

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' BENCH, CHENNAI

श्रीएन.आर.एस. गणेशन, न्यायिकसदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 1488/Mds/2015

निर्धारण वर्ष /Assessment Year : 2011-12

M/s.Simpson & Co.Ltd.,
861/862, Anna Salai,
Chennai – 600 002.

v. The Deputy Commissioner of
Income Tax (LTU-II),
Chennai – 600 101.

PAN: AAACS4909F

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Saroj Kumar Parida, Advocate
प्रत्यर्थीकीओरसे/Respondent by : Shri A.V.Sreekanth, JCIT

सुनवाईकीतारीख/Date of Hearing : 30.08.2016

घोषणाकीतारीख/Date of Pronouncement : 23.09.2016

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of CIT(A) -VII,
Chennai dated 20.01.2015 and pertains to Assessment Year 2011-12.

2. Shri Saroj Kumar Parida, the learned counsel for the assessee
submitted that the first issue arises for consideration is assessee's claim of

deduction under Section 35(2AB) to the extent of Rs.690.01 lakhs as against the claim of the assessee to the extent of Rs.705.07 lakhs. The learned counsel submitted that the assessing officer disallowed a sum of Rs.15.07 lakhs under Section 35(2AB) and added the same to the total income of the assessee. The learned counsel further submitted that the very same issue came before this Tribunal in the assessee's own case for the assessment year 2005-06 and this Tribunal found that the deduction under Section 35(2AB) could be allowed only to the extent of the approval granted by the prescribed authority. Accordingly, confirmed the similar disallowance made by the assessing officer.

3. In view of the above order of this Tribunal for the assessment year 2005-06, according to the learned counsel, the issue was decided by the assessing officer against the assessee.

4. We heard Shri A.V.Srekanth, the learned department representative also. Since the approval of the prescribed authority is a pre-condition for the grant of deduction under Section 35(2AB), this Tribunal is of the considered opinion that the CIT(A) has rightly granted deduction to the extent of approval granted by the prescribed authority. The claim of the assessee over and above the approval granted by the prescribed authority was rightly disallowed. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly, the same is confirmed.

5. The next ground of appeal is with regard to the additional depreciation. Shri Saroj Kumar Parida, the learned counsel for the assessee submitted that the assessing officer allowed additional depreciation at the rate of 10%. Since the machinery was acquired in the second half of the relevant financial year, the assessing officer allowed only 10% of the additional depreciation and disallowed the balance 10%. The assessee claimed the balance 10% depreciation during the year under consideration. The learned counsel submitted that in the assessee's own case in Assessment Year 2005-06, this Tribunal by placing reliance on its earlier order in the case of M/s. Automotive Coaches & Components Vs. DCIT in ITA No.1789/Mds/2014 dated 12.02.2016 allowed the claim of the assessee. Therefore, according to the learned counsel, the issue is covered in favour of the assessee.

6. On the contrary, Shri A.V.Sreekanth, the learned department representative submitted that there is no provision in the income tax act for carry forward of the additional depreciation. The additional depreciation can be allowed only for the new plant and machinery which was purchased during the year under consideration. Since the assessee acquired the machinery in the second half of the earlier assessment year, the assessing officer allowed 50% of the additional depreciation at the rate of 10%. In the absence of provision to carry forward additional depreciation, the assessing officer has rightly disallowed a sum of Rs.11,84,755/-.

7. We have considered the submissions of the learned representative of the department and also perused the material available on record. An identical issue was considered by the coordinate bench of this Tribunal in the case of M/s. Automotive Coaches & Components cited supra. This tribunal found that when the assessee purchased new plant and machinery and use the same for less than 180 days in the earlier assessment year, the assessee is entitled for additional depreciation at the rate of 10% during the year under which the plant and machinery was purchased. The balance 10% could be carried forward and allowed in the subsequent year. In the case before us, the assessing officer himself allowed 10% additional depreciation in the earlier assessment year. Therefore, this Tribunal is of the considered opinion that the assessee is entitled for balance 10% depreciation during the year under consideration. Accordingly, the orders of the lower authorities are set aside and the assessing officer is directed to allow the remaining 10% of the additional depreciation during the year under consideration.

8. The next issue arises for consideration is disallowance made by the assessing officer under Section 14A of the Income Tax Act. Shri Saroj Kumar Parida, the learned counsel for the assessee submitted that the assessing officer found that there was an investment during the year under consideration. According to the learned counsel for the assessee, the investment was made only common growth scheme of mutual fund and the

income from which is chargeable to capital gain on redemption. Maturity of the dividend income was received from the subsidiary companies or the group companies. Therefore, the assessing officer is not justified in making disallowance by applying the provisions of Rule 8D of the Income Tax Rules.

9. On the contrary, Shri A.V. Sreekanth, the learned department representative submitted that as on 31.03.2011, the assessing officer found from the balance sheet that a sum of Rs.49,77,57,158/- was invested in the shares and mutual funds for the purpose of earning income which do not form part of the total income. The assessee in fact incurred expenditure for establishment and management. The assessing officer also found that the assessee borrowed funds to the extent of Rs.18,29,78,642/-. The assessee has also taken a deposit to the extent of Rs.65,64,000/- from the public. Even though the assessee claimed before the assessing officer that the unsecured loan were towards working capital, no material available on record to suggest that the unsecured loan was attributable to any particular income of the assessee. Therefore, Rule 8D (2)(ii) is squarely applicable. The assessee has also borrowed a sum of Rs.26 crores from holding company and paid substantial interest. When the assessee paid Rs.26 crores as interest to the holding company, it is not known how the assessee claims the investment in the so called subsidiary companies are not for earning exempted income. Therefore, the assessing officer has rightly applied the provision of Rule 8D(ii) of the Income Tax Rules and made disallowance.

10. We have considered the submissions of the learned representative of the department and also perused the material available on record. As per the balance sheets, the assessee made investment during the year under consideration to the extent of Rs.49,77,57,158/-. The total investment was Rs.232,17,15,034/-. The assessee appears to have claimed before the assessing officer on redemption of mutual funds, capital gain was chargeable to tax. The assessee also claimed that no dividend was added to the mutual fund in which investment was made. The very fact that the income from mutual fund was exempted from taxation is not in dispute. The redemption of the mutual funds at the maturity period cannot be a reason for excluding the same while computing the disallowance under Rule 8D(2)(ii). Moreover, even though the assessee claims before the assessing officer that the investment were made in group companies and subsidiary companies, no material is available on record to suggest that the company in which the assessee has invested is group company of the assessee or the subsidiary company of the assessee. As rightly submitted by the learned department representative, the assessee has paid substantial interest to the holding company. Therefore, there is no substance in the claim of the assessee. This Tribunal is of the considered opinion that Rule 8D(2)(ii) is mandatory. Therefore, the assessing officer has rightly computed the disallowance as per the statutory requirement. Accordingly, this Tribunal do not find any reason to interfere with the order of the lower authority and the same is confirmed.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced on 23rd September, 2016 at Chennai.

Sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 23rd September, 2016.

sp.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT,
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.