

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 691/Ind/2016
Assessment Year:2009-10

Gurvinder Singh Bhatia, 8/5, BCC House, Manormaganj, Indore.	<u>बनाम/</u> Vs.	Addl. CIT, Range 3, Indore.
(Assessee / Appellant)		(Revenue / Respondent)
PAN: ABHPB 5245 N		
Assessee by	Shri Harsh Vijaywargiya, CA & Ld. AR	
Revenue by	Ms. Simran Bhullar, CIT DR	
Date of Hearing	19.12.2023	
Date of Pronouncement	21.12.2023	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 16.03.2016 passed by learned Commissioner of Income-Tax (Appeals)-I, Indore ["Ld. CIT(A)"], which in turn arises out of assessment-order dated 17.11.2011 passed by learned Addl. CIT, Range-3, Indore ["Ld. AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2009-10, the assessee has filed this appeal. on following grounds:

- (i) *That on the facts and in the circumstances of the case, the Id. CIT has erred in confirming and disallowing an amount of Rs. 8,38,389/- on account of expenses incurred for earning exempted income by applying provision of Section 14A read with Rule 8D even when the assessee has maintained separate books of accounts and no expenses were claimed by the assessee in his return of total income for earning the*

exempt income. The said disallowance therefore requires to be deleted in full.

(ii) *That the order is wrong and bad in law."*

2. Heard the learned Representatives of both sides at length and case-records perused.

3. The solitary issue involved in present appeal is the disallowance of Rs. 8,38,389/- made by AO u/s 14A read with Rule 8D on account of expenditure for earning exempted income in the form of dividend on shares.

4. Ld. AR for assessee straightaway carried us to Page No. 2-3 of assessment-order where the AO has made this disallowance, as under:

"1. Disallowance u/s 14A r.w. Rule 8D:

Assessee has received dividend u/s 10(34) of Rs. 55,62,998/- during the year under consideration from ~~Bhatia Coal Corporation~~ (Ld. AR pointed out that it should be 'from companies'). Assessee has not made any disallowance u/s 14A at the time of computation of income. It has been specifically asked vide questionnaire dated 18.07.2011 to file complete detail alongwith evidence of exempted income and explain why expenses incurred for earning exempted income may not be disallowed u/s 14A. Assessee vide his reply dated 16.08.2011 and 14.11.2011 submitted that no expenses was claimed by the assessee, thus, no disallowance is called for as per provisions of section 14A of the Income-tax Act, 1961.

The contention of the assessee is not acceptable. It has been observed during the course of assessment proceedings that assessee has claimed expenses on account of interest Rs. 5,17,886/- in the proprietary concern M/s. Bhatia Coal Corporation. Although, assessee is maintaining separate accounts in individual capacity as well as Prop. M/s. Bhatia Coal Corporation, but funds are being utilized for making investment in individual capacity also. Moreover, as per the decision of Mumbai ITAT Special Bench in the case of Daga Capital Management 119 TTJ 289, Rule 8D is mandatory and expenses have to be disallowed against the exempted income earned by the assessee during the year. Keeping in view these facts expenses on the basis of rule 8D has been calculated and amount of Rs. 8,38,389/- is disallowed and added back to the taxable income of the assessee."

5. The assessee carried matter in first-appeal but the CIT(A) upheld disallowance by passing following order:

“2. Finding and order :-

The assessee's submission and the assessment order has been considered. The assessee has claimed that he is maintaining separate books of accounts for Prop. Concern and his individual books. Entire amount of investment were reflected in his individual books of accounts. That no expenditure was incurred and claimed by the assessee in his individual accounts thus provisions of section 14A of the Income-tax Act, 1961, is not applicable in the present case.

Assessee is an individual and has proprietorship business in the name of Bhatia Coal Corporation. In the books of Bhatia Coal Corporation, the total expenses debited is of Rs. 16,30,094/-. The assessee has trying to claim that effort involved in maintaining such a huge portfolio of shares was without any cost and without assistance of anybody else. The assessee is having total investment in shares and mutual funds of Rs. 172447124/- i.e. more than Rs. 17.24 crore. The assessee has been buying and selling shares over the years, for maintain the portfolio and for buying and selling of shares the assessee must be incurring administrative cost and must be utilizing the assistance of staff also. Therefore, the contention of the assessee that no expenditure was incurred to earn tax free income of Rs. 5562998/- is not believable and is practically impossible. Section 14A reads as under :-

Expenditure incurred in relation to income and includible in total income.

