

IN THE INCOME TAX APPELLATE TRIBUNAL
"B" Bench, Mumbai
Before Shri B.R. Baskaran (AM)& Shri Pawan Singh (JM)
I.T.A. No. 1021/Mum/2013 (Assessment Year 2009-10)

DCIT 1(2) Room No. 535 5 th Floor Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. Money Matters Advisory Services Ltd. 1-B, 1 st Floor, Court Chambers, 35, New Marine Lines Mumbai-400 020 PAN : AACCP2478C
(Appellant)		(Respondent)

Assessee by	Shri Mahesh O. Rajora
Department by	Ms. S. Padmaja
Date of Hearing	31.01.2018
Date of Pronouncement	31.01.2018

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the Revenue is directed against the order dated 20.11.2012 passed by the learned CIT(A)-2, Mumbai and it relates to A.Y. 2009-10. The Revenue is aggrieved by the decision of the learned CIT(A) rendered on following issues :-

- a) Assessment of short term capital gains of ₹ 31.35 crores as business income of the assessee
 - b) Disallowance of interest expenditure of ₹ 51.28 lakhs.
 - c) Disallowance made u/s. 14A of the Act.
2. We heard the parties and perused the record. The assessee is engaged in the business of financial advisory services, trading and investment in shares.
3. First issue relates to assessment of short term capital gains arising on sale of shares as business income of the assessee. The assessee declared short term capital gains on sale of shares to the tune of ₹3135.77 lakhs. The Assessing Officer assessed the same as business income of the assessee. The learned CIT(A), however, reversed the order passed by the Assessing Officer by following his own order passed in assessee's own case for A.Y. 2008-09.

4. We noticed that the order passed by the learned CIT(A) in A.Y. 2008-09 has since been upheld by the Coordinate Bench of the Tribunal vide its order dated 22.12.2017 passed in ITA No. 135/Mum/2013. We further noticed that the assessee has realised short term capital gains on sale of shares of Orbit Corporation, Adani Enterprises Ltd. and GPC Ltd. We further noticed that all these shares have been purchased in the year relevant to A.Y. 2008-09 and have been sold during the year under consideration. In A.Y. 2008-09, these shares have been treated as “assessee’s investments” and the gain arising on sale of part of those shares in that year has been accepted as short term capital gains by the Tribunal. Under these set of facts, the character of the shares as “assessee’s investments” cannot be tinkered with at this stage. Accordingly, we do not find any reason to interfere with the order passed by the learned CIT(A) on this issue.

5. Next issue relates to disallowance of interest expenditure of ₹ 51.28 lakhs.

6. The Assessing Officer had treated certain loans as unexplained in A.Y. 2008-09 accordingly assessed them unexplained cash credit. Accordingly, during the year under consideration, the Assessing Officer disallowed the interest expenditure claimed on those loans.

7. Learned AR submitted that the Tribunal, in A.Y. 2008-09, has deleted the addition made by the Assessing Officer as unexplained cash credit and accordingly loans were treated as explained. Accordingly, he submitted that interest expenditure disallowed by the Assessing Officer is not called for.

8. We have heard learned Departmental Representative on this issue and perused the record. Since, loans taken in immediately preceding year have been treated as genuine loans, interest expenditure claimed by the assessee thereon during the year under consideration is allowable as deduction. We noticed that the learned CIT(A) has allowed the claim on this set of facts. Accordingly we uphold the order passed by the learned CIT(A) on this issue.

9. The next issue relates to disallowance made u/s. 14A of the Act. The Assessing Officer computed the disallowance u/s. 14A of the Act at ₹ 28.01 lakhs. The assessee itself had disallowed a sum of ₹ 5.52 lakhs u/s. 14A of the Act. Accordingly, the Assessing Officer added the difference amount of ₹ 22.48 lakhs to the total income of the assessee u/s. 14A of the Act. The learned CIT(A), by following the decision rendered by Hon'ble Bombay High Court in the case of Delight Enterprises (ITA No. 110 of 2009 dated 26.2.2009), held that no disallowance is required to be made in respect of investment from which no tax free income was earned. The learned CIT(A) had taken an identical view in A.Y. 2008-09 also and the same has been upheld by the Coordinate Bench of the Tribunal in assessee's own case in ITA No. 135/Mum/2013) (referred supra).

10. Since the view taken by the learned CIT(A) is also in accordance with the decision rendered by the Special Bench in the case of Vireet Investments Pvt. Ltd. (ITA No. 502/Del/2012), and since identical view has already been upheld by the Coordinate Bench in assessee's own case in AY 2008-09, we do not find any reason to interfere with the order passed by the learned CIT(A) on this issue.

11. In the result, appeal filed by the Revenue is dismissed.

Order has been pronounced in the Court on 31.01.2018.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 31/01/2018

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.

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BY ORDER,

Senior Private Secretary
ITAT, Mumbai