

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**Before Dr. B. R. R. Kumar, Accountant Member
Sh. Yogesh Kumar US, Judicial Member**

ITA No. 7007/Del/2019 : Asstt. Year : 2016-17

Pravin Anand, 1, Jaipur Estate, Nizamuddin East, New Delhi-110013	Vs	ACIT, Circle-61(1), New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AAAPA2572P		

**Assessee by : Sh. B. K. Anand, CA
Revenue by : Sh. Sanjay Nargas, Sr. DR**

Date of Hearing: 29.11.2022	Date of Pronouncement: 30.11.2022
------------------------------------	--

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-20, New Delhi dated 21.06.2019.

2. Following grounds have been raised by the assessee:

"1. That the authorities below erred in disallowing out of expenses claimed by the assessee sum o Rs.17,75,985/- u/s 14A read with Rule 8D of the I. Tax Rules, 1962 contrary to the provisions of the said Rule.

2. That assuming the authorities below were justified in adopting the mathematical acquisition in determining the amount of disallowance u/s 14A read with Rule 8D with the I. Tax Rule, 1962, they erred in not holding that interest on capital earned by the partner from the firm was to be included as part of income from firm which bore tax and further erred in excluding the interest amount of Rs.89,86,747/- in determining the allowable expenses."

3. In the instant case, the Id. CIT(A) confirmed the order of the AO with regard to the disallowances made u/s 14A read with Rule 8D of the Income Tax Rules, 1962. The Assessing Officer disallowed expenditure of Rs.17,75,985/- taking into consideration expenditure claimed, remuneration received and exempt profit share i.e. $\text{Rs.}20,54,354/- \times \text{Rs.}27,50,150 \div \text{Rs.}20,29,60,516 = \text{Rs.}2,78,368/-$.

4. We find the CBDT issued notification No. 43/2016 dated 02.06.2016 amending the Income Tax Rule 8D and as per the para 1(2) they shall come into force on the date of their publication in the official gazette. The said notification is as under:

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II,
SECTION 3, SUB-SECTION (ii)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF DIRECT TAXES

NOTIFICATION

New Delhi, the 02nd June, 2016

S.O. 1949(E)- In exercise of the powers conferred by section 295 read with sub-section (2) of section 14A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following rules further to amend the Income-tax Rules, 1962, namely:-

1. (1) These rules may be called the Income-tax (14th Amendment) Rules, 2016.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Income-tax Rules 1962, in rule 8D,-

(I) for sub-rule (2), the following sub-rule shall be substituted, namely:-

"(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely: —

- (i) the amount of expenditure directly relating to income which does not form part of total income; and
- (ii) an amount equal to one per cent of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income:

Provided that the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee.";

(II) sub-rule (3) shall be omitted.

[Notification No. 43/2016] [F.No. 370142/7/2016-TPL]

(Dr. T.S. Mapwal)

Under Secretary to Government of India

Note:- The principal rules were published vide Notification S.O. 969 (E), dated 26th March, 1962 and last amended by Income-tax (13th Amendment) Rules, 2016 vide Notification S.O,1923(E), dated 31.05.2016.

5. The Assessment Order passed on 14.12.2018 ought to have taken into consideration, the said notification of the Ministry of Finance. Hence, we remand the matter back to the file of the AO for the limited purpose of re-computation of disallowance in accordance with the notification issued.

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

Order Pronounced in the Open Court on 30/11/2022.

Sd/-

(Yogesh Kumar US)
Judicial Member
Dated: 30/11/2022

Subodh Kumar, Sr. PS

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member