

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER  
&  
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

**I.T.A. No. 526/Kol/2022**  
**Assessment Year: 2012-13**

<b>M/s. Patrex Vyapaar Pvt. Ltd.</b> (Since merged with BNK Securities Pvt. Ltd.) C/o. M/s. Salarpuria Jajodia & Co., 7, C.R. Avenue 3 <sup>rd</sup> Floor Kolkata - 700072 <b>[PAN : AABCP9991P]</b> <b>[Now PAN: AABCB0771F]</b>	Vs	<b>Income Tax Officer, Ward-5(2), Kolkata</b>
---	----	---

<b>अपीलार्थी/ (Appellant)</b>	<b>प्रत्यर्थी/ (Respondent)</b>
-------------------------------	---------------------------------

Assessee by :	Shri S. Jhaharia, A.R.
Revenue by :	Shri P.P. Barman, Addl. CIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 08/12/2022  
घोषणा की तारीख /Date of Pronouncement: 16/02/2023

**आदेश/ORDER**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi, (hereinafter the "Id. CIT(A)") dt. 06/09/2022, passed u/s 250 of the Income Tax Act, 1961 ("the Act"), for Assessment Year 2012-13.

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

*"1. For that in view of the facts and in the circumstances, the Ld. CIT(A), NFAC was wholly unjustified in dismissing the challenge of validity to the notice u/s 154 and the consequent order so passed by AO u/s 154/143(3) and as such the said order is bad in law and in view of the facts and in the circumstances the Ld. CIT(A), NFAC's order to such extent is bad in law and it may be held accordingly.*

*2. Without prejudice to Ground No. 1 above, the Ld. AO had initiated such proceedings u/s 154 at the instance of "revenue audit" without application of mind and as such the notice itself was void abinitio and the consequential order u/s 154/143(3) is also bad in law and hence are liable to be quashed / cancelled and it may be held accordingly.*

3. Without prejudice to Grounds No. 1 & 2 above, the Ld. AO had himself accepted in the response so filed before the "revenue audit" that disallowance on account of interest [for sec. 14A read with Rule 8D] was not at all called for and in view of the said admission of the Ld. AO in such respect, the consequential notice and proceedings u/s 154 and the order u/s 154 is bad in law and it may be held accordingly.

4. For that in view of the facts and in the circumstances, the Ld. CIT(A), NFAC failed to appreciate the fact that the Ld. AO in the original order u/s 143(3) despite computing the disallowance under Rule 8D at Rs.24,90,613/- had considered and accepted the disallowance u/s 14A at Rs. 5,07,199/- and the subsequent notice u/s 154 cannot consider the same as "mistake apparent from record" for issuing such notice and as such the addition so made by the Ld. AO in such respect in the consequent order u/s 154 is bad in law and the affirmation of the said order by Ld. CIT(A), NFAC is illegal and in view of the facts and in the circumstances it may be held accordingly.

5. For that in view of the facts and in the circumstances, the Ld. CIT(A), NFAC failed to appreciate the law settled by the Jurisdictional High Court and other Courts in respect of disallowance u/s 14A (i.e. it cannot exceed exempt income) and as such the mere fact of admission on the part of appellant towards the disallowed amount u/s 14A i.e. Rs. 5,07,199/- cannot be considered as binding and hence enhancement of such disallowance by AO in such respect to Rs. 24,90,613/- and the affirmation of the same by the Ld. CIT(A), NFAC is bad in law and the addition in such respect is liable to be deleted and it may be held accordingly and be restricted to amount of exempt income only and AO be directed accordingly.

6. For that your petitioner craves the right to put additional grounds and/or to alter/ amend/ modify the present grounds at the time of hearing."

3. Brief facts of the case are that the assessee is a Non-banking Finance Company engaged in the business of trading in shares and securities and granting of loans and advances. Loss of Rs.3,58,931/- was declared in the e-return filed on 28/09/2012. Case selected for scrutiny through CASS followed by notice u/s 143(2) & 142(1) of the Act. During the course of assessment proceedings the ld. Assessing Officer discussed the issue of disallowance u/s 14A of the Act in the body of the assessment order and at page 3 of the assessment order mentioned that the disallowance u/s 14A of the Act comes to Rs.24,90,613/-. However, inadvertently, while computing the computation of total income, the figure of disallowance was mentioned

at Rs.5,07,199/- and income assessed at Rs.1,48,267/-. Thereafter, the Id. Assessing Officer passed an order u/s 154 of the Act on 11/09/2017 and corrected the figure of disallowance u/s 14A of the Act considering the figure as Rs.24,90,613/- as against Rs.5,07,199/- made in the assessment order.

3.1. This rectification order u/s 154 of the Act was challenged by the assessee before the Id. CIT(A) taking two grounds that firstly, the rectification order is bad in law and no mistake has been pointed out in such order and secondly, the quantum of disallowance was challenged. However, the assessee failed to succeed as the Id. CIT(A) dismissed the legal ground and while dismissing the ground on merit stated that the assessee ought to have filed the appeal against the disallowance made u/s 14A of the Act.

4. Aggrieved, the assessee is now in appeal before the Tribunal.

5. The Id. Counsel for the assessee stated that the assessee is into the business of purchase and sale of equity shares and investment in equity shares held as stock-in-trade. Dividend income earned during the year has not been claimed to be exempt income. It also submitted that in view of the judgment of the Hon'ble Supreme Court in the case of *Maxopp Investments Ltd. v. CIT* [2011] 203 Taxman 364/15 taxmann.com 390 (Delhi), disallowance u/s 14A of the Act, has to be considered even in case of shares held as stock-in-trade. Further reference was made to the judgment of the Hon'ble Jurisdiction High Court in the case of *REI Agro Ltd. vs. DCIT* (2013) 144 ITD 141 (Kol.), stating that for the purpose of computing disallowance made u/s 14A of the Act, only the investment which have given rise to dividend income needs to be considered. The Id. Counsel for the assessee also placed on record a sheet showing the working of disallowance u/s 14A of the Ac computed at Rs.6,29,347/- and stating that without prejudice to the

aforesaid calculation, without in any way accepting the invocation of Rule 8D, towards the investment as well as stock-in-trade, since the Assessing Officer has held the disallowance to be at Rs.5,42,966/-, hence only Rs. 86,381/- can further be disallowed.

6. Per contra the ld. D/R vehemently argued the supporting the order of the lower authorities.

7. We have heard the rival contentions and perused the record placed before us.

8. We notice that the assessee company is engaged in the business of trading in shares and securities and investment in equity shares held as stock-in-trade. As per the audited profit and loss account, the dividend income earned during the year is Rs.3,37,873/-. In the income tax return filed by the assessee, the assessee has not claimed any exempt income. As far as the assessment order is concerned it remains undisputed fact that the ld. Assessing Officer had worked out the disallowance u/s 14A of the Act at Rs.24,90,613/- but while computing the total income mentioned the figure wrongly as Rs.5,07,199/-. This being an apparent mistake, was rectified by the ld. Assessing Officer in the order passed u/s 154 of the Act. So far as the legal issues raised by the assessee challenging the validity of the rectification order u/s 154 of the Act is concerned, we fail to find any merit as the ld. Assessing Officer has rightly prepared the rectification order after it came to his knowledge that a wrong figure has been mentioned in the computation of income. Therefore, legal grounds raised by the assessee are dismissed.

8.1. So far as the quantum of disallowance is concerned, it has been consistently held that the assessee should be subjected to tax only on the correct income earned during the year. In the instant case, the dividend income earned during the year is only Rs.3,37,873/-. The assessee has *suo-*

*moto* offered to the calculation of disallowance u/s 14A r.w.r. 8D at Rs.6,29,347/-. Recently, the Hon'ble Delhi High Court *PCIT Vs. Era Infrastructure (India) Ltd. (ITA 204/2022)* judgment dt. 20/07/2022, has held that the amendment made in Section 14A of the Act by Finance Act, 2022, will be applicable prospectively and also held that disallowance u/s 14A of the Act should not exceed the exempt income earned by the assessee during the year.

9. Considering the ratio of law laid down by the Hon'ble Delhi High Court and also considering the disallowance *suo-moto* offered by the assessee during the course of appeal before us, we direct the Assessing Officer to compute the income of the assessee considering disallowance u/s 14A of the Act at Rs.6,29,347/- only. Thus, assessee gets relief of Rs.18,61,266/-. Thus, grounds raised on merits are partly allowed.

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

**Order pronounced in the Court on 16<sup>th</sup> February, 2023 at Kolkata.**

*Sd/-*

**(SONJOY SARMA)  
JUDICIAL MEMBER**

*Sd/-*

**(DR. MANISH BORAD)  
ACCOUNTANT MEMBER**

Kolkata, Dated 16/02/2023

*\*SC Sp/2*

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

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

आदेशानुसार/ BY ORDER,  
TRUE COPY

**Assistant Registrar**  
आयकर अपीलीय अधिकरण  
**ITAT, Kolkata**