

आयकर अपीलीय अधिकरण, न्यायपीठ – “B” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
(समक्ष)Before श्री महावीर सिंह, न्यायीक सदस्य एवं/and श्री शामीम याहया, लेखा सदस्य)
[Before Shri Mahavir Singh, JM & Shri Shamim Yahya, AM]

आयकर अपील संख्या / I.T.A No.805/Kol/2012

निर्धारण वर्ष/Assessment Year: 2008-09

Deputy Commissioner of Income-tax,
Circle-6, Kolkata.
(अपीलार्थी/Appellant)

Vs. M/s. G. K. K. Capital Markets (P) Ltd.
(PAN: AACG9906E)
(प्रत्यर्थी/Respondent)

Date of hearing: 04.09.2014

Date of pronouncement: 14.10.2014

For the Appellant: Shri Ravi Jain, CIT (DR)

For the Respondent: Shri A. K. Tibrewal, FCA

आदेश/ORDER

Per Shri Mahavir Singh, JM :

This appeal by revenue is arising out of order of CIT(A)-VI, Kolkata in Appeal No. 121/VI/R-6/10-11/Kol dated 17.02.2012. Assessment was framed by Addl. CIT, Range-6, Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as “the Act”) for Assessment Year 2008-09 vide his order dated 24.12.2010.

2. The sole issue in this appeal of revenue is against the order of CIT(A) deleting the disallowance made u/s. 14A of the Act. For this, revenue has raised following ground no.1:

“1. That on the facts and circumstances of the case, Ld. CIT(A) erred in law in deleting the disallowance of Rs.8,46,20,989/- made u/s. 14A of the Income Tax Act and the order of the CIT(A) should be set aside and the order of the Assessing Officer should be restored on this issue.”

3. Briefly stated facts are that the assessee is in the business of share trading. The assessee declared short term capital gains arising from shares as business income but declared the profit arising from the transaction of shares as long term capital gains also. The assessee also declared dividend income. The AO assessed short term capital gain as well as long term capital gains as business income. To this, the assessee has not objected. The assessee objected only against disallowance of interest and disallowance of average value of investment made by AO by invoking the provisions of section 14A of the Act read with rule 8D of the I. T. Rules, 1962 (hereinafter referred to as the “Rules”). For this disallowance, the AO recorded the facts as under:

“The assessee has submitted two computations for disallowances u/s. 14A vide letter dated 26.11.2010. If the long term capital gain is allowed and treated as ‘exempt income’ the assessee has offered disallowance of Rs.8,83,49,955/- u/s. 14A read with Rule 8D as per the part (A) of the above letter. If the long term capital gain is treated as business income, it has offered disallowance of Rs.37,28,966/- u/s. 14A read with Rule 8D as per the part (B) of the said letter. Both the computations have been examined. Even though the long term capital gain has been treated as business income, the computation of disallowance of Rs.8,83,49,955/- u/s. 14A by the assessee is found to be correct. The computation of disallowance u/s. 14A as per Rule 8D is given as under:

Average value of investment	Rs. 74,57,93,255/-	---	(B)
Average Value of assets	Rs.133,17,09,652/-	---	©
(Interest	Rs. 15,11,01,646/-	---	(A)
1) $A \times \frac{B}{C}$	$= 15,11,01,646 \times \frac{74,57,93,255}{133,17,09,652}$		= Rs.8,46,20,989/-
2)	$\frac{1}{2}\%$ of average value of investments Rs.74,57,93,255/- comes to Rs.37,28,966/-		
	Therefore total amount (1+2) inadmissible u/s. 14A read with Rule 8D incomes to Rs.8,83,49,955/- i.e. Rs. (8,46,20,989 + 37,28,966).”		

4. Aggrieved against the disallowance made by AO, the assessee preferred appeal before CIT(A), who deleted the disallowance by observing as under:

“8. I have carefully considered the observations of the Assessing Officer in the assessment order and submissions of the appellant. The appellant during the appellate proceedings submitted that it has earned a dividend of Rs.62, 11,320/- only and has himself disallowed an amount of Rs. 37,28,966/-. The assessee does not have any now investment and all the shares are being held as stock in trade only as per the order of the Assessing Officer (supra). It is held that Rule 8D is not applicable in the case of assessee since now there are no investments and all the shares are being treated as stock in trade only and further no interest expenses have been incurred for any investments since all of them are now stock in trade. However, section 14A is still applicable where it provides that no deduction in respect of expenditure incurred by the assessee in relation to exempted income will be allowed.

9. There are expenses incurred for earning dividend income as well as earning of the business income. The dividend income may not involve separate/direct expenses but indirect expenses are there in purchasing those shares and other administrative expenses in the earning of income. The section 14A does not take care of only direct expenses but indirect expenses are also to be allocated to the exempted income. There may not be any investments for making Rule 8D applicable in the facts of the appellant. Rule 8D is a method prescribed when the dividend income is earned from investments. The appellant has submitted that a proportionate amount of the assessee’s business expenditure may be held related to the earning of dividend income and we offer for disallowance the amount calculated in terms of clause (iii) of Rule 8D only amounting to Rs.37,28,966/-.

10. The disallowance made by the appellant amounting to Rs.37,28,960/- is upheld to be fair and reasonable u/s. 14A. Therefore, this ground of appeal is partly allowed. The disallowance u/s. 14A is restricted to Rs.37,28,966/- and the addition of Rs.8,46,20,989/- made as per Rule 8D2(ii) and Rule 8D2(iii) is hereby deleted.”

Aggrieved, revenue came in appeal before Tribunal.

5. We have heard rival contentions and gone through facts and circumstances of the case. At the outset, Ld. counsel for the assessee Shri A. K. Tibrewal raised a legal issue that there is no satisfaction recorded by the AO for invoking the provisions of section 14A read with Rule 8D of the Rules. Ld. counsel for the assessee stated that this issue is now covered by the decision of Hon'ble jurisdictional High Court in the case of CIT Vs. R.E.I. Agro Ltd. in GA 3022 of 2013, ITAT 161 of 2013 dated 23.12.2013, wherein the order of Tribunal in DCIT Vs. R.E.I. Agro Ltd. of ITA No. 1811/Kol/2012 for AY 2009-10 dated 14.05.2013 was confirmed. The Tribunal in this case has held as under:

"9. We find from the facts of the above case that the AO has not examined the accounts of the assessee and there is no satisfaction recorded by the AO about the correctness of the claim of the assessee and without the same he invoked Rule 8D of the Rules. While rejecting the claim of the assessee with regard to expenditure or no expenditure, as the case may be, in relation to exempted income, the AO has to indicate cogent reasons for the same. From the facts of the present case it is noticed that the AO has not considered the claim of the assessee and straight away embarked upon computing disallowance under Rule 8D of the Rules on presuming the average value of investment at 1/2% of the total value. In view of the above and respectfully following the coordinate bench decision in the case of J. K. Investors (Bombay) Ltd., supra, we uphold the order of CIT(A). This ground of appeal of revenue is dismissed."

6. Even otherwise, on merits also the assessee had made disallowance itself for an amount of Rs.37,28,966/- and filed computation of disallowance as per rule 8D of the Rules. The AO could not find any fault in the computation of disallowance made by assessee and secondly, the assessee does not have any investment and all the shares are held as stock in trade, as is evident from the orders of the lower authorities. Once, the assessee has kept the shares as stock in trade, the rule 8D of the Rules will not apply. Hence, the assessee's case is covered by jurisdictional High Court by the case law of R.E.I. Agro Ltd., supra and also on merits. Appeal of revenue is dismissed.

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

8. Order is pronounced in the open court on 14.10.2014

Sd/-

शामीम याह्या, लेखा सदस्य
(Shamim Yahya)
Accountant Member

Sd/-

महावीर सिंह, न्यायीक सदस्य
(Mahavir Singh)
Judicial Member

Dated : 14th October, 2014

वरिष्ठ निजि सचिव Jd.(Sr.P.S.)

आदेश की प्रतिलिपि अग्रेषित:- Copy of the order forwarded to:

1. अपीलार्थी/APPELLANT – DCIT, Circle-6, Kolkata
2. प्रत्यर्थी/ Respondent – M/s. G. K. K. Capital Markets (P) Ltd., 24, Hemanta Basu Sarani, Kolkata-700 001.
3. आयकर कमिशनर (अपील)/ The CIT(A), Kolkata
4. आयकर कमिशनर/ CIT Kolkata
5. विभागीय प्रतिनीधी / DR, Kolkata Benches, Kolkata

सत्यापित प्रति/True Copy,

आदेशानुसार/ By order,

सहायक पंजीकार/Asstt. Registrar.