

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM

ITA No.7260/Mum/2014

(A.Y:2010-11)

Ramu S. Deora, Sambhava Chambers, 4 th Floor, Sir P. M. Road, Fort, Mumbai 400 001 PAN: AAMPD 2141H	Vs.	The Asst. Commissioner of Income Tax, Range-12(3), Mumbai
Appellant	..	Respondent

Appellant by	..	Shri M. C. Bhuwania
Revenue by	..	Shri B. S. Bist, Sr. DR

Date of hearing	..	22-09-2016
Date of pronouncement	..	22 -09- 2016

ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the common order of CIT (Appeals)- 23, Mumbai in appeal No.CIT (A)-23/ACIT-12(3)/IT-96/2013-14 dated 14-10-2014. Assessment was framed by the ACIT,-12(3), Mumbai u/s 143(3) of the Income Tax Act, 1961 (hereinafter ‘the Act’) for assessment year 2010-11 vide his order dated 26-03-2013.

2. The first issue in the appeal of the assessee is against the order of the CIT (A) confirming the disallowance or expenses quo exempted income by invoking the provisions of section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 (hereafter “the Rules”) made by the Assessing Officer.

3. Brief facts relating to this issue are that the assessee is proprietor concern engaged in the business of manufacturing and trading of pharmaceuticals items. The assessee is mainly engaged in export business. He is in export of own manufacturing goods as well as trading goods. He is also carrying on the investment activity in his individual name under the name of 4R Millennium Securities a proprietary concern engaged in the business of

dealing in shares and securities. During the year under consideration there was no activity in this proprietary concern. The assessee has maintained separate books of account for each of the above activities. He has kept a clear distinction in investment activity and trading in shares and securities. All the three sets of accounts are separately audited and the audited accounts with the reports have been furnished along with the return of income, which is not disputed by the revenue. The assessee claimed that in M/s.4R Millennium Securities the assessee has not received dividend and any other exempt income. It was claimed that in personal account i.e. Ramu S. Deora (A/c Shares), the assessee has received following exempt income:

<i>Dividend</i>	<i>Rs. 1,33,08,802/-</i>
<i>Interest on PPF</i>	<i>Rs. 1,79,264/-</i>
<i>Interest on Tax Free Bonds</i>	<i>Rs.7,09,67,8041-</i>

It was also claimed that the assessee has incurred following expenses during the year in the accounts of Ramu S. Deora (A/c Shares):

	<i>Rs.</i>	<i>Particulars</i>
<i>D-mat Expenses</i>	<i>24,459/-</i>	<i>Debited to capital account</i>
<i>Service tax, STT</i>	<i>1,15,007/-</i>	<i>Debited to capital account</i>
<i>Bank charges</i>	<i>331/-</i>	<i>Debited to capital account</i>
<i>Cusodian Fees</i>	<i>3,112/-</i>	<i>Debited to capital account</i>
<i>Other charges</i>	<i>269/-</i>	<i>Debited to capital account</i>
	<i>1,43,178/-</i>	
<i>Audit Fees</i>	<i>16,545/-</i>	<i>Debited to Profit & Loss Account but not claimed as an expense.</i>

4. The assessee has not claimed any expenditure during the year against tax free income. It was explained that M/s. G. Amphray Laboratories, the

proprietary concern is purely engaged in the business of manufacturing and trading of pharmaceuticals item. The assessee is mainly engaged in export business. He is in export of own manufacturing goods as well as trading goods. The expenses incurred by this proprietary concern are for the purposes of its own business. The investment activities are mainly looked after by the assessee himself. The contract notes and other documents have been signed by the assessee himself and all these services are nowadays provided by the big broking houses. Regarding the knowledge about the investment, the assessee explained that he himself has a deep study of market and industries. Besides this, all these big broking houses keep in touch with him for market updates. All the decisions regarding what to buy, when to buy, when to sell, etc. is taken by the assessee himself and the work is not delegated to anybody. No expenditure is incurred for this by the assessee and no notional value can be assigned to the time devoted by the assessee. The assessee has file details of various security brokers' with whom the assessee has transacted during the year. We have gone through the breakup of exempt income and find that the major income of Rs.7,09,67,804/- is from interest on tax free bonds. These investments were made in earlier years and during this year the assessee has received interest twice a year.

5. We also find that the assessee has made other investment which includes shares and mutual fund. Here also the investment have been made year on year. Also investment in mutual fund with growth option and fix maturity plan (FMP) and there is no dividend declared and the amount received on redemption is subject to capital gain tax. For routine work carried out in respect of investment activities, the attributable amount is calculated at Rs.2,26,5311/- by the assessee. The amount includes salary of a senior employee for a year and estimated cost of stationery and other expenses incurred. The assessee has been carrying on investment since earlier years and in the assessment of the earlier years, upto AY 2008-09 the disallowance u/s 14A of the Act was restricted to the

extent of direct expenses incurred by the assessee and not claimed and also expenses incurred as per profit and loss account of investment account. Even in the AY 2008-09, the disallowance u/s 14A of the Act read with Rule 8D was restricted to the direct expenses incurred and the expenses incurred in audited profit and loss account of share investment account. The assessee before us submitted that the expenses directly related to investment income totaling to Rs. 1,59,723/- have already been disallowed by the assessee (by not claiming it as deduction). The assessee has now further calculated indirect expenses totaling to Rs.2,26,531/- in respect of this activity and offers the same for disallowance. The department has taken a view in the AY 2008-09 and earlier years by calculating the disallowance u/s 14A of the Act read with Rule 8D to the extent direct expenses incurred and expenses incurred as per audited profit and loss account of share investment account.

6. At the outset, Ld. Counsel for the assessee stated that this issue is fully covered by the decision of co-ordinate bench in assessee's own case in immediately preceding AY 2009-10 in ITA No. 4860/mum/2012 on exactly same facts, wherein it is decided as under:-

“5. From the foregoing discussions and on consideration of the accounts of the assessee, we are of the view that the tax authorities were not justified in applying Rule 8D (2) (iii) by disregarding the accounts and claims of the assessee. According to the assessee, he had made the investments in the earlier years and major portion of exempt income was from Government securities. However, the Ld. A. R. could not conclusively clarify that the different concerns are not operating from different addresses. Accordingly, on a conspectus of the matter, we are of the view the disallowance u/s 14A may be restricted to Rs.10,000/- and the same, in our view, would meet the ends of justice. Accordingly we modify the order of the Ld CIT (A) on this issue and direct the AO to restrict the disallowance u/s 14A of the Act to Rs.10,000/-.

Respectfully following the order of co-ordinate bench in assessee's own case in immediately preceding, wherein facts are exactly identical, we allow this issue of assessee's appeal partly for the reason that now assessee before us further calculated indirect expenses totaling to Rs.2,26,531/- in

respect of this activity and offers the same for disallowance. Hence, this issue of assessee's appeal partly allowed.

7. The next issue in this appeal of the assessee is against the order of the CIT (A) in directing the Assessing Officer not to carry forward short term capital loss.

8. We have heard the rival contention on this issue and also gone through the facts and circumstances of the case. The CIT (A) admitted that as per revised computation of income there is short term capital loss of Rs.98,73,371/- in the under year under consideration which is to be carried forward to subsequent year for set off against short term capital gains only. He admitted that there is short term capital loss, which is accepted in the assessment year. But, no specific direction has been given for carry forward of the same. According to the CIT (A), no such short term capital gains are reflected in the assessment order. As the facts are clear and the findings are contrary, hence, we restore this issue back to the file of the Assessing Officer for verification of facts and then decide whether to give direction for set off of short term capital for future years. We direct the Assessing Officer accordingly.

9. In the result, this appeal of the assessee is allowed partly for statistical purposes.

Order pronounced in the open court on 22-09-2016.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER
Mumbai, Dated: 22-09-2016

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

LakshmiKanta Deka/Sr.PS

Copy of the Order forwarded to

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI

Sr.No.	Particulars	Date	Initials	Member Concerned
1	Dictation given on	22/09/16/ 23/09/16	LK Deka	JM
2	Draft placed before author	23/09/16 14/10/16		
3	Draft proposed/placed before The second Member			
4	Draft discussed/approved by Second member			
5	Approved Draft comes to the Sr.PS			
6	Kept for pronouncement on			
7	File sent to the Bench Clerk			
8	Date on which file goes to the Head Clerk			
9	Date of dispatch of Order			