

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "B": NEW DELHI]**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
A N D
SHRI AMIT SHUKLA, JUDICIAL MEMBER
(Through Video Conferencing)**

ITA. No. 2495/Del/2018
(Assessment Year : 2013-14)

Universal Stock Brokers Pvt. Ltd., 501, KM Trade Towers, H-3, Sector: 14, Kaushambi, Ghaziabad. PAN: AABCU3096Q	Vs.	DCIT, Circle : 27 (1), New Delhi.
(Appellant)		(Respondent)

Assessee by :	Shri Tarun Rohatgi, C. A.;
Department by:	Shri Kumar Pranav, Sr. DR;
Date of Hearing :	24/11/2021
Date of pronouncement :	31/01/2022

ORDER

PER AMIT SHUKLA, J. M.

The aforesaid appeal has been filed by the assessee against the order dated 23.01.2018, passed by the Id. Commissioner of Income Tax (Appeals)-9, New Delhi (hereinafter referred to [CIT (Appeals)]) for the quantum of assessment under Section 143(3) of the Income Tax Act, 1961 (the Act) for the assessment year 2013-14.

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

“1. That on the facts and in the circumstances of the case, the learned CIT(A) has erred in law by confirming the a disallowance of expenditure made by the Ld. AO u/s 14A read with Rule 8D amounting to Rs.12,26,902/-.

2. That the authorities below erred in applying section 14A read with rule 8D specially when the appellant was holding only Stock in Trade and no investments.

3. That the Learned Assessing officer has failed to record the satisfaction that the suo moto disallowance of Rs.2,58,386 u/s14A made by the Appellant was not correct.

4. That the Ld.CIT (A) has grossly erred in confirming the action of the AO in apportioning the entire expenses debited to the Profit and loss Account to the exempt income.

5. That on the facts and in the circumstances of the case, Rule 8D sub clause (2) and sub clause (3) will have no application.

6. That the authorities below have failed to appreciate that the interest disallowed for Purposes of Section 14A by the Appellant amounting to Rs. 38,98,695 /- represents the net interest after taking into account interest receipt of Rs.62,67,520,#/- and interest paid of Rs.1,01,66,216/-. “

3. The facts in brief are that the assessee was engaged in the business of trading in shares and securities. During the year the assessee has earned dividend income of Rs.44,47,102/- which was claimed as exempt. He also earned share profit of Rs.2,13,45,332/- and brokerage income of Rs.12,92,152/-.The assessee for the purpose of calculation of disallowance under Section 14A of the Act had suo moto disallowed Rs.2,58,386/-, working of which was given as under:-

Direct Expenses Related to Turnover	Amount Rs.
Depository Charges	53336
Misc. NSE & BSE Charges	87428
NSE & BSE Transaction Charges	1,00,397
SEBI Turnover Fees	7,851
STT Paid	15,40,278
Net Interest Paid	38,98,696
Total Expenses (A)	56,87,985
Equity Turnover (Sales)	2,16,26,00,636
Dividend Turnover	9,80,28,739
Ratio to Which Expenses to be Disallowed	4.54%
Proportionate Expenses to be disallowed (A*B)	2,58,386

4. However, the Id. Assessing Officer rejected the assessee's working and computed the disallowance at Rs.12,26,902/- in the following manner:-

Total Expenses Debited to P & L A/c.	Rs.	Rs.
Employee Benefit Cost	34,74,595	
Finance Costs	1,03,65,729	
Other Expenses	1,78,75,983	
Depreciation	9,95,953	3,27,12,260
Less:		
Expenses Considered for Disallowance u/s 14A by the Assessee.		56,87,985
Remaining Expenses being made subjected to 14A.		2,70,24,275
Proportion in which disallowance is to be Made (as per Assessee)		4.54%
Further Disallowance u/s 14A.		12,26,902

(Addition / Disallowance : Rs.12,26,902/-)

5. The Id. CIT (Appeals) has confirmed such disallowance.

6. Before us, the Id. Counsel submitted that there is no dispute with regard to the direct expenses. The only dispute are that, *firstly*, the Assessing Officer has taken the entire finance cost, whereas the assessee has taken net of financial cost which was Rs.38,696/- whereas the gross interest of Rs.1,03,65,729/-; *secondly*, it was further submitted that reserves and surplus were much higher than the investment and, therefore, no disallowance should have been made. *Lastly*, apart from that, the Id. Assessing Officer, has taken depreciation as a part of disallowance which could not have been done. Accordingly the disallowance computed by the Assessing Officer is erroneous and arbitrarily and without application of mind.

7. The Id. DR relied on the orders of the Assessing Officer and the Id. CIT (Appeals).

8. We have heard the rival submissions and also perused the relevant findings given in the impugned order. On the perusal of the computation of income, it is seen that the assessee had shown dividend income of Rs.44,47,102/- which was claimed as exempt. The assessee for the purpose of computing the disallowance has taken direct expenses relevant to turnover in the ratio of 4.57% and thereby allocating disallowance to Rs.2,59,873/-. The Id. Assessing Officer has taken the following expenses debited to the profit and loss account for the purpose of disallowance:

(1)	Employee Benefit Cost.	34,74,595
(2)	Finance Costs	1,03,65,729
(3)	Other Expenses.	1,78,75,983
(4)	Depreciation	9,95,953

After deducting the expenses considered by the assessee at Rs.56,57,985/-, AO for the remaining expenses has made the disallowance @ 4.57% as taken by the assessee.

9. First of all, in so far as the amount of depreciation debited to the profit and loss account of Rs.9,95,953/- cannot be said to be remotely connected with earning of exempt income. Therefore, at the outset, the same should be removed for the purpose of disallowance. In so far as the finance cost is concerned, we find that the Assessing Officer has taken the gross interest of Rs.1,03,65,729/-, whereas the assessee has also earned interest and net cost of interest is of only Rs.38,98,696/-, which alone if at all should have been taken for the disallowance. However, from the perusal of the balance sheet, we find that reserve surplus of the assessee itself is Rs.76.4 crores and share capital of Rs.31 lakhs, which is more than the investments made and accordingly there could be no finance cost which can be considered for the purpose of disallowance because if assessee has surplus interest free funds then it cannot be presumed that assessee has invested in securities out of interest bearing funds and hence the same is directed to be removed from the computation.

10. Coming to the Employee Benefit Cost and Other Expenses, the same can be said to be attributable for the purpose of allocating the expenditure. However, the ratio of 4.54% which was allocated by the assessee for the direct expenses is too high to be applied for indirect expenses, because some of these expenses have already been taken by the assessee as direct expenses for the purpose of disallowance as incorporated above. The details of these expenses debited to the profit and loss account are as under:-

No.	NOTES TO THE BALANCE SHEET	AMOUNT [Rs]
(24)	Expenses	
	Audit Fees	32,613.00
	API Annual Charges	150,000.00
	Co-Hosting Charges	1,379,863.03
	Cenvat Credit (Unclaimed)	756,674.27
	Computer & Data Processing Expenses	140,511.33
	Consultancy Charges	125,000.00
	Conveyance	21,025.00
	Depository Charges	53,335.98
	Diwali Expenses	34,803.00
	Donation	2,000.00
	Electricity Expenses	159,681.41
	Fees & Subscription	1,201,983.00
	Insurance	16,529.00
	Lease Line Charges	728,951.96
	Misc Expenses	12,246.50
	Misc Exchange Charges	87,427.94
	Office Repairs & Maintenance	130,456.00
	Printing & Stationery	Nil
	Rent	780,000.00
	ROC Expenses	3,100.00
	SEBI Turnover Fees Capital Market	7,851.00
	SEBI Turnover Fees F&O Market	54,286.00
	Short & Excess	288.55
	Stamp Duty Charges	4,366.00
	STT Paid Capital Market	1,540,278.00
	STT Paid F&O Market	7,427,052.10
	Telephone Exp.	31,691.71
	Transaction Charges Capital Market	100,396.89
	Transaction Charges F&O Market	2,705,855.50
	Travelling Expenses	45,108.00
	Vehicle Running & Maint.	49,950.00
	VSAT Charges	92,657.99
		17,875,983.16
(25)	Depreciation & Amortisation	
	Depreciation	977,839.00
	Preliminary Expenses	18,114.00
		995,953.00

11. Most of these expenses cannot be said to be relatable or attributable for earning dividend income and, therefore, in all fairness we hold that 1% of the Employee Benefit, Directors salary and salary to the staff and 1% of the other expenses would be reasonable for

attributing the disallowance for the purpose of disallowance under Section 14A of the Act. Thus, the Assessing Officer is directed to be compute disallowance out of Employees expenses and other expenses @ 1 % .

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

Order pronounced in the open court on : **31/01/2022**.

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Dated : 31/01/2022.

MEHTA

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

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	31.01.2022
Date on which the typed draft is placed before the dictating member	31.01.2022
Date on which the typed draft is placed before the other member	31.01.2022
Date on which the approved draft comes to the Sr. PS/ PS	31.01.2022

Date on which the fair order is placed before the dictating member for pronouncement	31.01.2022
Date on which the fair order comes back to the Sr. PS/ PS	31.01.2022
Date on which the final order is uploaded on the website	31.01.2022
date on which the file goes to the Bench Clerk	31.01.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	