

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A.Nos.1948 & 1949/Mds/2015

निर्धारण वर्ष /Assessment years : 2010-2011 & 2011-12

M/s. Ramco Industries Ltd,  
47, P.S.K. Nagar,  
Rajapalayam.

**Vs.** The Deputy Commissioner of  
Income Tax,  
Corporate Circle-2,  
Madurai.

**[PAN AAACR 5284J]**

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by

: Shri. V. Jagadisan, C.A.

प्रत्यर्थी की ओर से /Respondent by

: Shri. V. Vivekanandan, IRS, CIT

सुनवाई की तारीख/Date of Hearing

: 03-11-2015

घोषणा की तारीख /Date of Pronouncement

: 28.01-2016

**आदेश / O R D E R**

**PER G. PAVAN KUMAR, JUDICIAL MEMBER:**

The appeals filed by the assessee are against different orders of Commissioner of Income Tax -1, Madurai dated 30.03.2015 for the assessment years 2010-2011 and 2011-2012 passed u/s.263 of the Income Tax Act, 1961.

**2.** The assessee has raised the grounds challenging the order of u/sec.263 of the Act and also additional grounds. The assessment was made denova without considering the objections raised by the assessee. The issue in these two appeals are common in nature, hence these appeals are combined, heard together, and disposed off by this common order for the sake of convenience.

**3.** We take up appeal of assessment year 2010-2011 for adjudication. The assessee is in the business of building products and textiles and Return of income was filed on 22.09.2010 disclosing total income of ₹52,41,85,120/- and was processed u/s.143(1) of the Act and determined tax demand of ₹3,89,36,420/-. Subsequently the case was selected for scrutiny and notice u/s.143(2) was issued. In compliance to the notices the Id. Authorised Representative appeared from time to time and filed details as called for. Further mentioned that depreciation on Plant and Machinery were considered based on the Income Tax Rules applicable for assessment year 2006-2007 and there are different asset categorized under head Air and Water pollution. The assessee claimed depreciation quarter wise, whereas considering the rates and also additions to machinery, the Assessing Officer has disallowed depreciation and restricted the claim of deprecation on Air and Water pollution control energy saving devices and renewable energy devices for the first quarter at 15% and 7.5%

for the additions in Second quarter and made an addition of excess claim of depreciation of ₹45,64,398/-. The Id. Assessing Officer based on final statement found that the company is in receipt of dividend income of ₹12,65,38,451/- and claimed as exempted u/s.10(34) of the Act. The assessee company has not disallowed any expenditure on such exempted income. Based on the submissions of Id. Authorised Representative and rely on the decisions of Co-Ordinate Bench, the Assessing Officer made disallowance of 2% of dividend income at ₹25,30,769/- as addition u/Sec.14A of the Act. The company received investment subsidiary from the Government ₹5,40,36,767/- and claimed as capital subsidiary based on Accounting standard AS-12 of the Act. The subsidiary was received from State Government for promoting industrial units with new investments in the industrial sector and the same was claimed as deduction. But the Assessing Officer on the presumption believed subsidiary as Revenue in nature and added to returned income and assessed total income at ₹58,53,17,060/- and raised demand.

**4.** Similarly for the assessment year 2011-12 the assessee filed return of income on 28.09.2011 with total income of ₹54,10,48,490/-. The Assessing Officer issued notice and in compliance to the notices the Id. Authorised Representative of the assessee appeared from time to time and made submissions and filed details. The Assessing Officer

upon verification found that depreciation claimed is in excess in case of Air and Water pollution control equipments and made an addition of ₹52,41,671/- and similarly on energy saving disallowed excess depreciation of ₹5,66,054/- as in earlier year. The Id.Assessing Officer made disallowance under 14A by applying the Co-ordinate Bench decision disallowed 2% of dividend income as expenditure ₹.6,03,742/- incurred on exempted income and on the same lines the Id. Assessing Officer disallowed capital subsidiary received from State Government and added to the returned income and completed assessment u/s.143(3) of the Act dated 27.02.2014 assessing total income ₹60,94,29,430/- and raised demand. Aggrieved by the order of the Assessing Officer for both assessment years, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). When the matters are pending the Commissioner of Income Tax, Madurai issued notice of revision u/s. 263 of the Act for the assessment year 2010-2011 dated 09.03.2015. The show cause notices was issued based on records with the Assessing Officer on the following issues:-

*On perusal of miscellaneous records for assessment year 2010-11 it is notice that*

- (i) The assessee does not seem to have paid to the Dividend Distribuiton Tax u/s.115 O of the I.T. Act.*
- (ii) The ROC fees to the tune of ₹7,50,000/- has not been capitalized.*

- (iii) *The disallowance u/s.14A of the IT Act has not been worked out in accordance with Rule 8D of the I.T. Rules.*
- (iv) *The claim of deduction of ₹9,28,96,203/- u/s.80IA has not been certified by the Accountant in Form 10CCB and further the quantum of deduction has not been worked out in accordance with the provisions of Sec.80IA of the I.T. Act”.*

and similarly issued notice for assessment year 2011-12 on the disallowance u/Sec 14A of the Act. In compliance to the show cause notices, the assessee filed written submissions alongwith evidences. On the first issue of Dividend Distribution Tax u/s.115 O the assessee filed proof of challans evidencing payment of Dividend Distribution Tax ₹36,82,098/- on 14.08.2009. On the second issue of ROC fees the assessee made submissions that Authorized capital of the company was increased from ₹5 crores to ₹20 crores and the amount ₹7,50,000/- was paid as ROC fees. The assessee company filed copy of board resolution, copy of form filed with ROC and copy of fees receipt. The increase in authorized capital is in respect of issue of Bonus shares and relied on the decision of Supreme Court in the case of *CIT vs. General Insurance Corporation Ltd. 289 ITR 232* and other judicial High Courts decisions and the treated as Revenue Expenditure. On the contention of capitalization of ROC fees the assessee submitted that cost of issue of bonus share is not of any enduring benefit to the company and the same was claimed as Revenue

Expenditure. On the issue of 14A disallowance the assessee has made investments in domestic companies and no fresh investments are made in the relevant previous years. The assessee company has made investment in listed companies and dividend income is directly credited into bank accounts. The Assessing Officer has made the disallowance u/sec14A of the Act. The assessee company challenged the addition by way of appeal before the Commissioner of Income Tax (Appeals) Madurai. On the issue of deduction u/Sec.80IA of the Act the assessee filed the Audit report and certificate of Chartered Accountant in form 10CCB in assessment proceedings and further submitted that return of income was filed electronically, and full particulars are furnished alongwith working of claim of deduction u/s.80IA of the Act. The assessee company challenged validity of issue of Revision notices that Commissioner of Income Tax has no jurisdiction where the order of the Assessing Officer is not erroneous but also not prejudicial to the interest of Revenue and Assessing Officer has applied his mind and accepted details on this issue and prayed for dropping of proceedings u/s.263 Act.

**5.** Upon submission of information, the Commissioner of Income Tax without verifying the correctness distinguished the judgments submitted by the assessee and relied on the findings of *Malabar Industrial Cement Co. Ltd vs. CIT 243 ITR 83 (SC)* and viewed

that assessment was erroneous and prejudicial to the interest of Revenue and issued directions to the Assessing Officer to enquire into the findings referred in Revision order and any other issue and cancelled the assessment order passed u/s.143(3) of the Act dated 01.02.2013 and directed the Assessing Officer to redo the assessment afresh. Similarly for the assessment year 2011-2012 issued show cause notices and cancelled assessment order u/s.143(3) dated 27.02.2014. Against the Revision order u/Sec.263 of the Act for both the assessment years, the assessee company filed appeals before the Tribunal.

**6.** Before the Tribunal, the assessee has raised grounds on lack of jurisdiction of CIT for passing order u/s.263 of the Act and also on the grounds of cancelling the order of the Assessing Officer and no fresh inquiry should be directed. The assessee also raised additional grounds on the issue of disallowance u/s.14A r.w.Rule 8D and the assessee as filed an appeal on disallowance u/Sec.14A before the Commissioner of Income Tax (Appeals) on the same subject matter. The Commissioner of Income Tax cannot cancel entire assessment, and reiterated his submissions made before the lower authorities. The Commissioner of Income Tax has not given clarification on the order of the Assessing Officer as erroneous and prejudicial to the interest of the Revenue. Further, cannot invoke fresh enquiry and direct the

Assessing Officer to do so. For the assessment years 2010-2011 and 2011-12, the assessee has filed appeals before the Commissioner of Income Tax (Appeals) against additions in assessment order. The notice of Commissioner of Income Tax in the revision proceedings lacks jurisdiction and the information was submitted in the assessment proceedings and Assessing Officer has applied his mind and after due verification and examination completed assessment. Against the order of assessment u/s.143(3) r.w.s. 263 dated 23.09.2013, the assessee has filed an appeals before the Commissioner of Income Tax. The only issue arises that the order of Commissioner of Income Tax u/s.263 is without jurisdiction in treating the assessment denova. Since the issue of Sec.14A is a subject matter of appeal before Commissioner of Income Tax (Appeals) the order of Commissioner of Income Tax u/sec 263 has to be modified. The assessee filed paper book and also relied on the decisions on the issue of jurisdiction and prayed the Tribunal to quash the Revision order.

**7.** On the other hand, the Id. Departmental Representative relied on the orders of the lower authorities and objected that the Commissioner of Income Tax need not give reasons for passing the order and relied on the decision of CIT vs. Infosys Technologies 341 ITR 293 (Kar) and 313 ITD 182 (AT) Special Bench, Chennai.

**8.** We heard the rival submissions of both the parties, perused the material on record and judicial decisions cited. The Id. Authorised Representative pointed out the jurisdiction aspect and Commissioner of Income Tax has not proved that the assessment order is erroneous and prejudicial to the interest of the Revenue. The Commissioner of Income Tax has power to revise and pass orders based on assessment record but not on issues where the assessee is in appeal on the disallowance against assessment order before Commissioner of Income Tax (Appeals) and the same issues cannot be subject to revision. The main reason for invoking revision u/s.263 of the Act by the CIT for the assessment year 2010-11 and 2011-12 that the Assessing Officer failed to apply provisions of Sec.14A of Rule 8D for the above assessment years. Though Rule 8D came into effect from 24.03.2008 and non applicability of provisions is erroneous and omitted by the Assessing Officer and it is prejudicial to the interest of the Revenue and we do not find any merits in the argument of the Id. Authorised Representative as order under Sec.263 is bad in law. The assessee has raised additional grounds that the matter is a subject matter of appeal before CIT and that the CIT cannot exercise jurisdiction u/s.263 of the

Act. We are of the opinion that the argument of the Id. Authorised Representative is not correct where the notice u/s.263 was issued with reference to Rule 8D further doctrine of merger cannot be applied on this issue as the issue before CIT is with regard to disallowance u/s.14A and not relating to Rule 8D which is applicable from 2008-2009 onwards. Further CIT can suo-motu initiated proceedings were Assessing Officer takes a wrong decision without considering the material on record or he takes a decision without making an enquiry into matters, where such enquiry prime facie warranted. In the present case, the Assessing Officer has to consider the provisions applicable under Rule 8D effective from assessment year 2008-09. But the Assessing Officer made disallowance by following Co-ordinate Bench decision for earlier assessment year. It is apparent from facts and circumstances the order of the Assessing Officer is erroneous and prejudicial to the interest of Revenue and accordingly we uphold the order of CIT and dismiss the grounds of the assessee. Since, the CIT has not given any findings on merits of the addition and he has only remitted the issue to the Assessing Officer to consider afresh, we refrain from adjudicating the issue on

merits of additions proposed by CIT.

9. In the result, the appeals of the assessee in ITA Nos.1948 & 1949/Mds/2015 are dismissed.

Order pronounced on 28<sup>th</sup> January, 2016, at Chennai.

Sd/-

(चंद्र पूजारी)

**(CHANDRA POOJARI)**

**लेखा सदस्य /ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 28 .01.2016.

**KV**

Sd/-

(जी. पवन कुमार)

**(G. PAVAN KUMAR)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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