

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH : KOLKATA

[Before Hon'ble Sri Aby T.Varkey, JM & Shri Waseem Ahmed, AM]

I.T.A No.869/Kol/2015

Assessment Year : 2010-11

Surendra Kumar Joshi
Kolkata
[PAN : ACPJ 2620 L]
(Appellant)

-vs.-

A.C.I.T., Circle-40,
Kolkata

(Respondent)

For the Appellant : Shri A.K.Tibrewal, FCA &

Shri Amit Agarwal, Advocate

For the Respondent : None

Date of Hearing : 09.12.2016.

Date of Pronouncement : 28.12.2016.

ORDER

Per Aby T.Varkey, JM

This is an appeal preferred by the Assessee against the order of CIT(A)-12, Kolkata dated 11.03.2015 for AY 2010-11.

2. The sole issue by which the assessee is aggrieved is in respect of confirmation of the disallowance of Rs.6,19,150/- made by the AO u/s 14A of the Income Tax Act, 1961 (herein after referred to as the 'Act ').

3. The brief facts of the case are that the assessee filed his return of income declaring total income of Rs.10,58,005/-. Later on the case was selected for scrutiny. During the assessment proceedings the AO noted that the assessee has shown Rs.20,03,267/- as dividend income on shares. So the AO taking note that the assessee has claimed expenditure to the tune of Rs.55,03,805/- confronted the assessee as to why disallowance u/s 14A of the Act is not made. Pursuant to the said notice the assessee replied that expenses of Rs.55,03,805/- were incurred for business income of M/s. India Raw Silk Export and the said expenses is not in relation to the earning of any tax free income. According to the assessee, no expenses have been incurred for earning the exempt income. Not satisfied with the reply given by the assessee the AO calculated the

expenditure incurred for earning exempt income by applying Rule 8D and worked out the disallowance to the tune of Rs.6,69,149/-. Aggrieved the assessee preferred an appeal before CIT(A), who was pleased to dismiss the same. Aggrieved by the said order of the Id. CIT(A) the assessee is before us.

4. We have heard the Id. AR and have perused the records. We take note that the assessee has shown dividend income of Rs.20,03,267/-. The AO asked the assessee as to why the expenditure to the tune of Rs.55,03,805/- be disallowed for which the assessee replied that it were incurred for earning business income of M/s. Indian Raw Silk Exports and clarified that the said expenses has nothing to do with the earning of exempt income. It was clarified that no expenditure have been incurred to earn the exempt income. Not satisfied with the reply of the assessee the AO computed the disallowance by invoking Rule 8D and disallowed Rs.6,69,149/-. On appeal the Id. CIT(A) confirmed the action of the AO by quoting few tribunal orders. Aggrieved the assessee is before us. We take note that the assessee has received the dividend income to the tune of Rs.20,03,267/- for which the assessee claimed that there was no expenditure incurred for earning the said income. The question before us is whether the action of the AO to invoke Rule 8D without recording satisfaction as required by section 14A of the Act is legally tenable or not. Sub-section (1) of Section 14A clearly stipulates that for the purpose of computation the total income under Chapter IV (computation of income) no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to the income which does not form part of the total income. Sub-section (2) of section 14A provides the manner in which the AO is to determine the amount of expenditure incurred in relation to the income which does not form part of the total income. The requirement of the AO embarking upon a determination of the amount of expenditure incurred in relation to exempt income would be triggered only if the AO returns a finding that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. Therefore, the condition precedent for the AO entering upon a determination of the amount of the expenditure incurred in relation to exempt

income is that AO must record that he is not satisfied with the correctness of the claim of the assessee in respect of them then he has to compute in accordance with the method prescribed i.e. as per Rule 8D. Sub-section (3) will be attracted when the assessee claims that no expenditure has been incurred for earning the exempt income then in that case, recourse has to be taken to the procedure prescribed in sub-section (2) which means that when the assessee claims that he has earned the exempt income and has not incurred any expenditure then what the AO should do is as prescribed in sub-section (2) i.e. if the AO having regard to the accounts of the assessee is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to the income then he has to make disallowance in accordance with Rule 8D. So as per section 14A(2) the exercise of the computation of Rule 8D can be made only if the AO having regard to the accounts of the assessee, in this case, as to his claim that no expenditure having being incurred for earning the exempt income. Here the main thrust of the argument of the assessee is that AO has not brought anything on record to suggest that the claim of the assessee having not incurred any expenditure for earning exempt income have been made out before invoking Rule 8D. We take note that in order to invoke Rule 8D the AO simply has made a statement that since the assessee has shown the dividend income of Rs.20,03,267/- which does not form part of the total income so it attracts section 14A and Rule 8D. When the assessee was show caused why the expenses of Rs.50,03,805/- should not be disallowed u/s 14A, the assessee has informed the AO that it has not incurred any expenditure to earn the exempt income. We note that the AO had made the computation as per Rule 8D without recording the satisfaction that the claim made by the assessee is incorrect. The AO has not given any finding that any of the expenditure claimed by the assessee is attributable to earning exempt income, without which the AO cannot invoke Rule 8D. In other words when the AO has not pointed out that certain expenditure is not incurred for earning the business income but are incurred in relation to the dividend income he cannot resort to Rule 8D. The Hon'ble High Court of Punjab and Haryana in the case of CIT vs Deepak Mittal [2013] 38

Taxmann.com 83 has held that the AO without application of mind and without bringing on record any expenditure that may have been incurred by the assessee to earn exempt income cannot apply the formula set out in Rule 8D. Therefore by applying the principle laid down by the Hon'ble High Court and as per the decision of the Hon'ble Supreme Court in the case of CIT vs Walfort Share & Stock Brokers (P)Ltd 326 ITR 1 (SC) and Maxopp Invest Ltd vs CIT 347 ITR 272 (Del) Wherein it has been held that for attracting the provision of section 14A there should be *actual expenditure* in relation to or pertaining to exempt income. The corollary to this is that if no expenditure is incurred in relation to the exempt income, no disallowance can be made under section 14A of the Act. In this case the AO failed to point out that as to whether there was any expenditure incurred by the assessee in earning the exempt income. Therefore we allow the appeal of the assessee and set aside the order of CIT(A) and order deletion of the addition made by the AO.

5. In the result the appeal of the assessee is allowed.

Order pronounced in the Court on 28.12.2016.

Sd/-
 [Waseem Ahmed]
 Accountant Member

Sd/-
 [Aby T.Varkey]
 Judicial Member

Dated : 28.12.2016.

[RG PS]

Copy of the order forwarded to:

- 1.Surendra Kumar Joshi, 61/C, Keshav Chandra Sen Street, Kolkata-700009.
2. A.C.I.T.-Circle-40, Kolkata. .
- 3..CIT(A)-12, Kolkata 4. CIT -14, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

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By Order

Asstt.Registrar, ITAT, Kolkata Benches

