

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' 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.225/Mds/2017
निर्धारण वर्ष /Assessment year : 2012-2013.

Mira Textiles and Industries (I) Ltd, **Vs.** The Income Tax Officer,
Flat F2, Upper Crest Apartments, Corporate Ward 4(3)
No.11, School Street, Chennai.
Koyambedu,
Chennai

[PAN AAACM 4365R]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. S. Vidya, C.A.
प्रत्यर्थी की ओर से /Respondent by : Shri. Ashish Tripathi, JCIT.

सुनवाई की तारीख/Date of Hearing : 20-06-2017
घोषणा की तारीख /Date of Pronouncement : 22-06-2017

आदेश / O R D E R

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

Assessee in this appeal is aggrieved on a disallowance of
₹20,52,440/- u/s.14A of the Income Tax Act, 1961 (in short "the
Act").

2. Ld. Counsel for the assessee submitted that assessee had not derived any exempt dividend income during the relevant previous year nor claimed any income as exempt. According to her, by virtue of jurisdictional High Court in the case of *CIT vs. Chettinad Logistics (P) Ltd (2017) 80 Taxmann.com 221* no disallowance u/s. 14A of the Act could be made when there was no exempt income.

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

4. We have considered the rival contentions and perused the orders of the authorities below. Assessee has submitted before Id. Assessing Officer that it had not earned any exempt income. Ld. Assessing Officer despite such submission made a disallowance u/s. 14A r.w.r. 8D of the Income Tax Rules, 1962. The question whether a disallowance can be made u/s. 14A of the Act even when there is no claim for exempt income, has been answered in favour of the assessee by the Jurisdictional High Court in the case of *Chettinad Logistics (P) Ltd (supra)*. The relevant part of the judgment is reproduced hereunder:-

"11. Furthermore, we may note that a similar argument was sought to be advanced by the Revenue in the matter concerning, M/s.Redington (India) Limited Vs. The Additional Commissioner of Income Tax, which was, subject matter of T.C.A.No.520 of 2016.

11.1. A Co-ordinate Bench of this Court, vide judgment dated 23.12.2016, rejected the plea of the Revenue advanced in that behalf.

11.2. As a matter of fact, a perusal of the judgment would show that the Revenue had sought to argue that because exempt income could be earned in future years, therefore, recourse could be taken to the provisions of Section 14A of the Act, to disallow expenditure. In other words the stand taken by the Revenue was irrespective of the fact whether or not income was earned in the concerned assessment year expenditure under Section 14A could be disallowed against anticipated income.

11.3. Pertinently, the Division Bench in *M/s.Redington (India) Limited* case has repelled this precise argument.

12. The Division Bench, in our view, quiet correctly held that, the computation of total income, in terms of Section 5 of the Act, is made qua real income and not, vis-a-vis, notional income.

12.1. The Division Bench went on to hold that Section 4 of the Act brings to tax, that income, which is relatable to the assessment year in issue. The Division Bench, thus, held that where no exempt income is earned in the previous year, relevant to the assessment year in issue, provisions of Section 14 A of the Act, read with Rule 8 D could not be invoked.

12.2. While coming to this conclusion, the Division Bench also took note of the aforementioned Circular, issued by the Board.

12.3. The reasoning of the Division Bench is contained in the following part of the judgment:

'4.The admitted position is that no exempt income has been earned by the assessee in the financial year relevant to the assessment year in issue. The order of assessment records a finding of fact to that effect. The issue to be decided thus lies within the short compass of whether a disallowance in terms of s.14A of the Act read with Rule 8D of the Rules can be contemplated even in a situation where no exempt income has admittedly been earned by the assessee in the relevant financial year.

7. Per contra, Sri.T.Ravikumar appearing on behalf of the revenue drew our attention to the marginal notes of s.14 A pointing out that the provision would apply not only where exempted income is 'included' in the total income, but also where exempt income is 'includable' in total income.

8. He relied upon a Circular issued by the Central Board of Direct taxes in Circular No.5 of 2014 dated 11.2.2014 to the effect that s.14A was intended to cover even those situations whether there is a possibility of exempt income being earned in future. The Circular, at paragraph 4, states that it is not necessary for exempt income to have been included in the income of a particular year for the disallowance to be triggered. According to the Learned Standing Counsel, the provisions of s.14A are made applicable, in terms of sub section (1) thereof to income 'under the act' and not 'of the year' and a disallowance under s.14A r.w.Rule 8D can thus be effected even in a situation where a tax payer has not earned any taxable income in a particular year.

9. We are unable to subscribe to the aforesaid view. The provisions of section 14A were inserted as a response to the judgments of the Supreme Court in Commissioner of Income Tax Vs. Maharashtra Sugar Mills Limited (1971) (82 ITR 452) and Rajasthan State Ware Housing Corporation Vs. Commissioner of Income Tax ((2002) 242 ITR 450) in terms of which, expenditure incurred by an assessee carrying on a composite business giving rise to both taxable as well as non-taxable income, was allowable in entirety without apportionment. It was thus that s.14A was inserted providing that no deduction shall be allowable in respect of expenditure incurred in relation to the earning of income exempt from taxation. As observed by the Supreme Court in the judgment in the case of Commissioner of Income Tax vs. Walfort Share and Stock Brokers (P) Ltd (2010) 326 ITR 1 '.... The mandate of s.14A is clear. It desires to curb the practice to claim deduction of expenses incurred in relation to exempt income against taxable income and at the same time avail of the

tax incentive by way of an exemption of exempt income without making any apportionment of expenses incurred in relation to exempt income.'

10.The provision this is clearly relatable to the earning of actual income and not notional or anticipated income. The submission of the Department to the effect that s.14A would be attracted even to exempt income 'includable' in total income would entail the assessment of notional income, assumed to be exempt in the future, in the present assessment year. The computation of total income in terms of s.5 of the Act is on real income and there is no sanction in law for the assessment of admittedly notional income, particularly in the context of effecting a disallowance in connection therewith.

11.The computation of disallowance in terms of Rule 8D is by way of a determination involving direct as well as indirect attribution. Thus, accepting the submission of the Revenue would result in the imposition of an artificial method of computation on notional and assumed income. We believe this would be carrying the artifice too far.(emphasis is ours)]

13.Mr.Senthil Kumar, seeks to distinguish the judgment in M/s.Redington (India) Limited case based on the fact that Rule 8D had not kicked-in by AY 2007-08, which was the AY being considered in the said case.

14.According to us, this was not the argument, put forth, before the Division Bench. As a matter of fact, the Revenue relied heavily on Rule 8D.

14.1.Mr.Ravikumar, who appeared for the Revenue, in that matter and who is present in this Court, informs us that he had in fact argued that the Rule was clarifactory in nature and would apply retrospectively, and that, the Division Bench, therefore, discussed the impact of Rule 8D of the Rules.

15.However, it is, our view, as indicated above, independent of the reasoning given in M/s.Redington (India) Limited case that Rule 8D cannot be read in a manner, which takes it beyond the scope and content of the main provision, which is, Section 14 A of the Act.

15.1. Therefore, as adverted to above, Rule 8D, cannot come to the rescue of the Revenue.

15.2. In any event, the Tribunal, via, the impugned judgment has remitted the matter to the Assessing Officer.

15.3. Therefore, for the foregoing reasons, we are of the view, that no interference is called for qua the impugned judgment”.

Accordingly, we are of the opinion that the assessee has to succeed.

5. In the result, the appeal of the assessee stands allowed.

Order pronounced on Thursday, the 22nd day of June, 2017, at Chennai.

Sd/-

(एन.आर.एस. गणेशन))

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:- 22nd June, 2017

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