

आयकर अपीलीय अधिकरण
मुंबई पीठ "डी", मुंबई पीठ
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अमरजीत सिंह, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " D ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH , ACCOUNTANT MEMBER
आअसं. 1480/मुं/ 2022 (नि.व. 2013-14)
ITA NO. 1480/MUM/2022(A.Y.2013-14)
आअसं. 1481/मुं/ 2022 (नि.व. 2014-15)
ITA NO. 1481/MUM/2022(A.Y.2014-15)

Rita Lalit Jobanputra,
6th Floor, Citi Point, Telli Galli,
Andheri East, Mumbai 400 069
PAN: AAEPJ-4891-J

..... अपीलार्थी /Appellant

बनाम Vs.

The Asstt. Commissioner of Income Tax,CC(1)(2),
906, Prathishtha Bhavan,
MK Road, Mumbai – 400 020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Satish Mody

प्रतिवादी द्वारा/Respondent by : Smt. Mahita Nair

सुनवाई की तिथि/ Date of hearing : 03/11/2022

घोषणा की तिथि/ Date of pronouncement : 27/01/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

These two appeals by the assessee are directed against the orders of Commissioner of Income Tax(Appeals)-47, Mumbai [in short 'the CIT(A)'] for the Assessment Year 2013-14 and 2014-15, respectively. Both the impugned orders are of even date i.e. 05/04/2022.

2. Shri Satish Mody appearing on behalf of the assessee submitted that in both the appeals the facts are identical with respect to the issue of disallowance made u/s. 14A of the Income Tax Act, 1961 [in short 'the Act'].

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3. The assessee in appeal has raised three grounds:

(i) Ground No.1 is general in nature.

(ii) In ground No.2, the assessee has assailed disallowance of Rs.4,51,350/- u/s. 14A of the Act .

(iii) In ground No.3, the assessee has assailed addition of Rs.2,22,186/- in respect of rent from C.T. Chatwani Hall in cash.

4. The Id. Authorized Representative for the assessee in respect of disallowance u/s. 14A of the Act submitted that no satisfaction as envisaged u/s. 14A(2) of the Act was recorded by the Assessing Officer before making disallowance. Without prejudice to primary submission, the Id. Authorized Representative for the assessee made an alternate prayer to compute disallowance u/r. 8D(2)(iii) only on dividend yielding investments.

4.1 In respect of ground No.3, the Id. Authorized Representative for the assessee submits that the Assessing Officer had made addition of Rs.2,22,186/- on account of alleged rent received by the assessee from C.T. Chatwani Hall in cash. During the course of survey some loose papers were found relevant to the Assessment Year 2010-11, 2011-12 and 2012-13, wherein certain amount was mentioned as rent, based on said documents of Rs.26,66,232/- was added in each of the said Assessment Years on account of rent for Chatwani Hall. The Assessing Officer made addition of Rs.2,22,186/-

as according to him rent for one month was falling in the Financial Year 2012-13 relevant to the Assessment Year 2013-14. The Id. Authorized Representative for the assessee submits that aforesaid addition may kindly be deleted as no rent for any period falling under Assessment Year 2013-14 was received from C. T Chatwani Hall.

5. Per contra, Smt. Mahita Nair representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee.

6. Both sides heard. The ground No.1 of appeal is general in nature, hence, require no adjudication.

7. In ground No.2, the assessee has assailed disallowance u/s. 14A of the Act. Undisputedly, the assessee earned exempt income of Rs.21.46 lacs by way of dividend. The assessee has not made any suo-motu disallowance for earning said exempt income. The Assessing Officer invoked the provisions of Rule 8D(2)(iii) and made addition of Rs.4,51,350/-. A bare perusal of the assessment order reveals that the Assessing Officer has not recorded any satisfaction before making disallowance u/s. 14A of the Act. It is a well settled position that disallowance u/s. 14A of the Act is not automatic. Where, no suo-motu disallowance u/s. 14A of the Act has been made by the assessee, the provisions of section 14A(3) of the Act get triggered. As per sub-section(3) to section 14A of the Act, provisions of sub-section (2) shall apply where the assessee claims that no expenditure has been incurred in relation to earning of exempt income. As per the provisions of sub-section (2), the Assessing Officer having regard to the accounts of the assessee has to record is dissatisfaction

on correctness of the claim in respect of such expenditure in relation to income which does not form part of the total income under the Act. In the instant case the manner of making disallowance u/s. 14A r.w.r 8D is not in consonance with the provisions of the section. Hence, disallowance u/s. 14A made by the Assessing Officer is directed to be deleted. Ergo ground No.2 of the appeal is allowed.

8. In ground No.3 of appeal, the assessee has assailed addition of Rs.2,22,186/-. A survey action was carried out at the premises of the assessee. Consequent to survey addition on account of cash receipts was made in Assessment Year 2009-10 to 2012-13 in each of the Assessment Years. The said addition was confirmed by the CIT(A) for Assessment Year 2009-10, 2010-11, 2011-12 and 2012-13. The Assessing Officer made addition of Rs.2,22,186/- in Assessment Year 2013-14 as the period of cash receipts extended from 01/02/2009 to 26/04/2012. The entire cash receipts were divided month wise and for the period starting from 01/04/2012 to 26/04/2012, which fall in the Assessment Year 2013-14, the said amount was added in the impugned assessment year. The assessee has not been able to rebut the findings of authorities below on this issue. Hence, ground No.3 of appeal is dismissed being devoid of any merit.

9. In the result, appeal by the assessee is partly allowed.

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10. The solitary issue in the appeal is disallowance of Rs.4,97,131/- u/s. 14A of the Act. In the impugned assessment year we find that the assessee has earned dividend of Rs.1,00,057/-. No suo-motu disallowance has been made

by the assessee for earning exempt income. The Assessing Officer invoked the provisions of Rule 8D(2)(iii) and made disallowance of Rs.4,47,131/-. We find that the manner of making disallowance u/s. 14A r.w.r. 8D of the Act by the Assessing Officer is similar to the in Assessment Year 2013-14. For parity of reasons disallowance made u/s. 14A of the Act is deleted and the solitary ground raised by the assessee in its appeal is allowed.

11. In the result, appeal is allowed.

12. To sum up, ITA No.1480/Mum/2022 is partly allowed and ITA No.1481 is allowed.

Order pronounced in the open court on Friday the 27th day of January, 2023.

Sd/-

(AMARJIT SINGH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 27/01/2023
Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt. Registrar),
ITAT, Mumbai