



**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.5795/Mum/2017

(निर्धारण वर्ष / Assessment Years: 2014-15)

The Wodehouse Gymkhana Ltd. 182, Maharshi Karve Road, Cooperage, Nariman Point, Mumbai - 400021	<b>बनाम /</b> Vs.	Income Tax Officer 1(3)(3) Aayakar Bhavan, M.K. Road, Mumbai - 400021
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AA ACT4146R</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Jeevraj P. Jain
Revenue by:	Shri Chaudhary Arunkumar Singh

सुनवाई की तारीख / Date of Hearing: 10.01.2019

घोषणा की तारीख /Date of Pronouncement: 30.01.2019

**आदेश / ORDER**

**PER AMARJIT SINGH, JM:**

The assessee has filed the present appeal against the order dated 30.06.2017 passed by the Commissioner of Income Tax (Appeals)-3, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2014-15.

2. The assessee has raised the following grounds of appeal:-

1. *Learned CIT(A) erred in confirming addition of Rs.2,51,638/- under section 14A of Income Tax Act 1961. Appellant prays for deletion of addition of Rs.2,51,638/-.*
2. *Learned CIT(A) erred in rejecting the Ground of Appeal that provision of section 14A are not applicable in case of appellant on the ground that income is assessed under business income / income from other sources without considering the fact that major income is exempt under principal of mutuality. Appellant prays to consider that provision of section 14A are not applicable in case of appellant as income is exempt under principal of mutuality.*
3. *Learned CIT(A) erred in ignoring grounds of appeal that assessee should have claimed expenses disallowable u/s.14A against taxable income.*

*Appellant prays that no expenses on exempt income is claimed against taxable income.”*

3. The brief facts of the case are that the assessee filed its return of income on 27.11.2014 declaring total income to the tune of Nil. The assessment was selected for scrutiny under CASS. Notice u/s.143(2) and 142(1) of the Income Tax Act, 1961 ( in short “the Act”) were issued and served upon the assessee. The assessee showed the limited dividend income of Rs.22,07,008/- which was claimed as exempt income. The Assessing Officer applied the provision of Section 14A r.w. Rule 8D and assessed the expenditure incurred to earn the exempt income in sum of Rs.2,51,638/-. The total income of the assessee was assessed to the tune of Rs.(-)7,62,575/-. Feeling aggrieved the assessee filed the appeal before the CIT(A) who confirmed the order of Assessing Officer, therefore, the assessee has filed the present appeal before us.

**ISSUE NO.1 TO 3:-**

4. All the issues are interconnected, therefore are being taken up together for adjudication. In fact under these issues the assessee has challenged the addition of expenditure to earn the exempt income in sum of Rs.2,51,638/- assessed by the Assessing Officer and confirmed by the CIT(A). The basic contention of the assessee is that the expenses were not claimed against the exempt income, therefore, section 14A of the Act is not applicable. However, on the other hand the learned representative of the department has strongly relied upon the order passed by the CIT(A) in

question. The assessee claimed that it has earned the exempt income under the principle of mutuality. The assessee claimed its source of income on the basis of principle of mutuality and dividend / mutual fund dividend etc. and income not relating to mutual activity such as interest on bank deposits etc. which claimed as taxable income. No expenses were claimed against taxable income, therefore section 14A of the Act will not applicable. However, in this regard the assessee has also relied upon the memorandum of explanation of the provision of finance bill of 2001 provided the following rationale for insertion of section 14A of the Act.

“Certain incomes are not includible while computing the total income as these are exempt under various provision of the Act. There have been cases where deductions have been claimed in respect of such exempt income. This in effect means that the tax incentive given by way of exemptions to certain categories of income is being used to reduce also the tax payable on the non-exempt income by debiting the expense incurred to earn the exempt income against taxable income. This is against the basic principles of taxation whereby only the net income, i.e., gross income minus the expenditure is taxed. On the same analog, the exemption is also in respect of the net income. Expenses incurred can be allowed only to the extent they are relatable to the earning of taxable income.”

Accordingly, the assessee did not claim any expenses to earn the exempt income and the income of the assessee is based upon the principle of mutuality. Taking into account of all the above said facts and circumstances, we are of the view that the CIT(A) has wrongly confirmed the additions raised by the AO in view of the Section 14A read with Rule 8D of the Act, therefore, we delete the addition in sum of Rs.2,51,638/- raised in view of the provision of section 14A read with Rule 8D of the Act and allowed the claim of the assessee.

**8. In the result, the appeal of the assessee is Allowed.**

Order pronounced in the open court on this 30.01.2019.

Sd/-

**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(AMARJIT SINGH)**  
**JUDICIAL MEMBER**

Mumbai; Dated 30.01.2019

MP

**Copy of the Order forwarded to :**

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

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**