

**THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI**

**SHRI BASKARAN BR, ACCOUNTANT MEMBER
&
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

I.T.A. No.734/Mum/2022

(A.Y. 2017-18)

M/s AVTIL Enterprises Limited 1/204, Navjivan Society, Lamington Road, Mumbai- 400008 PAN AACCA8482H (Appellant)	Vs.	PCIT-5 Room No. 515, Aaykar Bhavan, Maharishi Karve Road, Mumbai-400020 (Respondent)
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Assessee by	Shri Devang Divecha
Department by	Smt Shailja Rai
Date of Hearing	13.07.2022
Date of Pronouncement	10.10.2022

ORDER

PER KAVITHA RAJAGOPAL:-

This appeal has been filed by the assessee challenging the order of the ld. PCIT passed u/s 263 of the Income-Tax Act pertaining to AY 2017- 18.

2. The brief facts are that assessee company is engaged in the business of general trading and merchants, buying and selling, trading, exchange, contract of all types of trade and investment instruments. The assessee company is also engaged in the investment activity in various real estate assets for the purpose of profit and gains from the real estate project. The assessee company filed its return of income dated 04/10/2017 declaring total income of Rs. 61,19,790/-. The assessee's case was selected

for limited scrutiny for the purpose of examination of expenses incurred for earning exempt income and assessment order dated 04/11/2019 was passed u/s 143(3) determining total income of Rs.61,19,790/-.

3. The ld. PCIT invoked the provision of section 263 of the Act on the ground that the AO has failed to conduct all necessary enquiries required and has also erred in non-application of mandatory provisions of law in this case section 14A r.w. Rule 8D. The ld. PCIT has further held that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interests of the revenue. The learned PCIT has also relied on the decision of the Hon'ble apex court in the case of **Smt. Tara Devi Agarwal (88 ITR 0323) and Rampyari Devi Saraogi (67 ITR 0084)** which has held that in the assessment completed without necessary enquiries required on facts of the case is erroneous in so far as it is prejudicial to the interest of the revenue. The learned PCIT had directed the AO to reframe the assessment order denova after conducting all necessary enquiries and verification required on facts of the case and by giving opportunity of being heard to the assessee before passing the assessment order.

4. The assessee is in appeal before us as against the order of the learned PCIT in invoking the provision of section 263 of the Act. The learned AR for the assessee contended that the assessee's case was selected for the limited scrutiny and that the AO has made relevant enquiry and only after due verification of details the assessment order was passed. The learned AR brought our attention to the paper book filed by the assessee and relied on pages 56 to 63 wherein the assessee had submitted the relevant details and computation of expenditure disallowable under section

14A r.w. Rule 8D before the AO and has complied to the query raised by the AO. Further to this learned AR stated that the dividend income earned by the assessee is only Rs. 5,957/- and the same has been shown in the audited annual accounts and that the said dividend income has not been claimed as exempt while computing the computation of total income and tax has been paid for the said amount thereby concluding the fact that the assessee is not entitled to disallowance under section 14A read with Rule 8D. The learned DR on the other hand contended that the AO has failed to make the necessary enquiries in the scrutiny assessment and that the assessment order passed by the AO is erroneous in so far as it is prejudicial to the interest of revenue. The learned DR relied on the order of Id. PCIT.

5. Having heard the rival submissions and perused the material on record it is evident that the assessee's case was selected for limited scrutiny to the extent of inquiring the issue pertaining to expenses incurred for earning exempt income. It is observed that the AO has raised queries pertaining to this issue to the assessee for which the assessee has given a detailed submission along with relevant documents to substantiate the claim of the assessee. The assessee has further stated that the AO has analysed the submissions made by the assessee after due verification and detailed enquiry has applied his mind and passed the assessment order. Assessee relied on the decision of Hon'ble Karnataka High Court in the case of **Commissioner of income tax, Bangalore v/s Chemsworth (P) Ltd. (2020) 119 taxmann.com 358 (HC Karnataka)** and the decision of Kolkata tribunal in **Shringar Marketing Pvt. Ltd. v/s DCIT (2021) 128 taxmann.com 199** wherein it was held that if the assessee has furnished all the details before the AO and if it is found that there is no expenditure

under section 14A which are attributable to exempt dividend income and the AO has taken plausibly view then section 263 cannot be invoked merely on the ground that there was inadequate enquiry conducted by the AO. The assessee further submitted that the assessee's case was for limited scrutiny to examine the issue of "expenses incurred for earning exempt income" for which the AO has made sufficient enquiry examining the details furnished by the assessee. The assessee also relied on the decision of Hon'ble jurisdictional Bombay High Court in the case of **Commissioner of Income-Tax v/s Future Corporate Resources Ltd. (2021) 132 Taxmann.com 173 (Bombay High Court)** which reiterated similar proposition as in the case of assessee. In addition to this the assessee relied on the plethora of judgment in favour of the assessee.

6. From the above observation it is evident that the AO has called for the details pertaining to the expenses incurred for earning exempt income and the assessee in response to that has furnished details which substantiate the claim of the assessee. No disallowance is permissible when there is no exempt income by way of dividend claimed and the same does not warrant disallowance under section 14A of the Act. Notwithstanding the same the assessee has also furnished audited annual financials wherein it was found that the capital and reserves exceeded the said investments during the year. This implies that the investments are made from the interest free funds of the assessee and not from interest bearing funds.

7. In view of the above observation we conclude that the assessment order passed by the AO is not erroneous insofar as it is prejudicial to the interest of the revenue as the AO in the

present case has taken one of the possible view and the invocation of section 263 is not warranted in the present case. We hereby set aside the order of ld. PCIT and allow the appeal filed by the assessee.

8. In the result the appeal filed by the assessee is allowed.

Order pronounced in the open court on 10.10.2022.

Sd/-

(BASKARAN BR)

ACCOUNTANT MEMBER

Sd/-

(KAVITHA RAJAGOPAL)

JUDICIAL MEMBER

Mumbai;

Dated : 10/10/2022

ANIKET RAJPUT (STENOGRAPHER)

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai