

IN THE INCOME TAX APPELLATE TRIBUNAL
'D/SMC' BENCH, CHENNAI

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य के समक्ष।
BEFORE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.3109/Chny/2019
(निर्धारण वर्ष / Assessment Year: 2016-17)

M/s B. Shantilal Choudhary No.39/21, General Muthiah Mudali Street, Sowcarpet, Chennai – 600 079.	बनाम/ Vs.	ITO Non-Corporate Ward-6(3), Chennai.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AEFPS-9755-M		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri J. Prabhakar (C.A)-Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri D. Hema Bhupal (JCIT)-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	19-09-2022
घोषणा की तारीख / Date of Pronouncement	:	19-09-2022

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2016-17 arises out of the order of learned Commissioner of Income Tax (Appeals)-5, Chennai [CIT(A)] dated 08-08-2019 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) of the Act on 31-10-2018. The sole grievance of the assessee is disallowance u/s 14A.
2. The registry has noted a delay of 15 days in the appeal, the condonation of which has been sought by Ld. AR. Considering the period of delay, I condone the delay and admit the same for adjudication on merits.

3. The Ld. AR submitted that the assessee debited expenditure under capital account and Ld. AO, without recording any objective satisfaction, could not have made any disallowance u/s 14A. The Ld. Sr. DR, on the other hand, supported the additions. Having considered rival submissions, the appeal is disposed-off as under.

4. The assessee being resident firm is stated to be engaged in the business of money lending. The assessee earned dividend income of Rs.9.37 Lacs. The expenditure relating to share transactions viz. Securities Transaction Tax, Service Tax and Other Charges were separately debited to capital account and not claimed as an expenditure. However, Ld. AO computed disallowance u/s 14A which was addition of excess interest for Rs.1.44 Lacs and disallowance as per Rule 8D for Rs.4.52 Lacs. The Ld. CIT(A) held that computing disallowance u/r 8D was mandatory and therefore, the disallowance made at 1% of investments was justified. The addition of Rs.1.44 Lacs was not agitated by the assessee. Aggrieved, the assessee is in further appeal before me.

5. Upon perusal of assessee's financial statements on record, it could be seen that the expenses which are relating to the share transactions have separately been debited in the Profit & Loss Account and no such expenditure has been claimed in the Profit & Loss Account. In my opinion, Rule 8D could not be applied mechanically. The Ld. AO has to record an objective satisfaction as to why the disallowance made by the assessee was not acceptable. The failure to do so would be fatal to the disallowance made as per Rule 8D which is a settled legal position. Therefore, the impugned disallowance is not sustainable in law. By deleting the same, I allow the appeal.

6. The appeal stand allowed.

Order pronounced on 19th September, 2022.

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 19-09-2022
EDN/-

आदेश की प्रतिलिपि ढ ग्रेषित/Copy of the Order forwarded 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