

IN THE INCOME TAX APPELLATE TRIBUNAL BENCH “B”, MUMBAI
BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No.2510/Mum/2013

Assessment Year: 2008-09

M/s Blue Star, 312 A, Prasad Chambers, Opera House, Mumbai-400004. PAN: AAAFB1196N	Vs.	Jt. CIT Range-16(3), Aayakar Bhavan, M.K. Road, Mumbai-400020.
(Appellant)		(Respondent)

Assessee by : Shri Nishit Gandhi (AR)

Revenue by : Shri D.P. Reddy (DR)

Date of hearing : 17.03.2016

Date of Pronouncement : 27.05.2016

ORDER

PER PAWAN SINGH, JM:

1. This appeal filed by the assessee against the order of CIT(A)-27, Mumbai, dated 10.01.2013 for AY 2008-09. The assessee has raised following grounds:
 - (a) Confirmation of disallowance of Rs. 71,43,249/- u/s. 14A read with Rule 8D of the Act.
 - (b) Treating the income from Business Services Centre under the head income from “House property” instead of “Profit & Gains of Business or Profession”.
2. The brief facts of the case are that assessee filed return of income on 28th September 2008 declaring total income at Rs. 11,35,79,790/-. The case was selected for scrutiny.

The AO made certain addition/disallowance including disallowance under section 14A of the Act and further treated income from business service centre as income in the head of "Income from House Property" in its order dated 30/12/2011. The assessee carried the matter in appeal before CIT(A), but without any success. Against the order of CIT(A), the present appeal is filed before us. We have heard AR for assessee and DR for revenue and perused the material available on record.

3. First we shall take up the Ground No.1. The Ld. AR of the assessee argued that assessee earned exempted income of Rs. 10,20,838/- and AO disallowed a sum of Rs. 71,43,249/- u/s. 14A of the Act. The assessee invested an amount of Rs. 42.94 crore in the shares of Bombay Stock Exchange and received dividend income of Rs. 10,20,838/-. The amount of exempt income was received through ECS. AR for assessee further argued that the assessee was having sufficient funds. Assessee has not paid any interest on the amount invested to earn exempt income. Assessee had invested out of advance amount of Rs. 44,44,65,000/- received from one of its overseas buyer on 16th of April 2007. Ld. AR further argued that the assessee has capital reserve of Rs. 187 crore (aprox). AR further argued that there was no question of disallowance of any expenses under section 14A of the Act. The Ld AR for assessee relied upon the case of Canara Bank Vs ACIT (2014) 99 DTR (Kar) 36. The Ld DR for the revenue relied upon the order of authorities below.
4. We have considered the rival contention of the parties and perused the material available on record. We find that the assessee has claimed to have earned exempt income of Rs. 10,20,838/- but no disallowance was made voluntarily. The AO while considering the disallowance under section 14A applied the provision of sub-section (2) of section 14A of the Act, and determined the amount of expenditure incurred in relation to exempt income in accordance with the method under Rule 8D of Income Tax Rules and calculated the same at Rs. 71,43,249/-. Ld. CIT(A) while dealing with this ground had concluded that at the beginning of financial year under consideration there was no funds available to the assessee to invest in the shares. The assessee earned profit after tax of Rs. 8.7 crore and on adding back the amounts provided toward bad debts, written off Rs. 12.33 crores and appreciation of Rs. 6.46 crore and cash profit available during the year works out to Rs. 27.53 crore. The investment was made to the

- tune of Rs. 42.94 crore thus; at the first instance assessee has no interest-free funds available on the date of investment. Secondly even if the profit during the year was considered to have been invested in shares, the same is not sufficient enough to cover the investment made. And finally concluded that since the assessee failed to disallow and such expenses on his own, thus the provision of section 14 A read with Rule 8D were attracted. And confirmed the disallowance made by AO.
5. We have seen the Profit and Loss Account of assessee for the relevant year the assessee has capital amount of Rs. 153,41,25,608-. The assessee invested Rs. 42,94,34,878/- and earned exempt income of Rs. 10,20,838/- but no voluntary disallowance was made in return of income. Thus the case of assessee falls under Rule 8 D(1)(b). Thus by considering the fact and circumstances of the case, we direct the AO to restrict the disallowance to 0.5% of the average of the value of investment made to earn exempt income. Hence, this Ground of appeal is partly allowed. The fact of case of Canara Bank Vs ACIT (2014) 99 DTR (Kar) 36 relied by Ld AR for assessee is not applicable for the year under consideration as Rule 8D is applicable w.e.f. Assessment Year 2008-09.
 6. Next Ground for our consideration is treating the income from Business Service Centre under the head "Income from House Property" instead of Profit & Gain of Business or Profession. Ld. AR of the assessee argued that AO has not considered the fact property placed before him during the assessment proceeding. The assessee is in fact operating the Business Service Centre and provided various facilities to its client for smooth functioning of business activities which includes furniture, telephone, fax and photocopy machine, regular cleaning facilities etc. DR for Revenue argued that all the furniture provided to the tenant was earlier used by the assessee and no such service is provided by the assessee. Assessee not claimed any expenses for making any modification in the premises or on account of providing extra infrastructure.
 7. Perusal of assessment reveals that during, the AO observed that assessee let out premises no. 312A, Prasad Chamber, Opera House and received amount of Rs. 13,48,080/- from M/s Diasdua India Pvt. Ltd.(DIPL) on account of compensation and paid service charge of Rs. 1,48,080/- and net amount of Rs. 12,00,000/- has been offered as a business income, the assessee was asked to provide copy of agreement and to explain as to why

the amount received from DIPL be not considered under the head “Income from House Property” as the whole premises has been given to use by the company. It was contended that on behalf of Assessee Company that it is operating business centre and therefore, with the premises it had provided various facility to its client like to use furniture, provision of two telephone lines, facsimile machine and use of photocopy machine. The contention of assessee was not accepted by the AO. The AO concluded that the property under consideration was earlier used by assessee. Assessee has not claimed any modification in the premises for providing extra infrastructure which was not available earlier for the purpose of giving this premise to the other person. Moreover, the whole property which was claimed to be used by assessee till 31.03.2006 for its business purpose and depreciation was claimed has been given to DIPL from 01.04.2006 itself. DIPL is the only party to use the property and which has been given for initial use for two years. The assessee is not providing of any other services as it has neither given any evidence nor claimed any expenses of such services. Ld. CIT(A) while considering this Ground concluded that so-called business centre is nothing but an office premises which were being used by the assessee for his business and it has no special feature to be qualify as something more than the ordinary House Property, the assessee allowed to use table chair, cabinets to two telephone lines and a fixed line and making service to peon, if required. The Securities service are common for all inmates for Prasad Chambers, its business of Diamond traders and no special service are provided to the exclusive use of the person using the said premises. And these services does not materially changed the agreement for giving premises on hire and the nature of income from rental income to the business income and upheld the finding of AO.

8. We have seen that assessee has placed on record the Paper Book consisting of 60 pages. The assessee has neither placed on record the copy of agreement of tenancy/letting off the property to the tenant, showing the term and conditions of the tenancy. No copy of Memorandum and Article of Association of assessee-company is placed on record. There is no cogent material before us which may suggest that object of assessee was to acquire and hold and to earn rental income. The Hon’ble Apex Court in a recent judgment in *Chennai Properties and Investment Ltd. vs. CIT* reported viz. (2015) 373 ITR 673 (SC) held as under:

“If main object as well as incidental and ancillary object is to acquire whole of the property and to let out those property as well as make advances upon the security of land and building on all other property or any interest therein and earning income by letting out of those property to be treated as “Income from Business”.

9. The assessee is a company and must be incorporated in accordance with the provisions of “The Companies Act 1956”. The company has to undertake its business in accordance with its Article and Memorandum of Association, which are not brought before us for our perusal. The said Article and Memorandum may throw light on the main or ancillary object of the assessee. Hence we deem it appropriate to restore this Ground of appeal to the file of AO to examine the case afresh in accordance with the Judgement of Hon’ble Apex Court in Chennai Properties and Investment Ltd. vs. CIT (supra) and pass the order in accordance with law. The assessee is directed to provide all necessary assistance and document to the AO. Hence this ground of appeal is allowed for statical purpose.

In the result appeal filed by the assessee is allowed for statical purpose.

Order pronounced in the open court on this 27th May, 2016.

Sd/-

(R.C.SHARMA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 27/05/2016

S.K.PS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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.

Sd/-

(PAWAN SINGH)

JUDICIAL MEMBER

आदेशानुसार/BY ORDER,

उप/सहायकपंजीकार

(Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai