

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.840/Bang/2018
Assessment Year :2012-13

Shri N. Nagaraj Ballal, 7/2/35, Pooja, Vadiraja Road, Udupi – 576 101. PAN: ACMPB2556L	Vs.	The Income Tax Officer, Ward – 2, Udupi.
APPELLANT		RESPONDENT

Appellant by	:	Shri Anil Kumar .H, CA
Respondent by	:	Smt. Padma Meenakshi, JCIT (DR)

Date of hearing	:	07.05.2018
Date of Pronouncement	:	11.05.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee which is directed against the order ofld. CIT(A)-10, Bangalore dated 26.12.2017for Assessment Year 2012-13.

2. The grounds raised by the assessee are as under.

“1. The order of the learned Commissioner of Income Tax (Appeals) dismissing the appellants appeal and confirming the addition of Rs. 21,59,010 u/s 14A as properly made by A.O is against law, fact of the case and weight of evidence.

2. The learned CIT (A) has erred in disallowing interest expenditure for investment in those shares which have not yielded exempt income.

3. The learned CIT (A) has erred in confirming the disallowance when investment in dividend yielding shares is not out of borrowed funds.

4. The learned CIT (A) has failed to appreciate that the investment in two companies aggregating to Rs. 4,04,93,305 /- is in the course of appellants business of civil construction and hotel business and not for earning dividend and from which the appellant has earned taxable income of Rs. 13,20,000 /- (Thirteen lakhs twenty thousand) .

5. The learned CIT (A) has erred in confirming the disallowance of Rs. 21,59,010 as against exempt income of only Rs. 14,870.

6. The appellant may be permitted to raise further evidence at the time of hearing.”

3. It was submitted by Id. AR of assessee that in the present case, the assessee has received dividend of only Rs. 14,870/- and such dividend is received from six companies viz., Syndicate Bank, Bank of Baroda, Manipal Housing, Reliance Industries Ltd., Andhra Bank and Sundaram Fasteners Ltd. He further submitted that investment in first three companies is appearing in the books of the assessee but the investment in the last three companies is out of drawings of the assessee in the relevant year and it is not finding mention in the books of the assessee. He submitted that as per the recent Tribunal order rendered in the case of Keyman Financial Services (P) Ltd. Vs. DCIT in ITA No. 4043/Del/2014 dated 15.01.2018, it was held that disallowance u/s. 14A cannot exceed the exempt income earned by the assessee in the relevant year and in this Tribunal order, the Tribunal has followed the judgment of Hon'ble Delhi High Court rendered in the case of Cheminvest Pvt. Ltd. Vs. CIT as reported in (2015) 378 ITR 33. He submitted that as per this Tribunal order, disallowance in the present case may be maximum Rs. 14,870/-. He further submitted that even these much disallowance in the present case is not justified and in the present case disallowance should not exceed Rs. 10,554/- as per working submitted by him along with the summary of submissions made before the Tribunal. In this regard, he placed reliance on an order of the Special bench of the tribunal rendered in the case of ACIT vs. Vireet Investment Pvt. Ltd. as reported in 165 ITD 27. He submitted that as per this working, only the shares of those three companies should be considered from whom the assessee has received dividend income which is exempt which is forming part of the books of the assessee. He pointed out that such investment is only of Rs. 1,54,200/- and therefore, the working of disallowance u/s. 14A r.w. Rule 8D should be based on this much investment of only of Rs. 1,54,200/- and if this is done, then the disallowance works out to Rs. 10,554/-. The Id. DR of revenue placed reliance on the judgment of Hon'ble Apex Court rendered in the case of

Maxopp Investment Ltd. Vs. CIT as reported in (2018) TaxCorp (DT) 71260 (SC) dated 12.02.2018. In the rejoinder, the Id. AR of assessee drawn my attention to para 40 of this judgment of Hon'ble Apex Court and pointed out that in that Para, it is noted by Hon'ble Apex Court that in that case, the AO has himself restricted the disallowance u/s. 14A of IT Act to the extent of being the amount of dividend received and claimed exempt.

4. I have considered the rival submissions and I feel that in the facts of the present case, the Tribunal order rendered in the case of Keyman Financial Services (P) Ltd. vs. DCIT (supra) should be followed and as per this Tribunal order, the disallowance u/s. 14A should be restricted to the extent of exempt income of the relevant year. Hence, I direct the AO to restrict the disallowance u/s. 14A to the extent of Rs. 14,870/- being the exempt income in the present year. Regarding the order of the Special bench of the tribunal rendered in the case of ACIT vs. Vireet Investment Pvt. Ltd. (Supra), I find that as per this order, those investments which yielded exempt income should be considered for making disallowance u/s 14A. In the present case, the dividend income is earned from investment in six companies but the assessee is not able to provide the amount of investment in three companies. Hence, the decision of this tribunal order cannot be made applicable in the present case in the absence of the figure of investment in six companies which yielded dividend. In view of this decision, other contentions raised by Id. AR of assessee do not require any discussion or separate adjudication.

5. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 11th May, 2018.
/MS/

Copy to:

1. Appellant
2. Respondent
3. CIT

4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.