

**आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“D” BENCH, MUMBAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**(Hearing Through Video Conferencing Mode)**

1. आयकरअपील सं./ I.T.A. No.7820/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2011-12)  
&
2. आयकरअपील सं./ I.T.A. No.7821/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2012-13)  
&
3. आयकरअपील सं./ I.T.A. No.7822/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2013-14)

<b>M/s R. Natvarlal Parekh</b> 1 <sup>st</sup> floor, 55/6, Rajbaug Estate, Tambakanta, Mumbai-400 003	<b>बनाम/ Vs.</b>	<b>ITO Ward-17(3)(1),</b> Kautilya Bhavan, 1 <sup>st</sup> floor 125, Bandra Kurla Complex, Mumbai-400 051
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. <b>AAFFR-8461-H</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	None
<b>Revenue by</b>	:	Shri Bharat Andhale– Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	04/08/2021
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	04/08/2021

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeals by assessee for Assessment Years (AY) 2011-12 to 2013-14 contest separate orders of learned first appellate authority. However, the facts as well as issues are found to be common.

Therefore, the appeals were consolidated and being disposed-off by way of this common order for the sake of convenience & brevity. The appeal for AY 2011-12 arises out of the order of learned Commissioner of Income-Tax (Appeals)-28, Mumbai [CIT(A)], dated 09/10/2019 in the matter of assessment framed by Ld. Assessing Officer (AO) u/s 143(3) on 28/03/2014. From the grounds of appeal, it is evident that the assessee is aggrieved by the fact that capital gains earned on sale of shares have been assessed as business income. The assessee is also aggrieved by certain disallowance u/s 14A. The assessee has also assailed the assessment proceedings on legal grounds of jurisdiction of Ld. AO.

2. At the time of hearing, none appeared for assessee. However, it transpires that one of the issues has already been dealt by the SMC bench of Tribunal in assessee's own case for AY 2010-11, ITA No.888/Mum/2018 order dated 25/10/2018. The copy of the same is on record. In fact, Ld. CIT(A) has followed the order of Tribunal while adjudicating the appeal. In the above background, we proceed with adjudication of these appeals.

3.1 The material facts are that the assessee being resident firm is stated to be engaged as commission agent as well as trading in securities. The assessee earned gain on sale and purchase of shares. The gain of Rs.18.21 Lacs was shown as Long-Term Capital gains which was claimed to be exempt. The gain of Rs.1.23 Lacs was offered as Short-Term Capital Gains. The assessee derived dividend income of Rs.20.65 Lacs. The Ld. AO show-caused assessee as to why the gain so earned was not to be treated as business income.

3.2 Though the assessee defended its stand, however, Ld. AO noted that the number and frequency of transactions was voluminous. The transactions were regular besides being systematic. The assessee obtained unsecured loans of more than Rs.679.18 Lacs and thereof, the gains were to be assessed as business income.

3.3 As a consequent therefore, since assessee earned exempt income, Ld. AO computed disallowance u/s 14A r.w.r. 8D for Rs.26.03 Lacs which comprised-off of interest disallowance u/r 8D(2)(ii) for Rs.23.11 Lacs and expense disallowance u/r 8D(2)(iii) for Rs.2.92 Lacs. The same was adjusted by suo-moto disallowance of Rs.4.19 Lacs as offered by the assessee in the computation of income.

4. During appellate proceedings, the assessee assailed the action of Ld. AO, inter-alia, by submitting that trades were delivery based and shares and securities were shown as investment in Balance Sheet. Similar gains earned in earlier years were accepted under the head capital gains.

5. The Ld. CIT(A) relying upon the cited order of Tribunal in assessee's own case for AY 2010-11 directed Ld. AO to accept the gains under the head capital gains subject to verification of the fact that the trades were delivery based. Regarding disallowance u/s 14A, Ld. AO was directed to re-compute the disallowance u/r 8D(2)(ii) by considering only those investments which had direct and proximate nexus with exempt income.

6. The aforesaid adjudication has given rise to assessee's appeal before us.

7. It is quite evident that Ld. CIT(A), relying upon Tribunal's order, has accepted the claim of the assessee under the head capital gains

subject to verification of the fact that the trades were delivery based. Therefore, no infirmity could be found in the same. The directions given with respect to disallowance u/s 14A are also in accordance with law. Therefore, no infirmity could be found in the same.

8. In the legal grounds, the assessee has assailed the validity of assessment proceedings for want of issue and service of notice u/s 143(2). However, there is no such material on record to corroborate this plea. The Ld. AO, in the assessment order, has clearly recorded the fact of issue and service of notice u/s 143(2). Therefore, we do not find any illegality in the order.

9. The appeal stand dismissed in terms of our above order.

#### **Assessment Year 2012-13**

10. Facts are similar in this year. The capital gains have been assessed as business income. The disallowance u/s 14A was computed at Rs.21.31 Lacs. The appellate order is on similar lines. Facts being pari-materia the same, taking the same view as in AY 2011-12, we dismiss the appeal.

#### **Assessment Year 2013-14**

11. Facts are similar in this year. The capital gains have been assessed as business income. The disallowance u/s 14A was computed at Rs.10.34 Lacs. The appellate order is on similar lines. Facts being pari-materia the same, taking the same view as in AY 2011-12, we dismiss the appeal.

**Conclusion**

12. All the three appeals stand dismissed.

*Order pronounced on 04<sup>th</sup> August, 2021.*

**Sd/-**

**(Mahavir Singh)**

**उपाध्यक्ष / Vice President**

**Sd/-**

**(Manoj Kumar Aggarwal)**

**लेखा सदस्य / Accountant Member**

मुंबई Mumbai; दिनांक Dated : 04/08/2021  
Sr.PS, Dhananjay

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**