आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI S. S. VISWANETHRA RAVI, JM

आयकर अपील सं. / ITA No.2416/PUN/2017
निर्धारण वर्ष / Assessment Year : 2013-14

Atharva Consortium And Realty
Private Limited,
326, Ashok Vijay Complex,
M.G. Road, Pune-411001.

PAN : AAGCA0449N ....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward-1(1),
Pune. ......प्रत्यर्थी / Respondent

Assessee by	:	Shri Suhas Bora
Revenue by	:	Shri Vitthal Bhosale

सुनवाई की तारीख / Date of Hearing	:	15.06.2021
घोषणा की तारीख / Date of Pronouncement	:	18.06.2021

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of ld. Commissioner of Income Tax (Appeals)- 1, Pune ('CIT(A)' for short) dated 02.08.2017 for the assessment year 2013-14.

2. The appellant raised the following grounds of appeal :-

> *"1. The learned CIT (Appeals) erred in confirming the addition made by the AO of Rs. 1,98,733/- on account of disallowances u/s 14A on the ground that the appellant is not maintaining separate fund flow statement regarding investment yielding exempt income and investment in general business activity without appreciating the submissions given by the appellant. The AO failed to apply his mind on the main contention that no expenditure is required for earning exempt income.*

> *2. The ld CIT(A) while confirming the addition made by the AO relied on the decision of Hon'ble Ahmedabad Tribunal in the case of Vishnu Anant Mahajan (2012) 22 taxman.com 88(Ahd) wherein it is held that as share of income from firm is not included in the total income provisions of section 14A are applicable and any expenditure incurred for earning share of income from firm shall be disallowed.*
>
> *3. The ld CIT(A) while confirming the disallowance made by the AO failed to consider the fact that the disallowance under section 14A can only be made if the AO records a finding that he is satisfied that claim made by the assessee is not correct.*
>
> *4. The appellant may kindly be permitted to add to or alter any of grounds of appeal, if deemed necessary."*

3. Briefly, the facts of the case are as under :-

The appellant is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of promoters and builders and dealing in lands. The return of income for the assessment year 2013-14 was filed on 18.10.2013 declaring total income of Rs.98,70,354/-. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward-1(1), Pune ('the Assessing Officer') vide order dated 18.02.2016 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at a total income of Rs.1,00,69,080/-. While doing so, the Assessing Officer made addition of Rs.1,98,733/- under the provisions of section 14A of the Act by holding that the assessee had incurred indirect expenses in earning the exempt income and rejected the contention of the appellant that no expenditure was incurred towards exempt income.

4. Being aggrieved by the above assessment order, an appeal was preferred before the ld. CIT(A), who vide his impugned order confirmed the action of the Assessing Officer.

5. Being aggrieved, the appellant is before us in the present appeal.

6. The ld. AR had not pressed the grounds of appeal no.1, 2 and 3. However, he raised the additional ground of appeal and pressed only the said additional ground of appeal, which reads as under :-

> *"On the facts and circumstances, the Ld. CIT(A) ought to have appreciated that only such investments which have resulted in earning of exempted income should be considered for calculation of disallowance under Rule 8D. Therefore, it is prayed that AO be directed to exclude the investment on which no exempted income has been earned during the previous year for the purpose of Computing "Average value of Investment" as required in Rule 8D(ii) of the Rules."*

7. The alternate argument of the ld. AR is that for the purpose of calculating the average value of investment as envisaged under Rule 8D of the Income Tax Rules, 1962 ('the Rules'), the value of investment which has not yielded any exempt income should be excluded. Since this additional ground of appeal is purely legal in nature, does not require investigation into facts, we admit this additional aground of appeal and adjudicate the same as follows.

8. The issue in the present appeal only relates to the disallowance u/s 14A of the Act on account of indirect expenses. We find merit in the submission of the ld. AR that for the purpose of computing the disallowance under Rule 8D(2)(iii) of the Rules only average value of investment which yielded exempt income alone to be considered as laid down by the Hon'ble Delhi High Court in the case of Joint Investments Pvt. Ltd. vs. CIT, 374 ITR 694 (Delhi), the decisions of Hon'ble Madras High Court in the cases of ACB India Ltd. Vs. Assistant Commissioner of Income Tax, Marg Ltd. Vs. CIT, 318 CTR (Mad.) 148 and CIT Vs. Shriram Ownership Trust 318 CTR (Mad.) 233 and also by the Hon'ble Karnataka High Court in the case of Pragathi Krishna Gramin Bank Vs. Jt.CIT, 95 Taxman.com 41 (Kar.) Respectfully following the

law laid down by the Hon'ble High Courts in the above decisions, we remit the issue back to the file of the Assessing Officer with a direction to compute the amount of disallowance u/s 14A of the Act by considering and the average value of investments which yielded the exempt income alone. Accordingly, the additional ground of appeal raised by the assessee is partly allowed.

9. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 18th day of June, 2021.

Sd/- **Sd/-**

(S. S. VISWANETHRA RAVI)
न्यायिक सदस्य/**JUDICIAL MEMBER**

(INTURI RAMA RAO)
लेखा सदस्य/**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 18th June, 2021.
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)-1, Pune.
4. The Pr. CIT-1, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**ए**" बेंच, पुणे / DR, ITAT, "**A**" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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