

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'D' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।  
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No. 1358/Mds/2014  
निर्धारण वर्ष /Assessment year : 2009-2010.

Shri. Ravikant Choudhry,  
No.51, Elephant Gate Street,  
Sowcarpet,  
Chennai 600 079.

**Vs.** The Joint Commissioner of  
Income Tax,  
Company Circle I(1)  
Chennai 600 034.

**[PAN AAEP 7102C]**  
**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri. Philip George & M.P. Senthil  
Kumar, Advocates.

प्रत्यर्थी की ओर से /Respondent by : Shri. A.V. Sreekanth, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 28-11-2016

घोषणा की तारीख /Date of : 14-12-2016

Pronouncement

**आदेश / ORDER**

**PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER**

In this appeal assessee has taken altogether five grounds of which grounds No.1, 4 & 5 are general in nature needing no specific adjudication.

2. Vide its ground No.2, assessee assails a disallowance of ₹37,51,029/- made u/s.14A of the Income Tax Act, 1961 (in short 'the Act').

3. Facts apropos are that assessee, a dealer in shares and securities had filed his return of income for the impugned assessment year disclosing income of ₹1,00,000/-. During the course of assessment proceedings, it was noted by the Id. Assessing Officer that assessee had claimed dividend ₹37,06,691/- as exempt u/s.10(34) of the Act. As per Id. Assessing Officer, assessee had not made any disallowance by itself, for expenditure incurred in earning such income. Clarification on the issue was sought. Thereupon assessee stated that he had not incurred any expenditure for earning the above exempted income. Id. Assessing Officer did not accept this contention citing following reasons:-

- (i) Assessee has claimed interest expenditure of ₹27,43,099/- on borrowed capital during the relevant previous year. Assessee could not establish that such borrowed funds were not used for making tax free investments.
- (ii) Claim of the assessee that no routine or administrative expenditure was incurred for the purpose of making the investments could not be believed.
- (iii) By virtue of Rule 8D, it was mandatory to make a disallowance against exempt income claimed by the assessee.

Disallowance for interest under Rule 8D(2)(ii) of the Act came to ₹23,11,516/- and that for indirect expenditure under Rule 8D(2)(iii) came to ₹14,39,513/-, aggregating to ₹37,51,029/-.

4. Aggrieved, assessee moved in appeal before Id. Commissioner of Income Tax (Appeals). Argument of the assessee was that no expenditure was incurred for earning the exempt income. As per assessee he was having sufficient capital and interest free borrowing for making the tax free investments. Further, argument of the assessee was that disallowance worked out u/s.14A of the Act was more than the total expenditure charged in its profit and loss account. As per assessee disallowance under Rule 8D(2)(ii) had to be confined at the best to the net interest payment of ₹10,18,544/- only. Assessee also contended that no expenditure for remuneration to any staff was incurred in relation to the exempt income. Reliance was placed on the judgment of Hon'ble Delhi High Court judgment in the case of *Maxop Investment Ltd vs. CIT (2012) 347 ITR 272* and that of Hon'ble Bombay High Court in the case of *Godrej and Boyce Mfg. Co. Ltd vs. DCIT (2010) 328 ITR 81*.

5. However, Id. Commissioner of Income Tax (Appeals) was not impressed by the above arguments. As per Id. Commissioner of

Income Tax (Appeals) assessee had not made any disallowance for expenditure relatable to the earning of the exempt income. As for the claim of the assessee that borrowed money were not used for making investments, Id. Commissioner of Income Tax (Appeals) relying on Jurisdictional High Court decision in the case of *Beach Minerals Company P. Ltd in T.C. No.681/2013, dated 02.12.2013* held that mere availability of funds would not by itself be a good explanation for tax free investments, when assessee had substantial interest bearing borrowed funds. Though, the Id. Commissioner of Income Tax (Appeals) noted the judgment of Hon'ble Bombay High Court in the case of *CIT vs. Reliance Utilities and Power Ltd 313 ITR 340*, he was of the opinion that in the facts and circumstances of the case, the principles laid down by Hon'ble Madras High Court in *Beach Minerals Company (P) Ltd (supra)* could be better applied here. As for the claim of the assessee that total disallowance made by the Id. Assessing Officer was more than interest expenditure of ₹27,43,099/- charged in the profit and loss account, Id. Commissioner of Income Tax (Appeals) observed that disallowance made by the Id. Assessing Officer under Rule 8D(ii) came to ₹23,11,516/- and the balance disallowance was under Rule 8D(iii). As for the claim of the assessee that only net interest expenditure should be considered, Id. Commissioner of Income Tax (Appeals) observed that assessee could not co-relate the interest

receipts and interest payment, for giving any such allowance. As to the claim of the assessee that he had not incurred any indirect expenditure, Id. Commissioner of Income Tax (Appeals) noted that even though assessee was only an individual, he had maintained books of accounts and was preparing Profit and Loss account and Balance sheet where a large number of expenditure was debited. According to the Id. Commissioner of Income Tax (Appeals) assessee's contention that he had not incurred any indirect expenditure could not be accepted. Thus, he confirmed the order of the Id. Assessing Officer.

**6.** Now before us, Id. Authorised Representative strongly assailing the orders of the lower authorities submitted that assessee had interest free own funds ₹23,06,12,317/- at the end of the relevant previous year. According to him, opening balance from funds of capital funds alone came to ₹22,85,73,423/-. Thus, according to him, sufficient own funds were available with the assessee. Argument of the Id. Authorised Representative was that in such a situation tax free investments had to be deemed as going out of the interest free funds and not from the interest bearing loan funds. Further, as per Id. Authorised Representative assessee had specifically claimed that he had incurred no expenditure for earning the dividend income and without demonstrating that this claim was incorrect, the Id. Assessing

Officer fell in error in making a disallowance under Rule 8D. Ld. Authorised Representative also submitted that Rule 8D was amended by a notification dated 02.06.2016 whereby 8D(2)(iii) stood omitted. According to him, maximum disallowance under Rule 8D(2) was only 1% of the average value of the investments, which could never exceed the total expenditure claimed by the assessee. Ld. Authorised Representative submitted that amendment of Rules though brought in with effect from 2<sup>nd</sup> June 2016 was intended to alleviate genuine hardship caused to assesseees and therefore had to be given retrospective effect.

**7.** Per contra, Id. Departmental Representative strongly supported the orders of the authorities below.

**8.** We have considered the rival contentions and perused the orders of the authorities below. First dealing with the claim of the assessee that he had specifically mentioned not incurring any expenditure for earning exempt dividend income, a careful verification of computation of total income filed by the assessee, placed at paper book page 1 to 3, show that there was not even a whisper regard incurring or not incurring any such expenditure. In other words, assessee in its return of income had not stated that he had incurred no

expenditure for earning dividend income. Claim if at all made, was only when this was brought to his notice by the Id. Assessing Officer. Thus at the best, the claim that no expenditure was incurred in relation to the tax free investments, can be treated only as an after thought and not a genuine one. Especially so, since assessee was in the business of trading in shares. Assessee's profit and loss account reflects following expenditure incurred by him in running its share trading and investment business during the relevant previous year, apart from loss in trading of shares, speculation loss and loss from a concern called "Arihant & Company".

To Audit Fees	:	7500.00
To Bank charges	:	1515.00
To Demat charges	:	26539.00
To Interest, Administrative & Custody charges	:	4130959.00
To Interest paid	:	2743099.00
To Port Folio Mgnt Fee	:	435717.00
To Donation	:	10960.00
To Transaction Charges	:	12996.00
To Insurance	:	10279.00
To Department Charges	:	3526.00
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		73,83,090.00
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On the face of the above, the claim of the assessee that he had not incurred any expenditure for making the investments earning him the exempt income was in our opinion rightly rejected by the lower

authorities. Coming to the claim of the assessee that interest paid by it was not relatable to earning of tax free income, what we find is that the only business carried on by the assessee was trading in shares. A look at Balance Sheet placed at paper book page 17 show that all equity shares held were shown under the investments portfolio. In other words assessee had credited the profit arising on trading of shares held by him as investment in his profit and loss account. What the assessee held as investment was nothing but its stock-in-trade only. Thus claim of the assessee that borrowed capital was not utilized for investments earning its interest free dividend was also, in our opinion rightly rejected by the lower authorities. Rule 8D(2)(ii) clearly applied. Similar is the case of indirect expenditure also. For the very same reason, assessee's claim that he had incurred no indirect expenditure was also in our opinion rightly rejected by the lower authorities.

**9.** Coming to the claim of the Id. Authorised Representative that amendment to Rule 8D(2) made through notification dated 02.06.2016 has to be deemed retrospective, nothing of that sort is mentioned in such notification. On other hand, it is specifically mentioned that the amendment would come into force on the date of publication in Official Gazette. Argument of the Id.

Authorised Representative is that notification was issued so as to alleviate hardship cause to assessees. However, he was not able to demonstrate what was the earlier hardship, and what was alleviated through the amendment. Even if we consider the amended Rule u/s.8D(2) and proviso thereto which stipulate that disallowance shall not exceed the total expenditure of the assessee, such expenditure given at para 8 above, came to ₹73,83,090/-. This is much higher than the actual disallowance ₹37,51,029/- by the Id. Assessing Officer. Claim for netting of the interest was also rightly disallowed since assessee could not show any nexus between the interest paid and interest earned. Thus, we do not find any reason to interfere with the orders of the lower authorities on this issue. Ground No.2 stands dismissed

**10.** In his ground No.3, assessee assails an addition of ₹1,33,02,525/- made under the head 'Short Term Capital gains' in relation to the sale of 11.065 acres of land at Sriperumbudur.

**11.** Facts apropos are that assessee had sold a property measuring 11.345 acres at Sriperumbudur for a total consideration of ₹1,93,30,000/-. After setting of cost of ₹80,77,500/-, a net surplus of ₹1,12,52,500/- was shown by the assessee. This was claimed as

exempt. As per the assessee the land which was sold was agricultural in nature and was acquired by him from various parties through nine different conveyance deeds entered during the period 08.11.2006 & 26.12.2006. Contention of the assessee was that the sale was done by way of letter cum receipts during this period. Though assessee produced letter cum receipts from the concerned parties, he could not produce any registered sale deed, executed by him in favour of the purchaser. However, assessee had executed a Power of Attornies on 11.04.2008 and 30.06.2008 with respect to these properties. Ld. Assessing Officer after verifying General Power of Attornies was of the opinion that the nature of the asset was not agricultural and the intention of the assessee was to develop the property to a residential colony. As per Id. Assessing Officer the property was located within 8 kms of the town of Sriperumbudur where the population was more than ten thousand. Reliance was placed by the Id. Assessing Officer on the Census abstract 2001 published by Directorate of Census Operations, Tamil Nadu. Further, as per Id. Assessing Officer time difference between purchase and sale of the property was only two years and this proved the non agricultural intentions of the assessee. Ld. Assessing Officer also reworked the cost of the land. According to him, cost of the land sold was only

₹60,27,475/-. The balance of the sum of ₹1,33,02,525/- was considered by the Id. Assessing Officer as Short Term Capital Gains and addition made accordingly.

**12.** In its appeal before the Id. Commissioner of Income Tax (Appeals), contentions taken by the assessee read as under:-

*“The Appellant submits that he had purchased 11.345 acres of Agricultural Lands during the Assessment Year 2007-2008 vide 6 Sale Deeds all dated 08. 11.2006 and registered as Document Nos. 21095 to 2110012006 in the office of the Sub Registrar, Sriperumbudur, Sale Deed dated 29.11.2006 and registered as Document No. 2636312006 in the office of the Sub Registrar, Sriperumbudur and 2 Sale Deed both dated 26.12.2006 and registered as Document Nos. 25676 & 25677/2006 in the office of the Sub Registrar, Sriperumbudur [Enclosed at Pages 76 to 157 of Paper Book. Cost of Land purchased as per registered document with Stamp Duty was Rs.61,80,000/-. Actual payment made towards purchaser of these agricultural land was Rs.84,27,500/-. Therefore the proportionate cost of land sold was RS.80, 77,500/-. All these payments were made by cheques and acknowledged by the vendors. The appellant has also accounted for the same as cost in his returns of income filed before the Income Tax Department. While computing the S. TC.G. the Assessing Officer has taken the cost only as per the consideration shown in the purchase deed and added the cost of Stamp Duty and Registration Fees ignoring the*

*actual payment made by the Appellant. No reason has been given for ignoring the cost of acquisition admitted by the Appellant.*

*The Appellant submits that during the A. Y. 2009-2010 he has sold 11.065 acres of land out of 11.345 acres of land and received consideration in respect of the said 11.065 acres. The Assessing Officer is erred in treating that the sale was in respect of the entire 11.345 acres of land. These lands were transferred to the respective parties by executing five General Power of Attorney, registered as Document Nos. 694 to 69712008 in the office of the Sub Registrar, Sriperumbudur and Sale Letter- cum-Receipts and possession was handed over. The Appellant had furnished the Certificate of V.A.O. certifying that the land in question is Agricultural Land*

*The Appellant submits that the Agricultural Lands sold by him cannot be treated as "Capital Asset", since Sriperumpudur, where the Agricultural Land is situated is a Town Panchayat and as such it cannot be treated at par with that of a Municipality or a Cantonment Board or a Municipal Corporation. Further Appellant submits that the agricultural land of the Appellant is situated far beyond 8 Kms. from the local limits of any Municipality or Cantonment Board notified by the Central Government. The Assessing Officer was not right in holding that the property is situated within the distance of 8 K. Ms from the town Sriperumpudur. Therefore the Appellant submits that the agricultural land of the Appellant will not fall under the exclusion uls. 2(14)(iii) of the Income Tax Act, 1961".*

Ld. Commissioner of Income Tax (Appeals) was of the opinion that property clearly indicated the use of the land as residential and it was a capital asset. He upheld the order of the Id. Assessing Officer, treating the surplus as Short Term Capital Gains.

**13.** Now before us, Id. Authorised Representative strongly assailing the orders of the lower authorities submitted that undue reliance was placed on General Power of Attorney while ignoring sale letter cum receipt. According to him, though the cost of land as per the document registered with Sub Registrar was ₹61,80,000/-, the actual payments made came to ₹84,27,500/-. As per Id. Authorised Representative what was sold was 11.065 acres out of a total area 11.345 acres and therefore the pro rata cost came to ₹80,77,500/-. Contention of the Id. Authorised Representative was that Village Administrative Officer (VAO) had certified the land as agricultural and it was situated in a Panchayat. As per the Id. Authorised Representative, the land was situated far beyond 8 kms from the local limits of any Municipality or Cantonment. According to him, receipts issued by the parties clearly mentioned the land as agricultural in nature. As per the Id. Authorised Representative the sale of agricultural land which was not a capital asset would not give rise to any taxable gains.

**14.** Per contra, Id. Departmental Representative strongly supported the orders of the authorities below

**15.** We have considered the rival contentions and perused the orders of the authorities below. One of the General Power of Attorneys issued by the assessee for the sale of the land is placed at paper book pages 102 to 127. Schedule one of this Power of Attorney is produced hereunder:-

*"All that piece and parcel of lands at No.42,Sriperumbudur Village, Sriperumbudur Taluk, Kancheepuram District comprised in S.Nos.26/1c measuring of an extent of 1 acre 07 cents and 26/2B1 measuring of an extent of 1 acre both totalling of an extent of 2 acres 07 cents situate in the Registration Sub-District of Sriperumbudur and in the Registration District of Chengalpet.*

Clause 1 to 5 of this Power of Attorney though which power to deal with the property was given to one Shri. D. Raja is reproduced hereunder:-

"1.To negotiate on terms for and to agree to and enter into and conclude' any agreement for sale of the said property to any purchasers in whole or in part or in undivided share at which in his absolute discretion thinks proper and/or to cancel the same.

2. To sell the said property to any purchaser or purchasers in whole or in part or in undivided share at such price which in his absolute discretion thinks proper in pursuance of the above said agreement or otherwise.

3. To receive from the intending purchaser or purchasers any earnest money / advance and also the balance purchase money and to give valid receipt and discharge for the same.

4. Upon such receipt as aforesaid to sign execute and deliver any Conveyance deed/s for registration, to admit execution and receipt of consideration before the sub-Registrar having authority for and to have the said conveyance registered and to do all acts and deeds necessary for fully conveying the said property.

5. To form layout in the schedule mentioned property, to lay roads, to measure and fix stones for each plots and to apply for approval for such layout before DTCprrown Panchayat /Municipalities or any other competent authorities, to execute gift deed/s with regard to roads, parks, public places and other open spaces etc., to pay necessary fee for the same”.

As against the above what was stated in sale letter cum receipt is reproduced hereunder:-

*‘Whereas I am the owner of the agricultural lands situate at No.42, Sriperumbudur village, Sriperumbudur Taluk, Kancheepuram District comprised in [s.No.5/1 measuring of an extent of 17 cents, S.No.10/1 measuring of an extent of 31 cents, S.No.15/2A measuring of an extent of 41 cents, S.No.23/2 measuring of an extent of 1 Acre 29 cents, S.No.24/2 measuring of an extent of 56 cents, S.No.24/5 measuring of an extent of 33 cents, S.No.26/2B2 measuring of an extent of 42 cents, all are totalling an extent of 3 Acres 49 cents hereinafter referred to as the “said property” for brevity sake and also agricultural land of an extent of Acre 1 and 7 cents comprised in S.No. 26/1 C and land of an extent of 1 Acre comprised in S.No. 26/281 and all admeasuring total extent of 5 acres and 56 cents and also I further state that, I have agreed to sell the above lands in all measuring about 5 Acres 56 Cents, through my power agent (vide GPA Nos. 694/8K 4/2008*

*and 697/8K 4/2008 SRO Sriperumbudur) Mr.D. RAJA, aged about 50 years, son of Mr. Deenadhayalan, residing at No.3, Vania street, Kundrathur, Chennai - 600 069, for a total sale consideration of Rs. 83,20,000/-- (Rupees Eighty Three Lakhs Twenty Thousand Only) by way of DD net free of all encumbrances, all I have received the entire sale consideration of Rs 83,20,000/- today.*

*I hereby admit, acknowledge the receipt of the entire sale consideration of Rs. 83,20,000/- (Rupees Eighty Three Lakhs Twenty Thousand Only) by way of DD, I am signing this Sale Letter cum Receipt.*

*I further confirm that, I have this day handed over all the Original documents of title relating to the said properties to the above said Mr. D. RAJA.*

*I further state that, since I have received the entire sale consideration for the sale of the said property and have also handed over the possession of the said lands to the above said Mr. D. RAJA, hereafter neither my self nor my legal heirs will have any claim or right over the said lands.*

*I hereby state that I will not cancel or revoke the said power of attorney deed at any point of time.*

#### SCHEDULE OF PROPETY

*All that piece and parcel of agriculturai land at No.42, Sriperumbudur Village, Sriperumbudur Taluk, Kancheepuram District*

*comprised in S.No. 5/1 measuring of an extent of 17 cents, S.No. 10/1 measuring of an extent of 31 cents, S.No. 15/2A measuring of an extent of 41 cents, S.No. 23/2 measuring of an extent of 1 Acre 29 cents, S.No. 24/2 measuring of an extent of 56 cents, S.No. 24/5 measuring of an extent of 33 cents, S.No. 26/282 measuring of an extent of 42 cents, S.No. 26/281 of an extent of 1 Acre and S.No. 26/1 C of an 1 Acre 07 cents and all admeasuring total extent of 5 Acres 56 cents in the registration Sub-District of Sriperumbudur and in the Registration District of Chenglepet”.*

Though in the sale letter cum receipt, the subject land was described as agricultural, what was stated in Power of Attorney clearly show that it was not agricultural in nature. No doubt, assessee had produced a certificate from Village Administrative Officer. However, this certificate only states that the land was agricultural patta land in the revenue register. Mere entry in revenue register as agricultural land would not convert an otherwise non agricultural land to an agricultural land. Assessee has not disputed the findings of the Assessing Officer that the land was situated within 8kms from the town of Sriperumpudur and it had a population of more than ten thousand. Assessee could not demonstrate any agricultural operations to have been done in the property. Considering all these facts and circumstances, we are of the opinion that lower authorities were

justified in treating the surplus under the head Short Term Capital Gains and taking the cost of acquisition based on the consideration mentioned in the purchase deed. We do not find any reason to interfere with the orders of the lower authorities. Ground No.3 of the appeal stands dismissed.

**16.** In the result, the appeal of the assessee is dismissed.

Order pronounced on Wednesday, the 14th day of December, 2016, at Chennai.

Sd/-

(एन.आर.एस. गणेशन))

**(N.R.S. GANESAN)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

चेन्नई/Chennai

दिनांक/Dated:14th December, 2016

**KV**

Sd/-

(अब्राहम पी. जॉर्ज)

**(ABRAHAM P. GEORGE)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

3. आयकर आयुक्त (अपील)/CIT(A)

5. विभागीय प्रतिनिधि/DR

2. प्रत्यर्थी/Respondent

4. आयकर आयुक्त/CIT

6. गार्ड फाईल/GF