

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI

Before Shri Saktijit Dey (JUDICIAL MEMBER)

AND

Shri G Manjunatha (ACCOUNTANT MEMBER)

I.T.A No.6270 /Mum/2016
(Assessment year:2012-13)

DCIT-2(2)(3), Mumbai	vs	M/s Pivotal Securities Pvt Ltd 151, 14 th Floor, Maker Chamber IV JB Marg, Nariman Point, Mumbai-21 PAN : AAACP3754F
APPELLANT		RESPONDEDNT

Appellant by	Shri Rajat Mittal
Respondent by	None

Date of hearing	06-11 -2017
Date of pronouncement	10-11-2017

ORDER

Per G Manjunatha, AM :

This appeal filed by the revenue is directed against the order of CITA)-5, Mumbai dated 01-07-2016 and it pertains to assessment year 2012-13.

2. The brief facts of the case are that the assessee company engaged in the business of finance and services, filed its return of income for the assessment year 2012-13 on 29-09-2012 declaring total income at Rs.84,61,750. The assessment was completed u/s 143(3) on 31-03-2015 determining total income at Rs.1,54,12,686 by making addition towards disallowance u/s 14A of the

Income-tax Act, 1961. Aggrieved by the assessment order, the assessee preferred appeal before the CIT(A). Before the CIT(A), the assessee submitted that the AO has worked out disallowance u/s 14A by invoking Rule 8D which is more than the expenditure debited in the P&L account. The assessee further submitted that out of total expenditure incurred for the year of Rs.48,39,732, a sum of Rs.6,12,996 represents loss incurred under the head 'capital gains', a sum of Rs.37,55,792 has been added back in the computation of income and also a sum of Rs.76,702 has been disallowed u/s 14A leaving behind Rs.3,94,242. As against this, the AO has determined disallowance to be made u/s 14A for Rs.70,27,638 which is more than the expenditure incurred by the assessee. The assessee also filed a copy of ITAT's order for the assessment years 2009-10 & 2010-11 wherein the ITAT held that expenditure to be disallowed u/s 14A cannot exceed the total expenditure incurred by the assessee. The CIT(A) after considering relevant submissions of the assessee observed that expenditure disallowed u/s 14A cannot exceed the total expenditure claimed by the assessee, therefore, directed the AO to disallow expenditure of Rs.2,94,242 and deleted the balance addition. Aggrieved by the order of CIT(A), the revenue is in appeal before us.

3. None appeared for the assessee. We have heard the Ld.DR, perused the materials available on record and gone through the orders of authorities

below. At the time of hearing, the Ld.DR submitted that the CIT(A) has given relief to the assessee by following ITAT decision in assessee's own case for the assessment years 2009-10 & 2010-11 wherein the ITAT has directed the AO to restrict disallowance to the extent of actual expenditure claimed by the assessee. We find that the CIT(A), by following ITAT's decision in assessee's own case for earlier years observed that expenditure to be disallowed u/s 14A cannot exceed the total expenditure claimed by the assessee. The relevant portion of the order of CIT(A) is extracted below:-

"5. I had considered the appellant submissions-in this case, order considered by ITAT for the A.Y. 2009-10 and 2010-11 in the appellant own case where it is held that appellant's expenditure incurred u/s. 14A cannot exceed the total expenditure claimed by the appellant. In this case, after allowing the credit for appellant disallowance u/s 14A for Rs.76,7021-. Total expenditure claim by the appellant is only Rs.3,94,242/-. So in view of the above ITAT decision A.O. is directed to disallow Rs.3,94,2421- u/s. 14A and the balance amount is deleted. Ground of appeal is partly allowed."

4. Facts remain unchanged. The revenue failed to bring on record any evidence to controvert the findings of fact recorded by the CIT(A). Therefore, we are inclined to uphold the findings of CIT(A) and dismiss the appeal filed by revenue.

5. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 10th November, 2017.

Sd/-

sd/-

(Saktijit Dey)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 10th November, 2017

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai