IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI

BEFORE SHRI B.C.MEENA, ACCOUNTANT MEMBER
AND
SHRI.C.M.GARG, JUDICIAL MEMBER

I.T.A .No.-1535/Del/2011
(ASSESSMENT YEAR-2007-08)

DCIT, Circle-3(1), New Delhi **(APPELLANT)**	**vs**	M/s Credential Stock Brokers Ltd. D-20, Mansarovar Garden, New Delhi-110027 **PAN-AABCC1868L** **(RESPONDENT)**

I.T.A .No.-938/Del/2011
(ASSESSMENT YEAR-2007-08)

M/s Credential Stock Brokers Ltd. D-20, Mansarovar Garden, New Delhi-110027 **PAN-AABCC1868L** **(APPELLANT)**	**vs**	ACIT, Range-3, New Delhi (RESPONDENT)

Appellant by:	**Smt. Parwinder Kaur, Sr. DR**
Respondent by:	**Ms. Rano Jain, CA &** **Mr. Venketesh Mohan, CA**

ORDER

PER C.M.GARG, JUDICIAL MEMBER

The above captioned appeals of the Revenue as well as of the assessee have arose from one order of the Commissioner of Income Tax(Appeals)-VI, New Delhi vide order dated 17.01.2011 in appeal No-304/09-10 for the AY-2007-08.

2. The grounds raised by the Revenue in ITA No-1535/Del/2011 read as under:-

1. *"The Ld. CIT(A has erred on facts and in law in deleting addition of Rs.684337/- on account of disallowances attributable to exempt income u/s 14A of the I.T. Act. The Ld. CIT(A) has failed to take cognizance of sub-section (3) of section 14A which specifies that even if the assessee makes a claim that no expenditure has been incurred in earning the exempted income, sub-section (2) of section 14A shall apply, meaning thereby, disallowance u/s 14A(1) is called for.*
2. *Ld. CIT(A) has erred in law and on facts in deleting addition of Rs.14210/- on account of extra depreciation claimed on computer peripherals ignoring that as per the IT Rules 60% depreciation is allowable only on computer and computer software and not on computer peripherals/accessories.*
3. *The Ld. CIT(A has erred in law and on facts in deleting addition of Rs.1863295/- on account of non-deduction of TDS on payments made by NSE ignoring that as per NSE's letter dated 10.5.2007 to its members TDS must be deducted by all members u/s 194(J) of the I.T. Act on charges i.e. membership fee, transaction charges and V-Sate and lease line charges."*

3. The assessee has taken various grounds in ITA No-938/Del/2011 wherein Ground No-1 of the assessee is of general in natural which need not adjudication and remaining grounds read as under:-

2. *On the facts and circumstances of the case, learned CIT(A has erred both on facts and in law in confirming the action of the AO in computing tax liability under Section 115JB of the Act, despite the fact that the tax payable under normal provisions are higher than the book profits computed under Section 115JB of the Act.*
3. *Without prejudice to the above and in the alternative, learned CIT(A) has erred both on facts and in law in not appreciating the contention of the assessee that the credit of STT paid under Section 88E shall also be available on the tax computed as per provisions of Section 115JB of the Act.*

4(i) *On the facts and circumstances of the case learned CIT(A) has erred both on facts and in law in upholding the action of the AO treating income of Rs.47,95,399/- being receipts from share broking as net income not eligible for rebate under Section 88E of the Act.*

4(ii) *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in not appreciating the contention of the assessee that the AO was not right in treating the entire gross receipts of Rs.47,95,399/- from share broking as net income ignoring the expenses incurred towards earning such income.*

5. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the action of the AO in restricting the credit on account of Security Transaction Tax (STT) under Section 88E to Rs.1,12,64,517/- as against Rs.1,19,34,585/- paid by the assessee and allowable as per law."*

Ground No-1 of the Revenue

4. Apropos Ground No-1 of the Revenue, we have heard the arguments of both the parties. Ld. Assessee's representative (AR) submitted that this issue is covered in favour of the assessee by the order of the ITAT "E" Bench, Delhi in ITA No-1169/Del/2012 dated 25.04.2014. The Ld. Departmental Representative (DR) fairly accepted that the issue has been covered in favour of the assessee by the order of the Tribunal dated 25.04.2014 (supra) wherein this issue has been adjudicated in favour of the assessee with following observations and findings:-

> *37. "Since the issue before us have not been decided by the Jurisdictional High Court and the Jurisdictional High Court in All India Lakshmi Commercial Bank Officers Union Vs. Union of India 150 ITR 1 (Del) has held that, in cases where Jurisdictional High Court's order is not existing then the Tribunal may follow other High Court's decision on the issue and we are inclined to follow the Karnataka High Court's order on the issue in hand. Therefore we concur with the Kolkata Bench decision cited (Supra) in that it was held that when there is no amount of expenditure is incurred directly relating to the exempt income which does not form part of the total income, Rule 8D(ii) & (iii) cannot be applied when the shares are held as stock-in-trade and as per Karnataka High Court decision (Supra), no notional expenditure could be deducted from the said income. And the dividend income is incidental to its business of sale of shares which remained unsold by the assessee. Therefore expenditure estimated invoking rule 8D above are set aside."*

5. In the present appeal the Revenue has agitated the same issue pertaining to disallowance made by the AO u/s 14A of the Income Tax Act, 1961 (for short the "Act"). From perusal of the impugned order para 2 to 2.3, we clearly observed that the CIT(A) has granted relief by holding that the Rule 8D of Income Tax Rules 1962 which have been notified w.e.f 24.03.2008 shall apply only w.e.f AY 2008-09 while present appeal is related to AY 2007-08. We are in agreement with the conclusions of the ITAT "E" Bench vide decision dated 25.04.2014 (supra) wherein it has been held when there is no amount of expenditure is incurred directly relating to the exempt income which does not form part of the total income than in a peculiar fact when the shares are held as stock-in-trade, no notional expenditure could be deducted from the said income and the dividend income is incidental to its business of sale of shares which remained unsold by the assessee. In the preset case, the AO resorted to section 14A for making disallowance which was deleted by the CIT(A) by holding that the general observations of the AO for making disallowance are not supported by any specific instances and the AO has not brought any material on record to link up the expenditure which has been incurred for earning the exempt income. Under these circumstances, respectfully following the decision of Tribunal in assessee's own case vide dated 25.04.2014 (supra), we hold that the issue is squarely covered in favour of the assessee and we

uphold the conclusion of the CIT(A) in this regard. Accordingly Ground No-1 of the Revenue is dismissed.

Ground No-2 of the Revenue

6. We have heard arguments of both the parties pertaining to the Ground No-2 of the Revenue wherein Revenue has objected the deletion of the addition made by the AO on account of extra depreciation claimed on computer peripherals. At the outset, the Ld. AR submitted that this issue is covered in favour of the assessee by the decision of the ITAT, Delhi "B" Bench in assessee's own case in ITA No-4742/Del/2010 vide dated 26.09.2012 wherein the same issue has been decided in favour of the assessee with following observations and findings:-

> *7. "We have heard the rival contentions in light of the material produced and precedent relied upon. We find that the Hon'ble Jurisdictional High Court in the case of C.I.T. vs. BSES Rajdhani Powers Ltd. in ITA No. 1266/2010 dated 31.8.2010 had held that computer accessories and peripherals such as, printers, scanners and server etc. form an integral part of the computer system as they cannot be used without the computer. Hence, same are the part of the computer system and entitled to depreciation at the higher rate of 60%. Accordingly, considering the aforesaid precedent, we do not find any infirmity in the order of the Ld. Commissioner of Income Tax (A) and hence, we uphold the same."*

7. Respectfully following the decision of Hon'ble Jurisdictional High Court in the case of CIT vs BSES Rajdhani Ltd. (supra) and the decision of the Tribunal in

assessee's own case dated 26.09.2012 (supra), we hold that the issue is squarely covered in favour of the assessee and the AO disallowed depreciation ignoring the above decision of the Hon'ble Jurisdictional High Court of Delhi which was rightly corrected by the CIT(A) by deleting the impugned addition of Rs.14,210/-. Accordingly Ground No-2 of the Revenue being devoid on merits is also dismissed.

