

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH : KOLKATA

[Before Hon’ble Sri N.V.Vasudevan, JM & Shri M.Balaganesh, AM]

I.T.A No. 2070/Kol/2014

Assessment Year : 2011-12

D.C.I.T., Circle-6,
Kolkata

-vs.-

M/s. Kredent Brokerage Services
Pvt. Ltd., Kolkata.
[PAN : AAACI 8269 C]

(Appellant)

(Respondent)

For the Appellant : Shri Sallong Yaden, Adl. CIT
For the Respondent : Shri K.K.Chhaparia, FCA &
Shri Nirav Sheth, ACA

Date of Hearing : 30.05.2017.

Date of Pronouncement : 02.06.2017.

ORDER

Per N.V.Vasudevan, JM

This is an appeal by the Revenue against the order dated 20.08.2014 of CIT-(A)-VI, Kolkata relating to A.Y.2011-12.

2. Grounds of appeal raised by the revenue reads as follows :-

“1. That on the facts and circumstances of the case, the CIT(A) erred as on facts as well as in law in holding that disallowance u/s 14A of Rs. 43,24,843/- was not warranted as dividend income accrued only from shares kept as stock in trade not from shares kept as investment, ignoring the decision of ITO Vs Cheminvest Ltd as well as CBDT circular No- 5/2014 in this regard which provides that disallowance u/s 14A read with Rule 8D can be invoked even when shares did not yield exempt income in a particular financial year.”

3. The Assessee is a stock broker. The assessee earned dividend income of Rs.5,99,321/- which does not form part of the total income under the Income Tax Act, 1961 (Act). Under Section 14 A of the Act, any expenditure incurred for the purpose of earning income which does not form part of the total income under the Act will not be allowed as deduction while computing total income. The question before AO was the quantum of expenses that has to be disallowed in terms of section 14A of the Act.

The AO applied the provision of Rule 8D of the Income Tax Rules 1962 (Rules). This is a method prescribed u/s 14A of the Act to determine the expenditure incurred in earning the exempt income and by applying the same, the AO arrived at a sum of Rs.43,24,843/- as the amount disallowable u/s 14A of the Act. The following was the calculation done by the AO :-

“The calculation of disallowance u/s 14A is made as below

a) Rule D(2)(i) Direct expenses : Nil

b) Rule 8D(2)(ii) Interest paid Rs 1,83,46,317/-

Avg Investments: Rs (16,48,71,168+ 18,82,67, 120)/2 = Rs 17,65,69,144/-
(including inventories)

Avg Assets : Rs (98,57,53,698+89,65,21, 752)/2 = Rs 94,11,37,725/-

Amt of disallowance is Rs 1,83,46,317X17,65,69,144/94,11,37.725 =
Rs 34,41,997/-

c) Rule 8D(2)(iii): 0.5%) of average Investments of Rs 17.65,69,144/-
equals to Rs 8,82,846/-

Hence total disallowance is (Rs 34,41,9971-+8,82,846/-) = Rs 43,24,843/-.”

4. On appeal by the assessee the CIT(A) deleted the addition made by the AO by following the order in assesee’s own case for A.Y.2010-11 by CIT(A) wherein it was held that

- a) While computing expenses disallowable u/s 14A of the Act only shares which yielded dividend income has to be considered in arriving at the average value of investments,
- b) Wherever dividend was earned on share held as stock in trade by the assessee there can be no disallowance u/s 14A of the Act.

Following the aforesaid order of CIT(A) for A.Y.2010-11, the CIT(A) deleted the disallowance u/s 14A of the Act. The following were the relevant observations of the CIT(A) :

“6.The material facts during the year are practically identical. The entire dividend income has been earned by the appellant from shares held as stock-in-trade. No dividend has been earned on the share held as investment. It is also been brought to notice by the appellant that the decision of Special Bench ITAT, Delhi in the case of Cheminvest Ltd. (supra) has been specifically over-ruled by three different High Courts namely Allahabad High Court in the case of CIT vs. Shivam Motors (P)Ltd., Gujarat High Court in the case of CIT vs. Cortech Energy Pvt. Ltd. and Punjab & Haryana High Court in the case of CIT vs. Lakhani Marketing. The appellant has also pointed out that investment made by it was much smaller than own fund available viz. share capital and reserve and surplus. It may also be mentioned, that though it has been stated in the assessment order, that the A.R. of the assessee admitted (need for) disallowance u/s 14A, on perusal of assessment records, no such admission is found. Considering the above facts and ratio given by various judicial authorities including jurisdictional Bench of ITAT, as discussed in the appellate order for A.Y.2010-11, the disallowance made u/s 14A read with Rule8D is deleted.”

5. Aggrieved by the order of CIT(A) the revenue has preferred the present appeal before the Tribunal.

6. We have heard the rival submissions. The Ld. DR relied on the order of AO. The Id. Counsel for the assessee brought to our notice that in A.Y.2008-09 in assessee's own case this Tribunal in ITA No.806/Kol/2012 by order dated 11.09.2010 on an identical issue was pleased to uphold similar order of CIT(A). The Id. Counsel also brought to our notice that the Hon'ble Calcutta High Court in the case of CIT vs GKK Capital Markets (P)Ltd 392 ITR 196 (Calcutta) has taken a view that the shares held as stock in trade and the expenses in relation to shares so held cannot be disallowed u/s 14A of the Act. In view of the aforesaid decision and the decision of the ITAT in assessee's own case, we are of the view that order of CIT(A) on this issue does not call for any interference. We also notice that disallowance of interest expenses under Rule 8D (2)(ii) cannot be sustained for the reason that the assessee had enough own funds which can be attributable to the investments in shares which are likely to yield tax free income. In such a scenario interest expenses have to be considered as not attributable to earn

exempt dividend income. We find no grounds with the order of CIT(A) . Accordingly the appeal of the revenue is dismissed.

7. In the result the appeal by the revenue is dismissed.

Order pronounced in the Court on 02.06.2017.

Sd/-
[M.Balaganesh]
Accountant Member

Sd/-
[N.V.Vasudevan]
Judicial Member

Dated : 02.06.2017.
[RG PS]

Copy of the order forwarded to:

1. M/s. Kredent Brokerage Services Pvt. Ltd., 4th Floor, 4, Brabourne Road, Kolkata-700001.
2. D.C.I.T., Circle-6, Kolkata.
3. CIT(A)-VI, Kolkata 4. CIT- II, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches

