

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH "B" BENCH NEW DELHI)**  
**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER**  
**&**  
**SHRI AMIT SHUKLA, JUDICIAL MEMBER**

**ITA No. 2008/Del./2014  
Assessment Year: 2009-10**

<b>Carissa Investment (P) Ltd., C/o Mr. Rajesh Dureja, Adv., 890, Dr. Mukherjee Nagar, New Delhi</b>	<b>Vs.</b>	<b>ITO Ward 3(2) New Delhi</b>
(Appellant)		(Respondent)
<b>(PAN: AAACC3277A)</b>		

Assessee by: Sh. Rajesh Dureja, Advocate

Revenue by: Sh. Anil Kumar Sharma, Sr. DR

Date of hearing	11/04/2017
Date of pronouncement	18/04/2017

**ORDER**

**PER AMIT SHUKLA, JUDICIAL MEMBER:**

The aforesaid appeal has been filed by the assessee against impugned order dated 31.1.2014, passed by the Id. CIT (Appeals)-6, New Delhi for the quantum of assessment passed u/s 143(3) for the A.Y. 2009-10. In the grounds of appeal the assessee has raised following grounds:-

*"1. That the order of the I.d. CTT (A) is bad in law and is against the facts and circumstances of the case.*

*2. That the Ld. CIT (A) has erred in confirming the addition of Rs.664.267/- made by the AO u/s 94(7) of the Income Tax Act.*

*1961. Further, the Ld. CTT (A) has grossly erred in interpreting the provisions of section 94(7) of the Act.*

*3. That the l.d. CTT (A) has erred grossly both in law and on facts in confirming the addition of Rs. 14,68,019/- made u/s 14A of the Act.*

*4. That the Ld. CTT (A) while upholding the addition made u/s 14A has failed to consider the detailed written submission and has not distinguished the facts of the case laws relied upon by the assessee before confirming the addition.*

*5. That in am case and in view of the matter, order of Ld. CTT (A) in confirming the action of Ld. AO is bad in law and unjustified.*

*6. That the appellant craves the leave to add modify, amend or delete any of the grounds of the appeal at the time of hearing.”*

2. The brief facts qua for the first issue are that, the assessee company is engaged in the business of investment in trading in shares. The Assessing Officer noted that assessee had booked a loss of Rs. 6,64,267/- on account of sale of shares on mutual funds and at the same time it had also booked dividend income of Rs. 10,14,732/-. From the details available on record, Assessing Officer further noted that assessee had incurred a loss of Rs. 31,06,046/- on account of trading in shares of 'GHCL' and also earned dividend of Rs. 5,99,925/- from such shares. Similarly assessee has also earned dividend income of Rs. 4,00,808/- on mutual funds and at the same time has booked on a loss of Rs. 3,73,223/-. Based on these details, the Assessing Officer was of the opinion that the provisions of section 94(7) are clearly attracted and accordingly, the

consolidated loss on sale shares amounting to Rs. 6,64,267/- was disallowed by him.

3. Before the Learned CIT (Appeals), the assessee pointed that the Assessing Officer never raised any query or asked for any detail regarding dividend stripping by the assessee company on any such transaction. When no query was raised by Assessing Officer then there is no question of furnishing details before the Assessing Officer. In support, of this contention, various questionnaires as issued by the Assessing Officer was also furnished. It was further submitted that, before making any disallowance u/s 94(7), the Assessing Officer did not bring on record any material which could prove that the assessee was indulged in dividend stripping. From the details of trade of shares of GHCL, the assessee pointed out that it was having 1,40,06,596 shares at the beginning of the relevant assessment year, i.e., as on 1.4.2008 as it was holding considerable shares from the A.Y. 2006-07 itself. During the year consideration it only purchased 5,88,864 shares of GHCL and sold only 16,15,417. At the end of the relevant assessment year, i.e., on 31.3.2009, the assessee company was having 1,29,22,046 shares of GHCL, hence whatever shares have been sold were held from earlier years and therefore, the provisions of section 94(7) cannot be held to be applicable.

4. However the Learned CIT (Appeals) after noting down the facts, has merely theoretically analyse the provisions of section 94(7) and the relevant case laws available on the said section without analysing or commenting upon the assessee's submission on merits. He held that the provisions of section 94(7) shall be applicable

whether the security is held as capital asset or stock-in-trade. Further, he held that it cannot be accepted that whatever shares of GHCL were sold during the year were sold from the existing holding at the beginning of the relevant assessment year and the Assessing Officer has rightly disallowed loss u/s 94(7).

5. Before us, the Learned Counsel submitted that none of the authorities have brought on record as to how the conditions laid down in section 94(7) are satisfied, i.e. *firstly*, when where the shares/unites were purchased; *secondly*; what is the record date of dividend; and *lastly*, for how much time shares/units were held after the records date of dividend. He drew our attention to the date of sale of purchase of shares of all the shares including that of GHCL shares which has been enclosed as 'Annexure-A' of the documents submitted before us and also the details of dividend earned during the year which has been enclosed as Annexure-B filed before us and pointed out that assessee had far more shares of GHCL in its book which were coming from the earlier years and during this year, sale of these shares far exceeded the purchase of these shares, hence the view taken by the authorities below for making the disallowance is unsustainable in law and facts.

6. On the other hand the ld. DR strongly relied upon the findings of the Learned CIT (Appeals) and submitted that he has taken note of entire facts and after analysing the relevant provision of section 94(7) he has given a definite finding and therefore, the order of the Learned CIT (Appeals) should be affirmed.

7. We have heard the rival submissions and perused the relevant findings given in the impugned order as well as material placed on record. The disallowance of loss of Rs. 6,64,267/- on sale of shares has been made by the department invoking the provisions of section 94(7), mainly on the ground that the assessee has received dividend income and also the claim loss on sale of same shares from which it has received dividend. Such a simplistic way for making the addition or disallowing the loss cannot be upheld, because before invoking the section 94(7), three conditions have been laid down which are as under:-

- a. Any person buys or acquires any security or unit within a period of three months prior to record date;
- b. i) Such person sells or transfer such securities within a period of three months after such date; or  
ii) Transfers such units within a period of 9 months after such record date;
- c. The dividend or income on such securities or unit received or receivable by such person is exempted,

If the aforesaid conditions are fulfilled, then only the loss arising on account of purchase and sale of particular security shall be ignored for the purpose of computing the income chargeable to tax, that is, the loss shall be disallowed. Here in this case as pointed out by the ld. counsel that, there were huge opening balances of shares of GHCL coming from earlier years which were more than 1.40 crore shares and during the year assessee has purchased only 5,65,864 shares. As against such huge holding of GHCL shares, only 16,50,414 of these shares were sold. Thus, prima facie it cannot be

reckoned that the loss on sale of GHCL is only on account of the shares which were held for less than period of three months. This aspect has not been examined by the lower authorities. Under these facts and circumstances, we are of the considered opinion that this issue should be restored back to the file of the Assessing Officer who shall examine the details as furnished by the assessee and also examine the conditions as laid down in u/s 94(7) before disallowing the loss. The Assessing Officer shall provide proper opportunity to the assessee to substantiate its case. Thus, ground no. 1 is treated as allowed for statistical purposes.

8. Regarding second issue relating to disallowance u/s 14A, brief facts are that the assessee from shares held as stock-in-trade has received dividend income of Rs. 10,14,732/- which was claimed as exempt. The Assessing Officer noted that the assessee has not attributed any expenditure incurred in relation to earning of such an exempt income. In response to query raised by AO, the assessee submitted that it is dealing in purchase and sales of shares and all the shares were held that stock-in-trade and none of the shares were for the purpose of earning dividend. Regarding interest, the assessee submitted that the same cannot be disallowed u/s 14A, because the interest of Rs. 6,67,996/- was paid on unsecured loan taken from creditors was not at all used for making any investment or buying of shares but was utilised for advancing loan on which the assessee has earned interest income to the tune of Rs. 20,64,706/-. Thus, it was claimed that no disallowance should be made. Alternatively the assessee submitted that only a proportionate disallowance of administrative and operative expenses can be made by taking the ratio of purchase of shares to total turnover of purchase and sale.

However the ld. Assessing Officer, rejected the assessee's contention and proceeded to make disallowance in accordance with the rule 8D which worked out to Rs. 41,87,027/-.

9. Before the Learned CIT(Appeals), detail submissions were made stating that the Assessing Officer has not recorded his 'satisfaction' with regard to the incorrect claim by the assessee which is primary condition for invoking the applicability of rule 8D. The assessee's detailed submission in this regard and also the various decisions relied upon t iare incorporated in the appellate order from pages 4 to 10. However, the Learned CIT (Appeals) confirmed the said disallowance in a very detail manner, however all his findings and observations are based on conceptual and theoretical aspect of provision of section 14A and why rule 8D is mandatory.

10. Before us, the ld. counsel submitted that, assessee during the course of the assessment proceedings had given from the detailed objection/reply as to why the disallowance u/s 14A cannot be made on the facts of the assessee's case. The assessee has given the entire details of shares held as inventory and shares held as investment and also the amount due to secured loan creditors and sundry creditors. Apart from that the assessee also had given the utilisation of interest bearing funds and also the why no interest disallowance can be made. The assessee's submissions and details have not been properly appreciated and both the authorities have proceeded with the disallowance under rule 8D without assigning any reasons as to why the assessee's claim is not correct unsustainable in law or on facts.

11. On the other hand ld. DR strongly relied upon the order of Learned CIT (Appeals) and submitted he has given detail reasoning as to why such disallowance should be made.

12. We have heard the rival submissions, perused the relevant findings given in the impugned order as well as material placed on record. First of all, it is noticed that the claim of exempt income is only to the extent of Rs.10,14,732/- and as against this income the disallowance as confirmed by the Learned CIT(Appeals) after applying rule 8D comes to Rs. 41,87,027/-. Neither of the authorities have analysed the assessee's accounts specifically the nature of expenditure debited to the profit & loss account as well as the stocks of shares recorded in the books of account, i.e., whether it is held as stock-in-trade or as investment or as both. When the assessee has demonstrated that the interest bearing funds have been utilized for giving loans and advances on which huge interest income has been earned, then prima facie there could not be any case of disallowance of interest. Similarly with regard to the working of indirect expenditure there are various aspects which needs to be examined to like nature of expenses debited, working of average value of investment, if rule 8D at all is held to be applicable. None of these fact and assessee's nature of accounts have been examined by AO or CIT (A) as per law enshrined in section 14(2). Accordingly, we are of the opinion that the whole matter regarding disallowance u/s 14A should be restored back to the file of the Assessing Officer to examine the claim of the assessee having regard to the accounts maintained by it and only after examination of such accounts, he shall proceed to record his satisfaction as per the mandate of section 14(2). Thus, we are setting aside this issue to the file of the

Assessing Officer to be decided afresh and in accordance with the law after giving due opportunity to the assessee to explain its case.

13. In the result, the appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the open court on 18.04.2017.**

**Sd/-**

**(N.K. SAINI)  
ACCOUNTANT MEMBER**

**Sd/-**

**(AMIT SHUKLA)  
(JUDICIAL MEMBER)**

Dated:18.04.2017

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Copy forwarded to:

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

ASSISTANT REGISTRAR

	Date
Draft dictated on	12.04.2017
Draft placed before author	13.04.2017
Draft proposed & placed before the second member	

Draft discussed/approved by Second Member.	
Approved Draft comes to the Sr.PS/PS	18 .4.2017
Kept for pronouncement on	
File sent to the Bench Clerk	19 .4.2017
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	