

**No disallowance under section 14A – Reg. dividends on shares
received by a trader in shares**

The issue whether any disallowance of expenditure could be made under section 14A of the Income-Tax Act, 1961 (the Act), in respect of exempt income by way of dividend earned by an assessee engaged in the business of dealing in shares and securities; has come up for consideration before various judicial fora.

The aforesaid issue was first decided by the Mumbai bench of the Tribunal in the case of *Mukand Global Finance Ltd. Vs Dy.CIT [2008] 119 TTJ 467 (Mum)*. It was, *inter alia*, held in this case that disallowance of interest under section 14A should be made only in respect of those shares which were held as investment. In other words, no disallowance of interest under section 14A should be made in respect of shares which were held as a stock-in-trade.

Thereafter, the aforesaid issue, *inter alia*, came up for consideration before the Special Bench of the Tribunal, Mumbai, in the case of *ITO Vs Daga Capital Management P. Ltd. [2008] 119 TTJ 289 (Mum) (SB) : 312 ITR (AT) 1 (Mum) (SB)*. It was, *inter alia*, held in this case by majority view that section 14A applies to all heads of income and aims at disallowing expenditure incurred in relation to income not forming part of the total income, even though such expenditure may be allowable under any other provision e.g. section 36(1)(iii). Therefore, the provisions of section 14A were held to be applicable with respect to the dividend income earned by the assessee engaged in the business of dealing in shares and securities, on shares held as a stock-in-trade.

In the aforesaid judgement, the minority view of the Vice-President was against the aforesaid view of the majority view of the Tribunal. As per the Vice-President, the disallowance under section 14A cannot be made if the connection in the expenditure and the income is not dominant and immediate but is merely incidental, ancillary or remote one. It was, accordingly, held by the Vice-President that no disallowance under section 14A can not be made in respect of dividend income received incidentally on shares acquired for the purpose of dealing in shares.

Recently, the Karnataka High Court has delivered a judgement on the aforesaid issue in the case of *CCI Ltd. Vs JCIT [2012] 71 DTR 141 (Karn)*. It was, held in this case that when the assessee has not retained shares with the intention of earning dividend income and the dividend income is incidental to his business of sale of shares, which remained unsold by the assessee, it cannot be said that the expenditure incurred in acquiring the shares has to be apportioned to the extent of dividend income and that should be disallowed from deduction.

It was, thus, clearly held that provisions of section 14A were not applicable to the expenses incurred by the assessee in the course of its business of dealing in shares, merely because the assessee has incidentally earned some dividend income which is exempt from income-tax.

Conclusion

In the light of the aforesaid judgement of the Karnataka High Court, the aforesaid judgement of the Special Bench of the Tribunal, Mumbai, will cease to be good law on the aforesaid issue.

In other words, the majority view in the aforesaid judgement of the Special Bench of the Tribunal, Mumbai, will no longer remain good law and accordingly, the same will not be binding on any judicial fora, including the various Benches of the Tribunal and the judicial authorities in the Income-Tax Department.

Place : Pune

Date : 1.10.2012

(S.K. Tyagi)

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