

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

**BEFORE, ABY T VARKEY, JUDICIAL MEMBER
&
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1708/Mum/2023
(A.Y. 2014-15)**

Nikhil Jitendra Shah HUF 20, Nagin Mahal, 82 V N Road Mumbai-400020	Vs.	ACIT Circle 17(2) Aayakar Bhavan, Mumbai 400020
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AAAHN3226M		
Appellant	..	Respondent

Appellant by :	Shri. Surendra Nijsure, AR.
Respondent by :	Shri. Ashok Kumar Ambastha, DR.

Date of Hearing	07.08.2023
Date of Pronouncement	24.08.2023

आदेश / O R D E R

PER AMARJIT SINGH :-

1. The present appeal filed by the assessee is directed against the order passed u/s 250 of the Income Tax Act, 1961 ([hereinafter “the Act”] by the Learned Commissioner of Income Tax (Appeals)-28 [hereinafter ‘the CIT(A)'] dated 20.03.2023 for A.Y. 2017-18.
2. The assessee has raised the following grounds of appeal :-
 1. *the Learned CIT(A) erred in law and on facts in confirming the disallowance made by the assessing officer u/s 14A r.w. rule 8D of ₹ 7,20,683/-*

2. *The appellate order passed by the learned CIT(A) in bad in law and should be quashed as it is against the principle of natural justice, depriving the appellant to make submissions in as much as the order was passed during the pendency of the adjournment request of 15 days commencing 15.03.2023, being a submission date fixed vide notice u/s 250 of the Act that would have ended on 30.03.2023, whereas the appellate order was passed on 20.03.2023 without rejecting the adjournment request.*

3. The Fact in brief is that the return of income declaring total income of ₹1,73,30,180/- was filed on 30.11.2014. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued and served on the assessee on 09.09.2015. During the course of assessment the AO noticed that the assessee has claimed exempt dividend income from shares and mutual funds at ₹18,83,413/- and interest on tax free bonds at ₹11,89,296/-. However, the assessee has not made any disallowance u/s 14A r.w.r. 8D of the IT Rule. On query the assessee explained that no expenses were incurred on investment from which exempt income was earned. However, the AO has not agreed with the submission of the assessee and computed disallowance as per the provision of Section 14A r.w.r 8D to the amount of ₹7,20,683/- and added to the total income of the assessee.

4. Aggrieved, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) has adjudicated the appeal exparte by stating that the assessee has not made any compliance to the notices issued during the course of appellate proceedings. Therefore, retreating the facts reported by the AO, the Ld. CIT(A) has dismissed the appeal of the assessee.
5. During the course of appellate proceedings before us the Ld. Counsel of the assessee filed paper book comprising copies of balance sheet and income and expenditure account of the proprietary concern, personal balance sheet and income expenditure of the assessee (HUF) and other details pertaining to the adjournment application filed by the assessee. These details were not filed before the Ld. CIT(A) since the order was passed exparte. The Ld. Counsel by referring details filed at page no. 14 and 15 of the paper book submitted that during the course of appellate proceedings before the Ld. CIT(A) the assessee has filed adjournment application on 03.03.2023 and 09.03.2022 through ITBA and sought adjournment for 15 days till 30.03.2023. However, the Ld. CIT(A) has passed the order on 20.03.2023 by dismissing the appeal of the assessee.
6. The Ld. Counsel pointed out that the relevant supporting materials that assessee has maintained separate accounts for

the purpose of investment and for the purpose of businesses were not considered by the CIT(A), therefore, the order of the Ld. CIT(A) is not justified.

7. On the other the learned Departmental Representative [hereinafter 'the Ld. DR'] submitted that the copies of documents placed in the paper book are required to verify by the Ld. CIT(A).
8. Heard both the sides and perused the materials on record. The AO has computed disallowance u/s 14A r.w.r. 8D to the amount of ₹7,20,683/- considering that assessee has earned exempt income of ₹18,83,413/- from shares and mutual fund and interest of ₹11,89,296/- on tax free bonds. The Ld. CIT(A) has dismissed the appeal of the assessee exparte as assessee could not make compliance before the Ld. CIT(A). Before us the Ld. Counsel submitted that the assessee has sought adjournment from the Ld. CIT(A) as evident from the copy of adjournment application filed on the ITBA. However, the CIT(A) neither rejected the adjournment request nor provided any adjournment and dismissed the appeal of the assessee exparte.
9. We further notice that in this regard the assessee has also filed grievance petition on 27.03.2023 before the Ld. CIT(A). The extract of detail of adjournment request made by the assessee is as under:

<i>Date of Notice</i>	<i>DIN</i>	<i>Date of Hearing</i>	<i>Adjournment Details</i>
03.03.2023	ITBA/NFAC/F/APL_1/2022-23/1050353314(1)	09.03.2023	Adjournment sought for 15 days till 24.03.2023
09.03.2023	ITBA/NFAC/F/APL_1/2022-23/1050556551(1)	15.03.2023	Adjournment sought for 15 days till 30.03.2023

10. The Ld. CIT(A) has neither rejected the adjournment sought by the assessee nor considered the same while deciding appeal of the assessee exparte. In view of the above facts and materials on record it is evident that the Ld. CIT(A) has not considered the documents placed in the paper book since the order was passed exparte, therefore, in the interest of the justice we restore the issue in the appeal to the file of the Ld. CIT(A) for deciding fresh on merits after considering the submission of the assessee and after providing adequate opportunity to the assessee. Therefore, the grounds of appeal of the assessee are allowed for statistical purpose.
11. In the result the appeal of the assessee is allowed for the statistical purpose.

Order pronounced in the open court on 24.08.2023

Sd/-

(ABY T VARKEY)
JUDICIAL MEMBER

Place: Mumbai

Date 24.08.2023

ANIKET SINGH RAJPUT/STENO

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.