

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“G” BENCH, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No. 55/Mum/2022  
(A.Y.2016-17)**

M/s Gyanshankar Investment & Trading Company Pvt. Ltd. 1601, Marathon Heights, P.B. Marg, Lower Parel, Mumbai - 400013	Vs.	ITO-35(1)(5) Aayakar Bhavan, Maharishi Carve Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABCG83362R		
Appellant	..	Respondent

Appellant by :	Amit Agarwal
Respondent by :	Harmesh Lal

Date of Hearing	06.10.2022
Date of Pronouncement	17.10.2022

आदेश / O R D E R

**Per Amarjit Singh (AM):**

All the grounds of appeal of the assessee are interconnected based on issue of confirming an addition of Rs.53,16,122/- u/s 14A r.w.rule 8D of the I.T. Rule. Therefore, both grounds of appeal of the assessee are adjudicated together by way of a consolidate order.

- “1. On the facts and in the circumstances of the case and in law, the Id CIT(Appeals) erred in confirming the total loss of the Appellant at (-)9,75,54,364/- as Against returned income of NIL with current year loss of

*(-)10,28,70,486/- . The Appellant disputes wrongful variations and submits that it's returned income be accepted as correct.*

- 2.(a) *On the facts and in the circumstances of the case and in law, the Id CIT(Appeals) erred in confirming an addition of 53,16,122/- to the income of the Appellant by way of disallowing administrative expenses claimed to have been incurred relating to exempt income invoking the provisions of section 14A r.w.r. 8D The addition made to the income of the Appellant is incorrect and invalid.*
- (b) *The Id. CIT(Appeals) failed to appreciate that having regard to the accounts there is no reason and basis in reaching to dis-satisfaction with the correctness of the claim of the Appellant that no expenditure except Demat charges of 4,293/- was incurred in relation to dividend income which does not form part of the total income.*
- (c) *In reaching to the conclusion and making such addition the Id. CIT(Appeals) omitted to consider relevant factors, considerations, principles and evidences while he was overwhelmed, influenced and prejudiced by irrelevant considerations and factors.*

*The Appellant craves leave to add, alter, amend or delete any or all of the above grounds of appeal.”*

2. Fact in brief is that return of income declaring loss of Rs.10,28,70,486/- was filed on 24.09.2016. The case of the assessee was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 13.07.2017. During the course of assessment the A.O noticed that during the year under consideration the assessee has earned dividend income of Rs.31,18,388/- which was claimed as exempt income. The A.O considered that assessee had not made disallowance in respect of expenditure incurred for earning exempt income in accordance with the provisions of Sec. 14A r.w.Rule 8D of the I.T. Rule, 1962. On query the assessee vide letter dated 30.11.2018 filed the working u/s 14A r.w.r 8D regarding amount to Rs.53,20,415/- it was mentioned that amount will be restricted to exempt income i.e dividend of Rs.31,18,388/-. However, the A.O has not agreed with the submission of the assessee and referred CBDT Circular No. 5/2014 stated that disallowance u/s14A

r.w.r 8D can be made even when corresponding income has not been earned during the year. Accordingly, the A.O has computed disallowance as per Rule 8D to the amount of Rs.53,16,122/- and added to the total income of the assessee.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A).The ld. CIT(A) dismissed the appeal of the assessee holding that there was no substance in the assessee's alternative contention made before the A.O that the disallowance u/s 14A should be restricted to Rs.31,18,388/- being equal to the exempt income earned during the year.

4. Heard both the sides and perused the material on record. During the course of assessment the A.O noticed that during the year under consideration the assessee had earned dividend income of Rs. 31,18,388/- and claimed the same as exempt income. During the course of assessment after examination of the balance sheet and other detail the A.O observed that assessee had made huge investment in the form of shares/units of mutual fund from which the assessee had earned the dividend income. However, the assessee had not made disallowance in accordance with the provision Sec. 14A r.w.Rule 8D, therefore the A.O had computed expenditure incurred towards earning exempt income to the amount of Rs.53,20,415/- as per Rule 8D of the I.T. Rule, 1962, after placing reliance on the CBDT Circular No. 5/2014. In its submission the assessee submitted that no expenses except the Demat charges of Rs.4293/- was incurred by it in relation to the dividend income earned by it. The assessee submitted that no disallowance u/s 14A could be made when the assessee has not incurred/claimed any expenditure for earning the exempt income. The assessee has also referred the decision of ITAT in the case of Fali S. Nariman Vs. Addl. CIT, Range-11(2),

Mumbai (2015) 56 taxman.com 155 (Mumbai) dated 30.01.2015. The assessee has also submitted that it has invested in shares and mutual fund from its own fund and not from borrowed fund. The assessee has also referred the other judicial pronouncements in its submission. The assessee had also made alternative submission that disallowance u/s 14A cannot exceed the exempt income earned by the assessee during the year. In this regard the assessee has placed reliance on the decision of PCIT-3 Vs. Reliance Ports & Terminal Ltd. (2020) 114 taxman.com 529 (Bombay) dated 09.11.2019 and the decision of PCIT, Corporate Circle-3(1), Chennai Vs. Envestors Ventures Ltd. (2021) 123 taxman.com 378 (Madras) dated 18.01.2021.

In the light of the above facts and findings, we observe that assessee has not substantiated in its support of claim that no expenditure except Demat charges of Rs.4293/- was incurred in relation to the earning the exempt income. After taking into consideration, the above facts and findings of judicial pronouncements as referred supra, we observe that the decision of Id. CIT(A) in sustaining the disallowance to the extent of Rs.53,16,122/- in excess of the exempt income earned by the assessee of Rs.31,18,388/- is not justified. Therefore, after taking into consideration the huge balance of investment of Rs.107.95 crores in respect of investment in shares/units of mutual fund in the case of the assessee as on 31.03.2016 and earning of long term capital gain and dividend income, we consider merit in the alternative plea of the assessee and direct the A.O to restrict the disallowance of expenditure incurred towards earning exempt income u/s 8D(2)(iii) to the extent of Rs.31,18,388/-. Therefore, the ground no.2 appeal of the assessee is partly allowed.

5. Ground No. 1 of the assessee is also partly allowed in consequent to the partial relief granted as per Ground No. 2 of the assessee.

6. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 17.10.2022

Sd/-  
(Kuldip Singh)  
Judicial Member

Sd/-  
(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 17.10.2022

Rohit: PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.**