

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI
BEFORE SHRI R.C. SHARMA, AM AND SHRI RAVISH SOOD, JM**

आयकर अपील सं./I.T.A. No.6245/Mum/2013

(निर्धारण वर्ष / Assessment Year: 2010-11)

SHRI ASHOK KUMAR DAMANI SURYA MAHAL, 1 ST FLOOR, 5 BURJORJI BHARUCHA MARG, FORT, MUMBAI, 400023	बनाम/ Vs.	DCIT 4(1), AAYAKAR BHAVAN, MUMBAI,
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.		AABPD1845K
(अपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Hiro Rai
प्रत्यर्थी की ओर से / Respondent by	:	Shri A. Ramachandran

सुनवाई की तारीख/ Date of Hearing	:	03/11/2016
घोषणा की तारीख / Date of Pronouncement	:	24/01/2017

आदेश / ORDER

PER RAVISH SOOD, JM:

The present appeal filed by the assessee arises from the order of the CIT(A)-8, Mumbai; dated. 12.09.2013, which in itself

arises from the assessment framed by the A.O under Sec. 143(3) of the Income-tax Act, 1961 (for short 'Act'), dated. 13.12.2012.

2. The brief facts of the case are that the assessee who is a Share & Stock broker and a member of BSE & NSE, CDSL, NSDL & MCX Stock exchange, in both cash and derivative segments, was engaged in the business of share trading, broking and other related activities viz. trading in Capital market and Futures & Options segment, debt securities, investment in debt securities & shares. The assessee had e-filed his return of income declaring income of Rs. 4,81,66,370/-, which was processed as such under Sec. 143(1) of the 'Act'. The case of the assessee was thereafter taken up for scrutiny proceedings.

3. The A.O during the course of the assessment proceedings observed that though the assessee had earned dividend income of Rs.66,66,536/- which was claimed as exempt, however no disallowance on account of expenses incurred towards earning such exempt income was made by the assessee in his return of income. That the assessee on being called upon to explain as to why provisions of section 14A r.w. rule 8D should not be applied in his case, therein submitted that his principal business was to deal and invest in shares, securities etc., which involved buying and selling of shares, with the prime objective as that of earning profit from the appreciation in the price of such shares and securities. It was thus submitted by the assessee that the dividend income was an incidental income, because the intention of the assessee while buying the shares, is not to earn dividend, but to earn by way of appreciation in the market value of the shares and securities. That in the backdrop of his

aforesaid contention, it was submitted by the assessee that the expenses pertaining to office administration as well as the finance cost were directly attributable to trading and investment activities, and not the dividend income. The assessee in support of his contention relied on the following judicial pronouncements:-

- (i) Vidyut Investment Ltd. vs. ITO [(2006) 10 SOT 284 (Delhi)]
- (ii) Dhanlaxmi Bank Ltd. Vs. ACIT [2007] 12 SOT 625 (Cochin)]
- (iii) Godrej Agrovet Ltd. vs. ACIT (ITA No.1629/M/2009 - Mum Trib)

The submission of the assessee that no disallowance under Sec. 14A was called for in its hands, however did not find favor with the A.O.

4. That during the course of the assessment proceedings the assessee had also submitted a working of disallowance under Sec. 14A, however the A.O observing that the assessee in his process of computing the disallowance had not considered the 'Stock in trade' while arriving at the average value of the investments, thus rejected the same and recalculated the disallowance u/s. 14A, as per method prescribed in Rule 8D, and made a disallowance of Rs.10,30,954/- in the hands of the assessee. The A.O after deliberating on certain other issues therein assessed the income of the assessee at Rs. 4,95,36,540/-. The appeal of the assessee against the assessment order was dismissed by the CIT(A).

5. The assessee being aggrieved with the order of the CIT(A), therein upholding the disallowance made by the A.O under Sec. 14A, had thus carried the matter in appeal before us. The assessee had assailed the disallowance under Sec. 14A, on the ground that the figure of

'Stock-in-trade' should not have been treated as an 'Investment' by the A.O for the purpose of calculation of disallowance under Sec. 14A r.w Rule 8D, because the 'Stock-in-trade' is never maintained for earning exempt income. Thus it was submitted by the assessee that as Rule 8D only refers to investment, and not 'Stock in trade', therefore the A.O while calculating the disallowance under Sec. 14A r.w Rule 8D, had committed an error by including the figure of 'Stock in trade' with the figure of 'Investment'. It was the contention of the Ld. A.R that the A.O by wrongly including the figure of the 'Stock in trade', had thus wrongly taken the 'average figure of investment' at Rs.20,61,90,144/- while computing the disallowance under Sec. 14A r.w Rule 8D. The Ld. A.R submitted that the issue that 'Stock in trade' is not to be included in the figure of 'Investment' had been appreciated by the Tribunal in the case of the assessee for A.Y. 2008-09, titled as : **Ashok Kumar Damani Vs. ACIT, ITA No. 1244/Mum/2012, Dt. 21.10.2015.** It was thus submitted by the Ld. A.R that necessary direction be issued to the revenue for excluding the amount of the 'Stock-in trade', while computing the disallowance under Sec. 14A in the hands of the assessee.

6. We have perused the order of the co-ordinate bench of the Tribunal in the case of the assessee for A.Y. 2008-09, titled as : **Ashok Kumar Damani Vs. ACIT, ITA No. 1244/Mum/2012, Dt. 21.10.2015** (copy of which is at Page 1-2 of the 'APB'), wherein it is held as under:-

"5. We have considered the rival submissions and perused the material on record. We find that the AO had computed the

*disallowance considering the provisions of section 14A r.w Rule 8D, that the assessee had submitted that shares held by it were part of stock-in trade, that the assessee had not provided the detailed working before the A.O or the FAA with regard to shares held as stock-in-trade/investment. **We are of the opinion that disallowance 14A can be made only when the shares are held as investment and not as stock-in trade.** As the issue has not been deliberated upon by the A.O in absence of availability of details of shares held under both the categories, therefore, in the interest of justice we are remitting the matter to his file. He is directed to exclude the stock-in trade while calculating the disallowance. The assessee is directed to file the detailed working of the stock-in trade before the A.O. Considering the peculiar facts and circumstances of the case effective ground of appeal is allowed in favor of the assessee.”*

We find ourselves to be in agreement with the view taken by the co-ordinate bench of the Tribunal in the aforesaid case of the assessee, and find no reason to take a different view as regards the same issue which is involved in the present appeal of the assessee before us. We are of the considered view that no disallowance is called for in respect of funds involved in shares and securities held by the assessee as stock-in trade. That in light of our aforesaid observations, we thus restore the matter to the file of the A.O, with a direction to recalculate the amount of disallowance under Sec. 14A after excluding the figure of the ‘Stock in trade’ while working out the average investment. The matter is thus restored to the file of the A.O who is directed to

compute the disallowance under Sec. 14A, in light of our aforesaid observations.

7. The appeal of the assessee is allowed.

Order pronounced in the open court on 24/01/2017.

Sd/-

(R.C Sharma)

Sd/-

(Ravish Sood)

लेखा सदस्य / Accountant Member न्यायिक सदस्य / Judicial Member
मुंबई Mumbai; दिनांक Dated : 24.01.2017

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.
Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai