

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.205/RJT/2019
Assessment Year: 2014-15**

Haresh Dhirajlal Radhanpura, vs. The Income Tax Officer,
C/o. Sarda & Sarda (CAs), Ward – 3(1)(2), Rajkot.
1st Floor, “Sakar”,
Dr. Radhakrishnan Road,
Opp. Rajkumar College,
Rajkot – 360 001
[PAN – ABRPR 7224 D]
(Appellant) (Respondent)

Appellant by : Shri Vimal Desai, AR
Respondent by : Shri B.D. Gupta, DR

Date of hearing : 03.08.2022
Date of pronouncement : 31.08.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the assessee against the order dated 08.07.2019 passed by the CIT(A)-3, Rajkot for the Assessment Year 2014-15.

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

- “1. *The order u/s.154 of the Act is bad in law.*
2. *The learned Assessing Officer has erred in law as well as on facts in exercising powers conferred u/s.154 of the Act in the absence of mistake apparent on the records. As The learned CIT(A) has erred in upholding this action of the A.O.*

3. The assessee filed return of income declaring total income of Rs.2,34,030/- on 20.03.2015. The Assessing Officer has passed the assessment order under Section 143(3) of the Income Tax Act, 1961 on 25.07.2016. The Assessing Officer issued notice under Section 154 of the Act on 27.07.2018 for rectifying apparent mistake in the Assessment Order under Section 143(3) of the Act for A.Y. 2014-15

on the ground that interest bearing funds were diverted for making investment in partnership firms and there was claim of exempt income in the form of share of profit from partnership firms. Therefore, the allowance of Rs.6,35,972/- was required to be made under Section 14A read with Rule 8D of the Income Tax Rules, 1962. In response to notice under Section 154 of the Act, the assessee filed detailed reply dated 06.08.2018. The Assessing Officer passed order under Section 154 of the Act on 29.08.2018 thereby making addition under Section 14A of the Act to the extent of Rs.6,35,972/-.

4. Being aggrieved by the order under Section 154 of the Act, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. As regards to ground no.1, the Ld. AR submitted that order under Section 154 of the Act was not justifiable as order under Section 143(3) was related to limited scrutiny and there was specific questionnaire related to disallowance under Section 14A of the Act on 21.06.2016. The assessee has given its reply on 28.06.2016 thereby stating that the only exempt income in the case of the assessee is share of profit from partnership firm and disallowance under Section 14A of the Act was not applicable to share of profit from partnership firm, as such, the share is received only after the firm having paid tax on a its income. Ld. AR further submitted that vide letter dated 19.07.2016, the assessee stated that the share of profit from the firm was not exempt as such but since the firm has paid tax on profit to avoid double taxation, partners are given exemption to pay tax on the same profit. The assessee earned interest on remuneration from partnership firm which has been offered to tax. When the income is offered to tax and consequent disallowance under Section 14A, therefore, order under Section 154 of the Act is not maintainable as the Assessing Officer cannot rectify its own order when the precise reply/response was given at the time of assessment proceedings by the assessee and thereafter the Assessing Officer has passed the order under Section 143(3) of the Act.

6. As regards to ground no.2, the Ld. AR submitted that the disallowance of Rs.6,35,972/- was not proper and justifiable as the assessee had furnished a working before the Assessing Officer showing disallowance under Section 14A read with Rule 8D with reference to capital contribution in the partnership firms which

comes to Rs.6,34,244/-. Since the assessee earned net exempt income of Rs.2,06,490/- in the form of share of profit, the proportionate disallowance pertaining thereto comes to Rs.1,60,283/- as is evident from the working. Therefore, in case ground no.1 is not allowed, then the disallowance should be restricted to Rs.1,60,283/-

7. The Ld. DR relied upon the order under Section 154 of the Act, Assessment Order and the order of the CIT(A).

8. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that there was non-verification of the Assessing Officer/mistake on the part of the Assessing Officer while taking cognisance of the disallowance under Section 14A of the Act in assessee's case and the Assessing Officer has rightly invoked provisions of Section 154 of the Act and rectified the shortcoming of the original assessment order passed under Section 143(3) of the Act. Therefore, rectification under Section 154 of the Act passed by the Assessing officer is just and proper. Hence ground no.1 is dismissed.

9. As regards ground no.2, the Assessing Officer has been given the working related to disallowance under Section 14A read with Rule 8D of the Rule with reference to capital contribution in the partnership firm. As per the submissions of the Ld. AR the proportionate disallowance pertaining thereto comes to Rs.1,60,283/-, therefore, it will be appropriate to remand back this issue to the file of the Assessing Officer and we direct the Assessing Officer to verify the said working in accordance with the provisions under Section 14A read with rule 8D and, thereafter, make the disallowance under Section 14A of the Act read with rule 8D of the Rule. Needless to say assessee be given opportunity of hearing by following principles of natural justice. Ground no.2 is partly allowed for statistical purposes.

10. In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the open Court on this 31st day of August, 2022.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 31st day of August, 2022

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Rajkot Bench, Rajkot