

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH AHMEDABAD

BEFORE, SHRI S. S. GODARA, JUDICIAL MEMBER
AND SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA Nos. 493 & 604/Ahd/2012
(Assessment Year: 2008-09)

Sagar Agencies Pvt. Ltd.,
803, Sahjanad Complex, Shahibaug
Road, Ahmedabad - 380004

Appellant

Vs.

Asstt. Commissioner of Income Tax
(OSD), Circle-8, Ahmedabad

Respondent / Cross Appellant

PAN: AADCS0473P

आवेदक की ओर से/By Assessee : Shri M. J. Shah, A.R.
राजस्व की ओर से/By Revenue : Shri Mudit Nagpal, Sr. D.R.
सुनवाई की तारीख/Date of Hearing : 21.08.2017
घोषणा की तारीख/Date of
Pronouncement : 28.09.2017

ORDER

PER S. S. GODARA, JUDICIAL MEMBER

Assessee and Revenue have instituted the instant cross appeals for assessment year 2008-09 against the CIT(A)-XIV, Ahmedabad's order dated 12.12.2011, in case no. CIT(A) XIV/ACIT Cir.8/126/10-11, in proceedings u/s. 143(3) of the Income Tax Act, 1961; in short "the Act".

2. We come to assessee's appeal ITA No.493/Ahd/2012. Its former substantive ground seeks to delete Section 14A r.w.8D disallowance of Rs.1,11,834/- made in the course of assessment as affirmed in lower appellate proceedings to the extent of Rs.53,037/-. There is no dispute that the assessee has derived exempt income in question in relevant previous year. The Assessing

Officer appears to have invoked Rule 8D (2) for disallowing the impugned sum @ ½% of average investment coming to Rs. 53,037/-. There is no dispute that Rule 8D very much applies from the impugned assessment year 2008-09. Learned Authorized Representative vehemently contended before us that both the lower authorities have erred in computing the impugned disallowance without recording any specific satisfaction in their respective orders. Hi further case is that the assessee is having sufficient interest free funds in the nature of share capital, reserve deferred tax and internal accrual etc. to discharge its initial onus not to have made tax free investments from interest bearing funds. We find no merit in these two pleas. We find that the impugned disallowance is that of administrative expenditure than direct or indirect expenses regarding the abovestated exempt income. Both the lower authorities have applied the specified statutory computation formula in the instant case. The same is therefore affirmed.

3. The assessee's latter substantive ground pleads that both the lower authorities have erred in law as well as on facts in disallowing its deduction claim of Rs.13,84,763/- u/s.80IA of the Act. The relevant facts qua this issue are in a narrow compass. The assessee admittedly had installed windmill power project in Satara District, Maharashtra. It thereafter received sales tax incentive on installation of windmill power project. Both the lower authorities hold that the said sales tax incentive amount in question is not in the nature of profit derived from eligible undertaking for the purpose of impugned deduction as per hon'ble apex court's decision in Liberty India v. Commissioner of Income Tax (2009) 317 ITR 218 (SC).

4. Bothe the parties reiterate their respective pleadings in the course of hearing. The assessee also seeks to raise an additional ground that the above sales tax incentive amount disallowed in both the lower proceedings is in the nature of a capital receipt not excisable to tax. Learned Departmental Representative vehemently opposes admission of this additional ground. We find that this tribunal's Special Bench decision in All Cargo Global Logistics Ltd. vs. DCIT

(2012) 137 ITD 26 (Mum)) quotes hon'ble apex court's judgment in NTPC's case 229 ITR 383 (SC) that such additional ground can be admitted in order to determine appropriate tax liability of an assessee. We therefore admit assessee's additional ground.

5. We now advert to merits of the issue. It is not in dispute that the relevant sales tax incentive scheme announced by the Maharashtra State Government does not form part of case records before us. Learned CIT(A) observes that the said scheme envisages incentive @1/6th of the cost for a period of six years on the windmills installed in Maharashtra. He then concludes that nothing depend on quantum of electricity generated from the windmill leading to the impugned eligible profit. The assessee invites our attention to a co-ordinate bench decision in (2014) 62 SOT 74 (Ahd-Trib) Jivraj Tea & Industries Ltd. vs. ACIT remitting an identical issue back to the Assessing Officer pertaining to the above sales tax incentive scheme for afresh adjudication after verifying relevant details thereof. We reiterate that such details are also not forthcoming from the instant case records. Learned Departmental Representative is also unable to rebut all these legal developments. We therefore restore the instant issue as well back to the Assessing Officer for afresh adjudication as per law. Assessee's appeal ITA No.493/Ahd/2012 is partly accepted for statistical purposes.

6. This leaves us with Revenue's appeal ITA No. 604/Ahd/2012. It raises five incentive grounds seeking to restore Assessing Officer's action disallowing the amount of Rs.18,421/- pertaining to amortization of lease rent in respect of land, windmill depreciation claim of Rs.2,69,453/-, 14A disallowance of Rs.1,11,834/-, interest disallowance of Rs.3,01,600/- and cessation of liability addition u/s.41(1) of the Act amounting to Rs.5,09,219/-; respectively. Learned Departmental Representative fails to dispute the fact that the tax effect involved in the Revenue's instant appeal is admittedly less than that Rs.10lacs. We find that the Central Board of Direct Taxes; hereafter the 'Board' has issued the circular no. 21/2015 dated 10.12.2015 clearly envisaging therein that department's pending appeals before the tribunal/high courts are to be withdrawn/not pressed as per the above

stated circular. The same has been declared to be having retrospective effect in other words. We take into consideration the above stated Board's circular and dismiss the instant appeal accordingly.

7. We therefore partly accept the assessee's appeal ITA No.493/Ahd/2012 for statistical purposes and dismiss Revenue's appeal ITA No.604/Ahd/2012 for involving low tax effect.

[Pronounced in the open Court on this the 28th day of September, 2017.]

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER
Ahmedabad: Dated 28/09/2017

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।