

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. Nos.1810 & 1811/Mds/2014

निर्धारण वर्ष /Assessment years : 2006-07 & 2010-2011.

UNIFI Capital Pvt. Ltd
(Formerly Unifi Wealth
Management Pvt. Ltd)
11, Kakani Towers,
15, Khader Nawaz Khan Road,
Chennai 600 006

Vs. The Assistant Commissioner of
Income Tax
Company Circle III(2)
Chennai.

[PAN AAACU 5196J]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri. N. Vijaykumar, C.A.
: Shri. A.B. Koli, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 28-12-2015

घोषणा की तारीख /Date of Pronouncement

: 26-02-2016

आदेश / O R D E R

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The Appeals filed by the assessee are against different orders of the Commissioner of Income-tax (Appeals)-III, Chennai dt 28.02.2014 for the assessment years 2006-07 and 2010-2011 passed

u/s.143(3) 274 and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. First, we take up Appeal No ITA No.1810/Mds/2014 of assessment year 2006-07 for adjudication and the assessee raised three grounds:-

- (i) *'The Commissioner of Income Tax (Appeals) erred in considering the disallowance of fine of ₹21,000/- paid to National Securities Clearing Corporation Ltd though is allowable as business expenditure u/s.37(1) of the Act.*
- (ii) *The Commissioner of Income Tax (Appeals) erred in confirming the disallowance of 5% of exempt income amounting to ₹3,22,670/- u/s.14A where the provisions of Section 14A does not apply as no expenditure has been incurred for earning exempt income whereas considering the judicial decision 2% of exempt income is to be treated as disallowance.*
- (iii) *The Commissioner of Income Tax (Appeals) erred in confirming the software expenses has not allowable as Revenue expenditure".*

3. The Brief facts of the case that the assessee is in the business of providing portfolio management services, stock broking services, corporate advisory services, custodial services and dealing in shares and securities etc., and filed Return of income on 29.11.2006 admitting total income of ₹2,39,24,883/- and processed u/s.143(1) of the Act and subsequently, notice u/s.143(2) of the Act dated 27.09.2007 was served on the assessee. In compliance to the notice, the Id.AR has filed information from time and time and submitted

that ₹21,000/- was paid as fine to National Securities Clearing Corporation (NSCCL) due to delay in uploading of information, short collection of margins and exposure violations etc. The nature of fine is a contractual obligation between NSCCL and Trade member and not a statutory fine or penalty and same is allowable u/s.37(1) of the Act. But the Assessing Officer treated such expenditure as extraneous of law and disallowed. The assessee company has received ₹64,53,414/- as dividend income and claimed exempted income u/s.10(35) of the Act and no disallowance was made in respect of expenditure incurred in earning exempt income. The Id. Assessing Officer relied on judicial decisions and disallowed under provision of Sec.14A of the Act ₹3,22,670/- being 5% of dividend income and also found ₹2,70,795/- debited to Profit and Loss account as computer software expenses and relied on the decisions of various High Courts and treated such expenses as capital expenditure and allowed depreciation at 60% ₹1,62,477/- and disallowed ₹1,08,318/- as excess claim and completed assessment alongwith other disallowance and passed order u/s.143(3) of the Act Dt.24.12.2008. Aggrieved, the assessee filed an appeal with the Commissioner of Income Tax (Appeals).

4. In the appellate proceedings the Id. Authorised Representative submitted that Assessing Officer disallowed ₹21,000/- treating the fine as violation of law and assessee filed written

submissions before Commissioner of Income Tax (Appeals) considering the expenses as contractual in nature. The assessee received dividend income on investments and also no expenditure was incurred for earning exempted income. The Id. Assessing Officer considered Co-ordinate Bench decision of *M/s. Ind Bank Merchant Banking Securities Ltd in ITA No.420/Mds/98, Dated 14.04.2004* and disallowed u/s.14A of the Act at ₹3,22,670/- being 5% of exempted income. The Id. Authorised Representative submitted the disallowance is on the higher side and supported with the decision of jurisdictional High Court in the case of *Simpson & Co Ltd in T.C. No.2621/2006, dated 15.10.2012*, to disallow 2% of exempted income as expenditure towards earning income. On the third ground the assessee incurred expenditure on computer software expenses towards licence fees, anti virus, MS office licence, ODIN software licence and software upgrading and also CDSL software rental charges all aggregating to ₹2,70,795/-. The Id. Assessing Officer considered the expenses as capital expenditure having enduring benefit and allowed depreciation at 60% and disallowed excess claim ₹1,08,318/-. The Id. Authorised Representative reiterated his submissions that software expenses are in the nature of operational software necessary for the assessee company in stock market trading and the validity period is less than one year and further periodical upgradation charges

incurred and also share trading software rental charges collected by CDSL. But the Id. Commissioner of Income Tax (Appeals) confirmed the findings of the Assessing Officer of disallowance of ₹21,000/- fine imposed by NSCCL based on debit invoice and also confirmed the disallowance u/sec.14A being 5% of exempted income. In the case of software expenses the Id.CIT(A) considered the functional test and usage and characteristics of a software and found MS Office licence software as capital in nature and directed the Assessing Officer to verify the claim and allow the same if it is Revenue or otherwise allow depreciation. Aggrieved by the order of the Commissioner of Income Tax (Appeals) the assessee assailed an appeal before the Tribunal.

5. Before Tribunal, the assessee reiterated his submissions made before the Assessing authorities and appellate proceedings. On the issue of fine of ₹21,000/- the Id. Authorised Representative drew attention to the page nos.2 to 6 of paper book referring debit invoice showing payments made towards non collection and partial collection of margin from clients and also charges for non submissions of client details for trade in F & O segment for a limited period in January, 2006 and these letters explained the payment as compensatory and if there is a delay in payment, interest is chargeable @18% per annum. Therefore, it is compensatory in nature and treated as Revenue

expenditure and should be allowed under Sec.37(1) of the Act. On the issue of disallowance u/sec. 14A the Id. Authorised Representative submitted that company has not incurred any expenditure to earn dividend income of ₹64,53,414/-. The Id. AO relied on the jurisdictional Tribunal decision and disallowed 5% of exempted income at ₹3,22,670/- being higher side and prayed for restricting to 2%. The Id. Authorised Representative produced invoice copies of software at page no.7 to 13 of paper book with description of software needed periodical upgradation and yearly renewal and prayed for allowing the same as Revenue Expenditure.

6. Contra, the Id. Departmental Representative relied on the order of the lower authorities and objected to the submissions of the assessee.

7. We heard the rival submissions, perused the material on record and judicial decisions cited. The Id. Authorised Representative submitted payment of ₹21,000/- as fine is in lieu of non submission charges levied and partially collection of margin and argued that as per the terms of contract with NSCCL such payments are always compensatory in nature. We are of the opinion on the basis of the debit note and debit advices though in debit advice it was referred as penalty for initial margin summary statement they take the

characteristic of business transaction wholly and exclusively incurred in trading of securities and compensatory in nature. Considering the apparent facts, we set aside the order of Commissioner of Income Tax (Appeals) on this ground and we direct the Assessing Officer to delete the addition and allow the ground of the assessee.

7.1 The Id. Assessing Officer made disallowance u/Sec 14A of the Act though no expenditure is incurred by the assessee company and relied on the Co-ordinate Bench decision in the case of *M/s. Ind Bank Merchant Banking Securities Ltd in ITA No.420/Mds/98*, dated 14.04.2004 and made disallowance @5% of the exempted income. We rely on the decision of jurisdictional High Court in the case of *Simpson and Co. Ltd vs. DCIT in Tax T.C.(A) No.2621 of 2006 decided on 15.10.2012* directed the Assessing Officer to disallow 2% of exempted income as disallowance u/s.14A of the Act. This ground of the assessee is partly allowed.

7.2 The assessee company incurred Computer Software expenses of ₹2,70,795/- as softwares have validity period of one year. The Id. Commissioner of Income Tax (Appeals) has examined the issue and directed the Assessing Officer to verify and allow deduction if it is Revenue in nature. Therefore, we are not incline to

interfere with the order of Commissioner of Income Tax (Appeals) and ground of the assessee is partly allowed.

8. ITA No.1811/Mds/2014, assessment year 2010-2011:- The assessee filed return of income on 4.10.2010 admitting total income of ₹3,88,46,740/- and the case was selected for scrutiny. The Assessing Officer completed assessment with disallowance alongwith disallowance on disputed issues. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

9. The Id. Commissioner of Income Tax (Appeals) granted partial relief and confirmed the findings of the Assessing Officer. On the issue of disallowance of computer software expenses Id. Commissioner of Income Tax (Appeals) gave direction to Assessing Officer as in earlier years to allow licence fees and expenses having validity period less than one year to be treated as Revenue expenses and remaining as capital expenditure and allow depreciation and on the issue of disallowance of claim of net profit from hedging information in respect of hedging transactions Id. Authorised Representative submitted that loss was incurred due to mistake of future & options transactions and same be allowed. The Id.

Commissioner of Income Tax (Appeals) on verifying the submissions and also circumstances of incurring loss directed the Assessing Officer to verify and pass order in accordance with law and partly allowed the ground.

10. During the year, the assessee received dividend income of ₹88,252/-. The Id. AO by applying provisions of Sec. 14A r.w.r. 8D calculated the disallowance whereas assessee suo-motu disallowed ₹16,770/- as expenditure incurred for earning such exempted income. The Id. Assessing Officer considering the disallowance by the assessee made additional disallowance of ₹2,57,857/- and added to the Returned income. Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The Id. Commissioner of Income Tax (Appeals) considered the submissions of the assessee and decisions relied and has examined the issue based on the Jurisdictional decision of Tribunal where disallowance is made mandatory and confirmed the findings. The Assessing Officer explained the law prior to assessment year 2008-09 has no applicability to current assessment year and Id.CIT(A) upheld the order of the Assessing Officer. Aggrieved, the assessee assailed an appeal before the Tribunal.

11. Before the Tribunal, the Id. Authorised Representative argued and submitted paper book placing reliance on the investments made in subsidiaries and tabulation of disallowance u/Sec.14A excluding investments in group companies and also statement with details of software and prayed for allowing the appeal.

12. Contra, the Id. Departmental Representative relied on the findings of the lower authorities and opposed to the submissions of the Id. Authorised Representative.

13. We heard the rival submissions, perused the material on record. The Id. Authorised Representative argued that assessee has incurred the expenditure of ₹7,20,560/- which includes licence fees, software upgradation charges, contract note software, licence application software. We have decided the issue in assessee's own case for the assessment year 2006-07 referred at para 7.2 of the order and partly allow the ground of the assessee.

14. The assessee company has made investments in the subsidiary companies. At the time of hearing, the Id. Authorised Representative submitted details of investments made in subsidiaries and others. The Id. Assessing Officer made calculation of disallowance Rule 8D(2)(iii) of the Act considering the average investments worked

out at ₹2,74,627/- as against suo-motu disallowance of assessee ₹16,770/- the exempted income received ₹88,252/- on listed securities and mutual funds. The Id. Assessing Officer applying the provisions of Sec.14A r.w.r. 8D(iii) has calculated the disallowance and considered ₹16,770/- and made an additional disallowance of ₹2,57,857/-. The Id. Authorised Representative reiterated his submissions and argued that the total exempted income received by the assessee is ₹88,252/- and assessee has voluntarily disallowed ₹16,770/- whereas the Id. Assessing Officer calculated disallowance under Rule 8D ₹2,57,857/- which is at higher side on comparison with income received and prayed deletion. We after considering the apparent facts and judicial decision of *M/s.Joint Investments P. Ltd vs. CIT 372 ITR 694* (Delhi) were held that disallowance should be restricted to the extent of exempted income. Therefore, we set aside order of the Commissioner of Income Tax (Appeals) on this ground and remit the issue in dispute to the file of the Assessing Officer, who shall verify and examine the disallowance on the ratio of judicial decision.

15. In respect of net profit from hedging ₹17,764/- disallowed by Assessing Officer, the Id. Commissioner of Income Tax (Appeals) directed the Assessing Officer to verify and pass order. Therefore, we not inclined to interfere with the order of the Commissioner of Income Tax (Appeals) and partly allow the ground of the assessee.

16. In the result, the appeals of the assessee are partly allowed for statistical purpose.

Order pronounced on Friday, the 26th day of February, 2016, at Chennai.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 26.02.2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |