

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.5991/Mum/2016

(निर्धारण वर्ष / Assessment Year: 2013-14)

Dy. CIT, Circle-4(3) R.No. 649, 6 th Floor, Aayakar Bhavan, Mumbai:400020	बनाम/ Vs.	M/s. Latin Manhorlal Securities P. Ltd. 5 th Floor, Viraj, S.V. Road, Khar West, Mumbai-400052
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACL2767L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by:	Ms. Pooja Swaroop
Assessee by:	Shri Rajiv Wagtay

सुनवाई की तारीख / Date of Hearing: 06.11.2017

घोषणा की तारीख /Date of Pronouncement: 17..01.2018

आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 05.07.2016 passed by the Commissioner of Income Tax (Appeals) - 09, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2013-14.

2. The revenue has raised the following grounds:-

- “1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) was not justified in directing AO in directing AO to recompute the disallowance u/s 14r.w. Rule 8D(2) & 8D (2)(iii) after excluding the value of investment held as stock in trade.?”
2. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.”

3. The brief facts of the case are that the assessee filed its return of income on 29.09.2013 declaring total loss to the tune of Rs.5,51,44,759/-. The assessee has shown book loss to the tune of Rs.5,61,29,462/-. The case was selected for scrutiny and notice u/s 143(2) of the Act dated 05.09.2014 was issued and served upon the assessee. The notice u/s 142(1) of the Act along with questionnaire was also issued and served upon the assessee on 07.04.2015. The assessee company is engaged in the business of broking and trading in shares & securities derivatives. The assessee has received the dividend income of Rs.24,46,073/-. The assessee did not show the expenses to earn the exempt income, therefore, the notice was given and the expenses to earn the exempt income in view of provision u/s 14A r.w. Rule 8D of the I.T. Rules, 1962 was assessed to the tune of Rs.77,34,188/-. The Assessing Officer also disallowed an amount of Rs.2,02,839/ u/s 94(7) of the Act and the total loss was assessed to the tune of Rs.4,72,07,732/-. The assessee was not satisfied, therefore, the assessee filed an appeal before the CIT(A) who allowed the claim of the assessee, therefore, the revenue has filed the present appeal before us.

ISSUE NO.1:-

4. The revenue has raised the issue to re-compute the disallowance u/s 14 r.w. Rule 8D (2)(ii) & 8D (2)(iii) of the Act after excluding the value of investments held as stock in trade. The Ld. Representative of

the Revenue has argued that the claim of the assessee has wrongly been allowed by the CIT(A), therefore, the finding of the CIT(A) on this issue is liable to be set aside. On the other hand the Ld. Representative of the assessee has argued that the claim of the assessee has duly been covered by the decision of Bombay High Court in the case of **CIT Vs. India Advantage Securities Ltd. (ITA. No. 1131 of 2013 decided on 13.04.2015 and** in view of the decision of the ITAT Mumbai Bench in ITA. No.6711/M/2011 **DCIT Vs. India Advantage Securities Ltd. dated 14.09.2012.** Therefore, the CIT(A) has rightly passed the order in question. Before going further we deemed it necessary to advert the finding of the CIT(A) on record.:-

5.3 I have considered the stand of the AO as well as submissions of the appellant. It is noted that the grounds of appeal for the A.Y. 2013-14 are the same as those for A.Y. 2012-13 filed by the appellant. I have already decided the appeal of the appellant for the A.Y. 2012-13 vide my detailed order dt. 05.07.2016. In the present case, the issues are two folds. Firstly, the appellant has paid interest as well as received interest while making share transactions and has claimed netting of the two and for such claim the appellant had relied upon the judicial pronouncement dated 13.04.2011 made by the Hon'ble Jurisdictional ITAT, Mumbai in the case of Morgan Stanley India Securities Pvt. Ltd. vs. ACET (2031) 55 DTR 177, The Ld.AR further filed copy of the said judgement. I have gone through the said order and find that this issue has been decided by the Hon'ble Tribunal in para 7 of the judgement which is reproduced as under:

" On a proper consideration of the facts and the rival contentions, we are of the view that no strong grounds have been advanced by the Departmental Authorities to discard the method adopted by the assesses in allowing He interest u/S, 14A of the Act. There can be no dispute that since the amount of interest debited to the P & I. Account is on net basis., the disallowance of interest should also be made only with reference to the net interest, as was done by the

assessee. There is also merit in the argument put forth on behalf of the assessee it is not proper to take into consideration only the value of investments and assets as on 31st March 2001 since interest is paid on funds utilized during the entire period between 31st March 2000 and 31st March 2001 and the more- appropriate method is to average the hinds position as on these two day's and apply s. 14A with reference to the average value. The J-d. counsel for the assessee is at right in his submission that r. 8D in the I T Rules does recognize the averaging method. Reference may be made (sub-r.(2) of the said rule, which speaks of average value of the investment. We therefore hold that the disallowance of the interest as made by the assessee is adequate and appropriate and no further disallowance is called for. The ground is thus allowed "

Since the above judgement is from Hon'ble Jurisdictional Tribunal, the same has to be followed in the present case. Going by the statistics available made during appellate proceedings, the appellant has received gross interest income of Rs. 1,00,93,4267- and paid interest of Rs.2,00,66,771/- by netting off these two figures He net figure after disallowing not setting off of interest of car loan, the net figure of Interest paid comes to Rs. 94,58,27G/-. The Ld.AR has further drawn my attention towards the Judicial pronouncements in the case of CIT vs. India Advantage Securities Ltd ITANOJ131 of 2013 dated on 13.04.2015 by the Hon'ble Jurisdictional Mumbai High Court according to which no interest can be disallowed on the transactions related to shares held as stock in trade. Accordingly, the AO is directed to segregate the figures. The AO is further directed to work out the disallowance under Rule 8D(2)(ii) keeping in view this figure and the ratio laid down by the Hon'ble Tribunal in the case of Morgan Stanley (supra). Accordingly, this part of disallowance being one of the component in grounds of appeal relate to disallowance u/s 14A r.w. Rule 8D(2)(ii) is to be treated as partly allowed."

As regards disallowance under Rule 8D(2)(iii), it may be mentioned that as per the decision of the Hon'ble Jurisdictional Mumbai High Court in the case of India Advantage (supra) no disallowance can be made in the case of shares held as stock in trade. Accordingly, the AO is directed to reduce the figure of shares held as stock in trade from the total share volume and

disallow expenses at the rate of 0.5% only on the shares held as stock in investment. The AO is directed to work out accordingly and made necessary disallowance to the extent indicated above. Accordingly, this part of disallowance being, one of the component in Grounds of appeal relate to disallowance u/s 14A r. w 8(D)(2)(iii) is to be treated as partly allowed.

In the result, this ground of appeal related to disallowance u/s 14A is to be treated as partly allowed.”

5. On appraisal of the above said order, we noticed that the interest amount was considered after netting of the interest received and paid. The assessee paid the interest to the tune of Rs.94,58,270/- and accordingly the provision of Section 14A r.w. Rule 8D of the Act was applied and in this regard, the CIT(A) has placed reliance upon the law settled in **Morgan Stanley India Securities P. Ltd. Vs. ACIT-2011 55 DTR 177**. The other point which has been considered by the CIT(A) is in connection with excluding the interest related to share one as stock in trade in view of law settled in **CIT Vs. India Advantage Securities Ltd. (ITA. No. 1131 of 2013 decided on 13.04.2015)**. The CIT(A) has relied both the decision in accordance with law and accordingly the CIT(A) has been directed to re-compute the expenditure incurred to earn the exempt income. The facts are not distinguishable at this stage. No law contrary to the law applied by the CIT(A) has been produced before us. Taking into account, all the facts and circumstances, we are of the view that the CIT(A) decided the matter of controversy judicially and correctly which is not liable to be interfere with at this appellate stage. Therefore, this issue is decided in favour of the assessee against the revenue.

6. In the result, the appeal filed by the **revenue is hereby ordered to be dismissed.**

Order pronounced in the open court on 17.01.2018.

Sd/-
(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 17. 01.2018

VIJAY

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai