

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

	I.T.A. No. 5400/DEL/2015	
	A.Y. : 2011-12	
SHANTI BHUSHAN, (SENIOR ADVOCATE), 1, JAIPUR ESTATE, NIZAMUDDIN EAST, NEW DELHI - 110013 (PAN: AACPB3899E)	VS.	ACIT, CIRCLE 63(1), 21 ST FLOOR, E-2 BLOCK, DR. S.P.M. CIVIC CENTRE, J.L.N. MARG, NEW DELHI - 110 002
(APPELLANT)		(RESPONDENT)

Assessee by : Sh. Ravish Aggarwal, CA
Department by : Sh. Shravan Gotru, Sr. DR

ORDER

PER H.S. SIDHU : JM

Assessee has filed this Appeal against the impugned Order dated 01.7.2015 passed by the Ld. CIT(A)-20, New Delhi relevant to assessment year 2011-12 on the following grounds:-

1. That on the facts and in the circumstances of the case the Ld. CIT(A) erred in confirming the disallowance u/s. 14A of Rs.5,72,868/- as against Rs. 1,25,963/- computed by the assessee towards expenses related to earning of income on which tax is not payable.
2. That the Ld. CIT(A) erred in not holding that the order of the AO is contrary to the order of ITAT Delhi Benches in

DCIT vs. Jindal Photo Ltd. (ITA No. 4539/Del/2010), wherein the Hon'ble Members held that recording of satisfaction is a per-requisite before invoking provisions of Rule 8D of the Income Tax Rules, and therefore, cannot be sustained.

3. Assuming and without prejudice to the aforesaid grounds of appeal that the AO was justified in making such disallowance, the authorities below erred in not allowing benefit in respect of Rs. 12596/- already added in the computation of income as disallowable expenses u/s. 14A of the Act and further erred in holding that the expenditure was a 'personal expenses' of the assessee.
4. That the orders of the Ld. Authorities below being contrary the facts and circumstance of the case and in law the appeal be allowed.

2. The brief facts of the case are that Assessee had filed the return declaring income of Rs. 15,84,70,570/- on 30.9.2011. The case was processed u/s. 143(1) of the Income Tax Act, 1961 (hereinafter referred as the Act). The case of the Assessee was selected for scrutiny through CASS. The Assessing Officer issued the notice u/s. 143(2) of the Act dated 11.9.2012 to the assessee which was served on the assessee. Notice u/s. 142(1) of the Act alongwith questionnaire was issued to the assessee on 22.7.2013. In response thereto Authorised Representative of the assessee appeared and filed the requisite details. The assessee is an

Advocate. During the year under consideration, the assessee derived income from salary (Pension), house property, profession, and capital gain. The reason of scrutiny selection under CASS was to examine the source of cash deposits in saving bank account as per AIR information and sale consideration, cost claimed while computing LTCG before deduction u/s. 54B, C, D, G, GA. The Counsel of the assessee was asked to explain the same and he vide submission dated 30.1.2014 stated that the cash deposits in the saving bank account relate to the professional income of the assessee and are banked directly upon the receipts thereof. The details of the clients alongwith addresses from whom the cash was received has been filed and put on record. Thereafter, the AO observed that in the instant case, it is inferred that the assessee contended that it had not incurred any expenditure for earning the dividend income and that no disallowance was warranted. He observed that the contention of the assessee is not acceptable in view of the fact that the insertion of section 14A was curative and declaratory. The assessee has not provided any separate account for earning of exempt income. AO further observed that the assessee has made very heavy investments for earning exempt income throughout the year. Assessee also managing such a large portfolio entail expenses right from diversion of manpower / staff for indulging in investment activities to various activities like visiting banks, use of vehicle and telephone, use of internet if portfolio management is web based, cost of computer and its depreciation, computer operator, consequent electricity, use of office

premises, fee charged by mutual fund agents/ bankers (Annual Fee), portfolio record maintenance and its tracking to ensure time sale/purchase of mutual fund units, etc. Accordingly, he held that in view of provision of section 14A read with Rule 8D of the Income Tax Rules, 1962, an expenditure of Rs. 5,72,868/- was determined which is attributable to the earning of exempt income and added back to the income of the assessee and accordingly, assessed the income of the assessee at Rs. 15,90,43,440/- and completed the assessment u/s. 143(3) of the I.T. Act, 1961 dated 12.3.2014.

3. Aggrieved with the assessment order dated 12.3.2014, the assessee preferred an appeal before the Ld. CIT(A), who vide impugned order dated 01.7.2015 has partly allowed the appeal.

4. Against the impugned order dated 01.7.2015, assessee has filed the Appeal before the Tribunal.

5. At the time of hearing, Ld. Counsel of the assessee stated that as regard the confirmation of disallowance made u/s. 14A of the Act of Rs. 5,72,868/- as against Rs. 1,25,963/- computed by the assessee as expenses related to earning of income on which tax is not payable. He further stated that disallowance out of expenses incurred by the assessee in the course of his practice as a Senior Advocate is not sustainable as at no stage have said the authorities found any dissatisfaction as regards the correctness of the claim made by the assessee. He requested that the addition in dispute may be deleted and the Appeal of the Assessee may

be allowed. He further stated that the ITAT, 'G' Bench, New Delhi in assessee's own case for the assessment year 2008-09 has allowed the Appeal of the assessee on the similar issue vide ITA No. 949/Del/2012 (AY 2008-09) dated 14.12.2016, hence, the issue involved in the present appeal is squarely covered by the aforesaid decision. For ready reference, he filed the copy of the aforesaid decision of the Tribunal and requested that following the same ratio, the present appeal of the assessee may be allowed.

6. On the other hand, Ld. DR relied upon the orders of the authorities below.

7. We have heard both the parties and perused the records available with me especially the orders of the revenue authorities. Firstly, we find that there is delay of one day in filing the present appeal before the Tribunal and therefore, the Defect Memo in this behalf was issued at the time of filing of the appeal by the Registry. We also find that assessee's counsel vide his application dated 02.9.2015 has requested for condonation of delay of one day stating therein that the order of the Ld. CIT(A) in this case was received on 03.7.2015 and the last date of filing the appeal was 01.9.2015. However, the assessee was out of station and returned to Delhi only on the evening of 1st September, 2015 and therefore, he could not sign the appeal within time. Accordingly, Ld. Counsel of the assessee has requested to condone the delay of one day. After perusal of the letter dated 02.9.2015 of the Ld. Counsel of the

assessee, as aforesaid, we find plausible reasons for delay in filing the appeal. Hence, we condone the delay of 01 day in filing the appeal before the Tribunal and proceed to adjudicate the issue in dispute.

7.1 We find that disallowance made u/s. 14A of the Act of Rs. 5,72,868/- was against Rs. 1,25,963/- computed by the assessee as expenses related to earning of income on which tax is not payable in the eyes of law. We further find that disallowance out of expenses incurred by the assessee in the course of his practice as a Senior Advocate is not sustainable as at no stage it has been said that the authorities found any dissatisfaction as regards the correctness of the claim made by the assessee. In view of above, no disallowance under section 14A is sustainable in the eyes of law. We further find considerable cogency in the assessee's counsel submission that the issue in dispute is squarely covered by the ITAT, 'G' Bench, New Delhi decision passed in assessee's own case for the AY 2008-09 passed in ITA No. 949/Del/2012 (AY 2008-09) dated 14.12.2016 wherein the Tribunal has held as under:-

"7. We have heard both the parties and perused the records available with me especially the orders of the revenue authorities. We find that disallowance made u/s. 14A of the Act of Rs. 14,56,385/- was against Rs. 50,400/- computed by the assessee as expenses related to earning of income on which tax is not payable in the eyes of

law. We further find that disallowance out of expenses incurred by the assessee in the course of his practice as a Senior Advocate is not sustainable as at no stage it has been said that the authorities found any dissatisfaction as regards the correctness of the claim made by the assessee. In view of above, no disallowance under section 14A is sustainable in the eyes of law. Our view is fortified by the following decisions:-

***CIT Vs Taikisha Engineering India Ltd.
(Delhi High Court) ITA 115/2014 &
119/2014 dated 25-11-2014***

Disallowance of expenses on exempt income u/s 14A r.w Rule 80 - investments in shares and mutual funds - Held that:- In Maxopp Investment Ltd. vs. Commissioner of Income Tax [2011 (11) TMI 267 - Delhi High Court] it has been held that it is only when the AO is not satisfied with the claim of the assessee, that the Legislature directs him to follow the method that may be prescribed - the findings recorded by the CIT(A) and the Tribunal are appropriate and relevant - the assessee had sufficient funds for making investments in shares and mutual funds -

The self or voluntary deductions made by the assessee were not rejected and held to be unsatisfactory, on examination of accounts - the Rule in sub Rule (2) specifically prescribes the mode and method for computing the disallowance under Section 14A of the Act - under clause (ii) to Rule 80(2) of the Rules, the AO is required to examine whether the assessee has incurred expenditure by way of interest in the previous year and secondly whether the interest paid was directly attributable to particular income or receipt - the amount to be disallowed as expenditure relatable to exempt income, under sub Rule (2) is the aggregate of the amount under clause (i), clause (ii) and clause (iii) - Clause (i) relates to direct expenditure relating to income forming part of the total income and under clause (iii) an amount equal to 0.5% of the average amount of value of investment, appearing in the balance sheet on the first day and the last day of the assessee has to be disallowed - thus, the order of the Tribunal is upheld - Decided against revenue.

7.1 In the background of the aforesaid discussions and respectfully following the precedent, as aforesaid, the disallowance made by the AO and confirmed by the Ld. CIT(A) is

deleted and the issue in dispute raised by the Assessee is allowed."

7.2 Keeping in view of the facts and circumstances of the case, we respectfully follow the precedent as aforesaid and allow the grounds raised by the Assessee.

8. In the result, the Appeal filed by the Assessee stands allowed.

Order pronounced in the Open Court on 06/09/2017.

Sd/-

**[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date 06/09/2017

"SRBHATNAGAR"

Copy forwarded to: -

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

Assistant Registrar, ITAT, Delhi Benches