

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B' BENCH, KOLKATA**

**Before Shri Pramod Kumar (Accountant Member),
and Shri Mahavir Singh (Judicial Member)**

**I.T.A. No.: 653/ Kol. / 2012
Assessment year : 2008-09**

*Joint Commissioner of Income Tax (OSD),.....Appellant
Circle-5, Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069*

-Vs.-

*M/s. Pilani Investment & Industries Corpn. Ltd.,.....Respondent,
9/1, R.N. Mukherjee Road,
Kolkata-700 069
[PAN :AABCP 7642 R]*

Appearances by:

*Dilip Kr. Rakshit, JCIT, Sr. D.R., for the appellant
A.K. Gupta, FCA, for the Respondent*

Date of concluding the hearing : February 04, 2013
Date of pronouncing the order : February 04, 2013

O R D E R

Per Pramod Kumar:

1. By way of this appeal, the Assessing Officer has called into question correctness of learned Commissioner of Income Tax (Appeals)'s order dated 13th December, 2011, in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2008-09 on the following grounds :-

*"That on the facts and circumstances of the case, the ld.
CIT(A) erred in law in directing the Assessing Officer to*

work out the disallowance of expenses relating to exempted dividend income as per the method of computation shown by the ld. CIT(A)".

2. The appeal is, however, time barred by 24 days. The Assessing Officer has moved a petition seeking condonation of this delay. Having perused the said petition, and having heard rival contentions on the same, we are inclined to condone the delay as the delay seems to have been explained by a reasonable cause. Accordingly, we condone the delay and proceed to take up the matter on merits.

3. The issue in appeal lies in a very narrow compass of material facts. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has earned tax free dividend income and long term capital gains, and, accordingly, proceeded to compute disallowance u/s. 14A read with Rule 6D(iii) in respect of expenditure incurred on such tax exempt income. Out of total general expenditure of Rs.1,16,94,912/-, the Assessing Officer excluded Rs.19,96,228/- being expenses related to house property income, interest expenditure of Rs.71,42,636/- and De-mat charges of Rs.2,14,481/-, and the balance expenses were allocated as relating to tax exempt income in the ratio of tax exempt receipts to total receipts. On this basis, 46.68% of balance expenditure, i.e. Rs.54,35,795/- was disallowed u/s. 14A r.w.r. 6D(iii). Aggrieved by the quantum of disallowance, the assessee carried the matter in appeal before the CIT(Appeals). It was contention of the assessee that expenses which were allocated by the Assessing Officer for the purpose of disallowance u/s. 14A r.w.r. 6D(iii) included Rs.57,14,450/- which was exclusively on building maintenance and service expenses. It was submitted that since no part of these expenses

could be attributed to tax exempt income, these expenses of Rs.57,14,450/- ought to have been taken out of computation of 14A disallowance. Learned CIT(Appeals) upheld this contention and observed as follows :-

"8. The assessee has submitted during the appellate proceedings that the amount of Rs.57,14,450/- is exclusively on building maintenance and service expenses. These are directly related to receipt of rent from the let out property. The Assessing Officer has erroneously taken this amount in the general allocation. I have examined the building maintenance and service expenses accounts and found that these expenses are related to earning of rent. Therefore, these expenses are not general in nature since these are attributable to a separate head of income, i.e. business income earned as rent".

4. Aggrieved by the stand so taken by the CIT(Appeals), the Assessing Officer is in appeal before us.

5. Having heard the rival contentions, and having perused the material on record, we see no reasons to disturb the fair and judicious stand of the CIT(Appeals). Once it is found that an expense is specifically relatable to a taxable income, as is the undisputed position in this case, no portion of such an expense can be disallowed u/s. 14A. The allocation of general expenses vis-à-vis tax exempt income and taxable income can only be made in respect of expenditure which cannot either be wholly allocated to taxable income, then or which can not be wholly allocated to tax exempt income; the allocation can be made, even on the basis of formula set out in Rule 6D(iii), in respect of such expenses which do not fall any of these categories. There is no infirmity in the stand of the CIT(Appeals). We approve the same.

6. For the reasons set out above, we confirm the order of the CIT(Appeals) and decline to interfere in the matter.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 4th day of February, 2013.

Sd/-
Mahavir Singh
(Judicial Member)

Kolkata, the 4th day of February, 2013

Sd/-
Pramod Kumar
(Accountant Member)

Copies to :

- (1) *The assessee*
- (2) *The Department*
- (3) *Commissioner of Income-tax (Appeals)*
- (4) *Commissioner of Income Tax*
- (5) *The Departmental Representative*
- (6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Kolkata benches, Kolkata

Laha/Sr. P.S.