Ground No-3 of the Revenue

8. Apropos Ground No-3 of the Revenue, we have heard arguments of both the sides and carefully perused the record placed before us. At the outset, the Ld. AR submitted that the issue is squarely covered in favour of the assessee by the decision of the Tribunal in assessee's own case for AY 2006-07 dated 26.09.2012 (supra) wherein upholding the order of the CIT(A) the issue of non reduction of TDS on payments made by the NSE has been decided in favour of the assessee with following observations and findings :-

> *11. "Ld. Counsel of the assessee submitted that the issue is squarely covered in favour of the assessee by the decision of the Special Bench, ITAT, Vishakapatnam Bench in the case of Merilyn Shipping & Transports vs. Addl. C.I.T. (2012) 136 ITD 23 (Vish) (SB). In this case it was held that the provision of section 40(a)(ia) cannot be invoked with respect to the payments which are actually paid during the financial year, but it can be invoked only with respect to the payments not actually made. Since all the payments were made*

during the year and nothing was payable, no amount was to be disallowed in this regard. Ld. Departmental Representative on the other hand, relied upon the order of the Assessing Officer.

12. We have heard the rival contentions in light of the material produced and precedent relied upon. We find that Ld. Commissioner of Income Tax (A) has noted that as far as the advise of NSE relied upon by the Assessing Officer is concerned, it is general in nature and the members have been advised to evaluate the applicability of tax provisions. Ld. Commissioner of Income Tax (A) further found that for ascertaining the liability of tax deduction at source with regard to various payments, it would be necessary to refer to the relevant statutory provisions of section 194C of the Act. Ld. Commissioner of Income Tax (A) opined that the said section relates to the payments made to a contractor in pursuance of a contract between the contractor and the specified person. Ld. Commissioner of Income Tax(A) further observed that no material has been brought on record to show that the payments on account of transaction charges, V-SAT charges, lease line charges and misc. charges were made in pursuance of a contract. These payments were made to NSE in the normal course of business and these payments do not fall within the scope of section 194C of the Act.

13. Over and above, we find that the issue involved is also squarely covered in favour of the assessee by the decision of the Special Bench of the Tribunal in the case of Merilyn Shipping & Transports vs. Addl. C.I.T. (Supra). In this case it was held that the provision of section 40(a)(ia) cannot be invoked with respect to the payments which are actually paid during the financial year, but it can be

invoked only with respect to the payments not actually made. Since in this case all the payments were made during the year and nothing was payable at the end of the year, no disallowance is called for. Accordingly, in the background of the aforesaid discussions and precedent, we uphold the order of the Ld. Commissioner of Income Tax (A) and decide the issue in favour of the assessee."

9. The Ld. DR fairly accepted that the assessee has got relief from the CIT(A) for AY 2006-07 and the order of the CIT(A) in this regard has been upheld by the Tribunal by its order dated 26.09.2012 (supra) deciding the issue in favour of the assessee. Respectfully following the above decision of the Co-ordinate Bench in assessee's own case, we hold that the issue is squarely covered in favour of the assessee and we further hold that the payments made by the AO on account of transactions charges, membership fee, V-SAT and lease line charges were made in pursuance of a contact and these payments were made to NSE in the normal course of business and the same do not fall within the scope of section 194C of the Act, we, therefore, are of the opinion that the disallowance made by the AO is not sustainable which was rightly deleted by the CIT(A) by following its earlier orders. Accordingly Ground No-3 of the Revenue is devoid on merit and deserves to be dismissed and we dismiss the same.

Ground Nos. 2 & 3 of the assessee:-

10. We have heard arguments of both the sides and careful perused the record placed before us apropos ground Nos. 2 & 3 of the assessee. The Ld. AR drawn

our attention towards decision of ITAT, Delhi "E" Bench in assessee's own case vide dated 25.04.2014 (supra) and submitted that the Tribunal has decided the issue in favour of the assessee with following observations and conclusions:-

> *21. "We have heard the rival submissions and perused the records and the case laws cited by both the parties. From a perusal of the assessment order we find that the Assessing Officer has computed the taxable income of the assessee company under the normal provisions of the Act as well as under the special provisions of section 115JB of the Act. While computing the book profit u/s 115 JB, the Assessing Officer has not allowed the rebate on account of STT u/s 88E of the Act from the book profit of the assessee company. In a decision in the case of M/s Horizon Capital Limited, the ITAT Bangalore (2011) 64 DTR (Kar) 306 has laid down that tax rebate in respect of STT u/s 88E is available even against tax liability u/s 115JB.*
>
> *22. It is further seen that a co-ordinate bench of the Tribunal has followed the aforesaid decision in the case of MBL Securities Pvt. Ltd. and has allowed the rebate u/s 88E from the book profit of the assessee, while computing the book profit. It is also seen that the decision of ITAT Bangalore has further been confirmed by the Hon'ble High Court of Karnataka in its order dated 24.10.2011 in CIT Vs., M/s. Horizon Capital ltd. ITA 434 of 2010 wherein the Hon'ble Karnataka High Court held that:*
>
> > *"17. Therefore, the contention that this benefit is not available to the assessee whose total income is assessed u/s 115JB has no substance. In other words, when the total*

income is assessed and the tax chargeable is computed, it is from that tax which is chargeable, is computed, it is from that which is chargeable, the tax paid u/s 88E is given deduction, by way of rebate, u/s 87 of the Act. This is the legislative intent. That is promise to give deduction of the tax already paid. This is the mode in which tax already paid is handed back at the time of final computation. Therefore, the judgment referred by the Tribunal is strictly in accordance with law and does not suffer from any legal infirmity, which called for interference. We do not see any substantial question of law involved in this appeal, which merits admission. The appeal is dismissed."

23. We find in the appellate order impugned before us, the ld CIT(A) has relied on the ratio in M/s Horizon Capital Limited (supra). We find that a co-ordinate Bench of this Tribunal has followed this decision in the case of MBL Securities Pvt. Ltd and has allowed the rebate u/s 88E from the book profit. In the light of the aforesaid decisions we find no legal infirmity in the order passed by the ld CIT(A) and therefore we confirm the same and dismiss this ground of the appeal of the revenue. 24. In the result the revenue's appeal is dismissed."

11. From careful perusal of the above order of the Tribunal, we note that the relief has been granted to the assessee for following decision of MBL Securities Pvt. Ltd. (supra) and has allowed the rebate u/s 88E of the Act from the book profit.

12. In view of the above and in the light of afore-said discussion made by the Tribunal in assessee's own case for AY 2008-09 on this issue, we find that the CIT(A) rightly granted the relief for the assessee and we are unable to see any legal infirmity or perversity in the impugned order in this regard. Hence, Ground Nos. 2 & 3 of the assessee are allowed by following decision of the Co-ordinate Bench of this Tribunal in assessee's own case dated 25.04.2014 (supra), Ground Nos. 2 & 3 of the assessee are allowed and the AO is directed to follow the earlier decision of this Tribunal in assessee's own case in AY 2008-09 in this regard.

Ground Nos. 4 &5 of the assessee

13. We have heard arguments of both the sides and carefully perused the record *inter alia* impugned order and assessment order. The AR pointed out that this ground is covered in favour of the assessee by the decision of the Tribunal in assessee's own case for AY 2006-07 dated 26.09.2012 (supra). The Ld. DR pointed out that the issue has not been decided in favour of the assessee but restored to the file of AO for fresh consideration and adjudication.

14. On careful perusal of the order of the Tribunal in assessee's own case for AY 2006-07 dated 26.09.2012 (supra), we note that the issue has been restored to the file of AO with following observations and findings:-

> *15. "In this case Assessing Officer noted that assessee has claimed the rebate u/s. 88E. A perusal of the detail submitted by the assessee reveals that profit and gains from transactions chargeable to STT is*

Rs.1,96,58,715/-. However, the assessee has claimed rebate u/s. 88E of Rs.58,97,616/-. Assessee was asked to submit the computation of rebate, assessee submitted as under:-

Amount of STT deducted during F.Y. 05-06	*6402784/-*
Tax on transaction liable to STT (30% of ` 19658720/-)	*5897616/-*
Tax on total income	*5902518/-*
Amount of rebate allowed (Lower of the above three)	*5897616/-*

On perusal of the details submitted by the assessee, he Assessing Officer noted some discrepancies. It was noted that the assessee has not used the correct method as prescribed u/s 88E for calculation of rebate. Secondly, the assessee has not reduced the expenses from the income on account of self trading subjected to STT for calculation purposes. Further, Assessing Officer observed that the assessee has not considered administrative and operative expenses debited in the P&L A/c for the purpose of calculation of rebate u/s 88E. Vide letter dt. 25.11.2008 the assessee submitted that the ratio of turnover on own account and on clients account is 13:10. However, in the absence of evidence the contention of the assessee was not accepted by the Assessing Officer. Therefore, in the absence of complete evidence the expenses were apportioned on the basis of turnover on brokerage account and on self trading. The ratio of turnover on brokerage account and self trading account was 17% and 83% respectively. Accordingly, rebate u/s 88E was recalculated by the Assessing Officer and was restricted to Rs. 51,86,074/-.

16. Upon assessee's appeal Ld. Commissioner of Income Tax (A) affirmed the order of the Assessing Officer.

17. We have carefully considered the submissions and perused the records. We find that Assessing Officer has made this disallowance by noting that proper evidence regarding the claim of the assessee was not submitted. Ld. Commissioner of Income Tax (A) has also confirmed this order. On the facts and circumstances of the case, in our considered opinion, interest of justice, will be served if the issue is remitted to the file of the Assessing Officer to consider the issue afresh. The Assessing Officer shall consider the issue in light of the submission in this regard, after giving assessee proper opportunity of being heard. We hold and direct accordingly."

15. Accordingly, respectfully following the above decision of the Co-ordinate Bench of the Tribunal in the assessee's own case, we are in agreement with the conclusion of the Tribunal that the issue requires fresh consideration at the end of the AO in the light of submissions and contentions raised by the assessee in this regard. Hence the issue in favour of Ground Nos. 4 & 5 of the assessee are restored to the file of AO for fresh adjudication in the light of contentions and submissions of the assessee and other relevant provisions of the Act. Needless to say that the AO shall afford due opportunity of hearing of the assessee while adjudicating the issue. On the basis of foregoing discussion and respectfully following the decision of the Co-ordinate Bench in assessee's own case dated

26.09.2012 (supra), Ground Nos. 4 & 5 of the assessee are deem to be treated as allowed for statistical purposes.

16. In the result the appeal of the Revenue is dismissed and the appeal of the assessee is allowed on Ground Nos. 2 & 3 and on Ground Nos. 4 & 5, the same is deem to be allowed for statistical purposes.

The order is pronounced in the open court on 11th of July 2014.

Sd/-	**Sd/-**
(B.C.MEENA)	**(C.M.GARG)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated:- 11/07/2014
Amit Kumar

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI