

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI R.K. PANDA, VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.488/PUN/2024
निर्धारण वर्ष / Assessment Year : 2020-21

Dy. Commissioner of Income Tax, Circle Pune	Vs.	Apoorva Ashokkumar Patni, S. No. 1A Irani Market Compound, Yerwada S.O.Maharashtra - 411006 PAN : AGUPP5918J
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

Assessee by :	Shri C.H. Naniwadekar
Department by :	Shri Pawan Bharati
Date of hearing :	18-06-2024
Date of Pronouncement :	27-06-2024

आदेश / ORDER

PER ASTHA CHANDRA, JM :

The appeal filed by the Revenue is directed against the order dated 18.12.2023 of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi ["CIT(A)"] pertaining to Assessment Year ("AY") 2020-21.

2. The Revenue has taken the following grounds of appeal:-

- (a) *Whether on the facts and in the circumstances of the case & in the law, the CIT(A) is correct in holding the losses suffered on investment through Portfolio Management Services to the tune of Rs.13,19,33,844/- as capital loss rather than business losses as held by the AO?*
- (b) *Whether on the facts and in the circumstances of the case & in the law, the CIT(A) has erred in deleting the addition made by the AO on account of disallowance u/s 14A read with Rule 8D amounting to Rs.4,73,06,926/- by relying merely on the orders of CIT(A) and ITAT in assessee's own case for previous years and not on the merits of the case?"*

3. We have heard the Ld. DR who has supported the order of Ld. Assessing Officer ("AO"). The Ld. AR submitted that both the issues

involved in the appeal are covered in favour of the assessee by the order of Tribunal in assessee's own case pertaining to earlier years.

4. We have considered the submissions of the parties and perused the records.

5. On the issue of losses suffered on investment through Portfolio Management Services (PMS) to the tune of Rs.13,19,33,844/-, the Ld. CIT(A)'s observations and findings are as under :-

“5.2 Ground No. 2 : In this ground of appeal the appellant has agitated against the investment through PMS as business loss of Rs.13,19,33,844/-.

5.2.1 I have considered the submission of appellant. I find that on similar facts and issue in the appellants case, Ld. CIT(A), Pune-5 has decided upon the issue in favour of the appellant for A.Y. 2017-18 vide order dated 29.01.2020 whereupon he has relied upon his predecessor's order in appellant own case for A.Y. 2015-16.

5.2.2 It is further noted that Hon'ble ITAT Pune Bench-B vide order dated 30.08.2018 in ITA No. 1706/PUN/2016 for A.Y. 2012-13 has decided the appellants case for A.Y. 2008-09.

5.2.3 In view of the above and since the issue involved is identical for the current appeal, ground No. 2 of appeal is hereby allowed.”

6. Nothing has been brought on record by the Ld. DR to indicate that the decision(s) of the Tribunal in assessee's case on identical issue for AYs 2008-09, 2012-13, 2015-16 and 2017-18 in favour of the assessee have been interfered by the higher judicial forum. We, therefore, concur with the findings of Ld. CIT(A) which are in consonance with the decisions of the Tribunal. Accordingly, we reject ground No. 1 of the Revenue.

7. Ground No. 2 of the Revenue relates to disallowance of Rs.4,73,06,926/- u/s 14A r.w. Rule 8D. The Ld. AO has discussed this issue in para 6.1 of the assessment order. Before the Ld. AO the assessee submitted that the issue of disallowance does not arise in the case of the assessee. Rejecting the assessee's contention and observing that section 14A disallowance requires to be computed in respect of all the investments as submitted by her which are capable of generating exempt dividend income, the Ld. AO made the impugned disallowance.

8. Aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who deleted the disallowance by recording the following findings :-

“5.1 Ground No. 1, 3 & 4 In these grounds of appeal, the appellant has agitated against the disallowance of Rs.4,73,06,926/- on account of u/s 14A.

5.1.1 This issue is covered by appellants own case on similar issue by order Ld. CIT(A), Pune-5 for A.Y. 2017-18 vide order dated 29.01.2020.

5.1.2 It is further noted that Hon'ble ITAT Pune Bench-B vide order dated 30.08.2018 in ITA No. 1706/PUN/2016 for A.Y. 2012-13 has decided the appellant's own case on this issue in favour of the appellant by relying upon appellants case for A.Y. 2008-09.

5.1.3 In view of the above and since the issue involved is identical for the current appeal, ground No. 1, 3 & 4 of appeal are hereby allowed."

9. We have heard the Ld. Representatives of the parties. Admittedly, the issue is covered in favour of the assessee and against the Revenue by the orders of Ld. CIT(A) and the ITAT in assessee's own case for earlier years. In the absence of any material brought by the Revenue on record to show that those decision(s) of ITAT have been reversed by any higher judicial forum in favour of the Revenue, we endorse the findings of Ld. CIT(A) which are in accord with the decisions of the Tribunal on identical facts in assessee's own case for earlier years. Accordingly, ground No. 2 is also decided against the Revenue.

10. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 27th June, 2024.

Sd/-
(R.K. Panda)
VICE PRESIDENT

Sd/-
(Astha Chandra)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 27th June, 2024.
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune