

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER
&
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 1134/Ahd/2023
(निर्धारण वर्ष / Assessment Year : 2016-17)

Deputy Commissioner of Income Tax Vadodara	बनाम/ Vs.	Jayant Shantilal Sanghvi Pratham, Makrand Desai Road, Gotri, Vadodara, Gujarat 390007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ANRPS3651F		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Ashesh R Rewar, Sr. DR
प्रत्यर्थी की ओर से/Respondent by :	Shri Milin Mehta, A.R.

Date of Hearing	22/07/2024
Date of Pronouncement	26/07/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

This appeal is filed by the Revenue against the order of National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’) dated 06.11.2023 for the Assessment Year 2016-17.

2. The brief facts of the case are that the assessee, an individual, e-filed return of income for A.Y. 2016-17 on 29.09.2016 declaring total income of Rs.13,82,36,020/-. In the course of assessment, the AO found that the assessee had declared exempt income of Rs.4,02,26,125/- in respect of profit

from various firms, capital gain under Section 10(38) of the Income Tax Act, 1961 (in short 'the Act'), interest on PPF, dividend from shares and dividend from mutual funds. However, no disallowance was made under Section 14A of the Act by the assessee. The AO, therefore, made addition of Rs.1,51,18,278/- under Section 14A read with Rule 8D of IT Rules.

3. Aggrieved with the order of the AO, the assessee had filed an appeal before the First Appellate Authority which was decided by the Ld. CIT(A) vide the impugned order. The Ld. CIT(A) held that no satisfaction had been recorded by the AO as mandated under Section 14A(2) r.w.s. 14A(3) of the Act and Rule 8D (1) of the IT Rules and that the disallowance was worked out mechanically by the AO. He, therefore, deleted the entire addition of Rs.1,51,18,278/- made under Section 14A of the Act.

4. Now, the Revenue is in appeal before us.

5. The following grounds have been taken in this appeal:

"1. "Whether Ld. CIT(A) was justified in deleting the disallowance under section 14A read with Rule 8D of the Act without appreciating the fact that the AO has drawn due satisfaction for invoking provisions of section 14A read with Rule 8D of the Act and has also issued specific Show Cause Notice to the assessee, while passing assessment order?"

2. The appellant craves leaves to add, modify, amend or alter any grounds of appeal at the time of, or before, the hearing of appeal."

6. Shri Ashesh R Rewar, Sr. DR appearing for the Revenue submitted that the Ld. CIT(A) did not examine the merit of the addition made under Section 14A of the Act and that he has

deleted the entire addition only on the ground that no satisfaction was recorded by the AO. The Ld. Sr. DR has drawn our attention to Para 5.1 of the assessment order wherein the AO had categorically recorded his satisfaction regarding disallowance under Section 14A of the Act and, thereafter, had also allowed opportunity to the assessee to explain why the said disallowance should not be made. In view of these facts, the Ld. Sr. DR submitted that the finding as given by the Ld. CIT(A) was not correct. He further submitted that the disallowance was made by the AO in accordance with the working as provided under Rule 8D of the IT Rules.

7. Per contra, Shri Milin Mehta, Ld. AR for the assessee submitted that no expenditure was incurred by the assessee for earning the exempt income and this fact was brought to the notice of the AO in the course of assessment proceedings. The AO without examining the contention of the assessee on merits had mechanically disallowed Rs.1,51,18,278/- under Section 14A of the Act, whereas, the total expenditure debited to P&L account of the assessee was Rs.55,87,108/- only. The Ld. AR has drawn our attention to the details of all the expenses as debited to P&L account and submitted that none of the expenses were incurred or laid out for earning of the exempt income. The Ld. AR supported the order of the Ld. CIT(A) and relied upon the decision of the Hon'ble Supreme court in the case of *Maxopp Investment Ltd. vs. CIT, (2018) 91 taxmann.com 154 (SC)*.

8. We have carefully considered the rival submissions and the facts of the case. The provision of Section 14A stipulates that 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 of the assessee. This section also empowers the AO to determine the amount of expenditure incurred in relation to such income which does not form part of the total income, if the AO 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. The contention of the assessee is that no expenditure was incurred for earning of the exempt income. It is found that the AO did not examine the claim of the assessee and has made the disallowance under Section 14A of the Act in a mechanical manner. The assessee had claimed expenditure of Rs.30,17,711/- in respect of interest on margin funding in its P&L account. However, the AO had worked out the disallowance of Rs.34,64,991/- in respect of interest expenditure. The disallowance on account of interest could never have been more than the actual interest expense claimed by the assessee as deduction. Further, the AO had also disallowed Rs.1,16,53,287/- on account of administrative expenses @ 0.5% of average value of investment. The disallowances as made by the AO is not found to be correct. The interest of Rs.30,17,711/- on margin funding was not incurred for earning of any exempt income. The assessee had explained that the income from margin funding was utilized in option trading and the assessee had

offered income of Rs.10,88,19,185/- derived from the option trading for tax. From the details of the interest and finance charges as brought on record, it is apparent that no part of interest and finance charging was utilized towards earning of any exempt income.

9. The other expenditure debited to P&L account were administrative expense of Rs.20,65,427/- and depreciation of Rs.4,26,403/-. It is found that the administrative expense comprises of audit fee, legal and professional charges and donation. The entire donation amount of Rs.12,45,500/- was added to the income in the computation of income by the assessee himself. Other expenses in respect of audit fee, legal and professional charges as well as depreciation cannot be held as incurred towards earning of any exempt income. Therefore, we find merit in the submission of the assessee that no part of expenditure debited to P&L account of the assessee was incurred for earning of any exempt income. It has been held by the Hon'ble Supreme Court in the case of *Maxopp Investment Ltd. (supra)* that if the expenditure incurred has no casual connection with exempt income, such expenditure would be treated as not related to the income that is exempted from the tax and that such expenditure would be allowed as business expenditure. To reproduce from the said order:

“32. In the first instance, it needs to be recognised that as per section 14A(1) of the Act, deduction of that expenditure is not to be allowed which has been incurred by the assessee "in relation to

income which does not form part of the total income under this Act". Axiomatically, it is that expenditure alone which has been incurred in relation to the income which is includible in total income that has to be disallowed. If an expenditure incurred has no causal connection with the exempted income, then such an expenditure would obviously be treated as not related to the income that is exempted from tax, and such expenditure would be allowed as business expenditure. To put it differently, such expenditure would then be considered as incurred in respect of other income which is to be treated as part of the total income."

10. The contention of the Revenue is that the Ld. CIT(A) was not correct in deleting the addition only on the ground that no satisfaction was recorded by the AO as mandated under Section 14A(2) of the Act. It is found that the AO had invoked the provision of Section 14A r.w. Rule 8D of IT Rule after drawing due satisfaction and issuing specific show cause notice to the assessee. So, the finding of the Ld. CIT(A) to that extent cannot be held as correct. At the same time, the AO has not drawn any casual connection of the expenses debited to the accounts with the exempt income and, therefore, the disallowance as made by the AO cannot be sustained. The provision of the Act does not empower the AO to make the disallowance in a mechanical manner. The AO had to first rebut the claim of the assessee that no expenditure was incurred for earning of the exempt income. From the nature of the expenses debited to the accounts and the discussions as aforesaid, we do not find any casual connection between the expenses debited to the account and the exempt income. Therefore, the AO was not correct in making the disallowance under Section 14A of the Act. The order of the Ld.

CIT(A) deleting the disallowance under Section 14A(2) of the Act is, therefore, upheld for this reason.

11. In the result, appeal preferred by the Revenue is dismissed.

This Order pronounced on 26/07/2024

Sd/-
(SUCHITRA RAGHUNATH KAMBLE)
JUDICIAL MEMBER

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 26/07/2024

S. K. SINHA

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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.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad