

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH 'G', MUMBAI**

**BEFORE SHRI G.E. VEERABHADRAPPA, PRESIDENT &
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

**I.T.A. NO. 5634/M/2009
ASSESSMENT YEAR 2004-2005**

M/s. Greaves Leasing Finance Limited, Industry Manor, Appasaheb Marathe Marg, Prabhadevi, Mumbai – 400 0025. PAN: AAACG5021G	Vs.	ITO-6(3)(1), Aayakar Bhavan, M.K. Road, Mumbai – 400 20.
(Appellant)		(Respondent)
Appellant by	:	Ms. Aarti Vissanji
Respondent by	:	Mr. Pavan Ved

Date of Hearing: 21.6.2012

Date of order: 27.7.2012

ORDER

Per AMIT SHUKLA, JM:

This appeal has been filed by the assessee against the order dated 28.07.2007 passed by CIT (A)-XXVI, Mumbai for the quantum of assessment passed u/s 143(3) for the assessment year 2004-2005.

2. In the grounds of appeal numbering A to C, the assessee has mainly challenged disallowance u/s 14A, deduction of Short Term Capital Loss from Rs. 4,72,49,239/- to Rs. 29,86,018/- and treatment of transaction of shares as speculative income instead of business income as claimed by the assessee.

3. At the very outset, the Ld Sr. Counsel had not pressed the third ground captioned as ground no. C relating to income being treated as speculative profit. Thus, this ground is dismissed as not pressed.

4. The assessee is a company in which public are substantially interested and is a 100% subsidiary of 'M/s. Greaves Cotton Limited', which is a Public Limited company and its shares are listed in Stock Exchange. The assessee is mainly engaged in the business of leasing of plant and machinery, equipments, vehicles etc and bill discounting.

5. The first issue relates to disallowance of expenditure u/s 14A for sums aggregating to Rs. 1,44,156/-. During the course of assessment proceedings, Assessing Officer noted that assessee has received dividend income of Rs. 15,28,314/- which was claimed as exempt u/s 10(33). Since, the assessee has not debited any expenditure attributable to earn the exempt dividend income, the AO required the assessee as to why the provisions of sec. 14A may not be applied. In response, the assessee submitted that no expenditure was incurred for earning the exempt dividend income which was credited through three dividend warrants received from Oriental Bank of Commerce and Crompton Greaves Ltd. on the shares which were acquired by way of amalgamation. It was also submitted that 1% of the dividend income has already been disallowed as expenditure while computing the income in the year under consideration. The AO, however, not satisfied with the explanation of the assessee, made the disallowance of Rs. 1,44,156/- u/s 14A.

6. Before the CIT (A) it was inter alia submitted that firstly, the interest debited was purely on over drawn facilities and various other expenses were directly related to its normal business activities, secondly, the mode of acquisition of shares was through amalgamation and no shares having been acquired either out of interest bearing funds or surplus funds and lastly, as a way of abundant caution and to avoid litigation, assessee itself has disallowed 1% of the dividend income i.e. at Rs. 15,283/- u/s 14A.

7. Ld CIT (A) too after following the decision of ITAT (Special Bench) in the case of **Daga Capital Management Co. Pvt. Ltd (ITA No. 8057/Mum/2003 dated 20.10.2008)** held that provisions of Rule-8D are retrospective in nature and disallowance has to be made in accordance with Rule 8D. Accordingly, he directed the AO to make the disallowance under the said Rule.

8. Before us, Ld Sr. Counsel submitted that first of all the decision of Daga Capital Management Co. Pvt. Ltd. cannot be followed as the same has been overruled by the Bombay High Court in the case of **Godrej Boyce and Manufacturing Co. Ltd. reported in 328 ITR 81** and, therefore, disallowance under Rule-8D cannot be made in the present assessment year. Secondly, the dividend income which has been received mainly from shares which has been acquired through amalgamation and neither any borrowed funds nor any surplus funds of the assessee were invested for purchasing of shares. She also drew our attention to **Annexure-A** filed along with the grounds of appeal, showing the details of expenditure debited to the Profit & Loss Account and submitted that none of the expenses were either remotely or directly related to earning of dividend income and lastly, she reiterated that 1% of disallowance made by the assessee itself should cover up any possible expenditure related to earning of such exempt income.

9. On the other hand, Ld DR submitted that AO has very categorically worked out the disallowance of expenses after taking into consideration all the various factors. Further, he submitted that even by following the decision of Godrej Boyce Manufacturing Co. Ltd (supra), some disallowance is called for.

10. We have carefully considered the rival submissions and also perused the material placed on record. It is evident from the record that the assessee has earned dividend mainly from

shares of 'Oriental Bank of Commerce' and 'Crompton Greaves' which was acquired through amalgamation of two companies. Further, it is also noticed that most of the expenses are directly attributable to assessee's business as per the details given in Annexure-A filed along with the grounds of appeal. Under these facts and circumstances, we cannot hold that assessee might have incurred any kind of expenditure for earning of dividend income. Moreover, looking to the fact that assessee has itself disallowed 1% of the dividend income i.e. Rs. 15,283/- as an expenditure. Hence, no further disallowance is called for. In the result, this issue is decided in favour of the assessee and the ground taken by the assessee stands allowed.

11. The second issue is with regard to deduction of Short Term Capital Loss. The facts relevant for the issue are that the assessee had shown in the return of income short term capital loss of Rs. 4,72,49,239/- on sale of shares of M/s. Ballarpur Industries Ltd. which are quoted shares. It was observed by the Assessing Officer that the assessee had acquired 11,102 shares of M/s. Carnation Investment Ltd. on amalgamation, at the cost of Rs. 1,10,200/- and further 8,08,924 shares were transferred from its holding company 'M/s. Greaves Cotton Ltd.' on 23.10.2003 at the cost of Rs. 10,35,57,350/-. Further, it has been noted by the AO that on the date of transaction / transfer of shares from M/s. Greaves Cotton Ltd. to the assessee, the market trading rate and quotation in BSE and NSE was around Rs. 73.30 per shares whereas the assessee has received these shares from 'M/s. Greaves Cotton Ltd.' @ Rs.128.02 per share. Before the Assessing Officer it was submitted that its parent company had acquired BILT shares at Rs. 128.02 per share which has transferred the shares to its subsidiary at the book value and had not sold the shares to the subsidiary. The cost of these shares @ Rs. 128.02 has been considered strictly as per the provisions of section 49(1)(iii)(e) for computing the capital gain / loss. Further, the parent company had not transferred BILT shares for any tax advantage which was clarified with facts and figures before the AO. The Assessing Officer rejected the

said contention and held that the assessee had entered into this transaction of purchase and sale of BILT shares with a view to claim excessive loss for set off against future income. After giving detailed reasoning and applying the ratio laid down by the Hon'ble Apex Court in the case of **McDowell and Co. Ltd. vs. CTO [1985] 154 ITR 148** he held that it was colourable device and, therefore, cost of value of shares at the time of acquisition was at Rs. 73.30 per share which was the value of the share in the stock exchange on the date in which the said BILT shares were acquired by the assessee. Resultantly the short term capital loss on the sale of BILT shares were brought down at Rs. 29,86,018/- as against assessee's claim of Rs. 4,72,49,239/-.

12. In the first appeal, the assessee reiterated the same submissions. However, the Ld CIT (A) completely agreed with the findings of the Assessing Officer and dismissed the assessee's ground after upholding the reasoning and the finding given by the AO.

13. Ld Sr. Counsel appearing on behalf of the assessee submitted that there cannot be any doubt in this case that the shares were acquired at book value which is evident from page 65 and 104 of the paper book, which is a part of balance sheet of Greaves Cotton Company and Carnation Investment Ltd wherein shares have been transferred on the book value. He strongly contended that AO as well as CIT (A) has not considered this vital plea of the assessee that these transactions were wholly covered by sec. 49(1)(iii)(e) r.w.s 47 (iv). She submitted that once these transactions are covered by the aforesaid provisions, then there was no occasion for the AO to assess the cost acquisition as per market value. She strongly relied upon the decision of ITAT, Delhi Bench in the case of **Trent Brands Ltd. vs. ITO [2010] 127 TTJ (Del) (UO) 65**. Lastly, she submitted that the AO's case has been mainly that assessee is trying to set off these losses in future to reduce the tax burden, whereas the fact is till 2011-2012 there has

been no claim for set off of losses and is not be likely to be so in the next years. For this, she has relied upon the document given at page 106 of the paper book.

14. On the other hand, Ld CIT-DR drew our attention to various reasoning and findings given by the AO and also contended that such a transaction is beyond the commercial probability that the share worth of Rs. 73/- have been transferred at a huge premium of Rs. 128/-. He reiterated the case laws as has been referred to by the AO. In sum and substance, he strongly relied upon the findings of the AO and also of the Ld CIT (A).

15. We have carefully considered the rival submissions and perused the material on record. In this case, the transaction is between parent company and its 100% subsidiary company. The shares have been transferred on the book value as have been shown in the books of parent company. It is also not denying fact that the parent company has transferred shares at Rs. 128/- to the assessee company as per its book value. Section 45 provides that capital gain is chargeable to tax on any profit and loss arising from transfer of capital asset. Section 47 provides various instances where transactions are not regarded as transfer within the meaning of section 45. Clause-(iv) of section 47 provides that any transfer of capital asset by a company to its subsidiary company, will not be regarded as transfer within the meaning of section 45. Further, section 49 provides for the cost with reference to certain modes of acquisition. Sub-clause-(e) of clause-(3) of sub-section (1) of section 49, provides that where the capital asset has become the property of the assessee under any such transfer as is referred to in clause-(iv) of section 47 (which is relevant in the case of the assessee), the cost of acquisition of asset shall be deemed to be cost for which the previous owner of the property acquired it. From the above perusal of the provisions of law, which is squarely applicable in the instant case, it is seen firstly, that transaction is between parent company and subsidiary company which cannot be treated as transfer as it is undisputed fact that assessee is a 100% subsidiary of its parent

company; secondly, the shares have been transferred as per the book value and, therefore, the cost of acquisition of the asset shall be deemed to be the cost of which it has been shown in the books of the parent company i.e. previous owner. In these circumstances whether the cost of the shares was higher or lower does not make any difference. From the perusal of the decision of the ITAT in the case of Trent Brands Ltd (supra), we find that provisions of section 47(iv) and 49(1)(iii)(e) has been dealt with in detail and the ratio laid down is also applicable in the case of the assessee also. All the finding and reasoning given by the Assessing Officer has no legs to stand in view of the clear cut provisions of sec.47(iv) r.w.s. 49(1)(iii)(e). Thus, the deduction of short term capital loss by the Assessing Officer is legally not correct. In the result, this ground of the assessee stands allowed.

16. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on this 27th day of July, 2012.

Sd/-
(G.E. VEERABHADRAPPA)
PRESIDENT

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Date : 27.07.2012
At : Mumbai

Okk

Copy to :

1. The Appellant.
2. The Respondent
3. The CIT (A), Concerned.
4. The CIT concerned.
5. The DR "G", Bench, ITAT, Mumbai.
6. Guard File

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By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai