

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI  
(DELHI BENCH 'H': NEW DELHI)**

**BEFORE SH. G.S.PANNU, HON'BLE PRESIDENT  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.8117/Del/2019  
(Assessment Year : 2015-16)

M/s. Uday Punj (HUF)  
Chimes -55, Sultanpur Farms  
New Delhi  
PAN : AAAHU0518H  
**(APPELLANT)**

Vs. Pr. Commissioner of Income Tax,  
Circle-11, New Delhi  
**(RESPONDENT)**

Assessee by  
Revenue by

Sh. Rohan Khare, Advocate  
Sh. Sanjay Kumar, Sr. DR

Date of hearing: 27.01.2023  
Date of Pronouncement: 13.02.2023

**ORDER**

**PER ANUBHAV SHARMA, JM:**

1. The Pr. CIT-11, New Delhi (herein after referred as “the Revisionary Authority”) passed revisionary order dated 23.08.2019 for Assessment Year 2015-16 u/s 263 of the Income Tax Act, 1961 (hereinafter referred as “the Act”) in regard to the assessment to the assessment order passed u/s 143(3) of the Act dated 29.11.2017 passed by ITO-Ward-32(2), New Delhi (hereinafter referred to as “the ld AO”) and aggrieved with the same the Assessee has come up in appeal raising following grounds of appeal:-

- “1. *The Ld. PCIT erred in fact and in law in initiating proceedings u/s 263 of the Income Tax Act which is not only bad in law but also void ab initio as it is against the facts and circumstances of the case.*
2. *The Ld. PCIT erred in fact and in law in directing the AO to make an addition of Rs. 8,79,260/- on account of disallowance u/s 14A which is not only bad in law but also against the facts and circumstances of the case.”*

2. The facts in brief are the Assessee had filed the return of income on 31.08.2015 showing income of Rs. 4,70,300/-. The case was selected for limited scrutiny for the following reasons:

- Large value sale of futures (derivative) in a stock exchange reported in Securities Transaction Tax Return.
- Mismatch in sales turnover reported in Audit Report and ITR.
- Securities transaction.

3. The assessee had filed the return of income on 31.08.2015 showing taxable income of Rs 4,70,300/-. The case was completed by the AO u/s 143(3) of the Income tax Act, 1961 on 29.11.2017 on an income of Rs. 4,70,300/-.

4. The Revisionary Authority observed that the Assessee claims that as HUF is engaged in making various investments in listed/unlisted shares of companies, futures and options, trading and derivatives from which it has earned dividend of Rs 9,41,360/- and KAOIF-Reits-Taxfree income of Rs 9,29,317 which have been claimed as exempt income. However, despite having huge exempt income of Rs 19,70,677 in the form of dividend on shares/mutual funds and interest from KAOIF-Reits, the assessee has not shown to have incurred any expenditure against this exempt income; all the expenditure debited in the Profit and Loss Account has been debited against taxable income. The Ld. AO has also not considered the provisions of section 14A of the IT Act relating to disallowance of expenditure incurred in relation to income not includible in total income which is fully applicable in this case. In accordance

with Section 14A of the I. T. Act, 1961, and Rule 8D of the I.T. Rules, 1962, disallowance u/s 14A in this case was required to be worked out. The Revisional Authority believed that as the Id AO had not worked out the disallowance as per Section 14A of the I.T. Act, 1961, and Rule 8D of the I.T. Rules, 1962, and has allowed the entire expenditure of Rs. 9,98,012/- against taxable income, the order of the AO is erroneous in so far as it is prejudicial to the interest of the revenue. Accordingly, the assessee was issued a show cause u/s 263 of the Act, 1961 vide letter F.No.Pr.CIT-II/Show Cause/M/s Uday Punj HUF/2018-19/1240 dated 25.09.2018. In response, the AR of the assessee filed a reply dated 04/10/2018 wherein he has objected for issuance of notice u/s 263 on the following grounds:

*“1. The assessee is not in the business of dealing in shares. He is an investor and has invested in two parts:*

- (a) in family owned companies from which it did not earn dividend.*
- (b) in listed companies from which it earned dividend income.*

*His total investment in derivatives as on 31/03/2015 is Rs. 70.62 Crores out of which Rs. 45 Crores is in family companies, Rs. 20.70 Cr. is in listed companies to earn dividend or to gain appreciation, Rs. 4.04 Cr. in mutual funds and Rs. 1.34 crore in Kotak Real Estate Fund.*

*5.2 The assessee has also submitted that total expenditure claimed is Rs. 9,98,012/- against which disallowance proposed in show cause is Rs. 35,59,499/-. Further, out of total expenditure of Rs. 9,98,012/- Rs. 4,46,075/- are general expenses and cannot be attributed to any income whereas other expenses amounting to Rs. 5,51,937/- is directly attributable to Income from derivatives and capital gains. The assessee relied on the Judgment of Hon'ble Apex court in the case of Maxopp Investment Ltd. V CIT (2018).*

*5.3 The assessee in its reply submitted that as per clause (1) of section 14A no deduction of expenses incurred by the assessee in relation to exempt income shall be allowed, if the AO is not satisfied with the correctness of claim of the assessee. However, in this case, the AO while passing the order u/s 143(3) was fully satisfied with the correctness of claim of the assessee and any direction on this issue will result into change of opinion by AO.*

5.4 *The assessee also took alternate plea that even if the assessing authority has to make an estimate of such an expenditure incurred to earn exempt income, it has rational nexus with the amount of expenses and disallowance cannot exceed the expenses claimed by the assessee.*

6. *The reply of the assessee has been considered and found not tenable for the following reasons:*

- i) *From the individual transaction statement it is seen that during the year the assessee has undertaken 226 number of transaction in shares and mutual funds. This only proves that during the year frequent transactions were made by the assessee and hence to make these frequent investments the assessee must have incurred certain expenditure which it has debited against taxable income.*
- ii) *The assessee in its reply itself accepted that expenses of Rs. 5,51,937/- can be attributed towards derivative and capital gain income whereas expenses of Rs. 4,46,075/- are general expenses. However, it neither bifurcated nor submitted any documentary evidence with regard to expenses related to the exempt income. The AO has also not done any verification in this regard.*
- iii) *From the balance sheet it is seen that total investment as on 31-03-2014 is Rs. 71,75,80,832/- while that as on 31-03-2015 is Rs. 70,62,18,899/- . In other words the average value of the investment made by the assessee towards earning of exempt income is Rs.71,18,99,865/- during the year.*

5. Considering the above facts the assessment order passed by the AO was held erroneous. However, taking into consideration amended proviso to Rule 8D inserted by Income Tax Rules 2016 (fourteenth Amendment) w.e.f. 02.06:2016 that the disallowance calculated u/s 14A read with Rule 8D should not exceed the total expenditure incurred by the assessee. The Revisional Authority made the following computation:-

Total expenses claimed by the assessee	Rs. 9,98,012/-
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Less: amount already disallowed by the assessee as per computation	Rs. 1,18,752/-
Balance expenditure to be considered while working out disallowance u/s 14A (considering the proviso to Rule 8D inserted w.e.f. 01.06.2016)	Rs. 8,79,260/-

6. Heard and perused the record.

6.1 The substantial argument on behalf of the Assessee was submitted that the Id. Revisionary Authority has failed to consider the fact that the assessment order was passed u/s 143(3) of the Act for limited scrutiny and based upon the submission of the Assessee the return of income was accepted. It was submitted that the Id AO had taken into consideration all aspects in regard to all the disallowances claimed and the Id Revisionary Authority has acted beyond its power of section 263 of the Act to interfere in the assessment order. It was submitted that revisional powers cannot be exercised beyond the issues considered under the limited scrutiny.

6.2 On merits, it was submitted that the investments were either in the family owned companies which are not meant to earn dividend income or in listed companies from which dividend income was derived. It was submitted that the Assessee had claimed expenditure of Rs. 9,98,102/- of which Rs. 4,46,075/- are general expenses and cannot be attributed to any income and other expenses amounting to Rs. 5,51,937/- is directly attributable to income from derivatives and capital gain. It was submitted that the exempt income is only Rs. 9,41,660/-. Interest income from KAOIF-Reits amounting to Rs. 9,29,317/- is taxed paid income as it is distributable profit from determinate irrecoverable trust wherein, the tax is paid and trust on behalf of the beneficiaries and post taxed the income is distributed. It is submitted that disallowances u/s 14A is attracted only when expenditure has been incurred on investment which generate the exempt income and no expenditure has been

claimed by the Assessee on the investment which have yielded the exempt income. It was submitted that the Id Revisionary Authority was apprised all these questions of fact and the judgment of Hon'ble Supreme Court in case of Maxopp Investment Vs. CIT (2018) 402 ITR 640 (SC) and other relevant laws but impugned order was passed. The Id AR has relied on the following judgments in support of its contention;-

- i. CIT-Delhi-IV Vs. DLF Ltd (2013 31 taxmann.com 158 (Delhi)
- ii. Malabar Industrial Co. Ltd Vs. CIT (2000) 109 Taxmann 66 (SC)
- iii. ETT Ltd Vs. CIT (2019) 112 taxmann.com 321 (Delhi-Trib.)
- iv. CIT Bangalore Vs. Chemsworth (P) Ltd (2020) 119 taxman.com 258 (Karnataka)
- v. CIT Vs. Future Corporate Resources Ltd (2021) 132 taxmann.com 173 (Bombay)

7. The Id DR however supported the orders of the Ld. Pr. CIT and submitted that the Id AO had failed to take into consideration the fact that the Assessee had reflected the exempt income and therefore, the expenses should have been disallowed for the purpose of section 14A and failure to do so has made the assessment order erroneous and prejudicial to the interest of revenue.

8. Giving a thoughtful consideration to the mater on record it can be observed that there is no dispute to the fact that the Assessee's return was scrutinized as a limited scrutiny case on account of Large value sale of futures (derivative) in a stock exchange reported in Securities Transaction Tax Return; Mismatch in sales turnover reported in Audit Report and ITR; Securities transaction.

9. In para 5 of the assessment order it is mentioned that after examination of the documents placed on record and discussions with Id AR of the Assessee the Id AO was satisfied with the return and accepted the return of income as filed.

Admittedly the Ld. Revisional authority did not find anything erroneous or prejudicial to the interest of revenue, in the assessment order, so far, the assessment order on the three reasons for scrutiny are concerned.

10. So the foremost question is if Ld. Revisional authority was justified in travelling beyond the assessment order arising of limited scrutiny and find same to be erroneous and prejudicial, in regard to issues which were actually not part of the limited scrutiny assessment. The bench is of considered opinion that the Ld. Revisional authority exercising powers under 263 of the Act have to take the assessment order as it is. No presumption or assumptions of issues actually considered by Ld. AO can be made. Thus, no new case can be introduced by venturing into issues not under examination under the limited scrutiny. It has been consistently held by Coordinate Benches that if assessee's case is of limited scrutiny to examine particular issues then the assessment order cannot be held to be erroneous and prejudicial to the interest of revenue u/s 263 of the Act for those issues for which Ld. AO is not empowered to conduct any verification/examination. Reliance can be placed on the following decisions:

- i. Agrawal Promoters vs. Pr. CIT in ITANo.1708/CHD/2017 (I.T.A.T., Chandigarh)**
- ii. Mrs. Sonali Bhavsar vs. PCIT ITANo.742/Mum/2019 (I.T.A.T., Mumbai)**
- iii. Rakesh Kumar vs. CIT ITANo.6187/Del/2015 (I.T.A.T., Delhi)**
- iv. Baby Memorial Hospital vs. ACIT ITANo.420/Coch/2019 (I.T.A.T., Cochin)**
- v. Sahita Construction Company Vs Pr.CIT (ITAT Indore), ITA No.119/Ind/2021, decided on 7/2/22**

11. In this context reference can be made to the CBDT Instruction No. 5/2016 dated 14-07-2016 which provide that the case selected for limited scrutiny cannot be taken up for full scrutiny without prior approval of the competent authority, the

Pr.CIT. Thus by exercising powers u/s 263 of the Act the Ld. Revisional authority has in a way circumvented the aforesaid mandate of law requiring prior approval of the competent authority to expand the scope of limited scrutiny. Thus the very assumption of jurisdiction by Ld Revisional authority is vitiated.

12. Even otherwise, in the similar circumstances, in a case relied by the Id Counsel for the Assessee/ appellant, **CIT-Delhi-4 Vs. DLF (2013) 31 Taxmann.com 158 (Del)**, Hon'ble Delhi High Court was dealing with the situation where the Assessee had received exempt dividend income from its subsidiary and the Revisionary Authority issued notice on the ground that issue regarding disallowances of expenditure u/s 14A relating to exempt income had not been examined by the Id AO. The question before Hon'ble High Court was that whether since disallowance of expenditure u/s 14A was debatable and, thus, did not render order of AO as unsustainable, revisionary powers u/s 263 could not have been exercised. The Hon'ble High Court held that *"in any event, even if it were not debatable, the error by the AO is not "unsustainable". Possibly he could have taken another view; yet, that he did not do so, would not render his opinion an unsustainable one, warranting exercise of Section 263."*

13. In the light of the aforesaid the ground raised are sustained and the appeal is allowed. The impugned revision order dated 23.082019 is set aside.

**Order pronounced in the open court on 13.02.2023.**

**-Sd/-  
(G.S.PANNU)  
PRESIDENT**

**-Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

Date: 13.02.2023

**\*Binita, SR.P.S\*  
Ajay Keot, Sr. PS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANTREGISTRAR  
ITAT, NEW DELHI