

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: 'F', NEW DELHI**

**BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER  
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**ITA No. 1264/Del/2016  
A.Y. 2011-12**

KK Securities Ltd. 76-77, Scindia House Janpath New Delhi 110 001  PAN: AAACK 1882B	<b>vs.</b>	ACIT Circle 5(1) Now Circle 14(2) 3 <sup>rd</sup> floor, Aayakar bhavan New Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Shri Gaurav Jain, Adv. & Ms.Manisha Sharma, Adv.
<b>Respondent by</b>	Sh. Atiq Ahmad, Sr.D.R
<b>Date of Hearing</b>	12.02.2018
<b>Date of Pronouncement</b>	27.02.18

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

The present appeal has been filed by assessee against order dated 06/01/16 passed by Ld. CIT (A)-5, New Delhi for assessment year 2011-12 on the following grounds of appeal:

*“1. On the facts and in the circumstances of the case and in Law, Ld. CIT(A) erred in restricting the addition/disallowance u/s 14A read with Rule 8D to Rs. 14,987/- being equal to the amount of dividend income received instead of deleting the entire*

addition/disallowance of Rs. 62,178/- erroneously made by Ld. Assessing Officer.

2. On the facts and in the circumstances of the case and in Law, Ld.CIT(A) erred in not deleting the addition of Rs. 7,00,000/- made by Ld. Assessing Officer totally on erroneous and untenable grounds.

2.1 On the facts and in the circumstances of the case and in Law, Ld.CIT(A) failed in not appreciating the true facts and circumstances under which Appellant had to make payment of Rs. 7,00,000/- and grossly erred, totally on erroneous and untenable grounds, in upholding the addition/disallowance thereof made by the Ld.Assessing Officer.

2.2 On the facts and in the circumstances of the case and in Law, Ld.CIT(A) grossly erred in not deleting the addition/disallowance of the said amount of Rs. 7,00,000/- made by Ld. Assessing Officer even though she came to the conclusion that the said payment was not in the nature of fine or penalty imposed by NSE as so erroneously held by Ld. Assessing Officer.

2.3 On the facts and in the circumstances of the case and in Law, Ld.CIT(A) grossly erred in upholding the addition/disallowance of the amount of Rs. 7,00,000/- made by Ld. Assessing Officer totally on erroneous and untenable grounds that the said payment is in the nature of fee paid towards settlement of case to avoid fine or penalty by NSE or that the Appellant was at the verge of being expelled from its trading membership of NSE which are based merely on presumptions and surmises and are contrary to and unsupported by the facts or documents on record.

2.4. *On the facts and in the circumstances of the case and in Law and without prejudice, Ld.CIT(A) grossly erred in upholding the said addition/disallowance of Rs. 7,00,000/- made by Ld. Assessing Officer even after holding, though incorrectly, that the appellant was at the verge of being expelled from its trading membership of NSE which is the business of the appellant and hence the expenditure was covered u/s 37(1) on this ground as well.*

3. *On the facts and in the circumstances of the case and in Law, Ld.CIT(A) erred in holding that ground No. 3 raised by the Appellant relating levy of interest u/s 2348 and 234C are consequential and dismissing the same on that ground without considering the merits of the case as urged and pressed by the Appellant.*

4.0 *The impugned order of Ld. CIT(A) and the assessment order of the Ld. A.O. are illegal, bad in Law and equity, without proper and valid jurisdiction and void ab initio. Accordingly, the same ought to be quashed, set aside and/or suitably modified .*

5.0 *Appellant craves leave to amend, alter, vary and/or to add to all or any of the grounds of appeal or to raise such additional or fresh grounds as may be considered necessary or required at any time hereafter.*

2. Brief facts of the case are as under:

Assessee is a company engaged in the business of share broker and acts as a broker to the clients for purchase and sale of shares and securities. For the year under consideration it declared total income of Rs. 72, 91, 890/-in the return filed on 22/09/11. The same was processed under section 143 (1) and

was selected for scrutiny. Assessee furnished required details/information as called for, and the assessment was completed after making following additions:

disallowance under section 14 A - Rs. 62, 178/-

disallowance of bad debt - Rs. 7, 00, 000/-

2.1. Aggrieved by the order of Ld. AO assessee preferred appeal before the Ld.CIT(A). Ld.CIT(A) restricted the disallowance made under section 14 A to the dividend income earned during the year. However he confirmed the addition made by the Ld. AO on account of bad debts.

3. Aggrieved by the order of Ld. CIT (A) assessee is in appeal before us.

**4. Ground No. 1** raised by assessee is in respect of the disallowance under section 14A being restricted to the dividend income earned by assessee.

4.1. Ld.AR submitted that admittedly assessee is engaged in purchase and sale of shares as a trader. Ld.AR submitted that during the year under consideration assessee had earned dividend amounting to Rs.14,987/-which was claimed as exempt under section 10 (33) of the Act. Ld.AR placed reliance upon the decision of *Hon'ble Punjab and Haryana High Court* in the case of *PCIT vs. State Bank of Patiala* reported in 391 ITR 218.

4.2. On the contrary Ld.DR relied upon the orders passed by authorities below.

5. We have perused the submissions advanced by both the sides in the light of the records placed before us.

5.1. *Hon'ble Punjab and Haryana High Court* in the case of *PCIT vs. State Bank of Patiala (supra)*, had decided that;

*“Since assessee did not hold the securities to earn dividend or interest but traded in them the dividend or interest accrued thereon was only incidental benefit arising there from and the same would not be subject to the provisions of section 14 A”*

In our considered opinion this judgment do not help assessee in any manner whatsoever as the assessee before Hon’ble High Court was a banking institution and there was a categorical finding recorded by the Tribunal therein that income arising from investments of a banking concern is attributable to the business of banking which falls under the head ‘profit and gains of business and profession’ which was supported by CBDT circular No. 18/2015 dated 02/11/2015. In the present case, assessee is not a banking concern, and, therefore, neither the circular nor the stated decision of Hon’ble Punjab and Haryana High Court would come to rescue of assessee.

5.2. Thus we do not find any infirmity in the observations of Ld. CIT (A) in restricting the disallowance under section 14 A to the extent of dividend income earned by assessee during the year under consideration.

5.3. Accordingly ground No. 1 raised by assessee stands dismissed.

**6. Ground No. 2** has been alleged by assessee on the addition made by Ld. AO of Rs.7,00,000/-as bad debts.

6.1. Ld.AR submitted that one of the clients of assessee had made a false claim against assessee and had filed a complaint before NSE stating that they had carried out unauthorised transactions in his account due to which he had suffered various

losses. Because of this complaint assessee had to settle the matter with the client to buy peace under the pressure from NSE and payment of Rs.7,00,000/-was paid as compensation. Ld.AR submitted that these payments were actually an expenditure incurred being incidental to the business and was allowable under section 37 (1) of the Act. Ld.AR submitted that these were not in the nature of penalty.

6.2. On the contrary Ld. DR placed reliance upon the orders of the authorities below.

6.3. We have perused the submissions advanced by both the sides in the light of the records placed before us.

6.4. It is observed from the paper book pages 146-168 relates to the issue on settlement made by assessee with its client. On perusal of these papers, it appears that the complaint filed by the complainant, being declined by assessee though accepted by NSE, the guilt may or may not be established.

6.5. It has been submitted by Ld.AR that the settlement was arrived at with the complainant was a commercial expediency as NSE had not held assessee to be guilty.

6.6. Commercial expediency must be decided from businessman's point of view. The question whether it was necessary of commercial expediency is a question that has to be decided from the point of view of the businessman and not by the subjective standard of reasonableness of the revenue. Further as there has been no material on record to show that there was any violation of any rules/regulations of NSE by assessee, the payment made to the complainant cannot be considered to be penalised nature. Thus we are of the considered opinion that

explanation to section 37 (1) cannot be invoked in the present circumstances and the sum paid by assessee has to be allowed as an expenditure allowable under section 37 (1) of the act.

6.7. Accordingly this ground raised by assessee stands allowed.

7. In the result appeal filed by assessee stands partly allowed.

Order pronounced in the open court on 27.02.2018.

Sd/-

**(R.K.PANDA)**  
**Accountant Member**

Sd/-

**(BEENA PILLAI)**  
**Judicial Member**

Dated: 27<sup>th</sup> Feb., 2018.

- mv

Copy of the Order forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. Guard File

By Order

Asst. Registrar  
ITAT, Delhi Benches, New Delhi