

IN THE INCOME TAX APPELLATE TRIBUNAL
“G” Bench, Mumbai
Before Shri B.R. Baskaran (AM) & Shri Ravish Sood(JM)

I.T.A. No. 54/Mum/2016 (Assessment Year 2011-12)

ITO 2(2)(1) Room No. 549 5 th Floor Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. Geecee Investment Limited 1&2, Western India House, 1 st Floor Sir P.M. Road, Fort Mumbai-400 001. PAN : AAACJ0259M
(Appellant)		(Respondent)

Assessee by	Shri Rakesh Mohan
Department by	Shri V. Vidhyadhar
Date of Hearing	30.10.2017
Date of Pronouncement	30.10.2017

O R D E R

Per B.R. Baskaran (AM) :-

The appeal of the revenue is directed against the order dated 12-10-2015 passed by Ld CIT(A)-5, Mumbai and it relates to the assessment year 2011-12. The revenue is aggrieved by the decision of Ld CIT(A) in holding that the disallowance u/r 8D(2)(ii) should be computed on net interest and further the shares held as Stock in trade should be excluded while computing average value of investments.

2. We heard the parties and perused the record. The assessee is engaged in the business of trading in shares and securities. Though the assessee disallowed a sum of Rs.64.37 lakhs u/s 14A of the Act, it filed revised claims before the AO and sought to reduce the disallowance to Rs.19.21 lakhs and further sought reduction on the basis of decisions rendered by the Tribunals. The same was rejected by the AO and accordingly he disallowed Rs.64.37 lakhs u/s 14A of the

Act. The Ld CIT(A) agreed with the contentions of the assessee and hence allowed the appeal. Aggrieved, the revenue has filed this appeal.

3. With regard to the claim of "Net interest", we notice that the Ld CIT(A) did not examine the nexus between the interest expenditure and interest income. Before us, the assessee did not furnish any document to show the nexus. In our considered view, the netting of interest can be allowed if the nexus between interest expenditure and interest income is shown. Accordingly, in our view, this issue requires fresh examination at the end of the AO. Accordingly we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the assessing officer with the direction to examine the claim of the assessee afresh. If the assessee is able to show the nexus between the interest expenditure and interest income, then net interest should be considered for computing disallowance under rule 8D(2)(ii) of the I.T Rules.

4. With regard to the claim for exclusion of shares held as Stock in trade for computing average value of investments, We notice that the assessee has placed reliance on the decision rendered by Hon'ble Karnataka High Court in the case of CCI Ltd (250 CTR (Kar) 291). We also notice that the co-ordinate bench has expressed the view in the case of India Advantage Securities (ITA 6711/Mum/2011) that the shares held as stock in trade should not be considered for computing average value of investments. Consistent with the view taken in the above cited cases, we uphold the order passed by Ld CIT(A) on this issue.

7. In the result, the appeal filed by the revenue is partly allowed.

Order has been pronounced in the Court on 30.10.2017.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 30/10/2017

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

PS

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai