

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "F", MUMBAI

Before Shri Rajesh Kumar, Accountant Member
& Shri Ram Lal Negi, Judicial Member

ITA No.5005/Mum/2018
Assessment Year : 2012-13

Shri Vivek Talwar, 17-B, ILL Palazzo, Ridge Road, Malabar Hill, Mumbai 400 006. PAN AAAPT3994Q (Appellant)	Vs.	DCIT CC 8(3), Mumbai (Respondent)
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For the Assessee : Shri Vimal Punmiya
For the Revenue : Shri Rajeev Gubgotra

Date of Hearing :07.08.2019	Date of Pronouncement : 09.09.2019
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ORDER

Per Rajesh Kumar, Accountant Member

This appeal by the assessee arises out of the order of the CIT(A) -50, Mumbai, dated 1.06.2018, for A.Y. 2012-13, which in turn arises out of the order of assessment passed u/s. 143(3) r.w.s. 147 of the Income Tax Act, 1961.

2. The issue raised in Ground No.1 is against the confirmation of the disallowance of Rs 5,74,534/- by the CIT(A) as made by the AO applying Rule 8D r.w.s. 14A of the Income tax Act. The facts in brief are that the assessee

is the Managing Director of a listed company M/s. Nitco Ltd. During the year the assessee has earned income by way of salary, income from House Property, income from other sources and loss from business in future and option segment. During the year the loss from Future and Option segment was incurred to the tune of Rs 93,32,053/- The said loss comprised of as under:

Particulars	Amount
Loss from Future Trading	87,55,414/-
Additional Brokerage Charges for Future Transaction	6,959/-
Delayed Payment charges	1,750/-
Interest on loan	2,75,127/-
Security Transaction tax	89,563/-
Service Charges	68,105/-
Audit Fees	5,515/-
Rent Rate & Taxes	1,29,100/-
Bank Charges	520/-
Total	93,32,053/-

3. During the course of assessment proceedings, the AO observed that the assessee has earned dividend of Rs 47,15,551/-, which was claimed to be exempt against which the assessee has suo moto disallowed demat charges of Rs 2,105/-. Accordingly, the AO invoked the provisions of section 14A read with Rule 8D after issuing show case notice to the assessee and made disallowance of Rs 17,12,716/- . However the AO upon perusal of the perusal of Profit & Loss account and statement of total income came to the conclusion that the assessee has only claimed expenses to the tune of Rs 5,74,434/-

after suo moto deducting the demat charges of Rs 2,105/- and restricted the disallowance to Rs. 5,76,639/-.

4. In the appellate proceedings, the learned CIT(A) confirmed the order of the AO by holding that the assessee has claimed expenses at Rs 5,76,639/- against the rental income, salary income and profit from various firm which are not allowable and thus justified the addition made by the AO.

5. The learned AR submitted before us that the expenses claimed by the assessee at Rs 5,76,639/- were incurred in connection with the business in Future and Option segment. He further submitted item-wise details of expenses incurred. The learned AR therefore, prayed that since the assessee has not claimed any expenditure, which can be attributable towards earning of exempt income the disallowance as made by the AO and confirmed by the CIT(A) may be reversed. He further submitted that the assessee has suo motto disallowed a sum of Rs 2,105/-, which were incurred on account of Demat charges. Therefore, the learned AR prayed for the deletion of the disallowance of Rs 5,74,434/- .

6. The learned DR relied on the orders of the authorities below.

7. After hearing the rival parties, we observe that the assessee has incurred expenses of Rs 5,76,639/- in the business of Future & Option Segment as under:

Nature of expenses	Amount
Additional Brokerage Charges for Future Transaction	6,959/-
Delayed payment charges	1,750/-
Interest on loan	2,75,127/-
Security transaction tax	89,563/-
Service Charges	68,105/-
Audit Fees	5,515
Rent rate & taxes	1,29,100/-
Bank Charges	520/-
Total	5,76,639/-

We observe from the nature of these expenses that these were exclusively incurred in connection with the business of Future and Option segment and nothing is relatable or attributable to earning of exempt income. We, therefore, do not find any reason to sustain the order of the CIT(A) as the expenses which are incurred in connection with the business of Future and Option Segment were considered for the purpose of disallowance u/s. 14A read with Rule 8D. Accordingly, we set aside the order of CIT(A) and direct the AO to delete the disallowance.

8. The issue in ground no.2 is against the order of the CIT(A) in not giving credit of TDS amounting to Rs 4,11,600/- as claimed by the assessee u/s. 194I. The learned AR at the outset submitted that learned CIT(A) has directed the AO to verify the claim of the assessee and allow the TDS credit thereafter. The AO has not done anything till date in that regard. The learned AR submitted that similar direction may be given so that the assessee

may be given credit of Rs 4,11,600/-. The learned DR fairly agreed to the contention of the learned AR in this regard.

9. After hearing both the parties, we are of the view that the learned CIT(A) has already given direction to the AO to examine the issue and allow credit of TDS to the assessee. Thus, this does not require any adjudication at our end. However, we direct the AO to decide the issue without any loss of time after examining the claim of the assessee and as per the facts of the case and as per law.

10. In the result, the appeal is partly allowed for statistical purpose.

Order pronounced in the open court on 09.09.2019.

**Sd/-
(Ram Lal Negi)
JUDICIAL MEMBER**

Mumbai; Dated : 09.09.2019.

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

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Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'F' Bench, ITAT, Mumbai

BY ORDER,

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(Dy./Asstt. Registrar)
Income Tax Appellate Tribunal, Mumbai