

*IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH AHMEDABAD*

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'सी'

Before Shri Shailendra Kumar Yadav, Judicial Member and

श्री शैलेन्द्र कुमार यादव, न्यायिक सदस्य एवं

Shri Anil Chaturvedi, Accountant Member

श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष ।

ITA No. 1924 & 2065/Ahd/2011
Assessment Year :2008-09

Asstt. Commissioner of Income Tax, Circle-3, 1 st Floor, Pratyakshyakar Bhavan, Panjrapole, Ambawadi, Ahmedabad	V/s.	Anagram Stock Broking Ltd. Anagram House, Darshan Society, Nr. H. L. Commerce Six Road, Navrangpura, Ahmedabad
Edelweiss Stock Broking Ltd. (Formerly known as Anagram Stock Broking Ltd.) Anagram House, Nr. Commerce Six Road, Stadium Road, Navrangpura, Ahmedabad	&	Asstt. Commissioner of Income Tax, Circle-3, Insurance Building, Ashram Road, Ahmedabad
PAN No. AABCA9956F		
(Appellant)	..	(Respondent)

राजस्व की ओर से / By Revenue	Smt. Smiti Samant, Sr. D.R.
आवेदक की ओर से/By Assessee	Shri Vijay Ranjan, A.R.
सुनवाई की तारीख/Date of Hearing	23.12.2015
घोषणा की तारीख/Date of Pronouncement	08.01.2016

ORDER

PER : Shri Anil Chaturvedi, Accountant Member

These two appeals of which one is filed by Revenue and the other by Assessee are against the order of CIT(A)-XVI, Ahmedabad, dated June 10, 2011 for the assessment year 2008-09.

2. The relevant facts as culled out from the materials on record are as under:

3. The Assessee is a Company stated to be engaged in the business of stock broking, depository participant and distribution of financial products. The Assessee filed its return of income for A.Y. 08-09 on 31.09.2008 declaring total income of Rs.18,43,55,180/-. The case was selected for scrutiny and thereafter assessment was framed u/s.143(3) vide order dated 30.12.2010 and the total income was determined at Rs.18,43,55,180/-.

4. Aggrieved by the order of Assessing Officer, Assessee carried the matter before the Id. CIT(A) who vide order dated 10th June, 2011 granted partial relief to the assessee.

5. Aggrieved by the order of Id. CIT(A), Revenue and Assessee both are in appeal before us. The grounds raised by the Revenue in its appeal i.e. ITA No.1924/Ahd/2011 read as under:

"1 The Ld. CIT(A) erred in law and on facts in partly deleting the addition on account of disallowance of bad debt to Rs.27,35,991/- as the conditions laid down u/s.36(1)(vii) of the Act are not satisfied.

2 The Ld. CIT(A) erred in law and on facts in partly deleting the disallowance of NSE penalty amount of Rs.17,027/- holding that delayed submission of compliance report to NSE is not infraction of law."

5.1 On the other hand, the grounds raised by the Assessee in its appeal i.e.

ITA No.2065/Ahd/2011 read as under:

"1. On the facts and in the circumstances of the case, the Departmental authorities have erred in rejecting assessee's claim for depreciation on Stock Exchange Card in a sum of Rs.41,36,396/-.

2. *On the facts and in the circumstances of the case, the Departmental authorities have erred in considering it a case fit for any disallowance in pursuance of section 14A and have further erred in quantifying that disallowance in a sum of Rs.4,86,456/-.*
3. *On the facts and in the circumstances of the case, the Departmental authorities have erred in disallowing assessee's claim for brokerage refund in a sum of Rs.8,57,229."*

6. We first take up Revenue's appeal in ITA No.1924/Ahd/20101.

6.1 Before us, at the outset, Id. A.R. submitted that the present appeal of the Revenue needs to be dismissed on account of low tax effect in view of the CBDT Circular No. 21 of 2015 dated 10.12.2015. The Id. D.R. fairly admitted that the tax effect is less than the limit prescribed by the aforesaid CBDT Circular.

6.2 We have heard the rival submissions and perused the material on record. On perusing the grounds of appeal raised by the Revenue, we find that Revenue is aggrieved by deletion of aggregate additions of Rs. 27,53,018/-, the tax effect of which is below Rs. 10 lacs. As per the announcement of Central Board of Direct Taxes (CBDT) dated 10.12.2015 (Circular No. 21 of 2015), no Department appeals are to be filed against relief given by Id. CIT(A) before the Income Tax Tribunal unless the tax effect, excluding interest exceeds Rs. 10 lacs and it further states that the instructions will apply retrospectively to the pending appeals. In the present case, since it is an undisputed fact that on the additions which are in dispute the tax effect is less than Rs. 10 lacs, we are of the view that the monetary limit prescribed by the instructions of the aforesaid CBDT Circular would be

applicable to the present appeal of the Department and therefore the present appeal is not maintainable on account of low tax effect. In such circumstances, we dismiss the appeal of Revenue without expressing any opinion on merits of the case.

6.3 In the result, the appeal of Revenue is dismissed.

7. Now, we take up Assessee's appeal in ITA No.2065/Ahd/2011.

7.1 First ground is with respect to claim of depreciation on stock exchange card. Assessing Officer on perusing the details furnished by the assessee noticed that assessee has claimed depreciation of Rs.41,36,396/- on stock exchange card. Assessing Officer was of the view that after the implementation of Corporatization and Demutualization Scheme, 2005, the membership card does not exist as the same stands cancelled and therefore, no depreciation can be allowed on the same. He, accordingly, disallowed the claim of depreciation.

7.2 Aggrieved by the order of Assessing Officer, assessee carried the matter before the CIT(A) who following the order of its predecessors for A.Y. 2006-07 upheld the disallowance made by the Assessing Officer by holding as under:

"3.3 I agree with the aforesaid finding of the CIT(A), Gandhinagar given in appellant's own case for the A.Y. 2006-07. No depreciation on the BSE membership-card is available to the appellant after the BSE (Corporatisation and Demutualization) Scheme 2005. The shares of BSE Ltd. have been allotted on a concessional price on BSE membership card. The trading rights which have been conferred upon the erstwhile card holders of BSE after its corporatisation and demutualization has no value as is evident from the proviso to section 55(2)(ab) of the Act as has been brought on statute by the

Finance Act 2003 w.e.f. 01-04-2004. In view of the¹ finding given in appellant's own case .in the appellate order dated 31 01.2011 for the A.Y. 2006-07, it is held that the Assessing Officer was justified in disallowing the depreciation of Rs. 41,36,396/-. His aforesaid finding is sustained and the addition made on account of disallowance of depreciation is confirmed, The second ground of appeal is accordingly dismissed.”

7.3 Aggrieved by the order of CIT(A), assessee is now in appeal before us. Ld. A.R. at the outset submitted that identical issue arose in the case of assessee in A.Y.2005-06. The hon'ble Tribunal while deciding the issue in ITA No.1168/Ahd/2011, order dated 11.07.2014 and after following the decision of co-ordinate bench in the case of M/s. Grishma Securities Pvt. Ltd. vs. ITO in ITA No.6098/M/2010 decided the issue in favour of assessee. He placed on record a copy of the aforesaid decision. He, therefore, submitted that since the issue in the present case is identical to the facts of the case in A.Y. 2006-07 and since in A.Y. 2006-07 the issue has been decided in favour of assessee by the Co-ordinate Bench of Tribunal, the present ground of the assessee needs to be allowed. Ld. D.R., on the other hand, supported the order of Assessing Officer and CIT(A).

7.4 We have heard the rival submissions and perused the material on record. We find that issue of depreciation of stock exchange card was before the Co-ordinate Bench in assessee's own case in A.Y. 2006-07 was decided in favour of assessee by holding as under:

“6. Ground No.2 is against disallowance of depreciation on the membership of the Stock Exchange card. The ld.counsel for the assessee reiterated the submissions as were made in the statement of facts-cum- synopsis. The ld.counsel for the assessee submitted that the issue is squarely covered by the judgement of Coordinate Bench (ITAT Mumbai "G" Bench Ahmedabad) rendered in the case of M/s.Grishma Securities Pvt.Ltd. vs. ITO in ITA No.6098/M/2010 for AY 2007-08, dated 29/03/2011.

6.1. On the contrary, Id.Sr.DR supported the orders of the authorities below.

7. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below as well as the decision relied upon by the Id.counsel for the assessee.

ITA No.1168/Ahd/2011 Edelweiss Stock Broking Ltd. vs. Addl.CIT Asst.Year - 2006-07 The Id.CIT(A) has decided this issue in para-8 of his order by observing as under:-

"8. The trading rights which have been conferred upon the erstwhile card hold of BSE after its corporatization and demutualization has no value is evident from the provisions of proviso to section 55(2)(ab) of the Act which has been brought on a statute by the Finance Act 2003 w.e.f. 01/04/2004. In present case under consideration, it is admitted fact that the assessee has been allotted equity shares under the BSE corporatization and Demutualization Scheme 2005 and same is evident from the balance sheet where under the head investment of Rs.10000 equity shares of BSE limited has been reflected. Once the assessee has been allotted equity shares of BSE limited under scheme then as per provisions of section 55(2)(ab), the cost of acquisition of trading and clearing right shall be deemed to be NIL hence depreciation cannot be allowed. Considering the same, disallowance made by AO is upheld and related ground of appeal is dismissed."

7.1. We find that the Coordinate Bench in ITA No.6098/M/2010 for AY 2007-08 in the case of M/s.Grishma Securities Pvt.Ltd. vs. ITO (supra), has held as under:-

"2. We have heard both the parties, perused the records and considered the matter carefully. The dispute is regarding allowability of depreciation on a stock exchange card. Under the provisions of section 32(1)(ii) depreciation is allowable on certain intangible assets such as know how, patents, copy rights and license etc. Earlier the Hon'ble High Court of Mumbai in case of Techno Shares and Stock Ltd. (supra) had held that stock exchange card was not covered under section 32(1)(ii) and therefore depreciation was not allowable. However the said judgment of the Bombay High Court has recently been considered by the Hon'ble Supreme Court in the same case and it was held that stock exchange card is akin to a license and therefore it is covered under section 32(1)(ii) and depreciation is allowable. We therefore respectfully following the said judgment of Hon'ble Supreme Court, set aside the order of CIT(A) and allowed the claim of the assessee."

7.2. Since the facts are identical and no change into the facts and circumstances has been pointed out by the Id.Sr.DR, we have no reason ITA No.1168/Ahd/2011 Edelweiss Stock Broking Ltd. vs. Addl.CIT Asst.Year - 2006-07 to take a different view than taken by the Coordinate Bench in the case of M/s.Grishma Securities Pvt.Ltd.(supra). Thus, this ground of assessee's appeal is allowed.

Since the facts of the case in year under appeal are identical to that of A.Y. 2006-07 therefore, we respectfully following the decision of Co-ordinate Bench in case of assessee and for similar reasons, hold that assessee is eligible for depreciation of stock exchange card. Thus, this ground of assessee's appeal is allowed.

8. Second ground is with respect to disallowance u/s.14A.

8.1 During the course of assessment proceedings, Assessing Officer noticed that assessee had made investment of Rs.1.40 crores, it had paid interest by pledging the shares for seeking overdraft. The assessee was therefore asked to furnish the working of disallowance u/s.14A r.w.r. 8D of the Act and also asked to show cause as to why no disallowance u/s.14A be made. The submission of the assessee inter alia that no borrowed funds have been used for the purpose of making investment and no expenditure has been incurred to earn dividend was not found acceptable to the Assessing Officer. Assessing Officer noted that assessee has not supported its claim of availability of interest free funds being invested in the shares and in the absence of fund flow statement, the assessee's claim of having not used interest free funds could not be accepted. He was further of the view that provisions of Rule 8D were applicable to the year under consideration and accordingly following the methodology prescribed under Rule 8D, worked out the disallowance u/s.14A at Rs.4,86,456/-.

8.2 Aggrieved by the order of Assessing Officer, assessee carried the matter before the CIT(A) who upheld the order of Assessing Officer by holding as under:

"5.2 I have carefully considered the facts of the case, the finding of the Assessing Officer recorded in para-7 of the assessment order and the statement of facts on which reliance was place by the Ld. Counsels. I have also considered the decisions relied upon by the Ld. Counsels. It is an admitted fact that no day to day fund flow statement had been submitted before the Assessing Officer and therefore, in absence of such fund flow statement, the assessee's claim that no. interest bearing funds were diverted for the investment in the said shares remained unsubstantiated. It is also the settled legal position that the assessee has to prove by demonstrative evidences that on the date' of investments, the assessee had interest free funds and there was no diversion of interest bearing funds for non business purposes. Reliance was rightly placed by the Assessing Officer on the decision of Hon'ble Mumbai Tribunal in the case of Sanghavi Swiss Refills Pvt. Ltd vs ITO 85 ITD 59 (Mum.). I agree with the contention of the Assessing Officer that if, interest bearing funds have been used in making investment in shares on which the income is exempt, then the disallowances are required to be made u/s. 14A of the Act read with Rule 8D of the Income-tax Rules, 1962 irrespective of the fact whether in the year under consideration, the assessee has derived any exempt income or not from such investment. However, in the year under consideration the assessee has disclosed dividend income of Rs. 14,53,085/- as exempt income. The view taken by the Assessing Officer is the correct view which is supported by the decision of the Hon'ble Special Bench of the Delhi Tribunal in the case of Cheminvest Ltd vs. ITO 121 ITD 318 and the decision of the Hon'ble Special Bench of Mumbai Tribunal in the case of Daga Capital Management Pvt Ltd 117 ITD 169 (Mum)(SB). As per the decision of the Hon'ble Bombay High Court in the case of Godrej & Boyce, the provisions of Rule 8D are applicable from the assessment year 2008-09, therefore, the disallowance made u/s 14A of the Act was justified. Since, the appellant had not disputed the calculation of disallowance as computed under Rule-8D of the Income-tax Rules, 1962, the disallowance so made is disallowable.

5.3 I would further like to say that exactly similar issue was came for consideration before my predecessor in the case of the group concern M/s Anagram Capital Ltd. for the A.Y 2008-09. My predecessor vide para-4,3 of his appellate order dated 28.04,2006 in appeal No. CIT(A)-XWAC!T,Cir.3/710/10-11 had sustained the disallowance of interest and administrative expenses made by resorting to the provisions of sec. 14A of the Act by holding that as per the decision of the Bombay High Court in the case of Godrej & Boycee, the provisions of Rule 8D are applicable from the current year. Since the nexus of investment is not shown then in view of the decision of the Bombay High Court in the case of Godrej & Boyce, the disallowance can be made from this year as per rule 8D. The Assessing Officer has made the disallowance as per Rule 8D and the appellant has not

disputed the calculation portion. Hence the ground is dismissed. For the year under consideration, the Counsels of the appellant had not disputed the calculation of disallowance as computed under Rule-8D of the Income-tax Rules, 1962. In view of the discussion in para-5.2 above and following the aforesaid finding of my predecessor on similar facts in the case of group concern M/s Anagram Capital Ltd. for the A.Y. 2008-09, it is held that the Assessing Officer was justified in disallowing the interest and administrative expenses by resorting to the provisions of sec 14A of the Act r.w. Rule 8D of the Income-tax Rules, 1962. The finding of the Assessing Officer is sustained and the disallowance so made for Rs. 4,86,456/- is confirmed. The fourth ground of appeal is accordingly dismissed.”

8.3 Aggrieved by the order of CIT(A), assessee is now in appeal before us.

8.4 Before us, Id. A.R. reiterated the submissions made before the Assessing Officer and CIT(A) and further submitted that investments of the assessee are only in one company and the same investment continues from 31st March 2005 onwards till date. He placed on record the extract of the Balance Sheet in support of its claim that there is no change in investment between the period 31st March, 2005 and the impugned assessment year. He further submitted that the interest free funds in the form of Capital & Reserves are far in excess of the investments and therefore, no disallowance with respect to interest could be made and for this proposition he relied upon the decision of Hon'ble Gujarat High Court in case of CIT vs. Gujarat Narmada Valley Fertilizers Co. Ltd. in Tax Appeal No.1151 of 2013, order dated 10th January 2014. As far as the disallowance of administrative expenses is concerned, he submitted that no expenditure has been incurred by the assessee to earn the income. Ld. D.R., on the other hand, supported the orders of Assessing Officer and CIT(A) and further submitted that during the year under consideration, the provisions of Rule 8D are applicable and

therefore, Assessing Officer has rightly made the disallowance u/s.14A r.w.r. 8D.

8.5 We have heard the rival submissions and perused the material on record. We find that in the present case, Assessing Officer has made disallowance u/s.14A of Rs.4,86,456/- which comprises of disallowance of interest of Rs.4,16,122/- and administrative expenditure of Rs.70,434/-. As far as disallowance on account of interest is concerned, it is undisputed fact that the interest free funds in the form of Capital and Reserves are far in excess of investments and further it is also a fact that there is no change in investments from 31st March, 2005 to 31st 2008. In such a situation, following the decision of Hon'ble Bombay High Court in the case of CIT vs. Reliance Utilities and Power Ltd. 313 ITR 340 (Bom), we are of the view that no disallowance on account of interest could be made. As far as the disallowance on account of administrative expenses is concerned, we are of the view that considering the fact that assessment year being 2008-09 and the provisions of Rule 8D being mandatory and the assessee having earned dividend income of Rs.14.53lacs and in the absence of any evidence of not incurring administrative expenses, we are of the view that no interference to the disallowance made on account of administrative expenses of Rs.70,434/- is called for. Thus, this ground of assessee's appeal is partly allowed.

9. Ground no.3 is with respect to disallowing the assessee's claim for brokerage refund of Rs.8,57,229/-.

9.1 On perusing the details furnished by the assessee, Assessing Officer noticed that assessee claimed to have paid brokerage of Rs.8,57,229/-. The submission of the assessee was inter alia that it was paid as a measure of commercial expediency and was incurred for the purpose of business and was therefore, allowable. The aforesaid submissions of the assessee was not found acceptable to the Assessing Officer as he noted that assessee had not pointed out the payment of such compensation in earlier years and there was no contractual liability for making such payments. He, accordingly, disallowed the claim of the assessee.

9.2 Aggrieved by the order of Assessing Officer, assessee carried the matter before the CIT(A) who upheld the disallowance made by the Assessing Officer by holding as under:

"7.2 I have carefully considered the facts of the case, the finding of the Assessing Officer recorded in para-9 of the assessment order and the statement of facts on which reliance was place by the Ld. Counsels. I have also considered the decisions relied upon by the Ld. Counsel. The Assessing Officer had referred to regarding loss incurred by the clients and not by assessee and regarding loss compensate relating to clients. It was further noted that the assessee had not pointed out that such compensation have been granted in earlier years. However, it is not understood from where the Assessing Officer taken the issue regarding loss to clients and compensating loss of clients by the appellant. The Ld. Counsel has submitted before Assessing Officer as well as during appellate proceedings that the brokerage is refunded on account of the reasons that:

- (i) Excess brokerage charged as against rate of brokerage decided with client.*
- (ii) If client has achieved turnover and considering his turnover/volume through appellant, management decides to refund certain percentage of brokerage to such client.*
- (v) Refund of brokerage for transactions carried out during certain period wherein there was connectivity problem from appellant's side.*

7.3 Apart from it, it was claimed that the entire brokerage refund given during the year is out of commercial expediency and looking to nature of business, such expenditure is allowable revenue expenditure against total income earned by appellant. I agree with the contention of the Ld. Counsel that the brokerage rebate was an integral part of share broking business and sometimes' it is given out of business compulsion to ensure patronage of the high net worth clients.

7.4 It was further brought to my notice by the Ld. Counsels that exactly similar issue was came for consideration before my predecessor in the case of the group concern M/s Anagram Capital Ltd. for the A.Y. 2008-09. My predecessor vide para-7.3.7 of his appellate order dated 28.04.2006 in appeal No. CIT(A)-XVI/ACIT.Cir.3/710/10-11 had allowed the claim of the appellant by holding that the appellant has given the list of parties to whom brokerage rebate has given. It was further stated that brokerage rebate is given effect in client's ledger account and to that extent ledger balance of client was decreased. I agree with the appellant that the claim is allowable. From the above, it can be seen that (he appellant has been able to show that the refund of brokerage has been given in respect of all cases. In view of the above discussion, the refund of brokerage is genuinely explained and the claim is therefore allowed However, from the finding of the Assessing Officer, it is not coming out as to whether the list of parties to whom brokerage rebate was given, was furnished before the Assessing Officer or not It is not ascertainable from the statement of facts, on which (he counsels relied upon, that such list was on the record of the Assessing Officer or not. During the appellate proceedings, no such attempt was made by the Ld. Counsels to justify that the list of parties to whom brokerage rebate was given was furnished before the assessing Officer. Though, I agree with the finding recorded by my predecessor in the case of the group concern M/s Anagram Capital Ltd, for the A.Y. 2008-09 but the claim of brokerage rebate can be allowed only if the list of parties to whom brokerage rebate has given is placed on record of the Assessing Officer and it is established that the brokerage rebate is given effect in client's ledger account and to that extent ledger balance of client was decreased. Since, no attempt was made to establish the aforesaid issues relevant for allowing the claim of the appellant, the deduction of brokerage rebate is not available to the appellant. The disallowance so made for Rs.8,57,229/- is thereby confirmed. The sixth ground of appeal is accordingly dismissed.”

9.3 Aggrieved by the order of CIT(A), assessee is now in appeal before us.

9.4 Before us, Id. A.R. reiterated the submissions made before the Assessing Officer and CIT(A) and further submitted that CIT(A) though has noted that the brokerage rebate has been sufficiently explained but however

noted that brokerage rebate could be allowed only if the list of parties to whom brokerage rebate was paid was placed and was established that the effect of the same is given in clients' ledger. He submitted that the aforesaid details could not be placed before Assessing Officer and CIT(A) but however if given an opportunity, these details can be filed before the CIT(A). He, therefore, submitted that in the interest of justice, the matter may be remitted back to the file of Assessing Officer /CIT(A) for afresh adjudication. Ld. D.R., on the other hand, supported the order of Assessing Officer and CIT(A).

9.5 We have heard the rival submissions and perused the material on record. We find that the reason of Id. CIT(A) in upholding the disallowance made by the Assessing Officer was that the list of parties to whom the brokerage rebate was not placed before the Assessing Officer and that assessee had to establish that the effect of brokerage rebate is given in clients' ledger account. We also find that the nature of expenses has not been doubted by Id. CIT(A). Before us, Id. A.R.'s contention is that the absence of details which resulted in confirmation of disallowance if given an opportunity can be furnished before the authorities. In view of the aforesaid submission of Id. A.R., we are of the view that in the interest of justice, one more opportunity be granted to assessee to furnish the required details. We, therefore, remit the issue to the file of Assessing Officer to decide the issue afresh moreso in the light of the observations made by the CIT(A). Needless to state that Assessing Officer shall grant adequate opportunity of hearing to

the assessee. Thus, this ground of assessee is allowed for statistical purposes.

9. In the result, the appeal of Revenue is dismissed and the appeal of Assessee is partly allowed.

This Order pronounced in open Court on 08.01.2016

Sd/-
(Shailendra Kumar Yadav)
Judicial Member

Sd/-
(Anil Chaturvedi)
Accountant Member

True Copy

S.K.Sinha

आदेश की प्रतिलिपि अद्येषित / Copy of Order Forwarded to:-

1. अपीलार्थी / Appellant
2. प्रत्यर्थी / Respondent
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।