

IN THE INCOME TAX APPELLATE TRIBUNAL“E” BENCH, MUMBAI
BEFORE SHRI R.C. SHARMA, AM AND SHRI AMARJIT SINGH, JM

I.T.A. Nos.1474/M/2015 & 600/M/2013
Assessment Years: 2008-09& 2008-09

Shakti Films Arvind Chambers, Natraj Studios, 194, M.V. Road, Andheri (w), Mumbai Pin: 400069	Vs.	CIT-11
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No. : AAAFS6403M		
(Appellant)	..	(Respondent)

Assessee by:	Shri Virendra Singh Khurana
Department by:	Shri Ram Tiwari (Sr. AR)

Date of Hearing: 06.07.2017
Date of Pronouncement: 04.10.2017

ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the above mentioned appeals against the different order passed by the Commissioner of Income Tax (Appeals)-4, Mumbai [hereinafter referred to as the “CIT(A)”] dated 28.01.2013 and order dated 14.08.2012 passed u/s 263 of the I.T. Act, 1961 relevant to the assessment year 2008-09.

ITA NO.1474/M/2015:-

2. The assessee has raised the following grounds:-

“1. The Hon’ble Commissioner of Income Tax has erred in view of the facts and in the circumstances of the Case in upholding the disallowance of Rs2, 1d129/- all HA and in presuming that there is a nexus between the expenses incurred and the earning of exempt incomes, especially as the assessee has maintained separate sets of accounts For the different ac6vLtles of the firm. In any case and without prejudice, the addition made is far too excessive and ought to be deleted in to if not reduced substantially. The remarks made in this connection are against [acts and the law.

The Honorable commissioner of Income Tax has erred in upholding the disallowance of a sum of Rs.434081 /being Long term capital gains on the ground that no STT was paid on the sale of the said mutual funds In act it a matter of record that STT was not liable at all in respect to the said mutual funds and such a consideration was irrelevant [or arriving at the disallowance. On facts alone no disallowance ought to have been made.

The appellants crave Leave to alter, add to or amend the aforesaid grounds of appeal.”

3. The brief facts of the case are that the CIT-11, Mumbai vide his order dated 14.08.2012 passed the order u/s 263 of the I.T. Act, 1961 and directed the AO to reframe the assessment by computing the disallowance u/s 14A and also to bring to tax on the Long Term Capital Gain to the tune of Rs.4,34,081/- which has been escaped assessment for the A.Y. 2008-09. A notice u/s 142(1) of the I.T. Act, 1961 was issued and served upon the assessee. Thereafter, the assessee filed the reply and considering the reply the AO applied the provision u/s 14A r.w. Rule 8D of the Act and disallowed the expenditure to earn the exempt income to the tune of Rs.2,16,129/- u/s 14A. The assessee also received the Long Term Capital Gain to the tune of Rs.4,34,081/- but he did not paid STT, therefore, the said Long Term Capital Gain to the tune of Rs. 4,34,081/- was disallowed

and added to the income of the assessee. The total income of the assessee was assessed to the tune of Rs.6,50,210/-. The assessee filed an appeal before the Commissioner of Income Tax Appeal -11, Mumbai who dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal before us.

ISSUE NO.1:-

4. Under this issue the assessee has challenged the disallowance of Rs.2,16,129/- u/s 14A of the Act. Under the year of assessment the assessee earned the dividend income to the tune of Rs.52,36,106/-. The Ld. Representative of the assessee has argued that the assessee did not incur any expenses to earn the exempt income nor expenses were claimed, therefore, in the said circumstances the disallowance u/s 14A of the Act to the tune of Rs.2,16,129/- is wrong against the law and facts and is not liable to be sustainable in the eyes of law. It is also argued that the Assessing Officer nowhere prove nexus between the borrowed funds and investment, therefore, in the said circumstances, the expenditure incurred to earn the exempt income to the tune of Rs.2,16,129/- is not liable to be sustainable in view of the law settled in the case of **Winsome Textile 319 ITR, 204 (P&H) & Hero Cycles 323 ITR 518**. However, on the other hand, the Ld. Representative of the department has refuted the said contentions. On appraisal of the record, we noticed that the assessee did not claim any expenses against exempt income. The Assessing Officer nowhere

prove nexus with the expenditure incurred to earn the exempt income with the expenses claimed. The assessee nowhere claimed any expenses when no expenses were claimed against the earning of exempt income then nothing is required to be disallowed. Therefore, no doubt in view of the law settled in **Winsome Textile 319 ITR, 204 (P&H) & Hero Cycles 323 ITR 518**. We are of the view that the disallowance is unjustifiable hence, we delete the said disallowance and decide this issue in favour of the assessee against the revenue.

ISSUE NO.2:-

5. Under this issue the assessee has challenged the disallowance of a sum of Rs.4,34,081/- being Long Term Capital Gain on account of this fact that no STT was paid. The assessee claimed the Long Term Capital Gain to the tune of Rs.4,34,081/- which disallowed by the AO and confirmed by the CIT(A) on account of this fact that the STT was not paid. The Ld. Representative of the assessee has argued that the upon the income of long term capital gain no STT was payable, therefore, the Assessing Officer has wrongly declined the claim of the assessee, hence, the finding of the CIT(A) is wrong against law and facts and is liable to be set aside in the interest of justice. On the other hand, the Ld. Representative of the Department has strongly relied upon the order passed by the CIT(A) in question. The assessee earned long term capital gain to the tune of Rs.4,34,081/-. No STT was payable on the sale of the mutual fund in view of the provision 10(38)

of the Act. Since no STT was payable on the capital gain arised due to sale of mutual funds, therefore, disallowance of long term capital gain to the tune of Rs.434081/- is not justifiable. Therefore, finding of the CIT(A) on this issue is wrong hence ordered to be set aside. Accordingly, we allowed the claim of the assessee of long term capital gain to the tune of Rs.4,34,081/-. Accordingly, this issue is decided in favour of the assessee against the revenue.

6. In result, appeal filed by the assessee is hereby ordered to be allowed.

ITA NO.600/M/2013:-

7. The assessee has raised the following grounds:-

1. *The Honorable CIT has erred in view of the facts and in the circumstances of the case in commencing proceedings u/s 263, and in ordering that the assessment originally made be set aside. On facts and in the circumstances of the case, the reopening is bad in law.*
2. *The Honorable CIT has erred in treating that there is a nexus between the expenses incurred and the earning of the exempt incomes, especially as the assessee has maintained separate sets of accounts for the different activities of the firm on facts this is, with respect, an erroneous interpretation and application of the law resulting in the disallowance. The remarks made in this connection are against facts.
The appellants craves leave to alter, add to or amend the aforesaid grounds of appeal.”*

8. The facts of the present case are that the Commissioner of Income Tax (Appeals) invoked the provision u/s 263 of the Act, 1961

on the basis of the examination of claim u/s 14A and claim of long term capital gain. After passing the order, the Assessing Officer passed the order in view of the provision u/s 263 of the Act, 1961 by virtue of order dated 26.11.2010. Subsequently, this order was challenged before the CIT(A) who decided the controversy by virtue of order dated 06.01.2015. The assessee filed an appeal before the ITAT in view of the ITA. No. 1474/M/2015. The claim of the assessee was allowed while deciding the above mentioned appeal. In the said circumstances, the appeal Bearing No. 600/M/2013 against the order passed u/s 263 of the Act, 1961 has become infructuous, therefore, there is no need to decide in the same being academic in nature.

9. In the result, all the appeals filed by the **assessee are hereby allowed.**

Order pronounced in the open court on 04.10.2017

Sd/-

(R.C. SHARMA)

लेखासदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : .04.10.2017

v.p. singh

Sd/-

(AMARJIT SINGH)

न्यायिकसदस्य/JUDICIAL MEMBER

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त (अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार (Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai