

आय अधकरण, “सी” ँयायपीठ, चेन्नई
APPELLATE TRIBUNAL ‘C’ BENCH, CHENNAI

श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुवु आर.एल रेडी, ँयायक सदस्य के समु
Before Shri A. Mohan Alankamony, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

अपील सं./I.T.A.No.684/Mds/2017

अनधाकरण वष/Assessment Year:2011-12

M/s. Orchid Holdings Pvt. Ltd. [Now
known as Orchid Healthcare Pvt. Ltd.]
No. 1, 6th Floor, Crown Court, New No.
128 (Old No. 34), Cathedral Road,
Chennai 600 086.

Vs. The Deputy Commissioner of
Income Tax,
Corporate Circle 5(1),
Chennai 34.

[PAN:AAACO0399K]

(अपीलाथ /Appellant)

(अयथ/Respondent)

आयकर अपील सं./I.T.A.No.683/Mds/2017

अनधाकरण वष/Assessment Year:2012-13

M/s. Orchid Health Care Pvt.
Ltd.[Formerly known as M/s. Orchid
Holdings (P) Ltd.], No. 1, 6th Floor,
Crown Court, New No. 128 (Old No.
34), Cathedral Road, Chennai 600 086.

Vs. The Deputy Commissioner of
Income Tax,
Corporate Circle 5(1),
Chennai 34.

[PAN:AAACO0399K]

(अपीलाथ /Appellant)

(अयथ/Respondent)

अपीलाथ का ओर से / Appellant by : Shri B. Ramakrishnan, C.A.

अयथ का ओर से/Respondent by : Shri A.V. Sreekanth, JCIT

सुनवाई का तारख / Date of hearing : 03.04.2017

घोषणा का तारख /Date of Pronouncement : 23.06.2017

आदेश / O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

y same assessee group are directed against

different orders of the Id. Commissioner of Income Tax (Appeals) 3, Chennai both dated 31.01.2017 relevant to the assessment years 2011-12 and 2012-13. We shall take up the appeal for the assessment year 2011-12.

I.T.A. No. 684/Mds/2017

2. The first ground raised in the appeal for the assessment year 2011-12 is that the Id. CIT(A) has erred in confirming the reopening of assessment under section 147 of the Income Tax Act, 1961 [Act+in short].

2.1 Brief facts of the case are that the assessee has filed its return of income on 30.09.2011 declaring a loss of .3,04,85,863/-. On perusal of the records, the Assessing Officer has noticed that the assessee has income from dividend, interest and capital gain and found that the assessee has credited the same in the Profit and Loss account and has claimed various expenses like interest and other expenditure to the extent of .3,04,85,863/- as business loss thereby becoming eligible to carry forward the same for subsequent years. Since the assessee was not doing any business, the Assessing Officer was of the opinion that the assessee was not eligible to claim the expenses in relation to the business and business loss shall not be allowed to be carried forward. Since there is an escapement of income, notice under section 148 of the Act was issued on 17.03.2016 and the

03.2016 requested to treat the original return of income filed on 30.09.2011 as return of income filed in response to notice under section 148 of the Act. Notice under section 143(2) r.w.s. 129 of the Act dated 15.09.2016 was issued to the assessee. Vide letter dated 15.09.2016, the reasons for reopening were also given to the assessee and was requested to appear with all the supporting documents in favour of its claim. Since none appeared on behalf of the assessee, the Assessing Officer has finalized the assessment under section 144 r.w.s. 147 of the Act on 18.11.2016 by assessing total income of the assessee at .1,39,05,988/- after making various disallowances.

2.2 The assessee carried the matter in appeal before the Id. CIT(A) and raised various grounds including reopening of assessment under section 147 of the Act. After considering the submissions of the assessee and facts of the case, the Id. CIT(A) dismissed the appeal filed by the assessee.

2.3 On being aggrieved, the assessee is in appeal before the Tribunal and challenged reopening of assessment as well as confirmation of disallowances. With regard to reopening of assessment under section 147 of the Act, the Id. Counsel for the assessee has submitted that the assessee has filed all details before the Assessing Officer and no new material is available with the Assessing Officer for reopening of assessment under section 147 of the Act. He further argued that various expenses accounted in

were disallowed and brought to tax and

therefore, he argued that the reopening of assessment is bad in law in the absence of any new materials brought on record. On merits, he argued that the assessee was not given sufficient opportunities to file all the details before the Assessing Officer for verification, therefore, the Assessing Officer has concluded the assessment under section 144 of the Act and prayed that the assessee may be given one more opportunity of being heard to file all the details before the Assessing Officer to decide the disallowances afresh.

2.4 On the other hand, the Id. DR strongly supported the orders of authorities below.

2.5 We have heard both sides, perused the materials available on record and gone through the orders of authorities below. In this case, by recording reasons and communicating the same to the assessee, assessment was completed under section 144 r.w.s. 147 of the Act since there was no response from assessee's side except to treat the original return filed as return of income filed in response to the notice under section 148 of the Act. It is an admitted fact that the assessee has not contested the reasons recorded for reopening of assessment before the Assessing Officer. The assessee has not responded to the notice under section 143(2) r.w.s. 129 of the Act. The Id. CIT(A) has observed that the original assessment was

(1) of the Act. He further opined that the Assessing Officer had tangible material on the basis of which reasons to believe have been formed by the Assessing Officer, which was not contested by the assessee before the Assessing Officer, the Id. CIT(A) has held that the Assessing Officer has rightly assumed jurisdiction and reopened the assessment by following the decision in the case of DCIT & Another v. Zuari Estate Development and Investment Co. Ltd. 370 ITR 661. Thus, we find no reason to interfere with the order passed by the Id. CIT(A) on this issue and accordingly, the ground raised by the assessee is dismissed.

3. With regard to the confirmation of disallowances of Administrative expenses amounting to .44,74,106/-, financial charges amounting to .3,98,51,565/- and audit fees amounting to .66,180/-, we find that the assessee has not responded to the notice issued under section 143(2) of the Act and also not responded to specific show-cause notice issued on 26.10.2016 to the assessee to furnish the relevant details in support of various expenses claimed. Before the Id. CIT(A) also it appears that the assessee has not filed any concrete evidence in support of its claim. However, by filing audited financial statements and MoA, the Id. Counsel for the assessee has prayed to give one more opportunity of being heard to the assessee to file the same before the Assessing Officer. Accordingly, to meet

one more opportunity of being heard to the assessee and direct the assessee to file all the details before the Assessing Officer. The Assessing Officer is directed to verify the details as may be filed by the assessee and decide the issue afresh in accordance with law after allowing an opportunity of being heard to the assessee. Thus, the grounds raised by the assessee are allowed for statistical purposes.

I.T.A. No. 683/Mds/2017

4. The only effective ground raised in the appeal of the assessee is that the Id. CIT(A) has erred in confirming the disallowance made under section 14A r.w. Rule 8D to the extent of .1,19,99,331/-.

4.1 The Assessing Officer has noticed during the course of assessment proceedings that the assessee has received exempted income of .1,10,99,331/- in the form of dividend in respect of investment made. The investment balance as on 01.04.2011 was .77,08,99,140/- and as on 31.03.2012 it was .77,12,01,919/-. From the financial statement, the Assessing Officer has noticed that the assessee has paid interest charges and claimed expenses in its profit and loss account. Therefore, the Assessing Officer was of the opinion that the assessee could not have earned exempt income from the said investments without incurring any expenditure. Accordingly, by applying the provisions of Rule 8D, the

out the expenditure component for earning exempt income to the extent of .4,19,38,494/- and disallowed the same.

4.2 The assessee carried the matter in appeal before the Id. CIT(A). After considering the submissions of the assessee and by following various decisions the Id. CIT(A) restricted the disallowance under section 14A r.w. Rule 8D to the extent of dividend income earned by the assessee. Against the order of the Id. CIT(A), the assessee is in appeal before the Tribunal.

4.3 We have heard the rival contentions. Against the exempt income of .1,10,99,331/-, by applying the provisions of Rule 8D, the Assessing Officer determined the expenditure component for earning exempt income to the extent of .4,19,38,494/- and disallowed the same. By following the decision of the Hon'ble Jurisdictional High Court in the case of Redington (India) Ltd. v. Addl. CIT 77 taxmann.com 257 as well as decision of the Tribunal in the case of Rayalla Corporation (P) Ltd. v. DCIT I.T.A. No. 908/Mds/2015 dated 16.10.2015 for the assessment year 2011-12, the Id. CIT(A) has rightly restricted the disallowance to the extent of exempt income earned by the assessee. Therefore, we find no infirmity in the order passed by the Id. CIT(A) on this issue and accordingly, the ground raised by the assessee is dismissed.

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deal filed by the assessee in I.T.A. No.
684/Mds/2017 is partly allowed for statistical purposes and I.T.A. No.
683/Mds/2017 is dismissed.

Order pronounced on the 23rd June, 2017 at Chennai.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 23.06.2017

Vm/-

आदेश क० प्रतिलिपि अपेक्षित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/
Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT,
5. वित्तीय प्रशासक/DR & 6. गार्डफाईल/GF.