IN THE INCOME TAX APPELLATE TRIBUNAL,MUMBAI BENCH "E", MUMBAI

BEFORE SHRI SANJAY ARORA, ACCOUNTANT MEMBER AND

SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No.4839/Mum/2013 Assessment Year-2006-08
&
ITA No.4840/Mum/2013 Assessment Year-2007-08

STCI Finance Ltd. (Formerly known as Securities Trading Corporation of India Ltd.) A/B 1-802, A Wing, 8th Floor, Marathon Innova, Marathon Nextgen Compound, Off Ganpaatrao Kadam Marg, Lower Parel, Mumbai-400013. **PAN: AAGCS9709K**	Vs.	ACIT-Range 1(3), Aayakar Bhavan, Mumbai-400020 .
(Appellant)		(Respondent)

Assessee by	:	Shri Bhavin Shah (AR)
Revenue by	:	Shri Mohammed Rizwan (DR)
Date of hearing	:	17.05.2015
Date of Order	:	30.06.2016

O R D E R

PER PAWAN SINGH, JM:

1. These two appeals filed by assessee against two separate orders passed by CIT(A)-7, Mumbai on 19.12.2012 and 28.12.2012 for Assessment Year (AY) 2006-07 & 2007-08 respectively. In both the appeals common Grounds are raised, therefore, both the appeals were heard together and being disposed of by common order.

2. First we shall take up the appeal ITA No. 4839/M/2013 for AY-2006-07. First Ground raised in the present appeal is related to the disallowance u/s. 14A of the Act.
3. Brief fact of the case are that assessee-company is engaged in the business of dealing in government securities, PSU bonds, commercial papers and other money market instruments. During the course of assessment proceedings, the AO noticed that assessee earned dividend income of Rs. 62,97,984/- and interest on tax free bonds at Rs. 85,79,695/-, which are claimed as exempt income. The assessee has not added back any amount as expenditure attributable for earning interest and dividend income (exempt income). As no voluntary disallowance was made, hence, AO made a disallowance of proportionate interest expenditure of Rs. 1,86,79,406/-, and further a sum of Rs.25,17,298/-, being 0.5% of average investment for relevant AY, and worked out total disallowance at Rs. 2,11,96,703/- Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). Before CIT(A), it was argued that the assessee is having sufficient own funds, consisting of share capital and reserve & surplus of Rs. 933.24 Crore, against the investment of Rs. 5 Crore and another investment in stock-in-trade of Rs. 75 Crore, which are capable of generating exempt income. Considering the contention of the assessee, the disallowance was restricted to 0.5% of average value of investment. Further, aggrieved by the order of CIT(A), assessee has filed the present appeal before us.
4. We have heard AR of the assessee and DR for Revenue and perused the material available on record. Ld. AR of the assessee argued that Rule D of I.T. Rules 1962 was not applicable for AY-2006-07. AO has wrongly invoked the provisions of Rule 8D of the Act for relevant AY. Ld. AR of assessee in alternative argued that disallowance may be restricted to 5% of dividend income. Ld. DR for Revenue argued that though Rule 8D was not applicable for AY-2006-07, yet the disallowance made @ .5% of average investment is reasonable one.

5. We have considered the rival contentions of the parties and perused the material available on record. Assessee claimed to have earned exempt income of Rs. 2,11,96,703/-. No voluntary disallowance u/s 14A was made by the assessee while filing return of income. We are in agreement with the ld. AR of the assessee that as per the decision of Hon'ble Jurisdictional High Court in Godrej & Boyce Mfg. Pvt. Ltd. vs. ACIT (328 ITR 81), the provision of Rule 8D are not applicable for the relevant year. The ld. CIT(A) has we observe already allowed full relief to the assessee in respect to disallowance u/s. 14A on account of interest expenditure, while restricting that *qua* indirect, administrative expenditure at 0.5% of the value of the relevant investments, as in fact requested by the assessee to him (refer para 4.5 of the impugned order for AY 2006-07). We find no infirmity therein inasmuch as the assessee has not able to show us as to how the same has been thus estimated in excess, i.e., with reference to its' books of account. True, no doubt Rule 8D is not mandatory for the current year, so, however, it provides a reasonable basis and guideline for assessment of such expenditure, which, it may be appreciated, is independent of and *de hors* the income that may stand to arise from such investments, so that pegging the same with respect to income, as at 5% thereof, as suggested by the assessee before us, is removed from reality and, thus, *ex-facie* inadmissible. As regards the reasonability of the estimate, the very fact that the constitutionality of the provision of rule 8D stands upheld by the Hon'ble Courts of law, proves the same. If it is a reasonable AY 2008-09 onwards, why we wonder it would cease to be so for years prior thereto. We have already found a complete un-substantiation of it's case by the assessee with reference to its' accounts. The disallowance of indirect administrative expenditure at 0.5% of the average value of the investments is, therefore, confirmed. We decide accordingly.

6. Ground No.2 raised in the present appeal is about confirming the disallowance of depreciation claimed of Rs.4,98,369/- on residential premises.
7. Ld. AR of the assessee argued that similar disallowance was made against the assessee in the assessment order for AY 2003-04 and again in AY 2004-05 and the assessee carried the matter in appeal before ITAT. The Co-ordinate Bench of this Tribunal in assessee's own case vide ITA No. 449/Mum/2009 dated 11.02.2011 restored the similar Ground to the file of AO for fresh adjudication. Ld. DR for the Revenue not disputed the factual position narrated by ld. AR of the assessee.
8. We have seen that the Co-ordinate Bench of this Tribunal in assessee's own case vide ITA No. 449/Mum/2009 dated 11.02.2011 made the following order:

> *"After hearing both the parties, we find the Tribunal vide ITA No.2288/Mum/2007 order dated 22.12.2008 has restored the issue to the file of the Assessing Officer for fresh adjudication. Since the CIT(A) following his order for AY 2003-04 has confirmed the disallowance made by the Assessing Officer and since the Tribunal, for the Assessment Year 2003-04 has restored the issue to the file of the Assessing Officer; therefore, respectfully following the order of the Tribunal in assessee's own case, we restore this issue to the file of the Assessing Officer for fresh adjudication in accordance with law and after allowing due opportunity of being heard to the assessee. We hold and direct accordingly. The ground raised by the assessee is accordingly allowed for statistical purpose."*

9. Hence, keeping in view the principle of consistency, this Ground of appeal is restored to the file of AO for fresh adjudication in accordance with the direction of this Tribunal vide ITA No. 2288/M/2007 dated 22.12.2008 and further in ITA No. 449/M/2009 dated 11.02.2011. The assessee is directed to fully co-operate with AO. This Ground of appeal is allowed for statistical purpose.
10. In ITA No. 4840/M/2013, for AY 2006-07 the assessee has raised the following Grounds:

(i) Disallowance of expenditure u/s 14A to the tune of Rs. 87,49,289/-
(ii) Disallowance of Club Membership Fees of Rs. 33,30,000/-
(iii) Disallowance of depreciation of Rs. 2,33,527/- on residential premises.

11. The Ground No.1 raised in the present appeal is identical to the Ground No.1 of ITA No.4839/M/2013, wherein we have confirmed the indirect administrative expenditure at 0.5% of average value of investments. Thus this Ground of appeal is disposed of with similar observations.
12. Ground No.2 raised in the present appeal is disallowance of Club Membership Fees of Rs. 33,30,000/-.In assessment, assessee claimed Club Membership as Revenue expenditure and the same was disallowed by AO, declaring it capital in nature. Ld. CIT(A) while considering this Ground also observed that the payment of Club Membership is for enduring benefit and availed for a longer period. Ld. AR of the assessee argued that it is settled law that payment made for availing Club Membership is Revenue expenditure and relied upon the decision of Hon'ble Delhi High Court in ITA No. 1152/2008 in CIT vs. Samtal Color Ltd. and decision of Hon'ble Punjab & Haryana High Court in ITA No. 366/2008 in CIT vs. M/s Groz Beckert Asia Ltd. Ld. DR relied upon the order of authorities below. The Hon'ble Delhi High Court in case of Samtal Color Ltd.(supra) while considering the issue/ground with regard to Club Membership held that, corporate Membership of Club cannot be held to be capital in nature as it does not constitute to the profit making apparatus of the assessee. Further, the Hon'ble Punjab & Haryana High Court in Groz Beckert Asia Ltd.(supra) held that such payment do not create any capital asset, it cannot be treated as capital in nature. Further, the Co-ordinate Bench of this Tribunal in Lubrizol India Pvt. Ltd. vs. ACIT in ITA No.2848/M/2008 also held the payment of Club Membership as a Revenue expenditure. Hence, keeping in view the above discussed legal position, this Ground of appeal is allowed in favour of assessee.
13. Ground No.3 raised in the present appeal is identical to the Ground No.2 decided in ITA No. 4839/M/2013 which has restored to the file of AO,

hence, keeping in view the principle of consistency, this Ground of appeal is also restored to the file of AO with similar direction.

14. In the result, both the appeals filed by the assessee are allowed for statistical purpose.

Order pronounced in the open court on this 30th June, 2016

Sd/-	Sd/-
(SANJAY ARORA)	**(PAWAN SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated 30/06/2016

S.K.PS

<u>आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

आदेशानुसार/BY ORDER,

उप/सहायकपंजीकार
(Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / **ITAT, Mumbai**