courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.

Website: www.courtkutchehry.com

Printed For:

Date: 26/10/2025

Dhanuka and Sons Vs Commissioner of Income Tax

Income Tax A. No. 633 of 2004

Court: Calcutta High Court

Date of Decision: April 19, 2011

Acts Referred:
Income Tax Act, 1961 â€" Section 10(33), 10(34), 115O, 14A, 260A#Income Tax Rules, 1962 â€" Rule 8D

Citation: (2011) 244 CTR 511 : (2011) 339 ITR 319 : (2011) 201 TAXMAN 105

Hon'ble Judges: Sambuddha Chakrabarti, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: J.P. Khaitan and Sanjoy Bhawmick, for the Appellant; R.N. Bandopadhyay and Shekhar B. Saraf, for the Respondent

Judgement

Bhaskar Bhattacharya, J.
This appeal u/s 260A of the income tax Act, 1961 is at the instance of an Assessee and is directed against an

order dated April 29, 2004, passed by the income tax Appellate Tribunal, ""D"" Bench, Calcutta, in income tax Appeal being ITA No. 2055 (K0L)

of 2003, for the Assessment Year 1998-99 thereby dismissing the appeal filed by the Assessee against the order of the Commissioner of income

tax (Appeals).

2. The facts giving rise to filing of this appeal may be summed up thus:

a) The Assessee had earned dividend income of Rs. 2,40,501/- apart from the income from trading in share, interest and commission. The

Assessing Officer found that the Assessee had claimed interest amounting to Rs. 12,96,597/- and that the interest payment was attributable to

investment in share from which income is exempted u/s 10(34) of the income tax Act. He, therefore, worked out the interest disallowance by

applying the formula: Interest paid X Investments in shares/Total loan over which interest has been paid and arrived at the following figure: Rs.

12,96,597 X Rs. 8,95,56/Rs.69,11,561= Rs. 1,68,005/-.

b) Being dissatisfied, the Assessee preferred an appeal before the Commissioner of income tax (Appeals) who dismissed the appeal with the

finding that the Assessee itself had admitted that it would not be possible for him to establish the acquisition of shares and sources thereof by

producing books of accounts or other documentary evidence and consequently, the said appellate authority observed that the Assessee had failed

to establish its contention whereas the Assessing Officer had worked out the disallowable amount on the basis of documentary evidence on record.

c) Being dissatisfied, the Assessee preferred an appeal before the Tribunal below and the Tribunal, by the order impugned herein has dismissed the

appeal.

3. Being dissatisfied, the Assessee has come up with the present appeal.

4. At the time of admission of this appeal, a Division Bench of this Court admitted this appeal on the following questions of law:

i) Whether the Tribunal was justified in law upholding the action of the Assessing Officer in notionally working out for the purpose of disallowance

a part of the interest expenditure as relatable to investment in shares/dividend received thereon and its purported findings in that behalf are

arbitrary, unreasonable and perverse?

ii) Whether and in any event, the entire interest expenditure incurred by the Appellant for its indivisible business of trading in shares, granting loans

and advances and investing in shares was allowable as a deduction u/s 36(1)(iii) and no part thereof could be disallowed by applying the principle

of apportionment or as incurred in relation to the dividend income falling u/s 10(33)?

iii) Whether on a true and proper interpretation of the provisions of Sections 115O and/or 14A of the income tax Act, 1961 and/or the circular

dated July 23, 2001 issued by the Central Board of Direct Taxes, the Appellant is entitled to deduction of interest amounting to Rs. 1,68,005/-.

5. Mr. Khaitan, the learned senior Advocate appearing on behalf of the Appellant, has criticized the orders of the authorities below on the ground

that in dismissing the appeals, the authorities below did not consider the fact that there was no acquisition of any new share in course of last five

years and thus, in such circumstances, those authorities should have taken a reasonable approach in calculating the amount of disallowance. Mr.

Khaitan, in this connection placed strong reliance upon the decision of the Supreme Court in the case of Commissioner of income tax v. Walfort

Share & Stock Brokers Pvt. Ltd., reported in (2010) 326 ITR 1 and also of the Division Bench of the Bombay High Court in the case of Godrej

and Boyce Mfg. Co. Ltd. Vs. Dy. Commissioner of Income Tax, Range 10(2) and Others, .

6. Mr. Khatan submits that Section 14A of the income tax Act clarifies that expenses incurred can be allowed only to the extent they are relatable

to the earning of taxable income and in many cases, the nature of expenses incurred by the Assessee may be relatable partly to exempt income and

partly to taxable income and in the absence of Section 14A, the expenditure incurred in respect of exempt income was being claimed against

taxable income. Mr. Khaitan submits the mandate of Section 14A is clear and it desires to curb the practice of claiming deduction of expenses

incurred in relation to exempt income against taxable income and at the same time, to avail of the tax incentive by way of exempt income without

making any apportionment of expenses incurred in relation to exempt income. Mr. Khaitan submits that in the case before us, the approach of the

Tribunal below was totally erroneous as the Assessing Officer failed to determine the proportion of expenditure incurred in relation to earning of

exempt income by taking a reasonable approach.

7. Mr. Sarkar, the learned advocate appearing on behalf of the Revenue, has, on the other hand, supported the order passed by the Tribunal and

has contended that the Assessee itself having failed to produce material in support of its contention, the Assessing Officer rightly assessed the

deductible income on proportionate basis. Mr. Sarkar submits that the same is in conformity with Rule 8D of the income tax Rule and thus, we

should not interfere with the order passed by the Tribunal.

8. After hearing the learned Counsel appearing for the parties and after going through the materials on record and the decisions cited by Mr.

Khaitan, we find that the Supreme Court in the cases of Commissioner of Income Tax, Bombay Vs. Maharashtra Sugar Mills Ltd., Bombay, and

Rajasthan State Warehousing Corporation Vs. Commissioner of Income Tax, having held that where there is one indivisible business giving rise to

taxable income as well as exempt income, the entire expenditure incurred in relation to that business would have to be allowed even if a part of the

income earned from the business is exempt from tax, Section 14A of the Act was enacted to overcome those judicial pronouncements. The object

of Section 14A of the Act is to disallow the direct and indirect expenditure incurred in relation to income which does not form part of the total

income.

9. In the case before us, there is no dispute that part of the income of the Assessee from its business is from dividend which is exempt from tax

whereas the Assessee was unable to produce any material before the authorities below showing the source from which such shares were acquired.

Mr. Khaitan strenuously contended before us that for the last few years before the relevant previous year, no new share has been acquired and

thus, the loan that was taken and for which the interest is payable by the Assessee was not for acquisition of those old shares and, therefore, the

authorities below erred in law in giving benefit of proportionate deduction.

10. In our opinion, the mere fact that those shares were old ones and not acquired recently is immaterial. It is for the Assessee to show the source

of acquisition of those shares by production of materials that those were acquired from the funds available in the hands of the Assessee at the

relevant point of time without taking benefit of any loan. If those shares were purchased from the amount taken in loan, even for instance, five or

ten years ago, it is for the Assessee to show by the production of documentary evidence that such loaned amount had already been paid back and

for the relevant Assessment Year, no interest is payable by the Assessee for acquiring those old shares. In the absence of any such materials

placed by the Assessee, in our opinion, the authorities below rightly held that proportionate amount should be disallowed having regard to the total

income and the income from the exempt source. In the absence of any material disclosing the source of acquisition of shares which is within the

special knowledge of the Assessee, the assessing authority took a most reasonable approach in assessment.

11. We, thus, find no merit in this appeal and dispose of this appeal by answering the first point in the affirmative and the other two in the negative.

12. In the facts and circumstances, there will be, however, no order as to costs.

Sambuddha Chakrabarti, J.

13. I agree.