

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER AND
SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.524/Bang/2013
Assessment years : 2008-09

M/s. SW Finance Co. Ltd., (Formerly known as M/s. Shaw Wallace Breweries Ltd.,) UB Towers, 6 th Floor, 24, Vittal Mallya Road, Bengaluru-560001. PAN : AAFCS3230E	Vs.	Commissioner of Income Tax, Bengaluru-III, Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Shreya Loyalka, C. A.
Revenue by	:	Smt. Sowmya Achar, Additional CIT

Date of hearing	:	05.04.2017
Date of Pronouncement	:	28.04.2017

ORDER

Per A.K. Garodia, Accountant Member

This appeal is filed by the assessee which is directed against the order of the learned CIT dated 22.03.2013 passed by him under section 263 for the assessment year 2012-13. The grounds raised by the assessee are as under:

1. That the above order of the Commissioner of Income tax in so far it is against the assessee is against the law, facts, circumstances, natural justice, equity and all other known principles of law.
 2. The CIT erred in assuming jurisdiction u/s 263 without first satisfying that the assessment order suffered from an error which is prejudicial to interest of revenue.
 3. The CIT erred in issuing the notice u/s 263 when there was no error from the records available.
 4. The CIT erred in holding the discretion exercised by the AO in favour of the assessee as an error and such a view is against law.
 5. That the CIT erred in holding that order of assessment was erroneous and prejudicial to the interests of revenue.
 6. The Learned CIT erred in assuming jurisdiction u/s 263 of the I T Act by issue of notice dt.07.11.2012.
 7. The order u/s 263 passed by the Learned CIT dt. 22.03.2013 is erroneous having regard to the facts, circumstances and law on the issue.
 8. The Learned CIT erred in holding the order passed by the AO as erroneous and prejudicial to interest of revenue and issuing directions to the AO for making disallowance of expenditure u/s 14A of the Act.
 9. For the above and other grounds and reasons which may be submitted during the course of hearing of this appeal, the assessee requests that the appeal be allowed as prayed and justice be rendered.
2. Learned AR of the assessee placed reliance on the following judicial pronouncements:

1. Accel Ltd., Vs. DCIT 54 SOT 174 (Chennai)
2. CIT vs. DLF Ltd., 350 ITR 555 (Delhi)
3. Priya Exhibitors (P.) Ltd., Vs. ACIT, ITA No. 1707 (Delhi) 2011
4. CIT vs. Vegetable Products Ltd., 88 ITR 192 (SC).

3. By placing reliance on the above judgments, this was the argument of the learned AR of the assessee that learned CIT has to give a finding in the order passed by him under section 263 that certain amount claimed by the assessee as deduction against computation of income defacto related to earning of tax-free income and in the absence of such finding, it is not possible to hold that the assessment order passed by the AO is erroneous and therefore, under these facts, the revision order passed by him is not justified. It is submitted that in the present case also, the learned CIT in the impugned order has not given such finding and therefore, in the present case also, the order u/s 263 is not justified.

4. The learned DR of the Revenue supported the order passed by the CIT.

5. We have considered the rival submissions. We find that as per the assessment order passed by the AO under section 143 (3) of the IT Act on 25.11.2010, there is no discussion in the order regarding any enquiry by the AO with regard to incurring of

expenditure for earning exempted income. Learned AR of the assessee did not bring on record any evidence to show that any query was raised by the A. O. in course of assessment proceedings on this issue. It is noted by CIT on page No. 4 of his order that it was submitted by the assessee before him that the assessee has earned dividend income in the present year of Rs.520485/-. It was also noted by him that the assessee has submitted that the assessee has debited the expenditure to the tune of Rs.98.30 lakhs out of which the assessee itself has added back the amount of Rs.69.03 lakhs incurred by the assessee on account of investment redemption loss. On page No. 6 of his order, it is noted by the learned CIT that the assessee being a financing & investment company has only 2 sources of income i.e., interest income and dividend income and all the expenditure debited by the assessee to P & L account are related only to earning of these 2 incomes. From this findings of learned CIT, it comes out that he has given a categorical finding that the assessee has incurred administrative expenses of Rs.98.30 lakhs (-) Rs.69.03 lakhs for which deduction has been claimed by the assessee and such expenses are claimed in respect of these 2 incomes i.e., interest income and dividend income. In view of these findings of the learned CIT in the impugned order, in our considered opinion, the judgments on which reliance has been placed by the learned AR are not applicable because the facts are different. In those cases, it is

noted by the Tribunal that no such finding has been given by the learned CIT that any expenditure has been claimed by the assessee which is relatable to earnings of tax free income. Hence these judgments do not render any help to the assessee in the present case. We also find that the CIT has followed the judgment of Hon'ble Delhi High Court rendered in the case of CIT Vs. Galileo India Pvt. Ltd., (2012) 211 Taxman 35 (Delhi) wherein it was held that if the AO does not make any enquiry which is required and the order by the AO is not in conformity with the Act, it is erroneous and can be revised by the CIT. In this case also, the AO did not make any enquiry about disallowance under section 14A of the IT Act. Therefore, respectfully following this judgment of the Hon'ble Delhi High Court, we decline to interfere in the order of the CIT. Regarding reliance placed by the learned AR of the assessee on the judgment of Hon'ble apex court rendered in the case of CIT Vs. Vegetables Products Ltd., (Supra), we find that it was held by Hon'ble Apex Court in this case that if two reasonable constructions of a taxing provisions are possible then construction in favour of the assessee must be adopted. In the present case, this is not shown by the learned AR of the assessee as to how there can be a reasonable construction of section 14A of the IT Act which may be in favour of the assessee by showing that making no enquiry by the AO in respect of expenses incurred by the assessee for earning

dividend income is a possible view. Hence this judgment is also not rendering any help to the assessee in the present case.

6. In view of the above discussion, we find no infirmity in the impugned order of the CIT passed by him under section 263 of the Act.

7. In the result, the appeal of the assessee is dismissed.

Pronounced in the open court on this 28th day of April, 2017.

Sd/-

(LALIET KUMAR)

JUDICIAL MEMBER

Place: Bangalore:

D a t e d : 28.04.2017

/NShylu/*

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-II Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

Sd/-

(A.K. GARODIA)

ACCOUNTANT MEMBER

By order, AR, ITAT, Bangalore