

आयकर अपीलीय अधिकरण
मुंबई पीठ "जी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
आअसं. 2486/मुं/2019 (नि.व.2013-14)
ITA NO.2486/MUM/2019 (A.Y.2013-14)

Shearson Investment & Trading Co. Pvt. Ltd.,
Industry House,, 159,
Churchgate Reclamation,
Mumbai-400020.

PAN: **AABCS4653H**

..... अपीलार्थी / Appellant

बनाम Vs.

ACIT Circle-1(3)(1),
5th Floor, Aayakar Bhavan,
M.K. Road, Churchgate,
Mumbai-400020.

..... प्रतिवादी / Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Arati Vissanji

प्रतिवादी द्वारा/Respondent by : Sh. Vijay Jaiswal

सुनवाई की तिथि/ Date of hearing : 24/08/2021

घोषणा की तिथि/ Date of pronouncement : 27/08/2021

आदेश / ORDER

PER VIKAS AWASTHY, J.M:

This appeal by assessee is directed against the order of Commissioner of Income Tax (Appeals)-3, Mumbai [hereinafter referred to as 'the CIT(A)'] dated 01.02.2019 for Assessment Year (AY) 2013-14.

2. Ms. Arati Vissanji appearing on behalf of the assessee submitted at the outset that at this stage she is only pressing additional ground with respect to

disallowance made under section 14A read with Rule 8D(2) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act']. The Id. counsel for the assessee pointed that in so far as main grounds raised in the appeal are concerned, they all relate to single issue of disallowance of Long Term Capital Loss on invocation of shares. These grounds have become academic as there is no profit in the books of the assessee.

In respect of additional ground of appeal, the Id. Counsel for the assessee submitted that the assessee has earned dividend income of Rs. 4,53,290/- during the relevant period. The assessee has incurred Rs. 24,860/- towards DMAT charges. These are the only charges directly attributable for earning of exempt income. The AO has disallowed expenditure to the tune of Rs. 3,84,63,977/- under section 14A read with Rule 8D of the Act. The Id. AR submitted that the short prayer is that the disallowance under section 14A be restricted to the exempt income earned.

3. The Id. counsel for the assessee pointed that before the CIT(A) the appellant had raised grounds for disallowance under Sec 14A. The CIT(A) partly allowed the grounds against the disallowance under rule 8D(2) of the Act. Inadvertently, the ground of appeal against disallowance sustained by the CIT(A) under Sec. 14A was omitted to be raised in grounds before the Tribunal. The relief sought by way of additional ground of appeal does not require any fresh evidence. All material facts and relevant documents are already on record. The Id. counsel prayed for admitting additional ground of appeal assailing disallowance u/s. 14A read with Rule 8D confirmed by the CIT(A).

4. Per contra, Sh. Vijay Jaiswal representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee.

5. Both sides heard, orders of the authorities below examined. The assessee in appeal has raised four grounds assailing disallowance of Long Term Capital Loss of Rs. 18,64,10,944/-. The Id. counsel for the assessee stated at the bar that the grounds raised in the appeal has become academic as there are no profits that would result in any tax liability. Without commenting on merits of the issue raised in grounds of appeal, the ground no.1 to 4 of the appeal are left open for adjudication if need arises in future at any point of time.

6. The assessee by way of additional ground of appeal has assailed disallowance under section 14A read with Rule 8D(2) of the Act confirmed by the CIT(A). A perusal of impugned order shows that the assessee had raised grounds of appeal before the CIT(A) challenging disallowance made by the AO u/s. 14A read with Rule 8D. The CIT(A) has granted part relief to the assessee. The assessee in main grounds of appeal has not raised any ground impugning the addition confirmed by CIT(A) in respect of disallowance u/s. 14A read with Rule 8D. The information relevant for adjudication of this issue is already available on record and hence, no fresh document is required to decide this issue. Hence, the additional ground raised is admitted for adjudication on merits.

7. The assessee has earned dividend income of Rs. 4,53,290/-. As against this, the AO has computed disallowance of Rs. 3,84,63,977/- for earning exempt income. The CIT(A) has granted part relief to the assessee by restricting disallowance under section 14A read with Rule 8D to Rs. 1,57,27,713/-. The assessee has raised a short contention before the Tribunal that the disallowance be restricted to the exempt income earned only. We find merit in the contention raised by the assessee. The Hon'ble Supreme Court of India in the case of PCIT Vs. State Bank of Patiala, 99 taxmann.com 286 has held that disallowance under

section 14A cannot exceed the exempt income earned. Thus, in view of the facts of case and the decision referred above, disallowance under section 14A is restricted to the exempt income earned by the assessee i.e. Rs. 4,53,290/-. The additional ground raised by the assessee is thus, allowed.

8. In the result, appeal of assessee is partly allowed.

Order pronounced in the open court on **Friday**, the **27th** day of August, 2021.

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई/Mumbai, दिनांक/Dated: 27/08/2021

SK, PS

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

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(Dy./Asstt. Registrar)
ITAT, Mumbai