

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "A" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No. 4343/Mum/2024
Assessment Year : 2018-19

AHA Holdings Private Limited, Unit No. 403, New Udyog Mandir No. 2, Mogul Lane, Mahim (West), Mumbai PAN : AAFCS6404E	vs.	Deputy Commissioner of Income Tax, Circle-6(1)(1), Aayakar Bhavan, Mumbai.
(Appellant)		(Respondent)

For Assessee :	Shri K. Gopal & Ms. Neha Paranjpe
For Revenue :	Shri Rama Krishn Kedia, Sr.DR

Date of Hearing :	18-12-2024
Date of Pronouncement :	19-12-2024

ORDER

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dt.20-02-2024 passed by the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi [‘Ld.CIT(A)’] and it relates to AY. 2018-19. The only issue urged in this appeal relates to disallowance u/s. 14A of the Income Tax Act, 1961 (‘the Act’).

2. The appeal is barred by limitation by 137 days. The assessee has filed a petition explaining the delay. The main reason cited is that the director

of the company, who was looking after the income tax matters resigned and further, the order sent to the email id of the company. At that relevant point of time, one of the group companies was facing NCLT proceedings. Hence all the staff members were giving attention to that proceedings. Accordingly, it is stated that the order passed by Ld CIT(A) escaped attention of the assessee. Subsequently, when the penalty order was received, it was found out that the Ld CIT(A) had already passed the order. Thereafter, the present appeal was filed immediately. Accordingly, it is prayed that the delay of 137 days may be condoned. We heard the parties. Having regard to the submissions made, we are of the view that there was reasonable cause for the assessee in filing this appeal belatedly. Accordingly, we condone the delay and admit the appeal for hearing.

3. The facts relating to the case are stated in brief. During the year under consideration, the assessee earned exempt income by way of dividends. The AO has noted the same as Rs. 29,46,276/- at Page No.2 of his order. The Ld.AR submitted that the actual exempt income earned by the assessee was Rs. 14,73,138/- and assessee has submitted the same before the AO and the said submission is extracted at Page No.3 of the assessment order. Accordingly, the correct exempt income is taken as Rs.14,73,138/-. The Ld.AR submitted that the assessee disallowed a sum of Rs. 3,84,000/- voluntarily. However, the AO computed the disallowance as per Rule 8D of the Income Tax Rules, 1962 ('the Rules') at Rs. 1,30,19,849/- and added the same even without adjusting the voluntarily disallowance made by the assessee. He submitted that the same amount was added for computing the book profits u/s. 115JB of the Act.

4. The Ld.AR further submitted that the Ld.CIT(A) upheld the disallowance made by the AO.

5. The Ld.AR submitted that it is a well settled principle that disallowance u/s.14A of the Act should not exceed the exempt income. Accordingly he submitted that that the AO may be ordered to restrict the disallowance to the amount of exempt income after deducting the amount voluntarily disallowed by the assessee u/s 14A of the Act in the return of income.

6. We heard the Ld.DR and perused the record. We notice that the Hon'ble Delhi High Court in the case of PCIT vs. IL&FS Energy Development Company Ltd., (2017) SCC Online DEL 9893 has held that disallowance u/s. 14A of the Act should not be made if the assessee had not earned any exempt income. We also notice that the Hon'ble Delhi High Court in the case of PCIT vs. M/s.Caraf Builders and Constructions Pvt. Ltd., in ITA 1260/2018 dt.13th November, 2018, has held that disallowance u/s. 14A of the Act cannot exceed the exempted income. Accordingly, following the above said decisions rendered by the Hon'ble Delhi High Court, we set aside the order passed by the Ld.CIT(A) and direct the AO to restrict the disallowance to the amount of exempt income less the amount voluntarily disallowed by the assessee u/s 14A of the Act in the return of income. We noticed earlier that the correct amount of exempt income was stated by the assessee as Rs.14,73,138/-. The AO may verify the same, while giving effect of this order and accordingly pass the order following the direction given above.

7. We notice that the Ld.CIT(A) has added the amount computed by him u/s. 14A of the Act to the net profit for the purpose of section 115JB of the Act. This is against the decision rendered by the Special Bench of the Tribunal in the case of ACIT Vs. Vireet Investment P. Ltd., (2017)

[165 ITD 27] (Delhi) (SB). Accordingly, we direct the AO to compute the addition to be made under clause (f) of explanation 1 to section 115JB of the Act as per the books of account independently.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 19-12-2024

Sd/-
[ANIKESH BANERJEE]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai,

Dated: 19-12-2024

TNMM

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1.	The Appellant
2.	The Respondent
3.	The Pr. CIT, Mumbai concerned
4.	D.R. ITAT, "A" Bench, Mumbai
5.	Guard File.

//By Order//

//True Copy //

Dy./Asst. Registrar,
ITAT, Mumbai