

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT  
&  
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No.-5821/Del/2012  
(Assessment Year: 2005-06)**

DCIT Circle 9(1) Room No. 163, C.R. Building New Delhi.	vs	Suraj Overseas Pvt. Ltd. Green Field Farm, Khasra No. 8/1/1, 10/2 & 9/3 & 4, Gadaipur, Jaunpur Road, Tehsil Mehrauli, New Delhi. AAACS4002K
<b>Assessee by</b>		<b>Sh. Rohit Jain, Adv. Sh. Deepesh Jain, CA</b>
<b>Revenue by</b>		<b>Sh. Tiwari, Sr. DR</b>

<b>Date of Hearing</b>	<b>12.10.2017</b>
<b>Date of Pronouncement</b>	<b>27.10.2017</b>

**ORDER**

**PER SHRI K.N. CHARY, JUDICIAL MEMBER**

Aggrieved by the order dated 31.08.2012 in appeal no. 196/10-11 passed by the Ld. Commissioner of Income Tax (Appeals)-New Delhi (hereinafter for short called as the "Ld. CIT (A)"). Revenue preferred this appeal on the following grounds:

1. *"On the facts and circumstances of the case, the Ld. CIT (A) erred in law in deleting the addition of Rs. 2,86,468/- made by the AO under section 14A of the Act on account of dividend income.*

2. *The Id. CIT (A) erred in law and on facts in assessing short term capital gain on shares/units at Rs. 7,64,671/- and long term capital gain on shares at Rs. 71,52,517/- instead of treating it as business income.*
3. *The appellant craves to amend modify, alter, add or forego any ground of appeal at any time before or during the hearing of this appeal."*

2. Briefly stated relevant facts are that the assessee was deriving income from rent, interest and dividend and for the AY 2008-09 they have filed their return of income on 29.09.2008 declaring the total income of Rs. 35,10,350/-. During the scrutiny AO found that the assessee primarily engaged in the business of rent, purchase and sale of shares and interest and a part of the receipts derived from the trading of shares was shown in profit and loss account and a part was claimed as short term capital gain and long term capital gain. AO treated the entire short term and long term capital gains as business income of the assessee and made an addition of Rs. 79,17,188/- on that count. Further, AO found that during the year the assessee earned a dividend income of Rs. 33,65,755/- and by invoking provisions u/s 14A of the Income Tax Act, 1961 (for short called as the "Act") and 8D of the Income Tax Rules (for short referred to as 'the Rules') AO made an addition of Rs. 2,86,468/-. In the appeal, Ld. CIT (A) accepted the contention of the assessee that a sum of Rs. 7,64,671/- was short term capital gain on shares/units and a sum of Rs. 71,52,517/- as long term capital gain on shares, instead of treating it as business income

as was done by the AO. Ld. CIT (A) further accepted the contention of the assessee and deleted Rs. 2,86,468/- addition made by the AO by invoking the provisions u/s 14A of the Act. Hence, the Revenue is in appeal before us.

3. At the outset, Ld. AR brought it to our notice that insofar as the issue relating to the short term and long term capital gains being treated as business income, in assessee's own case for the AY 2006-07 the following question was referred to the Special Bench:

*"Whether on the facts and in the circumstances of the case, the CIT (Appeals) erred in law in holding that profit aggregating to Rs. 2,51,50,313/- earned by the appellant from sale of shares and securities held under discretionary portfolio management scheme was assessable under the head "business income" as opposed to capital gains returned by the appellant?"*

and the Special Bench answered the above issue in the following terms:

*"13. Thus in view of the aforesaid decisions of the two High Courts in favour of the assessee where no contrary decision is cited before us, we answer the question in favour of the assessee holding that 'the issue is no longer re integra. Only the facts of the present case need to be examined by the Division Bench as the issue of admission of the 2-PMS Agreements including the other supporting evidences is pending adjudication before the Division Bench. Similarly the details of the transactions as culled out by the Hon'ble High Court in the case of Radial International vis-à-vis the assessee's case have been tabulated by the assessee so as to canvass that the period of holding of shares under PMS is identical. The correctness of the claims made in the tabulation at pages 568-573 of the paper book needs to be verified. We find that although no objection was taken by the Department that it was fresh evidence as the Departmental stand was that it may be verified at the AO's level. However, we allow the assessee to file an appropriate petition before the Division Bench.*

*14. Accordingly having answered the question posed within the procedural and factual constraints, we return the reference to the Division Bench to decide the appeal of the assessee.”*

He submitted that pursuant to the above finding returned by the Special Bench, a coordinate bench of this Tribunal in ITA No. 3827/Del/2009 restored this question to the file of AO for application of the proposition of law laid down by the Special Bench of this Tribunal and also the Jurisdictional High Court to the case of the assessee for AY 2006-07. Basing on this Ld. AR submitted that this matter may also be remanded back to the file of AO for giving effect to the proposition of law laid down by the Special Bench of this Tribunal in assessee's own case for the AY 2006-07. Ld. DR reports no objection. Hence, recording the same, we deem it just and necessary to set aside ground no. 2 to the file of the AO for carrying out this direction, after giving an opportunity to the assessee.

4. In so far as the deletion of the addition made by the AO u/s 14A of the Act is concerned, Ld. CIT (A) in his order observed that the Assessing Officer held the profit on sale of investment as business income and recomputed the business profit after including the sale of investment as business income and considering the total expenses of Rs. 30,79,941/- was charged in the profit and loss account, and disallowed a sum of Rs.

2,86,468/- out of the above expenses u/s 14A read with Rule 8D in respect of exempt dividend income of Rs. 33,65,755/-. Ld. CIT(A) further observed that in view of the finding given by him on the gain on sale of shares and redemption of units of mutual fund to the effect that the assessee's income from the sale of investment liable to tax under the head "capital gain", and considering that the assessee had claimed only Rs. 68,009/- as tax deductible business expenses out of total expenses of Rs. 30,79,941/-, no further disallowance u/s 14A is warranted. We do not find any illegality or irregularity in this finding of the Ld. CIT (A), as such, we do not propose to interfere with the same. Hence, ground no. 1 is dismissed.

5. In the result, the appeal of the assessee is allowed in part for statistical purpose.

Order pronounced in the open court on 27.10.2017

Sd/-  
**(G.D. AGRAWAL)**  
**PRESIDENT**

Sd/-  
**(K.N. CHARY)**  
**JUDICIAL MEMBER**

Dated: 27.10.2017

\*Kavita Arora

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR  
ITAT NEW DELHI