

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI R.C. SHARMA, AM
AND SHRI MAHAVIR SINGH, JM

ITA No. 3694/Mum/2013
(Assessment Year: 2008-09)

Shri Madhav Prasad Aggarwal C/o, Shankarlal Jain & Associates, 12, Engineer Building, 265, Princess Street, Mumbai-400 002. (PAN:AABPA6137H)	Vs.	Assistant Commissioner of Income-tax, Circle-18(2), Piramal Chambers, Mumbai
(Appellant)		(Respondent)

Appellant by : Shri Shankarlal Jain, AR
Respondent by : Shri Sanjeev jain (DR)

Date of hearing: 31.03.2016
Date of Pronouncement: 07.04.2016

O R D E R

PER MAHAVIR SINGH, JM:

This appeal by assessee is directed against the order of CIT(A)-16, Mumbai in Appeal No. CIT(A)-16/ACIT-18(2)/IT-425/2010-11 vide order dated 11.02.2013. Assessment was framed by ACIT-18(2), Mumbai u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2008-09 vide his order dated NIL.

2. The first issue in this appeal of assessee is against the order of CIT(A) in confirming the disallowance made by AO u/s. 14A of the Act read with Rule 8D of the I.T. Rules, 1962 (hereinafter referred to as the 'Rules') in respect to the claim of exempt income i.e. the expenses of Rs.7,49,546/-.

3. Briefly stated facts are that the AO noticed from the Balance Sheet of the assessee for the year ending 31.03.2008 i.e. for the relevant Asst. Year 2008-09 that the assessee has made investment in shares, mutual funds, bonds and partnership firm etc. which comes to Rs.15,98,98,938/- excluding investment in proprietary concern and Post Office MIS. The AO also noticed that the assessee has claimed several indirect expenses such as salary paid, staff welfare expenses,

miscellaneous expenses, motor car expenses, depreciation on motor car, telephone/mobile charges, bank charges, auditors' remuneration, professional charges, travelling charges etc. and debited the same to P&L Account. According to AO, the entire expenditure cannot be considered to be incurred exclusively for business activity. According to AO, the following incomes do not form part of total income and hence, assessee was asked to explain as to why disallowance of expenses relating to exempt income could not be made by invoking the provisions of section 14A of the Act read with Rule 8D of the Rules. The assessee explained that no expenses have been claimed by the assessee other than directly related to business expenses in its proprietary concern is relatable to exempt income and hence, no expenditure can be disallowed under Rule 8D of the Rules towards earning of the above exempted income. The AO by taking average value of the investment, disallowed 0.5% which comes to Rs.7,49,546/- u/s. 14A of the Act read with Rule 8D of the I. T. Rules. Aggrieved, assessee preferred appeal before CIT(A), who also confirmed the action of AO. Aggrieved, now assessee is in second appeal before Tribunal.

4. We have heard rival submissions and gone through facts and circumstances of the case. We find that the investment includes quoted shares of Rs.96.11 lacs, unquoted shares of Rs.80.41 lacs and bonds and other investment including Post Office MIS of Rs.1157.77 lacs. It has also made investment in partnership at Rs.264.68 lacs, which includes Govt. of India bonds of Rs.64.44 lacs, LIC Bima Nivesh of Rs.76.14 lacs, LIC Jeevanshree Rs.998.56 lacs and Govt. of India Bonds Rs.9.91 lacs. We find that while calculating disallowance under Rule 8D of the Rules only disallowance can be made which is expenses directly relatable to exempt income qua that there is no finding and the AO has taken the entire investment while making disallowance. In view of these facts, we are of the view that this issue need reconsideration by the AO in respect to disallowance u/s. 14A of the Act read with Rule 8D of the Rules regarding exempted income like interest on PPF, Post Office deposits, dividend income etc. which are derived from old investments and is without any expenditure relatable to these exempt incomes. Accordingly, this issue of assessee's appeal is remitted

back to the file of the AO for fresh adjudication in term of the above. This issue of assessee's appeal is allowed for statistical purposes.

5. The next common issue is in respect to ad hoc disallowance of telephone expenses and motor car expenses.

6. We have heard rival contentions and gone through facts and circumstances of the case. We find that the assessee has incurred telephone expenses of Rs.5,12,728/- out of which he incurred expenses to the tune of Rs.93,293/- in respect to telephone installed at residence which includes mobile expenses. The AO disallowed 20% of the telephone expenses amounting to Rs.51,272/- as personal in nature. The CIT(A) has also confirmed the same. Ld. Counsel for the assessee before us filed copies of Tribunal's order in assessee's own case for AY 2006-07 in ITA No. 2124/Mum/2012 dated 08.12.2015, wherein the Tribunal has restricted the disallowance at 10%. We also restrict at 10% in this year and direct the AO accordingly.

7. In regard to disallowance of motor car expenses the assessee has incurred expenses of motor car and debited to the P&L Account amounting to Rs.1,47,214/- and also claimed depreciation at Rs.1,21,779/- i.e. the total expenditure of Rs.9,68,993/-. The AO disallowed 10% at Rs.96,899/- and CIT(A) confirmed the same. We find no infirmity in the order of CIT(A). Hence, the same is confirmed. This ground of appeal of assessee is partly allowed.

8. In the result, appeal of assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 7th April, 2016.

Sd/-
(R.C. SHARMA)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated 7th April, 2016

JD. Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT(A) -16, Mumbai
4. CIT- , Mumbai
5. DR, "B" Bench ITAT, Mumbai
6. Guard file.

By Order

(Asstt. Registrar)
ITAT, Mumbai