

IN THE INCOME TAX APPELATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI  
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

**ITA No. 5350/Del/2016**

A.Y. : 2011-12

LATE SHRI D.K. JAIN,  
L/H MS. USHA JAIN,  
D-19, NIZAMUDDIN EAST,  
NEW DELHI – 110 013  
(PAN: AAKPJ4559P)

Vs. ACIT, CIRCLE 54(1),  
NEW DELHI

**(Appellant)**

**(Respondent)**

Assessee by : Sh. Ved Jain, Adv. & Sh. Ashish  
Goel, CA  
Department by : Ms. Ashima Neb, Sr. DR.

**ORDER**

**PER H.S. SIDHU, JM**

This appeal by the Assessee is directed against the Order dated 27.7.2016 of the Ld. Commissioner of Income Tax (Appeals)-18, New Delhi pertaining to assessment year 2011-12.

2. The grounds of appeal raised in the assessee's appeal read as under:-

1. *That the Ld. CIT(A) has erred both in law and on facts in enhancing the disallowance from Rs. 14,63,887/- to*

*Rs. 53,17,653/- representing interest paid on overdraft facility availed from banks and eligible for deduction u/s. 57(iii) of the Act.*

*2. That enhancement by Ld. CIT(A) in the impugned order is beyond the scope of powers vested u/s. 251(2) of the Act and thus in excess of jurisdiction.*

*2.1 That the Ld. CIT(A) has failed to appreciate that the AO having accepted the claim of deduction in part, the same could not fall within the scope of jurisdiction u/s. 251(2) of the Act but at best u/s. 263 of the Act.*

*3. That the Ld. CIT(A) has erred both in law and on facts in not allowing the claim of deduction of Rs. 53,17,635/- being interest paid on overdraft facilities obtained by the assessee from the banks.*

*3.1 That the Ld. CIT(A) has failed to appreciate that interest paid on loan raised stood explained from the evidence on record and as such, the addition made and sustained is illegal, invalid and untenable and infact based on contradictory findings and conclusion.*

*3.2 That the Ld. CIT(A) has erred both in law and on facts in failing to appreciate that the aforesaid sum did not warrant any disallowance u/s. 57(iii) of the Act.*

*4. That the Ld. CIT(A) has erred both in law and on facts in holding that out of interest paid and claimed as deduction a sum of Rs. 12,47,509/- warranted disallowance under section 14A read with rule 8D of the Income Tax Rules, 1962.*

4.1 *That the computation has been made by the AO by invoking Rule 8D without satisfying statutory preconditions and thus, disallowance made is not in accordance with law.*

4.2 *That without prejudice, computation of disallowance under Rule 8D of Income Tax Rules, 1962 is not in accordance with law and in any case, excessive.*

*It is therefore, prayed that the disallowances made both by the Assessing Officer and by Ld. CIT(A) may kindly be deleted and appeal of the appellant be allowed. It be further held that enhancement by the Ld. CIT(A) is on account of jurisdiction.*

3. The brief facts of the case are that the assessee is an individual having income from salaries, income from house property and income from other sources. The assessee filed his return of income on 26.9.2011 declaring income of Rs. 66,61,683/- and AO processed the same u/s. 143(1) of the Income Tax Act, 1961 (in short "Act") on the same income. On selection of case for scrutiny, notice u/s. 143(2) of the Act was issued on 11.9.2012 and duly served. Subsequently, notice u/s. 142(1) of the Act alongwith questionnaire was issued on 21.8.2013. In response to the same, the AR of the assessee attended the proceedings from time to time and furnished the written submissions and required details. After considering the same, the AO assessed the income of the assessee at Rs. 81,25,520/- thereby making an addition of Rs. 14,63,837/- to the returned income on account of disallowance u/s. 14A of the Act on the presumptions certain expenses have been incurred to earn the exempt income vide order dated 20.03.2014 passed u/s. 143(3) of the Act. Against the assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated

27.7.2016 has enhanced disallowance from Rs. 14,63,887/- to Rs. 53,17,653/- representing interest paid on overdraft facility availed from banks and eligible for deduction u/s,. 57(iii) of the Act. Aggrieved the impugned order, assessee is in appeal before the Tribunal.

4. Ld. Counsel for the assessee stated that in the assessment order AO has made the addition of Rs. 14,63,837/- u/s. 14A on the presumption certain expenses have been incurred to earn the exempt income. Although the assessee pleaded no expenses were incurred in earning exempt income. He further submitted that Ld. CIT(A) has erred in enhancing the disallowance from Rs. 14,63,887/- to Rs. 53,17,653/- representing interest paid on overdraft facility availed from banks and eligible for deduction u/s. 57(iii) of the Act. He further submitted that the enhancement by Ld. CIT(A) in the impugned order is beyond the scope of powers vested u/s. 251(2) of the Act and thus in excess of jurisdiction. It was further submitted that Ld. CIT(A) has failed to appreciate that the AO having accepted the claim of deduction in part, the same could not fall within the scope of jurisdiction u/s. 251(2) of the Act but at best u/s. 263 of the Act. He further submitted that Ld. CIT(A) has erred in not allowing the claim of deduction of Rs. 53,17,635/- being interest paid on overdraft facilities obtained by the assessee from the banks. It was further submitted that Ld. CIT(A) has failed to appreciate that interest paid on loan raised stood explained from the evidence on record and as such, the addition made and sustained is illegal, invalid and untenable and infact based on contradictory findings and conclusion. It was further submitted that Ld. CIT(A) has erred in failing to appreciate that the aforesaid sum did not warrant any disallowance u/s. 57(iii) of the Act. It was further submitted that Ld. CIT(A) has erred in holding that out of interest paid and claimed as deduction a sum of Rs. 12,47,509/- warranted disallowance under section 14A read with rule 8D of the Income Tax Rules, 1962. It was further submitted that the computation

has been made by the AO by invoking Rule 8D without satisfying statutory preconditions and thus, disallowance made is not in accordance with law. It was further submitted that the computation of disallowance under Rule 8D of Income Tax Rules, 1962 is not in accordance with law and in any case, excessive. In support of his contention, he filed a Paper Book containing pages 1-50 in which he has attached the copy of acknowledgement of original ITR alongwith computation of income; copy of balance sheet of assessee as on 31.3.2010 and 31.3.2011; copy of balance sheet of M/s Luxor Pen Company as on 31.3.2011; copy of reply filed by the assessee before the AO dated 10.1.2014; copy of written submission filed by the assessee before the CIT(A); copy of written submissions filed by the assessee before the CIT(A); copy of continued written submissions filed by the assessee before the CIT(A) and copy of order passed by the ITAT in assessee's case for AY 2010-11 wherein similar addition was deleted by the Tribunal. In view of above, he requested that the disallowances made both by the Assessing Officer and enhanced by Ld. CIT(A) may kindly be deleted and appeal of the assessee may.

5. On the contrary, Ld. DR relied upon the order of the authorities below and stated that the Ld. CIT(A) has passed a well reasoned order which does not need any interference, hence, the same may be affirmed.

6. We have heard both the parties and perused the records available with us, especially the orders passed by the Revenue authorities. On going through the facts, we note that assessee own funds are more than the investments made from which exempt income has been earned. If that be so, no disallowance can be made on account of interest expenditure u/s 14A of the Act. As regards the administrative expenses is concerned, we note that AO has disallowed a sum of Rs. 6,63,770/- being the expenses incurred by the assessee during the year. The Ld. CIT(A) has restricted the same to Rs. 4,47,442/-. In this regard, we note that as per Paper Book

Page no. 14, the assessee is a Proprietor of M/s Luxor Pen Company, the total expenditure debited is Rs. 6,63,770/- out of which a sum of Rs. 2,16,328/- has been disallowed being the property tax set off against the rental income. The balance Rs. 4,47,442/- is the expenditure for the business purposes in respect of M/s Luxor Pen Company. This expenditure has no nexus/link with the exempt income in the form of dividend etc. earned by the assessee. The Assesee is an individual and as such the investments are being made by him in the individual capacity. Accordingly, no disallowance on account of administrative expenses is called for. Therefore, the entire addition in dispute made u/s. 14A of the Act is directed to be deleted.

6.1 Now coming to the issue relating to disallowance of interest of Rs. 53,17,653/- enhanced by the Ld. CIT(A) by invoking the provisions of section 57(iii) of the Act. In this regard, from the record, we note that the assessee has made the FDR out of the borrowed funds. The assessee took the overdraft and from that he made the FDR on which it has earned interest. Thus the interest has been paid on overdraft from the bank is an expenditure incurred to earn income on FDR from bank. It is noted that Ld. CIT(A) in his impugned order has referred to a Chart prepared by him. However, on going through Page No. 60 of the Ld. CIT(A)'s order, it is apparent that assessee has first borrowed funds and thereafter it has made the FDR. Accordingly, the finding of the Ld. CIT(A) that FDR has not come out of the borrowed funds is not correct. Hence, the reliance placed by the Ld. CIT(A) on the judgment in the case of CIT vs. V.P. Gopinathan 248 ITR 449 (SC) is not correct as in that case the assessee had FDR and against the FDR it has taken loan for construction/ purchase of property and on these facts the interest expenditure was disallowed against the interest income. However, in the present case, it is the overdraft from which the FDR has been made on which interest has been earned. In view of this fact, we are

of the considered view that the enhancement made by the Ld. CIT(A) is not tenable in the eyes of law and therefore, we direct to delete the same.

7. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced on 12/12/2019.

**Sd/-**  
**[DR. B.R.R. KUMAR ]**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**[H.S. SIDHU]**  
**JUDICIAL MEMBER**

*Date: 12/12/2019*

**SRB**

**Copy forwarded to: -**

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

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By Order,

Assistant Registrar, ITAT, Delhi Benches