

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER

ITA no.926/Mum./2016
(Assessment Year : 2010-11)

Smt. Dulari R. Trailokya
212 Rajaram Indl. Estate Ramachandra,
Lane, Opp. SNDT College, Malad (W),
Mumbai 400 064
PAN ABOPT2484L

..... Appellant

v/s

ACIT 24(1)
C-13, R.No 513, 5th Floor,
Pratyakshkar Bhavan, BKC, Bandra (E)
Mumbai 400 051

..... Respondent

Assessee by : Shri. Vipul Shah
Revenue by : Ms. Arju Garodia

Date of Hearing –15.02.2017

Date of Order – 28.02.2017

ORDER

PER: SHAMIM YAHYA

This appeal by the assessee is directed against order of learned CIT-A dated 15/12/2015, and pertains to assessment year 2010- 11.

2. The grounds of appeal read as under;

1. On the facts and circumstances of the case and law the learned Commissioner of Income Tax - Appeal (Crc-A) erred in confirming the additions made by the Assessing Officer by disallowing RsJ,25,000/- u/s 14A of the Income Tax Act, 1961 without appreciating that fact that;

1.1 the appellant had submitted the nexus of amount received and amount invested and no expenditure has been incurred by the appellant.

1.2 the learned AO had not recorded his dis-satisfaction about the claim of the appellant.

2. On the facts and circumstances of the case and law the learned CIT-A erred in not considering and distinguishing the case laws relied upon by the appellant during the course of hearing.

3. The Appellant craves leave to add, amend, alter, modify, substitute or delete any or all above ground(s) of appeal.

3. Briefly stated facts of the case is that the appellant is the proprietor of M/s. G Tech Solution which deals in computer software, accessories etc. The assessee has earned exempt dividend income of Rs.1,25,630/- on investment in Birla Sunlife floating Rate Fund. The assessee did not allocate any expenses in relation to the said dividend income. The AO invoked provisions of Section 14A r.w.r. 8D and made

disallowance of Rs.1,25,000/- under rule 8D(2)(iii) @ 0.5% of average value of investment.

4. Upon assessee's appeal Ld. CIT-A noted the submissions of the assessee as under;

"In the appellate proceedings, it was submitted that the appellant has invested Rs.5 Crore in Floating Rate Fund- Weekly Dividend Scheme of Birla Sun Life Mutual Fund on 10th March, 2010 out of advance of Rs.7.99 Crore received from its customer Mahindra & Mahindra Ltd. The mutual fund units were redeemed on 6th May, 2010, So out of 57 days of investment, a period of only 20 days falls in the year under review. It was claimed that there was no direct or indirect expenses incurred for making the aforesaid investment. Thereafter, the appellant has reproduced legal provisions and relied on several judicial pronouncements in support of its submission that Rule 8D is to be applied only when the AO having regard to the accounts of the assessee is not satisfied with the correctness of the claim of the assessee. As per appellant, the AO has not recorded his dis-satisfaction.

It was further stated that the investment was made through a financial consultant M/s. Arthashashtra Financial Planners Pvt. Ltd. who visited the office of the assessee and collected the application form and cheque and submitted the same with the Mutual Fund. The

dividend was paid weekly and the same was re-invested, so there was no effort made by the assessee for depositing the said income in the bank. The redemption proceeds were directly credited to the bank account of the assessee.”

5. However learned CIT-A was not convinced. He held that assessee was incurring expenditure on administrative other expenses- That advance was received in the course of business. Hence making of investment cannot be seen in isolation. That moreover business infrastructure was used for taking decision of making investment. Hence learned CIT-A affirmed the assessing officers action. Against above order assessee is in appeal before us.

6. We have heard both the counsel and perused the records. Learned counsel of the assessee submitted that assessee has not incurred any expenditure in making the investment in earning that exempt income. He reiterated that assessing officer has not recorded any satisfaction that assessee has incurred expenditure for making the investment and earning the dividend income, He reiterated that assessee has received advance and invested the same in Sun Life mutual fund. The investment was made through financial consultant in the office of the assessee who collected the application form and cheque and submitted the same with the mutual fund. The dividend

was paid and the same was reinvested, so there was no effort made by the assessee for depositing the said income to the bank. The redemption proceeds were directly credited with the bank account of the assessee. The investment was held only for a period of 20 days during the financial year under review. In these circumstances we agree with the learned counsel of the assessee that no cogent material has been brought on record by the authorities below to negate assessee's plea that no expenditure has actually been incurred to earn the said dividend income. In these circumstances we set aside the orders of authorities below and hold that no disallowance should be made for earning the exempt dividend income in this case.

In the result this appeal by the assessee stands allowed.

Order pronounced in the Open Court on 28.02.2017

Sd/-

**SANJAY GARG
JUDICIAL MEMBER**

Sd/-

**SHAMIM YAHIYA
ACCOUNTANT MEMBER**

MUMBAI, DATED: 28.02.2017

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Nishant Verma
Sr. Private Secretary

By Order

(Dy./Asstt.Registrar)
ITAT, Mumbai