment order in passing the impugned order which according to the Appellant was beyond the scope of Section 263 of the Act.

7. The PCIT failed to appreciate that the cryptic findings at Para 5 of the impugned order were wrong, incorrect, erroneous, invalid, not sustainable both on facts and in law.

8. The PCIT failed to appreciate that the directions to apply the quantification mechanism in Rule 8D of the Income Tax Rules, 1962 to the factual matrix of the case was wholly unjustified and ought to have appreciated that the provisions of Section 14A of the Act per se was not applicable to the facts of the case thereby vitiating the related findings in the impugned order.

9. The PCIT failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.

10. The Appellant craves leave to file additional grounds/arguments at the time of hearing.

3. The brief facts of the case are that the assessee is engaged in the business of automobile and auto parts, filed its return of income for the AY 2017-18 on 27.10.2017 declaring total income of Rs.34,03,15,680/-. The assessment has been completed u/s.143(3) of the Act, on 15.12.2019 and accepted income declared by the assessee. The case has been subsequently taken up for revision proceedings u/s.263 of the Act, on the issue of disallowance of expenses u/s.14A of the Act, and accordingly, show cause notice dated 23.11.2021 was issued to the assessee. The Pr.CIT in the said show cause notice observed that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of the

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Revenue, because, the AO has failed to apply his mind to relevant provisions of the Act, even though, the assessee has made huge investments and earned exempt income, but, failed to make disallowance of expenditure u/s.14A r.w.r.8D of the Rules. The assessee contended that the AO has considered the issue of disallowance u/s.14A of the Act, during the course of assessment proceedings and thus, revision proceedings on very same issue cannot be initiated. The Pr.CIT after considering relevant submissions of the assessee and also taken note of various facts set aside the assessment order passed by the AO on the issue of disallowance u/s.14A r.w.r.8D of the IT Rules, 1962 and direct the AO to pass fresh order after providing due opportunity to the assessee. Aggrieved by the order of the Pr.CIT, the assessee is in appeal before us.

4. The Ld.AR for the assessee submitted that the Pr.CIT erred in setting aside the assessment order passed by the AO on the issue of disallowance u/s.14A of the Act, without appreciating the fact that the very same issue was subject matter of deliberations from the AO, during the course of assessment proceedings, which is evident from the issue of notice with a specific question on exempt income and consequent disallowance made u/s.14A of the Act. Since, the AO has considered the issue and has taken a possible view, the Pr.CIT cannot assume jurisdiction and revised assessment order u/s.263 of the Act.

5. The Ld.DR, on the other hand, supporting the order of the Ld.Pr.CIT, submitted that no doubt, the AO has called for details about disallowance

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u/s.14A of the Act, and the assessee has submitted certain details. However, if you go through the submissions made by the assessee before the AO, it is only on the issue of disallowance of interest expenditure u/r.8D(2)(ii) of IT Rules, 1962. However, in respect of the first limb on direct expenses and the third limb on indirect expenses, the assessment order is silent and thus, the Pr.CIT has rightly invoked his jurisdiction and set aside the assessment order.

6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that the AO had considered the issue of disallowance u/s.14A of the Act, which is evident from the fact that during the course of assessment proceedings, the AO had issued a show cause notice dated 22.11.2019 with a specific question on exempt income and consequent disallowance of expenditure u/s.14A of the Act. The assessee had filed a detailed reply on 26.11.2019 and explained its case with necessary details and argued that the assessee had sufficient own funds to cover up investments made in shares and securities and consequently, no disallowance can be made u/r.8D of IT Rules. The AO after considering relevant facts has accepted the explanation furnished by the assessee and has not made any disallowance u/s.14A of the Act. Although, there is no specific discussion on each and every limb of Rule 8D(2), but the AO has considered the issue in toto on the basis of reply submitted by the assessee and has accepted explanation furnished by the assessee without making

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any disallowance towards expenditure relatable to exempt income. Therefore, in our considered view on the very same, the Pr.CIT cannot exercise his powers conferred u/s.263 of the Act, and set aside the assessment order on the ground that the AO ought to have made further enquiries on this issue and make disallowance towards expenditure. Because, there is no scope for the Pr.CIT to exercise his powers once there is sufficient evidence to prove that the AO had considered the issue and taken a view. Therefore, we are of the considered view that the Pr.CIT is erred in assuming his jurisdiction u/s.263 of the Act, and set aside the assessment order passed by the AO. Hence, we quashed the order passed by the Pr.CIT u/s.263 of the Act.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced on the 25th day of July, 2022, in Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(जी. मंजूनाथा)
(G. MANJUNATHA)
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 25th July, 2022.
TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF