

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 482/CHNY/2019
निर्धारण वर्ष / Assessment Year: 2013-14

M/s. Unifi Capital Pvt. Ltd.,
11, Kakani Towers,
15, Khader Nawaz Khan Road,
Chennai – 600 006.

The Income Tax Officer,
v. Corporate Ward 3(3),
Chennai.

PAN: AAACU5196J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Smt. Nithya Sankaran, CA
: Shri Suresh Periasamy, JCIT

सुनवाई की तारीख/Date of Hearing

: 08.04.2021

घोषणा की तारीख/Date of Pronouncement

: 21.04.2021

आदेश / O R D E R

Per G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against order of learned Commissioner of Income Tax (Appeals)-11, Chennai, dated 13.12.2018 and pertains to assessment year 2013-14.

2. The assessee has raised the following grounds of appeal:-

1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interests of the appellant and is opposed to the principles of equity, natural justice and fair play.
2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.
3. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer erred in disallowing a sum of Rs.8,58,818/- u/s.14A r.w Rule 8D.
4. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the provisions of section 14A read with rule 8D are not invocable in the facts and circumstances of the case.
5. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer has not recorded satisfaction for invoking Rule 8D of the Income Tax Rules.
6. For that the Commissioner of Income Tax (Appeals) failed to appreciate that that borrowed funds were not utilized for making investments.
7. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the disallowance u/s.14A read with rule 8D was not warranted as no expenditure was incurred by the appellant for earning exempt income.
8. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer erred in applying Rule 8D(2)(ii) on interest expenditure which is not connected to earning exempt income.
9. For that without prejudice to the above, the Commissioner of Income Tax (Appeals) failed to appreciate that Assessing Officer erred in applying Rule 8D on entire investments without considering the fact that all the investments did not yield any return in the form of dividend during the impugned assessment year.
10. For that the Commissioner of Income Tax (Appeals) erred in upholding the treatment of Rs.10,00,000/- paid for admission into MCX Exchange Ltd as capital in nature.
11. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the expenditure incurred for admission into MCX Exchange Ltd is allowable as revenue expenditure.
12. For that the appellant objects to the levy of interest u/s.234B.

3. The brief facts of the case are that the assessee company is engaged in the business of stock broking, portfolio management, corporate advisory services, custodial services and dealing in shares, securities, derivatives, etc., filed its return of income for the assessment year 2013-14 on 31.03.2015 admitting total income of Rs.2,31,79,286/-. The assessment for impugned assessment year was completed u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') on 24.02.2016 and determined total income at Rs.2,47,88,104/- after making addition towards disallowance u/s.14A of the Act at Rs.8,58,818/- and addition towards disallowance of membership fee paid to MCX Exchange Limited at Rs.7,50,000/-. The assessee carried the matter in appeal before the Id.CIT(A) but could not succeed. The Id.CIT(A) for the reasons stated in his appellate order dated 13.12.2018 confirmed additions made by the AO towards disallowance of expenses u/s.14A of the Act and has also confirmed findings of the AO in disallowance of membership fees paid to MCX Exchange Ltd. Aggrieved by the Id.CIT(A) order, the assessee is in appeal before us.

4. The first issue that came up for our consideration from Ground Nos.1 to 9 of assessee appeal is disallowance of expenses in relation to exempt income u/s.14A of the Act.

4.1 The Id.AR for the assessee submitted that the Id.AO has erred in disallowance of expenses u/s.14A without recording satisfaction as required under sub-section 2 of section 14A of the Act, having regard to the books of accounts of the assessee that disallowance if any made by the assessee is incorrect. Unless such satisfaction is recorded, the AO cannot mechanically invoke Rule 8D to compute disallowance. The Id.AR further submitted that the assessee has not incurred any expenditure to earn exempt income. Unless there is a direct nexus between expenses including interest on borrowed funds and investments made, no disallowance can be made under Rule 8D(2) of the Income Tax Rules, 1962. She further referring to Paper-book submitted that the assessee has paid interest on loans borrowed for specific purpose and no interest bearing funds has been used for investments in earning exempt income. Therefore, disallowance of interest cannot be made. The Id.AR further submitted that in respect of disallowance of other expenses under Rule 8D(2)(iii),

only those investment from which exempt income eared to be considered for disallowance of expenses. If such investment is considered then disallowance works out to be Rs.600/- instead of Rs.8,58,818/-. Therefore, if at all any disallowance is required then it may be restricted to the extent of Rs.600/- as against total disallowance computed by the AO at Rs.8,58,818/-.

4.2 The Id.DR on the other hand supporting order of the Id.CIT(A) submitted that the AO as well as the Id.CIT(A) have brought out clear facts to the effect that the assessee has invested in dividend yielding investments but could not made any disallowance towards expenses relatable to such exempt income. Therefore, the AO has invoked Rule 8D to compute disallowance contemplated u/s.14A of the Act and hence, there is no reason to interfere with order of the AO as well as the Id.CIT(A).

4.3 We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. As regards the first contention of the assessee that satisfaction as required u/s.14A(2) of the Act is not recorded by the Id.AO, we find that the AO has computed disallowance having

regard to books of accounts of the assessee that although the assessee has made investment in shares and securities which yield exempt income but no disallowance was made in relation to expenses relatable to such exempt income. Therefore, we are of the considered view that said finding of the AO constitute satisfaction as required u/s.14A(2) of the Act and hence, in absence of any express provision for recording satisfaction in particular form by the statute then disallowance computed by the AO by invoking Rule 8D(2) of the IT Rules, 1962 itself depicts that AO was not satisfied with the explanation of the assessee and hence there is no merit in the arguments taken by the Id.AR of the assessee on the issue of satisfaction. Accordingly, we reject the same.

4.4 Having said so, let us come to disallowance computed by the AO under Rule 8D(2) of the IT Rules, 1962. The AO has computed interest disallowance of Rs.5,93,126/- under Rule 8D(2)(ii) of IT Rules, 1962. We have gone through the explanation furnished by the assessee in light of schedule of financial charges appeared in the financial statement and find that interest expenditure incurred for the year are relatable to

specific loans borrowed for acquisition of assets, interest paid on Client Margin Money and interest paid u/s.234C of the Act. Further, there is no specific interest has been paid on any loan which has been used for investing in dividend yielding shares or securities. Therefore, unless the AO makes out a case that interest bearing funds have been used for making investments in shares and securities which yield income, no interest disallowance can be made under Rule 8D(2) of the IT Rules, 1962. Therefore, we direct the AO to delete additions made towards disallowance of interest under Rule 8D(2)(ii) of IT Rules 1962.

4.5 Coming back to disallowance of expenses under Rule 8D(2)(iii) of IT Rules, 1962. The AO has computed disallowance of Rs.2,65,692/- at the rate of 0.5% of average value of investments. The Id.AR for the assessee contended that only those investments which yield exempt income needs to be considered for computing disallowance. We find that the ITAT, Special Bench of Delhi in the case of ACIT vs. Vireet Investments (P) Ltd., (2017) 82 taxman.com 415 had considered an identical issue and held that while computing average value of investments only those investments which yield exempt income for the year

should be considered. Therefore, we are of the considered view that for computing disallowance under Rule 8D(2)(iii), those investments which yield exempt income only needs to be considered. The assessee has submitted details, as per which, out of total investments of Rs.5,06,26,240/- a sum of Rs.1,20,000/- was only yielding exempt income. Therefore, we set aside the issue to the file of the AO and direct him to re-compute disallowance in light of our discussions herein above and also in light of submissions made by the assessee that only a sum of Rs.1,20,000/- is yielding exempt income.

5. The next issue that came up for our consideration from Ground Nos. 10 & 11 of assessee appeal is disallowance of membership fee paid to MCX Exchange Ltd.

5.1 The AO has disallowed membership fee paid to MCX Exchange Ltd., on the ground that it is in the nature of capital expenditure and it gives enduring benefit to the assessee. However, allowed depreciation in terms of section 32(1)(ii) of the Act being a business right, falls within the meaning of intangible asset by virtue of Explanation 3 to section 32(1)(ii) of the Act.

5.2 The Id.AR for the assessee submitted that membership fee paid to MCX Exchange Ltd., is a revenue expenditure which does not give enduring benefit to the assessee. The payment was made for use of facilities and not for acquisition of any right and accordingly, no asset of enduring benefit was acquired by the assessee. In this regard, the Id.AR relied upon the decision of Hon'ble Madras High Court in the case of S. Venkasubramaniam vs. CIT [2007] 291 ITR 193.

5.3 The Id.DR on the other hand supporting order of the Id.CIT(A) submitted that the Id.CIT(A) has recorded categorical finding in light of certain judicial precedents including decision of Hon'ble Delhi High Court in the case of Abhipra Capital Ltd., [2018] 91 taxmann.com 101 to confirm addition made by the AO towards disallowance of membership fee paid to MCX Exchange Ltd., by holding that said expenditure is in the nature of intangible asset and does not qualify to be a revenue expenditure. Therefore, there is no reason to deviate from the reason given by the Id.CIT(A) to confirm addition made by the AO.

5.4 We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. Admittedly, membership fee paid to any stock exchange including MCX Exchange Ltd., is for acquiring a right in membership of exchanges for trading in shares and securities. Further membership rights in any stock exchange including MCX Exchange Ltd., is a transferable right. Therefore, said right is definitely a right in the nature of any commercial right of similar nature which falls under section 32(1)(ii) of the Act. Once amount paid is in the nature of an intangible asset, then same cannot be treated as revenue expenditure. This view is supported by decision of Hon'ble Supreme Court in the case of M/s. Techno Shares and Stocks vs. CIT in Civil Appeal No.7780 to 7781 of 2010 dated 09.09.2010, where the Hon'ble Supreme Court clearly held that membership card would constitute an intangible asset and the assessee could be entitled to depreciation on the cost of membership card u/s.32(1)(ii) of the Act. Therefore, we are of the considered view that there is no error in the findings recorded by the AO and confirmed by the Id.CIT(A) in disallowance of deduction claimed towards membership fee paid to MCX Exchange Ltd., as revenue

expenditure. Insofar as, the case law relied upon by the Id.AR for the assessee in the case of S. Venkatasubramaniam vs. CIT, *supra* of Hon'ble Madras High Court, we find that although the Hon'ble Madras High Court has held that membership fees paid to any stock exchange is revenue expenditure, but because the Hon'ble Supreme Court has taken a different view in later judgment in the case of M/s. Techno Shares and Stocks Ltd., vs. CIT and held that membership fees paid to any stock exchange is an intangible asset and eligible for depreciation u/s.32(1)(ii) of the Act, we are of the considered view that case law relied upon by the Id.AR for the assessee has no application because said judgment was rendered before the decision of Hon'ble Supreme Court in the case of M/s. Techno Shares and Stocks Ltd., vs. CIT. Therefore, considering the facts and circumstances of the case and also by following the decision of Hon'ble Supreme Court in the case of M/s. Techno Shares and Stocks Ltd, we are of the considered view that there is no error in the findings recorded by the authorities below to disallow deduction claimed towards membership fee paid to MCX Exchange Ltd., as revenue expenditure and further allowing depreciation as intangible asset

u/s.32(1)(ii) of the Act. Accordingly, we reject the ground taken by the assessee.

6. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in the court on 21st April, 2021 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. Durga Rao)

न्यायिक सदस्य/Judicial Member

Sd/-

(जी. मंजुनाथ)

(G. Manjunatha)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 21st April, 2021

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |