

आयकर अपीलिय अधिकरण “SMC” न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 995/Mum/2018

(निर्धारण बर्ष / Assessment Year 2013-14)

M/s Crescent Trading Pvt. Ltd. (now merged with M/s Rightgrowth Trading Pvt. Ltd.) 45-C, Mandhana Manor, Moghul Lane, Matunga Road (West), Mumbai-400 016	Vs.	Dy. Commissioner of Income Tax, CC-3(3), Air India Building, 19 th Floor, Nariman Point, Mumbai-400 021
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
PAN No. AABCC6898A		

Assessee by : None, AR

Revenue by : P.R. Chauhan, DR

Date of hearing: 08-05-2018 Date of pronouncement : 08-05-2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-51, Mumbai [in short CIT(A)], in appeal No. CIT(A)-51/IT/DC-CC-3(3)/304/2016-17 dated 29.12.2017. The Assessment was framed by the Dy. Commissioner of Income Tax, Central Circle 3(3), Mumbai (in short 'DCIT') for the A.Y. 2013-14 vide order dated 23.03.2016 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').



2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the disallowance of expenses relatable to exempt income made by AO under section 14A of the Act read with Rule 8D of the IT Rules 1962 (hereinafter the Rules) amounting to ₹ 19,07,565/- and the same was enhanced by CIT(A) to the extent of ₹ 21,18,863/-. For this assessee has raised the following ground No. 1 and 2: -

“1.

a) *The ground or grounds of appeal are without prejudice to one another. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in confirming the addition to the extent of 21,18,863/- (₹ 15,51,540/- + ₹ 5,67,323/-) as against such disallowance of ₹ 18,83,373/- made by the AO to the income of the Appellant by way of disallowing proportionate interest and administrative expenses at the flat rate alleged to have been incurred relating to exempt income invoking the provisions of section 14A r.w.r. 8D mechanically.*

b) *The Id. CIT(A) failed to appreciate that there is no reason and basis in reaching to dissatisfaction with the correctness of the claim of the Appellant that no expenditure other than Demat charges of ₹ 24,192/- was incurred in relation to dividend income which does not form part. of the total income.*

c) *In reaching to the conclusion and confirming/ enhancing such addition made by the AO, the Id. CIT(A) omitted to consider relevant factors, considerations, principles and evidences while he was overwhelmed, influenced and prejudiced by irrelevant considerations and factors.*



d) *In any case the disallowance u/s.14A r.w.r. 8D as worked out by the Id. CIT(A) is excessive and unreasonable.*

2. *On the facts and in the circumstances of the case and in law, the Id. AO erred in making an addition of ₹ 19,07,565/- to the book profit of the Appellant by way of adding back disallowance made u/s.14A r.w.r. 8D and thereby erred in enhancing the book profit artificially.”*

3. Briefly stated facts are that the assessee is engaged in the business of trading in fabrics and investments in shares. The assessee has earned dividend income of ₹ 1,82,371/- on shares held as investment and the same has exempt under section 10(34) of the Act. The assessee already added back the same of ₹ 24,251/- being STT payment and further a sum of ₹ 24,251/- and 24,192/- being deemed charges, being expenses relatable to dividend income. The AO simply applying formula made disallowance of expenses relatable to exempt income under Rule 8D (2)(ii) at ₹ 15,51,540/- and under Rule 8D (2)(iii) of the Act at ₹ 3,56,025/- and thereby a total disallowance was made at ₹ 19,07,565/-. The AO considered the suo moto disallowance made by the assessee of ₹ 24,192 and balance was disallowed amounting to ₹ 18,83,373/-. Aggrieved, assessee preferred the appeal before CIT(A), who confirmed the disallowance made by AO under Rule 8D(2)(iii) at ₹ 15,51,540/- and enhanced the disallowance under Rule 8D(2)(iii) at ₹ 5,87,323 as against the disallowance made by AO at ₹ 3,56,025/-. Aggrieved, now assessee came in second appeal before Tribunal.

4. I have heard the learned Sr. Departmental Representative and gone through the facts and circumstances of the case. I find from the facts of the case that the exempt income earned by assessee is only to the tune of ₹ 1,82,371/- on shares held as investment and claim the same



as exempt under section 10(34) of the Act. In view of the decision of Hon'ble Delhi High Court in the case of Cheminvest Ltd. vs. CIT (2015) 378 ITR 33 (Delhi) the issue is squarely covered in favour of assessee. The decision of Delhi High Court in the case of Cheminvest Limited (*supra*), reads as under: -

“23. In the context of the facts enumerated hereinbefore the Court answers the question framed by holding that the expression „does not form part of the total income“ in Section 14A of the envisages that there should be an actual receipt of income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. In other words, Section 14A will not apply if no exempt income is received or receivable during the relevant previous year.”

5. In view of the above decision of Hon'ble Delhi High Court in the case of Cheminvest Limited (*supra*), we direct the AO to restrict the disallowance at ₹ 1,82,371/-. This issue of assessee's appeal is partly allowed.

6. **In the result, the appeal Assessee is partly allowed.**

Order pronounced in the open court on 08-05-2018.

आदेश की घोषणा खुले मे दिनांक 08-05-2018 को की गई ।

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 08-05-2018
Sudip Sarkar /Sr.PS



ITA No. 995/Mum/2018

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI