आयकर अपीलीय अधिकरण “बी” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, PUNE

(Through Virtual Court)

**BEFORE SHRI D. KARUNAKARA RAO, AM
AND SHRI PARTHA SARATHI CHAUDHURY, JM**

आयकर अपील सं. / ITA No.1671/PUN/2017
निर्धारण वर्ष / Assessment Year : 2013-14

Amrish Jayantilal Kakkad,
612/b 1, Nana Peth,
Pune-411002.

PAN : AFKPK7818P ....अपीलार्थी / Appellant

बनाम / V/s.

DCIT, Circle-6,
Pune. ......प्रत्यर्थी / Respondent

Assessee by	:	Shri Hari Krishan
Revenue by	:	Shri S. P. Walimbe

सुनवाई की तारीख / Date of Hearing	:	03.06.2020
घोषणा की तारीख / Date of Pronouncement	:	22.06.2020

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal filed by the assessee is against the order of the CIT(A)-4, Pune dated 10.03.2017 for the assessment year 2013-14.

2. The grounds raised by the assessee are as under :-

“1. On the facts and in the circumstances of the case and in law the order passed by the Commissioner of Income Tax-Appeals is without jurisdiction, bad in law, invalid and ab-initio void.

2. On the facts and in the circumstances of the case and in law the order passed by the Commissioner of Income Tax-Appeals is bad in law, invalid and ab-initio void as it has been passed in violation of Principles of Natural Justice.

3. On the facts and circumstances of the case and in law, the Commissioner of Income Tax-Appeals has erred in making addition of Rs.5,54,242/- by way of disallowance u/s 14A of the I.T.Act,1961.

> *4. On the facts and circumstances of the case and in law, Commissioner of Income Tax-Appeals has not considered the fact that since the assessee has been investing in various partnership firms for more than past 5 years out of his owned funds from time to time and as on 31.3.2013 such investments of Rs.1,93,11,167/- are out of his owned funds of Rs.6,49,95,455/-, the provisions of Sec.14A are squarely not applicable to the assessee.*
>
> *5. On the facts and circumstances of the case and in law, the Commissioner of Income Tax-Appeals has erred in considering the fact that though all the audited final statement of Accounts were placed on records, he has concluded the appeal saying no evidence were provided.*
>
> *6. The appellant craves leave to delete or to modify, alter or amend any or all of the above grounds of appeal, or to add any other ground/grounds of appeal."*

3. Briefly stated the relevant facts include that the assessee is a proprietor of M/s. Kakkad Construction & Engineering Company. The assessee filed the return of income declaring total income of Rs.1,08,46,223/-. The assessment was completed on 20.11.2015 at an assessed income of Rs.1,14,99,870/- thereby making the addition of (i) Rs.99,400/- on account of income from house property and (ii) addition of Rs.5,54,242/- made u/s 14A of the I.T. Act read with Rule 8D of the I. T. Rules. The CIT(A) confirmed both the additions and dismissed the appeal of the assessee. The addition made u/s 14A of the Act is the bone of contention before the Tribunal.

4. Aggrieved with the above decision of the CIT(A), the assessee is in appeal before the Tribunal with the above extracted grounds.

5. Before us, ld. Counsel for the assessee did not press the grounds no.1 and 2 and the same are dismissed as not pressed.

6. Regarding the grounds no.3, 4 and 5 which relates to the addition of Rs.5,54,242/-, ld. Counsel for the assessee submitted that it has two segments disallowance under clause (ii) and (iii) of Rule 8D(2) of the Rules. Referring to

the disallowance made under clause (ii) amounting to Rs.4,22,503/-, ld. Counsel for the assessee submitted that the said disallowance is uncalled for since no interest bearing bank loans were invested in the exempt income yielding assets. Further, ld. Counsel mentioned that the assessee has excess funds and, in that case, the applicability of the finding of Hon'ble Jurisdictional Court's judgments in the case of (i) CIT vs. HDFC Bank, 366 ITR 505 (Bom.) and (ii) CIT vs. Reliance Utilities & Power Ltd., 313 ITR 340 (Bom.) are applicable in the present case. In this regard, ld. Counsel mentioned that for want of clarity of availability of excess funds, the matter may be remanded to the file of the Assessing Officer with a direction that the addition is not to be made in case of existence of excess funds. We agree with the same and accordingly, this part of the ground is remanded to the file of the Assessing Officer for fresh adjudication.

7. Regarding the disallowance made under clause (iii) of Rule 8D(2) of the Rules, ld. Counsel submitted that the average investments working requires modification with reference to the investments made in the forms which yielded exempt income. On this issue also, the ld. Counsel mentioned that this part of ground may be remanded to the file of the Assessing Officer for fresh adjudication. According to him, the disallowance will work out to only Rs.13,500/-. Thus, the Assessing Officer is directed to examine the calculation and decided the issue afresh after granting reasonable opportunity of being heard to the assessee. Accordingly, the grounds no.3 to 5 are allowed for statistical purposes.

8. Ground no.6 is general in nature and the same is dismissed.

9. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on this 22nd day of June, 2020.

Sd/-	**Sd/-**
(PARTHA SARATHI CHAUDHURY)	**(D. KARUNAKARA RAO)**
न्यायिक सदस्य/**JUDICIAL MEMBER**	लेखा सदस्य/**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 22nd June, 2020
Sujeet

<u>आदेश की प्रतिलिपि अग्रेषित **/ Copy of the Order forwarded to :**</u>

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-4, Pune.
4. The Pr. CIT-3, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**बी**" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.