

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" Bench, Mumbai
Before Shri B.R. Baskaran (AM) & Shri Sanjay Garg (JM)

I.T.A. No. 4677/Mum/2014
(Assessment Year 2008-09)

Kishore Musale 164, Senapati Bapat Marg Matunga West Mumbai-400 051. (Appellant)	Vs.	DCIT-18(3) Mumbai. (Respondent)
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PAN No.AADPM0375K

Assessee by	Shri Manish Jaju
Department by	Shri A. Ramachandran
Date of Hearing	25.8.2016
Date of Pronouncement	2.9.2016

O R D E R

Per B.R. Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 29.1.2014 passed by learned CIT(A)-29, Mumbai and it relates to A.Y. 2008-09.

2. Though the assessee has raised many grounds, learned AR submitted that the grievance of the assessee is with regard to the disallowance made u/s. 14A of the Act. Learned AR submitted that the Assessing Officer has made disallowance u/s. 14A of the Act as per Rule 8D of the Income Tax Rules. He submitted that the disallowance made by the Assessing Officer consisted of disallowance made u/r. 8D(2)(ii) and 8D(2)(iii) of the I.T. Rules. He submitted that the Assessing Officer, while computing interest disallowance u/r. 8D(2)(ii), has included interest pertaining to housing loan. Learned AR submitted that the assessee has taken housing loan for specific purpose of constructing the house and hence the said interest should not have been taken into account for working the disallowance u/r. 8D(2)(ii) of the I.T. Rules.

3. On the contrary, learned Departmental Representative submitted that the submissions made by the assessee have been considered by learned CIT(A) in para 25 of his order.

4. We have heard the rival contentions on this issue and perused the record. Provisions of Rule 8D(2)(ii) provides for disallowance of indirect interest expenditure, meaning thereby, interest expenditure which could be allocated to other activities of the assessee should be excluded for the purpose of Rule 8D(2)(ii) of the I.T. Rules. In the instant case, it is the case of the assessee that the Assessing Officer has included interest payable on housing loan. Since the housing loan could be linked to the construction of the property and if the same has been used to construction purposes, we are of the view that there is merit in the contention of the assessee. However, as submitted by learned Departmental Representative, this fact requires examination at the end of the Assessing Officer. Accordingly, we set aside the order passed by learned CIT(A) on this issue and restore the matter back to the file of the Assessing Officer with the direction to examine the disallowance made u/s. 14A of the Act by duly considering the contentions of the assessee and take the decision in the light of the discussion made (supra).

5. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Order has been pronounced in the Court on 2.9.2016

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 2/9/2016

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai

6. Guard File.

//True Copy//

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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai