

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : SMC-II : NEW DELHI

BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER

ITA No.920/Del/2015  
Assessment Year : 2007-08

ITO,  
Ward-14(4),  
New Delhi.

Vs. Lalit Kumar Poddar,  
E-524,  
Greater Kailash-II,  
New Delhi.  
PAN: AHZPP0556G

(Appellant)

(Respondent)

Assessee By : Smt. Prem Lata Bansal, Sr. Advocate  
& Shri Prashant Kumar, Advocate  
Department By : Smt. Parwinder Kaur, Sr. DR

Date of Hearing : 20.07.2015  
Date of Pronouncement : 08.10.2015

ORDER

PER N.K. SAINI, AM:

This is an appeal by the Department against the order dated  
31.12.2014 passed by the CIT(A)-V, New Delhi.

2. The only grievance of the Department in this appeal relates to the deletion of addition of Rs.13,63,477/- made by the AO u/s 14A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

3. Facts of the case in brief are that the assessee filed the return of income on 30.10.2007 showing an income of Rs.2,40,000/- and business loss of Rs.1,24,48,564/-. The assessment was completed u/s 143(3) of the Act on 29.12.2009 by making an addition of Rs.1,55,00,000/- and disallowance u/s 14A read with Rule 8D amounting to Rs.15,03,031/-. The taxable income of the assessee after allowing brought forward loss was determined at Rs.34,33,619/-. Against the said assessment order, the assessee preferred an appeal to the Id.CIT(A), who deleted the addition of Rs.1,55,00,000/-, but, confirmed the disallowance u/s 14A amounting to Rs.15,03,031/-. Against the said order of the Id.CIT(A), the assessee preferred an appeal to the ITAT Delhi Bench 'D' in ITA No.5197/Del/2011, wherein, vide order dated 23.3.2012, the order of the Id.CIT(A) was set aside and the matter was restored to the file of AO.

Thereafter, the AO framed the assessment at an income of Rs.2,40,000/-

by observing as under:-

“ During the assessment proceedings, assessee has submitted that the provisions of Rule 8D is not applicable for Asst. Year 2007-2008 and applicable from Asst. Year 2008-2009 onwards only for which certain judicial pronouncement were also relied by the assessee.

However, it was noticed that the assessee has made investments in shares of different companies. During the year, the assessee has received Dividend Income from the said companies, which was claimed as exempt from tax. It was also observed that the assessee has also claimed interest on loans amounting to Rs.27,26,953/-. It was also observed that apart from trading stock of Rs.51,53,132/-, assessee had an investment of Rs.75,39,025/- in equity shares of companies as on 31.03.2007. That the claim by the assessee during the present assessment proceedings that the assessee was not engaged in the investment activity and engaged only in trading activities are incorrect. However assessee has also not filed any evidence that the investment/purchase of shares held as stock or investment were from his own funds nor from the borrowed funds. It is also important to note that Section 14A does not make any distinction between the dividend income earned with reference to shares held as investment or the shares held as stock in trade. What is material is, whether there is any exempt income and expenditure incurred in relation thereto. In these circumstances, I am satisfied that the provision of section 14A is applicable upon the assessee, as no disallowance u/s 14A was made by the assessee although dividend income was claimed as exempt by him. In these circumstances and considering the Balance Sheet of the assessee, I hereby disallow a sum of Rs.13,63,477/- being 50% of the Interest on Loans claimed by the assessee as disallowance u/s 14A of the Income Tax Act, 1961. Since the assessee has furnished inaccurate particulars of income on this ground, penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 are being initiated separately.

In view of above, income of the assessee is recomputed as under:-

Income from Salaries		Rs,2,40,000/-
Add: Disallowance U/s 14 A	Rs.13,63,477/-	
Less: Adjusted from Business Loss	Rs.13,63,477/-	Nil
Taxable Income		=====
		Rs,2,40,000/-
		=====”

4. Being aggrieved, the assessee carried the matter to the Id.CIT(A) and furnished the written submission which has been incorporated in para 10 of the impugned order. For the sake of brevity the same is not reproduced herein. The main contention of the assessee was that no expenditure had been incurred for earning the dividend income, therefore, provisions of section 14A of the Act were not attracted. The Id.CIT(A), after considering the submissions of the assessee, deleted the addition by observing in para 11.1 and 11.2 of the impugned order which read as under:-

“11.1 I have considered the submissions made by the appellant and the case law cited by him. I have also examined the facts and circumstances of the case. It is true that assessee was holding shares as

stock-in-trade as well as investment. It is also true that the dividend has been earned by the assessee on shares held as stock-in-trade and not as investment. Comparative chart filed by the assessee reveals that the investment of Rs. 75,39,025/- was made by the assessee not during the year but was made in the years relevant to AY 2002-03 to 2005-06. Even stock-in-trade was to the tune of Rs. 2.27 crore in AY 2005-06. In these years, assessee had sufficient funds of its own out of which investment was made in stock-in-trade as well as investment. During the year, assessee had rather sold the stock-in-trade which was decreased from Rs. 2.12 crore to Rs. 51.53 lac. Thus this is not a case where assessee had borrowed money for purchasing shares and paid interest thereon. However, Assessing Officer has made disallowance of 50% of the interest paid by the assessee which is unjustified.

11.2 I have also considered the case law cited by the assessee particularly the judgement of Jurisdictional High Court in the case of Maxopp Investment Ltd. & Ors vs CIT (2012) 347 ITR 272 (Del) and Karnataka High Court in the case of CCI Ltd. vs the Joint Commissioner of Income Tax (2012) 206 Taxmann 563 as well as judgement of Supreme Court in the case of CIT vs Wallfort Shares & Stock Brokers (P) Ltd. (326 ITR 01) on which heavy reliance is placed by the appellant. Assessing Officer has not examined as to whether expenditure incurred by the assessee by way of interest has proximate relationship with tax exempt income i.e. dividend in this case. Looking to the volume of transactions made by the assessee, it is clearly discernible that the dividend of Rs.1,35,460/- earned by him is very meagre. The Assessing Officer has not given any reasoning for disallowing a sum of Rs.13,63,477/- being 50% of the total interest paid by the assessee, u/s 14A. Even out of stock-in-trade, 75% of the shares were sold by the assessee during the year and only 25% of the stock-in-trade was retained. It is not the case of assessee that shares were retained for earning the dividend income. Bulk of the shares, which were purchased, are sold and the income derived there from was offered to tax as business income. The shares which could not be sold remained with the assessee and these

unsold shares yielded dividend, for which assessee had not incurred expenditure at all.

The dividend income is exempt from payment of tax; if any expenditure is incurred in earning the said income, the said expenditure cannot be deducted against the taxable income. In the present case, when the assessee had not retained the shares with the intention of earning dividend income and the dividend was incidental to the business of sale of shares, it would be unjustified to apportion the expenditure incurred by the assessee in acquiring the shares, to the extent of dividend income and disallow the same u/s 14A. Hence the disallowance made by the Assessing Officer is not sustainable and therefore, is deleted. Accordingly, a relief of Rs.13,63,477/- is allowed to the assessee.”

5. Now, the Department is in appeal.
6. The ld. DR strongly supported the order of the AO and, further, submitted that the assessee made the investment and had not bifurcated the investment and stock-in-trade. Therefore, the addition was rightly made by the AO by making the disallowance u/s 14A of the Act. In her rival submissions, the ld. counsel for the assessee reiterated the submissions made before the ld.CIT(A) and, further, submitted that no disallowance had been made in the succeeding year and there was no basis for making the disallowance @ 50% of the interest paid by the assessee. It was further stated that during the year under consideration

no investment was made by the assessee and the provision of Rule 8D were not applicable for the year under consideration. It was accordingly submitted that the Id.CIT(A) was fully justified in deleting the arbitrary addition made by the AO.

7. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is an admitted fact that the provisions of Rule 8D of the IT Rules, 1962 are not applicable for the year under consideration because those rules are applicable for the assessment year 2008-09. It is also not in dispute that if any expenditure is incurred for earning the dividend income which is exempt from payment of tax, the said expenditure cannot be deducted against the taxable income. However, in the present case, the assessee had not retained the shares with the intention of earning dividend income. The investment was incidental to his business of sale of shares. Therefore, the Id.CIT(A) was justified in holding that the AO wrongly apportioned the expenditure incurred by the assessee in acquiring the shares to the expenditure of dividend income and making

the disallowance u/s 14A of the Act. In the present case, the assessee did not make the fresh investment and even out of the stock-in-trade 75% of the shares were sold during the year which clearly shows that bulk of the shares which were purchased earlier, were sold and the income derived from those shares was offered to tax as 'Business income', the shares which could not be sold remained with the assessee and yielded the dividend for which the assessee had not incurred any expenditure at all. Therefore, the Id.CIT(A) rightly deleted the addition made by the AO. I do not see any valid ground to interfere with the findings of the Id.CIT(A).

8. In the result, the appeal of the department is dismissed.

The order pronounced in the open court on 08.10.2015.

Sd/-

[N.K. SAINI]  
ACCOUNTANT MEMBER

Dated, 08<sup>th</sup> October, 2015.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.