

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.554/Mds/2016

निर्धारण वर्ष / Assessment Year : 2011-12

M/s T V Sundram Iyengar & Sons
Private Limited
(Formerly known as TV Sundram
Iyengar & Sons Ltd.),
7-B, West Veli Street,
Madurai – 625 001.

v.

The Joint Commissioner of
Income Tax,
Range I,
Madurai.

PAN : AABCT 0159 K
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S.A. Balasubramanyan, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri Shiva Srinivas, JCIT

सुनवाई की तारीख/Date of Hearing : 28.07.2016

घोषणा की तारीख/Date of Pronouncement : 15.09.2016

आदेश / O R D E R

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

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) – 1, Madurai, dated 30.12.2015 and pertains to assessment year 2011-12.

2. The first issue arises for consideration is expenditure incurred by the assessee on higher education of relatives of the Directors.

3. Shri S.A. Balasubramanyan, the Ld.counsel for the assessee, submitted that when an identical issue came before this Tribunal in the assessee's own case for the assessment year 2010-11, this Tribunal after referring to the judgment of Madras High Court in K. Subramaniam Bros v. CIT (250 ITR 306), found that it is the liability of parents to educate their children, therefore, there was no business expenditure for the company. The Tribunal further found that there was no business purpose in incurring expenditure on the education of the grandchildren /children of the Directors. In view of the above decision of this Tribunal in the assessee's own case, this issue is covered against the assessee.

4. We have heard Shri Shiva Srinivas, the Ld. Departmental Representative also. The Ld. D.R. submitted that in view of the judgment of Madras High Court in K. Subramaniam Bros (supra), the Tribunal in the earlier assessment year decided the matter

against the assessee. Therefore, according to the Ld. D.R., the same order may be followed.

5. We have considered the submissions on either side and perused the relevant material available on record. As rightly submitted by the Ld.counsel for the assessee and the Ld. D.R., the assessee incurred expenditure on the education of grandchildren and children of the Directors of the assessee-company. This Tribunal is of the considered opinion that it is the responsibility of each parent to give best possible education to their children. For giving education to the children, no business purpose would be served to the assessee-company. A similar view was taken by the Madras High Court in K. Subramaniam Bros (supra). This judgment of the Madras High Court was followed by this Tribunal in the assessee's own case for assessment year 2010-11. In view of the above, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

6. The next ground of appeal is with regard to disallowance of interest paid by the assessee on borrowings to the extent of 3%.

7. Shri S.A. Balasubramanyan, the Ld.counsel for the assessee, submitted that the assessee accepted deposits from public and paid interest at the rate of 9% on fixed deposits and in respect of cumulative deposits, the assessee has paid 9.7% to 10.20%. The assessee-company, in fact, paid interest to the extent of ₹2026.15 lakhs during the year under consideration. The assessee has paid, out of the interest free funds, to the extent of ₹1500 lakhs to its subsidiary company M/s TVS Srichakra Ltd. The rate of interest charged by the assessee is 7% per annum. There was a difference of 3%. According to the Ld. counsel, the assessee borrowed funds at the rate of 10% and advanced the same to sister concern at 7%. The Assessing Officer has taken the difference of 3% as income of the assessee.

8. According to the Ld. counsel for the assessee, there was a regular transaction between the assessee-company and M/s TVS Srichakra Ltd., who is one of the supplier of goods to the assessee. In the course of its business activity, the assessee has advanced ₹1500 lakhs and also charged interest at the rate of 7%. The Assessing Officer simply rejected the claim of the assessee on the ground that no evidence was produced by the assessee. The

voluminous document produced by the assessee to prove the business transaction was not considered by the CIT(Appeals). The Ld.counsel further submitted that self-generated funds were available to the assessee more than the deposits received from the public and borrowed funds, therefore, there is no question of any disallowance of interest.

9. On the contrary, Shri Shiva Srinivas, the Ld. Departmental Representative, submitted that the assessee has borrowed loan for the purpose of business and paid interest to the extent of ₹2026.15 lakhs during the year under consideration. The Assessing Officer found that the assessee has advanced ₹1500 lakhs to M/s TVS Srichakra Ltd., Madurai and charged interest at the rate of 7%. The Assessing Officer found that the assessee paid interest at the rate of 10% on the borrowed funds, however, charged interest at the rate of 7% on the money advanced to M/s TVS Srichakra Ltd. The assessee claimed before the Assessing Officer that for ensuring uninterrupted supply of goods, the assessee advanced money at the rate of 7%. However, no material is available on record the nature of goods supplied by M/s TVS Srichakra Ltd. Therefore,

according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

10. We have considered the rival submissions on either side and perused the relevant material available on record. From the material available on record, it appears that the assessee has borrowed funds from bank and other financial institutions and paid interest at the rate of 10%. The assessee has also received deposits from public. The assessee has advanced a sum of ₹15 Crores to M/s TVS Srichakra Ltd. and charged interest at the rate of 7%. Even though the assessee claims that the advance was paid to ensure uninterrupted supply of goods, no material is available on record to suggest the nature of goods supplied by M/s TVS Srichakra Ltd. At the best, we may say that it is an advance paid by the assessee for purchasing goods from M/s TVS Srichakra Ltd. However, it is for the assessee to produce necessary material indicating the nature of goods said to be purchased from M/s TVS Srichakra Ltd. The assessee has not produced any details with regard to the so-called material purchased from M/s TVS Srichakra Ltd. This Tribunal is of the considered opinion that unless the assessee produces the details of the material supplied by M/s TVS

Srichakra Ltd., the claim cannot be allowed. Therefore, in the interest of justice, one more opportunity needs to be given to the assessee to produce necessary material with regard to goods supplied by M/s TVS Srichakra Ltd. Giving one opportunity to produce necessary material would not prejudice the interests of Revenue. Accordingly, the orders of the authorities below are set aside and the issue of disallowance of interest to the extent of ₹41,68,767/- is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter in the light of the details of the goods that were supplied by M/s TVS Srichakra Ltd. and thereafter decide the same, in accordance with law, after giving a reasonable opportunity to the assessee.

11. The next ground of appeal is with regard to disallowance made by the Assessing Officer under Section 14A of the Income-tax Act, 1961 (in short 'the Act').

12. Shri S.A. Balasubramanyan, the Ld.counsel for the assessee, submitted that the Assessing Officer disallowed the expenditure said to be incurred in earning dividend income to the extent of ₹3889.35 lakhs. According to the Ld. counsel, the assessee made investment to the extent of ₹7750.61 lakhs during

the year under consideration and acquired dividend income of ₹3889.35 lakhs. According to the Ld. counsel, no expenditure was incurred. Since no expenditure was incurred, according to the Ld. counsel, there cannot be any disallowance. Moreover, the Ld.counsel submitted that the assessee invested its own funds in the shares and acquired dividend income. Therefore, according to the Ld. counsel, there cannot be any disallowance.

13. On the contrary, Shri Shiva Srinivas, the Ld. Departmental Representative, submitted that the assessee admittedly borrowed funds for the purpose of business. Therefore, the expenditure incurred by the assessee cannot be attributed to any particular income. Moreover, during the year under consideration, the assessee has invested a sum of ₹7750.61 lakhs in the shares. Therefore, the disallowance has to be computed by applying Rule 8D(2)(ii) & (iii) of the Income-tax Rules, 1962. The Assessing Officer has applied Rule 8D for making disallowance. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

14. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, the

assessee borrowed funds for the purpose of business and also diverted substantial amount in the form of advance to M/s TVS Srichakra Ltd. The assessee now claims that the investment was made out of its own funds and no expenditure was incurred. The fact remains that the expenditure incurred by the assessee for payment of interest on the borrowed funds cannot be attributed to any particular income. When the assessee borrowed substantial amount and paid interest, it cannot be said that no expenditure was incurred for earning exempted income. Even assuming for argument sake that the assessee invested its own funds in the shares, third limb of Rule 8D(2) would coming into operation. Therefore, 0.5% of average investment made during the year under consideration, which resulted income and which does not form part of total income, has to be taken into consideration. In view of the above, this Tribunal is of the considered opinion that the Assessing Officer has rightly computed the disallowance by applying provisions of Rule 8D(2). Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

15. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on 15th September, 2016 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 15th September, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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