

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G', NEW DELHI**

**Before Sh. Bhavnesh Saini, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**(E-Court Module)**

**ITA No. 2274/Del/2017 : Asstt. Year : 2013-14**

Vinay Bhasin, C-14, South Extension, Part-II, New Delhi-110049	Vs	ACIT, Circle-63(1), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAAPB3445J</b>		

**Assessee by : Sh. Salil Agarwal, Adv.**

**Revenue by : Sh. Parikshist Singh, Sr. DR**

<b>Date of Hearing: 30.09.2020</b>	<b>Date of Pronouncement: 12.10.2020</b>
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**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-20, New Delhi dated 19.01.2017.

2. Following grounds have been raised by the assessee:

*"1. That the learned Commissioner of Income Tax (Appeals) has erred in sustaining the disallowance of Rs. 7,38,963/- failing to appreciate that aforesaid disallowance has been made mechanically applying the provisions of Rule 8D(2)(iii) of the Income Tax Rules, 1962 and without recording a satisfaction vis-a-vis books of the accounts of the assessee as envisaged under the provisions of Sub-sections (2) and (3) of Section 14A of the Act and hence the disallowance made of Rs. 6,93,610/- is wholly unsustainable in law and deserves to be deleted.*

*1.1 That the learned Commissioner of Income Tax (Appeals) has erred in sustaining the disallowance failing to appreciate that while making the aforesaid disallowance learned Assistant Commissioner of Income Tax has not established the nexus between the specific expenditure and the income which does not form part of the total income despite the fact that the appellant has specifically submitted that no expenditure has been earned for earning the exempt income.*

*2. That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining a disallowance of Rs. 2,22,649/- on account of interest expenses claimed on car loan.*

*2.1 That in doing so, the learned Commissioner of Income Tax (Appeals) has failed to appreciate the fact that requisite documents/evidences were filed and explanation were tendered before the learned ACIT explaining the aforesaid expenditure, but the learned ACIT based his decision purely on suspicion, surmises and conjectures and as such, the disallowance so made should be deleted.*

*3. That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining a disallowance of Rs. 1,92,186/- on account of software expenses.*

*3.1 That in doing so, the learned Commissioner of Income Tax (Appeals) has failed to appreciate the fact that requisite documents/evidences were filed and explanation were tendered before the learned ACIT explaining that the software expense claimed of Rs. 4,80,465/- is a revenue expenditure, but the learned ACIT based his decision purely on suspicion, surmises and conjectures and as such, the capitalization of the said expenditure and allowance of depreciation at the rate of 60% is highly unjust and untenable in law.*

*4. That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining*

*an adhoc disallowance of Rs. 2,62,484/- on account of interest expenses claimed on car loan.*

*4.1 That in doing so, the learned Commissioner of Income Tax (Appeals) has failed to appreciate the fact that requisite documents/evidences were filed and explanation were tendered before the learned ACIT explaining the aforesaid expenditure, but the learned ACIT based his decision purely on suspicion, surmises and conjectures and as such, the disallowance so made should be deleted.*

*5. That the learned Commissioner of Income Tax (Appeals) has grossly erred in recording adverse findings which are perverse and have been recorded without considering the factual substratum of the case and hence such findings are vitiated and deserves to be deleted."*

3. The assessee has earned income exempt from tax amounting to Rs.24,62,098/- from dividend u/s 10(34) and Rs.12,90,604/- under the head "LTCG" on listed securities u/s 10(38). The assessee was asked on 15.09.2015 to give details and justify the claim in view of Section 14A read with rule 8D with reference to the exempt income. After considering the submissions, the AO referring to the case of CIT Vs Walford Shares & Stock Brokers Pvt. Ltd. disallowed Rs.7,38,963/- u/s 14A.

4. The Id. CIT (A) confirmed the order of the AO.

5. At the outset, it was brought to our notice that a similar issue has been adjudicated by the Co-ordinate Bench of ITAT Delhi in ITA No. 5822/Del/2015 for the earlier years. It was submitted that except the quantum of the amount involved, the issue stands similar the fact which counsels from both the sides not controverted.

6. We have gone through the facts of the case and find it similar to the earlier years. We have also gone through the order of the Co-ordinate Bench of ITAT Delhi and find the ratio squarely applicable to the year in question. The relevant part of the said order is as under:

*"13. On ground no. 3 assessee challenged the disallowance of Rs. 6,08,180/- u/s 14A of the Act read with Rule 8D(2)(iii) of the Act. The AO noted that assessee has earned income exempt from tax amounting to Rs. 21,26,012/- from dividends. The assessee was asked to give details and justify the claim in view of section 14A read with Rule 8D with reference to the dividend income. The assessee submitted that he has not claimed any expenses against earning of the said income. Therefore, above provisions are not applicable in the case of the assessee. The assessee relied upon the following decisions:*

- 1. "CIT vs. Wimco Seedlings - ITA No. 1367/2008, 1368/2008 & ITA No. 1391/2008;*
- 2. ACIT vs. Sun Investments Pvt. Ltd. (2011) 48 SOT 159 (Delhi);*
- 3. Relaxo Footwear Ltd. vs. Addl. CIT, Range-15, New Delhi (2012) 50 SOT 102 (Delhi)."*

*14. The AO, however, noted that the basic object of section 14A is to disallow the direct and indirect expenditure incurred in relation to income which does not form part of the total income. AO referred to judgment of the Supreme Court in the case of CIT vs Walfort Share and Stock Brokers P. Ltd. 326 ITR 1. The AO also noted that AO has to adopt a reasonable basis or method consistent with all the relevant facts and circumstances for making a disallowance. The assessee has not provided any separate amount for earning of exempt income. The assessee has made very heavy investments for earning exempt income throughout the year. The AO, therefore, following section 14A read with Rule 8D disallowed expenditure*

*of Rs. 6,08,180/- which is attributed to the earning of exempt income.*

*15. The addition was challenged before Ld. CIT(A). The written submission of the assessee is reproduced in the appellate order in which it was stated that AO has not specified or pointed out any expenses, whatsoever claimed by assessee for earning the said dividend income. The assessee relied upon the decisions of Delhi High Court in the cases of CIT vs. Taikisha Engineering India Ltd. 275 CTR (Del.) 316 and Joint Investments (P) Ltd. vs. CIT 275 CTR 471. The Ld. CIT(A), however, confirm the addition and dismiss the appeal of assessee.*

*16. After considering the rival submissions, we are of the view that addition is wholly unjustified. Ld. Counsel for assessee submitted that similar issue was considered by ITAT Delhi 'D' Bench in the case of assessee for AY 2009-10 vide order dated 15.11.2018 (supra) and similar addition has been deleted. The findings of the Tribunal in para 8 of the order above is reproduced as under:*

*"8. We have gone through the findings of the Ld. Assessing Officer on this aspect. Ld. Assessing Officer recorded that the assessee made heavy investments for earning of exempt income and being a busy professional, he requires the management of such a portfolio by incurring expenses, diversion of man-power/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 timely sale/purchase of mutual fund units etc. Except making this statement and reading all the possible expenses that involve in investment process, Ld. Assessing Officer is not specific as to what exactly the probable expenditure in this*

*matter the assessee could have incurred. According to the assessee the investment was made in mutual funds and the expenses were already directed by the operators and a certificate to that extent was submitted before the Ld. Assessing Officer. Further, the instructions are that the dividend income will be directly credited to the bank account of the assessee so that no probable expenditure at the end of the assessee for deposit of the dividend in bank could have occurred. Having regard to this set of facts and circumstances involved in this matter, we are of the considered opinion that instead of making a sweeping enumeration of the probable expenses involved in investment process, Ld. Assessing Officer could have taken legal exercise to verify the correctness or otherwise of the certificate that was issued by the asset management companies or the Citibank in this respect. We, therefore, find that there is no proper record of satisfaction as to the expenses incurred by the assessee for earning the exempt income. By following the decision reported in CIT vs. Taikisha Engineering India Ltd. 275 CTR (Del.) 316 and Joint Investments (P) Ltd. vs. CIT 372 ITR 694 (Del.), we are of the opinion that the AO at the first instance should have examined the correctness of the statement made by the assessee that no expenses were incurred for earning the exempt income during the year and if and only if the Ld. AO is not satisfied on this account after making reference to the accounts, he is entitled to adopt the method under Rule 8D of the Rules. We, therefore, while allowing the plea of the assessee direct the Ld. Assessing Officer to delete the addition made on this score also."*

*Copy of the order is provided to the Ld. DR who did not dispute the same.*

*17. Considering the facts of the case, in the light of the findings of the Tribunal in AY 2009-10 (supra), we are of the view that issue is covered in favour of the assessee by above order of the Tribunal in the case of the same assessee. Following the reasons for the*

*decision of the same, we set aside the orders of the authorities below and delete the addition.”*

7. Since, the facts remain unaltered, in the absence of any change in the position of law, following the ratio laid down in the order of the Co-ordinate Bench of ITAT, we hereby delete the addition made by the AO u/s 14A.

**Interest on Car Loans:**

8. Ground No. 2: The AO held that income and expenditure account of the assessee for the year under consideration, it was seen that the assessee has debited interest paid of Rs.2,22,649/- on account of vehicle loan. Further, it was observed that the assessee had advanced loans and advances to various parties including related parties and no interest is charged. The AO disallowed the interest on the loan taken for the purchase of vehicle on the grounds that the assessee has extended interest free advance for property of Rs.6.89 crs. and hence the interest on the vehicle should be disallowed.

9. The Id. CIT (A) confirmed the action of the Assessing Officer relying on the order of the Hon'ble Jurisdictional High Court in the case Punjab Stainless Steel Industries Ltd. Vs. CIT 324 ITR 396.

10. It was brought to our notice that a similar issue has been adjudicated by the Co-ordinate Bench of ITAT Delhi in ITA No. 5822/Del/2015 for the earlier years. It was submitted that except the quantum of the amount involved, the issue stands similar the fact which counsels from both the sides not controverted.

11. We have gone through the facts of the case and find it similar to the earlier years. We have also gone through the order of the Co-ordinate Bench of ITAT Delhi and find the ratio squarely applicable to the year in question. The relevant part of the said order is as under:

*"After considering the rival submission, we are of the view that addition is wholly unjustified.*

*9. Ld. Counsel for assessee pointed out that the AO noted in the assessment order that issue is similar as has been considered in AY 2009-10. He has submitted that assessee preferred appeal before ITAT 'D' Bench in AY 2009-10 and appeal of assessee has been allowed on the similar ground, vide order dated 15.11.2018 in which the Tribunal in para 6 held as under:*

*"6. Ld. AR submitted that this **car** loan was the only interest-bearing loan that was taken by the assessee during the year and all the other funds are either interest free loans or the balance of capital account available with him. We find force in the submission of Ld. AR that the car loan of Rs. 50 lacs is no match against the amounts advanced during the year under consideration which are to the tune of Rs. 2.98 crores by the assessee. Further, it is not the case of the Ld. Assessing Officer that the car loan was diverted for any other purpose, because there is no denial of the statement of the assessee that the loan amount was directly disbursed to the seller of the car. Inasmuch as the loan was for the purpose of business and no question of diversion of such funds had taken place, merely because the assessee placed his own funds and also the interest free loans for some other purposes, is not open for the Ld. Assessing Officer to disallow the interest on the amount taken for business purpose. We, therefore, direct the Assessing Officer to delete this addition."*

*10. Copy of the above order is provided to the Ld. DR who did not dispute the same.*



*11. In view of the above, it is clear that AO disallowed the interest because the issue is similar as has been considered in AY 7 ITA No. 5822/Del/2015 2009-10. In AY 2009-10 the Tribunal deleted the similar additions. We, therefore, following the reasons for decision for AY 2009-10 (supra) found that issue is covered in favour of the assessee. We, accordingly, set aside the orders of the authorities below and delete the addition."*

12. Since, the facts remain unaltered, in the absence of any change in the position of law, following the ratio laid down in the order of the Co-ordinate Bench of ITAT, we hereby delete the addition made by the AO u/s 14A.

**Software Expenses:**

13. Ground Nos. 3 & 3.1: The assessee has debited Rs.4,80,465/- as software expenses in income and expenditure account. The counsel of assessee vide order sheet noting dated 20.11.2015 was asked to explain why computer and software expenses which are debited in P&L a/c should not be capitalized.

14. The AO has disallowed the claim of the assessee of treating software expenses as revenue expenses and treated it as capital expenditure and depreciation @ 60% was allowed and 40% of the expenses were disallowed on account of software expenses being capital in nature.

15. The issue of depreciation of the software and the computer accessories has been adjudicated a number of cases by this Tribunal wherein depreciation @60% has been allowed. However, since the AO and the Id. CIT (A) have categorically mentioned that the assessee did not produce the relevant

evidences for the purchase of software, we, accordingly, set aside the orders of the authorities below and restore this issue to the file of AO with direction to re-decide the issue after giving an opportunity of being heard to the assessee, after verifying the bills and vouchers produced on this issue. This ground is allowed for statistical purposes.

**Disallowance of Personal Expenditure:**

16. Ground No. 4: The AO noted that assessee has claimed telephone and telex, vehicle running and maintenance expenses and depreciation on vehicle in profit and loss account. The total expenses are amounting to Rs. 34,93,780/-. The AO noted that the personal element of these expenses cannot be ruled out. Hence, 1/10th of these expenses was disallowed u/s 37(1) being of personal nature. The AO, therefore, made addition of Rs. 3,49,378/-. The Ld. CIT(A) gave a remission of Rs.86,890/- and confirmed disallowance of Rs.2,62,484/-. A similar matter has also been adjudicated in the case of the assessee for the assessment year 2011-12.

17. After considering the rival submission, we are of the view that the entire addition is wholly unjustified. The AO has not pointed out on which items personal element was involved in claiming the aforesaid expenses. AO has not pointed out any specific item which is used by the assessee for personal purposes. It is ad hoc addition made by the AO by disallowing 1/10th out of these expenditures. It is well settled law that ad hoc addition cannot be sustained unless AO has pointed out any specific item in which personal element is involved. There was thus, no justification to make any disallowance out of these

expenditures. We, accordingly, set aside the orders of the authorities below and delete the entire addition.

18. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 12/10/2020.

Sd/-

**(Bhavnesb Saini)**  
**Judicial Member**

**Dated: 12/10/2020**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**