

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,  
*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH “B” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and  
**Shri, M. Balaganesh, Accountant Member**

**ITA No.436/Kol/2017**  
Assessment Year :2012-13

Income Tax Officer, Ward-1(4), P-7, Chowringhee Square, Kolkata-69	<b>V/s.</b>	M/s. Milestone Share and Stock Broking Pvt. Ltd., 14, Princep Street, 1 <sup>st</sup> Floor, Kolkata-72 <b>[PAN No.AAFCM 7386 P]</b>
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri S. Dasgupta, Addl. CIT-DR
प्रत्यर्थी की ओर से/By Respondent	None
सुनवाई की तारीख/Date of Hearing	26-07-2018
घोषणा की तारीख/Date of Pronouncement	24-08-2018

**आदेश /O R D E R**

**PER S.S.Godara, Judicial Member:-**

This Revenue's appeal for assessment year 2012-13 of Commissioner of Income Tax (Appeals)-2 Kolkata's order dated 05.12.2016 passed in case No.633/CIT(A)-2/15-16, involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

2. Case called twice. None appears at the assessee's behest. The Registry has already sent RPAD notice dated 07.06.2018. It is accordingly posted *ex parte*.

3. The Revenue's sole contention during the course of hearing as per Revenue's pleadings is that CIT(A) has erred in law as well as on facts in reversing the Assessing Officer's action invoking u/s 14A r.w.s. 8D disallowance of ₹1,62,36,681/- comprising of taxpayer's direct, proportionate interest and administrative expenditure under Rule 8D-1(i) to (iii) Income Tax Rules, 1962 involving corresponding sums of ₹1,02,06,385/-, 58,52,707/- and ₹8,50,541/-; respectively. There is no dispute about the assessee having derived exempt income of ₹2,54,427/- from dividends. The Assessing Officer invoked the above computation in his assessment order dated 30.03.2015.

4. Coming to CIT(A)'s order, we find that he has directed the Assessing Officer to re-examine correctness of all the three heads of expenditure. He first of all takes note of the fact that assessee's also engaged in securities trading in market and therefore the direct expenditure disallowance of ₹1,02,06,384/- pertains to its business activity. Coming to second issue of proportionate interest expenditure disallowance (supra), the CIT(A) concludes that interest expenditure of ₹4,64,815/- pertains to secured loan creditors. Further amount of ₹19,19,774/- is stated to be representing delayed payment charges to the brokers with whom shares and securities trading had been done. The CIT(A) thereafter concludes regarding administrative expenditure that only the dividend yielding investment have to be taken into consideration as per this tribunal's decision in *REI Agro Ltd. Vs. DCIT* (2013) 144 ITD (141) (Kol). It is therefore evident that the CIT(A) has directed the Assessing Officer to verify all these facts in re-examination exercise and make the impugned disallowance related to exempt income yielding investments only.

5. Mr. Dasgupta at this stage quotes section 251(1)(a) of the Act before us. His case is that the crucial expression therein "or he may set aside" regarding CIT(A)'s jurisdiction to remand the case to the Assessing Officer stands omitted with effect from 01.06.2001 by the Finance Act, 2001. There can be no dispute about the instant legal contention. The fact however

remains that the Assessing Officer had not considered all the above stated details in his assessment order at the time of invoking the impugned disallowance. We therefore accept the Revenue's above legal plea for statistical purpose and restore the instant appeal back to the Assessing Officer ourselves for independent examination of the above sole issue as per law after affording adequate opportunity of hearing to the assessee.

5. This Revenue's appeal is allowed for statistical purposes.

Order pronounced in the open court 24/08/2018

Sd/-  
(लेखा सदस्य)  
(M.Balaganesh)  
(Accountant Member)  
Kolkata,  
\*Dkp, Sr.P.S

दिनांक:- 24/08/2018 कोलकाता ।

Sd/-  
(न्यायिक सदस्य)  
(S.S.Godara)  
(Judicial Member)

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-ITO Ward-1(4), P-7, Chowringhee Sq. Kolkata-69
2. प्रत्यर्थी/Respondent-M/s Milestone Shares & Stock Broking Pvt. Ltd.14, Princep Street  
1<sup>st</sup> Floor, Kolkata-72
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of  
Office/DDO  
आयकर अपीलीय अधिकरण,  
कोलकाता ।