

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

BEFORE SHRI R.C.SHARMA, AM

&

SHRI PAWAN SINGH, JM

ITA No.3781/Mum/2014

(Assessment Year :2011-12)

M/s. Gandhi Securities & Investments Pvt. Ltd., 9, Haji Kasam Building, 2 nd Floor, Tamarind Lane, Fort, Mumbai – 400 001	Vs.	DCIT, Tax-4(1)Mumbai – 400 020
PAN/GIR No.		AAACG2133P
Appellant)	..	Respondent)

Assessee by	Shri Rahul Kapadia
Revenue by	Shri Premanand J
Date of Hearing	17/10/2016
Date of Pronouncement	21/12/2016

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against the order of CIT(A) for the assessment year 2011-2012.

2. Following grounds have been taken by the assessee.

1.1 Under the facts and the circumstances of the case, the Hon. CIT(A) has not justified in confirming the further disallowance amounting to Rs. 43,09,513/- u/s 14A of the Income Tax act, made by the Ld. Assessing officer by applying Rule 80, without correlating expenses to that extent, being incurred to earn the tax free dividend income by the appellant, inspite of the fact that the appellant itself has disallowed Rs. 3,30,872/- u/s. 14A of the Income Tax Act.

1.2 Under the facts and circumstances of the case, the Hon. CIT(A) has not justified in confirming the disallowance made by the Ld. Assessing officer to the extent of Rs. 46,40,385/- u/s.14A of the income tax act.

1.3 Without prejudice, the Hon. CIT(A) is not justified in agreeing with Ld. Assessing officer for including stock in trade, in calculating disallowance under Rule 8D of the Income Tax Rules.

2. The appellant craves leave for any addition, deletion and amendments in ground of appeal, till the disposal of the appeal.

3. Rival contentions have been heard and record perused.

4. Facts in brief are that during the course of assessment proceedings, the AO observed that the assessee has shown dividend income of Rs.66,17,432 and long term capital gain (SIT paid) of Rs.25,19,130 and the same were claimed as exempt. The assessee had disallowed only an amount of Rs.3,30,872 being 5% of dividend income toward earning of exempt income. The AO further noted that the assessee had earned LTCG of Rs.25,19,130 on which the assessee has not disallowed any proportionate expense for earning such exempt income as per section 14A of the Act. Therefore, the AO after giving a reasonable opportunity to the assessee and relying on the Bombay High Court's decision in the case of Godrej & Boyce Mfg Co. Ltd. vs. DCIT proceeded to re-calculate the disallowance as per formula given in Rule 8D. As per the calculation, an amount of Rs.46,40,385 was treated as disallowable and after reducing Rs.3,30,872/- which was already allowed by the assessee, an amount of Rs.43,09,513/- was disallowed and added to the total income u/ s. 14A r.w. rule 8D.

5. By the impugned order CIT(A) confirmed the disallowance against which assessee is in further appeal before us.

6. It was contended by learned AR that assessee was having shares held as stock in trade and not as investment on which no disallowance is warranted in view of the decision of Bombay High Court in case of India Advantage Securities Limited in ITA No.6711/Mum/2011 order dated 14/09/2012.

7. On the other hand, learned DR relied on the order of the lower authorities and contended that AO has correctly computed disallowance as per verdict of Jurisdictional High Court in case of Godrej & Boyce Mfg. Co. Ltd.,

8. We have considered rival contentions and carefully gone through the order of the authorities below. We find that the Tribunal in the case of "DCIT vs. India Advantage Securities Ltd." in ITA No.6711/M/2011 vide order dated 14.09.2012 while relying upon the decision of the Hon'ble Kerala High Court in the case of "CIT vs. Smt. Leena Ramachandran (339 ITR 296) and further on the decision of the Hon'ble High Court of Karnataka in the case of "CCI Ltd. vs. JCIT" 250 CTR 291 has held that disallowance under section 14A in relation to dividend received from trading shares cannot be made. The said finding of the Tribunal has been upheld by the Hon'ble Jurisdictional Bombay High Court in the case of "CIT vs. India Advantage Securities Ltd." in ITA No.1131 of 2013 vide order dated 17.03.2015 (supra). The said decision holds binding precedent upon this Tribunal. Moreover the assessee has already offered

the dividend income earned on the shares held as stock in trade as business income of the assessee.

9. In view of the above discussion, we restore the matter back to the file of the AO for re-computing disallowance by excluding the shares held as stock in trade. We direct accordingly.

10. In the result, appeal of the assessee is allowed in part for statistical purposes.

Order pronounced in the open court on this 21/12/2016

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 21/12/2016

Karuna Sr.PS

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.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai