

IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI  
BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 6555/Mum/2019  
(A.Y: 2013-14)

RanjitGobindramMalkani, 73, NCPA Apartments, NCPA Complex, Nariman Point, Mumbai – 400021.	Vs.	DCIT – 3(3)(1) Aayakar Bhavan, MK Road, Mumbai- 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.:AAJPM6587F		
Appellant	..	Respondent

Appellant by :	Shri.Dharan Gandhi.AR
Respondent by :	Shri S.G.Mehta.DR

Date of Hearing	30.05.2022
Date of Pronouncement	06.06.2022

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals) – 9, Mumbai order passed u/s 143(3) and 250 of the Income Tax Act, 1961.

1. *The Ld. CIT(A) has erred in confirming the AOs action of invoking provisions of Sec. 14A r.w.r. 8D in order to compute the disallowance of expenses related to exempt income and confirming the disallowance of Rs. 7,51,031/-*

2. The brief facts of the case are that, the assessee is a director in Rami Investments Pvt Ltd and is engaged in

the business of Finance and Trading in accessories, decorative and antique goods and consultancy services. The assessee has filed the return of income for the A.Y 2013-14 on 30.07.2013 disclosing a total income of Rs. 13,80,120/-. Subsequently the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act along with the questionnaire was issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and submitted the details. The Assessing Officer(A.O.) on perusal of the financial statements found that the Assessee has received the dividend income of Rs. 7,13,480/- and claimed exemption. Further the assessee has tax free interest income and claimed exemption in respect of the interest on bonds and long term capital gains. The A.O. observed that the assessee has received the dividend income and has not made disallowance u/s 14A of the Act. Whereas, the A.O has dealt on the applicable provisions and computed disallowance U/sec the Sec. 14A r.w.r 8D(2)(iii) of I T Rules, which worked out to Rs. 8,39,878/- and since the assessee has received exempted dividend income therefore the A.O. has restricted the disallowance to the extent of Rs. 7,51,031/- and passed the order u/s 143(3) of the Act dated 18.03.2016.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the scrutiny assessment. But the CIT(A) has confirmed the addition in respect of the disallowance u/s 14A of the Act and granted relief in other grounds of appeal and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing the Ld. AR submitted that the CIT(A) has erred in confirming the disallowance u/s 14A r.w.r 8D(2). The Ld. AR submitted that the assessee is having vast experience in business of finance and trading. The assessee is maintaining two separate balance sheets one being balance sheet of personal assets and liabilities and other for the business operations. Further, the assessee has received dividend income and has not claimed any expenditure in earning the dividend income in the profit and loss account. Hence the provisions of sec 14A of the Act cannot be invoked. The Ld. AR substantiated the submissions with the financial statements and judicial decisions and prayed for allowing the assessee appeal. Contra, the Ld. DR supported the order of the lower authorities.

5. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue as envisaged by the Ld. AR that the assessee has received dividend income and has not incurred any expenditure in the respect of earning of dividend income. Further, the assessee has not claimed/debited the expenditure in the books of accounts. The Ld.AR demonstrated the copy of the personal balance sheet as at 31.03.2013 and the business balance sheet as on 31.03.2013. The Ld. AR drew our attention to the capital account in the personal balance sheet, where the assessee has credited the capital account with the salaries and other incomes including capital gains, dividend income and the debits in the capital account are towards the medical insurance, drawings and other payments including the Income Tax and the Security Transaction Tax(STT) on shares. Therefore the contention of the Ld. AR that since no dividend has been utilized for the purpose of business and the business income do not constitute any dividend income therefore the addition made by the A.O. under sec14A of the Act is not sustainable.

6. Further, based on the financial statements produced in the course of hearing find that there is no claim of expenditure in respect of investments in shares & securities and earning the dividend income,

which is in the nature of personal expenses was claimed/debited in the profit and loss account for the year ending 31-03-2013. Whereas, the assessee capital account was debited with drawings and other personal expenses. The submissions of the Ld.AR are realistic and duly supported with the material papers and judicial decisions. We are of the substantive view that the applicability of the provisions of Sec14A r.w.r 8D(2) are invoked only when the expenses are claimed in the books of accounts. We support our view relying on the ratio of decision of the Co-ordinate Bench of the Honble Tribunal on similar issue in ITA No.5024/Mum/2017- ACIT 16(2) Vs. Shri Janak Dilip Dwarkadas. A.Y. 2013-14 dated 04.02.2019 at page 3 Para 8, which is read as under:

*“8. The next issue relates to disallowance made u/s. 14A of the I.T. Act. We noticed that the assessee did not claim any expenditure relating to share investment activity in his profit and loss account. The assessee has charged all expenditure relating to share investment activity to his capital account. When the assessee did not claim any expenditure in the profit and loss account relating to share investment activity, in our view, the question of making any disallowance u/s. 14A of the Act does not arise. We noticed that an identical issue was considered by the Coordinate Bench in A.Y. 2012-13 (referred supra), and it has also taken view that the disallowance u/s. 14A of the Act is not called for, in the facts and circumstances*

*of the case. The facts, being identical in this year also, we uphold the view taken by Ld CIT(A) on this issue by following the decision of co-ordinate bench rendered in the assessee's own case, referred supra."*

7. We find the assessee has not claimed the expenditure in the financial statements. The assessee in the personal Balance Sheet as at 31-03-2013 has disclosed the shares and securities as investments and not as trading asset. We considering the facts, circumstances, provisions of law and judicial decisions are of the opinion that the assessee cannot be subjected to disallowance under section 14A r.w.r 8D(2)(iii) of the I T rules. Accordingly, we set aside the order of the CIT(A) on the disputed issue and direct the Assessing officer to delete the disallowance u/sec section 14A r.w.r 8D(2)(iii) and allow the grounds of appeal in favour of the Assessee.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 06.06.2022.

Sd/-  
(M BALAGANESH)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 06.06.2022

KRK, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

( Asst. Registrar)  
ITAT, Mumbai