“14A.(1) For the purposes 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.

(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the AO, having regard to the accounts of the assessee is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act.

Provided that nothing contained in this section shall empower the AO either to reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee u/s 154 for any assessment year beginning on or before the 1st day of April, 2001.”

Section 14A(3) clearly says that section 14A(2) will be applicable even in those cases where an assessee claims that no expenditure has been incurred by him

in relation to income which does not form part of the total income. In this case the assessee must have utilized office and staff of Bhatia Coal Corporation to maintain share portfolio and to keep a tab and account for dividend income received from different companies.

In view of this, the disallowance made by the AO u/s 14A r.w. rule 8D is upheld."

6. Analysing and assailing the orders of AO, Ld. AR raised multiple objections, namely (i) The assessee has categorically and correctly claimed before AO that no expenditure had been incurred for earning exempted dividend but the AO has disregarded such submission and made disallowance which is absolutely wrong; (ii) The AO has made disallowance of Rs. 8,38,389/- without giving any working or calculation, therefore the disallowance is baseless, arbitrary and not sustainable; and (iii) Though the AO has rightly noted the factual point that the assessee has claimed interest of Rs. 5,17,886/- in the books of his proprietary business M/s Bhatia Coal Corporation and the assessee has maintained separate books of such proprietary business and personal affairs. But despite such noting by himself, the AO has overlooked the fact that the investments in shares were made by assessee in his personal books out of funds available in personal books for which no interest has been incurred/claimed in personal books at all. The interest of Rs. 5,17,886/- claimed in M/s Bhatia Coal Corporation is for the loans taken for carrying on business of that proprietary concern and the same does not relate to the funds invested in shares. In such a situation, how can the AO make disallowance u/s 14A? Ld. AR also carried to the Balance-Sheet and P&L A/c of M/s Bhatia Coal Corporation as well as personal affairs of assessee filed in the Paper-Book to support this stand. With these contentions, Ld. AR submitted that the disallowance made by AO is patently wrong for several reasons and the same must be deleted.

7. Ld. DR for revenue strongly supported the orders of lower-authorities and re-iterated the observations of AO and CIT(A) made therein and urged to uphold the disallowance.

8. We have considered rival submissions of both sides and perused the orders of lower-authorities as also the documents placed in the Paper-Book to which our attention has been drawn. After a careful consideration, we find that there are several shortcomings in the orders of lower-authorities due to which the impugned disallowance is not sustainable. Firstly, the assessee is categorically claiming that no expenditure had been incurred for earning exempted income yet the AO has made disallowance without establishing that the assessee has in fact incurred any such expenditure. Secondly, the AO has made disallowance of Rs. 8,38,389/- just by citing section 14A / rule 8D but it is not coming from AO's order as to how the amount of disallowance has been arrived at. Ld. AR is right in claiming that the disallowance has no working and it is arbitrary. Thirdly, the assessee has maintained separate books of his proprietary business M/s Bhatia Coal Corporation and personal affairs. The interest expenditure of Rs. 5,17,886/- adopted by AO as basis for making disallowance is in fact recorded and claimed in business books. On the other hand, the investments in shares are recorded in personal books. Although personal books are also having borrowed funds but there is no interest expenditure claimed in personal books. In such a case, it is difficult to understand how the interest of Rs. 5,17,886/- incurred and claimed in business books can be a basis for projecting disallowance *qua* the investments recorded in personal books. It is not the stand of revenue that there is any indirect route, accounting adjustment or other circuitous modus adopted by assessee for recording of interest expenditure in business books whereas the funds have been utilized for making investment in shares. Fourthly, the CIT(A), while upholding disallowance, has adopted an altogether new stand not even observed by AO. He has noted that the office and staff of M/s Bhatia Coal Corporation must have been utilized to maintain portfolio of shares and earn dividend income which is absent AO's assessment-order. Thus, looking into all aspects, we find that the lower-authorities have not made out a successful case to make/uphold arbitrary and baseless disallowance in the hands of

assessee. In the situation, we are inclined to delete the disallowance and we do so. The assessee succeeds in its grounds.

9. Resultantly, this appeal of assessee is allowed.

Order pronounced in the open court on 21.12.2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER
Indore

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

दिनांक /Dated : 21.12.2023
CPU/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore*