

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2827/Mds/2016

निर्धारण वर्ष / Assessment Year : 2012-13

The Deputy Commissioner of
Income Tax,
Corporate Circle 6(1),
Chennai - 600 034.

v. M/s Shriram Properties Pvt. Ltd.,
No.149, Greams Dugar,
4th & 5th floor, Greams Road,
Chennai - 600 006.

(अपीलार्थी/Appellant)

PAN : AAFCS 5801 D

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Shiva Srinivas, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri R. Sivaraman, Advocate

सुनवाई की तारीख/Date of Hearing : 30.01.2017

घोषणा की तारीख/Date of Pronouncement : 29.03.2017

आदेश / O R D E R

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

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) – 15, Chennai, dated 28.06.2016 and pertains to assessment year 2012-13.

2. The first issue arises for consideration is disallowance of payment of royalty to the extent of ₹20,62,683/-.

3. We have heard Shri Shiva Srinivas, the Ld. Departmental Representative and Shri R. Sivaraman, the Ld.counsel for the assessee. It was brought to the notice of this Bench that an identical issue was considered by this Bench of the Tribunal in Shriram Transport Finance Co. Ltd. v. DCIT in I.T.A. No.454/Mds/2016. This Tribunal vide its order dated 24.08.2016 found that the payment was made by the assessee for using logo which belongs to Shriram Ownership trust. Since the payment was made for using the logo which belongs to Shriram Ownership Trust, this Tribunal found that the payment made by the assessee is in the revenue field. In view of the order of this Tribunal on identical issue, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

4. The next issue arises for consideration is disallowance made by the Assessing Officer under Section 14A of the Income-tax Act, 1961 (in short 'the Act').

5. Shri Shiva Srinivas, the Ld. Departmental Representative, submitted that the assessee made investment with the intention to earn dividend income which is exempted from taxation. The Assessing Officer found that the expenditure was not computed under Rule 8D of Income-tax Rules, 1962. Since the assessee being a company, according to the Ld. D.R., the assessee has to necessarily incur expenditure at the managerial level for making decision to invest the funds, therefore, a portion of expenditure incurred by the assessee would be relatable to the income which is otherwise not taxable under the provisions of Income-tax Act. However, on appeal by the assessee, the CIT(Appeals) allowed the claim of the assessee on the ground that no dividend income was earned during the year under consideration. According to the Ld. D.R., earning of dividend income is immaterial when the expenditure was computed under Rule 8D(2). When the assessee borrowed funds and paid interest, definitely a part of expenditure incurred by the assessee has to be relatable to earning of dividend income. Moreover, the salary paid to managerial staff for taking decision to invest the money, a part of salary paid to them relates to expenditure for earning the income. Therefore, according to the Ld.

D.R., the CIT(Appeals) is not justified in allowing the claim of the assessee on the ground that there was no income.

6. On the contrary, Shri R. Sivaraman, the Ld.counsel for the assessee, submitted that the assessee has not earned any dividend income during the year under consideration. Placing reliance on the judgment of Madras High Court in Redington (India) Ltd. v. Addl. CIT (2017) 77 taxmann.com 257, the Ld.counsel submitted that on identical circumstances, the Madras High Court found that by applying the matching concept in a year where there is no exempted income, there cannot be any disallowance of expenditure. Therefore, according to the Ld. counsel, the CIT(Appeals) has rightly allowed the claim of the assessee.

7. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the assessee made investment in the shares of other companies. Even though the assessee claimed before the Assessing Officer that the investment was partly made in subsidiary companies, it is not known how such companies are subsidiary companies of the assessee. It is also not known how many shares of the said companies in which the investment was made, were held

by the assessee at the relevant point of time. Therefore, this Tribunal is unable to find out whether the investment is really made in the subsidiary companies.

8. Now coming to the contention of the Ld.counsel for the assessee that there was no income from such investment during the year under consideration, the contention of the Ld. D.R. is that irrespective of the income, the expenditure has to be computed as per the method prescribed under Rule 8D(2).

9. We have carefully gone through the Rule 8D(2) of the Income-tax Rules, 1962, which reads as follows:-

**"METHOD FOR DETERMINING AMOUNT OF EXPENDITURE
IN RELATION TO INCOME NOT INCLUDIBLE IN TOTAL INCOME**

(1) Where the Assessing Officer having regard to the accounts of the assessee of the previous year, is not satisfied with-

(a) the correctness of the claim of expenditure made by the assessee ; or

(b) the claim made by the assessee that no expenditure has been incurred in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).

(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:-

(i) the amount of expenditure directly relating to income which does not form part of total income ;

(ii) in a case where the assessee has incurred expenditure by way of interest during the previous year is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely :-

$$A \times \frac{B}{C}$$

C

Where A = amount of expenditure by way of interest other than the amount of interest included in clause(i) incurred during the previous year ;

B = the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance-sheet of the assessee, on the first day and the last day of the previous year ;

C = the average of total assets as appearing in the balance-sheet of the assessee, on the first day and the last day of the previous year ;

(iii) an amount equal to one-half per cent. of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance-sheet of the assessee, on the first day and the last day of the previous year.

(3) For the purposes of this rule, the "total assets" shall mean, total assets as appearing in the balance-sheet excluding the increase on account of revaluation of assets but including the decrease on account of revaluation of assets."

10. We have also carefully gone through the judgment of Madras High Court in Redington (India) Ltd. (supra). The Madras High Court has observed at paragraphs 14 and 15 as follows:-

"14. Nothing much turns on the use of the word 'includable' and the phrase 'under the Act' in s.14A and we are not persuaded to accept the emphasis laid or the interpretation of the same by the Revenue. An assessment in terms of the Income-tax Act is specific to an assessment year and related previous year. S.4 of the Act, which imposes the charge to tax reads thus:

"Charge of income-tax

4. (1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with and subject to the provisions (including provisions for the levy of additional income-tax) of, this Act in respect of the total income of the previous year of every person:

Provided that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly."

Thus, where the statute indented that income shall be recognized for taxation in respect of any previous other than that immediately preceding the relevant assessment year, the provision shall expressly state so. The provisions of s.10 in Chapter III of the Act dealing with 'Incomes not included in the total income' commences with the phrase 'In computing the total income of a previous year, any income falling within any of the following clauses shall not be included.....'

15. The exemption extended to dividend income would relate only to the previous year when the income was earned and none other and consequently the expenditure incurred in connection therewith should also be dealt with in the same previous year. Thus, by application of the matching concept, in a year where there is no exempt income, there cannot be a disallowance of expenditure in relation to such assumed

income. Madras Industrial Investment Corpn. Ltd. v. CIT (1997) 225 ITR 802/91 Taxman 340 (SC). The language of s.14A (1) should be read in that context and such that it advances the scheme of the Act rather than distort it.”

11. In view of the judgment of Madras High Court, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

12. The next issue arises for consideration is computation of book profit under Section 115JB of the Act.

13. We have heard Shri Shiva Srinivas, the Ld. Departmental Representative and Shri R. Sivaraman, the Ld.counsel for the assessee. The CIT(Appeals), by following the order of this Tribunal, deleted the addition made by the Assessing Officer. In fact, the CIT(Appeals) reproduced the order of this Tribunal. Since the CIT(Appeals) has followed the order of this Tribunal, there cannot be any grievance on the part of the Revenue. Therefore, this Tribunal finds no reason to interfere with the order of the lower authority and accordingly the same is confirmed.

14. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 29th March, 2017 at Chennai.

sd/-

(डि.एस. सुन्दर सिंह)

(D.S. Sunder Singh)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 29th March, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-15, Chennai-34
4. आयकर आयुक्त/CIT-6, Chennai-34
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.