

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 9445/DEL/2019
[Assessment Year: 2016-17]**

ACIT, Circle-28(1), New Delhi.	<u>Vs</u>	Amar Raj Singh, 404, Mansarovar 90, Nehru Place, New Delhi-110065. PAN: AICPS9804J
APPELLANT		RESPONDENT
Assessee represented by	None	
Department represented by	Sh. Kanv Bali, Sr. DR	
Date of hearing	13.04.2023	
Date of pronouncement		

ORDER

PER KUL BHARAT, JM:

This appeal, by the Revenue, is directed against the order of the learned Commissioner of Income-tax (Appeals)-10, New Delhi dated 24.09.2019, pertaining to the assessment year 2016-17. The Revenue has raised following grounds of appeal:

“1. Whether on facts and in circumstances of the case, the Ld. CIT (A) has erred in law and on facts in deleting the addition of Rs. 19,94,750/- made by the AO to the income of the assessee on account of disallowance of professional expenses ignoring the fact that these expenses had no direct nexus with the purchase and sale of shares.?”

2. *Whether on facts and in circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 368,92,821/- made by the AO to the income the assessee on account of disallowance of Rs. 363,92,821/- u/s 14A of the Income Tax Act, 1961 read with rule 8D ignoring the fact that these expenses are directly relation earning of Dividend Income ?*
 3. *Whether on facts and in circumstances of the case, the Ld. CIT(A) has erred in law and on facts that the assessment was completed on the basis of submission filed by the assessee and the assessee was failed to substantiate his claim before the AO ?*
 4. *The appellant craves leave to add, alter or amend any of the grounds of appeal before or during the course of hearing of the appeal.*
2. At the time of hearing no one attended the proceedings. It is seen from the record that no one has been attending the hearing of the appeal. The notice of hearing sent to the assessee has been returned back by the postal authorities. The assessee has not provided any current address. Therefore, under these facts, appeal is taken up for hearing in the absence of the assessee and is being decided on the basis of material available on record.
3. The facts giving rise to the present appeal are that assessee filed his return of income through electronic mode by disclosing income of Rs. 14,47,73,400/-, which was processed u/s 143(1) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"). Subsequently, the case was selected for complete scrutiny assessment and the assessment u/s 143(3) of the Act was framed vide order dated 24.12.2018. The Assessing Officer while framing the assessment noticed that the expenditure related to legal fee claimed by the assessee was not allowable on the basis that the

assessee failed to explain that the expenditure incurred was wholly and exclusively in connection with sale of shares and securities. Hence he made addition of Rs. 19,94,750/-. Further, the assessing authority by invoking the provisions of Section 14A read with Rule 8D made addition of Rs. 3,63,92,821/-. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who after considering the submissions allowed the appeal of the assessee and deleted the impugned additions. Now the Revenue is in appeal before this Tribunal.

4. Ground no. 1 is against deleting the addition of Rs. 19,94,750/-. Learned DR supported the order of the Assessing Officer and submitted that there was no nexus between the expenditure having been incurred wholly and exclusively for the purpose of transfer of shares.

5. We have heard learned DR and perused the material available on record. We find that the learned CIT(Appeals) has given a finding of fact by observing as under:

“6.1.3 I have carefully considered the facts of the case and the relevant case laws referred by the Appellant in the submission made before me. The Hon’ble Delhi High Court in the case of Smt. Sita Nanda v. CIT vide its order dated 09.07.2001 has held that the legal expense for seeking advice on the modalities of transfer and the drafting of agreement or deed of transfer shall be considered as expenses incurred wholly and exclusively in connection with transfer and would undoubtedly qualify for deduction. Share purchase agreement and invoices submitted by the Appellant clearly proves that the expenses of Rs. 19,94,750/- were incurred by the Appellant for availing the professional services like legal advisory, representation as legal Counsel and preparation of share purchase agreement and hence

there is direct nexus of these expenses with the sale of shares by the Appellant. These are covered under section 48(ij) of the Act. Nothing has been brought by the Assessing Officer on record while making the aforesaid disallowance to show that the professional expenses were not incurred in connection with sale of shares. Therefore, I find no merit in the action of the AO to disallow the expense of Rs. 19,94,750/- and the AO is directed to allow the same. This ground of appeal is allowed.”

6. The above finding on fact is not rebutted by the Revenue by placing any adverse material on record. The learned CIT(Appeals) has given a specific finding that the amount was incurred for professional services like legal advisory, representation by legal counsel and preparation of share purchase agreement etc. Therefore, in the absence of any adverse material we do not find any infirmity into the order of learned CIT(Appeals) and the same is hereby affirmed. Ground raised by the Revenue is dismissed.

7. Ground no. 2 is against deleting the addition of Rs. 3,63,92,821/-. Learned DR apropos to this ground heavily relied on the assessment order and submitted that the learned CIT(Appeals) was not justified in deleting the disallowance.

8. We have heard the learned DR. We find that learned CIT(Appeals) has given a finding of fact by observing as under:

“6.2.4 I have carefully considered the facts of the case and the relevant case laws referred in the assessment order and also by the Appellant in the submission made before me. The AO's reliance on the judgment of the Supreme Court in the case of Maxopp Investment Ltd. vs. CIT (2018) is misplaced because in this case the Hon'ble Apex Court held that if expenditure is incurred on earning the dividend income, that much expenditure which is attributable to income has to be disallowed. But in the

present case of the Appellant, no expenses have been incurred to earn exempt income. On the other hand the Appellant has relied on another judgment of Hon'ble Supreme Court in the case of CIT v. Walfort Share and Stock Brokers P. Ltd. (2010) 192 Taxman 211/326 ITR 1, wherein Hon'ble Apex Court allowed the appeal in favour of the Assessee. The Walfort case relied on by the Appellant has identical facts as that of the Appellant's case in respect of the Appellant's contention. The facts of Walfort case and the Appellant's case are identical in the sense that in both the cases assessee made investment in units of mutual fund, in both cases dividend earned from investment in mutual fund units was claimed as exempt, in both the cases mutual fund units were sold subsequent to record date resulting in Short Term Capital Loss which was set off. In the Walfort case the Hon'ble Apex Court has held that "For attracting Section 14A. there has to be a proximate cause for disallowance, which is its relationship with the tax exempt income Pay-back or return of investment is not such proximate cause, hence, Section 14A is not applicable in the present case. Thus, in the absence of such proximate cause for disallowance, Section 14A cannot be invoked." Therefore, by respectfully following the aforesaid judgment of Hon'ble Apex Court, cost of acquisition of the mutual funds cannot be considered as expenses incurred for earning dividend income, hence, no disallowance u/s 14A of the Act is warranted on this ground.

Further, I also find that section 94(7) of the Act is also not applicable in the Appellant's case as it is clear from the documents submitted by the AR at page nos. 5 and 6 of the written submission dated 28.08.2019 that the units of the mutual funds were purchased more than three months prior to the record date.

Furthermore, I also find that the Appellant has not incurred any expenses to earn the dividend income, therefore, no disallowance u/s 14A of the Act should be made. Thus, I find no merit in the action of the AO to disallow the sum of Rs.3,63,92,821/- u/s 14A of the Act and the AO is directed to delete the same This ground of appeal is allowed"

9. From the above finding it is clear that the learned CIT(Appeals) has given a clear finding that no expenditure was incurred for earning the exempt income. The Revenue has not brought any material suggesting that any such expenditure was

incurred and the finding of the learned CIT(Appeals) is perverse and incorrect. In the absence of any such material we do not see any reason to disturb the finding of the learned CIT(Appeals). The ground raised by the Revenue is dismissed.

10. Ground nos. 3 and 4 are general in nature, require no separate adjudication.

111. Appeal of the Revenue is dismissed.

Order pronounced in open court during the course of hearing on _____.

(M. BALAGANESH)
ACCOUNTANT MEMBER

MP

Copy forwarded to:

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

(KUL BHARAT)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI

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