

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ए' मुंबई।
IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI

सर्व श्री राजेन्द्र, लेखा सदस्य एवं श्री संजय गर्ग, न्यायिक सदस्य के समक्ष।
BEFORE SHRI RAJENDRA, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER

आयकर अपील सं./ITA No.7731/M/2011
(निर्धारण वर्ष / Assessment Year: 2008-09)

M/s. Ameer Trading Corporation Limited, 310B, Veer Savarkar Marg, Dadar (W), Mumbai-400 028 PAN: AABCA 0761A	बनाम/ Vs.	ITO 2(1)(1), Aayakar Bhavan, Mumbai
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Present for:

Assessee by

: None

Revenue by

: Shri Rajesh Kumar Yadav, D.R.

सुनवाई की तारीख/Date of Hearing : 06.02.2017

घोषणा की तारीख /Date of Pronouncement : 07.04.2017

आदेश / ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 16.08.2011 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2008-09.

2. This appeal has been filed by the assessee on 15.11.11 and since then the matter has been adjourned several times, but none has appeared on behalf of the assessee despite the notice by RPAD has been served by ITAT several times. It seems that the assessee is no more interested in pursuing its appeal. However, considering the principles of natural justice, we proceed to decide the appeal of the assessee on merits ex-parte of the assessee after hearing the Ld. D.R.

The assessee, through its grounds of appeal, has raised two effective issues. Ground No.1 is relating to the disallowance under section 14A whereas ground No.2 is relating to the addition of an amount of Rs.2,76,180/- into the income of the assessee on account of unexplained credit into the bank account of the assessee.

Ground No.1

3. As observed above, ground No.1 is relating to the disallowance of expenses amounting to Rs.5,09,482/- under section 14A of the Income Tax Act read with Rule 8D of the Income Tax Rules. It has been pleaded in the grounds of appeal that the assessee during the year had earned exempt income of Rs.833/- only, being dividend income of Rs.344/- and long term capital gain of Rs.489/-. However, the Assessing Officer (hereinafter referred to as the AO) made the total disallowance of Rs.5,09,482/- of the expenditure under section 14A of the Act in relation to the above stated exempt income earned by the assessee. The said disallowance has been further confirmed by the Ld. CIT(A).

4. It can be noted from the assessment order that while making the aforesaid disallowance, the AO has relied upon the special Bench decision of the Tribunal in the case of “Chem Invest Ltd. vs. ITO” in ITA No.87/Del/08. It is to be noted that the special Bench decision of the Tribunal in the case of “Chem Invest Ltd.” (supra) has been reversed by the Hon’ble Delhi High Court. The Hon’ble Delhi High Court in the case of “Chem Investments vs. CIT” (2015) 61 taxman.com 118 has held that section 14A will not apply if no exempt income is received or receivable during the relevant previous year and that the expression ‘does not form part of the total income’, in section 14A of the Act envisages that there should be an actual receipt of income which is not included in the total income during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. Almost

identical issue has been taken by the Hon'ble Allahabad High Court in the case of "CIT Kanpur vs. M/s. Shivam Motors Pvt. Ltd." in ITA No.88 of 2014 vide order dated 05.05.2014; by the Hon'ble Gujarat High Court in the case of "CIT vs. Corrtecth Energy Pvt. Ltd." in ITA No.239 of 2014 vide order dated 24.03.2014 and by the Hon'ble Bombay High Court in the case of "CIT vs. M/s. Delite Enterprises" in ITA No.110 of 2009 vide order dated 26.02.09. Further, the Hon'ble Delhi High Court in the case of Joint Investment Private Limited reported in 372 ITR 694 has held that section 14 of the Act or rule 8D cannot be interpreted so as to mean that the entire tax exempt income of the assessee is to be disallowed. That the window for disallowance is indicated in Section 14A, and is only to the extent of disallowing expenditure incurred by the assessee in relation to the tax exempt income. This proportion or portion of the tax exempt income surely cannot swallow the entire amount of tax exempt income. In the light of the above stated case laws, the disallowance under section 14A on this issue is, thus, restricted to the extent of exempt income earned by the assessee. This issue is, therefore, partly allowed in favour of the assessee.

Ground No.2

5. Vide ground No.2, the assessee has agitated the addition on account of unexplained credits in its bank account. The assessee has pleaded before the lower authorities that the said amount does not belong to it. However, no evidence in this respect has been furnished before the lower authorities. The amount has been found credited into the bank account of the assessee. The lower authorities, therefore, rightly made the addition of the said amount treating the same as income of the assessee. We do not find any infirmity in the order of the Ld. CIT(A) on this issue. This ground is therefore decided against the assessee.

6. In the result, the appeal of the assessee is treated as partly allowed.

Order pronounced in the open court on 07.04.2017.

आदेश की घोषणा खुले न्यायालय में दिनांक: 07.04.2017 को की गई।

Sd/-
(राजेन्द्र / Rajendra)
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(संजय गर्ग / Sanjay Garg)
न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई/Mumbai; दिनांक/Dated 07.04.2017

* Kishore

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 / The DR
Concerned Bench,
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai