

आयकर अपीलिय अधिकरण "सी" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI**

श्री डि. करुणाकर राव, लेखा सदस्य एवं

श्री अमित शुक्ला, न्यायिक सदस्य के समक्ष ।

**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
AND SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No. : 6834, 6835, 6836 and 6837/Mum/2012

(Assessment years : 2002-03, 2003-04, 2004-05 and 2005-06)

DCIT -7(1), Room No. 622, Aayakar Bhavan, M K Road, Churchgate, Mumbai -400 020	Vs	Premier Finance and Trading Co. Ltd., Continental Building, 135 Dr A B Road, Worli, Mumbai -400 018 स्थयी लेखा सं.: PAN: AAACP 8140 M
अपीलार्थी (Applicant)		प्रत्यर्थी (Respondent)
Applicant by	:	Ms. Lata Sunder
Respondent by	:	Shri Sandeep Jhanwar

सुनवाई की तारीख /Date of Hearing : 29-07-2015

घोषणा की तारीख /Date of Pronouncement : 30-10-2015

आदेश
ORDER

अमित शुक्ला, न्या. स.:

PER AMIT SHUKLA, JM:

The aforesaid appeals have been filed by the Department against separate impugned orders dated 27.08.2012 passed by CIT(A)-20, for the quantum of assessment passed u/s 143(3) for the assessment year 2002-03, 2003-04, 2004-05 & 2005-06. Since issues involved in all the appeals are common arising out of identical set of facts therefore, they were heard together and are being disposed off for the sake of brevity by way of this consolidated order.

2. The assessee company is engaged in business of trading in shares, investment and finance.

3. We will first take-up revenue's appeal for AY 2002-03 wherein following grounds have been raised :-

- (i) *The Ld. CIT(A) erred in deleting the addition of Rs. 2,85,12,330/- made on account of grant of interest free advances to various parties, out of interest bearing loans. The Ld. CIT(A) ignored the fact that the issue involved is not similar to the issue involved in AY 1999-2000, which was regarding proportionate disallowance in respect of use of interest bearing funds on exempt income carrying investment.*
- (ii) *The Ld. CIT(A) erred in deleting the addition of Rs. 92,60,000/- made on account of grant of interest free advances to various parties, out of share application money. The Ld. CIT(A) ignored the fact that the issue involved is not similar to the issue involved in AY 1999-2000, which was regarding proportionate disallowance in respect of use of interest bearing funds on exempt income carrying investments.*
- (iii) *The Ld. CIT(A) erred in deleting the addition made u/s 14A amounting to Rs. 1,47,28,503/- relying on the decision of the Hon'ble High Court, Mumbai, in the case of M/s Godrej & Boyce Mfg. Ltd., which has not been accepted by the department and the SLP in the Apex Court has been suggested on this issue.*
- (iv) *The Ld. CIT(A) erred in deleting the speculation loss of Rs. 2,12,50,205/- without appreciating the facts that the onus of proving the transactions as genuine by producing primary documents such as Contract notes, market quotations and Certificate from Stock Exchange for execution of such transactions & Account confirmation of the parties is on the assessee".*

4. Regarding the issue raised in the various grounds of appeal, the Ld. Counsel submitted that the Ld. CIT(A) has merely followed the earlier orders of the Tribunal, wherein the Hon'ble Tribunal has upheld the orders of the CIT(A). This fact he submitted has been noted in the appellate order.

5. The Ld. DR, on the other hand, relied upon the order of the AO.

6. So far as the issue raised in Ground no. (i) & (ii), we find that the Ld. CIT(A) has not given any proper finding as to why he is deleting the addition and how this issue is covered from the orders

of the earlier years. Even before us, it has not been demonstrated how this issue is covered. In absence of any proper discussion or material on record, we are of the opinion that in the interest of justice, the issue raised in ground no. (i) & (ii) are restored back to the file of the CIT(A) to decide them afresh and in accordance with the material on record and law to follow earlier year precedence, if any, after giving opportunity to the assessee . Accordingly, ground no. (i) & (ii) as raised by the revenue is as treated allowed for statistical purposes.

7. So far as the issue of disallowance u/s 14A, as raised in ground no. (iii), it is seen that Ld. CIT(A) has followed the precedence of the earlier years of the Tribunal wherein direction have been given for proportionate disallowance. The relevant finding of the CIT(A) reads as under :-

“5.4 I have perused the assessment order and written submission of the appellant. During the appellate proceeding attention was drawn to the fact that the issue of proportionate disallowance of interest has been decided by the Hon’ble ITAT in this case vide order dated 23.05.2006 for AY 1998-99 and order dated 31.08.2007 for 1999-2000. The Hon’ble ITAT upheld the order of the CIT(A) as under :-

- i) No interest is disallowable under 14A of the IT Act on dividend income received on shares held as the income relatable in such trades in shares held as stock in trade expenditure allowable u/s 36(1)(iii) of the I.T. Act.*
- ii) Interest towards interest free loan and advances and investment in shares to be disallowed in the proportion of borrowed fund to total funds on the basis of average rate of interest.*

The appellant also drew attention to the fact that the Department Appeal before the High Court has been dismissed. These issues therefore have a history being a recurring one. The issues of disallowance of interest has been decided by the Hon’ble ITAT in assessee’s own case for AY 1998-99 and 1999-2000 as such following the principal of judicial consistency and discipline the Assessing Officer is directed to work out the disallowance of interest on grounds 1, 2 & 4 on proportionate basis. Whereas reasonable disallowance u/s 14A can be made out on administrative expenses incurred in earning dividend in accordance with

Premier Finance and Trading Co. Ltd
ITA No. 6834, 6835, 6836 and 6837/Mum/2012
decision of the Bombay High Court in Godrej & Boycee Ltd.
Thus Ground no. 1 to 4 disposed off accordingly”.

8. From the perusal of the aforesaid finding, it is seen that the Ld. CIT(A) has followed the earlier order of the Tribunal for the assessment year 1998-99 to 1999-2000 and therefore, as matter of judicial precedence, we uphold the order of the CIT(A) in directing the AO to work out the disallowance on proportionate basis.

9. As regards, the issue raised in ground no. (iv), the CIT(A) decided this issue after observing holding as under :-

“I have perused the assessment order and considered the submission of the appellant from the documents submitted during the assessment proceedings and observations made by the Assessing Officer in the assessment order. It is obvious that the necessary documents were produced before the AO during the assessment proceedings. The AO has made some observations without seeking information from the Broker u/s 133(6) of the I.T. Act and treated the said transactions as bogus. The documents produced before the AO contained full details of copies of bills, payment details, name of the scripts etc. and therefore the disallowance made by the AO is solely premised on the assumption and presumption without providing any mala fide intent of booking the loss by the appellant. The same is therefore liable to be deleted. The Ground No. 4 is therefore decided in appellant favour”.

10. From the perusal of the above finding, we find that Ld. CIT(A) has not discussed the material or evidence to rebut the finding of the AO in a speaking manner, *albeit* he has accepted the assessee's contention without much discussion vis-à-vis material on record. Therefore, in the interest of justice, we are of the opinion that this matter too should be restored back to the file of the CIT(A) to give proper finding based on material on record and the observation and finding of the AO. Accordingly, issue raised in ground no. (iv) is set aside to the file of the CIT(A) and is treated as allowed for statistical purposes.

11. Now we will take up appeal for AY 2003-04, wherein following grounds/ issue have been raised by the Department :-

(i) *The Ld. CIT(A) erred in deleting the addition of Rs. 2,06,91,000/- made on account of grant of interest free*

advances to various parties, out of interest bearing loans. The Ld. CIT(A) ignored that fact that the issue involved is not similar to the issue involved in AY 1999-2000, which was regarding proportionate disallowance in respect of use of interest bearing funds on exempt income carrying investment.

- (ii) *The Ld. CIT(A) erred in deleting the addition of Rs. 2,06,91,000/- made on account of grant of interest free advances to various parties, out of share application money. The Ld. CIT(A) ignored the fact that the issue involved is not similar to the issue involved in AY 1999-2000, which was regarding proportionate disallowance in respect of use of interest bearing funds on exempt income carrying investments.*
- (iii) *The Ld. CIT(A) erred in deleting the speculation loss of Rs. 36,39,524/- without appreciating the facts that the onus of proving the transactions are genuine by producing primary documents such as Contract notes, market quotations and certificate from Stock Exchange for execution of such transaction & Account confirmation of the parties is on the assessee”.*

12. So far as issue raised in ground no. (i) and ground no. (ii) are concerned they are similar to the issue raised in ground no. (i) & (ii) for the AY 2002-03. In this year also, the Ld. CIT(A) again has not given any proper finding so as to how the issues are covered in favour of the assessee. Thus, as held in earlier years, we set aside this impugned issues raised in ground no. (i) & (ii) to the file of the CIT(A) to decide it afresh after giving opportunity to the assessee and after considering the material on record and also the precedence of the earlier years, if any.

13. So far as issue raised in ground no. (iii), the same is similar to the ground no. (iv) raised in assessment year 2002-03. In this year also, the finding of the CIT(A) is again very sketchy without proper discussion on the basis of material on record. Therefore, in the interest of justice, we feel that this issue also needs to be set aside to the file of the CIT(A) to deal and decide the issue afresh. Accordingly, the appeal of the revenue is treated as allowed for statistical purposes.

14. In Assessment year 2004-05, grounds raised by the Department are as under :-

- (i) *The Ld. CIT(A) erred in deleting the addition of Rs. 6,78,24,158/- made u/s 14A on account of interest expenditure on borrowed funds used for lending interest free advances & exempt income carrying investments. The Ld. CIT(A) erred in relying on the decision of the Hon'ble High Court, Mumbai, in the case of M/s Godrej & Boyce Mfg. Ltd., which has not been accepted and the SLP in the Apex Court has been suggested on this issue by the department.*
- (ii) *The Ld. CIT(A) erred in deleting the addition made on account of grant of finance charges of Rs. 1,00,000/- for getting loans without appreciating the fact that the assessee has granted interest free advances to various parties out of interest bearing funds. The Ld. CIT(A) further ignored the fact that the onus of proving that the borrowed funds were not utilized for non-business purposes or utilized for the purpose of business is on the assessee”.*

15. In assessment year 2004-05, ground no. (i) is with regard disallowance made u/s 14A on account of interest expenditure on borrowed funds, the impugned issue is similar to the ground raised in the earlier year. The relevant finding of CIT(A) reads as under :-

“5.2 I have perused assessment order and the written submission of the appellant it was pointed out by the appellant that the issue of proportionate disallowance of interest has been decided by ITAT in its own case vide its order dated 23.05.2006 for AY 1998-99 dated 31 .08.2007 for 1999-2000 upholding the order of Hon'ble. CIT(A) as under: -

- (i) *No interest is disallowable u/s.14A of the Act on dividend income received on shares held as stock in trade as the interest relatable to such stock in shares held as stock in trade is expenditure allowable u/s.36(1)(iii) of the Act.*
- (ii) *Interest towards interest free loans and advances and investment in shares is to be disallowed in the proportionate of borrowed funds to total funds on the basis of average rate of interest.*

The appellant also pointed out that the Department in High Court has been dismissed.

The issue therefore recurring one having a history which was decided by the IT AT, in assessee's own case for AY 1998-99 and 1999-2000. As such the following principle of judicial constituency and disciplined. The Assessing Officer is directed to work out

disallowances on proportionate basis in respect of interest towards interest free loans and advances and reasonable disallowances can be made u/s.14A. In accordance with the decision of the Bombay High Court in the case of Godrej and Boyce Ltd. The Ground No.1 and 2 are disposed off in the light of above directions”.

16. Thus consistent with the view taken in the earlier years, we by uphold the order of the CIT(A) in directing the AO to compute the disallowance on proportionate basis. Thus ground no. (i) raised by the revenue stands dismissed.

17. The relevant facts as raised in ground no. 2 is that the assessee has incurred financial charges of Rs. 1 lakh to M/s Emerald Systems Engineering Ltd for granting loan of Rs. 20 crores. The AO disallowed the said amount of financial charges on the ground that loan taken was used for giving non-interest bearing loans. The assessee's case has been that assessee is a regd. NBFC i.e. finance company and hence the finance charges incurred by the assessee company is for the purpose of the business and the same has been utilized for re-paying other loans taken by the company and hence the addition made by the Assessing Officer is required to be deleted.

18. After considering the assessee's submission, the Ld. CIT(A) allowed assessee's contention in the following manner :-

“5.4 I have perused the assessment order and written submission, the appellant is a Registered NBFC and earning interest is part of its business activity. Therefore, the income from interest income has been offered and assessed as business income in such cases. While deciding the ground no.1 and 2 it has been held that the disallowance of interest should be worked out on proportionate basis. In accordance with that stand it is held that the disallowance of financial charges may also be made proportionately. Ground no. 3 is disposed off accordingly”.

19. Once the assessee is a registered NBFC then finance charges incurred by the company has to be treated for the purpose of 'business'. Thus, finding by the CIT(A) is factually and legally

correct and without there being any rebuttal by the Department, the impugned issue stands dismissed.

20. In Assessment year 2005-06, the sole ground raised by the Department reads as under :-

- (i) *The Ld. CIT(A) erred in deleting the addition of Rs. 6,42,82,176/- made u/s 14A on account of interest expenditure on borrowed funds used for lending interest free advances & exempt income carrying investments. The Ld. CIT(A) erred in relying on the decision of the Hon'ble High Court, Mumbai, in the case of M/s Godrej & Boyce Mfg. Ltd., which has not been accepted and the SLP in the Apex Court has been suggested on this issue by the department.*

21. The only ground raised by the Department in assessment year 2005-06 is with regard to disallowance made u/s 14A on account of interest expenditure on borrowed funds, the impugned issue is similar to the ground raised in the earlier years and even the finding of the CIT(A) is also the same. Therefore, in view of the direction given in earlier years, AO is directed to compute the disallowance as per the directions of the earlier years. Accordingly, only ground raised by the department stands dismissed.

To sum-up :

Departmental appeals for AY 2002-03 and for AY 2003-04 are allowed for statistical purposes and that for AY 2004-05 and 2005-06 stands dismissed.

Order pronounced in the open court on 30th October, 2015.

Sd/-
(डि. करुणाकर राव)
लेखा सदस्य
(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

Sd/-
(अमित शुक्ला)
न्याईक सदस्य
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai, Date: 30th October, 2015

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
- 2) प्रत्यर्थी /The Respondent.

- 3) The CIT(A) -20, Mumbai.
- 4) The CIT -7, Mumbai.
- 5) विभागीय प्रतिनिधि "सी", आयकर अपीलीय अधिकरण, मुंबई/
The D.R. "C" Bench, Mumbai.
- 6) गार्ड फाईल \\
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आदेशानुसार/By Order

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*चव्हान व.नि.स
*Chavan, Sr.PS