



IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA no.4402/Mum./2019
(Assessment Year : 2014-15)

Income Tax Officer
Ward-13(3)(3), Mumbai

..... Appellant

v/s

Manoj Vasudev Wadhwa
11, Happy Home
144, Waterfield Road
Bandra (W), Mumbai 8 400 050
PAN - AALPW0303K

..... Respondent

Revenue by : Shri Kailash Kanojiya
Assessee by : Shri Mitesh Joshi

Date of Hearing - 22.03.2021

Date of Order - 08.06.2021

ORDER

PER S. RIFAUR RAHMAN, A.M.

The revenue is in appeal before us against the order of Commissioner of Income Tax (appeals)-21, Mumbai and filed following grounds of appeal:-

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the disallowance of finance brokerage paid amounting to Rs. 77,82,815/- on the basis of documents submitted by the assessee during appellate proceedings, when the same was not covered under exceptions mentioned in Rule 46(A)(1) and Assessing Officer had not been allowed reasonable opportunity to examine the evidence or document produced as provided in Rule 46(A)(3).

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the disallowance of stamp duty of Rs.1,03,413/- on the basis of documents submitted by the assessee during appellate proceedings, when the

same was not covered under exceptions mentioned in Rule 46(A)(1) and Assessing Officer had not been allowed reasonable opportunity to examine the evidence or document produced as provided in Rule 46(A)(3).

2. On the facts and circumstances of the case and in law, the CIT(A) has erred in restricting the addition of Rs. 3,21,55,578/- made by the AO u/ s. 14A of the I. T. Act without appreciating the fact that as per CBDT Circular No. 5 of 2014 even if the assessee has not received any income from the investments, which does not form part of the total income, disallowance can be made by invoking Section 14A of the I.T. Act. 1961.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.2,21,10,920/- made to the total Rs.73,03,237/- income of the assessee by holding that Section 43(5)(d) is for trading in derivatives and not for trading in shares."

2. With regard to ground No.1, the relevant facts are, the assessing officer observed that assessee has raised unsecured loans through brokers on which assessee incurred brokerage expenses which was paid to parties who arranged the loans for the assessee and according to assessing officer the expenses are in capital nature therefore he disallowed under section 37(1) Of the Income Tax Act 1961. Aggrieved with the above order assessee preferred an appeal before Ld CIT(A) and submitted that the amount of brokerage expenses was paid to finance brokers who have arranged for unsecured loans and was utilised by the assessee for the purpose of its business of shares and derivatives trading and therefore the same is allowable as business expenditure under section 37(1) of the Act. After considering the submissions of the assessee, learned CIT(A) observed that assessee is

an individual and is engaged in the business of share trading and derivative trading. He observed that the assessee derives income mainly from remuneration and share of profit from partnership firm trading in cash segment, derivative of futures and options and commodities. He observed that the AO disallowed the said expenses of brokerage on the ground that the loans were not incurred for the purposes of business and the expenses paid to the brokers are capital in nature. He also observed that assessee has submitted a detailed chart mentioning detailed bifurcations of brokerage paid to different brokers with their names, PAN No. and TDS deducted on various dates et cetera. He observed that based on the record the assessee is engaged in the business of share trading and derivative trading, which was not disputed by the AO. He observed that assessee had raised unsecured loans of ₹ 78,62,96,030/- through brokers and paid them the commission for arranging the loans. The documents produced on record clearly suggest that the said loans was utilised for the purpose of share trading in derivative trading. Based on the above the reason Ld CIT(A) allowed the deduction under section 37 (1) of the Act.

3. Aggrieved with the above order, revenue is in appeal with the ground that assessing officer was not given proper opportunity to examine the document submitted by the assessee as per rule 46(A)(3). Considered the rival submissions and material on record, we

notice that assessee filed detailed chart with the bifurcations of brokerage paid to different brokers. These details are part of Ledger account of brokerage expenses which was already submitted before AO. The AO treated the above expenses as capital in nature and never bothered to verify the same. The assessee has filed the details of brokerage expenses which was paid along with details of TDS deduction and other details. Moreover, these documents were never filed as additional evidence but submitted as further details for the expenses claimed. Therefore in our considered view there is no violation of rule 46A in this case. Accordingly ground No.1 raised by the revenue is dismissed.

4. With regard to ground No.2, the relevant facts are, during assessment proceeding AO observed that assessee had claimed deduction for a stamp duty expenses amounting to ₹ 1,03,413/- and according to him, it is not being incurred for the purpose of business and therefore, he disallowed the same since assessee has not filed specific submission on this expenditure and according to assessing officer the said expenditure is not incurred for the purpose of business and also not incurred for any of the income offered for taxation during this year. Aggrieved, assessee submitted before Ld CIT(A) that assessee incurred stamp duty in connection with his business in share trading and derivative trading business. After considering the

submissions of the assessee, Ld CIT(A) observed that the assessee submitted a Ledger account of the said expenses paid to the brokers Angel Broking Private Limited for share transaction and Latin Maharlal Sec Private Limited incurred in share and commodity trading on various dates. Based on the above Ledger accounts, Ld CIT(A) allowed the ground raised by the assessee. Aggrieved with the above order, revenue is in appeal before us raising the ground that there is violation of rule 46 of Income Tax Rules. We notice that the assessee has substantiated the claim of the expenditure by filing Ledger accounts of this expenditure. From the Ledger copy, Ld CIT(A) observed that the assessee has actually incurred the expenditure for the purpose of business. Again the above said Ledger was not filed before Ld CIT(A) as additional evidence but substantiated for the expenditure incurred. The Ld CIT(A) accepted the above evidences. Therefore in our considered view there is no violation of rule 46 in this case. Accordingly the ground raised by the revenue is dismissed.

5. With regard to ground No. 3, the relevant facts are, the assessee has earned exempt income of ₹ 13,77,530/- and ₹ 53,15,209/- from dividend income and share of profit from partnership firm respectively. The assessing officer noticed that assessee has incurred direct expenses amounting to ₹ 9,30,454/-, debited interest income amounting to ₹ 8,93,93,053/- and bank interest of ₹ 1,08,033/-. The

assessing officer reworked the disallowance under section 14A read with rule 8(2)(iii) aggregating to ₹ 3,21,55,578/-.

6. While calculating average investments for disallowance under section 14A read with rule 8D, AO included credit balances with firms and payable to the firm. Aggrieved with the above inclusion of credit balance of capital investment in the firm as part of investment in the calculation, assessee preferred an appeal before Ld CIT(A) and after observing the submissions of the assessee and the financial statement submitted before him, he observed that credit balances with the firm are actually liability of the partner and accordingly the appellant has shown the said balances under the head current liabilities of the Balance Sheet. He observed that the AO has inadvertently considered the credit balances of the firm as assets and investments of the assessee and consequently, included the same while calculating disallowance under rule 8D. Accordingly he directed the AO to verify and exclude the above said amount in investment and total fixed assets while calculating revised disallowance under section 14A. Aggrieved with the above direction, revenue is in appeal before us.

7. Considered the rival submissions and material on record. We notice that AO calculated the 14A disallowance as per rule 8D. While calculating average investment in earning the exempt income he calculated average investment in equity, average investment in closing

stock of shares and average investment in partnership firm. AO included ₹ 14,89,59,771/- as average investment in the firm. While adjudicating this issue, Ld CIT(A) observed that credit balances with the firm are actually liability of the partner accordingly the appellant has shown the said balances under the head current liabilities of the balance-sheet. Before us, both the parties have not brought to our notice the financial statement which was submitted before tax authorities. In our considered view when an exempt income is earned, the disallowance under section 14A should be calculated based on the relevant expenditure incurred to earn the above said exempt income. The disallowance under rule 8D, the investments in the assets through which exempt income is earned should include only those investments which has actually earned exempt income. In the given case, assessee has earned exempt income from dividend earned out of investment in shares held for stock as well as investment. Similarly, assessee also earned exempt income of share of profit from the partnership firm. There's no dispute that assessee has earned exempt income through partnership firm. The portion of investment made by the assessee in the partnership firm should also be part of investment in earning the exempt income. Since no financial statements were submitted before us, we are not in a position to appreciate the findings of Ld CIT(A). However, in our view, partnership firm is separate entity and the investment made by the assessee in the firm should be part of the

assets of the statement of affairs of the assessee. In the given case, Ld CIT(A) observed that the credit balances disclosed by the assessee in the liability side is liability to the assessee. We are in agreement with the findings but it is also fact that assessee must have invested capital in the partnership firm or the assessee should submit the document before the tax authorities that assessee has not invested anything in the firm but sharing only share of profit without investment. Partnership firm is separate entity, the balance sheet of the firm should be evaluated to determine the actual investment in the firm. Therefore, in our considered view, we are remitting this issue back to the file of AO to determine the actual investment made by the assessee in the partnership firm to earn the exempt income should be considered for the calculation of disallowance under rule 8D. With regard to submissions of the Ld AR and relying on various case law, in our view the facts in those cases are distinguishable. Accordingly ground raised by the revenue is allowed for statistical purpose.

8. With regard to ground No. 4, the relevant facts are, AO observed from the record that assessee had debited an amount of ₹ 221,10,920/- towards derivatives loss on future and option and commodities of cash segment. Therefore the same are not covered by the provisions of section 43(5)(d) of the Act. Accordingly, he disallowed the same. Aggrieved with the above order assessee

preferred an appeal before Ld CIT(A) and submitted that the loss of ₹ 221,10,920/- on account of sale and purchase of shares by actual delivery as against cash segment trading loss. After considering the submissions of the assessee, Ld CIT(A) observed that from the documents submitted before him that shares are purchased and sold, delivery of shares and transaction notes along with details of scripts traded on various dates clearly evident that the assessee had suffered loss of ₹ 221,10,90/- in its share trading segment. He observed that the above loss is related to the transaction of sale and purchase of shares where there is actual delivery happened. He observed that the provision of section 43(5)(d) of the Act is applicable only on derivative trading not on actual delivery of share trading. Accordingly, he allowed the ground raised by the assessee. Aggrieved with the above order, revenue is in appeal before us.

9. Considered the rival submissions and material on record we notice that assessee has declared loss from its share trading business in the consolidated format which included loss from speculative transactions as well as cash transaction involving actual delivery of shares. From the record we notice that AO disallowed the loss of speculative transactions based on the financial statement without actually calling for the details. Assessee has submitted detailed submission on the loss incurred by the assessee from both segments

based on delivery and non-delivery of the securities. The loss incurred by the assessee based on delivery can never be part of speculative transactions as per the provisions of section 43(5)(d) of the Act. Therefore we do not see any reason to interfere with the findings of Ld CIT(A), therefore, the grounds raised by the revenue is dismissed.

10. With regard to ground No.5, which is generally nature, accordingly this ground is dismissed.

11. In the net result appeal filed by the revenue is partly allowed for statistical purpose.

Order pronounce in the open Court on 08.06.2021.

**Sd/-
MAHAVIR SINGH
VICE PRESIDENT**

**Sd/-
S. RIFAUZ RAHMAN
ACCOUNTANT MEMBER**

MUMBAI, DATED: 08.06.2021

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Assistant Registrar
ITAT, Mumbai