

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ 'सी' मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

श्री आर. सी. शर्मा, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष
BEFORE SHRI R.C.SHARMA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A.No.440/M/14
(निर्धारण वर्ष / Assessment Year: 2008-09)

Chandler Investment & Trading Co. Pvt. Ltd. 101, Doctor Centre, 135, August Kranti Marg, Kemps Corner, Mumbai - 400036	बनाम/ Vs.	Commissioner of Income Tax -5 Room No.559, Aayakar Bhawan, M.K.Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACC1588J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Pankaj Toprani
Department by:	Shri T. Roumaun Paite

सुनवाई की तारीख / Date of Hearing: 22.09.2015

घोषणा की तारीख /Date of Pronouncement: 03.02.2016

आदेश / O R D E R

PER AMARJIT SINGH, JM:

This is an appeal against the order passed by the Commissioner of Income Tax - 5, Mumbai [hereinafter referred to as the "CIT"] dated 16.12.2013 relevant to the A.Y. 2008-09.

2. The assessee company was incorporated as an investment company in 1994 and was initially conducting the investment activities. However from last 7 to 8 years, its main activity and business is dealing in land and real estate. The assessee has purchased various pieces of land around Delhi and Mumbai for the purpose of development. The company was also investing in mutual fund and was earning dividend. Initially the assessment order was passed u/s. 143(3) r.w.s. 147 of the Income Tax Act, 1961(in short “the Act”) on 07.02.2013 vide which the total loss of company was determined to the tune of Rs.2.26 crores. During the course of assessment proceedings it was noticed that the assessee had earned exempt income of Rs.1,65,677/- in the form of dividend from mutual funds. The Assessing Officer made disallowance u/s 14 A of the Act of Rs.2,15,006/- i.e. expenses directly related to earning of dividend income of Rs.56,930/-(Rs.1200/- + Rs.55730/-) and 0.5% of average investment of Rs.1,58,076/-. Thereafter the matter was taken up by the CIT 5, Mumbai in view of the provision u/s. 263 of the Act and the said authority arrived at this conclusion that Assessing Officer has not considered the amount of interest of Rs.2.17 crores which has been debited to the profit and loss account for making disallowance with reference to Rule 8D(ii) of the Income Tax rules. The said amount was liable to be disallowed comes to the tune of Rs.11,22,594/- on the basis of following facts and figures:-

	As on 31.03.2008	31.03.2008	Average
Assets	59,90,10,532	62,46,17,771	61,18,14,151
Investments	3,61,311	6,28,69,271	3,16,15,291

Feeling aggrieved the assessee has been filed the present appeal before us.

3. We have heard the arguments advanced by the learned representative of the parties and perused the record carefully. The learned representative of the assessee has argued that the Assessing Officer has already considered the facts and figures of the account regarding disallowance u/s 14A of the Act, therefore, the matter was not required to be taken up again in view of the provision 263 of the Act and also placed reliance upon the law settled in [2009] 227 CTR(Del)133 in case titled as CIT Vs. Sunbeam Auto Ltd. It is also argued by the learned representative of the assessee that on the basis of the similar facts and circumstances of the present case, the Income Tax Appellate Tribunal, Mumbai bench has also passed the order dated 11.12.2014 in ITA No.2170/M/13 in case titled as South Seas Dist & Brew Pvt. Ltd. Vs. CIT 5, Mumbai therefore in the said circumstances the order in question u/s 263 of the Act is wrong against law and facts and is liable to be set aside. While, on the other hand the learned representative of the Department has strongly relied upon the order passed u/s 263 of the Act. The assessment order dated

07.02.2013 passed in view of section 143(3) r.w.s. 147 of the act perused and we noticed that the learned Assessing Officer applied his mind while finalizing the assessment of assessee u/s 143(3) of the Act after giving the proper opportunity of being heard. Assessee also filed reply dated 12.01.2013 stating therein that the source of investment in the Mutual Fund is out of own funds except out of borrowed money to the tune of Rs.3,99,37,913/- for a short period of 3 to 5 days, Hence, interest of Rs.55,730/- on borrowed funds is only to be considered for working out disallowance u/s. 14A of the Act. Therefore, Assessing Officer assessed the expenditure to earn the exempt income to the tune of Rs.2,15,006/- This matter was again taken up by the learned CIT(A) in view of the provision contained in section 263 of the Act. Now it is to be seen whether the Assessing Officer has properly applied his mind or not and thereafter matter was again taken by the learned CIT(A) with regard to the reassessment of the expenditure incurred for the earning of exempted income is quite legal or not. The similar controversy has come before the Income Tax Appellate Tribunal, Mumbai bench in ITA No.2170/M/13 in case titled as South Seas Dist & Brew Pvt. Ltd dated 11.12.2014 wherein the order passed u/s 263 of the Act is held to be unjustifiable specifically in the circumstances when the Assessing Officer has applied his mind after giving proper opportunity of being heard to the assessee then the CIT(A) was held not to entitle to take up the matter in view of the provision contained in section 263 of the Act. Moreover, Hon'ble

High Court of Delhi in case titled as CIT Vs. Sunbeam Auto Ltd. has held that where the two views are arisen and one view has been taken by the Assessing Officer and the other view has been taken by the CIT(A) then in the said circumstances the matter does not come within the ambit of section 263 of the Act. In view of the said circumstances and by following the order passed by the co-ordinate bench also passed the order dated 11.12.2014 in ITA No.2170/M/13 in case titled as South Seas Dist & Brew Pvt. Ltd bench dated 12.11.2014. We are of the view that the order dated 16.12.2013 under section 263 of the Act passed by the CIT(A) is wrong against law and facts therefore the same is hereby allowed to be set aside.

4. In the result, appeal of the assessee is hereby allowed.

Order pronounced in the open court on 3rd February, 2016.

Sd/-

(R.C.SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 3rd February, 2016.

MP

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