

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BENCH "C" KOLKATA**

Before Shri A.T Varkey, Judicial Member and  
Shri Manish Borad, Accountant Member

आयकर अपील सं.य/ ITA No. 1440/Kol/2018 Assessment Year: 2015-16
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Sanjay Mehta PAN: AERPM0968G 29/1C Bentinck Street, Kolkata-700 001.	<u>बनाम</u> V/s.	ACIT, Circle-36, Kolkata Aaykar Bhawan, Poorva, 8 <sup>th</sup> Fl., 110 Shanti Pally, Kolkata-700 107.
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

Hearing through video Conferencing

अपीलार्थी की ओर से/By Appellant	Shri Anikesh Banerjee, Advocate, Ld. AR
प्रत्यर्थी की ओर से/By Respondent	Shri Supriyo Pal, Addl.CIT, Ld.DR
सुनवाई की तारीख/Date of Hearing	15-09-2021
घोषणा की तारीख/ Date of Pronouncement	17-09-2021

आदेश /O R D E R

PER MANISH BORAD, AM.

This appeal filed by the assessee pertaining to the A.Y. 2015-16 is directed against the order of Id. Commissioner of Income-tax (Appeals)-10, Kolkata dated 5<sup>th</sup> April, 2018 vide Appeal No. 912/CIT(A)-10/C-36/2015-16/2017-18/Kol. which is arising out of the assessment order framed u/s 143(3) of the Income Tax Act dated 28-12-2017 by ACIT, Circle-36, Kolkata.

2. The assessee has raised following grounds of appeals for Assessment Year 2015-16:-

1. For that learned CIT (A) was wrong in not adjudicating ground number 1 before him by holding "I find that the appellant has participated in the assessment proceedings without protest and is raising certain technical issues for academic purposes. As such, in my considered view these matters do not call for any specific adjudication.

2. For that in view of facts and circumstances of the case variations made by Ld. AO, which are beyond scope of limited scrutiny, are void being without jurisdiction. The same may be declared void .

3. For that Ld. CIT(A) was wrong in not considering clear language in S.14A in two phrases namely "total income under this Chapter" and "which does not form part of the total income under this Act" as used in S.14A. AS per reading of these phrases a disallowance is called for only in relation to income which is not chargeable under the Act. Therefore, Ld. CIT (A) was wrong in confirming invocation of S.14A, because dividend constitute chargeable income I total income under the Act and is a final tax levied under the Act. Therefore, in relation to such income S.14A cannot be invoked. The Ld. AO may be directed not to invoke S.14A.

4. For that without prejudice to above ground, Ld. CIT(A) was wrong in confirming disallowance u/s 14A to the extent of Rs.88558/- which is highly excessive, particularly when no expenses have been incurred to earn dividend.

5. For that learned CIT(A) was wrong in confirming invocation of 5.68 in respect of Loan received amounting to Rs.4,00,000/- nature and source of which was fully explained by assessee and therefore, 5.68 is not at all applicable, in view of provisions of the Negotiable Instrument Act; because the assessee received a/c payee cheque, which was held and deposited as a holder in due course, on presentation of cheque, through banker of assessee to the drawee bank, the drawee bank honored the cheque against balance available in account of drawer of the cheque. In such circumstances

*amount was realized from drawee bank, on presentation of cheque, therefore 5.68 cannot be invoked.*

*6. For that Id. CIT(A) was wrong in confirming addition u/s 68, merely on basis of presumption, bias, conjecture and hearsay, without any evidence that assessee had in fact paid cash in lieu of cheque received for which assessee confirmed received, acknowledged liability, paid interest from time to time, deducted tax on interest and repayment was also made in due course.*

*7. For that Ld. CIT (A) was wrong in confirming addition u/s 69C in respect of interest paid by assessee which was duly recorded in books of account of assessee and is a genuine payment of interest on capital borrowed.*

*8. For that learned CIT (A) was wrong in confirming invocation of S.234A though Return of income was filed timely.*

*9. For that Ld. CITA (A) was wrong in holding that invocation and levy of interest u/s 234B and 234C are consequential in nature. Furthermore when AO did not make any order to levy interest us. 234A, 234B and 234C but in computerized computation sheet interest has been levied. In case of additions made due to difference of opinion, and also additions made not as per law and binding precedence, interest can only be charged on the basis of income as per return and not as per income assessed by AO. Because it is impossible for assessee to foresee, what additions will be made by the AO. Levy of interest may be deleted fully.*

*10. The appellant seeks permission to raise new contentions and new grounds of appeal.*

3. Brief facts of the case as culled out from the records are that the assessee is an individual. E-Return of income for the A.Y 2015-16 filed on 29-09-2015 declaring total income of Rs. 43,33,390/-. Case selected for scrutiny through CASS followed by serving of notices issued u/s. 143(2) and 142(1) of the Act. The Ld. AO called for submissions of the details. After considering the same, he computed the disallowance u/s. 14A read with rule 8D of Rs.9,18,028/-. The Id.

AO also observed that there was a loan from M/s. Attitude Merchants Pvt. Ltd of Rs. 4 lakhs. The Id. AO was not satisfied with the submissions made by the assessee explaining the identity, genuineness and creditworthiness. The Id. AO disallowed interest expenditure of Rs. 40,000/- on the alleged loan of Rs. 4 lakhs. The total addition was made at Rs. 13,58,028/- (Rs. 9,18,028/- u/s. 14A r.w.r 8D, Rs. 4,00,000/- u/s. 68 and Rs.40,000/- u/s.69C of the I.T Act, 1961). Accordingly, income of assessee assessed at Rs.56,91,420/-.

4. Aggrieved, the assessee preferred an appeal before the Id. CIT(A) and partly succeeded.

5. Now, the assessee is in appeal before this Tribunal challenging the additions confirmed by Ld. CIT(A).

6. Ld. Counsel for the assessee submitted that as regards the disallowance made u/s. 14A of the Act, sustained at Rs. 88,558/- by the Id. CIT(A) to the extent of total exempt income earned during the year under consideration, could not submit any other contention to challenge the finding of the Id. CIT(A). As regards the addition made u/s. 68 of the Act of Rs. 4 lakhs, the Id. Counsel for the assessee has submitted that no such amount was received during the year. The alleged sum was received in the preceding F.Y (financial year) and, therefore, no addition on this issue was called for. As regards the disallowance made on interest expenditure of Rs.40,000/- u/s. 69C of the Act and confirmed by the Id. CIT(A), it was submitted by him that it is a genuine expenditure and the same may be allowed. The Id. Counsel for the assessee also took us through the paper book dt. 14-

10-2020 running pages from 1 to 36 and another paper book dt. 23-11-20 running pages from 1 to 63.

7. Per contra, Ld. Departmental Representative vehemently argued supporting the order of the Id. CIT(A).

8. We have heard the rival contentions and perused the records placed before us. Though the assessee has raised 10 grounds of appeal, but the effective issue are the followings:-

- i) disallowance made u/s. 14A of Rs. 88,558/-*
- ii) addition made u/s. 68 of the Act of Rs. 4 lakhs, and*
- iii) addition/disallowance made u/s. 69C of the Act of interest expenditure of Rs. 40,000/-.*

9. As regards the disallowance made u/s. 14A/r.w.r 8D, we find that the exempt income earned during the year under consideration is of Rs. 88,558/-. The Id. AO made the disallowance at Rs. 9,18,028/-. When the matter came to the Id. CIT(A), he in view of settled judicial precedence sustained the disallowance to the extent of exempt income. The Id. Counsel for the assessee failed to rebut the finding of the Id. CIT(A) by placing any finding of judicial precedent to controvert the finding of Id. CIT(A) confirming the disallowance made u/s. 14A of the Act to the extent of exempt dividend income of Rs. 88,558/- earned during the year. We, thus, find no infirmity in the finding of the Id. CIT(A). Accordingly, ground nos. 3 & 4 of assessee's appeal are dismissed.

10. As regards the addition of Rs. 4 lakhs made u/s. 68 of the Act, we find that the assessee took a loan of Rs. 4 lakhs from M/s. Attitude Merchants Pvt. Ltd in preceding year. A perusal of confirmation of

accounts placed at page 33 of the P.B dt. 23-11-20 for the F.Y 2013-14 relevant to A.Y 2014-15 shows that there was an opening credit balance of Rs. 7 lakhs as on 1-4-2013. The assessee took a loan of Rs. 4 lakhs on 1-1-2014. Interest was paid and TDS was deducted and the closing balance was at Rs. 11,00,000/-. Further, during the year under appeal i.e F.Y 2014-15 from perusal of paper book at page-34, we find that in confirmation of accounts there is no transaction during the year and interest has been charged on the opening balance. Other documentary evidence in the form of bank statement has also been filed to prove that the alleged fund was not received during the assessment year under consideration. This fact remains undisputed at the end of the Id. DR also. We, therefore, under the facts and circumstances of the case, are of the considered view that since the alleged sum of Rs. 4 lakhs was not received during the A.Y under consideration, the addition made u/s. 68 of the Act is not called for during the A.Y under consideration. We, thus, set aside the finding of the Id. CIT(A) and delete the addition of Rs. 4 lakhs made u/s. 68 of the Act. Accordingly, ground nos. 5 & 6 of assessee's appeal are allowed.

11. As regards ground no. 7 relating to disallowance of interest paid of Rs. 40,000/- on the alleged unexplained cash credit of Rs. 4 lakhs, we are of the view that since the addition made u/s. 68 of the Act for alleged cash credit of Rs. 4 lakhs stands deleted by us and there being no other finding of the Id. AO challenging the genuineness of the interest expenditure, no disallowance is called for. Relevant finding of the Id. CIT(A) is set aside and addition for Rs. 40,000/-

made u/s. 69C of the Act by the Id. AO stands deleted. Accordingly, ground no. 7 raised by the assessee is allowed.

12. Ground no. 1, 2 & 10 are general in nature, which need no adjudication. Ground nos. 8 & 9 are consequential in nature.

13. In the result, the appeal of the assessee stands partly allowed.

The order pronounced in the open Court on 17.09.2021.

Sd/-  
(A.T.VARKEY)

JUDICIAL MEMBER

दनांक /Dated : 17<sup>th</sup> September, 2021

Sd/-  
(MANISHBORAD)

ACCOUNTANT MEMBER

\*\*PP/SPS

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1.अपीलार्थी/Appellant/Assessee: Sri Sanjay Mehta 29/1C Bentinck Street, Kolkata-700 001.

2. प्रत्यर्थी/Respondent/Department: ACIT, Circle-36, Aaykar Bhawan, Poorva, 8<sup>th</sup> Fl., 110 Shanti Pally, Kolkata-700 107.

3. संबंधित आयकर आयुक्त / Concerned CIT

4. आयकर आयुक्त- अपील / CIT (A)

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata

6. गार्ड फाइल /  
Guardfile.

By order/आदेश से,  
/True Copy/

Senior Private Secretary/D.D.O  
ITAT, Kolkata