आयकर अपीलीय अधिकरण पुणे न्यायपीठ एक-सदस्य मामला पुणे में

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM

आयकर अपील सं. / ITA No.99/PN/2015
निर्धारण वर्ष / Assessment Year : 2008-09

Jayprakash Poonamchand Surana
MZSK & Associates,
Chartered Accountants,
Level 3, Business Bay, Plot No.84,
Wellesley Road, Near RTO,
Pune – 411001 …. अपीलार्थी/Appellant

PAN: ADWPS9383B

Vs.

The Dy. Commissioner of Income Tax,
Circle 11(2), Pune …. प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Neelesh Khandelwal
प्रत्यर्थी की ओर से / Respondent by : Shri Suhas Kulkarni, JCIT

सुनवाई की तारीख / **Date of Hearing : 26.07.2016**		घोषणा की तारीख / **Date of Pronouncement: 29.07.2016**

आदेश / ORDER

PER SUSHMA CHOWLA, JM:

This appeal filed by assessee is against order of CIT(A)-I, Pune, dated 31.07.2014 relating to assessment year 2008-09 against order passed under sections 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

1. *On facts and circumstances prevailing in the case and as per provisions of law, it be held that, addition of Rs.7,70,892/- made by the AO in terms of provisions of sec.14A read with Rule 8D of the rule & upheld by the 1st appellate authority unwarranted, unjustified, and contrary to the provisions and Scheme of the Act & facts prevailing in the case & further be held that no disallowance is warranted, justified in the case of appellant in terms of provisions of sec.14A of the Act. The disallowance made by the AO be deleted. Just & proper relief be granted to the appellant on this score.*

3. The issue arising in the present appeal is against the disallowance made under section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (in short 'the Rules') of Rs.7,70,892/-.

4. Briefly, in the facts of the case, the assessee for the year under consideration had filed the return of income declaring total income of Rs.21,81,430/-. The assessee had claimed Rs.96,050/- as exempt income on account of interest from RBI Bond and dividend income received from the companies. The assessee was show caused to explain as to why the provisions of section 14A of the Act should not be invoked. In reply, the assessee pointed out that he had claimed income was exempt from various firms in which he was a partner and had also claimed interest accrued on RBI Bond as exempt. The assessee claimed that he had raised loan of Rs.10 lakhs from Lunkad Housing and invested the same in the firm Kamdhenu Estate in the financial year 2003-04, which was paid back in the same year and interest on such loan of Rs.42,540/- was claimed. He further explained that thereafter, he had never raised any loan and paid any interest and / or incurred any expenses for investment made in various firms. The assessee stressed that where all the investments in various firms and bonds were made out of his own funds, the provisions of section 14A of the Act read with Rule 8D of the Rules were not applicable. The Assessing Officer noted that it was difficult to assume that no indirect expenses were incurred for earning the exempt income. He

also noted that in overall activities of the assessee, he had paid interest during the year but since no separate records were maintained, the claim of assessee that no interest bearing funds were available for making investment by way of capital in various firms and investment in RBI Bonds / shares, was not verifiable. The Assessing Officer also noted that the assessee had made investment in AOP and he has remained silent on the source of investment in the said AOP in the past i.e. as on 31.03.2007 and as on 31.03.2008. He accordingly, invoked the provisions of section 14A of the Act read with Rule 8D of the Rules and computed the disallowance at Rs.7,70,896/- on account of both interest and administrative expenses.

5. The CIT(A) upheld the order of Assessing Officer, against which the assessee is in appeal.

6. The learned Authorized Representative for the assessee pointed out that the investment in RBI Bonds and other investments were made since 2001 and no loans were taken for these investments. He further stated that no disallowance under section 14A of the Act was made in any of the preceding years. Attention was drawn to Profit & Loss Account of one M/s. Poonam Metal Industries of which the assessee was sole proprietor, placed at page 53 of the Paper Book. It was pointed out by the learned Authorized Representative for the assessee that in the said concern the assessee had claimed interest expenditure of Rs.4,44,060/- and in none of other concerns had claimed any interest expenditure. He further pointed out that the said interest expenditure related to the sole proprietary concern itself and had no link with the investments made by the assessee. He further pointed out that the assessee had also furnished his personal balance sheet in which, there was a capital

balance of Rs.7.87 crores and the said amount was sufficient to take care of investment made by the assessee by way of capital investment with the firms and other investments. He further pointed out that it was not the case of Assessing Officer that the assessee had utilized any interest bearing funds for making investments and further no expenses were debited to personal account.

7. The learned Departmental Representative for the Revenue on the other hand, placed reliance on the order of CIT(A) and pointed out that both the sole proprietary concern accounts and the personal balance sheet of the assessee have to be cumulatively seen in order to verify the claim of assessee.

8. On perusal of record and the submissions made by the learned Authorized Representatives, the issue which arises in the present appeal is in relation to the disallowance made under section 14A of the Act read with Rule 8D of the Rules. The assessee is a partner in various firms from which it had received the share of profit, which is exempt from tax. In addition, the assessee had earned interest from RBI Bonds and shares totaling Rs.96,050/- which was claimed as exempt. The authorities below were of the view that since the assessee had earned tax free income, then the provisions of section 14A of the Act were attracted and applying the provisions of Rule 8D of the Rules, the disallowance was worked out at Rs.7,70,896/-. The claim of the assessee on the other hand, was that since he had sufficient interest free funds by way of capital to the extent of Rs.7.87 crores, the investments in capital account with the partnership firm and other investments were out of the said interest free funds available and hence, no disallowance was warranted under section 14A of the Act. Further, the assessee had during the year under consideration not claimed any interest expenditure in his personal balance

sheet and only interest expenditure to the extent of Rs.4,40,060/- was claimed as deduction in sole proprietary concern. The Assessing Officer or CIT(A) has failed to bring on record any evidence to establish that loan raised in the sole proprietary concern was utilized by the assessee for making the aforesaid investments in various assets, income from which was exempt from tax. In such circumstances, the issue which arises for adjudication is whether any disallowance is merited under section 14A of the Act.

9. The Hon'ble Bombay High Court in HDFC Bank Ltd. Vs. DCIT (2016) 383 ITR 529 (Bom) had decided the aforesaid issue and had held as under:-

> *"It is clear that for the first time in the case of CIT Vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom) that this court took a view that the presumption which has been laid down in CIT Vs. Reliance Utilities and Power Ltd. (2009) 313 ITR 340 (Bom) with regard to investment in tax-free securities coming out of the assessee's own funds in case the same are in excess of the investments made in the securities (notwithstanding the fact that the assessee concerned may also have taken some funds on interest) applies, when applying section 14A of the Act. Thus, the decision of this court in HDFC Bank Ltd. (supra) for the first time on July 23, 2014 has settled the issue by holding that the test of presumption as held by this court in Reliance Utilities and Power Ltd. (supra) while considering section 36(1)(iii) of the Act would apply while considering the application of section 14A of the Act. The aforesaid decision of this court in HDFC Bank Ltd. (supra) on the above issue has also been accepted by the Revenue inasmuch as even though they have filed an appeal to the Supreme Court against that order on the other issue therein, viz., broken period interest, no appeal has been preferred by the Revenue on the issue of invoking the principles laid down in Reliance Utilities and Power Ltd. (supra) in its application to section 14A of the Act."*

10. Applying the principle laid down by the Hon'ble Bombay High Court to the facts of the case, where the assessee has sufficient interest free funds available with it, which in turn, were utilized for making the aforesaid investments, income from which was exempt from tax, there is no merit in disallowing any part of expenditure under section 14A of the Act. In the first instance, no disallowance is merited on account of interest paid by sole proprietary concern of the assessee under Rule 8D(ii) of the Rules in the absence of any evidence brought on record to establish that those funds were

utilized for making the investments, the income from which was exempt from tax. Further, in the absence of the assessee having claimed any expenditure whatsoever, there is no merit and also in view of the fact that investments made by the assessee were in the past years, no disallowance on account of administrative expenses merits to be made. The Assessing Officer is thus, directed to delete the addition of Rs.7,70,892/-. The ground of appeal raised by the assessee is thus, allowed.

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

Order pronounced on this 29th day of July, 2016.

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 29th July, 2016.

GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-I, Pune;
4. आयकर आयुक्त / The CIT-I, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे, एक-सदस्य मामला / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune