

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER**

ITA No. 64/Jodh/2018
(ASSESSMENT YEAR- 2009-10)

Smt. Leela Devi Sankhlecha C-133, Kamla Nehru Nagar X-1, Jodhpur	Vs	The ITO Ward 3(4) Jodhpur
(Appellant)		(Respondent)
PAN NO. AOBPS 7384 G		

Assessee By	Shri Mahendra Gargieya, Advocate and Shri Devang Gargieya, Advocate
Revenue By	Ms. Nidhi Nair, JCIT-DR
Date of hearing	17/01/2023
Date of Pronouncement	13/04/2023

ORDER

Dr. S. SEETHALAKSHMI, JM

The assessee has filed this appeal challenging the order passed by Ld CIT(A)-2, Jodhpur dated 09-07-2017 for the assessment year 2009-10 raising therein following grounds of appeal.

“1. The impugned additions and disallowances made in the order u/s 143(3)/250 of the Act dated 12.09.2013 are bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be deleted.

2.1 The Id. CIT(A) erred in law as well as in the facts of the case in not appreciating the correct legal position that the earlier order dated 19.08.2013 of the Id.CIT(A) was an intermediately order only whereby, a remand report was called upon by the earlier Id. CIT(A) from the assessing officer and in absence of specific withdrawal of the powers of setting aside by the first appellate authority vide the Finance Act, 2001 w.e.f. 01.06.2001, the earlier Id CIT(A) could not have restored the issue in hand to the AO without incorporating and considering the remand report hence the impugned order by the Id. CIT(A) dated 09.10.2017, is the only final order wherein the earlier order of the Id. CIT(A) dated 19.08.2013 stands completely merged and therefore, the appellant has got all the right to challenge the issue of very applicability of Sec. 14A with respect to the entire income which was made subjected to that provision. Hence, the appellant may kindly be held entitled to raise this ground.

2.2 The Id. CIT(A) erred in law as well as in the facts of the case in confirming the application of S. 14A, which being contrary to the provision of law and facts. Kindly be quashed.

3. The Id. CIT(A) erred in law as well as in the facts of the case in confirming the applicability of Sec. 14A even with regard to the taxable income, which is contrary to the provisions of law and facts. Hence, it may kindly held that the provisions of Sec. 14A could not have been applied at least with respect to the taxable interest income of Rs.11,27,000/-.

4. The Id. AO further erred in law as well as on the facts of the case in charging interest u/s 234B, 234C & 234D of the Act and as also in withdrawing interest u/s 244A of the Act. The appellant totally denies its liability of charging and withdrawal of any such interest. The interest so charged/withdrawn, being contrary to the provisions of law and facts, kindly be deleted in full.”

2.1 During the course of hearing, the Bench noted that the Ground of Appeal No. 1 is a general ground which does not require any adjudication.

3.1 Apropos Ground No. 2.1 to 3, the facts as emerges from the order of the ld. CIT(A) are as under:-

‘6.1. I have considered the facts of the case, order u/s. 143(3)/250 of the Act and appellant's submissions and I find that in the original assessment order passed u/s. 143(3) dated 13-12-2011, the appellant's income was assessed at Rs. 41,69,680/-, thereby making an addition of Rs. Rs. 33,00,000/- on account of unexplained investment and disallowance of Rs. 5,65,880/- u/s. 14A of Act. In order u/s. 143(3)/250 dated 12-09-2013, the AO as per the direction of the CIT(A), reduced the amount of addition of Rs. 33,00,000/- from the total assessed income and further arrived at a figure Rs. 791675/- being amount to be disallowed as per direction of the CIT(A). Since a disallowance u/s 14A at Rs. 5,65,880/- was already made in the original assessment, the AO therefore, added Rs. 2,25,795/- (Rs. 7,91,675-5,65,880) to the revised assessed income. Accordingly, the AO assessed the assessee's total income (as per the direction of the CIT(A)) at Rs. 10,95,475/-. Thus by this way, the AO enhanced figure to Rs 7,91,675/-. However, I find that the AO while calculating the amount to be disallowed u/s 14A rw.r. 8D, has not mentioned that how the figures of 678344X1126578/9658600) were arrived at. This shows that the AO has not followed CIT(A)'s directions in right perspective. For the cost of repetition, the relevant finding of CIT(A) given vide order dated 19-08-2013 is reproduced as under:-

‘5.2. Having held that sec. 14A is applicable in this case, I am of the view that disallowance has not been correctly worked out by the Assessing Officer as he has overlooked Rule 8D of 1. T. Rules, 1962 which provides for method of calculation of such disallowance u/s 14A. I am of the considered view that Rule 8D of Income Tax Rue should be applied in this case to work out the correct disallowance as this Rule provides for method for determining amount of expenditure in relation to income not includible in the total income. The aforesaid rule 8D has been inserted by the I. T (Fifth Amdt.), Rule, 2008 with effect from 24-3-2008.

As discussed above, I have already held that disallowance u/s 14A of the I. T. Act, 1961 is attracted in this case and since at the time of making the disallowance u/s 14A and calculating the same Rule 8D was in existence, the Assessing Officer is directed to work out the disallowance as per the provision of Rule 8D. If the working as per Rule 8D results in a disallowance more than what has been made by the Assessing Officer, this order will be treated to have made an enhancement to that extent."

6.1.1. I find that above findings were given in the context of appellant's argument that income from house property is a separate income and has nothing to do with the income from the firm, the assessing authority has misinterpreted the provision of sec. 14A and therefore entire addition of Rs 5,65,880/- deserved to be struck down. The appellant had also questioned the manner of disallowance worked out by the AO before the CIT(A). After due consideration of these arguments, the CIT(A) directed the AO to re-work out the amount to be disallowed. The CIT(A)'s direction cannot be taken in isolation where the amount of disallowance is enhanced. In my view, the AO ought to have accorded opportunity of being heard before arriving at any figures and working of disallowable amount u/s. 14A r.w.r 8D. However, the AO simply arrived figure at 7,91,675/- by doing calculation in following manner.

678344X1126578/9658600-791675) 791675-565880-225795/-

6.1.2. From the above working, it is not clear whether the AO considered or excluded house property income of Rs. 3,06,701/- from the gross income Working of disallowance also does not specify under which clause of Rule 8D the calculation is made. There is ambiguity in the AO's action as to how the figures 678344X1126578/9658600 have been arrived at. Therefore, in the interest of natural justice, I direct the AO to re-work out the correct disallowance as per the Rule 8D which provides for method for determining amount of expenditure in relation to income not includible in the total income. Needless to mention here that the AO may accord an opportunity of being heard to the appellant/assessee before making calculation as per rule 8D. The appellant is also directed to co-operate with the AO and provide

necessary details for working/ calculation of figures under rule 8D. With these directions, the ground nos. 1 and 2 are disposed of. The grounds are treated as allowed.

07. Vide ground no. 3, the appellant contended that the provisions of section 14A are not applicable in the case of the appellant as the expenditure of interest on borrowed funds is allowable under section 36(1)(iii) of the Act. I find no force in this claim of the appellant. My Id. Predecessor vide his order dated 19-08-2013 in Appeal No. 357/11-12 for AY 2009-10 after examining the appellant's claim that interest payment is allowable u/s 36(1)(ii), upheld the applicability of provisions of sec. 14A of the Act. The undersigned is not authorized to review the order passed by predecessor. If the appellant was not satisfied with the findings of the CIT(A), she has right to prefer appeal before the higher forum. Even otherwise also, it may be clarified here that this issue is no more a subject matter of this appeal as this appeal is preferred against the order u/s. 143(3)/250 which is restricted to working of amount to be disallowed u/s 14A r.w.r. D Accordingly, this ground of appeal is dismissed.

08. As regards the appellant's alternative plea that disallowance made by AO is on a higher side, it is stated that I have already directed the AO to re-work out disallowance u/s. 14A r.w.r. 8D, hence, this ground becomes infructuous.”

3.2 During the course of hearing, the ld. AR of the assessee prayed that the ld. CIT(A) has wrongly upheld the provisions of Section 14A of the Act and the disallowance of addition made by the AO amounting to Rs.7,91,675/- may be deleted.

3.3 On the other hand, the ld. DR supported the orders of the authorities below,

3.4 We have heard both the parties and perused the materials available on record. Brief facts of the case are that the Grounds of Appeal No. 2.1 to 3 is against the rejection of the Grounds of appeal taken by the assessee before the ld. CIT(A) to the effect that the provisions of S. 14A of the Act are not applicable in

as much as the predecessor Id. CIT(A) vide its order dated 19.08.2013 in appeal No. 357/11-12 for the subjected year had already upheld the applicability of S. 14A with regard to the interest claimed u/s 36(1)(iii) of the Act as it remained unchallenged before a higher forum by the assessee and hence, the subject matter was restricted to the computation of amount disallowable u/s 14A in the light of Rule 8D. After a very careful consideration of the rival contentions, the orders of the authorities below and the material available on record, we find that the predecessor Id. CIT(A) had no doubt had upheld the applicability of S. 14A but at the same time, he has very categorically held that the disallowance of Rs. 5,65,880/- was not correctly worked out by the AO by overlooking Rule 8D of the Income Tax Rules, 1962. Therefore, the predecessor Id. CIT(A) had directed the AO to work out the disallowance as per rule 8D. The AO, pursuant to the above directions, reworked out the disallowance at Rs. 7,91,675/- as against Rs. 5,65,880/- worked out earlier and thus thereby, enhanced the disallowance by Rs. 2,25,795/- . A careful perusal of the order dated 9.10.2017 of the Id. CIT(A) (in the second round -under challenge) and the contentions raised by the assessee shows that the total income of the assessee also included income from house property and interest. Further the Id. CIT(A) recorded a categorical finding that the disallowance so worked out (again) does not specify which clause of Rule 8D, was made and there was an ambiguity in the AO's action, as to how the figures Rs. 6,78,344 X 11,26,578/96,58,600 have been arrived at. The Id. CIT(A) also held that the AO was at fault by not having provided an opportunity of being heard to the assessee. Because of these reasons, the Id. CIT(A) in second round again directed the AO to work out the said disallowance as per rule 8D. The provisions of S. 14A empowers the AO to disallow any deduction claimed in respect of the expenditure incurred by the assessee but in relation to such income which does not form part of the total

income under the Act. Thus, the claimed expenditure must have been in relation to the income which is exempt and therefore, it was incumbent for the AO to have identified and established that the particular expenditure claimed by the assessee was incurred in relation to such income which was exempt. Further, as per the mandate u/s 14A of the Act, the AO is bound to determine the amount of expenditure incurred in relation to such income which does not form part of the total income. In the present case, however, there is absolutely no finding recorded by the authorities below that which and how much expenditure has been incurred in relation to an exempted income the fact otherwise shows that the total income also included taxable income from house property, which is not contemplated. Moreover, the claim of interest payment on borrowed funds u/s 36(1)(iii) has not been shown as resulting into some exempted income or was incurred in relation to an exempted income. In this view of the matter, the Id. CIT(A) erred in not considering the challenge raised by the assessee before him vide ground of appeal no. 3. The Id. CIT(A) failed to appreciate that the provisions of S. 14A of the Act was wrongly applied. We are, therefore, satisfied that the assessee could have raised the issue of applicability of S. 14A in the peculiar facts of the case. Further coming to grounds of appeal no. 2.2 & 3 wherein the very applicability of S.14A is challenged, we have already held that the precondition of applicability of S. 14A has not been fulfilled in the present case in as much the law never contemplates to apply S. 14A in relation to a taxable income as in the present case. Moreover, there is absolutely or no discussion as to how interest payment has been incurred to in relation with some exempted income, if any. For the above reasons, the disallowance made u/s 14A under challenge is hereby directed to be deleted. Thus Grounds of appeal no. 2 & 3 are decided in the favour of the assessee.

4.1 The Ground N. 4 of the assessee is regarding charging of interest u/s 234B, 234C & 234D of the Act and also withdrawing interest u/s 244A of the Act which are mandatory and consequential in nature.

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

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

I agree with the final decision.

Sd/-
(B. R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(Dr. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Dated : 13/04/2023

**Mishra*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Asstt. Registrar

Jodhpur Bench