

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA BENCH "A", KOLKATA**

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT  
AND SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.43/Kol/2022  
Assessment Year: 2016-17**

<b>Mint Investments Ltd.</b>  4A, Dhunseri House, Woodburn Park, Kolkata  <b>PAN: AADCM7416N</b>  (Appellant)	Vs.	<b>ACIT, Circle-12(2), Kol</b>        (Respondent)
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**Present for:**

Appellant by : Shri Akkal Dudhewala, FCA  
Respondent by : Shri Biswanath Das, Addl. CIT-DR.

Date of Hearing : 07.07.2022

Date of Pronouncement : 12.07.2022

**ORDER**

**PER RAJESH KUMAR, ACCOUNTANT MEMBER:**

The present appeal by the assessee is directed against the order dated 12.12.2021 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeals Centre [hereinafter referred as the 'CIT(A)'] which in turn arises out of the assessment framed u/s 143(3) of the Income Tax Act (hereinafter referred to as the 'Act') vide order dated 22.12.2018 passed by the Assistant Commissioner of Income Tax(Appeals), Circle-12(1), Kolkata (hereinafter referred to as the Assessing Officer). The grounds raised by the assessee are as under:

*"1. For that on the facts and circumstances of the case, the CIT(A) grossly erred on facts and in law in confirming the ad hoc disallowance of Rs.1,88,000/- made by the AO out of foreign travel expenses incurred by the company.*

*2. For that on the facts and circumstances of the case, the CIT(A) failed to appreciate that the foreign travel expenses pertained to director/employee which was incurred in the course of business and therefore the disallowance made by the AO out of such expenditure was unwarranted on facts and in law*

3. *For that on the facts and circumstances of the case, the CIT(A) erred in confirming the action of the AO in taxing dividend income of Rs.27,98,868/- earned from listed shares & securities which are specifically exempt from tax in terms of Section 10(34) of the Act.*

4. *For that on the facts and circumstances of the case, the reliance placed by the lower authorities on decision of the Hon'ble Delhi High Court in the case of CIT Vs Excellent Commercial Enterprises & Inv Ltd. (282 ITR 423) was misplaced in as much as the said judgment was rendered in the context of AY 1996-97 when the dividend income was taxable in the hands of the shareholder and they failed to appreciate that Section 10(34) which was inserted by Finance Act, 2003 had exempt dividend income earned from securities listed in stock exchange from levy of income-tax, and therefore the A.O be directed to delete the addition of Rs.27,98,868/- in full.*

5. *For that the appellant craves leave to submit additional grounds and/or amend or alter the grounds already taken either at the time of hearing of the appeal or before.”*

2. The issue raised in Ground No.1 & 2 is directed against the order of CIT(A) confirmed the addition of Rs.1,88,000/- as made by the Assessing Officer by disallowing 50% of the foreign travel expenses of the director.

The facts in brief are that the Assessing Officer during the course of assessment proceedings observed from the details filed by the assessee that the assessee has incurred an expenditure of Rs.3,76,000/- on foreign travel and the assessee was called upon to furnish details for travel. The assessee filed the necessary details of the foreign expenditure and submitted that the said expenditure was incurred in connection of travel of managing director of the company for attending business conference abroad. The reply did not find favoured with the Assessing Officer and after rejecting the reply of the assessee and contention made in correction therewith. The Assessing Officer disallowed 50% of the foreign expenditure thereby making an addition of 1,88,000/- by holding that since the assessee in the business of trade of shares and there is no need of getting quantified with foreign financial development and systems. The Assessing Officer also noted that the travel expenditure incurred by the assessee cannot be sought to be regulated with the regular course of business of the assessee. However, nowhere the Assessing Officer doubted the genuineness of the expenses.

3. In the appellate proceedings, the CIT(A) confirmed the order of the Assessing Officer on the issue of disallowance of 50% of the foreign travel expenses by holding that the assessee has failed to discharge the primary onus to prove the nexus between the foreign travel expenses of business of the assessee. The Id. CIT(A) observed that the assessee has failed to furnish necessary documentary evidences qua the business conference of the assessee having connection with the business of the assessee. The Id. CIT(A) also dismissed the prayer of the assessee that the disallowance based on mere presumption, assumption and surmises, is not sustainable.

4. After hearing the rival contentions and perused the materials on record, we note that both the authorities below have not doubted at all the genuineness of the foreign expenses. We also note that the disallowance is made at the whims of the Assessing Officer without pointing out any specific reason. In case the expenditure is not connected with the business of the assessee, it has to be allowed in toto and the disallowance made at 50% of the total expenditure shows an ad hoc approach on the part of the Assessing Officer based on presumption, assumption and surmises. Similarly, the Id. CIT(A) has confirmed the order of the Assessing Officer without giving a valid reason as to how the ad hoc disallowance of 50% could be sustained. In view of these facts, we are not in agreement with the conclusion drawn by the CIT(A) and consequently the order of the CIT(A) cannot be sustained. The Id. Assessing Officer is directed to delete the disallowance. Ground No.1 and 2 are allowed.

5. The issue raised in Ground No.3 & 4 is against the confirmation of addition of Rs.27,98,868/- as made by the Assessing Officer on account of dividend earned from business and held by the assessee as stock-in-trade.

The facts in brief are that the Assessing Officer noted during the assessment proceedings that the assessee has made some investments in shares and securities and at the same time held some shares and stocks as stock-in-trade. The Assessing Officer noted that the assessee has earned Rs.1,80,65,827/- on shares and securities held as investment whereas Rs.27,98,868/- was earned on shares and securities held as stock-

in-trade. According to the Assessing Officer, the dividend received on shares and securities held as stock in trade embeds the character of business income and is not exempt u/s 10(34) of the Act and by relying on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Excellent Commercial Enterprises and Investments Ltd. 147 taxman 558 held that dividend earned on shares and securities held as stock-in-trade is business income and exemption u/s 10(34) is not available in respect thereof and added Rs.27,98,868/- to the income of the assessee.

6. In appeal, the assessee before the Id. CIT(A) submitted that income of shares and securities held as stock-in-trade is exempt u/s 10(34) of the Act as it had already been subjected to tax u/s 115 of the Act. However, the reply of the assessee did not find favoured with the CIT(A) and Id. CIT(A) after rejecting the contention of the assessee confirmed the order of the Assessing Officer on this issue by holding that Assessing Officer has already allowed 10(34) exemption to the dividend income attributable to investment in shares and securities.

7. We have heard the rival contentions and perused the materials on record. The provisions of the Act u/s 10(34) and 115 of the Act, we note that the impugned premise of the Assessing Officer is that the dividend income earned on the assessee on shares and securities held as stock-in-trade is business income, therefore, deduction 10(34) of the Act is not available and similarly the Id. CIT(A) has upheld the view taken by the Assessing Officer. Having perused the provisions of the Act u/s 10(34) and 115 of the Act, we are of the opinion that the dividend received by the assessee is exempt u/s 10(34) of the Act irrespective of the fact that the whether the same is derived from investment in shares or the shares and securities held as stock-in-trade. We find merit in the contentions of the Id. AR that the dividend income is exempt u/s 10(34) of the Act. Decision of the Hon'ble Delhi High Court in the case of CIT vs. Excellent Commercial Enterprises & Investment Ltd. held that the dividend income was taxable in the hands of the shareholders. We also note that section 10(34) was inserted by Finance Act 2003 w.e.f. 01.04.2004 providing that income received by way of dividend as referred to section 115 of the Act which deals

with the dividend distribution tax as exempt. The case of the assessee is find force on the decision of the Hon'ble Apex Court in the case of CIT vs. Maxopp Investment Ltd. 91 taxmann.com 154 (SC) wherein the Hon'ble Apex Court has held that where the shares are held as stock-in-trade and the main purpose is trade in those shares and earned profits therefrom and in the process of certain dividends earned which is exempt u/s 10(34), this attributable to that exempt income will have to be disallowed u/s 14A. Accordingly, we set aside the order of the CIT(A) and direct the Assessing Officer to delete the addition of Rs.27,98,868/-.

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

**Order pronounced in the open court on 12.07.2022.**

**Sd/-  
(RAJPAL YADAV)  
VICE PRESIDENT**

**Sd/-  
(RAJESH KUMAR)  
ACCOUNTANT MEMBER**

Kolkata, Dated: 12.07.2022.  
RS

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Kolkata  
The CIT (A) Concerned, Kolkata  
The DR Concerned Bench

//True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata