

**IN THE INCOME TAX APPELLATE TRIBUNAL
“RAJKOT” BENCH, RAJKOT**

[Conducted through E-Court at Ahmedabad]

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 59/Rjt/2020

(निर्धारण वर्ष / Assessment Year : 2016-17)

Shri Saileshbhai Shambhubhai Hirpara C/o. Nishan Export, Dhoraji Road, Jetpur, Rajkot - 360370	बनाम/ Vs.	The Deputy Commissioner of income Tax Circle-1(2), Rajkot
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAEPH3006R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	None
प्रत्यर्थी की ओर से / Respondent by :	Shri Ashish Kumar Pandey, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	23/08/2023
घोषणा की तारीख /Date of Pronouncement	30/08/2023

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal at the instance of the assessee is directed against the order dated 28.01.2020 passed by the Ld. Commissioner of Income Tax (Appeals)-1, Rajkot (in short ‘CIT(A)’) arising out of the assessment order dated 22.12.2018 passed by the DC/AC, Circle-1(2), Rajkot under Section

143(3) of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') for Assessment Year 2016-17.

2. Today, before us, none appeared on behalf of the assessee and neither any adjournment has been sought for. It also appears from the record that on very many occasions, the matter was called on but none appeared on behalf of the assessee. Having no other alternative, we have decided to proceed with the matter ex parte.

3. Ground No.1 relates to disallowance under Section 14A in respect of interest paid by the assessee on LIC loan. Assessee has made investment in partnership firm from which profit has been earned and investment thereupon has been made out of interest bearing fund taken as laon of LIC policies on which interest was also paid. Show cause was issued and finally the Ld. AO made disallowance under Rule 8D r.w.s. 14A of the Act restricting it to the interest expenses claimed.

4. Before the First Appellate Authority, assessee made following submissions:

“A. Re: Disallowance of interest was 144 of Rs. 1135920/-

i. The assessee submits that he is a partner in different firms. He derives Income from interest and remuneration from Nisan Export. The assessee had taken a loan from LIC and the same was given to Nisan Export. The Ld AC has applied sec. 14A and has worked out the disallowance under rule 8D of Rs.1135920, which is the entire amount of Interest paid to LIC. It is respectfully submitted that the disallowance as worked out by the Ld AO is wholly incorrect when the assessee derives the income from various sources and when the assessee has his own capital of a fairly large amount which also shifts/changes from one asset to the other, and therefore it is not correct to make the disallowance of the entire amount of interest

paid on LIC Loan Even otherwise the calculation of disallowance is excessive and incorrect.

Without prejudice the factual position is that the assessee earns interest of Rs. 426571/- from Nisan Exports on his credit capital with that firm. He also earns remuneration of Rs.6000000/- there from and has earned the share of profit of Rs. 19095448/- from that firm. On this share of profit of Rs. 19093448/- from Nisan Exports, though this income is not liable to tax in the hands of the assessee, the firm of Nisan Exports has paid the tax thereon and therefore the same cannot be termed as exempted income per se. Section 144 reads as under.

Expenditure incurred in relation to income not includible in total income:

144 For the purpose of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.

ii. There is another thing also. On a careful reading of the provisions of the section 14A, it states that "No deduction shall be allowed in respect of expense incurred by the assessee in relation to income which does not form part of the total income under this Act." It is submitted that sub section 1 of section 14A provides for disallowance of expenditure incurred by an assessee in relation to the income which does not form part of the total income "under this Act," namely under the Provisions of The Income Tax Act.

On a careful reading of this provision, this sub section makes it clear the disallowance has to be made in respect of expenditure incurred in relation to income which is totally exempt under the provisions of the Income Tax Act and not that income which is exempt in the case of particular assessee. In the present case, the firm of Nisan Export has paid the tax on its profit and therefore what the assessee got by way of profits though the same is not taxable in his hands by virtue of section 10(24), the same does form part of the total income under the provision of the Act namely in the case of the partnership firm of Nisan Export. The legislature has made it very clear while the provision that it is only such income on which tax is not payable by anybody or at any stage that the corresponding expenses against such income should be disallowed.

iii. More importantly, it is pertinent to mention that the share of profit which is tax free in the hands of the assessee, is such income which has not been earned as a result of the capital contributed by him in Nisan Export but has been earned as a result of his right as a partner in the firm of Nisan Export. It is pertinent to mention that there is no compulsion in the partnership deed of Nisan Export to contribute capital so as to qualify as a partner and this is not a condition to be a partner Had it been a case where the assessee's capital was negative, in that case also he would certainly have earned the share of profit from the said firm. In view of that the expense by way of interest paid to LIC has not been incurred in relation to income which does not form part of the total income.

In view of that, since

a. The tax paid profit from Nisan Exports is not such income that that does not form part of the total income under the provision of the Act, in view of the clear language of Sec. 144;

b. What the assessee has earned by way of share of profit from Nisan Exports is not because he has contributed his capital (his owned and borrowed funds) but because of his right as a partner in the firm that he got the share of profit from that firm and therefore without prejudice the expense on interest is not relatable to exempted income and therefore also no disallowance is called for.

So far as the decision in the case of Anant Mahadev Mahajan (ITAT, Ahmedabad Bench) is concerned, it was not the case of the appellant in that case he had earned tax paid profit not because of his investment/capital in the partnership firm but because of his right as a partner in the firm, therefore the facts in that case and in the case of the assessee are certainly distinguishable.

In view of that no disallowance out of interest w/s.144 is called for.”

5. Finally, the Ld. CIT(A) relied upon the judgment passed by the Special Bench, Ahmedabad in the case of Vishnu Anant Mahajan vs. ACIT and upheld the disallowance made by the Ld. AO.

6. In the absence of any assistance rendered by the assessee, we do not find any reason to interfere with the order passed by the Ld. CIT(A). On the basis of judgment passed by the Special Bench, ITAT Ahmedabad, this ground of appeal filed by the assessee is found to be devoid of any merit and, thus, dismissed.

7. Second ground of appeal relates to the addition of Rs.4,95,647/- under Section 23(4) of the Act.

8. The assessee has shown more than one residential properties. The assessee is staying at Mumbai being a self-occupied house property.

However, no rental/deemed rental income has been shown in computation of total income and show cause, therefore, dated 17.12.2018 was issued as to why the addition on account of deemed rental income should not be made. The assessee replied to the show cause in the following manner:

- “1. *"I have a flat at Lalit Kunj, Mumbai which is occupied by my son and wife during the above year and I used to frequently visit my family at Mumbai. Therefore I consider this Mumbai flat as my self-occupied house property. I was staying in the above year at Jetpur along with my mother in her house at Panchavati Society, Dhoraji Road, Jetpur. The same belongs to her and is duly reflected her books of accounts and therefore the Lalit Kunj flat of Mumbai being the self-occupied house property no deemed rent is chargeable on it and I am not liable for notional deemed rent chargeable thereon.*
2. *Regarding the Suncity Pride the same is rented and the rent income has been shown in my return of income.*
3. *Regarding the other house property which is Anand Place at Rajkot. This is a small flat which is vacant, the copy of house tax bill for the same is enclosed herewith.*
4. *Regarding the adoption of 7% of the total value of the property applying the Allahabad High Court Judgement in the case of the Radhaddevi Dalmia vs. CIT 125 ITR 134, I respectfully disagree with the same and submit that the notional rent for the purpose of Section-23 if at all the same is taken, the same to be as per Municipal House Tax bill. Even otherwise no property in the above period can fetch such high rent. The fact is that return on property is very negligible and very low if the rent is considered as return thereon."*

9. The above reply was not found to be acceptable in the absence of any supporting documents and addition of Rs.4,95,647/- under Section 23(4) of the Act was made in the following manner:

"However, the plea of the assessee is not accepted regarding Suncity Pride Flat as assessee has not submitted any supporting documents in support of his claim that flat at Suncity Pride has been let out and rent of the same is shown in the ITR. Therefore, the Annual Rental value 7% of the total value of property for the following properties are taken as deemed annual let out value of the property mentioned above u/s 23(4) of the I.T. Act, 1961 as the ratio laid down by Hon'ble

Allahabad High Court in the decision of the case of Smt. Radha Devi Dalmia V/s CIT(1980) 125 ITR 134, which is fair.

Further, as assessee has not produced any supporting documents for the house tax paid by him during the year under assessment for above flats the deduction of the same is not allowed. However, the standard deduction of 30% as prescribed in the section 24(a) is allowed. Therefore, the income from deemed let out property is calculated as under:

Description of the property	Value of the property as per the balance sheet of the assessee (In Rs.)	Deemed rent @7% of the value of the property as per balance sheet (In Rs.)	Less: Standard deduction of 30% u/s 24(a) (In Rs)	Taxable rent (In Rs)
Flat at Anand Palce, Rajkot	14,75,700/-	1,03,299/-	30,990/-	72,309/-
Flat at Suncity Pride	86,39,543/-	6,04,768/-	1,81,430/-	4,23,338/-
Total taxable rent on the deemed let out property				4,95,647-

Therefore, Rs. 4,95,647/- is added back to total income of the assessee the head "Income from house Property" for the year under assessment.

10. Before the First Appellate Authority, the assessee reiterated the stand taken before the Ld. AO. With the following observation, the Ld. CIT(A) upheld the addition made by the Ld. AO:

"In this ground the assessee has challenged the addition of Rs. 495647/- as deemed rent of property u/s 23(4). The AO has computed the rent at 7% of the value the property in the balance sheet in view of the decision of Hon. Allahabad High Court in the case of Smt. Radhadevi Dalmia vs. CIT(1980) 125 ITR 134. The AO has also allowed 30% standard deduction u/s 24(a) in computing the taxable deemed rent. The assessee has contended that deemed rent computed following the decision of Hon. Allahabad High Court in the case of Smt. Radhadevi Dalmia vs. CIT(1980) 125 ITR 134 is much on higher and no property can fetch so big rent. The assessee has contend that the municipal tax should be basis of deemed rent computation. The assessee has alternatively argued that out of the rental value worked out @ 7%, of 30% u/s 24(a) for repair should be granted.

Having considered the facts and circumstances of the case I find that valuation done by the AO is based on decision of Hon. Allahabad High Court. And hence contentions of assessee are not tenable. The alternative plea of the assessee is also not tenable because the AO has already allowed the deduction of 30% u/s 24(a) out

of the deemed rent of 7% of the value of the property. Therefore no interference is warranted in action of the AO. Ground of appeal is rejected.”

11. The value has been shown by the Ld. AO on the basis of decision passed by the Hon'ble Allahabad High Court in the case of Smt. Radha Devi Dalmia vs. CIT [1980] 125 ITR 134 and already allowed standard deduction of 30% under Section 24(a) of the Act. Hence, in the absence of any assistance rendered by the assessee, we do not find any reason to interfere with the order passed by the Ld. AO and upheld by the Ld. CIT(A) impugned before us. Thus, this ground of appeal filed by the assessee is found to be devoid of any merit and, thus, dismissed.

12. In the result, assessee's appeal is dismissed.

This Order pronounced on	30/08/2023
---------------------------------	-------------------

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad; Dated 30/08/2023
S. K. SINHA

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

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

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

By order/आदेश से,

Deputy/Asstt. Registrar
ITAT, Rajkot