

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "I", MUMBAI**

BEFORE SHRI SHAMIM YAHYA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 2352/MUM/2017
Assessment Year: 2011-12**

The D.C.I.T.-1(2)(2), R. No. 535, 5 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s Maharashtra State Finance Corporation, United India Building, 1 st Floor, Sir P M Road, Fort, Mumbai - 400001 PAN: AAACM3751F
(Appellant)		(Respondent)

Revenue by : Shri Choudhary Arunkumar Singh (DR)
Assessee by : None

Date of Hearing: 09/08/2018
Date of Pronouncement: 29/08/2018

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against the order dated 08.12.2016 passed by the Commissioner of Income Tax (Appeals)-2, Mumbai (for short 'the CIT (A), for the assessment year 2011-12, whereby the Ld. CIT (A) has allowed the appeal filed by the assessee against assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee/appellant M/s Maharashtra State Financial Corporation, filed its return of income for the assessment year under consideration declaring Nil income and loss at Rs. 51,11,11,783/-. The case was selected for scrutiny. In response to notices u/s 143 (2) and 142 (1) of the Act, the authorized representative (AR) of the assessee attended the proceedings and furnished the information called for and discussed the case. After hearing the AR, the AO made disallowance of Rs. 6,02,705/- u/s 14A

read with rule 8D of the Income Tax Rules ('Rules') on the ground that the assessee had received a sum of Rs. 2,86,457/- as dividend income from investments in shares and also made addition of Rs. 62,78,000/- on account of sale of mortgaged property to recover the dues from the defaulters. Consequently, the AO determined the total loss amounting to Rs. 50,42,31,078/-.

3. The assessee challenged the assessment order before the Ld. CIT (A). The Ld. CIT (A) after hearing the assessee restricted the disallowance to the extent of dividend income earned by the assessee. The Ld. CIT (A) further deleted the addition made on account of sale of immovable property amounting to Rs. 62,78,000/-. The revenue is in appeal against the said findings of the Ld. CIT (A).

4. The revenue has challenged the impugned order before the Tribunal by raising the following effective grounds:-

1. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in restricting the disallowance to the extent of exempt income i.e. Rs. 2,86,457/-, as against disallowance of Rs. 6,02,705/- made by Assessing Officer, when CBDT Circular No. 5/2014 (F. No. 225/182/2013-ItA.II) dtd. 11.02.2014 specifies that disallowance u/s 14A is attracted even if no exempt income is earned during the year?"*
2. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) was correct in deleting the addition of Rs. 62,78,000/- in respect of receipts from sale of property without appreciating the facts brought out in the assessment order that the assessee had failed to establish with documentary evidence that the properties belonged to mortgagor as also the computation of profit arising from such transaction and the appropriation of the sale receipts towards principal amount of loan and interest cost was not furnished and*

hence the A.O. had correctly taxed the entire sale receipt in the hands of the assessee?”

5. This appeal was fixed for hearing on 09.08.18. On the said date when the case was called out for hearing, none appeared on behalf of the assessee. Perusal of record revealed that on 06.07.18 the registry had informed the parties about the next date of hearing. Hence, we decided to dispose of the appeal on the basis of material on record after hearing the Ld. Departmental representative (DR).

6. Vide Ground No. 1, the revenue has challenged the action of the Ld. CIT (A) in restricting the disallowance u/s 14A read with Rule 8D to the extent of dividend income earned by the assessee during the financial year relevant to the assessment year under consideration. The Ld. DR relying on the assessment order submitted that the Ld. CIT (A) has wrongly restricted the addition to the dividend income of the assessee ignoring the CBDT Circular No 5/2014 dated 11.02.2014 which says that disallowance u/s 14A is attracted even if no exempt income is earned during the year. Since, the assessee had claimed expenses such as administrative and establishment which are partly related in earning of such income, the Ld. CIT(A) has wrongly restricted the disallowance to the extent of exempt income.

7. We have perused the orders passed by the authorities below and the cases relied upon by the Ld. CIT (A). The Ld. CIT (A) has restricted the disallowance made by the AO u/s 14A of the Act to the exempt income earned by the assessee during the previous year. The findings of the Ld. CIT (A) read as under:-

“3.6 I have duly considered the submission of the appellant, facts of the case and also the assessment order dated 22.01.2014 wherein AO has added a sum of Rs. 6,02,705/-. The AR pleads that appellant has not incurred any expenditure which is directly related to earn dividend income & the Investments made by the appellant were not for earning capital

gains or dividend income. Further, the AR of the appellant submits that the exempt investments were made as strategic investments and business expediency. The Submission is as under:-

“Out of Investments of Rs. 350.27 lakhs appearing at the end of the year, Investments of Rs. 100 lakhs are in the nature of Strategic Investments, details of which are appearing in the 35th Page of Annual Report (Attached herewith). Further, other Investments (66% of total investments) are made by appellant in the Companies/corporations to whom appellant has granted loan and as per agreement between the parties, as a security, certain shares are acquired by the appellant.

Such Investments made by the appellant were not for earning capital gains or dividend income. Such investments had been made by the assessee on account of business expediency and dividend there from is purely incidental. Therefore, investments made by the assessee are not to be considered for disallowance u/s 14A r.w.r. 8D.”

However, the AO has not accepted the argument of the AR of the appellant and has independently worked out the disallowance u.s 14A read with rule 8D(2)(ii) of Rs. 4,27,570/- and Rs. 1,75,135/- of disallowance u/s 14A read with rule 8D(2)(iii) of the Act. It is seen that exempt income received by the appellant is Rs. 2,86,457/- that means the disallowance made by the AO exceeds the exempt income received by the appellant company.

