

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.6930/M/2017
Assessment Year: 2014-15**

Dy. Commissioner of Income Tax, Central Circle-3(3), Room No.1923, Air India Building, 19 th Floor, Nariman, Mumbai - 400021	Vs.	M/s. Sharekhan Ltd., 10 th Floor, Beta Bldg., Lodha 1-think Park, Off JVLR, Opp. Kanjurmarg Station, Kanjurmarg (E), Mumbai – 400 042 PAN: AAEC5 5096H
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Hiro Rai, A.R.
Revenue by : Shri Chaudhary Arun Kumar Singh, D.R.

Date of Hearing : 18.04.2019
Date of Pronouncement : 26.04.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 15.09.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2014-15.

2. The Revenue has raised four grounds of appeal. The issue raised in ground No.1 is against the order of Ld. CIT(A) directing the AO to treat the loss of Rs.61,01,334/- as settlement loss instead of speculation loss ignoring the fact that the said loss has arisen out of transactions of shares carried out by the assessee and is covered by the explanation to section 73 of the Act.

3. At the outset, the Ld. Counsel of the assessee submitted before the Bench that the issue is covered against the Revenue and in favour of the assessee by the decision of the co-ordinate bench of the Tribunal in the assessee's own case in A.Y. 2007-08, 2009-10 & 2010-11. The Ld. A.R. also submitted that the appeal filed by the Revenue against the order of Tribunal in A.Y. 2007-08 has been dismissed by the Hon'ble Bombay High Court, a copy of which is also placed at page No.12 and 13 of the paper book. The Ld. A.R. submitted before the Bench that the first appellate authority has decided the issue in favour of the assessee by following the decision of his predecessor in A.Y. 2011-12 to 2013-14 and also the decision of the co-ordinate bench of the Tribunal in 2009-10 and 2010-11. The Ld. A.R. therefore prayed that the ground raised by the Revenue may be dismissed.

4. The Ld. D.R., on the other hand, relied on the grounds of appeal and order of AO.

5. After hearing both the parties and perusing the material on record, we observe that the issue is recurring in nature and has been decided in favour of the assessee right from the assessment year 2007-08, 2009-10 and 2010-11 by the co-ordinate benches of the Tribunal. The appeal filed by the Revenue against the order of Revenue in A.Y. 2007-08 has also been dismissed by the Hon'ble Bombay High Court vide order dated 03.12.2018. Therefore, in our opinion, the issue is squarely covered in favour of the assessee and against the Revenue by the decisions of the co-ordinate benches of the Tribunal in assessee's own case.

The relevant portion from the said order in ITA No. 1027/Mum/AY 2007-08 is reproduced below:

"9. We have heard both the parties and their contentions have carefully been considered. In the case of ACIT vs. IDFC SSKI Securities Ltd. (supra), similar ground was raised by the Revenue. The ground raised in that case read as under:

"1.On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in allowing the loss of Rs.2,36,36,821/- as business loss even when the same is specifically covered under [section 73](#) of the Act.

2. The appellant craves to leave to add, to amend and/or alter any of the grounds of appeal, if need be"

9.1 The assessee placed reliance upon following decisions:

1. [ITO vs. GDV Share & Stock Broking Services Ltd.](#), 88 TTJ (Cal) 352
2. M/s.Parker Securities Ltd. vs. DCIT, 102 TTJ (Ahd) 235.
- 3.33 CCH 124 (Mum-Trib) HSBC Securities & Capital Markets India P. Ltd., vs. ACIT
- 4.139 R 149 ([AP](#)), [CIT vs. Shah Pratapchand Nowpaji](#)
5. 91TTJ 57 (Del-Trib) ACIT vs. Subhash Chandra Shorewala. 6.50 SOT 592 (Ahd-Trib) ITO vs. Rajiv Securities P. Ltd.

After considering these decisions the Tribunal has held as under:

5. We have heard both the parties and their contentions have carefully been considered. Right from the assessment proceedings it was the case of the assessee that the impugned loss has occurred to the assessee in respect of error trade. Due to dispute with the clients, for the transaction, it does not change the relation of principal and the agent. The assessee for business consideration chooses not to recover the losses. These losses are in the course of business and should be allowed as such under [section 28](#) of the Act. All these contentions of the assessee have been recorded in the assessment order in para 3.3. The AO has not brought any material on record to suggest that these contentions of the assessee are either false or incorrect. No material has also been brought on record that these losses are on account of assessee's own trading in shares. If it is so, the loss accrued to the assessee will be governed by the aforementioned decisions of Tribunal where consistent view has been taken that loss occurred to share broker on account of client disowning transaction is business loss and not speculative loss. Therefore, we are of the opinion that Ld. CIT(A) did not commit any error in accepting the claim of the assessee. Accordingly, we decline to interfere and Departmental appeal on this ground is dismissed.

5.1 Before parting of the Departmental appeal it may be mentioned that amount stated by the Department in its grounds of appeal is wrongly mentioned as Rs.2,36,36,821/-, whereas the same is Rs.2,65,07,464/-. In view of the above discussions the Departmental appeal is dismissed.

In the aforementioned decision both of us are parties. Therefore, following the aforementioned view we hold that Ld. CIT(A) has rightly decided the issue and we decline to interfere and this ground of the Revenue is dismissed.”

Since the facts in the current year are materially same to the facts in A.Y. 2007-08 which has been decided in favour of the assessee by the Tribunal and affirmed by the Hon'ble Bombay High Court , we accordingly uphold the order of Ld. CIT(A) on this issue by dismissing the ground raised by the Revenue.

6. The common issue raised in ground No.2 to 4 is against the order of Ld. CIT(A) in directing the deletion of disallowance made by the AO under section 14A read with rule 8D(ii) towards interest to the tune of Rs.1,95,69,126/-.

7. The facts in brief are that during the course of assessment proceedings, the AO observed that assessee has received exempt income by way of dividend to the tune of Rs.21,09,57,577/- from investments in mutual funds and disallowed suo motto only a sum of Rs.7,28,000/- under section 14A of the Act. Accordingly, the AO issued a show cause notice to the assessee as to why the provisions of section 14A read with rule 8D should not be invoked which was replied by the assessee by submitting that the investments in the mutual funds and shares were made out of the own funds and not out of the borrowed funds. According to the AO , the assessee could not establish the linkage between own funds and investments in the mutual funds and finally applied the provisions of section 14A read with rule 8D by relying on the decision of the “Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT [(2010) 328 ITR 81 (Bom)]” and calculated the disallowance at Rs.2,27,68,626/- comprising 1,95,69,126/-

under rule 8D2(ii) and Rs.31,99,500/- under rule 8D2(iii) and after allowing the deduction towards suo motto disallowance of Rs.7,28,000/- , a net addition of Rs.2,20,40,626/- was made.

8. In the appellate proceedings, the Ld. CIT(A) deleted the disallowance made under section 14A read with rule 8D2(ii) while the disallowance under rule 8D2(iii) was restored to the file of the AO to be calculated afresh as per law. So now the Revenue is in appeal before the Tribunal against the deletion of addition under rule 8D(2)(ii) only.

9. After hearing both the parties and perusing the material on record, we observe that Ld. CIT(A) has deleted the disallowance under rule 8D2(ii) by following the decision of the co-ordinate bench of the Tribunal in assessee's own case in A.Y. 2008-09. The Ld. CIT(A) also noted that in A.Y. 2009-10 and 2010-11 the issue has been decided by following the decision of the co-ordinate bench of the Tribunal in assessee's own case in A.Y. 2008-09. The Ld. A.R. at the time of hearing submitted before the Bench that the own funds were far more than the investments made by assessee in the mutual funds/shares which yielded exempt income and therefore the presumption has to be made that said investments were made out of own interest free funds available with the assessee and thus the disallowance under rule 8D2(ii) was rightly deleted by the Ld. CIT(A). The Ld. A.R. placed before the Bench a copy of the balance sheet wherefrom we observe that the share capital, reserves and surpluses were to the tune of Rs.710 crores whereas the investments in mutual funds and shares were to the extent of Rs.193 crores. Thus, we find merits in the

contentions of the Ld. A.R. that ld CIT(A) has correctly deleted the disallowance. The case of the assessee is also squarely covered by the decision of Hon'ble Jurisdictional Bombay High Court in the case of CIT vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom) and CIT vs. Reliance Industries Ltd. (2019) 410 ITR 466 (SC). We, therefore, respectfully following the decision of the Apex Court in the case of CIT vs. Reliance Industries Ltd. and also the Hon'ble Jurisdictional Bombay High Court in the case of CIT vs. HDFC Bank Ltd. (supra), hold that the disallowance under rule 8D2(ii) was rightly deleted by the Ld. CIT(A) and the ground Nos.2 to 4 are hereby dismissed.

10. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 26.04.2019.

**Sd/-
(Mahavir Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 26.04.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.