

IN THE INCOME TAX APPELLATE TRIBUNAL
"E" Bench, Mumbai
Before Shri B.R. Baskaran (AM)& Shri Pawan Singh (JM)
I.T.A. No. 1048/Mum/2016 (Assessment Year 2004-05)

STCI Finance Limited A/B 1-802, A Wing 8 th Floor, Marathon Innova, Marathon Nextgen Compound Off Ganpatro Kadam Marg, Lower Parel (W) Mumbai-400 013. PAN : AAGCS9709K (Appellant)	Vs.	DCIT 1(3) Aayakar Bhavan M.K.Road Mumbai-400 020. (Respondent)
---	-----	--

Assessee by	Shri Prasad Bapat
Department by	Shri V. Justin
Date of Hearing	7.06.2018
Date of Pronouncement	7.06.2018

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the assessee is directed against the order dated 12.10.2015 passed by the learned CIT(A)-3, Mumbai and it relates to A.Y. 2004-05.

2. At the time of hearing the assessee did not press ground 3 and the same is dismissed as not pressed.

3. The assessee is aggrieved by the decision rendered by the learned CIT(A) on following issues :-

- (i) Disallowance made u/s. 14A of the Act.
- (ii) Disallowance of depreciation on residential flats

4. The appeal filed by the assessee is barred by limitation by 55 days. The Chartered Accountant of the assessee has filed an affidavit owning up the responsibility in not filing the appeal in time. Since the mistake has occurred

at the end of the counsel, learned AR submitted that the delay may be condoned.

5. On the contrary, learned DR strongly objected to the same and submitted that the affidavit has been filed by some other person and not the person who has claimed to have committed mistake.

6. Learned AR replied that the assessee firm is a big firm consisting of many Chartered Accountants as partners and employees. The Chartered Accountant who was looking after the file of the assessee was an employee and he has left the firm and hence affidavit was filed by another employee who is aware of the facts.

7. We have heard the parties on this preliminary issue. Since the mistake has occurred at the end of the assessee's counsel, in our view, the same constitute reasonable cause. Accordingly, we condone the delay and admit the appeal for hearing.

8. The assessee is a dealer in Government securities, PSU bonds, commercial papers and other money market instruments. The first issue relates to disallowance made u/s. 14A of the Act. This is the second round of proceedings. In the first round the Tribunal has restored the matter back to the file of the Assessing Officer for computing the disallowance on reasonable basis to comply with the requirement of section 14A of the Act, since Hon'ble Bombay High Court has held in the case of Godrej & Boyce Manufacturing Co. Ltd. (328 ITR 81) that provisions of Rule 8D of the I.T. Rules shall apply only from A.Y. 2008-09. However, in the set aside proceedings, the Assessing Officer computed disallowance by applying rule 8D of the I.T. Rules and accordingly, the disallowed a sum of ₹ 18.57 lakhs. The learned CIT(A) also confirmed the same.

9. Learned AR submitted that own funds available with the assessee is in far excess of the value of investment and hence no disallowance out of interest

expenditure is called for as per the decision rendered by Hon'ble Bombay High Court in the case of HDFC Bank Ltd. (366 ITR 505).

10. Learned AR further submitted that the assessee has brought forward the investments from last year and accordingly submitted that, during the year under consideration, no transaction relating to purchase and sale of investments have taken place. Accordingly, he submitted that reasonable amount may be disallowed out of expenses.

11. Learned DR supported the order passed by the learned CIT(A).

12. We have heard both the parties on this issue and perused the record. We noticed that the own funds available with the assessee as at the beginning and end of the year was ₹ 92320 lakhs and ₹ 100460 lakhs respectively. The value of investment as at beginning and also at the end of the year was 500 lakhs only. Hence, admittedly, the own funds available with the assessee is in far excess of the value of investments and hence no disallowance out of interest expenditure is called for as per the decision rendered by Hon'ble Bombay High Court in the case of HDFC Bank Ltd. (supra). We further noticed that the assessee has not carried out any investment activity during the year under consideration. However, the assessee has received tax free income of ₹ 348 lakhs. Accordingly, we are of the view that expenditure relating to receipt of dividend income has to be disallowed u/s. 14A of the Act. We noticed that the Assessing Officer has disallowed a sum of ₹ 2.50 lakhs by applying provisions of rule 8D(2)(iii) of the I.T. Rules. Considering the quantum of exempt income received by the assessee, we are of the view that disallowance of ₹ 2.50 lakhs made by the Assessing Officer would meet the requirements of section 14A of the Act. Accordingly, we modify the order passed by the learned CIT(A) on this issue and direct the Assessing Officer to restrict the addition u/s. 14A of the Act to ₹ 2,50,000/-.

13. Next issue relates to disallowance of depreciation claimed on residential flat. The Learned AR submitted that the learned CIT(A), without deciding the

issue, has restored the matter to the file of the Assessing Officer. The Learned AR submitted that the learned CIT(A) does not have power to remand the matter to the file of the Assessing Officer.

14. We have heard learned DR and perused the record. Since the issue urged by the assessee on this issue required examination at the end of the Assessing Officer, the learned CIT(A) has restored the same to the file of the Assessing Officer. However, as rightly pointed out by learned AR, the learned CIT(A) does not have power to remand the matter. However, we agree with the view taken by the learned CIT(A) that this matter requires examination at the end of the Assessing Officer. Accordingly, we regularize the direction given by the learned CIT(A) and accordingly we restore this issue to the file of the Assessing Officer for examining it afresh in accordance with law.

15. In the result, appeal filed by the assessee is treated as partly allowed.

Order has been pronounced in the Court on 7.6.2018.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

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

Mumbai; Dated : 7/6/2018

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.

//True Copy//

BY ORDER,

PS

Senior Private Secretary
ITAT, Mumbai