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% 03.10.2011

Present: Mr. Abhishek Maratha, Sr. Standing Counsel for the Revenue.
Mr. Ved Jain, Advocate for the assessee.

+ITA No.768/2011

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The respondent assessee filed the income tax return declaring loss at ₹1.89 Crore. During the assessment proceedings, the Assessing Officer noticed that the assessee had bifurcated its activities as brokerage and share trading i.e. non-speculative and speculative. The AO was of the view that the establishment expenses had to be allocated between both the activities. In the absence of any details filed by the assessee, the AO allocated 10% of establishment expenses of ₹1,04,94,518/- and 10% of the interest of ₹1,88,31,801/- towards speculative business. The AO also assigned ₹1 lac to share trading business from the expenses other than interests which were not included in establishment expenses. Thus, total disallowance of ₹30,32,180/- was made by the AO.

The AO further noticed that the assessee had earned dividend of ₹58,57,269/- and had claimed exempt under Section 10(33) of the Income Tax Act ('the Act' for brevity). He invoked provisions of Section 14A of the Act and allocated 6% of establishment expenses and 6% of interest expenses towards dividend income. Thus, the total disallowance was made by the AO at ₹17,59,580/-.



The CIT (A) held that the AO had apportioned an expenditure of ₹30,32,180/- towards share trading business, held to be as speculative, applying rate of 10% of administrative as well as interest expenses. Since a sum of ₹69,84,472/- out of total trading loss in shares of ₹81,30,883/- had been held to be non-speculative, apportionment of expenses had to be in respect of balance loss of ₹11,46,011/-. The CIT (A) had further held that the expenditure had to be allocated taking into consideration actual facts and quantum of work involved. The assessee itself had allocated ₹49,033/- as administrative expenses to the share trading activity. However, the losses on account of trading errors and on account of opening stock had not been considered by the assessee. Accordingly, after considering the facts on record, the CIT (A) allocated a sum of ₹3,41,209/- towards share trading business, out of which, a sum of ₹1,80,854/- was attributed to the units, transactions related to which were not treated as speculative in nature. Thus, out of total expenditure apportioned by the AO at ₹30,32,180/-, the CIT (A) confirmed the addition of ₹1,60,355/- and deleted the balance addition.

Similarly, with respect to apportionment of expenses towards exempted dividend income, CIT (A) observed that out of total dividend income of ₹58,57,269/-, amount of ₹55,98,164/- pertained to KMMF Units. Expenditure pertaining to mutual fund had been worked



out at ₹1,80,854/- and therefore, the CIT (A) held that the said amount is attributable to earning of dividend from units. Accordingly, the CIT (A) reduced the disallowance to ₹1,80,854/- as against ₹17,59,780/- made by the AO.

In further appeal, the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal') confirmed the order passed by the CIT (A).

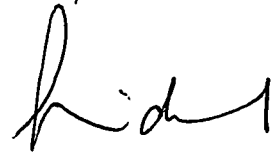
Challenging the order of the Tribunal, the instant appeal is preferred by the Revenue.

Tax effect calculated is not correct. We have taken to the orders of the CIT (A) as well as the Tribunal minutely discussing the quantum of expenses, which are to be allocated. The detailed exercise is undertaken by the CIT (A) and thereafter by the Tribunal as well. It would be relevant to point out that the respondent herein had given the precise calculation of the expenses which is to be allocated. The CIT (A) had called for the remand report thereupon. However, in his remand report, the AO did not state the basis as well as his objections to the calculations submitted by the assessee. Thereafter, the CIT (A) discussed the working out of the expenses as per the calculations submitted by the assessee and found the same to be correct and on that basis, apportioned the expenses.



We are of the opinion that the entire exercise is based on the facts and material on record. No question of law arises, this appeal is accordingly dismissed.


A.K. SIKRI, J.



SIDDHARTH MRIDUL, J.

OCTOBER 03, 2011
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