

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-2' NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
&
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA No. 6477/Del/2019
(Assessment Year: 2016-17)**

Heard Through Video Conferencing

Thomas Philips 19, Kailash Kunj Apartments, Greater Kailash, Part-1, New Delhi. PAN No. AAGPP8604F	vs	ITO, Ward 61(5), New Delhi.
APPELLANT		RESPONDENT

Assessee by	Sh. S. Srinivasan, CA
Revenue by	Sh. Ved Prakash Mishra, Sr. DR

Date of Hearing	14.10.2020
Date of Pronouncement	14.10.2020

ORDER

PER SHRI RAMIT KOCHAR, A.M.

This appeal in ITA No. 6477/Del/2019 for assessment year 2016-17 has arisen from appellate order dated 04.06.2019 passed by Ld. Commissioner of Income Tax (Appeals)-20, New Delhi in ITA No. 10216/2018-19, which in turn has arisen from assessment order dated 20.12.2018 passed by Ld. Assessing Officer u/s 143(3) of the Income-tax Act, 1961. This appeal is heard through video conferencing.

2. The grounds of appeal raised by assessee in the appeal in ITA No. 6477/Del/2019 for assessment year 2016-17 filed with Income Tax Appellate Tribunal, Delhi Benches are as under:

1. *“The Learned Commissioner of Income Tax (Appeals) has erred:
 - a) *The Learned CIT Appeals has failed to observe that the Appellant has not claimed any expenditure in the computation of income and has erred in:*
 - b) *Invoking the provisions of Section 14A read with Rule 8D.*
 - c) *In confirming the addition of Rs. 4,74,191/- especially when the fact that no expenditure has been claimed in the return of income has been clearly stated.**
2. *The Learned CIT Appeals has erred in confirming that the disallowance u/s 14A for Rs. 4,74,191/- especially when the proviso to Rule 8D states “Provided that the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee.*
3. *The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal.”*

3. The brief facts of the case are that the assessee is a professional Doctor and has earned income from profession of Doctor (declared under the head “Income from other Sources”), capital gains, house property and income from other sources. The assessee has earned exempt income by way of dividend to the tune of Rs. 11,47,898/- and had made huge investments, during the year under consideration. The assessee has claimed that it has not incurred any expenditure while making investments and in relation to the earning of an exempt income and hence, there is no question of disallowance of expenses by invoking provisions of

section 14A of the Income Tax Act, 1961. The authorities below have applied Rule 8D of Income Tax Rules, 1962 and had made disallowance to the tune of Rs. 4,74,191/- by invoking amended Rule 8D(2)(ii) of the 1962 Rules. The assessee has filed an appeal with the Tribunal and main grievance of the assessee is that the assessee has not made any expenditure in relation to earning an exempt income and has not claimed any deduction of expenditure from the Revenue and hence there is no question of disallowance of expenditure. Ld. Counsel for the assessee submitted that this plea of the assessee was not verified by the authorities below and the same can be verified by authorities..

4. The Ld. DR submitted that matter can be restored back to the file of the AO for fresh adjudication.

5. After hearing both the parties through the video conferencing mode, we have observed from the Paper Book filed by the assessee, wherein computation of income have been filed by assessee that the assessee has claimed income from profession of Doctor which is claimed under the head "income from other sources" instead of declaring the same under the head "Profit or Gain from business or profession". We have gone through the orders of the authorities below and we have observed that there is no finding whether assessee has claimed any expenditure for which deduction has been claimed from Revenue. It will be fair and reasonable in the interest of justice that matter be restored back to the file of the AO for fresh adjudication and assessee is directed to produce details

of income earned from various sources including from profession of Doctor which is declared under the head "Income from other Sources" by assessee and expenses claimed while declaring the aforesaid income(s). Needless to say that AO will give proper and adequate opportunity of being heard to the assessee before adjudicating of disallowance of expenditure u/s 14A read with the Rule 8D of the 1962 Rules. We order accordingly.

5. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 14.10.2020

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated: 14.10.2020
*Kavita Arora, Sr. PS

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI

