

2. Brief facts of the case are that the assessee is engaged in the business of manufacturing & trading of Jewellery, stones and beads apart from dealing in listed shares, derivatives and intra-day trades in recognized stock exchange. For the year under consideration, the assessee filed its return declaring a total income at 83,09,700/- which includes profit from business of jewellery at Rs. 83,42,701/- and profit in the business of sale shares (speculation business) at Nil after setting off profit of Rs. 30,57,397/- against the past years speculative loss and also claim deduction of section 80G amounting to Rs. 33,000. Learned Assessing Officer, however, denied set off speculation loss brought forward from earlier years against the profit in the business of sale shares (speculation business) during the year amounting to Rs. 30,57,397/-, and also disallowed a sum of Rs. 5,04,602/- under section 14A of the Income Tax Act, 1961 (for short "the Act") by applying Rule 8D of the Income Tax Rules 1962 ("the Rules") in respect of dividend of income amounting to Rs. 93,018. Learned Assessing Officer, accordingly, concluded the assessment at Rs. 1, 18, 89, 600/- by order dated 20/3/2013 passed under section 143(3) of the Act.

3. Aggrieved by such an order, the assessee preferred an appeal before the Ld. CIT(A) but the Ld. CIT(A) did not agree with the contentions of the assessee and upheld the learned Assessment Order. Hence this appeal by the assessee challenging the denial of the set off of the carry forward speculative loss to the tune of Rs. 30, 57, 397/- and also the addition of Rs. 5, 04, 605/- by invoking 14A of the Act read with Rule 8D of the Rules.

4. Insofar as the challenge to the denial of set off of the carried forward speculative losses is concerned, it is the submission on behalf of the assessee that in the assessment order learned Assessing Officer observed that during the course of assessment proceedings the assessee submitted that during the year under consideration, the investment in shares was valued on the basis of native realizable value at the year end and the same has resulted in the profit of Rs. 30, 75, 397/-whereas in the preceding years such valuation resulted in losses, and therefore, the assessee was claiming set off of the speculative losses carried forward from the earlier assessment years out of the speculative profits of this year; that the learned Assessing Officer further observed that since there is no actual purchase or sale of the shares during the year under consideration and the assessee has been treating the profits/losses so generated as notional profit/loss, the set off as claimed cannot be allowed. Ld. AR submits that the loss on account of a fall in value of stock is to be treated as a loss of that business on the ground of prudence and in view of the explanation to section 73 of the Act since the business of the assessee consists in the purchase and sale of shares of other companies, the assessee shall, for the purposes of section 73, may deemed to be carrying on a speculative business to the extent to which the business consists of the purchase and sales of such shares. He placed reliance on the decision of a coordinate Bench of the Tribunal in the case of PaharpurCooling Towers vs. DCIT 85 ITD 745 in support of this contention. He has drawn our attention to the computation of income for the assessment years 2008-09, 2009-10 and also for this assessment year

2010-11, besides the relevant portions of the trading and Profit and Loss Account (P&L Account) for these years to show the treatment given by the assessee to the business of dealing in shares.

5. Per contra, Ld. DR submitted that it could be seen from the computation of income for the earlier assessment years, the assessee had gained a profit of Rs. 20, 07, 570/-on trading of derivatives which according to the assessee was treated as speculative gain and while setting off the speculative losses from the dealing of shares, the assessee carried speculative loss forward claiming it to be of Rs. 11, 09, 271/-and a similar exercise was done in respect of the assessment year 2009-10 also; and that inasmuch as such setting off of the speculative losses from the shares against the income from the derivatives for the earlier assessment years was not justifiable and also because the quantum and nature of brought forward spec relation loss claimed by the assessee was not ascertainable, the authorities are justified in denying the claim of the assessee for setting off of the carried forward speculative losses against the speculative gains of this particular year. Ld. CIT(A) further directed the learned Assessing Officer to take remedial action in respect of the setting off of the speculative losses of the shares business against the gains from the derivatives business.

6. Inreply, Ld. AR submitted that if we accept the contentions raised by the Ld. CIT(A), it would amount that instead of carrying forward the speculative loss to the tune of Rs. 11, 09, 271/-for the assessment year 2008-09 a sum of Rs. 31, 16, 841/- had to be carried forward and it would only increase the quantum of losses. He further submits that, apart from this, the assessment order consequent to the directions of the Ld. CIT(A),

passed under section 143(3) read with section 148 of the Act also does not add anything on this account and the learned Assessing Officer accepted the contention of the assessee in respect of such set off of the speculative losses of the business from dealing of shares against the speculative gains from the business in derivatives.

7. We have gone through the record in the light of the submissions made on either side. It could be seen from the orders of the authorities below, there is no denial of the fact that the assessee has been dealing in speculative transactions and admits regularly showing speculative profit/loss. As a matter of fact, by rallying the investment in shares on the basis of net realizable value at the year end, for the assessment year 2008-09 the assessee had shown a net loss of Rs. 31, 16, 840/-and for the assessment year 2009-10 a net loss of Rs. 23, 26, 578/-. Assessee, however, after setting off of this speculative loss in respect of the business of shares, had carried forward only a loss of Rs. 11, 09, 271/-for the assessment year 89 and Rs. 22, 78, 091/-for the assessment year 2009-10.

8. In view of explanation to section 73 of the Act, the assessee, whose business also consists in the purchase and sale of shares of other companies, has to be considered to have been carrying on a speculative business to that extent. Further, when the valuation of the investment in shares on the basis of net realisable value has consistently been accepted by the Revenue, for this particular assessment year the learned Assessing Officer had taken objection stating that merely because there is no sale or purchase of shares in this particular year, the gain claimed to have

been derived by the assessee for this particular year basing on the valuation of the stock at the end of the year cannot be accepted.

9. On this aspect, the Ld. AR placed reliance on the decision of the Kolkata Bench of the Tribunal in the case of Paharpur Cooling Toivers vs DCIT, 85ITD 745. We deem it just and necessary to refer to the relevant observations of the Tribunal on this aspect.

“...16. We now move on to the assessee's alternate contention that the loss in share dealings was only on account of fall in value of shares held as closing stock and, therefore, the loss so suffered cannot be said to be loss on account of purchase and sale of shares within meanings of section 75. However, we find that there is nothing on record to substantiate the factual elements embedded in this proposition and this plea, being taken for the first time at this stage, seems to be a new twist to the assessee's case. On the contrary, there is a categorical and uncontroverted finding by the assessing officer that the assessee has sold some shares which were held by it as stock in trade and that the assessee incurred loss of Rs. 1,41,60,772 on such transactions. Our careful perusal of the assessee's paper-book also reveals that, as evident from computation of profit/(loss) from the business of dealing in shares and securities at page 10 of the paper-book, during the year in appeal, the purchases of securities by the assessee amounted to Rs. 11,41,72,539 and assessee's sale of the securities amounted to Rs. 7,46,51,708. It is thus clear that the assessee's contention is contrary to the admitted facts on record. Learned counsel for the assessee has also not brought on record any material to substantiate the factual elements embedded in the proposition canvassed by him.

17. We are also of the considered view that even if the loss is only on account of fall in value of stock, it is still in the nature of loss incurred from that business. A careful perusal of Explanation to section 73 indicates that this Explanation lays down that the expression speculation business, under the specified circumstances, will cover assessee's business to the extent to which the business consists of the purchase and sale of such shares. The definition thus sought to be placed is of the speculation business and not speculation profits. As to what will constitute profits from such speculation business, this is to be essentially

governed by the normal accounting principles and business practices. Unlike the definition under section 43(5) which defines speculative transactions per se, the deeming provisions of Explanation to section 73 lay down the circumstances in which, and the extent to which, a business is to be deemed as speculation business. The thrust of the provisions under Explanation to section 73 is on the nature of business, rather than nature of transaction. It is thus immaterial as to whether profit is, or is not, on account of sale and purchase of shares but, in our considered view, to the extent it is arising out of business of purchase and sale of shares, it will be hit by the provisions of Explanation to section 73. As held by Honble Supreme Court in the case of Chainrup Sampatrams case (supra) loss on account of fall in value of stock is to be treated as loss of that business on the ground of prudence, fully sanctioned by the custom. Their Lordships of Honble Supreme Court inter alia observed that, "...valuation of unsold stock at the end of an accounting period is a necessary part of the process of determining the trading results of that period, and can in no sense be regarded as source of such profits (or losses)". In this view of the matter, the loss on valuation of closing stock of shares, in the present case, cannot be treated any different than a normal trading loss; such a loss is, as is the settled legal position, an integral part of the loss on trading, i.e., purchase and sale, of shares."

10. From the above, it is clear that the profits said to have been derived on valuation of shares of dealing in business of shares how to be treated as a speculative profit and being eligible to set off with carried forward losses of the earlier years. In this case, it is beyond dispute that the assessee has been treating such type of profit/loss as notional profit/loss for many years and as a matter of fact, after the direction of the Ld. CIT(A) in appeal, learned Assessing Officer had taken a remedial action by issuing notice under section 148 of the Act but in the orders dated 31/3/2016 for the assessment year 2008-09 and 26/12/2016 for the assessment year 2009-10, learned Assessing Officer did not disturb the earlier assessment in respect of the treatment of the assessee of the profit/loss on account of the business in purchase and

sale of shares of other companies. Even if we go by the logic of Ld. CIT(A) in this matter if the speculative profit/loss from the business of shares against the profit/loss from the business in derivatives, for the assessment year 2008-09 it would result only in an enhancement of the loss to be carried forward.

11. In the circumstances, we are of the considered opinion that in view of the consistent accounting policy followed by the assessee, in view of explanation to section 73 of the Act and also the view taken by a coordinate Bench of this Tribunal in the case of Paharpur cooling towers (supra), the assessee is entitled to claim set off of the carried forward speculative losses from the business in shares and also derivatives against the speculative profit accounted for in this year. The addition of Rs. 30, 75, 397/- made on account of profit set off against a speculative loss is accordingly deleted.

12. Now coming to the addition of Rs. 5, 04, 602/- by invoking the provisions under section 14A of the Act read with Rule 8D of the Rules, the case of assessee is twofold. Firstly, Ld. AR submits that such an addition is bad for nonrecording of the satisfaction by the learned Assessing Officer and secondly, no addition under section 14A of the Act read with Rule 8D of the Rules can exceed the amount of tax-exempt income.

13. So far as the 1st contention is concerned, it is an admitted fact that the assessee received dividend income of Rs. 93, 018/- during the year, and made no disallowance under section 14A of the Act read with Rule 8D of the Rules on the ground that no activity of purchase and sale took

place during the year. It could be found from the assessment order that when asked to explain as to why the disallowance under section 14A of the Act read with Rule 8D of the Rules should not be computed, assessee did not furnish an explanation in that respect. It is submitted by the Ld. AR that since no activity of purchase or sale of shares took place during the year, no disallowance was made - the assessee did not furnish any explanation. However, the matter does not stop here. After admitting to the provisions of law and case law, learned Assessing Officer recorded that the investment to the extent of Rs. 42, 68, 972/-made by the assessee company, being a conscious decision and having deployment of funds clearly brings into picture expenditure by way of cost of funds "invested", there could be incidental expenditure of collection, telephone follow-up etc and out of total funds available/raised the by the assessee, a substantial portion of it was invested in shares and mutual funds.

14. According to us proper satisfaction is recorded by the learned Assessing Officer, inasmuch as making investment, maintaining or continuing with any investment in a particular share/mutual fund etc. and the time when to exit from one investment to another are all the activities requiring well-coordinated and well-informed management decisions, involving not only inputs from various sources but it also involves acumen of senior management functionaries. Decision to hold the shares worth Rs. 42, 68, 972/-and not to make any purchase or sales during the year could also be a conscious decision. Assessee does not maintain any separate account in respect of the purchase or sale of the shares on the connector expenditure and no such accounts are forthcoming for any assessment year. In the absence of any details

furnished by the assessee, it is not possible for the learned Assessing Officer to record a detailed satisfaction with reference to the accounts of the assessee. It's not as though the learned Assessing Officer straightaway proceeded to compute the disallowance by invoking section 14A of the Act read with Rule 8D of the Rules. By recording the reasons, the learned Assessing Officer proceeded to compute the same. Hence, we reject the contention of the assessee that no satisfaction was recorded by the learned Assessing Officer and consequently the addition is bad.

15. Now coming to the alternative submission on behalf of the assessee to limit the disallowance to the tune of dividend income received i.e. Rs. 93, 018/-, the same is supported by the decision of the jurisdictional High Court in Joint Investments P. Ltd. vs. CIT (2015) 372 ITR 694 wherein it was held that the disallowance of expenditure u/s 14A of the Act cannot exceed the amount of tax exempt income. We, therefore, accept the same and direct the assessing officer to limit the disallowance under section 14A of the Act read with Rule 8D of the Rules to Rs. 93, 018/-and delete the rest of the addition.

16. In the result, appeal of the assessee is allowed in part.

Order pronounced in the open court on this the 3rd day of June, 2020 immediately conclusion of hearing by virtual court.

Sd/-
(G.S. PANNU)
VICE PRESIDENT
Dated: 03/06/2021

Sd/-
(K. NARSIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI