

(2024) 04 ITAT CK 0014

Income Tax Appellate Tribunal (Delhi A Bench)

Case No: Income Tax Appeal No. 328/DEL/2021

ACIT

APPELLANT

Vs

Ashish Gupta

RESPONDENT

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**Date of Decision:** April 2, 2024**Acts Referred:**

- Income Tax Rules, 1962 - Rule 8D, 8D(1)
- Income Tax Act, 1961 - Section 14A(2), 115UB, 164(1), 166

**Hon'ble Judges:** C. N. Prasad, J; Dr. B. R. R. Kumar, (AM)**Bench:** Division Bench**Advocate:** Rohit Agarwal, Kanv Bali**Final Decision:** Dismissed

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**Judgement**

1. The present appeal has been filed by the Revenue against the order of Id. CIT(A), Meerut dated 28.09.2020.

2. Only two tangible grounds have been raised by the Revenue:

**"1. The CIT(A), Meerut has erred in law and on facts in deleting the addition of Rs. 1,35,59,971/- reflected in financial statements as 'Interest on Cash Opportunity Fund' [Category III Alternative Investment Fund(AIF)].**

**2. The CIT(A), Meerut has erred in law and on facts in deleting the entire disallowance of Rs. 21,04,632/ - made u/s 14A of the I.T. Act, 1961 read with rule 8D of I.T. Rules, 1962."**

3. Heard the arguments of both the parties and perused the material available on record. The relevant facts taken from the order of the Id. CIT(A).

**Disallowance of Rs.21,04,632/- u/s 14A:**

4. The taxable & non-taxable income of the assessee were Rs.4,18,84,982/- & Rs.2,09,71,939/- respectively. The assessee has claimed expenditure of Rs. 21,04,632/- excluding insurance premium, interest on TDS, children school fee, club subscription in profit & loss account.

5. The A.O. held that assessee has substantial income as "tax free income" and the claim of the assessee that all expenses claimed pertains to taxable income only, is not acceptable under Rule 8D(1). Following Rule 8D, the Assessing Officer calculated the disallowable amount at Rs.50 Lakhs with reference to calculated average investment of Rs.50 Crore, but as the total expenses claimed were only Rs.21,04,632/-,he restricted the disallowance u/s 14A of the Income Tax Act, 1961 at that amount.

6. Before the Id. CIT(A), the assessee has submitted that in order to make disallowance, the condition precedent for the A.O. is to first record, on examining the accounts of the assessee, that he was not satisfied with assessee's claim that no expenditure were incurred by him relating to exempt income. The assessee has argued that as the Assessing Officer did not record any such objective satisfaction in terms of section 14A(2) of the Act read with rule 8D, the A.O. did not get jurisdiction to invoke Rule 8D. On these facts, the assessee has argued that the A.O. did not enter jurisdiction to invoke rule 8D.

7. Before the Id. CIT(A), the assessee has relied upon the judicial pronouncements in the Case of Principal Commissioner of Income Tax vs. ShapoorjiPallonji And Co. Ltd. (2020) 423 ITR 220/Principal Commissioner of Income Tax vs. Lee And Muirhead Pvt. Ltd. (2020) 423 ITR 167, ITAT Bombay in the case of Tata Capital Ltd. vs. ACIT (2020) 58 CCH 0095 and Hon'ble Karnataka High court in the case of Commissioner of Income Tax and Another vs. Syndicate Bank (2020) 422 ITR 298 on this issue.

8. The assessee has further argued that the exempt income consist of interest on tax free bonds, dividend on shares, dividend of mutual fund, interest on PPF, share from partnership firm, survival benefit from LIC etc. and none of the income did require incurring of any expenditure. The assessee has claimed that he has not incurred any expenses and therefore there is no question of disallowance of any expenditure u/s 14A read with rule 8D.

9. The Id. CIT(A) held that no staff cost can be related to the earning of exempt income as the same is directly received in recipient's bank accounts through NEFT/RTGS and bank transfers. The other administrative and office expenses also cannot be related to the earning of exempt income. On these facts, the Id. CIT(A) held that where expenses claimed by the assessee do not relate to earning of exempt income and hence no disallowance u/s 14A read with Rule 8D can be made.

10. The assessee has claimed expenses of Rs. 80,415/- on securities transaction tax, in the total expenses of Rs.21,04,632/-, which relates to earning of Capital Gains on Shares and is not related to business income. The terms of Seventh proviso to section 48 of the I.T. Act, any sum paid on Securities Transaction Tax is not allowable in computing the income chargeable under the head Capital Gains. In view of these facts and legal position, the Id. CIT(A) directed the A.O. to disallow amount of STT of Rs. 80,415/- claimed in the expenses by assessee. We find that the order of the Id. CIT(A) is reasonable, logical and as per the provisions of the Act. Hence, we decline to interfere with the order of the Id. CIT(A).

**Disallowance of exemption of income of Rs.1,35,59,971/-**

11. The assessee has earned interest income of Rs.1,35,59,971/- by accrual on his investment in IIFL Cash Opportunity Fund Category-III, Alternate Investment Fund. The said income accrued to the assessee on the basis of NAV value of units of the fund standing in the name of the assessee as on the last date of the year. The A.O. held the accrued interest as taxable. The A.O. made a finding that section 115UB is applicable to Category-I & II, Alternate Investment Fund, but the section is silent regarding taxability of Category-III, Alternate Investment Fund.

12. During appellate proceedings, the assessee has pleaded that from the two account statements of cash opportunity fund (COF) of the assessee already on record, it is apparent that the fund itself has discharged the tax liability as representative tax assessee on behalf of the investors of the fund. The assessee submitted that the following information was given on the statement of accounts at Sr. no. 1 under instructions & information:

**"1. IIFL Cash Opportunities Fund is a CAT III AIF, tax has been discharged by the fund as representative tax assessee on behalf of the investors of the fund."**

13. The assessee has further relied upon CBDT circular no.13/2014 on the subject issuing clarification regarding taxation of AIF's having status of non-charitable trust. The assessee has referred to para 4 of the said circular, in which it is stated that where the trust deed either does not name the investor or does not specify the beneficial interest, provision of section 164(1) would apply and the entire income of the funds shall be taxed at MMR in the hands of trustee of such fund in the capacity of representative assessee. Para 4 of the circular is reproduced in the submission of the assessee hereinabove. On the strength of information in accounts statements of the assessee with the fund and Circular no.13/2014, the assessee has claimed that the tax on the income from Category-III, AIF, under reference, has been discharged by the fund as representative assessee and because the tax has been paid u/s 164(1), the same is not taxable in the hands of the assessee. The provisions of section 166 of the Act are not to be invoked in view of above referred said circular.

14. The Id. CIT(A) referred statements of account of the assessee with the Cash Opportunity Fund, CBDT Circular no.13/2014, clarifying the position of taxation of income of AIF, where the tax is discharged by the fund as representative assessee and observed that the tax on interest income from AIF, under reference has been discharged by the FUND in the capacity of representative assessee on behalf of the assessee investor and hence held that the interest income, on AIF, Category-III, Cash opportunity fund, of Rs.1,35,59,971/- is exempt in the hands of the assessee.

15. On going through the provisions of the Act and the facts narrated above, since the tax liability stands discharged, we decline to interfere with the order of the Id. CIT(A).

16. In the result, the appeal of the Revenue is dismissed.