

आयकर अपीलीय अधिकरण, "सी" न्यायपीठ, मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.1669/Mum/14
(निर्धारण वर्ष / Assessment Year: 2009-10)

Pradeep Mallick A-2, Pallonji Mansion, 43, Cuffe Parade, Mumbai - 400005	बनाम/ Vs.	Deputy Commissioner of Income Tax 12(2) Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAIPM3600N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:		Shri Mehul Shah
Department by:		Shri Shiddaramappa K. Navar

सुनवाई की तारीख / Date of Hearing: 03.12.2015

घोषणा की तारीख /Date of Pronouncement: 11.03.2016

आदेश / O R D E R

PER AMARJIT SINGH, JM:

This is an appeal against the order dated 05.12.2013 of learned Commissioner of Income Tax (Appeals)-23, Mumbai [hereinafter referred to as the "CIT(A)"] for the assessment year 2009-10.

2. The assessee has raised the following issues:-

“(i) On the facts, and in the circumstances of the case, and in law, learned Commissioner of Income-tax (Appeals) erred in upholding action of the Assessing Officer in making ad-hoc disallowance of Rs.22,551/-

being 10% of total expenditure of Rs.2,25,515/- on account of Entertainment expenses without bringing any material or evidence on record.

2. *On the facts, and in circumstances of the case, and in law, learned Commissioner of Income-tax (Appeal) erred in upholding action of the Assessing Officer in disallowing Rs.2,73,561/- invoking provisions of Rule 8D read with section 14A against dividend income and income from mutual funds, ignoring the fact that, there were no corresponding expenses, especially expenses directly attributable to exempt income, incurred or claimed by the Appellant to sustain the disallowance.*

3. *On the facts, and in circumstances of the case, an in law, learned Commissioner of Income-tax (appeal) erred in making ad-hoc disallowance of Rs.1,34,832/- being 20% of total expenditure of Rs.6,74,160/- on account of Membership Fees, after deleting disallowance by the Assessing Officer on the pretext of differed revenue expenditure, without bringing any material or evidence on record.*

Issue No. 1:-

3. The assessee has raised the objection is in connection with the disallowance of Entertainment expenses to the extent of Rs.22,551/- being 10% of the amount of Rs.2,25,515/-. The learned representative of the assessee has argued that the assessee was engaged in the profession of management consultant to many big corporate and he has to meet with various high profile clients, therefore, he has to visit good hotels to entertain people over lunch and dinner diplomacy therefore the whole expenses are liable to be allowed. It is also contended that in connection with the expenditure the assessee has given the details of expenses which

has been reflected at page 24 of the paper book but the learned CIT(A) has wrongly confirmed the disallowance to the extent of 10% without any reasonable ground therefore the said expenses is fully required to be allowed in the interest of justice. However, on the other hand the learned representative of the department has strongly relied upon the order passed by the learned CIT(A) in question. The Assessing Officer disallowed the 10% of the total expenditure on the ground of that it was difficult to identify and determine the expenditure related to the business of assessee or not. The assessee has given the details of bills as well as of the concerned hotels which has been reflected at page 24 of the paper book. The said details perused which speaks the date and hotels name and bills. These details nowhere speaks about the clients of the assessee since the assessee has claimed these bills / expenditure in connection with his business therefore firstly it is upon the assessee to prove these expenditure in connection with his business. No evidence has been produced before us. The assessee may produced the evidence such as list of appointee, any record of appointment or any letter etc. to connect the said expenditure with his business. No doubt, the Assessing Officer nowhere recorded the reasons to decline the same but when the assessee himself did not discharge his duty to prove the said expenditure then in the said circumstances the Assessing Officer has declined the 10% expenditure of the total expenditure to the tune of Rs.2,25,515/- which seems unjustifiable. Therefore, in the said circumstances we are inclined to held this fact that the Assessing Officer has rightly

disallowed the 10% expenditure of the total expenditure of Rs.2,25,515/- and the learned CIT(A) has rightly confirmed the same. Accordingly, it is apparent on record that the learned CIT(A) has passed the order judiciously and correctly which does not require to be interfere at this appellate stage. Accordingly, this issue is decided in favour of the Revenue and against the Assessee.

Issue No. 2:-

4. The second issue is in connection with the disallowance of an amount of Rs.2,73,561/- u/s. 14A read with Rule 8D of the Income Tax Act, 1961(in short “the Act”). The assessee earned the divided income of Rs.46,233/- from shares and dividend income from Mutual Funds of Rs.6,02,095/- the said income was claimed tax exempt u/s. 10(34) and 10(35) of the Act. It is asserted that no expenditure of any kind was incurred to earn the dividend income and the assessee placed reliance on the law settled in the case of **CIT Vs. Hero Cycles (P&H High Court) ITA 331 of 2009 (O &M) dated November 4, 2009 and also relied upon the law settled in Hon’ble Income Tax Appellate Tribunal, Mumbai bench in the case of Yatish Trading Co. (P). Ltd. Vs. Assistant Commissioner of Income-tax, 1(3), Mumbai [2011] 9 taxmann.com 164.** It is also argued that the matter of controversy has already been adjudicated by the **Income Tax Appellate Tribunal while deciding in ITA No.2811/M/12 dated 17.05.2013 in case of assessee himself.** However, on the other hand learned representative of the department has strongly relied upon relied

upon the order passed by the learned CIT(A) in question. Keeping in view of the arguments advanced by the parties and perused the record carefully; it is observed that the assessee carried out its activities of investment through PMS. It is also admitted that the expenditure incurred on account of portfolio management to the tune of Rs.17,515/- was not claimed as deduction. Demet charges and S.T.T paid were separately attached to the capital account meaning thereby nothing was claimed as expenditure. Moreover, the learned representative of the assessee has asserted that assessee himself disallowed 20% of the dividend income as expenditure. No doubt it does not come into the notice that the assessee incurred any expenditure to earn the dividend income. Moreover, nexus with the expenditure to the tune of 20% to earn the dividend income is also seems doubtful. Therefore, in view of the said circumstances we are of the view that the matter is required to be again considered in accordance with law. Therefore this issue is hereby ordered to be restored to the file of Assessing Officer who will decide the matter in accordance with law after giving an opportunity of being heard to the assessee. Accordingly, this issue is decided in favour of the Assessee and against the Revenue.

Issue No. 3:-

5. In the issue no. 3 assessee has challenged the ad-hoc disallowance of Rs.1,34,832/- being 20% of the total expenditure of Rs.6,74,160/- on account of Membership Fees to the tune of Rs.6,74,160/- to Taj, the Chamber. The assessee has argued that

business club are having certain facility to provide members of the said club. The conditions are hereby reproduced below:-

- The Chambers is a business club and issue by invitation only at the discretion of managing committee of the Chambers.
- The company to whom membership is issued (Company) shall nominate a representative from its Company who shall be considered a “Member” for all purposes of utilizing the Chambers benefits and privileges.
- The membership to “The Chambers” is in favour of a company, corporation or business and is non transferable from one company to other.
- The membership to “The Chambers” is in favour of a company, corporation or business and is not transferable from one company to other.
- The membership to “The Chambers” is corporate in nature and the status for the same cannot be changed to “Personal”.

- The Chambers can be used by the Members for all business meetings and dining. However, it is essential for the Member to be present while conducting the meeting or dining with guests.
- Guest below the age of 21 years of age is refrained from using the facilities of “The Chambers”.
- Due to the applicable liquor laws, it is only permitted to serve liquor bought from “Chambers”.
- Dress Code: Formal or smart casuals.

It is specifically argued that the Assessing Officer and the learned CIT(A) has wrongly declined the claim of the assessee in connection of membership fees to the tune of Rs.6,74,160/- and the learned CIT(A) disallowed the said expenditure to the tune of Rs.1,34,832/- being 20% of total expenditure of Rs.6,74,160/-. The learned representative of the assessee has also placed reliance upon the law settled in **Dy. Commissioner of Income Tax Circle 3(1) Vs. M/s. Banc of America Securities (India) Pvt. Ltd. in ITA No. 6611/Mum/2008 by Income Tax Appellate Tribunal, Mumbai bench.** By going through the order in question it is observed that the Assessing Officer did not dispute upon the said expenditure wholly and exclusively for the business of assessee.

However, the parameters of Assessing Officer as well as the learned CIT(A) are different for the disallowance of said expenditure. In view of the **law settled in Dy. Commissioner of Income Tax Circle 3(1) Vs. M/s. Banc of America Securities (India) Pvt. Ltd. in ITA No. 6611/Mum/2008 by Income Tax Appellate Tribunal, Mumbai bench** it is not disputed that if the expenditure has been incurred only for the business purpose the same is required to be wholly allowed. In view of the observations made above and by honouring the decision in **law settled in Dy. Commissioner of Income Tax Circle 3(1) Vs. M/s. Banc of America Securities (India) Pvt. Ltd. in ITA No. 6611/Mum/2008 by Income Tax Appellate Tribunal, Mumbai bench** we allowed the said expenditure. Accordingly, this issue is decided in favour of the Assessee and against the Revenue.

5. In the result, **appeal of the Assessee is Partly Allowed.**

Order pronounced in the open court on 11th March, 2016.

Sd/-

(D.KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 11th March, 2016

MP

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai