

आयकर अपीलीय अधिकरण "H" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 1422/Mum/2016

(निर्धारण वर्ष / Assessment Year : 2008-09)

Assistant Commissioner of Income-tax-33(2) Room No. 608, C-12, 6 th Floor, Pratyakshakar Bhawan, Bandra Kurla Complex, Mumbai-400051	बनाम/ v.	Shri Kalpesh C Shah 904, Raj Vaibhav Tower-II Mahavir Nagar, Dahanukarwadi, Kandivali(West), Mumbai- 400067
स्थायी लेखा सं./PAN : AAJPS8486R		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by:	Shri. T A Khan,DR
Assessee by :	Sh B V Jhaveri

सुनवाई की तारीख /**Date of Hearing** : **24-10-2017**

घोषणा की तारीख /**Date of Pronouncement** : **24 -10-2017**

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the Revenue, being ITA No. 1422/Mum/2016 for assessment year 2008-09, is directed against the appellate order dated 30-12-2015 passed by learned Commissioner of Income Tax (Appeals)-45, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2008-09, appellate proceedings had arisen before learned CIT(A) from the assessment order dated 28-03-2014 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) r.w.s. 254 of the Income-tax Act, 1961 (hereinafter called "the Act").

2. This is second round of litigation and the dispute in this appeal is in very narrow compass. The assessee is an individual wherein total income was declared in the return of income filed with the Revenue to the tune of Rs. 9,06,06,240/- which mainly comprised income from house property ,

business income , capital gains and income from other sources. The case was selected for scrutiny and the learned AO framed an assessment vide assessment orders dated 28-12-2010 in the first round of litigation wherein an additions to the tune of Rs. 2,36,02,861/- were made u/s 14A of the Act. The matter was carried in appeal by the assessee to the learned CIT(A) in the first round of litigation who was pleased to grant partial relief to the assessee by restricting disallowance u/s 14A to Rs. 8,65,564/- as against Rs. 2,36,02,861/- made by the AO. The Revenue went in appeal to Income-Tax Appellate Tribunal, Mumbai(hereinafter called “the tribunal”) wherein the tribunal was pleased to set aside the issue to the file of AO for fresh adjudication in the light of the order of Hon’ble High Court of Karnataka in case of CCI Limited v. JCIT (ITA no. 359 of 2011) , vide orders in ITA no. 5393/Mum/2011 dated 06-02-2013. The operative portion of order of the tribunal is as under:

“7. We have heard both the parties, perused the material placed before us as well as the decisions cited by the Ld Counsel. On perusal of the above cited decisions, we find that so far as the legal principle is concerned, in view of the above cited judgments, the provisions of section 14A are not made applicable to the case of dividend earned out of the shares held as stock-in-trade as held by the Hon’ble High Court of Karnataka in the case of M/s. CCI Ltd., vs. JCIT (supra). The Hon’ble Kerala High Court judgment in the case of Commissioner of Income-tax Vs Smt. Leena Ramachandran (Ker) (339 ITR 296) was distinguished. However, it is for the assessee to demonstrate that the exempt income earned by him is out of the stocks held for trading purposes. In our opinion, the case of the assessee is covered by the ratio of the judgment of the Hon’ble High Court of Karnataka in the case of M/s. CCI Ltd., vs. JCIT (supra). Nevertheless, for this limited purpose, we deem it fit to refer the issue to the files of the AO to decide the issue afresh in the light of the above cited decisions/judgments. Accordingly, the issue involved in the grounds is set aside to the files of the AO for fresh adjudication after granting a reasonable opportunity of being heard to the assessee. Accordingly, grounds raised by the Revenue are set aside.”

3. The AO while framing assessment in second round of litigation in compliance with the directions of tribunal instead of following the directions of tribunal chose to follow other order’s of the tribunal in the case of DCIT v. Damani Estates and Finance Private Limited in ITA no. 3029/Mum/2012 dated 17-07-2013 and other decisions of the tribunal mentioned in his orders wherein in those cases the tribunal has taken a view that the shares held as stock-in-trade will be considered for computation of disallowance of

expenditure u/s 14A, vide assessment order dated 28-03-2014 passed u/s 143(3) r.w.s. 254.

4. The assessee carried the matter in appeal before the learned CIT(A) in second round of litigation who granted relief to the assessee by holding that the assessment was set aside by the tribunal in first round of litigation for the limited purpose for the assessee to demonstrate that the exempt income is earned by him out of the stocks held for trading purposes . The learned CIT(A) held that the AO has not followed the direction of the tribunal vide which the assessment was set aside for the limited purposes by the tribunal to demonstrate that the exempt income earned by the assessee was out of stock in trade and ratio of decision of Hon'ble Karnataka High Court in the case of CCI Limited v. JCIT(supra) was directed to be followed. The learned CIT(A) deleted the additions u/s 14A to the tune of Rs. 2,36,02,861/- while the additions to the tune of Rs. 8,65,564/- u/s 14A was retained by learned CIT(A), vide appellate orders dated 30-12-2015 in the second round of litigation.

5. Aggrieved Revenue has come in appeal before the tribunal in second round of litigation challenging relief granted to the assessee. The learned DR relied upon the order of the AO while learned counsel for the assessee relied upon the order of learned CIT(A). It was contended by learned counsel for the assessee that the tribunal in first round of litigation set aside the matter to the file of the AO for computing disallowance u/s 14A after verification that if the stocks are held for trading purposes then no disallowance u/s 14A is warranted based on judgment of Hon'ble Karnataka High Court in the case of CCI Limited v. JCIT(supra) but rather the AO instead of following the directions of the tribunal instead followed some other of decision of the tribunal to make disallowance of expenditure u/s 14A. The learned counsel for the assessee submitted that the revenue has relied upon decision of tribunal in the case of HDFC Bank Limited v. DCIT in ITA no. 374/Mum/2012 dated 23-09-2015 which is later set aside by Hon'ble Bombay High court in writ jurisdiction and matter was restored to tribunal in HDFC Bank Limited v. DCIT reported in 383 ITR 529(Bom. HC). The assessee also relied upon decision of Hon'ble Punjab and Haryana High Court in the case of Pr. CIT v. State Bank of Patiala 391 ITR 218(P&H HC)

and Decision of Hon'ble Calcutta High Court in the case of CIT v. GKK Capital Markets Private Limited (392 ITR 471(Cal. HC))

6. We have considered rival contentions and perused the material on record. We have observed that the assessee is an individual wherein total income was declared in the return of income filed with the Revenue by the assessee to the tune of Rs. 9,06,06,240/- which mainly comprised income from house property , business income , capital gains and income from other sources. The case was selected for scrutiny and the learned AO framed an assessment vide assessment orders dated 28-12-2010 in the first round of litigation wherein an additions to the tune of Rs. 2,36,02,861/- were made u/s 14A of the Act. The matter was carried in appeal by the assessee to the learned CIT(A) in the first round of litigation who was pleased to grant partial relief to the assessee by restricting disallowance u/s 14A to Rs. 8,65,564/- as against Rs. 2,36,02,861/- made by the AO. The Revenue went in appeal to Income-Tax Appellate Tribunal, Mumbai(hereinafter called "the tribunal") wherein the tribunal was pleased to set aside the issue to the file of AO for fresh adjudication in the light of the order of Hon'ble High Court of Karnataka in case of CCI Limited v. JCIT (ITA no. 359 of 2011) , vide orders in ITA no. 5393/Mum/2011 dated 06-02-2013. The operative portion of order of the tribunal is as under:

"7. We have heard both the parties, perused the material placed before us as well as the decisions cited by the Ld Counsel. On perusal of the above cited decisions, we find that so far as the legal principle is concerned, in view of the above cited judgments, the provisions of section 14A are not made applicable to the case of dividend earned out of the shares held as stock-in-trade as held by the Hon'ble High Court of Karnataka in the case of M/s. CCI Ltd., vs. JCIT (supra). The Hon'ble Kerala High Court judgment in the case of Commissioner of Income-tax Vs Smt. Leena Ramachandran (Ker) (339 ITR 296) was distinguished. However, it is for the assessee to demonstrate that the exempt income earned by him is out of the stocks held for trading purposes. In our opinion, the case of the assessee is covered by the ratio of the judgment of the Hon'ble High Court of Karnataka in the case of M/s. CCI Ltd., vs. JCIT (supra). Nevertheless, for this limited purpose, we deem it fit to refer the issue to the files of the AO to decide the issue afresh in the light of the above cited decisions/judgments. Accordingly, the issue involved in the grounds is set aside to the files of the AO for fresh adjudication after granting a reasonable opportunity of being heard to the assessee. Accordingly, grounds raised by the Revenue are set aside."

The AO in second round of litigation instead of following the directions of the tribunal vide orders dated 06-02-2013 in ITA no. 5393/Mum/2011 , relied upon other decisions of the tribunal in the case of DCIT v Damani Estates and Finance Private Limited in ITA No. 3029/Mum/2012 dated 17-07-2013 as well other decisions to upheld the disallowance, vide assessment order dated 28-03-2014 passed u/s 143(3) r.w.s. 254. The learned CIT(A) observing that the AO has not followed directions and has not carried out verifications as directed by the tribunal to ascertain that exempt income earned by the assessee is out of stocks held for trading purposes for which onus was on the assessee, deleted the additions in the second round of litigation vide appellate order dated 30-12-2015 . However, we have observed that learned CIT(A) also did not carried out the necessary verifications as directed by the tribunal in first round of litigation for which onus was on the assessee. The authorities below are expected to follow the orders of the higher authorities which is governed by the principles of judicial discipline otherwise there will be anarchy and break down of rule of law. Thus, in nut shell the directions as contained in the order of the tribunal remain uncomplied with both by the AO and learned CIT(A). Thus, under these circumstances it will be fit and appropriate in the interest of justice and fair play to restore this issue back to the file of the AO with directions to follow the orders of the tribunal in assessee's own case in first round in ITA no. 5393/Mum/2011 dated 06-02-2013 which are reproduced hereunder:

“7. We have heard both the parties, perused the material placed before us as well as the decisions cited by the Ld Counsel. On perusal of the above cited decisions, we find that so far as the legal principle is concerned, in view of the above cited judgments, the provisions of section 14A are not made applicable to the case of dividend earned out of the shares held as stock-in-trade as held by the Hon'ble High Court of Karnataka in the case of M/s. CCI Ltd., vs. JCIT (supra). The Hon'ble Kerala High Court judgment in the case of Commissioner of Income-tax Vs Smt. Leena Ramachandran (Ker) (339 ITR 296) was distinguished. However, it is for the assessee to demonstrate that the exempt income earned by him is out of the stocks held for trading purposes. In our opinion, the case of the assessee is covered by the ratio of the judgment of the Hon'ble High Court of Karnataka in the case of M/s. CCI Ltd., vs. JCIT (supra). Nevertheless, for this limited purpose, we deem it fit to refer the issue to the files of the AO to decide the issue afresh in the light of the above cited decisions/judgments. Accordingly, the issue involved in the grounds is set aside to the files of the AO for fresh adjudication after granting a reasonable opportunity of being heard to the assessee. Accordingly, grounds raised by the Revenue are set aside.”

With this directions, the matter is set aside and restored to the file of the AO.
We order accordingly.

7. In the result appeal of the Revenue in ITA No.1422/Mum/2016 for assessment year 2008-09 is allowed for statistical purposes.

Order pronounced in the open court on 24 .10.2017

आदेश की घोषणा खुले न्यायालय में दिनांक: 24 .10.2017 को की गई ।

(SAKTIJIT DEY)
JUDICIAL MEMBER

(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Mumbai, dated: 24 .10.2017

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench, E
6. Master File

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BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI

	Draft dictated on	24-10-2017	Sr PS
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9	Date on which file goes to the AR		
10	Date of dispatch		Sr PS