

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **703/Chny/2022**

निर्धारण वर्ष / Assessment Year: 2015-16

A. Vairaprakasam,
4, Chairamn Shanmugam
Road,
Sivakasi.

[PAN: AAJPV-8360-P]

(अपीलार्थी/Appellant)

v. The Assistant Commissioner of
Income Tax,
Virudhunagar Circle-1,
Virudhunagar.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : None

प्रत्यर्थी की ओर से/Respondent by : Shri. P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing : 16.01.2023

घोषणा की तारीख/Date of Pronouncement : 16.01.2023

आदेश /ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax, National Faceless Appeal Centre (NFAC), Delhi, dated 08.07.2022 and pertains to assessment year 2015-16.

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

1. Details for Dividend income is as follows:

<u>Sl.No</u>	<u>Name of Company Quoted</u>	<u>No of Shares</u>	<u>Amount in Rs</u>
<u>Quoted</u>			
1	State Bank of India	67 Nos	2010.00
2	Tamilnad Mercantile Bank Ltd	650 Nos	1040000.00
3	ShriramTpt Finance Corp Ltd	1080 Nos	8640.00
4	Indian Overseas Bank Share	100 Nos	50.00
5	Mahindra & Mahindra Share	12 Nos	168.00
			1050868.00
<u>Unquoted</u>			
6	Aluminium Powder Co Ltd	300 Nos	10500.00
7	Pandian Chemicals Ltd	3312 Nos	198720.00
8	The Metal Powder Co Ltd	18099 Nos	633465.00
9	MRI Diagnostic Research Ltd	2500 Nos	1250.00
10	Ayyan Fireworks Factory P Ltd	8500 Nos	340000.00
			1183935.00
			2234803.00

The details for Investments in shares held as investment is as follows:-

	<u>Year Ended</u> <u>31-03-2015</u>	<u>Year Ended</u> <u>31-03-2014</u>	<u>Increase</u>
Shares in Company	1,49,01,753	1,03,01,753	46,00,000
Dividend Received	22,34,803	25,50,542	
Capital A/c	4,85,57,187	4,51,27,301	3429886
Trade Creditors	38,56,639	5,72,453	3284186

Fresh Investments in share of M/s Vindhya Spinning Mills (P) Ltd., during the year is for Rs 46,00,000/-. This is from out of his own income during the year. This can be easily verified from the fact that Capital A/c is increased by Rs 3429886/- and Trade Creditors for which no interest is payable is increased by Rs 3284186/-. So it is obvious that no borrowed fund is used for the new investment. Moreover for investing in M/s Vindhya Spinning Mills (P) Ltd., no expenditure is incurred. Above all the appellant is a director in the said company. In order to retain the control over the company he and other directors have introduced fresh capital in the said company. This investment is made by way of commercial expediency.

3. For earning this dividend income from existing shares, expenditure such as Interest, postage and telegram, telephone, printing & stationery, travelling expenses and bank charges need not be incurred. So the provision of section 14A is not applicable.

(60 ITR (Trib)266;56 ITR (Trib) Sn 34,43;383 ITR 529;376 ITR 553 ; 352 ITR 583)

4. *Not only the incurring of the expenditure but also its relationship with the exempted income must be clear and must be capable of being ascertained on the fact of it without involving any further mental exercise. The onus is on the assessing officer not only to show that some expenditure was factually incurred but also to show its relationship with the income exempt from tax (2007) 107 ITD 267 TM).*

5. *Expenses relatable to the exempted income alone can be disallowed. There must be an approximate cause for disallowance which is in relation with the Tax-exempt income. Merely because the assessee had incurred interest expenditure on funds borrowed it would not ipso facto invite the disallowance u/s 14A. Unless there was evidence to show that such interest bearing funds formed part of investment. The Assessing Officer has not proved that certain expenditure are incurred for earning exempted income. The onus is on the department to prove that some expenditure was incurred for earning tax free income. Rule 8D read with section 14A(2) can be invoked only 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 expenditure incurred in relation to the tax-free income.*

6. *Moreover there is no requirement to take a decision as where to invest and how much to invest at the highest level especially the new investment is made in a Private Limited Company in which the appellant is already a Director and in order to retain the control over the company like other directors in the said company. So the addition of < 63009- u/s. 14A is unwarranted and unjustified.*

It is prayed that the connected papers may kindly be looked into and justice rendered. Your appellant craves leave to add, amend, alter, withdraw any grounds of appeal at any time upto the hearing of the appeal."

3. The brief facts of the case are that, the assessee is an individual and sole proprietor of M/s. Ayyan Traders, which is engaged in the business of fireworks. The assessee had filed

his return of income for assessment year 2015-16 on 22.07.2016, declaring total income of Rs. 1,04,14,280/-. During the course of assessment proceedings, the AO noticed that the assessee had earned dividend income of Rs. 22,34,803/- and same has been claimed as exempt income u/s. 10(34) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). However, no expenditure was disallowed u/s. 14A of the Act. The assessee was called upon to file necessary details of expenditure in relation to exempt income, for which the assessee claimed that he does not incurred any expenditure in relation to exempt income. The AO rejected arguments of the assessee and computed disallowance of Rs. 63,009/- u/s. 14A r.w.r. 8D(2)(iii) of the Income-tax Rules, 1962 (hereafter referred to as "I.T. Rules, 1962") @ 0.5% of average investments in shares. The assessee carried the matter in appeal before the first appellant authority, but could not succeed. The CIT(A), for the reasons stated in their appellant order dated 08.07.2022 sustained addition made towards disallowance u/s. 14A of the Act.

4. None appeared for the assessee. We heard the Ld. DR and considered written submissions filed by the assessee. We

find that the assessee has earned dividend income of Rs. 22,34,803/-, but does not disallowed any expenditure relatable to exempt income. The assessee claimed that he does not incurred any expenditure in relation to exempt income. We find that the AO has disallowed expenditure relatable to exempt income u/s. 14A r.w.r. 8D(2)(iii) of the IT Rules, 1962 at Rs. 63,009/- @ 0.5% of average investments in shares. We find that the assessee has derived taxable income and non-taxable income. The assessee had also incurred various expenditures which are common in nature which cannot be identified particularly for exempt income and taxable income. Therefore, as per provisions of section 14A r.w.r. 8D(2)(iii) of the IT Rules, 1962, the AO has computed expenses relatable to exempt income @ 0.5 % of average value of investments. In our considered view, there is no error in the method followed by the AO to determine expenses relatable to exempt income, because the assessee has not maintained separate books of accounts and also apportioned expenditure which are common in nature to exempt income and taxable income. Thus, we reject arguments of the assessee and sustain addition made towards disallowance u/s. 14A r.w.r. 8D(2)(iii) of the IT Rules, 1962.

5. In the result, appeal filed by the assessee is dismissed

Order pronounced in the open court on 16th January, 2023 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /Vice President

Sd/-
(जी. मंजुनाथ)
(G. MANJUNATHA)
लेखासदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 16th January, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |