आयकर अपीलीय अधिकरण, 'ई' खंडपीठ मुंबई

INCOME TAX APPELLATE TRIBUNAL,MUMBAI "E" BENCH

सर्वश्री ए. डी.जैन, न्यायिक सदस्य, एवं राजेन्द्र, लेखा सदस्य

Before S/Sh. A.D. Jain,Judicial Member & Rajendra,Accountant Member

आयकर अपील सं/.ITA No.7405/Mum/2011,निर्धारण वर्ष/Assessment Year-2008-09

Dy. CIT (OSD), Central Circle-39 Room No.32(1), Ground Floor Assesseeyakar Bhavan, M.K. Road Mumbai-400 020.	Vs	Shree Durga Capital Ltd. 402,403 Vyapar Bhavan, 49 P.D. Mello Road, Mumbai-400 009. **PAN:ASSESSEEACS 9120 N**

(अपीलार्थी /Appellant) (प्रत्यर्थी / Respondent)

निर्धारिती ओर से/Assessee by : Shri Anuj Kishnadwala - AR

राजस्व की ओर से/ **Revenue by : Shri S.M. Keshkamat-DR**

सुनवाई की तारीख/ Date of Hearing : 03-08-2015

घोषणा की तारीख / Date of Pronouncement : **03**-08-2015

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

<u>लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-</u>

Challenging the order dt.09.08.2011 of CIT(A)-41,Mumbai the Assessing Officer(AO),has raised following Grounds of Appeal:

> *1."Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in directing the Assessing Officer to re-compute the disallowance under section 14A read with rule 80 after excluding the interest expenditure debited to profit and loss account used for trading in shares by the assessee, relying on the decision of the Hon'ble ITAT in the the case of Yatish Trading Co. Pvt. Ltd. vs. ACIT 129 ITD 237, even if such shares yield income which does not form part of the total income under the Income-tax Act, 1961.*
>
> *The appellant prays that the order of Commissioner of Income-tax (Appeal) on the above ground be set aside and that of the Assessing Officer be restored. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary."*

Assessee-company,engaged in the business of trading and investment in shares,filed its return on 11.09.2008,declaring income of Rs. (-)61,00,054/-.The AO completed the assessment on 29.10.2010,u/s. 143(3) of the Act,determining the income of the assesse at (-)17.67 lacs.

2.Effective ground of appeal is about deletion of disallowance made u/s.14Aof the Act.During the assessment proceedings ,the AO found that the assessee had earned dividend income of Rs.3.37 lacs,that the said income did not form part of total income, that it had not attributed any expenses towards earning the income, that it had claimed Rs.37,575/- on account of Demat charges, that Rs.51.91 lacs and Rs.37.41 lacs were claimed under the heads d-mat charges and other expenses respectively, that it had also shown speculation profit of Rs.13.51 lacs. The AO held that the assessee has not submitted any evidence to show that no portion of the expenses claimed in its P&L account were in relation to the exempt income.Applying the provisions of

Section 14A and Rule 8D of the Income-tax,Rules,1962(Rules),the AO disallowed an amount of Rs.43.32 lacs and added it to the total income of the assessee .

3.Aggrieved by the order of the AO,the assessee preferred an appeal before the First Appellate Authority(FAA).Before him,it was argued that the assessee did not hold any stock by way of investment, as evident from the audited balance sheet,that the inventory of shares was part of current assets,that the Rule 8D was applicable to investments and not to stock in trade. The assessee relied upon the matter of Yatish Trading Co. Pvt. Ltd(129ITD327).After considering the submission of the assessee and the assessment order,the FAA held that the issue was covered in favour of the assessee by the decision of Yatish Trading Co. Pvt. Ltd.(supra), that disallowance u/s. 14A was not applicable on the interest expenditure used by the assessee for trading in shares shown as stock in trade in the balance sheet, that the interest on borrowed funds used in trading activity was allowable expenditure u/s. 36(1)(iii) of the Act, that same could not be treated as an expenditure for earning dividend income.He directed the AO to recomputed the disallowance.

4.Before us,the Departmental Representative(DR)supported the order of the AO. The Authoriesd Representative(AR)stated that the issue is covered by the judgment of Hon'ble Bombay High Court.We find that the only issue to be decided in the appeal before us is as to whether the shares held by an assessee under the head stock in trade can be considered for making disallowance u/s.14A of the Act r.w.rule 8D of Rules.It was brought to our notice that the issue has been conclusively decided by the Hon'ble jurisdictional High Court in the case of India Advantage Securities Ltd.(Income tax Appeal no.1131 of 2013).We find that in that case the Hon'ble court has clearly held that the disallowance if any to be made u/s.14A and rule 8 D could only be made with regard to investments and not for the shares held as stock in trade.In the case under consideration, the FAA had followed the decision of Tribunal delivered in the case of Yatish Trading Co.Pvt.Ltd.(supra).The view taken by the Tribunal has been upheld by the Hon'ble Bombay High Court in the case of India Advantage Securities Ltd. (supra). Respectfully, following the judgment of the Hon'ble Court we decide the effective ground of appeal against the AO.

As a result,the appeal filed by the AO stands dismissed.

फलतः निर्धारिती अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है.

Order pronounced in the open court on 3rd,August,2015.

आदेश की घोषणा खुले न्यायालय में दिनांक 3 अगस्त,2015 को की गई ।

Sd/-	**Sd/-**
(ए. डी.जैन /A. D. Jain)	**(राजेन्द्र / RAJENDRA)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

मुंबई/Mumbai,दिनांक/Date:03.08.2015

व.नि.स.*Jv.Sr.PS.*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1.Appellant /अपीलार्थी **2.** Respondent /प्रत्यर्थी
3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, **4.**The concerned CIT /संबद्ध आयकर आयुक्त
5.DR E Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई
6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**
आयकर अपीलीय अधिकरण, मुंबई **/ITAT, Mumbai.**