

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH – AHMEDABAD

(BEFORE SHRI D. K. TYAGI, JM AND SHRI A. K. GARODIA, AM)

ITA No.1964/Ahd/2012

(AY: 2009-10)

The A. C. I. T., Cir-5, 5 th Floor, "B" Wing, Pratyaksh Kar Bhavan, Nr. Polytechnic College, Ambawadi Ahmedabad 15	Vs	Smt. Neeta M. Patel, Prop. New Era Enterprises, 7, Gandvi Society, Nr. Ishita Tower, Navrangpura, Ahmedabad 380 009 P. A. No. AAFPP 1187 N
(Appellant)		(Respondent)

Appellant by	Shri Rahul Kumar, Sr.DR
Respondent by	Shri A. L. Thakkar, AR

Date of hearing: 31-01-2013

Date of pronouncement: 31-01-2013

ORDER

PER A. K. GARODIA: This is a revenue's directed against the order of the learned CIT(A)-XI, Ahmedabad dated 05-06-2012, for the assessment year 2009-2010.

2. The grounds raised by the revenue are as under:

- "i) The Ld. CIT(A) has erred in law and on facts in directing the A. O. to treat the income from share transactions as LTCG instead of business income.*
- ii) The Ld. CIT has erred in law and facts in deleting the addition of Rs.7,22,711/- made on account of expenses related to the exempt income u/s 14A of the Act.*
- iii) On the facts and circumstances of the case, the Ld. Commissioner of Income tax (A) ought to have upheld the assessment order of the Assessing Officer."*

iv) *It is, therefore, prayed that the order of the Ld. Commissioner of Income tax (A) may be set-aside and that of the Assessing Officer be restored."*

3. Regarding ground No.1, the learned DR of the revenue supported the assessment order whereas the learned AR of the assessee supported the order of the learned CIT(A). He also submitted that this issue is covered in favour of the assessee by the Tribunal Order in assessee's own case for assessment year 2005-06 in ITA No.937/Ahd/2009 dated 15-05-2012. He submitted a copy of the Tribunal decision.

4. We have considered the rival submissions, perused the materials on record and gone through the orders of the authorities below and the Tribunal decision cited by the learned AR of the assessee (supra). We find that this issue has been decided by the learned CIT(A) by following the Tribunal order on the same issue in the case of the assessee in the assessment year 2005-06. The learned DR of the revenue could not point out any difference in the facts in the present year and in the assessment year 2005-06 and hence, we do not find any reason to take contrary view in the present year. Hence, by respectfully following the earlier year's Tribunal Order, we decline to interfere in the order of the learned CIT(A) on this issue. Ground No.1 is rejected.

5. Regarding ground No.2 also, the learned DR supported the assessment order whereas the learned AR supported the order of the learned CIT(A). He also submitted a copy of the profit & loss account of the assessee for the present year and pointed out that apart from purchase of Rs.65,79,796/-, only four amounts are debited to the profit & loss account i.e. Rs.30,153/- being administrative expense, Rs.25,070/- being interest expenses, Rs.5,694/- being other expenses and Rs.9,196/- being depreciation. He drawn our attention to the order of the learned CIT(A) that the learned CIT(A) has already confirmed the disallowance of administrative expenses to the extent of Rs.35,847/- which is debited to the profit & loss account (Rs.30,153/- + Rs.5,694/-) and this finding is also given by the learned CIT(A) that in the computation of income, the assessee on its own has

disallowed interest expenses of Rs.28,140/-. He submitted that when no other expense is debited to the profit & loss account, disallowance for expenses in expenses of debited to profit & loss account cannot be made.

6. We have considered the rival submissions, perused the material on record and have also gone through the orders of the authorities below. We find that the AO has made disallowance on the basis of Rule 8D of the Income Tax Rules, 1962, but no disallowance can be made or sustained in excess of the expenses debited in the profit & loss account. In the present case, the total expenses debited in the profit & loss account is Rs.66,49,909/- which includes Rs.65,79,796/- on account of purchase and Rs.9,196/- on account of depreciation and admittedly, no disallowance can be made against these two expenses. Apart from this, whatever amount is debited to the profit & loss account has been disallowed by the assessee itself in the computation on account of interest expenditure and the disallowance to the extent of balance amount of administrative expenses and other expenses totaling to Rs.35,847/- has been confirmed by the learned CIT(A) and hence, we do not find any reason to interfere in the order of the learned CIT(A) on this issue also. Hence, ground No.2 is also rejected.

7. In the result, appeal of the revenue is dismissed

Order pronounced in the open Court on the date of hearing itself i.e. on 31-01-2013.

Sd/-
(D. K. TYAGI)
JUDICIAL MEMBER

Sd/-
(A. K. GARODIA)
ACCOUNTANT MEMBER

Copy of the order forwarded to:

1.	The Appellant
2.	The Respondent
3.	The CIT concerned
4.	The CIT(A) concerned
5.	The DR, ITAT, Ahmedabad
6.	Guard File

BY ORDER

Asst. Registrar, ITAT, Ahmedabad

1. Date of Dictation: 31-01-2013
2. Date on which the typed draft is placed before the Dictating Member: 01-02-2013 other Member:
3. Date on which approved draft comes to the Sr. P.S./P.S.:
4. Date on which the fair order is placed before the Dictating Member for pronouncement:
5. Date on which the fair order comes back to the Sr. P.S./P.S.:
6. Date on which the file goes to the Bench Clerk:
7. Date on which the file goes to the Head Clerk:
8. The date on which the file goes to the Assistant Registrar for signature on the order:
9. Date of Despatch of the Order: