

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 6966/Del/2017
(Assessment Year : 2014-15)

Brassco Estate P. Ltd. 63, UGF, World Trade Centre, Near Lalit Hotel, Connaught Place, New Delhi- 110 001 PAN No. AAACB 4988 K (APPELLANT)	Vs.	ACIT Central Circle – 30 New Delhi (RESPONDENT)
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Assessee by	-None-
Revenue by	Shri Kanv Bali, Sr. D.R.

Date of hearing:	09.05.2023
Date of Pronouncement:	15.05.2023

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 13.09.2017 of the Commissioner of Income Tax (Appeals)-30, New Delhi relating to Assessment Year 2014-15.

2. Brief facts of the case as culled out from the material on record are as under:-

3. Assessee is a company stated to be engaged in the business of real estate consultations. Assessee filed its return of income for A.Y. 2014-15 on 30.09.2014 declaring total income of Rs.40,26,526/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 26.12.2016 determining the total income at Rs.62,80,130/- by disallowing Rs.22,53,600/- u/s 14A of the Act.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) upheld the order of AO and also made enhancement by observing as under:

“4.6 It was found that the appellant, by creative/clever presentation of figures, claimed benefit of expenditure even against Income under the head 'House Property', against which no other expenditure (except expenditure prescribed in section 24(a) and 24(b) of the Act), can be claimed. The appellant thus, was not presenting the expenditure to be disallowed as per provisions of section 14A r.w.r. 8D. I find that the satisfaction of the AC is clearly inferable from the order. Even the appellant has agreed that some expenditure needs to be disallowed.

4.7 In the return of income, the appellant had not made any disallowance u/s 14A r.w.r. 8D. The assessing officer, vide order dated 26.12.2016 arrived at a disallowance of Rs.22,53,600/-.

4.7.1 The total expenditure claimed in return of income (for purposes of income tax) is Rs. 36,58,339/-, by the appellant, is as follows -

<i>Total expenditure as per P & L account</i>	<i>Rs.44,54,596</i>
<i>Less: Depreciation as P & L account</i>	<i>Rs. 6,59,724</i>
	<i>Rs.37,94,872</i>

Add: Depreciation as per I.T. Act, 1961 Rs. 1,36,533
Rs. 36,58,339

Thus, expenditure to be apportionated has to be was out of Rs.36,58,339/-, for purpose of section 14A r.w.r. 8D.

4.7.2 Vide submissions dated 23.08.2017, at para 9, the appellant had prayed for restricting the disallowance to Rs. 4,83,052/-, as follows -

"Without prejudice the above, This very issue came up for the consideration of the Ld. CIT(A) in the appellate proceedings for A.Y. 2012-13. The Ld. CIT(A) accepted the submissions of the appellant and granted relief. A copy of this order is enclosed. The amount of disallowance as per this order (For the AY 2014-15), is ignoring depreciation is worked out below:-

Sl No.	Particulars of receipts	Turnover	%	Amount of proportionate Expenses (in Rs.)
1.	Taxable Income	9272028	46.66	1770548
2.	Exempt/dividend	10601000	53.34	2024324
	Income			
		19873028	100%	3794872

	As worked out by the appellant
Disallowance u/s 14A	2,24,324
Disallowance computation	1541272
Balance to be disallowed	483052

4.7.3 I find that the disallowance of Rs. 15,41,272/-, made by the appellant, consisted of, among other things, municipal tax paid on property let out on rent amounting to Rs. 7,98,073/- and other items. When property has been let out on rent, and income there from admittedly disclosed as Income under the head House Property, otherwise then the 30% deduction u/s 24, no other deduction is allowable. In fact, I note that the appellant has been misleading Revenue by claiming in his write up that taxable

income for purposes of working out proportionate expenses should include Income under the head House Property. Thus, the appellant, to misguide revenue, claimed that the disallowance u/s 14A should be Rs. 20,24,324/- out of which the appellant claimed to have already disallowed Rs. 15,41,272/-. I find that appellant had in this manner, been able to misguide the first appeal authority during appeal proceedings for A.Y. 2012-13, in appeal No. 190/15-16/2167.

4.7.4 Even accepting the logic of spreading expenditure for purposes of disallowance by attributing the same to taxable and non-taxable income, the working should be as hereinafter.

S. No.	Particulars of receipts, inflows/income receipts	Amount (Rs.)	Remarks
1.	Income from service charges	16,16,300	To be included for working out taxable income turnover
2.	Income received from renting out property, offered for taxation u/s 22, after claiming deductions u/s 24	76,55,728	Should not be included for working out taxable income no other expenses are to be allowed Income under the head House Property Rent received Rs. 76,55,728/- less Municipal Taxes Rs. 7,98,073/- equals Rs. 68,57,655/-, Deduction u/s 24 30% of Rs. 68,57,655/- amounting to Rs. 20,57,297/. Income under this

			head 48,00,359/- 68,57,655 20,57,297)	Rs. (Rs.
3.	Exempt/dividend income	1,06,01,000	To be included for working out the turnover, as expenditure attributable to the same is to be proportionate	

Accordingly, the working submitted by the appellant at para 9 of submission dated 23.08.2017, should have been as follows –

S. No	Particulars of receipts	Turnover		%		Amount of proportionate expenses (In Rs.)	
		As worked out by the appellant	As proposed by me	As worked out by the appellant	As proposed by me	As worked out by the appellant	As proposed by me
1	Taxable Income	92,72,028	16,16,300	46.66	13.23	17,70,548	4,83,998
2.	Exempt/dividend income	1,06,01,000	1,06,01,100	53.34	86.77	20,24,324	31,74,341
	Total	1,98,73,02	1,22,17,300	100	100	37,94,872	36,58,339
				As worked out by the appellant	As proposed by me		
				Disallowance u/s 14A	20,24,324	31,74,341	
				Disallowance in computation	15,41,272	N.A.	
				Balance to be disallowed	4,83,052	31,74,341	

The disallowance in computation, as claimed to have been suo moto offered by the appellant at Rs.15,41,272/-, is not in accordance with provisions of section 14A r.w.r. 8D. The same therefore, needed to be re examined.

4.7.5 As such, on the basis of working as above, I proposed to enhance the disallowance to Rs.31,74,341/-, instead of the disallowance made by the AO at Rs.22,53,600/-.”

5. CIT(A) has also noted that the notice for enhancement was issued to the assessee and after considering the submissions of the assessee, CIT(A) observed as under:

“4.10 I have examined the appellant's reply filed vide letter dated 07.09.2017. It is not a case where the expenditure had been found to be bogus. This is not the case here. The appellant actually accepts that the expenditure was incurred for earning the exempt income. This is clear from the appellant's acceptance of appeal order dated 29.01.2016, and even from the submissions made before me. What is in question here is the manner and quantum of allocation of the expenditure between exempt and non- exempt incomes that has been found by me to be misleading and incorrect. It is established position of law that any other expenditure (except the expenditure detailed in section 24(a) and 24(b) of the Act). cannot be claimed further as expenditure from income 'Under the Head House Property' (i.e. rental income), as detailed above. This is precisely what the appellant has done. The same is detailed by me in my analysis above. As such, the method of allocation made by the appellant is not proper. The disallowance that should have been made is Rs. 31,74,341/- as detailed by me earlier in this order, against the figure proposed by the AO at 22,53,600/-, and as offered by the appellant at Rs. 20,24,324/-.

4.11 In final analysis, I enhance the disallowance to be made at Rs. 31,74,341/-, as against the disallowance made by the AO at Rs. 22,53,600/-. To this extent, the income of the appellant is enhanced to Rs. 72,00,871/-, against assessed income assessed by the AO at Rs. 62,80,130/-.”

6. Aggrieved by the order of CIT(A), assessee is now before the Tribunal and has raised the following grounds:

“1. That having regard to the facts and circumstances of the case, the Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO for the addition made u/s 14A of Rs.22,53,600/- and which was made without assuming jurisdiction as per law and without considering the facts and circumstances of the case.

- 1.1 *That the Ld. CIT(A) has failed to appreciate that the Ld. AO did not record any objective satisfaction in respect of the claim of the appellant of nil expenditure, a jurisdictional defect, which could not be cured subsequently.*
 2. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in enhancing the addition u/s 14A from Rs. 22,53,600 to 31,74,341/- without appreciating the facts and circumstances of the case.*
 - 2.1 *That having regard to the facts and circumstances of the case, the Ld. CIT(A) erred in disallowing expenditure of Rs. 31,74,341/- against the total expenditure of Rs. 22,53,600/- claimed by the appellant in the return of income.*
 3. *That having regard to the facts and circumstances of the case, the disallowance is highly excessive and uncalled for.*
 4. *That the Ld. CIT(A) erred in observing in paragraph no. 4.73 on page 14 that I find that appellant had in this manner, been able to misguide the first appeal authority during appeal proceedings for A.Y 2012-13. in appeal No. 190/15-16/2167" and that these remarks may be expunged.*
 5. *That various grounds are without prejudice to one another*
 6. *That the assessee craves the leave to add, alter or amend the grounds of appeal in the course of hearing of the appeal."*
7. The case file reveals that the present appeal was listed for hearing on various occasions and on all the occasions, assessee did not appear before the Tribunal despite notices issued through RPAD nor any application was filed seeking for adjournment. Further, the notice issued by the Registry through RPAD was returned unserved with the postal remarks "Left". In case of any change of address, it is for the assessee to file revised Form No.36

duly mentioning the new address. Preferring an appeal does not mean merely formally filing the appeal but also taking all the necessary steps to effectively pursue the appeal. In the absence of any Co-operation from the side of the assessee, we do not find any reason to keep the matter pending before us more so when the appeal has been filed by the assessee in 2017. Considering the aforesaid facts, we have no option except to dispose of the appeal on merits, after hearing the Ld. D.R.

8. Before us, Learned DR took us through the findings of CIT(A) and strongly supported the order of lower authorities.

9. We have heard the Learned DR and perused the material on record. The issue in the present ground is with respect to the disallowance u/s 14A of the Act and enhancement made by CIT(A). We find that CIT(A) for the reasons noted in the order and which has been reproduced hereinabove has made the enhancement of disallowance u/s 14A of the Act. When the appeal is filed before the Tribunal by the assessee himself against the orders of the lower authorities, it is expected that the assessee may put forth some documentary evidences in support of his contentions to decide the appeal as it is the duty of the assessee to lead evidence in support of its claim and for the adjudicating authority to decide upon the sustainability of the claim on the basis of the evidence led by the parties before it. However, the assessee did not appear before the Tribunal despite numerous

adjournments allowed and notices issued through RPAD. No material has been placed by assessee to controvert the findings of lower authorities nor has pointed to any fallacy in the findings of lower authorities. In this view of the matter and in absence of any contrary material brought on record to rebut the findings of lower authorities, we find no reason to interfere with the order of CIT(A) and thus **we dismiss the grounds of the assessee.**

10. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 15.05.2023

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 15.05.2023

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI