

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,  
*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH “B” KOLKATA*

Before **Shri Aby.T Varkey, Judicial Member** and  
**Shri Waseem Ahmed, Accountant Member**

**ITA No.632/Kol/2016**  
Assessment Year :2010-11

M/s Crosseas Capital Services Pvt. Ltd. 1, R.N. Mukherjee Road, 5 <sup>th</sup> Floor, Suite No.37, Martin Burn House, Kokata-01 <b>[PAN No.AACCC 5470 H]</b>	<b>V/s.</b>	DCIT, Circle-6(2), P-7, Chowringhee Square, Aayakar Bhavan, 6 <sup>th</sup> Floor, Kolkata-69
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri S.M. Surna, Advocete
प्रत्यर्थी की ओर से/By Respondent	Shri Saurabh Kumara, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	11-09-2017
घोषणा की तारीख/Date of Pronouncement	22-09-2017

**आदेश /ORDER**

**PER Waseem Ahmed, Accountant Member:-**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-16, Kolkata dated 09.03.2016. Assessment was framed by DCIT, Circle-6, Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 04.03.2013 for assessment year 2011-12.

Shri S.M. Surana, Ld. Advocate appeared on behalf of assessee and Shri Saurabh Kumar, Ld. Departmental Representative represented on behalf of Revenue.

2. Solitary issue raised by assessee in this appeal is that Ld. CIT(A) erred in confirming the order of Assessing Officer by sustaining disallowance of ₹1,19,586/- under the provision of Section 14A of the Act.

3. Briefly stated facts are that assessee is a private limited company and engaged in business of share broking and trading activities. The assessee is a registered broker with the Bombay Stock Exchange and National Stock Exchange. The assessee, during the year has earned dividend income of ₹1,52,195/- only. But it has made no disallowance of the expense incurred in relation to such dividend income. Therefore, AO invoked the provision of Section 14A r.w.s. Rule 8D of the IT Rules, 1962 and made a disallowance of ₹1,19,586/- and added to the total income of assessee.

4. Aggrieved, assessee preferred an appeal before Ld. CIT(A) who confirmed the order of Assessing Officer.

Being aggrieved by this order of Ld. CIT(A) assessee came in second appeal before us.

5. Before us Ld. AR for the assessee submitted that it is engaged in share trading business and therefore investment made in share was held as stock-in-trade.

The Id. AR for the assessee further submitted that it has not declared any income on account of sale-purchase of shares under the head "capital gains" as evident from the return of income.

The assessee was maintaining single port-folio of shares as trader. None of the shares have been classified as investment in its books of account.

Ld. AR in support of assessee's claim has produced the copy of audited financial statements which are placed on record.

In view of above the Id. AR prayed before the Bench that no disallowance under section 14A r.w.r. 8D is warranted. On the other hand, Ld. DR heavily relied on the order of Authorities Below.

6. We have heard the rival contentions of both the parties and perused the material available on record. The undisputed fact are detailed as under

- i) That assessee has earned dividend income on the shares which were held as stock-in-trade.
- ii) The main business of assessee is to trade in shares/ securities. These shares/ securities were classified in the books of account as stock-in-trade and no part of it was shown under the head of investment as evident from the financial statement produced before us.

The Hon'ble jurisdictional High Court in the case of *CIT vs. G.K.K. Capital Markets (P) Ltd.* reported in 392 ITR 196 (Cal) has held that if the assessee is into the trading business of shares / securities then no disallowance can be made under the provision of Section 14A r.w.r. 8D of IT Rules. The relevant extract is reproduced below:-

*“9. In Dhanuka & Sons case (supra) it was found there was no dispute that part of the income of the assessee from its business was from dividend whereas the assessee was unable to produce any material before the authority below showing the source from which such shares were acquired. That decision is distinguishable on facts as not applicable to this case. We also do not find the Revenue had urged that the expenditure being disallowed was in relation to exempt income not arising in the previous year for application of the said circular to be considered. The Assessing Officer had accepted the correctness of the disallowable expenditure offered by the assessee on its claim of Rs.25,68,04,353/- as long term capital gain. He did not allow the claim itself treating the said amount as business income to thereafter disallow the offered expenditure.*

*10. In view of the clear finding of fact regarding the exempt income claimed treated to be business income and the shares held by the assessee having been treated as stock in trade, we do not find the case involves a substantial question of law. The application and appeal are thus dismissed.”*

As the principle laid down by Hon'ble jurisdictional High Court is squarely applicable to the instant facts of the case, we have no hesitation in reversing

the order of Authorities Below. Thus, AO is directed to delete the addition made under the provision of Section 14A r.w.r. 8D of the IT Rules, 1962. Hence, this ground of assessee's appeal is allowed.

**7. In the result, assessee's appeal stands allowed.**

Order pronounced in the open court 22/09/2017

Sd/-  
(Aby. T. Varkey)  
(Judicial Member)  
Kolkata,

Sd/-  
(Waseem Ahmed)  
(Accountant Member)

\*Dkp

दिनांक:- 22/09/2017 कोलकाता ।

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-M/s Crossseas Capital Services Pvt. Ltd., 1, R.N. Mukherjee Road, 5<sup>th</sup> Floor, Suite No.37, Martin Burn House, Kolkata-01
2. प्रत्यर्थी/Respondent-DCIT, Circle-6(2), P-7,Chowringhee Sq.6<sup>th</sup> Fl,Aayakar Bhavan, Kol-69
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of  
Office/DDO  
आयकर अपीलीय अधिकरण,  
कोलकाता ।