

आयकर अपीलीय अधिकरण, “जे” खंडपीठ मुंबई
INCOME TAX APPELLATE TRIBUNAL, MUMBAI-“J” BENCH
सर्वश्री संजय गर्ग, न्यायिक सदस्य एवं अश्वनी तनेजा, लेखा सदस्
Before S/Sh. Sanjay Garg, Judicial Member & Ashwani Taneja, Accountant Member
आयकर अपील सं./ITA No.2863/Mum/2014, निर्धारण वर्ष/Assessment Year-2009-10

J.M. Financial Institutional Securities Ltd.(Successor of JM Financial Ventures Ltd.) 7 th Floor, Cnergy, appasaheb Marathe Marg, Prabhadevi Mumbai-400 025. PAN No.AAACM 7079 C	Vs.	CIT-3, Room No.612, Aayakar Bhavan M.K. Road Mumbai-400 020.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Appellant by	S/Shri K.Sivaram & Sanjay Parikh
Respondent by	Shri Alok Johri-DR

Date of hearing	:	17.12.2015
Date of pronouncement	:	08.01.2015

ORDER

PER ASHWANI TANEJA, AM:

This appeal is filed by the assessee against the order passed by the Id. CIT-3 , Mumbai u/s. 263 for assessment year 2009-10 vide order dt.10.3.2014. Assessee has raised the following grounds :-

“A) Revision u/s. 263

1) *The learned Commissioner of Income Tax - 3, Mumbai (CIT) erred on facts and in law in setting aside the order passed by the Income Tax Officer 3(2)(1), Mumbai (AO) holding that the order passed by the Assessing Officer (AO) was passed without application of mind or failed to apply his mind to the case in all perspective and therefore the order was erroneous.*

2) *The learned CIT erred on facts and in law in holding that the AO had not made any enquiry before accepting the disallowance made by the*

appellant u/s. 14A of Rs. 1,54,50,477/- and hence the order of the AO was erroneous and prejudicial to the interest of the revenue.

3) The appellant prays that your honour hold that the order passed by the AO was after making proper inquiry and was neither erroneous nor prejudicial to the interest of the revenue and hence the order passed by the CIT u/s. 263 setting aside the assessment made by the AO, may be held to be bad in law.

B) General

4) The above grounds of appeal are without prejudice to one another and the appellant craves leave to add, alter, amend, delete or modify any of the above grounds of appeal.”

2. The order under section 263 has been passed by the CIT on the ground that AO had passed the assessment order without application of mind with respect to disallowance u/s.14A.

3. During the course of hearing it has been submitted by the Id. Counsel that aggregate expenses debited in the P&L account of the assessee are to the tune of Rs.1,98,84,182/-, as against which the assessee itself disallowed voluntarily u/s. 14A a sum of Rs.1,54,50,477/- as per computation sheet enclosed in the paper book. It was further submitted that during the course of assessment proceedings queries were asked by the Assessing Officer with respect to disallowance u/s. 14A, and in response to the same, the assessee had furnished requisite information and details and these were duly considered by the AO and only thereafter claim, of the assessee was accepted in the assessment order. It is also submitted that no justification has been given by the Id. CIT that how disallowance made by the assessee voluntarily was incorrect. It has also not been shown by the Id.CIT that disallowance works out to be for a greater amount. Only on vague remarks the

assessment has been set aside. On the other hand Id. DR has relied upon the order of the CIT.

4. We have gone through the submissions made by both sides, orders of the lower authorities and material placed before us for our consideration. It is noted by us that assessee is a non-banking financial company. During the year, it has earned interest income also, which is taxable under the income tax law. It has also earned dividend income, which has been claimed as exempt in the computation sheet. It is noted that voluntary disallowance of Rs.1,54,50,477/- has been made by the assessee in the computation sheet. Further details were asked by the Assessing Officer during the course of assessment proceedings. In response, the assessee submitted detailed break up and justification for making proportionate disallowance out of the expenses claimed by the assessee in the P&L account. Item-wise break-up of expenses has been given justifying allocation of expenses for earning exempted income. All these details were duly examined by the Assessing Officer, and thereafter only the Assessing Officer found that voluntary disallowance made by the assessee in the return filed by it, was justified as per law and facts. In the order passed u/s. 263 Id. CIT has alleged that there was no application of mind by the Assessing Officer. We find that there are no justified basis on the part of Id. CIT to hold it so. Nothing has been mentioned in the order by the Id. CIT that how the disallowance made u/s.14A would be of an amount more than the disallowance made by the assessee itself. It is noted that the assessee has itself made disallowance of Rs.1.54 crores as against total expenditure of Rs.1.98 crores, and its justification has also been given during the course of assessment proceedings. The view taken by the Assessing Officer is certainly one of the possible views as per law. We further find that the disallowance made by the assessee voluntarily in the return is justified as per law and facts. Keeping in view

all the facts and circumstances of the case and taking help from the judgment of *Hon'ble Bombay High Court in the case of Fine Jewellery (372 ITR 303)*, the order passed by the Id. CIT is contrary to law and facts and, therefore, it is hereby quashed.

5. As a result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 08.01.2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 08 जनवरी, 2016 को की गई।

Sd/-

(संजय गर्ग /SANJAY GARG)
न्यायिक सदस्य/ JUDICIAL MEMBER

Sd/-

(अशवनी तनेजा /ASHWANI TANEJA)
लेखा सदस्य /ACCOUNTANT MEMBER

मुंबई, Mumbai, दिनांक Dated : 08.01.2016
Jv, Sr. PS

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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai