

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 7015/DEL/2019
[Assessment Year: 2016-17]

Jaswant Singh Uberoi, B-5/125, Safdarjung Enclave, New Delhi-110029.	<u>Vs</u>	JCIT, Spl. Range-11, New Delhi.
PAN- AABPU3788N		
APPELLANT		RESPONDENT
Appellant by	Shri Tejinder Singh Saini, CA	
Respondent by	Sh. Sanjiv Mahajan, Sr. DR	
Date of hearing	25.01.2022	
Date of pronouncement	11.02.2022	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-11, New Delhi, dated 25.06.2019, pertaining to the assessment year 2016-17. The assessee has raised following grounds of appeal:

“The ld. CIT(A) has erred on facts and in law in partially upholding the order of the AO by not allowing the exempt dividend income and taxing the same as ‘Dividend Stripping’ u/s 94(7) of the Income Tax Act, and consequently reducing the loss claimed by the Appellant by Rs. 1,45,547/-.”

2. The facts giving rise to the present appeal are that in this case the original return of income declaring income of Rs. 31,59,720/- was filed on 28.07.2016. Thereafter a revised return of income declaring total income of Rs. Nil was filed on 17.10.2016. The case was selected for scrutiny under CASS. Thereafter a notice u/s 143(2) was issued and served upon the assessee. In response thereto the authorized representative of the assessee appeared on behalf of the assessee and submitted the details. The Assessing Officer while framing the assessment made disallowance of expenditure of Rs. 29,532/- in respect of delayed payment charges, DP charges, auction charges etc., treating the same as not related to the business. The Assessing Officer observed that the assessee has received income which was claimed exempt u/s 10(34) of the Act amounting to Rs. 4,09,867/-. The assessee claimed loss of Rs. 36,59,514/- in his profit and loss account. The assessee declared dividend only of Rs. 4,09,867/- in his profit and loss account instead of whole amount of Rs. 5,55,414/-. Therefore, the Assessing Officer issued a show cause to explain the same. The assessee filed his reply stating that the assessee had earned dividend income from shares and mutual funds of Rs. 5,55,414/- during the year under consideration. However, inadvertently in the income-tax return the amount shown/ claimed as exempt was Rs. 5,27,900/-. Out of this amount of Rs. 4,09,867/- was reduced from the loss incurred by way of credit to the profit and

loss account. This was around 74% of the total dividend earned. There was no motive or intent to avoid the tax. Nearly 3/4th of the dividend was offered for taxation. Therefore, the business loss incurred may not be covered u/s 94(7) of the Act. However, the reply of the assessee was not found acceptable by the Assessing Officer and proceeded to make addition of Rs. 1,45,547/-.

3. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who after considering the submissions partly allowed the appeal, thereby the addition of Rs 29,532/- in respect of disallowance of the expenses was deleted. However, the ground relating to disallowance of Rs. 1,45,547/-, on account of exempt dividend income u/s 94(7) was rejected and the view of the Assessing officer was sustained. Aggrieved against this the assessee is in appeal before this Tribunal.

4. Learned counsel for the assessee vehemently argued that the authorities below failed to appreciate the facts in right perspective. He contended that provisions of section 94(7) of the Act would not be applicable under the facts and circumstances of the present case. He contended that the explanation offered was brushed aside without assigning any reason. He, therefore, prayed that addition may be deleted.

5. On the contrary, learned Sr. Departmental Representative opposed the submissions and supported the orders of authorities below. He contended that the assessee did not furnish any material in support of his claim.

6. Learned counsel for the assessee in rejoinder stated that the assessee had placed the relevant material on record to substantiate his claim.

7. I have heard the rival submissions and perused the material available on record. The contention of the assessee before the learned CIT(Appeals) was that amount of Rs. 1,78,404/- was out of the scope of Section 94(7) of the Act as the dividend included dividend from mutual funds, which was not covered under the provisions of Section 94(7) of the Act. However, the learned CIT(Appeals) sustained the addition by observing as under:

“5.4.1 I have carefully considered the observations of AO and submissions of appellant. During the course of appellate proceedings, appellant has submitted that amount of Rs. 178404.33 is out of the scope of section 94(7) of the I.T. Act, 1961. On perusal of the facts of the case it is seen that appellant has not given the entire break-up of dividend to the extent of Rs. 5,55,414/- neither he has explained how the provisions of section 94(7) are not attracted in his case. Therefore, there is no basis in the claim of appellant. Accordingly, I find no reason to interfere in the order of AO. As a result, the disallowance of Rs. 1,45,547/- resulting into reduction of loss is sustained.”

8. It is seen that the assessee has also filed written synopsis. The relevant contents are reproduced as under:

“4. Contrary to the observation of the Learned CIT(A), we had in fact mentioned at page no 5 of our submission and submitted a statement as Annexure D at page no. 43 with further details placed at page no. 44,45,46 (refer page nos. 5 to 8 of Annexure A) the details of dividend from shares and mutual funds of Rs. 5,55,414.50. Out of this an amount of Rs.4,09,867/- was credited to the profit and loss account. The remaining amount of Rs. 1,45,547/- was clearly out of the scope of section 94(7) of the I T Act, 1961, as an amount of Rs. 1,78,404/- (being more than Rs. 1,45,547/-) was on account of dividend earned on mutual funds which were held by your appellant as an investment and not as trading activity under the head business or profession. List of dividend on mutual funds for Rs. 1,78,404/- was also submitted at page no. 6 and 58 with further details at page no. 46 to 58 before the Learned CIT(A) (refer page nos. 8 to 20).

5. For your kind perusal, the copies of the above mentioned pages of our submission made before the learned CIT(A) is attached to this submission as Annexure A. On perusal of pages 9 to 20 of Annexure A, it can be observed that the mutual funds on which dividend was received during the FY 2015-16(relevant to AY 2016-17) and claimed exempt were purchased way back in the year 2006, 2007, 2010, 2011 and 2013. This goes to prove beyond doubt that the appellant’s dividend income is not hit by provisions of section 94(7) to cover it as taxable under Dividends Stripping.

Section 94(7) has been reproduced below:-

As per sec. 94(7), Where—

- (a) any person buys or acquires any securities or unit within a period of three months prior to the record date;
- (b) such person sells or transfers—
 - (i) such securities within a period of three months after such date; or
 - (ii) such unit within a period of nine months after such date;
- (c) the dividend or income on such securities or unit received or receivable by such person is exempt,

then, the loss, if any, arising to him on account of such purchase and sale of securities or unit, to the extent such loss does not exceed the amount of dividend or income received or receivable on such securities or unit, shall

be ignored for the purposes of computing his income chargeable to tax.

In view of above,

1. Your honour is prayed to kindly allow amount of Rs. 1,45,547/- as exempt dividend income justly due to the Appellant by quashing the order of the learned CIT(A) disallowing the loss resulting into reduction of loss claimed by the appellant.”

9. I find that the above contention of the assessee is not rebutted by the Revenue. Moreover, the assessee had furnished the details of mutual funds before the learned CIT(Appeals). Hence, the finding of learned CIT(Appeals) that the assessee has not provided break up of dividend is erroneous. Therefore, same cannot be sustained. I hereby direct the Assessing officer to delete the addition.

10. In the result, assessee's appeal is allowed.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Dated: 11.02. 2022.

M P

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI