



IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA no.4358/Mum./2012
(Assessment Year : 2009-10)

M/s. Sharyans Resources Ltd.
Kalpataru Heritage
127, M.G. Road, Fort
Mumbai 400 001 PAN AABCS8634C

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-2(3), Aayakar Bhawan
101, M.K. Road, Mumbai 400 020

..... Respondent

Assessee by : Shri Vijay Mehta
Revenue by : Shri Ritesh Misra

Date of Hearing - 03.03.2016

Date of Order - 11.03.2016

ORDER

PER SAKTIJIT DEY, J.M.

Aforesaid appeal by the assessee is directed against the order dated 30th May 2012, passed by the learned Commissioner (Appeals)-6, Mumbai, for the assessment year 2009-10. Effective grounds raised by the assessee are as under:-

"1. On the facts and in the circumstances of the case and in law, the learned Commissioner (Appeals) erred in upholding the action of the Assessing Officer in disallowing ₹ 31.86.555 under section 14A on account of expenses attributable to earning of exempt income. The appellant prays that the same may please be deleted.

2. On the facts and in the circumstances of the case and in law, the learned Commissioner (Appeals) erred in upholding the action of the Assessing Officer in disallowing ₹ 1,70,234 towards repairs and maintenance considering the same as capital expenditure. The appellant prays that the same may please be deleted."

2. As far as ground no.1 is concerned, briefly stated the facts are, assessee company filed its return of income for the assessment year under consideration on 29th September 2009, declaring total income of ₹ 98,00,126. In the course of assessment proceedings, it was noticed by the Assessing Officer that assessee has earned dividend income of ₹ 25,62,341, during the relevant previous year which has been claimed as exempt. He also noticed that the assessee has voluntarily disallowed an amount of ₹ 92,019 under section 14A of the Income Tax Act, 1961 (for short "*the Act*"). However, Assessing Officer called upon the assessee to explain why the disallowance under section 14A should not be worked out in terms of rule 8D. In response to the query raised by the Assessing Officer, assessee submitted a detail explanation stating reasons for which the disallowance made by him suo-motu should be accepted. The Assessing Officer, however, did not find merit in the submissions of the assessee. Relying upon the decision of the Hon'ble Jurisdictional High Court in Godrej & Boyce Mfg. Co. Ltd. v/s DCIT, [2010], 328 ITR 081 (Bom.), the Assessing Officer held that disallowance under section 14A, has to be worked out

in terms of rule 8D and accordingly, proceeded to compute the disallowance by applying the said rule which ultimately worked out to ₹ 32,78,574. The assessee having itself disallowed ₹ 92,019, the net disallowance made by the Assessing Officer under section 14A, was ₹ 31,86,555. Being aggrieved of such disallowance, assessee preferred appeal before the learned Commissioner (Appeals), wherein the assessee submitted, it has itself worked out disallowance under rule 8D(2)(iii) @ 50% of average value of investment in quoted shares towards expenditure incurred for earning exempt income. The learned Commissioner (Appeals), however, did not accept the claim of the assessee and upheld the disallowance made by the Assessing Officer.

3. Learned Authorised Representative, at the outset submitted, identical issue has been decided by the Tribunal in assessee's own case for the assessment year 2008-09 by restoring the issue back to the file of the Assessing Officer. A copy of the said order passed by the Tribunal in ITA no.8591 and 8643/Mum./2011, dated 16th October 2015, was also placed before the Bench. He, therefore submitted, in the impugned assessment year also, the issue may be restored back to the file of Assessing Officer.

4. Learned Departmental Representative has not opposed the aforesaid contention of the assessee.

5. We have considered the submissions of the parties and perused the material available on record. Undisputedly, assessee on its own has worked out the disallowance @ 0.5% of the average investment in quoted equity shares. The Departmental Authorities, however, have not accepted the method adopted by the assessee. It is seen that similar dispute arose in case of assessee in assessment year 2008-09 also. The Tribunal, while dealing with the issue, restored back the matter to the file of the Assessing Officer with following observations:-

"6. Considering the above submissions of the Ld. Representatives of the parties, in our view, the issue requires a fresh examination at hands of the AO. We therefore, restore this issue to the file of the AO with a direction that the AO will consider the correctness of the suo-moto disallowance made by the assessee and will record an objective satisfaction in this regard. He is also directed to consider the above stated propositions and the relevant case laws produced by the assessee in support of its contentions and to pass a speaking order thereafter in accordance with law. This appeal of the assessee is treated as allowed for statistical purposes."

As there is no material difference in facts in the impugned assessment year, respectfully following the decision as aforesaid, we restore the issue to the file of the Assessing Officer for deciding afresh in terms of the directions in the order passed by the Tribunal referred to above. Thus, ground no.1, is allowed for statistical purposes.

6. In ground no.2, assessee has challenged disallowance of expenditure incurred towards repairs and maintenance by treating the same as capital expenditure.

7. Briefly stated the facts are, the Assessing Officer noticing that assessee had debited expenditure to the tune of ₹ 5,73,027, for repairs and maintenance called upon the assessee to justify the same. In response to the query raised, though the assessee submitted, such expenditure is allowable as revenue expenditure, but the Assessing Officer pointing out that out of the total expenditure claimed, an amount of ₹ 1,70,234, was incurred for major civil work which includes purchase of wood, painting grill and marble works, etc., held the expenditure to be of capital in nature and added back to the income of the assessee. Though, assessee challenged the disallowance before the learned Commissioner (Appeals), he also confirmed the same.

8. Learned Authorised Representative submitted, the issue stands covered in favour of the assessee by the decision of the Tribunal in assessee's own case for assessment year 2003-04 and 2008-09.

9. Learned Departmental Representative has not opposed the aforesaid contention of the learned Authorised Representative.

10. We have considered the submissions of the parties and perused the material available on record. On a perusal of the order passed by

the co-ordinate bench in ITA no.8591/Mum./2011, dated 16th October 2015, for assessment year 2008-09, it is observed the Tribunal following its own order in assessee's case for assessment year 2003-04 vide ITA no.44/Mum./2007 dated 21st November 2008, held that as the assessee is engaged in the business of project management, leasing & financing in real estate and the properties were taken on lease with mutual understanding with the lessor with right to sub-lease the premise and also to make alterations and changes in the premise as per the requirement of sub-tenant / occupier and in the process has received much higher rent than what was paid by the assessee to the owner, and further, when the rent received has been assessed as business income, the expenditure incurred has to be allowed as revenue expenditure. That being the case, as there is no material difference in facts, following the aforesaid order of the co-ordinate bench of the Tribunal, we allow assessee's claim of expenditure by deleting the addition made.

11. In the result, assessee's appeal is partly allowed.

Order pronounced in the open Court on 11.03.2016

Sd/-
RAMIT KOCHAR
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 11.03.2016

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai