

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
[Before Shri Pramod Kumar, A.M. & Shri George Mathan, J.M.]

I.T.A. Nos.179/Kol/2012
Assessment Year :2005-2006

Ivory Finvest Ltd. 2, Cooper Lane, Kolkata – 700 001 (PAN:AABCI 0347N) (Appellant)	–Vs–	ITO, Ward-1(2),Kolkata (Respondent)
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Date of concluding the hearing : 28.05.2012
Date of pronouncing the Order : 28.05.2012

Appearances : For the Appellant : Shri Arvind Agarwal
: For the Respondent : Shri A.K.Pramanik

ORDER

Per Shri Pramod Kumar

1. By way of this appeal, the assessee has challenged correctness of CIT(A)’s order dated 30th November 2011, in the matter of assessment u/s.143(3) of the Income Tax Act, 1961 for the assessment year 2005-06.

2. Grievance raised by the assessee is as follows:

“1. The Learned Commissioner (Appeals) has erred in confirming the addition made under section 14A by the Assessing Officer in the facts and circumstances of the case.

2. Without prejudice to above, the learned Commissioner (Appeals) is incorrect in confirming the amount of addition under section 14A at Rs.1,37,590/- in the facts and circumstances of the case.”

3. Briefly stated, the material facts of the case are like this. The assessee is engaged in the business of finance and investment. During the course of assessment proceedings, the Assessing Officer noticed that while the assessee has earned dividend income of Rs.2,58,681/- and paid interest of Rs.3,66,314/- to fund investment in shares, the assessee has not offered any disallowance of interest u/s. 14A. It was explained by the assessee that borrowings, on which interest is paid,

were used to earn dividend as also capital gains, and that there is no specific funding by the Assessing Officer to the effect that borrowed amounts have been used for earning the dividends. The Assessing Officer was, however, of the view that as funds have been used for earning exempt as also non-exempt income. The interest expenditure is required to be allocated to these two streams of income. He allocated the interest expenditure in the ratio of dividend income and business profits. Accordingly, interest allocable to dividend income was computed at Rs.1,37,590/- which was disallowed u/s 14A. Aggrieved, assessee carried the matter in appeal before the CIT(A) but without any success. Learned CIT(A) confirmed the action of the Assessing Officer and observed as follows:-

“5.4 I have carefully gone through the submission of the appellant. The argument of the appellant for non applicability of the provisions of section 14A is not correct as held by the jurisdictional High Court in the case of ISG Traders Ltd. vs. CIT, WB-II, Kolkata (I.T.A No.264 of 2003-2011-TIOL-621-HC-KOL-IT). It has been held that:

“On Appeal before the HC Appellant Counsel contended that the entire interest expenditure was incurred by the assessee for the purpose of its one and indivisible business and was allowable as deduction u/s 36(1)(iii) in its entirety and no part of the interest expenditure could be apportioned as incurred in relation to the dividend income. The Counsel further contends that at the time of passing the assessment order by the AO, there being on existence of Section 14A.

.....In the case before us, the original proceedings being taken in appeal before the Tribunal and the Section 14A having been given retrospective operation in case of pending assessment proceedings, the same would be applicable to the appeal before the Tribunal and also in this appeal in this appeal before us and thus, the Tribunal below did not commit any illegality in applying the said provisions to the pending proceedings.

Thus, the approach of the Assessing officer to work out the pro rata interest expenditure as relatable to earning of dividend was quite in conformity with the provisions of section 14A of the Act and we do not find any reason to disturb the said order in the light of the amended provisions of section 14A of the Act.

We, therefore, find no substance in the aforesaid contention of Mr. Khaitan that the Revenue cannot get the benefit of Section 14A of the

Act and consequently, dismiss this appeal by answering the formulated question in the negative and against the assessee.”

5.5 Thus the A.O has rightly invoked the provisions of section 14A of the IT Act. The basis of the disallowances has to be worked out as per the pro-rata interest expenditure as relatable to earning of dividend income as held by the jurisdictional High Court in the case of ISG Traders Ltd. vs. CIT, WB-II, Kolkata (I.T,A No.264 of 2003-2011-TIOL-621-HC-KOL-IT).”

4. The assessee is not satisfied by the stand so taken by the CIT(A) and is in further appeal before us.

5. We have heard the rival contentions, perused the materials on record and duly considered factual matrix of the case as also the applicable legal position.

6. Learned counsel submits that he has no grievance with the fact that the CIT(A) has applied Hon'ble Calcutta High Court's decision in the case of ISG Traders Ltd. –vs- CIT (2011-TIOL-621-HC) and holding that material facts of the case are similar, but then the CIT(A) ought to have applied the same formula for making the disallowance as was adopted in the case. Learned counsel takes us through the said judgment and points out that allocation of interest expense is to be done in the ratio of dividend and turnover of the business. He submits that the CIT(A) fell in error in adopting the figure of profit of business whereas he ought to have taken the figure of turnover of business. Learned counsel then invites our attention to his calculation sheet pointing out that, on the basis of allocation of dividend to turnover, the disallowance will duly be Rs.3,315/-. Learned Departmental Representative does not point out any infirmity in these submissions and places rather bland reliance on the order of the CIT(A).

7. We find that once it is not in dispute that the facts of the case are materially similar to the facts of ISG Traders Ltd. (*supra*) and that the said decision applies in this case, the computation of disallowance has to be done on the same basis as was accepted by Their Lordships in ISG Traders Ltd.'s case (*supra*). As learned

counsel rightly points out, the ratio of allocation accepted by Their Lordships is of dividend income to total turnover. In view of this position, we deem it fit and proper to uphold the grievance of the assessee and to remit the matter to the file of the Assessing Officer for recomputation of disallowance u/s.14A in the light of above directions. The assessee gets the relief accordingly.

8. In the result, the appeal filed by the Assessee is allowed, in the term indicated above.

This Order is pronounced in the open court today on 28th May, 2012 immediately after the completion of the hearing.

Sd/-
(George Mathan)
Judicial Member

Sd/-
(Pramod Kumar)
Accountant Member

Dated : 28th May, 2012

Copy of the order forwarded to:

1. Ivory Finvest Ltd., 2, Cooper Lane, Kolkata – 700 001
2. ITO, Ward-1(2), Kolkata
3. The CIT(A), Kolkata
4. CIT, Kolkata
5. DR, Kolkata Benches, Kolkata

True Copy,

By order,

Asstt. Registrar, ITAT, Kolkata

Talukdar(Sr.P.S.)

