

**IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &
SHRI M BALAGANESH, AM**

आयकरअपीलसं./ I.T.A. No.799/Mum/2022
(निर्धारणवर्ष / Assessment Year: 2017-18)

The Cricket Club Of India Ltd. J.N.Tata Pavillion, Dinshaw Waccha Road, Churchgate, Mumbai- 400020	बनाम/ Vs.	Principal Commissioner of Income Tax-1 3 rd Floor, Room No. 330, Aayakar Bhavan, M.K.Road, Churchgate, Mumbai- 400020
स्थायीलेखासं ./जीआइआरसं ./PAN No AACCT6935C		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Ms. Shivani Chaurasia, A
प्रत्यर्थीकीओरसे/ Respondent by	:	Ms. Samruddhi Hande, Sr. AR.
सुनवाईकीतारीख/ Date of Hearing	:	10.02.2023
घोषणाकीतारीख / Date of Pronouncement	:	30.03.2023

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeal has been filed by the Assessee against order dated 10.03.2022, passed by Ld. CIT Mumbai-1, in his revisionary Jurisdiction u/s 263 for the AY 2017-18. In the grounds of appeal assessee has raised following grounds:

1. The learned Principal Commissioner of Income Tax ("ld. PCIT") erred in passing an order u/s. 263 of the Income Tax Act, 1961 ("the Act") to revised the assessment order dated 22.12.2019 He failed to appreciate that the said assessment order was neither erroneous nor prejudicial to the interests of the Revenue.

He failed to appreciate that Id. Assessing officer ("ld. AO") after making all possible enquiries, examining the facts and proper application of mind, completed the assessment of the assessee u/s 143(3) of the Income Tax Act, 1961, which was in accordance with the provisions of law.

2. The Id. PCIT erred in holding that the ld. AO has completed the assessment u/s. 143(3) of the Act without conducting requisite enquiry and thereby erred in directing the ld. AO to re-examine the issue of disallowance u/s 14A r.w.r. 8D and thereby erred in directing the ld. AO to pass a fresh order.

2. The brief facts qua the issue are that, Assessee is a company incorporated under the Companies Act 1913 having no share capital. It is mutual association formed for the benefit of its

member. It has filed return of income for the AY 2017-18 declaring income of Rs. 3,42,32,100/-. The Assessing Officer noted that the Assessee club has earned interest on tax free bonds of Rs. 20,71,38,73/- which was claimed was exempt u/s 10(15) of the Act. He noted that, Assessee has made investment of Rs. 265,03,46,102/- as on 31.03.2017 in the tax free bonds, and assessee has not made any disallowance u/s 14A. The Assessee's contention before the AO was that, it has not claimed any deduction of any expenses that might have being incurred for earning exempt income. Therefore, no disallowance was offered u/s 14A. It was further contended that being a mutual association, the 'principle of mutuality' will apply and this has been accepted by the Tribunal in Assessee's own case for several assessment years. However, the Ld. AO held that disallowance u/s 14A is required to be made and accordingly proceeded to apply rule 8D and disallowance was worked out at Rs.2,65,83,614/-, by taking 1% of annual average value of the investment. Assessee aggrieved by the disallowance made in the assessment order has already filed an appeal before the first appellate authority which is still pending.

3. The Ld. PCIT, noted that on perusal of the records it is observed that AO has considered 1% of tax-free bond of Rs.265,83,64,000/- instead of entire eligible amount of investment of Rs.581,34,43,546/-, which includes Tax free Bonds and quoted Mutual Fund Units. The assessee has used the proceeds received from the above transactions for earning income using concept of mutuality which ultimately does not form part of total income of the assessee. The AO should have considered entire tax free investment of Rs.581,34,43,546/- instead of Rs.265,83,64,000/- for the purpose of disallowance u/s. 14A read with rule 8D of the Act. Hence, the calculation of addition made u/s 14A read with rule 8D during assessment is erroneous in as much as prejudicial to the interests of the revenue.

4. In response to the show cause notice, Assessee submitted that the total expenditure debited in the books of account was only Rs. 1,45,08,756/- which was on account of municipal taxes of Rs. 4,17,292/- and cricket expenses of Rs. 1,14,91,464/-. Once, Assessee has claimed total expenditure of Rs. 1,45,08,766/- u/s 57, disallowance u/s 14A cannot exceed the expenditure debited

and claimed. Moreover, none of the expenses can be said to be attributable for earning of the exempt income. Apart from that, it was stated that only those investments can be taken for the purpose of disallowance which has yielded income and only the tax free bonds have yielded exempt income.

5. However, the Ld. PCIT rejected the Assessee's contention and set aside the assessment after observing and holding as under:

5. I have carefully considered the submissions made by the assessee and have also gone through the facts of the case. I have also perused the relevant assessment records. On perusal of the records it is seen that, during the year the assessee has earned interest on Tax Free Bonds of Rs.20,71,38,733/- which is claimed as exempt u/s. 10(15) of the Income Tax Act, 1961. It is also seen that the assessee has invested substantial amount of Rs. 581,34,43,546/- into investment yielding exempt income. As per Balance Sheet, the assessee has total investments of Rs. 581,34,43,546/- which include tax-free investments and mutual funds investment. It is also observed that the assessee has investment of Rs.265.03 crores as on 31.03.2017 into 'Tax Free

Bonds and Rs.265.87 crores as on 31.03.2016. However, while calculating the tax liability, the assessee has not made any disallowance u/s 14A in respect of expenditure incurred in relation to income not includible in total income for A.Y 2017-18. There is no doubt that the assessee has investments for the year ending 31.03.2017 in Tax Free Bonds and Mutual Fund Units vis. Non Current Investments including totaling to Rs.347.79 Crores and Current investments including quoted mutual funds totaling to Rs.241.51 Crores.

5. Before us, Ld. Counsel for the Assessee submitted that this issue was inquired in detail by the Assessing Officer during the course of assessment proceedings which is evident from the notice u/s 142(1) dated 18.10.2019, the copy of which is has been placed in the paper book from pages 82-86. He further submitted that, the observation and the finding of Ld. PCIT is incorrect that assessee has earned exempt income from the entire investment of 581.34 Crore, because in so far as investment made other than tax free bonds, it had not yielded exempt income. In fact they were subject to capital gains which assessee has offered during the year, i.e., on

the quoted mutual fund units. This is evident from computation of income, the copy of which has been placed in the paper book. Thus, the entire presumption of Ld. PCIT is incorrect. In any case, in so far as the quantum of disallowance made by the AO, Assessee is already in appeal before the first appeal and the very basis on which the AO has disallowance is unsustainable in law.

6. Before us, The Ld. CIT DR strongly relied upon the order of the PCIT and submitted that AO has not examine the entire investment, whether any such investment has yielded exempt income or not and were subjected to tax under the head capital gain. Therefore, this matter needs be examine by the AO.

6. After considering the relevant finding by the Ld. PCIT in his order in u/s 263 and from perusal of the material on record, we find that the basic premise of the Ld. PCIT in his revisionary order is that, Assessee has invested substantial amount of Rs. 581,34,43,546/- which are investment which have yielded exempt income. This investment constituted tax free bonds and also mutual funds investment. However, it is undisputed fact that assessee has earned exempt income from tax free bond alone for sums

aggregating to Rs. 265.03 crores and other investment have not yielded any exempt income and in fact were taxable investments. Once, that is so, the entire premise of the Ld. PCIT is incorrect and therefore, the assessment order cannot held to be erroneous, in so far as prejudicial to the interest of revenue. Now, whether the disallowance made by the AO is correct or it is excessive the same is already subject matter of first appeal and therefore, we are not going into this aspects. However, in so far as observation and the finding of the Ld. PCIT in setting aside to the issue of disallowance to the AO is quashed and **accordingly, appeal of the Assessee is allowed.**

Orders pronounced in the open court on 30th March, 2023.

Sd/-
(M Balaganesh)

Accountant Member

मुंबई Mumbai;दिनांक Dated : 30.03.2023

Ms.Urmila

Sd/-
(Amit Shukla)

Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)

4. आयकरआयुक्त/ CIT- concerned
 5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
 6. गार्डफाईल / Guard File
- आदेशानुसार/ BY ORDER,**

.उप/सहायकपंजीकार (Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai