

**आयकर अपीलीय अधिकरण “सी” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI**  
**BEFORE SHRI G. S. PANNU, AM AND SHRI PAWAN SINGH, JM**

आयकर अपील सं./I.T.A. No. 3889/Mum/2013  
(निर्धारण वर्ष / Assessment Year: 2008-09)

Pritish Nandy 87/88, Mittal Chambers, Nariman Point, Mumbai-400 021	<b>बनाम/</b> Vs.	Asst. CIT-11(1), Mumbai-400 001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAAPN 9949 D		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Ashok Patil
प्रत्यर्थी की ओर से/Respondent by	:	Shri Amit Kumar
सुनवाई की तारीख / Date of Hearing	:	06.05.2015
घोषणा की तारीख / Date of Pronouncement	:	30.06.2016

**आदेश / ORDER**

**Per Pawan Singh, JM:**

The present appeal is filed by the assessee against the order of CIT(A)-3, Mumbai dated 15.3.2013 raising the following grounds of appeal:

1. The Honorable Commissioner of Income Tax Appeals -3, has erred in rejecting the contentions of the appellant and on the facts and circumstances of the case and in law:
  - a. Has erred in upholding the additions made by learned ACIT being making a disallowance u/d. 14A in respect of expenditure treating the same as expenditure incurred in relation to income not includible in total income, as the appellant has not taken any secured or unsecured

loan to invest in shares and mutual funds to earn tax free income, on which basis, this disallowance has been allegedly made. The loan taken from State Bank of India to purchase a property situated at Flat No. 6, Ground Floor, Kamani House, D.G. Deshmukh Marg, Mumbai has been directly disbursed in the name of Hindustan Lever Ltd. from whom the property has been purchased as per the pay order issued by State Bank of India. Hence in regards to the above no disallowance can be made.

Regarding other expenses debited to profit and loss account, the same are entirely pertaining to professional income of the appellant. As regards income from other sources being interest etc., there are no expenses claimed even against taxable income .

b. Has further erred in upholding the additions made by learned ACIT being treating the property located at Khar and Goa as Let out property and taxing the income under the head income from house property on a notional basis. The appellant has clearly submitted that the above mentioned properties were used by the appellant for purpose of writing and his profession, hence it could not be given on rent with 100% charge to anyone. Hence the above addition may be deleted.

2. The learned A CIT 11 (1) on the facts and circumstances of the case and in law:

Has erred in making a disallowance u/s 14A in respect of expenditure treating the same as expenditure incurred in relation to income not includible in total income, as the appellant has not taken any secured or unsecured loan to invest in shares and mutual funds to earn tax free income, on which basis, this disallowance has been allegedly made. The loan taken from State Bank of India to purchase a property situated at Flat No. 6, Ground Floor, Kamani House, D.G. Deshmukh Marg, Mumbai has been directly disbursed in the name of Hindustan Lever Ltd. from whom the property has been purchased as per the pay order issued by State Bank of India. Hence in regards to the above no disallowance can be made.

Regarding other expenses debited to profit and loss account, the same are entirely pertaining to professional income of the appellant. As regards income from other sources being interest etc., there are no expenses claimed even against taxable income.

b. Has erred in upholding treating the property located at Khar and Goa as Let out property and taxing the income under the head income from house property on a notional basis. The appellant has clearly submitted that the above mentioned properties were used by the appellant for purpose of writing and his profession; hence it could not be given on rent with 100% charge to anyone. Hence the above addition may be deleted.'

2. The brief facts of the case are that the assessee is a Director and Non-executive Chairman of Pritish Nandy Communications Ltd. He is also providing professional consultancy services to Pritish Nandy Communications Ltd. in the field of Media and entertainment, filed a return of income for A.Y. 2008-09 on 20.9.2008 declaring total income of Rs.59,28,095/-. The return of income was selected for scrutiny during the assessment proceedings. Beside the other addition/disallowance, the A.O. made disallowance of Rs.8,05,816/- u/s. 14A of the Act in the assessment order dated 10.11.2010. The assessee preferred an appeal before the CIT(A). It was dismissed vide the impugned order dated 15.3.2011 against which the present appeal is filed before us. Though the assessee has raised a number of grounds in the present appeal, however, during the course of hearing ground nos. 1(b) and 2(a) and 2(b) was not pressed by the Id. AR of the assessee. Hence, now we are dealing/discussing with ground no. 1(a).

3. We have heard the Id. AR for the assessee and the Id. DR and perused the material available on record. The Id. AR of the assessee has argued that during the assessment year under consideration the assessee has received Rs.55,50,000/- as a professional consultancy income from Pritish Nandy Communications Ltd., Rs.1,00,000/- from Dainik Bhaskar and Rs.74,000/- from Bennett Coleman and Rs.4,084/- from Ananda Publishers as a writing income which is his other or professional activity. The assessee has taken a loan from SBI which was directly disbursed to the party from whom the property was purchased. The assessee has not taken any loan for investing in mutual fund and share for earning tax free income and,

hence, there is no question of applicability of section 14A of the Act. Hence, no disallowance can be made against the assessee u/s. 14A. The assessee has already offered 100% income to the tax without claiming any expenses. The A.O. while making the disallowance has observed that the provision of section 14A will come automatic into play if the assessee contains that no expenditure has been made by the assessee to earn the exempt income and, therefore, to avoid any arbitrariness in the method of disallowance, Rule 8D come into picture and, accordingly, calculated the amount of disallowance of Rs.8,05,816/- as per Rule 8D (ii) r/w s. 14A of the Act. The Id. CIT (A) while considering this ground of appeal has observed that the assessee has dividend income of Rs.31,69,947/- which has been claimed as exempt income under the Act. The CIT(A) further observed that the assessee has also debited interest expenditure of Rs.10,19,000/- in the profit and loss account and concluded that no expenditure had been incurred for earning dividend income which cannot be accepted. As it is impossible to earn substantial dividend income without incurring any expenses and confirmed the disallowance made by the A.O.

4. We have perused the paper book placed on record by the assessee. At pg. 5 of the paper book the assessee has shown details of housing loan availed it to purchase property, wherein a loan of Rs.2 crores was disbursed in the name of Hindustan Liver on 30.10.2006. Profit and loss account is also available at pgs. 7 and 8 of the paper book. We have perused the capital account of the assessee for the year ending on 31.3.2008, wherein the assessee was held capital account of Rs.18,76,57,260/-. We have noticed that though the assessee has claimed to earn exempt income of Rs.31,69,974/- but no voluntary disallowance is made by the assessee while filing the return of income. No explanation is offered by the assessee as to how he had not incurred any amount for earning the exempt income. The A.O. invoked the provision of section 14A(3) for calculating the disallowance in respect of exempt income. The claim of the assessee that no interest expenditure has been incurred for earning

dividend income is getting support from the certificate of SBI dated 27.06.2008, (page 5 of p/b) that Bank has granted housing loan. As we have already noticed that the assessee owned sufficient funds, thus for the purpose of disallowance u/s 14A, the case of assessee would fall under Rule 8D (iii) of Income Tax Rules 1962. Hence, we direct the AO to restrict the disallowance under section 14A, @ 0.5% of the average of the value of investment, as appearing in the balance sheet of assessee, on the first day and the last day of the relevant financial year. We order accordingly.

5. In the result, the assessee's appeal is partly allowed.  
परिणामतः निर्धारिती की अपील आंशिक स्वीकार की जाती है ।

*Order pronounced in the open court on 30.06.2016*

Sd/-  
(G. S. Pannu)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 30.06.2016

व.नि.स./Roshani, Sr. PS

Sd/-

(Pawan Singh)

न्यायिक सदस्य / Judicial Member

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**