

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं ए. मोहन अलंकामणी, लेखा सदस्य के समक्ष
BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.866/Mds/2017
(निर्धारण वर्ष / Assessment Year: 2010-11)

The Deputy Commissioner of Income Tax, Chennai	Vs	M/s. Accel Media Ventures Limited, III Floor, Accel House, No.75, Nelson Manickam Road, Aminjikarai, Chennai – 600 029.
		PAN: AAACZ1490N
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से /Appellant by	:	Shri AR. Sreenivasan, JCIT
प्रत्यर्थी की ओर से /Respondent by	:	Shri T. Banusekar, CA

सुनवाई की तारीख /Date of hearing	:	21.12.2017
घोषणा की तारीख /Date of Pronouncement	:	30.01.2018

आदेश / ORDER

Per A. Mohan Alankamony, AM:-

This appeal by the Revenue is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-1, Chennai, dated 17.01.2017 in ITA No.36/CIT(A)-1/2013-14 for the assessment year 2010-11 passed U/s.250(6) r.w.s. 143(3) of the Act.

2. The Revenue has raised four grounds in its appeal however the cruxes of the issues are that:-

- (i) The Ld.CIT(A) has erred in deleting the disallowance made U/s.14A of the Act to the tune of Rs.38,20,959/-.
- (ii) The Ld.CIT(A) has erred by directing the Ld.AO to amend his order by holding that invoking explanation to Section 73 of the Act cannot be upheld.

3. The brief facts of the case are that the assessee is a limited company engaged in the business of investment by way of purchase and sale of shares, filed its return of income for the assessment year 2010-11, admitting loss of Rs.31,83,065/-. Initially the return was processed U/s.143(1) of the Act and subsequently the case was selected for scrutiny under CASS. Finally assessment order was passed U/s.143(3) of the Act on 30.03.2013 wherein the Ld.AO disallowed the entire expenses incurred by the assessee of Rs.38,20,959/- by invoking the provisions of Section 14A of the Act since the assessee was investment company earning exempt income and also disallowed to carry forward the loss incurred by the assessee by virtue of explanation to Section 73 of the Act.

4. **Ground No.2(i) : Applicability of Section 14A of the Act:-**

During the course of scrutiny assessment proceedings it was observed by the Ld.AO that the assessee company's business was investment in shares and also purchase and sale of shares.

Therefore he opined that provisions to Section 14A of the Act would be applicable in the case of the assessee. Thereafter he disallowed the entire expenses claimed by the assessee invoking the provisions of Section 14A of the Act. On appeal the Ld.CIT(A) restricted the disallowance to the extent of dividend income earned by the assessee during the relevant assessment year by observing as under:

“7. I have carefully considered the facts in issue, the reasons based on which the AO has preferred the disallowance / addition, the arguments advanced by the appellant and The appellant has earned of its own admission of Rs.10,256 as dividend income during the period under consideration. The Hon'ble Delhi High Court in the case of Joint Investments P Ltd v. CIT 372 ITR 694 restricted the disallowance made by the AO to the extent of exempt income earned by the appellant. The Chennai Tribunal in the case of M/s.Ambattur Clothing Ltd vs. Joint Commissioner of Income Tax in ITA No.1436,1643/Mds/2014 & 910/Mds/2015 dt 28.12.2015 held that disallowance u/s.14A r.w. Rule BD should not exceed the exempt income. Respectfully following the decisions of the Delhi High Court and ITAT , Chennai, the AO is directed to restrict the disallowance to the extent of dividend earned during the year. This ground of appeal is partly allowed.”

4.1 Before us the Ld.DR argued in support of the order of the Ld.AO while as Ld.AR relied on the order of the Ld.CIT(A).

4.2 We have heard the rival submissions and carefully perused the material on record. At the outset, we find that the order of the

Ld.AO is erroneous because he has not made a categorical finding as to what are the expenses incurred by the assessee for earning exempt income. Instead he has simply disallowed the entire expenses claimed by the assessee company. However we find that the Ld.CIT(A) has given part relief to the assessee and the assessee had not raised any cross objection, hence it appears that the assessee is satisfied with the decision of the Ld.CIT(A). In this situation we do not find it necessary to interfere with the order of the Ld.CIT(A) on this issue.

5. Ground No.2(ii) : Invoking the provisions of Section 73 of the Act:-

Since the assessee company was involved in buying and selling of shares, the Ld.AO was of the opinion that explanation to Section 73 of the Act would be applicable to the assessee. Therefore the Ld.AO disallowed the loss to be carried forward. On appeal the Ld.CIT(A) held that the view taken by the Ld.AO by invoking explanation to Section 73 of the Act cannot be upheld. At the outset on examining the Profit & Loss account of the assessee, out of total loss of Rs.30,24,836/-, we find that the assessee had incurred loss from investment in currency and nifty futures for

Rs.27,08,942/-. However, the loss incurred by the assessee in currency and nifty future has not been taken note off either by the Ld.AO nor by the Ld.CIT(A). Moreover we find that explanation to Section 73 of the Act is applicable wherein loss / profit has resulted from purchase and sale of shares. Since both the Revenue Authorities has not evaluated the facts of the case, we are of the opinion that the matter has to be remitted back to the file of Ld.AO for de-nova consideration. Accordingly this issue is remitted back to the file of Ld.AO for fresh consideration.

6. In the result the appeal of the Revenue is partly allowed for statistical purposes.

Order pronounced on the 30th January, 2018 at Chennai.

Sd/-

(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

Sd/-

(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 30th January, 2018

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|-------------------------|------------------------------|
| 1. निर्धारिती/Assessee | 2. राजस्व /Revenue | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |