

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "सी" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI
BEFORE S/SHRI B.R.BASKARAN, AM AND AMARJIT SINGH, JM

आयकर अपील सं./I.T.A. No.6229/Mum/2013
(निर्धारण वर्ष / Assessment Year:2007-08)

M/s Premji Vishram and Co., C/o R C Reshamwala and Co, Chartered Accountants, 323, Varma Chambers 11, Homji Street, Fort, Mumbai-400001	बनाम/ Vs.	Addl. Commissioner of Income Tax -Circle-14(3), 5 th floor, Earnest House, Nariman Point, Mumbai-400021
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN. :AAAFP3887G

अपीलार्थी ओर से / Appellant by	Shri Kirit Sanghvi and Shri Manish Reshmwala
प्रत्यर्थी की ओर से/Respondent by	Ms.Radha K Narang

सुनवाई की तारीख / Date of Hearing : 29.12.2015
घोषणा की तारीख /Date of Pronouncement: 1.1.2016

आदेश / O R D E R

Per B R Baskaran, AM:

The appeal filed by the assessee is directed against the order dated 15.3.2013 passed by Ld CIT(A)-25, Mumbai for the assessment year 2007-08 wherein the Id. CIT(A) has confirmed the following additions made by the AO:

- a) The disallowance of loss of Rs.3,50,000/-;
- b) Disallowance of repair and maintenance expenditure of Rs.2,90,000/-; and
- c) Disallowance u/s 14A of Rs.6,73,650/-

2. We heard the parties and perused the record. The assessee is a partnership firm carrying on the business in pharmaceutical products on wholesale basis. The first issue relates to disallowance of claim of

Rs.3,50,000/- made by the assessee as bad debts. The AO noticed that the assessee had given an advance of Rs.3,50,000/- to a person named as Shri Nilesh Shah and the assessee has claimed the same as bad debt. The assessee submitted that the above said advance was given for starting a new business which did not materialize. Further the assessee could not recover the advance and hence it was written off. The AO further noticed that the assessee should have offered the above said amount of Rs.3,50,000/- as his income as per the provisions of section 36(2) in order to claim the deduction of bad debts u/s 36(1)(vii) of the Act. Accordingly, the AO disallowed the claim of bad debts of Rs.3,50,000/-. The Id.CIT(A) also confirmed the same.

3. At the time of hearing, the Id. AR submitted that the assessee had given this advance for starting a new venture in the pharmaceutical lines. However, the advance was given during the course of carrying on the business and the loss of the same should be allowed as a trading loss under section 28 of the Act. The Id. AR further submitted that the assessee has ultimately recovered the amount of Rs.3,50,000/- and the same was offered as income in the assessment year 2014-2015.

4. When it was specifically asked to the Id.AR as to whether the assessee was having any material to show that the advance was given for starting the new venture in the pharmaceutical lines and further whether there was any material to show that the assessee was taking all steps to recover the amount, the Id.AR fairly admitted that the assessee does not have any such material to substantiate its claim. The Id. AR alternatively prayed that the AO should be directed to delete the amount of Rs.3,50,000/- offered by the assessee in assessment year 2014-15, if the impugned disallowance is confirmed during the year under consideration.

5. Admittedly, the assessee does not have any material to prove that the advance of Rs.3,50,000/- was given in connection with a view to start new venture in the pharmaceutical lines. Hence, the claim of the assessee that the advance was given in the normal course of business was not substantiated. The tax authorities were right in holding that the loss of advance cannot be claimed as bad debt, since the same was not offered as income in any of the years. In the absence of any material to show that it was a trading loss, we are of the view that the Id. CIT(A) was justified in confirming the disallowance of Rs.3,50,000/- made by the AO.

6. At the same time, we find merit in the alternative submission of the assessee. Since the disallowance of Rs.3,50,000/- has been confirmed by us during the year under consideration, the said amount offered by the assessee in the assessment year 2014-15 is liable to be deleted. Accordingly, we direct the assessee to move an appropriate petition before the AO, who shall act upon it in accordance with the discussions made (supra).

7. The next issue relates to disallowance made out of repairs and maintenance expenditures. The assessee claimed the sum of Rs.4,59,666/- as repair and maintenance expenditure. The AO noticed that the assessee has paid a sum of Rs.2,90,000/- to a firm named as M/s Saya Construction Co. for renovation of its business premises. The AO took the view that the assessee has carried out extensive construction work and hence, the amount of Rs.2,90,000/- referred above should have been capitalized by the assessee. Accordingly, the AO disallowed the amount of Rs.2,90,000/- treating the same as capital expenditure. The Id. CIT(A) confirmed the same.

8. We heard the parties on this issue and perused the record. We notice that the assessee had taken business premises on rent and it has

been occupying the same for the last 40 years. The Id. AR, inviting our attention to the details of repairs and maintenance furnished in the paper book, submitted that the assessee has only strengthened and repaired the existing structures of the business premises and hence the same is allowable as revenue expenditure. A perusal of the details submitted by M/s Saya Construction Co. would show that it has mainly done plastering work and has also undertaken repairs of floor and other items. It was not shown to us that the assessee has not built any new structure by incurring these expenditures. Accordingly, we are of the view that the amount of Rs.2,90,000/- spent by the assessee is in the nature of revenue expenditure, since the same has been incurred on maintenance of the existing business premises of the assessee. Accordingly, we set aside the order of Id. CIT(A) on this issue and direct the AO to delete the impugned addition.

9. The next issue relates to the disallowance made u/s 14A of the Act. The Id. AR submitted that the AO has applied the provisions of Rule 8D of the Income Tax Rules, 1962 for the year under consideration even though he said Rule is not applicable to the assessment year 2007-08. He further submitted that the Id.CIT(A) accepted this position of law but held that the disallowance computed by the AO is reasonable one. The Id. AR further submitted that the assessee has received dividend income of Rs.8.94 lakhs during the year under consideration. He submitted that the entire borrowings made by the assessee having used for the business purpose only. He further submitted that the assessee is carrying on the share trading activities and has also made investments. Accordingly, he submitted the disallowance made u/s 14A has to be a made on reasonable basis as held by the Hon'ble jurisdictional High Court in the case of Godrej & Boyce Manufacturing Co. Ltd. (328 ITR 81)(Bom).

10. On the contrary, the Id. DR submitted that the assessee has earned dividend income of Rs.8.94 lakhs and hence disallowance has to be made u/s 14A of the Act.

11. In the rejoinder, the Id.AR submitted that the assessee has worked out the disallowance at Rs.46,425/- and the same is placed at page 66 of paper book.

12. There is no dispute with regard to the fact that the provisions of Rule 8D are not applicable to the year under consideration. Hence, the disallowance u/s 14A is required to be made on a reasonable basis as held by the Jurisdictional High Court in the case of 'Godrej & Boyce Manufacturing Co. Ltd. (supra). We notice that the assessee is holding shares as investment and also stock-in-trade. Closing value of shares held as investment was Rs.84.07 lakhs and the closing value of stock-in-trade was Rs.20.42 lakhs. The partners' capital account stand at Rs.120.27 lakhs, which is more than the value of investments/stock in trade of shares. The profit and loss account provided by the assessee for share trading business shows that the assessee has booked only direct expenses in the business. The aggregate expenditure (other than interest) booked in other business carried on by the assessee stands at Rs.49.10 lakhs, of which the administrative expenses stand at Rs.17.34 lakhs and salary expenses stand at Rs.13.37 lakhs. The assessee was having a turnover of Rs.14.65 crores in its other business. Thus, we notice that the administrative expenses have been mainly incurred for other business purposes. Considering all these factors, we are of the view that the disallowance made u/s 14A may be determined at Rs.46,425/-, as worked out by the assessee, since the same works out to about 5% of the dividend income received by the assessee. Accordingly, we set aside the order of Id.CIT(A) and sustain the disallowance u/s 14A at Rs.46,425/-.

13. In the result, the appeal filed by the assessee is partly allowed.

Pronounced accordingly on 1st Jan,2016.

घोषणा खुले न्यायालय में दिनांक: 1st Jan, 2016 को की गई ।

Sd
(AMARJIT SINGH)
JUDICIAL MEMBER

sd
(B.R. BASKARAN)
ACCOUNTANT MEMBER

मुंबई Mumbai: 1st Jan, 2015.

व.नि.स./ SRL , 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)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True copy

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai