

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Sh. N. K. Saini, AM and Ms. Suchitra Kamble, JM

ITA No. 2205/Del/2016 : Asstt. Year : 2012-13

M/s Dharampal Premchand Ltd., 4873, Chandni Chowk, Delhi-110006	Vs	Dy. Commissioner of Income Tax, Central Circle-29, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACD1952B		

Assessee by : Sh. G. N. Gupta, AR

Revenue by : Sh. Shiv Raj Singh, Sr. DR

Date of Hearing : 23.11.2017	Date of Pronouncement : 30.11.2017
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ORDER

Per N. K. Saini, AM:

This is an appeal by the assessee against the order dated 29.02.2016 of Id. CIT(A)-30, New Delhi.

2. Following grounds have been raised in this appeal:

“1. That on the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) -30, New Delhi (CIT (A) for short) erred in confirming the action of the Dy. Commissioner of Income Tax, Central Circle-29, New Delhi (AO for short) in holding that the loss of Rs.3,48,57,989/- incurred in future trading is speculation loss.

2.1 That on the facts and in the circumstances of the case, the learned CIT(A) erred in confirming the action of the AO in disallowing a sum of Rs. 1,03,87,691/- u/s 14A of the Income

Tax Act, 1961 (Act for short) against dividend income of Rs. 43,79,337/-.

2.2 That without prejudice to the generality of grounds of appeal no 2.1 above, the disallowance of Rs.1,03,87,691/- is arbitrary and highly excessive.

3. That the appellant craves liberty to add, alter, vary or amend any ground of appeal.

3. As regards to Ground No. 1, the Id. Counsel for the assessee at the very outset stated that this issue is against the assessee as per the ratio laid down by the Honøble Delhi High Court in the case of CIT Vs DLF Commercial Developers Ltd. (ITA 94/2014) which has been followed by the Id. CIT(A). However, this legal issue is pending for decision before the Honøble Supreme Court of India and the assessee therefore wants to keep this issue alive.

4. In his rival submissions, the Id. DR supported the order of the Id. CIT(A).

5. After considering the submissions of both the parties, we are of the view that since the issue is covered by the order of the Honøble Jurisdictional High Court against the assessee in the case of CIT Vs DLF Commercial Developers Ltd. (supra). We, therefore, do not see any valid ground to interfere with the findings of the Id. CIT(A).

6. As regards to the issue agitated in Ground Nos. 2.1 & 2.2, the Id. Counsel for the assessee submitted that this issue is squarely covered by the decision of the ITAT Delhi Bench -B, New Delhi in ITA No. 2458/Del/2013 for the assessment year 2008-09 in assessee's own case (copy of the said order was furnished which is placed on record).

7. The Id. DR although supported the orders of the authorities below but could not controvert the aforesaid contention of the Id. Counsel for the assessee.

8. We have considered the submissions of both the parties and carefully gone through the material available on the record. It is noticed that an identical issue having similar facts was a subject matter of the assessee's appeal in assessment year 2008-09 in ITA No. 2458/Del/2013 wherein the issue has been decided in favour of the assessee. The relevant findings have been given in paras 6 to 9 of the order dated 09.05.2014 which read as under:

“6. We have heard the parties and have perused the material on record. As per the record, during the year, the assessee company earned dividend income of Rs.29,83,855/-. This was claimed as exempt u/s 10 (38) of the Act. The AO held that the assessee had not invested in shares for earning dividend, but that it was a dealer in shares. However, the AO made a disallowance of Rs.17,20,850/- representing expenditure against the said dividend income.

7. *Undoubtedly, the assessee had not accounted for any expense concerning the dividend of Rs.29,83,855/-. The AO applied the provisions of Section 14A of the Act read with Rule 8D of the Rules. The issue is as to whether these provisions are applicable to an assessee, who has been admitted to be a dealer in shares, as has been done by the AO in the present case.*

8. *In 'CCI Ltd.' (supra), the Hon'ble Karnataka High Court has held that if the assessee is a dealer of the shares and securities, it cannot be said that the purchases of the shares and holding of shares made by it were for the purpose of earning of dividend income; and that hence, the expenditure incurred in acquiring these shares cannot be disallowed u/s 14A of the IT Act. There also, like in the present case, it was the admitted position that the assessee was a dealer in shares and securities. 'CCI Ltd.' (supra) was followed by the Ahmedabad Bench of the Tribunal in 'Hina Nitin Parikh' (supra).*

9. *No decision contrary to the aforesaid case laws has been cited before us on behalf of the department. Therefore, respectfully following 'CCI Ltd.' (supra) and 'Hina Nitin Parikh' (supra), the grievance of the assessee by way of Ground No.2 is accepted."*

9. In the present case also, the income of the assessee is treated as business income of the assessee who is dealer in shares and security. Therefore, the facts for the year under consideration are similar to the facts involved in the assessment year 2008-09. So, respectfully following the

aforesaid referred to order dated 09.05.2014 in ITA No. 2458/Del/2013. The impugned addition made by the AO and sustained by the ld. CIT(A) is deleted.

10. In the result, the appeal of the assessee is partly allowed.
(Order Pronounced in the Court on 30/11/2017)

Sd/-
(Suchitra Kamble)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 30/11/2017

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR