

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH MUMBAI**

BEFORE HON’BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

**ITA No. 6332/Mum/2024
(Assessment Year: 2017-18)**

Kashish Multi Trade Pvt Ltd., 401-A, Pearl Arcade, Opp PK Jewellers, JP Road, Andheri – 400058.	Vs.	DCIT, CC- 4(3) Room No. 420, Kautilya Bhavan, Bandra – 400051.
PAN/GIR No. AACCK7596A		
(Applicant)		(Respondent)

Assessee by	None
Revenue by	Shri Sunil Agawane, Sr. DR

Date of Hearing	29.01.2025
Date of Pronouncement	18.02.2025

आदेश / ORDER

PER SANDEEP GOSAIN, JM:

The present appeal has been filed by the assessee challenging the impugned order 08.10.2024 passed u/s 250 of the Income Tax Act, 1961 (‘the Act’), by the Commissioner of Income Tax (Appeal)- 52, Mumbai for the assessment year 2017-18.

2. None appeared on behalf of assessee, when the case was called repeatedly, even no application for seeking adjournment has been filed. On going through the case file, I noticed that even on earlier occasion, date was

sought and the matter was consequently adjourned to today i.e 29.01.2025 even on this date, again none appeared which shows that assessee is not interested in pursuing his appeal. On the other hand Ld DR present in the court is ready with the arguments. Therefore I have decided to proceed with the hearing of the case *ex-parte*. The assessee has raised the following grounds of appeal:

1. The Ld. CIT (A) erred in uploading the action of AO of disallowance under section 14A of the Act read with Rule 8D of the I T Rule, 1962.

2. The Ld. CIT (A) did not appreciate that appellant has already disallowed the expenses related to investment activities and also disallowed further amount to the extent of dividend earned and, therefore, no further disallowance could have been made u/s 14A of the Act.

3. The Ld. CIT (A) did not appreciate that the further disallowance made by him has resulted in entire amount debited to the Statement of Profit & Loss being disallowed though the appellant besides the investment activities capable of yielding exempt income has also earned taxable income from host of other activities.

4. The Ld. CIT (A) erred in relying upon case law and article of an author which are out of context.

Your appellant, therefore, submits that the addition so made be deleted and in the alternative suitable relief be allowed.

3. As per the facts of the present case the assessee has raised four grounds of appeal and all the grounds are interrelated and interconnected and relates to challenging

the order of CIT(A) in upholding the action of the AO of making disallowance u/s 14A r.w.r 8D of the Act. Therefore, I have decided to take up all these grounds together and adjudicate the same through present consolidated order.

4. The brief facts of the case are that the case of the assessee was selected for limited scrutiny on the following reasons:

a. Expenses debited to P & L account for earning exempt income as per schedule of BP of ITR is significantly lower as compared to investments made to earn exempt income; and

b. sale consideration of property in ITR is less than sale consideration reported in Form 26QB.

5. Since the assessee could not submit satisfactory explanation, therefore AO considered the fact that as against the total exempt income of Rs. 2,15,71,266/-, the assessee has disallowed sum of Rs. 2,08,544/-, therefore the AO while not satisfied with the accounts of the assessee, made disallowance u/s 14A r.w.s 8(D)(i) of Rs. 5,10,881/-

5. The Ld. CIT(A) after considering the written submissions filed before him decided the appeal of the assessee by holding that the disallowance u/s 14A cannot exceed the exempt income and thus adjudicated the same

on merits, the operative portion of the order of the CIT(A) is contained in para 6 to 7.8, the same is reproduced herein below:

6. *In the above back ground after considering the entire material on record, the appeal is proceeded to be decided.*

7. *Ground Nos. 1 to 2: These grounds relate to very same issue of disallowance u/s. 14A r.w.r. 8D(ii) of the Act and hence taken up together for adjudication.*

7.1. *According to the appellant, it has already made so-moto disallowance of Rs.2,08,544/- to the extent of dividend income. Besides, it has also disallowed share transaction charges of Rs 36,714/-. According to the AO, the total disallowance u/s. 14A amounts to Rs.15,90,691/- as per Rule 8D of the Act. However, the same has been restricted to Rs.5,10,881/- as per the balance of total expenses claimed by the appellant.*

7.2. *The Hon'ble Jurisdictional High Court in the case of PCIT vs. Ballarpur Industries Ltd. in ITA No. 51 of 2016 held that in the absence of any exempt income, disallowance u/s. 14A of the Act could not be made.*

7.3. *Although the explanation of sec. 14A inserted by the Finance Act, 2022 can be treated to be clarificatory in nature, the Hon'ble Delhi High Court in the case of M/s. Era Infrastructure (India) Ltd. in ITA No. 204/2022 & CM APPL. 31445/2022 dated 20.07.2022 has held that the provisions cannot be treated to be retrospective. Hence, the claim of the appellant that disallowance u/s. 14A cannot exceed the exempt income is backed by judicial precedence and binding in nature.*

7.4. *In view of the above, there is merit in the claim of the appellant that the disallowance u/s. 14A cannot exceed the exempt income. As per the appellant's claim out of total expenses of Rs.8,70,932/- the appellant has already disallowed Rs. 3,60,051/- in respect of Sec. 14A, House*

Property, etc. Thus, the AO has disallowed the balance sum of Rs.5, 10.88 ME TAX DEPARTMENT

7.5. The perusal of the computation filed by the appellant shows that the appellant has claimed the following two amount as exempt income during the year dividend u/s. 10(34) of Rs.2,08,544/- and LTCG on Listed Securities u/s. 10(38) of Rs.2,13,62,721/-. Thus, the disallowance u/s. 14A cannot exceed Rs.2,15,71,266/-. In the instant case, even after including the disallowance made by the AO, the disallowance does not exceed the total exempt income received. In view of the above, the disallowance of Rs.5,10,881/- made by the AO u/s. 14A is upheld.

7.6. As regards the appellant's contention that the entire expenses have been disallowed, the same is devoid by merit.

7.7. I find that the Hon'ble Supreme Court has held on many occasions that taxation and equity are strangers and it is the job of the courts to interpret the provisions only in the event of ambiguity or conflict and not where the provisions of the Act are unequivocal.

7.8. The ratio laid down by the Hon'ble Supreme Court in the case of H H Lakshmibhai vs CWT, 206 ITR 688 is relevant, wherein it was held that, "It is settled law that a taxation statute in particular has to be strictly construed and that there is no equity in a taxing provision. It is because of this that the strict interpretation of the proviso would cause hardship to small depositors as against the richer ones, even if true, has no relevance."

6. After having gone through the decisions passed by the revenue authorities and considering the submissions of the Ld. DR, I am of the view that the revenue authorities have rightly disallowed sum of Rs. 5,10,881/- u/s 14A of the Act. No written submissions or

documentary evidences have been filed before me in order to controvert or rebut the findings so recorded by the revenue authorities. Therefore, after taking into consideration the entire facts, circumstances and the legal proposition I am of the view that during the year under consideration the assessee has earned exempt income which includes dividend u/s 10(38) of the Act. In the instant case even after including the disallowance made by the AO, the disallowance does not exceed the total income received by the assessee therefore considering the contention for disallowance made by the Ld.AO, I upholding the same and dismissed the appeal filed by the assessee.

7. In the result the appeal filed by the assessee stands dismissed.

Order pronounced in the open court on 18.02.2025.

Sd/-

(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai, Dated 18/02/2025

KRK, PS

आदेश की प्रतिलिपि ढ ग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai