

आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI

माननीय श्री छल्ला नागेन्द्र प्रसाद, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI C.N. PRASAD, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

1. आयकरअपील सं./ I.T.A. No. 1704/Mum/2020
 (निर्धारण वर्ष / Assessment Year: 2016-17)

Apurva Natvar Parikh & Co. Pvt. Ltd. 411B, Hemu Kalani Marg Near Bhakti Bhavan, Chembur, Mumbai-400 071	बनाम/ Vs.	DCIT Cen Cir – 7(1), R. No. 657, 6 th floor Aaykar Bhavan, M. K. Road, Mumbai-400 020
स्थायीलेखासं./जीआइआरसं./ PAN/GIR No. AAACN-2937-Q		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Madhur Agarwal – Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Brajendra Kumar -Ld. Sr. DR

सुनवाईकीतारीख/ Date of Hearing	:	23/09/2021
घोषणाकीतारीख / Date of Pronouncement	:	01/10/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2016-17 arises out of the order learned Commissioner of Income-Tax (Appeals)-49, Mumbai [CIT(A)], dated 24/01/2020 in the matter of assessment framed by Ld. Assessing Officer (AO) u/s 143(3) r.w.s. 147 on 28/12/2018. The effective grounds read as under: -

1. The Ld. Commissioner of Income-tax (Appeals) ('CIT(A)') has erred in making disallowance under section 14A read with rule 8D of the Income-tax Rules, 1962
2. The Ld. Commissioner of Income-tax (Appeals) erred in not treating the one time membership entrance fees as capital receipt.

3. The learned Commissioner of Income-tax (Appeals) erred in confirming the addition made by assessing officer treating the amount spent on repairs and maintenance as capital expenditure.

It is admitted position before us that ground No.2 is to be decided against the assessee keeping in view the orders of Tribunal in earlier years. Therefore, Ground No.2 stand dismissed. The facts as well as adjudication to Ground Nos. 1 & 3 would be as follows: -

2. Disallowance u/s 14A

2.1 The assessee is stated to be engaged in service sector and entertainment industry. The assessee earned exempt dividend income of Rs.96.29 Lacs and offered suo-moto disallowance of direct expenses for Rs.0.07 Lacs in the return of income. However, Ld. AO making a contrary observation that the assessee did not offer any disallowance, computed aggregate disallowance of Rs.11.88 Lacs as per Rule 8D which is direct expense disallowance u/r 8D(2)(i) for Rs.0.07 Lacs and disallowance u/r 8D(2)(ii) being 1% of the annual average of the monthly averages value of investments, income from which does not or shall not form part of total income. The action of Ld. AO, upon confirmation by Ld. CIT(A), is in further challenge before us.

2.2 One of the arguments raised by Ld. AR is that Ld. AO did not consider the suo-moto disallowance made by the assessee and did not recorded objective satisfaction before applying Rule 8D. Upon perusal of assessment order, we find that though suo-moto disallowance has not been considered by Ld. AO, however, in para 7.3, the Ld. AO has recorded such satisfaction and thereafter computed the disallowance u/r 8D. Therefore, this plea is to be rejected.

2.3 Another argument is that while computing the disallowance, only those investments are to be considered which have yielded exempt income during the year. This plea is also to be rejected since after amendment to Rule 8D w.e.f. 02/06/2016, the computation u/r 8D has undergone change and it has been made clear that the amount equal to 1% of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income, shall be disallowed. Therefore, post 02/06/2016, the plea to exclude the non-income yielding investment is to be rejected.

2.4 Proceeding further, we find that though the assessee has identified direct expenses towards earning of exempt income but it has not made any disallowance of indirect expenditure. In our opinion, the application of Rule 8D would not be automatic or mechanical and the disallowance has to be computed having regards to the accounts of the assessee. Therefore, considering the facts and circumstances of the case, the matter of disallowance u/s 14A r.w.r. 8D stand restored to the file of Ld. AO for *de novo* adjudication in the light of our above observations. This ground stand partly allowed for statistical purposes.

3. Repair & Maintenance

3.1 Upon perusal of Profit & Loss account, it transpired that the assessee incurred expenditure of Rs.53.12 Lacs which was in the nature of installation of lawn tennis court, repairs of boundary wall, supply of aluminum sheets, electrical works, purchase of water closet, fabrication charges, hardware items etc. The same was claimed by the assessee as revenue expenditure. However, Ld. AO, treating the same as capital

expenditure, allowed depreciation on the same. The action of Ld. AO, upon confirmation by Ld. CIT(A), is in further challenge before us.

3.2 Upon perusal of relevant material on record, we find that the expenditure on installation of tennis court is nothing but re-laying of the surface of the courts. The repairs to boundary wall is on account of plastering, painting, water proofing, stone fixing, chemical coating etc. The aluminum sheets are for the purpose of window replacement etc. Similar is the nature of other expenses. All these expenses, in our opinion, are not capital expenditure by which the assessee has acquired any new assets but the same are more in the nature of repair & renovation expenses. The benefit may be enduring in nature but nevertheless, the expenditure could not be termed as capital expenditure. Similar is the view of Tribunal in assessee's own case for AY 2009-10, ITA No.2093/Mum/2013 order dated 21/12/2017. Therefore, we direct Ld. AO to allow the same as revenue expenditure and reverse the depreciation granted on these items. This ground stand allowed.

4. The appeal stand partly allowed in terms of our above order.

Order pronounced on 1st October, 2021.

Sd/-

(C. N. Prasad)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 01/10/2021
Sr.PS, Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.