

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI D.T. GARASIA (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5542/MUM/2015
Assessment Year: 2011-12**

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| Shree Global Tradefin Ltd.,35, Ashok Chambers, Broach Street, DevjiRetanesy Marg, Masjid Bunder, Mumbai-400020. PAN No. AAACB2975J | Vs. | ACIT-32 Ground floor, AayakarBhavan, M.K. Road,Mumbai-400020. |
| Appellant | | Respondent |

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|-------------|---|-----------------------|
| Assessee by | : | Mr. Dilip Lakhani, AR |
| Revenue by | : | Mr. T.A. Khan, DR |

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| Date of Hearing | : | 11/10/2017 |
| Date of pronouncement | : | 29/12/2017 |

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-53, Mumbai and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under:

1. On the facts & circumstances of the case the Learned Commr. of Income Tax (Appeals) has erred in remanding the matter back to the file of the Assessing

Officer to compute the disallowance u/s. 14, after exercising the fundamental jurisdiction of stepping into the shoes of the Learned Assessing Officer. The appellant prays that the Learned Commr. of income Tax (Appeals) has no jurisdiction to direct the Assessing Officer to verify the details and determine the disallowance u/s. 14A. The direction given by the Learned Commr. of income Tax (Appeals) is bad in law and be set aside.

2. On the facts & circumstances of the case the appellant prays that no additional disallowance should be made of any amount u/r 8D(2)(iii) over and above the disallowance made voluntarily by the appellant amounting to Rs.30,47,613/- and the addition made by the Learned Assessing Officer may be deleted.
3. On the facts & circumstances of the case the appellant prays that the disallowance u/s. 14A be restricted to of Rs. 30,47,613/-.
4. On the facts & circumstances of the case the Learned Commr. of Income Tax (Appeals) has erred in confirming the addition made by the Learned Assessing Officer of Rs.5,55,000/- under the head short term capital gains. The appellant prays that the addition made by the Learned Assessing Officer and confirmed by the Learned Commr. of Income Tax (Appeals) is not justified and be deleted.
5. On the facts & circumstances of the case the claim of the appellant that they have suffered long term capital loss on sale of motor car amounting to Rs.1,25,90,193/- be allowed.
6. The Learned Commr. of Income Tax (Appeals) has erred in not accepting the claim of the appellant that the appellant is not liable to pay interest u/s 234B of Income Tax Act, 1961. The appellant prays that no interest u/s. 234B be levied for Assessment Year 2011-12.
7. The Learned Commr. of Income Tax (Appeals) has erred in not accepting the claim of the appellant that the appellant is not liable to pay interest u/s 234D of Income Tax Act, 1961. The appellant prays that no interest u/s. 234D be levied for Assessment Year 2011-12.

3. We discuss the 1st, 2nd and 3rd ground of appeal together as they address a common issue. Briefly stated, the facts of the case are that the assessee-company earned a dividend income of Rs.32,03,079/- during the year under consideration. The Assessing Officer (AO) resorted to the disallowance u/s 14A r.w. Rule 8D and arrived at a disallowance of Rs.1,96,99,871/- [(Rs.51,128/- under Rule 8D(2)(ii) and Rs.1,96,48,743/- under Rule 8D(2)(iii)].

The assessee itself had disallowed Rs.30,47,613/-. Therefore, the AO restricted the disallowance to Rs.1,66,52,258/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that the Ld. CIT(A) has restored the matter to the file of the AO for verifying and ascertaining the quantum of salary expenses, administrative expenses and other expenses to be apportioned towards earning of exempt income subject to the amount of Rs.1,96,48,743/- computed by the AO as per Rule 8D(2)(iii) of his order.

5. Before us, the Ld. counsel of the assessee submits that the AO has not made any query before disallowing u/s 14A. It is submitted by him that the claim made by the assessee cannot be rejected by the AO without giving any reasons. It is stated that the assessee has earned exempt income of Rs.32,03,079/- from investment in three scrips during the year. It is further stated that the assessee has voluntarily disallowed Rs.30,47,613/- and the same be accepted.

6. On the other hand, the Ld. DR supports the order passed by the Ld. CIT(A). He submits that the Ld. CIT(A) has restored the matter to the file

of the AO for verification and ascertaining the quantum of salary expenses, administrative and other expenses to be apportioned towards earning of exempt income subject to the amount of Rs.1,96,48,743/- computed as per Rule 8D(2)(iii). The AO would pass an order after verification.

7. We have heard the rival submission and perused the relevant materials on record. In the instant case the assessee has declared tax exempt income of Rs.32,03,079/- and voluntarily disallowed Rs.30,47,613/- u/s 14A.

In the present case, the AO has not firstly disclosed why the assessee's case for attributing Rs.30,47,613/- as a disallowance u/s 14A has to be rejected. The AO has failed to scrutinize the accounts of the assessee and no reasons were recorded by him. In a similar case in *Joint Investment Pvt. Ltd. v. CIT* [2015] 59 taxmann.com 295 (Del.), the Hon'ble Delhi High Court has held as under:

“The second aspect is there appears to have been no scrutiny of the accounts by the AO an aspect which is completely unnoticed by the CIT(A) and the ITAT. The third, and in the opinion of this court, important anomaly which we cannot be unmindful is that whereas the entire tax exempt income is Rs.48,90,000/-, the disallowance ultimately directed works out to nearly 110% of that sum, i.e., Rs.52,56,197/-. By no stretch of imagination can Section 14A or Rule 8D be interpreted so as to mean that the entire tax exempt income is to be disallowed. The window for disallowance is indicated in Section 14A, and is only to the extent of disallowance expenditure 'incurred by the assessee relation to the tax exempt income'. This proportion

or portion of the tax exempt income surely cannot be swallow the entire amount as has happened in this case.”

7.1 Respectfully following the above judgment of the Hon’ble Delhi High Court, we direct the AO to accept the disallowance of Rs.30,47,613/- voluntarily made by the assessee in place of the addition of Rs.1,66,52,258/- made by him.

8. The 1st, 2nd and 3rd grounds of appeal are thus allowed.

9. We now turn to the 4th and 5th ground of appeal and discuss them together as they are closely linked.

The assessee had sold a motor car and earned a profit of Rs.5,55,000/-. As the depreciation was claimed on this car, AO treated it as Short Term Capital Gains (STCG) and brought the same to tax.

10. In appeal, before the Ld. CIT(A), the assessee furnished a working of Long Term Capital Loss (LTCL) on sale of the aforesaid motor car as under:

| Date | Particulars | Amount (Rs.) |
|------------|--|----------------------|
| 24.04.2010 | Sale of Motor Car | 5,55,000 |
| 05.07.1995 | Less: Indexed cost of acquisition Rs.5195217x 711/281 | 131,45,193 |
| | Long Term Capital Loss | (1,25,90,193) |

However, the Ld. CIT(A) observed that the assessee had not furnished any supporting documentary evidence in regard to its claim of LTCL before him, despite having been asked to do so. As per him, the assessee had not placed on record documents that it had neither

claimed depreciation nor was it allowed depreciation by the AO on the said motor car in the relevant years since AY 1996-97. As the assessee failed to discharge its onus of proving that it is entitled to claim any LTCL on sale of car, the Ld. CIT(A) upheld the action of the AO in bringing to tax Rs.5,55,000/- as LTCG.

11. Before us, the Ld. counsel submits that the assessee had not claimed any depreciation on the imported car. It is stated by him that the car was sold for Rs.5,55,000/- and it has claimed LTCL of Rs.1,25,90,193/-.

On the other hand, the Ld. DR supports the order passed by the Ld. CIT(A).

12. We have heard the rival submissions and perused the relevant materials on record. We find that the assessee has not furnished the relevant supporting documentary evidence before the Ld. CIT(A) with regard to its claim of LTCL, despite having been asked to do so. It has been held by the Hon'ble Supreme Court in *CIT v. Calcutta Agency* 19 ITR 191 (SC) that where claim is made in respect of any expenditure or statutory deduction/allowance, the burden is upon the assessee to prove the genuineness of the transaction and that conditions for allowing such deduction are fulfilled. In the present case, the assessee has failed to file the supporting documentary evidence before the AO as well as the Ld. CIT(A).

Therefore, we uphold the order of the Ld. CIT(A) on the above issue and dismiss the 4th and 5th ground of appeal.

13. The 6th and 7th ground of appeal relate to levy of interest. We hold that the levy of interest is mandatory though consequential. We order accordingly.

14. In the result, the appeal is partly allowed.

Order pronounced in the open Court on 29/12/2017.

Sd/-
(D.T. GARASIA)
JUDICIAL MEMBER

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

Mumbai;

Dated: 29/12/2017

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai