

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

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1391/Mum./2020
(Assessment Year : 2011-12)

ITA No.1392/Mum./2020
(Assessment Year : 2013-14)

Shri Vinod Nevatia
206, Kakad CHS, Dr.A.B. Road
Worli, Mumbai 400 018
PAN – AAEPN8175H

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-4(2), Mumbai

.....Respondent

Assessee by : Shri S.C. Tiwari
Ms. Sonia Jain
Revenue by : Ms. Smita Nair, Sr. AR

Date of Hearing – 20/06/2022

Date of Order – 11/08/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the assessee challenging the common impugned order dated 30/10/2018, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by learned Commissioner of Income Tax (Appeals)-48, Mumbai ['learned CIT(A)'], for the assessment years 2011-12 and 2013-14.

2. Since both the appeals pertain to the same assessee and issue involved is also common, therefore these appeals were heard together as

a matter of convenience and are being adjudicated by way of this consolidated order. Further, as the basic facts in both the appeals are same, we have elaborately mentioned only the facts for the first assessment year (i.e. 2011-12) before us for the sake of brevity.

3. Both the appeals filed by the assessee before us are delayed by 411 days. Along with the present appeals, assessee has filed separate application seeking condonation of delay in filing the appeals, which is also supported by an affidavit sworn by the assessee. In the application, the assessee has submitted as under :

"2. Your appellant is a senior citizen aged 80 years and is suffering from various ailments.

3. On the receipt of the impugned order I forwarded the same to my Chartered Accountant Mr.Bharat M. Pathak for further necessary action. Mr Bharat M. Pathak did not take any action on the same.

4. Due to my old age and medical problems this matter skipped my mind and it remained to be attended.

5. It is for this reason that the appeal could not be filed in time.

6. On 18 February, 2020 I met Shri RK Jhunjunwala who had earlier filed appeals for me upto assessment year 2009-10, he asked me what was the position of the assessment in my case on account of disallowance under section 14A for subsequent years.

7. I told him that I would check up and revert to him. On checking up I realized that appeal had not been filed by me for assessment years 2011-12 and 2013-14 against the order of the Learned CIT(A)'s - 48 received by me on 19 November, 2018.

8. I then requested Shri R K Jhunjunwala to prepare the appeals and the same are being filed now.

9. The delay in filing of the appeals is due to my ill health and old age and is attributable to reasons beyond my control.

10. *The appellant sincerely regrets the delay and request the Honourable Members to kindly condone the delay and request your honours to kindly admit the same."*

4. In view of the above, the assessee has requested to condone the delay as the same is unintentional and due to circumstances beyond the control of the assessee. On the other hand, learned Departmental Representative (*'learned DR'*) did not raise any serious objection against the application seeking condonation of delay. Having perused the application, which is also supported by an affidavit, we are of the considered view that there exist sufficient cause for not filing the present appeals within the limitation period and therefore we condone the delay in filing the appeals by the assessee and we proceed to decide the appeals on merits.

ITA no.1391/Mum./2020
Assessment Year – 2011-12

5. In this appeal, the assessee has raised following grounds:

"1) On the facts and in the circumstances of the case the Learned CIT(A) erred in law and in facts in confirming the disallowance of Rs.11,94,665/- made by the Assessing Officer:

a) Without recording his satisfaction as to why the assessee's claim that no expenditure was incurred for the purpose of earning exempt income was incorrect.

b) The actual expenditure claimed by the appellant in computing its income for the year was only Rs.4,31,072/- and the disallowance could not exceed the expenditure claimed by the appellant.

2) The appellant prays that the disallowance of Rs.11,94,665/- may please be deleted.

3) The Order of the Learned CIT(A) and the Learned Assessing Officer being contrary to law, evidence and facts of the case deserves to be set aside, amended or modified."

6. The only grievance of the assessee is against disallowance made by the Assessing Officer under section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 ("*the Rules*").

7. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is an individual and has conducted business in propriety firm, where the main activity was trading in securities and holding investments in his personal account. For the assessment year 2011-12, assessee filed his return of income on 24/09/2011 declaring total income of Rs. 32,41,597. During the year, assessee has received dividend of Rs. 67,90,256 and long term capital gain of Rs. 1,17,73,540, which was claimed as exempt under section 10 of the Act. Since, the assessee has not allocated any expenses towards earning such tax free income, assessee was asked to show cause as to why expenses attributable to earning the dividend income should not be disallowed under section 14A of the Act. In reply, assessee submitted that no expenditure is incurred for earning non-taxable income and the assessee has not borrowed any funds and therefore there is no interest payment either. The Assessing Officer vide order dated 26/03/2014 passed under section 143(3) of the Act for assessment year 2011-12 held that certain percentage of the expenses claimed by the assessee would definitely be attributable to tax-free income earned by the assessee. Accordingly, Assessing Officer disallowed Rs. 11,94,665 (i.e. 0.5% of the average value of investment) under section 14A of the Act read with Rule

8D of the Rules. In appeal, learned CIT(A) vide common impugned order dated 30/10/2018 dismissed the appeal filed by the assessee. Being aggrieved, assessee is in appeal before us.

8. During the course of hearing, learned Authorised Representative ('learned AR') submitted that no specific satisfaction was recorded by the Assessing Officer, while making disallowance under section 14A of the Act. Learned AR further submitted that assessee is an investor and also trades in shares and the entire expenditure claim by the assessee is the business expenditure.

9. On the other hand, learned Departmental Representative ('learned DR') vehemently relied upon the orders passed by the lower authorities.

10. We have considered the rival submissions and perused the material available on record. Section 10 of the Act deals with income which do not form part of total income of the assessee. Section 14A of the Act provides that no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does in form part of the total income under this Act. Further, section 14A (2) of the Act, reads as under:

"(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does in form part of the total income under this Act". (emphasis supplied)

11. Thus, if the Assessing Officer is not satisfied with the correctness of the claim of the assessee in respect of expenditure incurred in relation to income which does in form part of the total income, the Assessing Officer can determine the amount of such expenditure after having regard to the accounts of the assessee. Hon'ble Supreme Court in Maxopp Investment Ltd v. CIT: [2018] 402 ITR 640 (SC), while emphasising the aspect of recording of satisfaction by the Assessing Officer, observed as under:

"41. Having regard to the language of section 14A(2) of the Act, read with rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the Assessing Officer needs to record satisfaction that having regard to the kind of the assessee, suo motu disallowance under section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the Assessing Officer was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, the nature of the loan taken by the assessee for purchasing the shares/ making the investment in shares is to be examined by the Assessing Officer."

Further, Hon'ble Supreme Court in Godrej & Boyce Manufacturing Company Ltd. Vs DCIT: [2017] 394 ITR 449 (SC), observed as under:

"37. We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. Sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable." (emphasis supplied)

12. The satisfaction as required to be recorded under the provisions of section 14A of the Act is not limited to merely disagreeing with the submission of the assessee and requires that the Assessing Officer should also provide the basis for reaching such conclusion, after having regard to the accounts of the assessee. In the present case, assessee is an investor in shares as well as also does trading in shares under proprietary firm i.e. M/s Gaurav Trading Company. Assessee claimed to have maintained separate books of account for the aforesaid two activities. Dividend income of Rs. 67,90,256 was earned by the assessee in his personal account. The assessee has also claimed to have incurred expenditure of Rs. 3,94,436 in his personal account. The expenditure incurred on personal account by the assessee was not claimed as deduction and thus, no question arises of disallowing any part of such expenditure. It is pertinent to note that, during assessment 2011-12, the Assessing Officer only took into account the exempt income forming part of the personal account, for the purpose of invoking the provisions of section 14A of the Act. Further, the Assessing Officer as well as learned CIT(A) though alleged that common pool of human and financial resources have been utilised to earn the income, however, failed to appreciate that the assessee has already recorded expenditure incurred in personal account, which has also not been claimed as deduction by the assessee. Therefore, in view of the above and respectfully following the aforesaid judicial precedents, we do not find any basis for upholding the disallowance made

by the Assessing Officer under section 14A read with Rule 8D. Accordingly, the Assessing Officer is directed to delete the same. As a result, grounds raised by the assessee are allowed.

13. In the result, appeal by the assessee for assessment year 2011-12 is allowed.

ITA no.1392/Mum./2020
Assessment Year – 2013-14

14. In this appeal, the assessee has raised following grounds:

"1) On the facts and in the circumstances of the case the Learned CIT(A) erred in law and in facts in confirming the disallowance of Rs 16,62,672/- made by the Assessing Officer:

a) Without recording his satisfaction as to why the assessee's claim that no expenditure was incurred for the purpose of earning exempt income was incorrect.

b) The actual expenditure claimed by the appellant in computing its income for the year was only Rs.4,60,890/- and the disallowance could not exceed the expenditure claimed by the appellant.

2) The appellant prays that the disallowance of Rs.16,55,520/- may please be deleted.

3) The Order of the Learned CIT(A) and the Learned Assessing Officer being contrary to law, evidence and facts of the case deserves to be set aside, amended or modified."

15. The only difference in assessment year 2013-14 is that the Assessing Officer considered entire exempt income earned by the assessee, be it in trading account or personal account, for the purpose of invoking the provisions of section 14A of the Act. Further, during the course of assessment proceedings, assessee, on a without prejudice basis, *suo-moto* offered Rs. 7,144 as expenditure incurred for earning

dividend income in trading account. However, the Assessing Officer vide order dated 19/02/2016, passed under section 143(3) of the Act did not accept the submission of the assessee and made disallowance of Rs. 16,62,672 under section 14A read with Rule 8D of the Rules, after taking into account the entire salary expenses of Rs. 78,305, in trading account and 0.5% of average value of investments.

16. In the present case, the Assessing Officer took into account the entire salary expenses of Rs. 78,305, in trading account, while making disallowance under section 14A read with Rule 8D. Accepting the plea of Revenue would result in an illogical conclusion that the assessee did not incur any salary expenditure for running its proprietary concern, and entire expenditure was only incurred for the purpose of earning the exempt income. Further, similar to assessment year 2011-12, assessee also claimed to have incurred expenditure of Rs. 2,14,189 in his personal account, which was not even claimed as deduction by the assessee. In addition, the direct / salary expenditure of Rs. 78,305 for earning business income of Rs. 19,16,230 is quite nominal, which constitutes only 4%. The Assessing Officer also rejected the *suo-moto* disallowance of Rs. 7,144 offered by the assessee for earning dividend income in trading account without providing any basis. Further, the total exempt income earned by the assessee in trading account, i.e. Rs. 2,16,879, is not even 1% of the entire exempt income considered by the Assessing Officer, in the year under consideration. Thus, on similar basis as stated above in

earlier appeal, we do not find any reason for upholding the disallowance made by the Assessing Officer under section 14A read with Rule 8D for assessment year 2013-14. Accordingly, the Assessing Officer is directed to delete the same. As a result, grounds raised by the assessee are allowed.

17. In the result, appeal by the assessee for assessment year 2013-14 is allowed.

Order pronounced in the open court on 11/08/2022

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 11/08/2022

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai