

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI  
BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER AND  
SHRI RAVISH SOOD, JUDICIAL MEMBER**

I.T.A. No.3837/M/2012 (Assessment Year: **2009-2010**)

M/s. Nasha Trading & Commerce Pvt Ltd, C/o. ZAL A BALSARA, 15, Gulistan 13, Carmichael Road, Mumbai.	बनाम/ Vs.	DCIT-5(2), 5 <sup>th</sup> Floor, M.K. Marg, Aayakar Bhavan, M.K. Road, Mumbai – 400 020.
स्थायी लेखा सं./PAN : AAACN2291H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Ms. Aarti Sathe
प्रत्यर्थी की ओर से/ Respondent by	:	Smt. Madhavi, DR

सुनवाई की तारीख /Date of Hearing : 20.09.2016

घोषणा की तारीख /Date of Pronouncement : 20.09.2016

**आदेश / O R D E R**

**PER D. KARUNAKARA RAO, AM:**

This appeal filed by the assessee on 30.5.2012 is against the order of the CIT (A)-9, Mumbai dated 10.4.2012 for the assessment year 2009-2010.

2. In this appeal, assessee filed the revised grounds before us. Bringing our attention to the same, Ld Counsel for the assessee submitted that Ground no.1 is most relevant and other Grounds no.2 and 3 support ground no.1. Considering the above, Ground no.1 is taken up for adjudication which reads as under:-

*"The Ld CIT (A)-9, has erred in confirming the addition of Rs. 11,75,280/- of taxable income, made by the Ld DCIT. The Assessee's income during the relevant assessment year is totally comprised of share of profit from partnership firm which is exempted u/s 10(2A) of the Act and dividend income which is exempted u/s 10(34) of the Act."*

3. Briefly stated relevant facts of the case are that the assessee, whose source of income is 'share of profit from partnership firm and dividend income' filed the return of income declaring the total loss of Rs. 46,36,384/-. Assessment was completed u/s 143(3) of the Act and the assessed income was determined at Rs. 11,75,280/- which includes certain disallowances. In the assessment proceedings, Assessing Officer examined the applicability of the provisions of section 14A read with Rule 8D(2) of

the IT Rules and noticed that the assessee is engaged in earning of exempt income only. Consequently, all the expenditure claimed in the P & L Account were considered as disallowable amount u/s 14A of the Act. The total addition on this account works out to Rs. 61,82,420/-. The subject matter of the litigation raised by the assessee today is restricted to the disallowance of Rs. 58,11,660/-. This sum is the composite amount of expenditure incurred on accounts of audit fees, rent, depreciation, administrative and other expenses.

4. Before us, Ld Counsel for the assessee submitted that the ground relating to the rent of Rs. 45,77,885/- is not pressed. Regarding the audit fees and administrative and other expenses (Rs. 10,71,287/-), Ld Counsel for the assessee submitted that the above sums, which is identical to that of the claim made in the AY 2013-14, were allowed in favour of the assessee. To support the same, assessee filed a copy of the assessment order for the AY 2013-14, dated 9.12.2015. To support the analogy of such expenses, Ld Counsel for the assessee brought our attention to page 16, schedule-9 and schedule-12 of the paper book, relevant for the AY 2013-14. Regarding the depreciation, Ld Counsel for the assessee submitted that the said claim is not actual expenditure incurred by the assessee as the claim of depreciation on 'notional expenditure' is allowed under the Statute vide section 32 of the Act. In support of her argument that the claim of depreciation is outside the scope of section 14A of the Act, Ld Counsel for the assessee filed orders of the Tribunal in the case of Hoshang D Nanavati vs. ACIT in ITA No. 3567/M/2007 (AY 2003-2004), dated 18.3.2011 and the Special Bench decision in the case of Vishnu Anant Mahajan vs. ACIT vide ITA No.3002/Ahd/2009, dated 25.5.2012.

5. On the other hand, Ld DR for the Revenue relied on the orders of the Revenue Authorities.

6. After hearing both the parties and on perusal of the orders of the Revenue Authorities as well as the relevant material placed before the Tribunal, we find, disallowance u/s 14A r.w. Rule 8D(2)(i) of the IT Rules amounting to Rs. 58,11,660/- is the issue contested by the assessee in the grounds filed before us. The back of the said amount is as follows:-

Audit Fees	-	Rs. 26,472/-
Rent	-	Rs. 45,77,885/-
Depreciation	-	Rs. 1,36,016/-
Administrative and other expenses:	-	<u>Rs. 10,71,287/-</u>
		<b><u>Rs. 58,11,660/-</u></b>

7. Before us, Ld Counsel for the assessee fairly conceded that the issue to the extent of rent of Rs. 45,77,885/-. Considering the said concession, we proceed to dismiss that part of the ground. We order accordingly.

8. However, it is the submission of the Ld Counsel for the assessee that other expenses (ie Depreciation and Administrative & Other Expenses) should not be disallowed under Rule 8D(2)(i) of the IT Rules, 1962. Elaborating the submissions on the claim of Audit Fees and Administrative & Other Expenses, Ld Counsel for the assessee submitted that similar claims were not disallowed by the AO in the AY 2013-14. We have examined the break-up for Administrative & Other Expenses and find those expenses are comparable to that of the expenses of the AY 2013-14. Therefore, we are of the opinion, the Audit Fees and Administrative & Other Expenses of Rs. 26,472/- and Rs. 10,71,287/- respectively should not be disallowed u/s 14A read with Rule 8D(2)(i) of the IT Rules, 1962. Accordingly, that part of the ground is allowed in favour of the assessee.

9. Regarding the disallowance of depreciation on car amounting to Rs. 1,36,016/-, it is the claim of the assessee that the claim of depreciation is the '**notional expenditure**' and not the '**real expenditure**'. As per the Ld Counsel for the assessee, such claims are outside the scope of the provisions of Rule 8D(2)(i) of the IT Rules, 1962. Referring to the expression "expenditure incurred" used in the provisions of section 14A and also Rule 8D(2)(i), we find merit in the submissions of the Ld AR. We also perused the order of the Tribunal in the case of Hoshang D Nanavati (supra) and also the Special Bench decision in the case of Vishnu Anant Mahajan (supra) and find they are in favour of the assessee. For the sake of completeness of this order, the relevant lines from para 7 of the Tribunal's order in the case of Vishnu Anant Mahajan (supra) are extracted as under:-

*"7.....coming to the question regarding depreciation being an expenditure or not, it has been held in the case of Hoshan D. Nanavati (supra) that section 14A deals only with the expenditure and not any Statutory allowance admissible to the assessee. The decision has been arrived at after considering the decision in the case of Nectar*

*Beverages Pvt Ltd vs. DCIT (2009) 314 ITR 314. The Ld CIT (DR) has not been able to displace the ratio of these cases. Thus, on consideration, we find that section 14A uses the words "expenditure incurred by the assessee in relation to income". A Statutory allowable under section 32 is not an expenditure. Therefore, we are in agreement with the decision of the Division Bench in the case of Hoshan D. Nanavati (supra). Question referred to us is answered accordingly. The division Bench shall dispose of the appeal in conformity with this decision."*

10. From the above, it is clear that the claim of depreciation is not 'expenditure actually incurred by the assessee'. The said decision is taken relying on the decision in the case of Nectar Beverages Pvt Ltd (supra). Therefore, the decision of the Tribunal in the case of Hoshang D. Nanavati (supra) is upheld and the claim of depreciation is eventually outside the scope of the provisions of section 14A of the Act. Therefore, allow this part of the ground in favour of the assessee. Thus, Ground no.1 is partly allowed.

11. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 20<sup>th</sup> September, 2016.

Sd/-

**(RAVISH SOOD)**

JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 20.09.2016

व.नि.स./ OKK, Sr. PS

Sd/-

**(D. KARUNAKARA RAO)**

ACCOUNTANT 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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai