

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH MUMBAI

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL
MEMBER**

AND

SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

**ITA No. 870/MUM/2024
Assessment Year: 2015-16**

Assistant Commissioner of Income Tax – 16(3), Mumbai	Vs.	New Growth Comtrade Pvt. Ltd., 5 th Floor, M.G. Road, Bank of India Bldg., Fort, Mumbai – 400 055, (PAN : AAECN3690G)
(Appellant)		(Respondent)

Present for:

Assessee : Shri Pritesh Mehta, AR

Revenue : Shri Nayanjyoti Nath, Sr. A.R

Date of Hearing : 05.11.2024

Date of Pronouncement : 03.02.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), vide order no. ITBA/NFAC/S/250/2023-24/1059377021(1), dated 04.01.2024 passed against the assessment order by Income-Tax Officer, Ward-16(3)(2), Mumbai, u/s. 143(3) of the Income-tax Act (hereinafter referred to as the “Act”), dated 28.12.2017 for Assessment Year 2015-16.

2. Grounds taken by the Revenue are reproduced as under:

“1. Whether on facts and circumstances of the case the Ld. CIT (A) has erred in allowing the addition u/s 14A read with Rule 8D made by the AO u/s 143 dated 28.12.2017.

2. Whether on facts and circumstances of the case the Ld. CIT (A) has erred in noting the fact that the AO has clearly recorded his satisfaction that the AR's

contention of nil expenditure claimed to earn exempt income is not found satisfactory.

3. Whether on facts and circumstances of the case the Ld. CIT (A) has erred in noting the fact that It is an irrefutable fact that upkeep and maintenance of any investment portfolio for earning of income necessitates expenditure on supportive office and other infrastructure facilities apart from financial cost on the funds deployed.

4. Whether on facts and circumstances of the case the Ld. CIT (A) has erred in noting the fact that the reply to notice U/S 133(6) by M/s Pune E Stock Broking Pvt. Ltd clearly states that the Bill has been raised in the name of M/s IIFL Wealth Management Ltd and not in the name of the Assessee.

5. Whether on facts and circumstances of the case the Ld. CIT (A) has erred in noting the fact that Bills were raised on 26.01.2015 being a Public Holiday (Republic Day), 01.02.2015 being Sunday and non working day which cannot be ignored.

2. The Ld. CIT(A)'s order is contrary in law and on facts and deserves to be set aside.

3. The appellant prays that the order of Ld. Cit(A) on the above grounds be set aside and that of the AO restored. The appellant craves leave to amend or alter any ground or add a new ground that may be necessary at the time of hearing.

3. From the above, ground No.1 to 3 relates to disallowance made u/s.14A r.w.r. 8D of Rs.67,89,407/-. Ground No.4 and 5 relate to disallowance of Rs.1,57,24,156 towards claim of referral fees as deduction by the assessee, paid by it during the year.

4. Brief facts of the case are that assessee filed its return of income on 30.09.2015 reporting total income at Nil which was subsequently revised on 29.06.2016, again reporting total income at Nil. Assessee is engaged in the business of lending and trading in securities. In respect of the first issue relating to disallowance made u/s. 14A r.w.r. 8D, assessee received following incomes, claimed as exempt on the investments held by it, which is tabulated as under:

S. No.	Particulars	Amount (Rs.)	Remarks
1.	Dividend Income from mutual Fund units of IIFL Liquid Fund-Regular Plan	1,12,047	Claimed as exempt under section 10(35) of the Act
2.	Dividend Income from mutual Fund units of Reliance Liquid Fund	9,02,277	Claimed as exempt under section 10(35) of the Act
Total		10,14,324	

4.1. Assessee furnished details of investments held during the year to demonstrate that it earned exempt dividend income only from two Mutual Funds i.e., i) IIFL Liquid Fund - Regular Plan – Div Reinvestment ii) Reliance Liquid Fund Treasury Daily Dividend. Details of investment is tabulated as under:

Particulars	Nature of Investment	Opening Balance	Debit	Credit	Closing Balance	Whether yielded any exempt income
Investment in Equity Shares	Equity Shares	199,108,913		199,108,913	-	No
AIFNCD	Debentures		49,999,800	49,999,800	-	No
ECL Finance Ltd	Debentures		37,053,332	37,053,332	-	No
F&O Margin Account	Futures and Options		7,040,228	7,040,228	-	No
ICICI RE FUND	Alternative Investment Fund		17,500,000	17,500,000	-	No
IIFLCL Bonds	Bonds		112,675,945	112,675,945	-	No
IIFL DURATION PLUS BONDS	Bonds		15,000,000	15,000,000	-	No
IIFL RE FUND CLASS A	Alternative Investment Fund		69,773,161	69,773,161	-	No
Equity Shares and F&O	Equity Shares and F&O		531,704,691	531,704,691	-	No
IIFL LIQUID FUND - REGULAR PLAN - DIV REINVSTMT	Mutual Fund		51,542,047	51,542,047	-	Yes, Dividend Income of Rs. 1,12,047/-
Reliance Liquid Fund Treasury Daily Dividend	Mutual Fund		76,297,277	76,297,277	-	Yes, Dividend Income of Rs. 9,02,277/-
Grand Total		199,108,913	968,586,481	1,167,695,394	-	

4.2. Assessee claimed that it did not incur any administrative cost nor any direct expenditure for earning this exempt dividend income. In respect of the disallowance made, assessee contented that –

A. The disallowance u/s 14A read with Rule 8D made in the order u/s 143(3) is unreasonable and uncalled for.

B. The AO has failed to record satisfaction, with cogent reasons, for rejecting the claim of the appellant that no expenditure has been incurred in relation to income which does not form part of the taxable income as per the provisions of the Act.

C. The AO has failed to exclude investments which did not yield exempt income during the year, while computing average investments for the purposes of working out disallowances u/s 14A read with Rule 8D.

D. The AO has failed to appreciate that dis-allowance u/s 14A cannot exceed the amount of exempt income earned.

4.3. Assessee got relief from ld. CIT(A) on the ground that ld. Assessing Officer did not record his satisfaction as to correctness of the claim of assessee regarding expenditure to be disallowed u/s.14A. According to ld. CIT(A), action of ld. Assessing Officer could not be upheld for want of recording of satisfaction before invoking provisions of section 14A r.w.r. 8D. Revenue is in appeal before the Tribunal.

5. We have heard both the parties and perused the material on record. It is an undisputed fact that assessee earned dividend income of Rs.10,14,324/- from investments in Mutual Funds which is exempt u/s.10. It is also a fact on record that assessee did not disallow any expense u/s.14A *suo moto*, since it claims that no expenditure has been incurred by it for earning the said dividend income. We note that relief granted by ld. CIT(A) is solely on the basis of ld. Assessing Officer not recording satisfaction for resorting to making disallowance u/s.14A r.w.r. 8D. In this respect, it is to be noted that sub-section (2) of 14A

comes into role in a situation where assessee has made certain suo moto disallowance u/s.14A for which ld. Assessing Officer has to satisfy himself about the correctness of the claim so made, by having regard to the accounts of the assessee, for such expenditure. In absence of any *suo moto* disallowance by the assessee against the exempt dividend income earned during the year, claim by the assessee of recording of satisfaction having regards to its accounts for making disallowance by the ld. Assessing Officer is not tenable.

5.1. However, we are in agreement with the contention of the assessee that ld. Assessing Officer ought to have excluded investments which did not yield exempt income during the year while computing average investments for the purpose of working out disallowance u/s.14A r.w.r. 8D(2)(iii). Our consensus on these contentions find force from the decision of Hon'ble Special Bench of ITAT in the case of ACIT vs. Vireet Investments Pvt. Ltd., [2017]58 (ITR Trib) 313. Accordingly, we, direct the ld. Assessing Officer to recompute the disallowance u/r. 8D(2)(iii) by taking into consideration, the investments which yielded exempt income during the year, details of which are already tabulated above. Accordingly, grounds taken by Revenue on this issue are partly allowed.

6. On the second disallowance of referral fees paid by assessee, the details are tabulated below, according to which assessee had paid referral fees to Pune E Stock Broking Pvt. Ltd. and to Roister Properties Pvt. Ltd.

Date	Particulars	Referral Paid Fees	TDS Thereon
22/01/2015	Roister Properties Private Limited	50,00,000	5,00,000
28/01/2015	Pune E Stock Broking Pvt Ltd.	1,04,16,667	10,41,667

04/02/2015	Pune E Stock Broking Pvt. Ltd.	32,24,156	3,22,416
07/02/2015	Pune E Stock Broking Pvt. Ltd.	20,83,333	2,08,333
	GRAND TOTAL	2,07,24,156	20,72,416

6.1. Ld. Assessing Officer noted certain discrepancies in payments made by assessee towards referral fees which is as under:

“1. M/s Pune E Stock Broking has raised advice in the name of M/s IIFL Wealth Management Limited and Not in the name of the Assessee.

2. The Bills were raised on 26/01/2015 being a Public Holiday (Republic Day), 01/02/2015 being Sunday and non-working day ile. before one or two days before the payment was made to Pune e Broking Limited.

3 The commission was paid in lieu of sale of shares of Shining Metal trust Gold PTC for 75,00,000/- and commission was charged @1.4%. Since M/s Roister Properties Private Limited has sold shares of Rs.50,00,000/- of M/s Shining Metal trust Gold PTC, how M/s Pune e-Stock Broking Private Limited sold shares of Rs. 75,00,00,000/-. As per ledger of Trading income/loss for the period 01/04/2014 to 31/05/2015 filed by the assessee it is found that during the year assessee was sold shares of Shining Metal Trust Gold PTC to the tune of Rs 75,00,00,000 Therefore, M/s Pune e Stock Broking Private Limited could not sale shares of Shining Metal Trust Gold PTC to the tune of Rs. 75,00,00,000/-, In view of this the invoices raised by Pune e-Stock Broking is seems to be bogus and fabricated one.”

6.2. In this respect, assessee clarified its stance by making the following submission-

“The assessing officer failed to appreciate that the appellant has paid referral fees to M/s Pune E Stock Broking Private Limited and to M/s Roister Properties Private Limited for separate transactions and not for the same transaction.

The said referral fees were paid to M/s Pune E Stock Broking Private Limited on account of the following transactions of the appellant. Please find enclosed copies of the invoice and details of the invoice raised by the said Pune E Stock Broking Private Limited along with reply to notice u/s 133(6) by them to the assessing officer. The assessing officer failed to appreciate that the invoices by the said Pune E Stock Broking Private Limited have been raised on the appellant

Trade Date	Security name	Seller	Buyer	Invoice No	Consideration	Brokerage Rate	Referral fees
30/9/2014	Shining Metal Trust Gold PTC	Shining Metal Trust Gold PTC	New Growth Comtrade Pvt Ltd (appellant)	16	750,000,000	1.40%	10,416,667
16/10/2014	Shining Metal Trust Gold PTC	New Growth Comtrade Pvt Ltd (appellant)	IIFL Wealth Management	23	150,789,041	1.35%	2,083,333
22/7/2014	IIFL CL Bonds	New Growth Comtrade Pvt Ltd (appellant)	Azim Hasham Premji	19	55,663,268	1.39%	3,224,156
22/7/2014	IIFL CL Bonds	New Growth Comtrade Pvt Ltd (appellant)	Azim Hasham Premji	19	56,512,677	1.39%	
17/9/2014	IIFL Real Estate Fund Class A	New Growth Comtrade Pvt Ltd (appellant)	Arjava Projects Private Limited	19	19,812,707	1.39%	
4/10/2014	Shining Metal Trust Gold PTC	New Growth Comtrade Pvt Ltd (appellant)	IIFL Wealth Management	19	100,032,877	1.39%	

The assessing office failed to appreciate that in respect of the following transaction through Pune E Stock Broking Private Limited as broker, the appellant is the buyer of securities by the name of Shining Metal Trust Gold PTC on 30/09/2014.

Trade Date	Security name	Seller	Buyer	Invoice No	Consideration	Brokerage Rate	Referral fees
30/9/2014	Shining Metal Trust Gold PTC	Shining Metal Trust Gold PTC	New Growth Comtrade Pvt Ltd (appellant)	16	750,000,000	1.40%	10,416,667

The referral fees were paid to M/s Roister Properties Private Limited on account of the following transactions of the appellant -

Trade Date	Security name	Seller	Buyer	Invoice No	Consideration	Brokerage Rate	Referral fees
1/10/2014	Shining Metal Trust Gold PTC	New Growth Comtrade Pvt Ltd (appellant)	Claris Lifesciences Limited	1	500,000,000	1%	5,000,000

The assessing office failed to appreciate that in respect of the following transaction through Roister Properties Private Limited as broker, the appellant is the seller of securities by the name of Shining Metal Trust Gold PTC on 01/10/2014 and as such, both the transactions done by the appellant through

Pune E Stock Broking Private Limited and Roister Properties Private Limited as broker are separate and distinct transactions done on different dates.

Trade Date	Security name	Seller	Buyer	Invoice No	Consideration	Brokerage Rate	Referral fees
1/10/2014	Shining Metal Trust Gold PTC	New Growth Comtrade Pvt Ltd (appellant)	Claris Lifesciences Limited	1	500,000,000	1%	5,000,000

The assessing officer failed to appreciate that the appellant has provided all documentary evidences in the course of assessment proceedings in support of the said expenses.

The assessing officer failed to appreciate that M/s Pune E Stock Broking Private Limited has filed reply to notice u/s 133(6), confirming the transaction for referral fees paid to it

The assessing officer failed to appreciate that the referral fees paid to M/s Pune E Stock Broking Private Limited are in the course of the normal operations of the appellant and are valid and genuine transactions.

6.3. From the perusal of observations of ld. CIT(A) in para 5.2 while deleting the addition made by ld. Assessing Officer in respect of referral fees paid to Pune E Stock Broking Pvt. Ltd., it is noted that on the discrepancy relating to issue of bills on holidays, he observed that ld. Assessing Officer could have made enquiries with the brokers, as to how the bill were prepared on holidays and as to how they were bogus. On these observations, he held that simply preparation of bills on holiday cannot disregard the transaction. In our considered view, conclusion arrived at by ld. CIT(A) despite observing that ld. Assessing Officer could have made enquiries on the aspect of bills having issued on holidays, needs examination at the end of Assessing Officer, so as to arrive at correct fact on the issue before allowing the claim. Accordingly, we find it proper to remit the matter back to the file of ld. Assessing Officer on this issue, so as to make proper enquiries in respect of bills which forms basis of making the claim for which ld. Assessing Officer has observed that they have been issued on holidays. Ld. Assessing Officer after having satisfied on this account may allow the claim of the assessee in

accordance with the provisions of law. Needless to say, assessee be given reasonable opportunity of being heard in this respect. Further, assessee is also directed to be diligent in furnishing all the required details and assist the Id. Assessing Officer in completing the required compliance. Thus, grounds raised by the Revenue in this respect are partly allowed for statistical purposes.

7. In the result, appeal of the Revenue is partly allowed for statistical purposes.

Order is pronounced in the open court on 03 February 2025

Sd/-

(Narender Kumar Choudhry)
Judicial Member

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 03 February 2025

MP, Sr.P.S.

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
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BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai