

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH: 'SMC-I', NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
(THROUGH VIDEO CONFERENCE)

ITA NO. 643/DEL/2020

A.Y. : 2016-17

UDAY PUNJ (HUF), CHIMES-55, SULTANPUR FARMS, NEW DELHI - 110030 (PAN: AAAHU0518H)	Vs.	ITO, WARD 32(2), NEW DELHI
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. Rahul Khare, Advocate
Department by	Sh. Mrityunjoy Barnwal, Sr. DR.

**ORDER**

**PER H.S. SIDHU, JM:**

01. This appeal is filed by the Assessee - Uday Punj (HUF) against the order of the Ld. CIT(A)-11, New Delhi dated 15.01.2020 for the assessment year 2016-17 wherein the appeal filed by the assessee against the order of the ITO, Ward 32(2), New Delhi passed u/s. 143(3) of the I.T. Act, 1961 on 29.12.2018 making the addition of Rs.

28,64,419/- u/s. 14A of the Act read with Rule 8D was dismissed and the above addition was confirmed.

02. The assessee has challenged the order by raising the following ground:-

*"The Ld. AO erred in fact and in law in making an addition of Rs. 28,64,419/- which is not only bad in law but also against the facts and circumstances of the case."*

03. The brief facts of the case are that assessee is an individual who filed his return of income on 13.09.2016 declaring total income of Rs. 10,18,970/-. Assessee has also shown Short Term Capital Loss of Rs. 88,18,782/- which was carried forward for set off. The case was selected for limited scrutiny under CASS for verification of following items:-

- i) Whether sales turnover / receipts has been correctly offered for tax.

ii) Whether the investment and income relating to securities (derivative) transactions are duly disclosed.

04. Subsequently, notice u/s. 143(2) of the I.T. Act was issued on 24.07.2017.

05. During the course of assessment proceedings, the AO observed that assessee has earned dividend income of Rs. 14,04,831/- and assessee was asked that why disallowance u/s. 14A of the Act should not be made. The assessee explained vide letter dated 18.12.2018 that assessee has debited total expenditure in Profit & Loss Account of only Rs. 9,20,749/- out of which a sum of Rs. 8,17,707/- is income tax, service tax, stamp duty and Security Transaction Tax (STT). Therefore, the assessee has incurred and claimed the expenditure of Rs. 1,03,042/- only. Out of this expenditure, Rs. 77,771/- are general expenditure and Rs. 25,271/- are DMAT charges. Assessee submitted that it has not claimed any expenditure which has yielded the exempt income. He submitted that security transaction tax has

not been claimed by the assessee and already disallowed. The AO rejected the contentions of the assessee and noted that assessee has shown Consultation charges of Rs. 10,137/- and DMAT charges of Rs. 25,271/- and therefore, it has incurred expenditure for earning exempt income. Thereafter, the Ld. AO applied the Rule 8D and found that assessee himself has disallowed the STT paid of Rs. 86,735/-, AO calculated disallowance of Rs. 28,64,419/-. This disallowance was made u/s 14A of the Act and assessment order was passed on 29.12.2018 determining the total income of the assessee Rs. 38,83,389/- against the returned income of Rs. 10,18,970/-.

06. The assessee preferred appeal before the Ld. CIT(A), who confirmed the above disallowance and dismissed the appeal of the Assessee. Therefore, the assessee is aggrieved with the order of the Ld. CIT(A) and has preferred this appeal.
07. Ld. AR stated that

- (i) the case of the assessee was selected for limited scrutiny giving the reasons which did not include disallowance of expenditure u/s. 14A of the Act;
- (ii) the assessee has only incurred total expenditure of Rs. 1,03,042/-, therefore, the disallowance cannot exceed the total expenditure and
- (iii) assessee has himself disallowed the STT amounting to Rs. 86,735/- and therefore, the balance expenditure can only be considered for disallowance. He also referred to Profit and Loss Account of the assessee. He submitted that disallowance deserve to be deleted.

08. Ld. DR supported the order of the AO and submitted that the reasons for limited scrutiny included for investment and income relating to securities are duly disclosed or not. Therefore, disallowance u/s. 14A is part of the reasons. Even otherwise, he submitted that

there is no infirmity in the working of disallowance made by the AO.

09. We have carefully considered the rival contentions and perused the orders of the lower authorities. In the present case, the case of the assessee was picked up for limited scrutiny for the reasons stated above. The reasons did not speak about any disallowance of expenditure u/s. 14A of the Act. If the AO wanted to go beyond the reasons of the limited scrutiny, then he should have invoked the provisions of complete scrutiny by obtaining the necessary approvals. In this case, no such approval or conversion of the case from limited scrutiny to complete scrutiny was shown. Undisputedly, case of the assessee was for limited scrutiny and the reasons for picking up of the case of assessee under limited scrutiny does not include the disallowance of expenditure u/s. 14A of the Act, hence, we cannot uphold the disallowance made by the AO and confirmed by the Ld. CIT(A). In the result, we direct the Assessing Officer to delete the disallowance of Rs. 28,64,419/- made u/s. 14A of the Act read with Rule

8D. The orders of the lower authorities are reversed.  
The solitary ground of the appeal of the assessee is allowed.

10. In the result, the Assessee's Appeal is allowed.

The decision is pronounced on 26.08.2020.

Sd/-

Sd/-

**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**  
"SRB"

**(H.S. SIDHU)**  
**JUDICIAL MEMBER**

**Copy forwarded to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi