

IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI BENCH, PANAJI – VIRTUAL COURT

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.08/PAN/2021
निर्धारण वर्ष / Assessment Year : 2014-15

M/s. Ahiliabai Sardessai, 301, Lotus Court, M. G. Road, St. Inez Junction, Panaji- 403001. PAN : AAGFA9044G	Vs.	ITO, Ward-2(4), Panaji.
Appellant		Respondent

Assessee by : Shri N. J. Prabhudesai
Revenue by : Shri N. Shrikanth

Date of hearing : 17.08.2023
Date of pronouncement : 29.08.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of the National Faceless Appeal Centre, Delhi [‘NFAC’] dated 26.03.2021 for the assessment year 2014-15.

2. Briefly, the facts of the case are that the appellant is a partnership firm engaged in the business of mining. The Return of Income for the assessment year 2014-15 was filed on 30.09.2014 declaring a loss of Rs.4,92,14,101/- and the same was revised at loss

of Rs.6,47,68,218/-. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward-2(4), Panaji-Goa ('the Assessing Officer') vide order dated 29.12.2016 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at a total loss of Rs.5,83,57,432/-. While doing so, the Assessing Officer made addition of Rs.15,65,088/- u/s14A and Rs.48,45,698/- u/s 41(1) of the Act.

3. Being aggrieved by the above additions, an appeal was filed before the NFAC, who vide impugned order, confirmed the disallowance u/s 14A r.w. Rule 8D(2)(iii) of the Income Tax Rules, 1962 ('the Rules') and deleted the addition u/s 14A r.w. Rule 8D(2)(ii). The Id. CIT(A) also deleted the addition on account of sundry creditors of Rs.48,45,698/-.

4. Being aggrieved by the disallowance u/s 14A r.w. Rule 8(D)(2)(iii), the appellant is in appeal before us in the present appeal.

5. Before us, it is contended that the appellant had not incurred any expenditure to earn the exempt income and, therefore, the question of disallowance u/s 14A r.w. Rule 8(D)(2)(iii) does not

arise. He also placed reliance on the decision of the Co-ordinate Bench of the Tribunal in assessee's own case for the assessment year 2015-16 vide ITA No.450/PAN/2018 dated 30.08.2022, wherein, the Co-ordinate Bench of the Tribunal deleted the addition.

6. On the other hand, ld. Sr. DR placing reliance on the orders of the lower authorities submits that the addition should be sustained.

7. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the quantum of disallowance u/s 14A r.w. Rule 8D(2)(iii). The appellant took a consistent view that no expenditure was incurred to earn the exempt income. The lower authorities rejected the contention of the appellant by noting that the quantum of higher magnitude involvement cannot be made without a proper analysis of market conditions, which requires the expertise and, therefore, rejected the contention of the appellant that no expenditure was incurred and computed the quantum of amount of disallowance in accordance with the provisions of Rule 8D(2)(iii) of the Rules. From perusal of the findings of the lower authorities, it would be clear that the rejection of the contention of the appellant that no expenditure was

incurred to earn the exempt income is not based on the satisfaction reached having regard to the books of account. Therefore, rejection of the contention of the appellant is not tenable in the eyes of law. Respectfully, following the decision of the Co-ordinate Bench of the Tribunal in assessee's own case (supra), we direct the Assessing Officer to delete the addition u/s 14A r.w. Rule 8D(2)(iii). Thus, the grounds of appeal filed by the assessee stand allowed.

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

Order pronounced on this 29th day of August, 2023.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 29th August, 2023.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. DR, ITAT, Panaji.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलिय अधिकरण, पुणे / ITAT, Pune.