

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 125/Jodh/2022
Assessment Year: 2015-16**

Rajasthan Marudhara Gramin Bank 1, Tulsi Tower, 9 th A Road, Sardarpura Jodhpur [PAN:AACAR0020J] (Appellant)	Vs.	ACIT, Circle-3, Jodhpur. (Respondent)
--	-----	--

Appellant by	Sh. N. R. Mertia, CA.
Respondent by	Ms. Nidhi Nair, JCIT DR

Date of Hearing	10.10.2023
Date of Pronouncement	12.10.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee is directed against the order of the ld. Commissioner of Income Tax (Appeals) NFAC, Delhi, [in brevity the ‘CIT (A)’], order passed u/s 250 of the Income Tax Act 1961, [in brevity ‘the Act’] for A.Y. 2015-16. The impugned order was emanated from the order of the ld. Asstt. Commissioner of Income Tax, Circle-3, Jodhpur,[in brevity ‘the AO’] order passed u/s 143(3)/147of the Act.

2. The assessee has taken the following ground:

“1.a. That in the facts and circumstances of the case and in view of the detailed submissions made on facts of the case as well as on legal issues involved in this case, the Commissioner of Income Tax (Appeals), NFAC, Delhi [hereinafter the ld. CIT(A)] seriously erred in law and facts in maintaining disallowance of **Rs. 89,18,157/-** made by the ld. A.O comprising direct expenses of **81,68,157/-** at Sr. No. 2 and indirect expenses at Sr. No. 3 of **Rs. 7,50,000/-** out of interest expenses as per table in **Pg. No. 5 & 6** of the asst. order and was disputed in appeal before him.

b. The Ld. CIT(A) ought not to have maintained the said disallowance of Rs.89,18,157/-

c. The Hon'ble ITAT may very kindly delete the same.

2. a. That in the facts and circumstances of the case the ld. CIT(A) has erred in law and facts in maintaining the working of the ld. A.O of disallowed sum of **Rs. 89,18,157/-** u/s 14A of the Act r.w. Rule 8D of the Rules as against (0) Zero disallowance worked out by the appellant because factually no direct expenses of interest was attributable to the investment made in securities, yielding exempted income not includible in the total taxable income. The ld. A.O had also not found out any such invested amount nor pointed out the same in asst. order except his bald assumptions and presumptions.

b. The ld. CIT(A) thus ought not to have maintained the said disallowance of Rs. Rs. 89,18,157/-

c. The Hon'ble ITAT may very kindly delete the same.

3. That the ld. CIT(A) erred on facts when he stated wrong facts in last para of the impugned order as under:-

"I have considered the submission of the assessee. The assessee while submitting the details has relied on numerous decision rather than bringing on record the entire facts of the case".

The above finding in the last para of the impugned order of CIT(A) is absolutely incorrect, unjustified or to say false because the appellant had in its written submission starting from the Pg. No. 9 Para No. (iii) onwards

stated and brought the complete facts and figures on record which established that the appellant's investment was out of the taxable income of the year. Thus the appellant had fully established that it was the taxable profit of the period itself which was sufficient to invest in securities, yielding exempted income. Hence the Id. CIT(A) in view of the availability of facts before him (which were also brought on record of the Id. A.O by the appellant) seriously erred in mentioning wrong facts in the impugned order thus acted injudicious and based the decision on non-existing facts by maintaining the disallowance on assumptions and presumptions only, which deserves to be deleted.

- 4. a. That when neither Sec. 14A nor Rule 8D of IT Act and It Rules respectively were attracted / applicable in view the facts that the entire investment of funds in such securities was fully attributable to and out of the taxable income earned by the appellant during this year itself, and were also out of its own capital and free reserves figures which justified and fully supported the appellant's this contention / submissions on fact and in law. Hence the Id. CIT(A) erred in law and facts.*
- b. The Id. CIT(A) thus ought not to have maintained the said disallowance of Rs. Rs. 89,18,157/-*

c. The Hon'ble ITAT may very kindly delete the same.

5. That in the facts and circumstances of the case and in view of the detailed facts and figures provided by way of charts in the written submission that the Id. CIT(A) seriously erred in law facts in not at all discussing and dealing with the submissions made before him. The Id. CIT(A) further erred in passing a non-speaking order in violation of mandate of Sec. 250(6) requiring a well-reasoned and speaking order from him. But the Id.

CIT(A) completely failed in discharging his duty when he had simply proceeded to quote almost all the paras of the assessment order as well as also entire written submissions of the appellant in the appellate order and he did not deal with the facts and figure and submissions made by the appellant, hence the impugned asst. order and CIT(A)'s order are not at all sustainable and have to be quashed, without providing any second inning.

6. That in view of the facts that the impugned appellate order is full of type graphical errors in quoting / reproducing the submissions of the appellant as well as quoting of assessment order which reflected a careless manner in which the order was prepared and sent without having a second look thereon. This rendered at any places the order un-understandable to an independent reader, therefore, when such an order is passed, it has to be

cancelled without any second inning because all the facts and figures and position of law was before the deciding the authority but he proceed in an injudicious manner in without giving any reasoned order.

7. The ld. CIT(A) has also erred in law and facts in not touching upon the disputed issue relating to jurisdictional aspect for a Limited Scrutiny Assessment which the Id. A.O by passing the mandates of the law, hence the impugned order was also without jurisdiction on that count. The same deserves to be quashed and cancelled.

8. That in the facts and circumstances of the case, the ld CIT(A) erred in law and fact in not proceeding to decide the issue of chargeability of interest as in the facts and circumstances of the case such interests were not at all chargeable.

9. The appellant craves leaves to add, alter, substitute withdraw, modify or amend any of the ground of appeal here in above taken on or before the hearing.”

3. Brief fact of the case is that the assessee is a Gramin Bank. In the impugned assessment year the assessee invested 15 crore in UTI in two instalments Rs. 10 Crore on dated 21.05.2014 and Rs. 5 Crore on dated 31.03.2015. The assessment was framed u/s 143(3)/147. The ld. AO calculated the expenses related to exempted income which was yielded amount to Rs.2,91,01,555/- from the investment in UTI amounting to Rs. 15 crore. The ld. AO applied the Rule 8D r.w.s. 14A and calculated the expenses which is related to exempted income amount to Rs.89,18,157/-. The amount of Rs.89,18,157/- was added back with the total income of the assessee for contravening of section 14A of the Act. Aggrieved assessee filed an appeal before the ld.

CIT(A). The ld. CIT(A) without considering the submission of the assessee passed the order against assessee. Being aggrieved assessee filed an appeal before us.

4. The ld. AR for the assessee claimed that the assessee had invested Rs.15 crore in UTI out of his own saving. The ld. AR placed the detail of capital structure which is as below:

1.	Capital	Rs. 181,93,17,500.00
2.	Reserve & Surplus	Rs. 317,64,29,301.26
	Total	Rs. 499,57,46,801.26

During hearing the ld AR vehemently argued and placed the written submissions which are kept in the record. The ld. AR claimed that the CIT(A) has passed the order very slip short manner without considering the entire submission of the assessee. The ld. AR further claimed that there is no such any expenses was incurred related to investment in UTI by the assessee. He further claimed that the addition was made u/s 14A(2) which is not correctly applicable but the correct section would be applicable to Sec 14A (3).

4.1 The ld. AR submitted a calculation which are reproduced as below:

Formula	A.O's wrong working	Appellant's correct working
<u>A * B</u>	<u>4,41,49,88,428 * 15,00,00,000</u>	<u>0*15,00,00,000</u>

<p>C</p> <p><i>Where</i></p> <p><i>A = amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year;</i></p> <p><i>B = the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;</i></p> <p><i>C = the average of total assets as appearing in the balance sheet of: the assessee, on the first day and the last day of the previous year;</i></p>	<p>81,07,68,28,408</p> <p>Sol.:81,68,157</p>	<p>81,07,68,28,408</p> <p style="text-align: center;"><u>0</u></p> <p>81,07,68,28,408</p> <p>Sol.:0 (Zero)</p>
--	--	--

5. The Id. DR vehemently argued and fully relied on the order of the revenue authorities.

6. We heard the rival submission and consider the documents available in the record. The Id. AR specifically drawn our attention to balance sheet as on 31.03.2015 and Profit and loss account for year ended 31.03.2015, **APB page nos. 33 to 48** of the assessee. But the assessee claimed that the entire investment was duly invested from assessee's own fund and no expenses were incurred to earn the exempted income. In fact, the Id. appellate authority, without considering and without any reasonable opportunity passed the order and the assessee was denied to explain the correct fact. In our considered view the matter is remitted back to the file of the Id. CIT(A). Both the parties, the

assessee and revenue have accepted in set aside of appeal order. Needless to say, the assessee should get a reasonable opportunity in set aside proceeding.

7. In the result, the appeal of the assessee bearing **ITA No. 125/Jodh/2022** is allowed for statistical purposes.

Order pronounced in the open court on 12.10.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

(On Tour)

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order