After considering the fact on record, I am of the considered opinion that after taking into account the following jurisdictional decision the disallowance can be restricted to the income received by the appellant. Reliance in this regard is placed on the decision of the Delhi Bench of the Tribunal in the case of Sahara India Financial Corpn. Ltd. v. DCIT: [2014] 41 taxmann.com 251 wherein the court held as under:-

“81..... In given facts and circumstances without going into all the issues, in our view it is appropriate to take

guidance from Chandigarh bench judgment in the case of Punjab State Co-opt Marketing Fed. Ltd. (supra) holding that the disallowance of expenditure in any case cannot exceed the income earned. In our view this judgment takes a holistic view that disallowance in terms of sec. 14A can be maximum to the extent of exempt income, there is no dispute that in this case which is at Rs. 68,37,583/-.....”

8. Admittedly, in the present case the assessee had earned the exempt income of Rs. 2,86,457/- and the AO computed the disallowance at Rs. 6,02,705/-. We find that the Ld. CIT (A) has restricted the addition to the exempt income earned by the assessee by following the decision of the Delhi Bench of the Tribunal aforesaid. As per the ratio laid down by the Hon'ble Delhi High Court in *Joint Investment Pvt. Ltd. vs. CIT 372 ITR 694(Del.)*, the addition u/s 14A read with Rule 8D cannot exceed the exempt income earned by the assessee. Since, the findings of the Ld. CIT (A) are based on the decision of the Delhi Bench of ITAT rendered in *Sahara India Financial Corporation Ltd. vs. DCIT (supra)* and the principles of law laid down by the the Hon'ble Delhi High Court in *Joint Investments Pvt. Ltd. vs. CIT (supra)*, we do not find any infirmity in the order of the Ld. CIT (A). We accordingly uphold the findings of the Ld. CIT (A) and dismiss this ground of appeal of the revenue.

9. Vide second ground of appeal the revenue has challenged the action of Ld.CIT (A) in deleting the addition made by AO an amount of Rs. 62,78,000/- on account of immovable property sold in order to recover the dues from the defaulters. The Ld. DR relying on the findings of the AO submitted that the Ld. CIT (A) has wrongly deleted the addition made by the AO without appreciating the fact that the assessee has failed to produce any material fact to substantiate its claim with regard to sale of two immovable properties for Rs. 11,03,000/- and Rs. 51,75,000/- respectively. Since, the assessee has failed to

substantiate its claim, the Ld. CIT (A) ought to have confirmed the addition made by the AO.

10. We have perused the material on record. We notice that the assessee has sold the immovable properties of the mortgagors in order to recover the loan amounts advanced to the concerned borrowers. However, since the assessee could not produce the copies of sale agreements before the AO within the time given by the AO, the contention of the assessee was rejected. We further notice that the properties in question were sold by the assessee through public auction in order to recover the loan advanced to the borrowers. Under these circumstances the Ld. CIT(A) has rightly held that the assessee is not liable to pay any tax on the sale proceeds of the properties in question. Hence, in our considered view, the findings of the Ld. CIT (A) are based on the evidence on record and in accordance with the principles of law. The Ld. CIT (A) has deleted the addition made by the AO holding as under:-

“4.4 I have duly considered the submission of the appellant and the facts of the case. Further I have also gone through the assessment order dated 22.01.2014 wherein AO has added a sum of Rs. 62,78,000/-. Sale consideration received by the appellant is of Rs. 62,78,000/- is not directly attributable to the income of the appellant as the AR of the appellant argues that the above said property was mortgaged to the Maharashtra State Finance Corporation to obtain some loan. Therefore, the liability were attached to the property. Hence, after selling all the property, the Maharashtra State Finance Corporation will get the priority to clear all the dues from the mortgagor and if at all any balance amount is there're it will be given to the party concerned (Mortgagor). I am also partly agreeing with the AR of the appellant and entire sale process may not be the income of the appellant company as the property were mortgaged to the Maharashtra State Finance Corporation. There were liabilities attached to the Maharashtra State Finance Corporation and after appropriating the loan amount to the appellant company the balance if at all anything is there should be given to the respective mortgagor. So accordingly, I direct the AO to delete

the addition of Rs. 62,78,000/- in the case of the appellant and direct the AO to communicate to the concerned AO where the mortgagor is assessed to tax if any balance is there and direct the concerned AO to take necessary action”

11. Since, there is no evidence on record to establish that the assessee has earned capital gain from transfer of its capital assets, the Ld. CIT (A) has rightly deleted the addition holding that the assessee is not liable to pay any tax on the said amount. On the other hand the Ld. CIT(A) has rightly directed the AO to communicate the concerned AO to ascertain as to whether the mortgagors have been assessed to tax and, if not, to take further necessary action against them. We are, therefore, of the considered view that since the assessee has sold the immovable property of the mortgagors in order to recover the outstanding loans, question of tax liability on the sale consideration in the hands of the assessee does not arise. Hence, the order of the Ld. CIT(A) does not suffer from any legal or factual infirmity to interfere with. We therefore, uphold the findings of the Ld. CIT (A) and dismiss this ground of appeal of the revenue.

In the result, appeal filed by the revenue for assessment year 2011-2012 is dismissed.

Order pronounced in the open court on 29th August, 2018.

Sd/-
(SHAMIM YAHYA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 29/08/2018

Alindra, PS

Sd/-
(RAM LAL NEGI)

JUDICIAL MEMBER

आदेश प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-

4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**