

आयकर अधीकरण, "डी" न्यायपीठ, चेन्नई  
PELLATE TRIBUNAL 'D' BENCH, CHENNAI

श्री संजय अरोड़ा, लेखा सदस्य एवं श्री धुवुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष  
Before Shri Sanjay Arora, Accountant Member &  
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I.T.A.No.107/Mds/2017

निर्धारण वर्ष/Assessment Year:2012-13

The Deputy Commissioner of  
Income Tax, Corporate Circle 6(2),  
Aayakar Bhavan, New Block, 7<sup>th</sup> Floor,  
121, M.G. Road, Chennai 600 034.

M/s. Sundar Chemicals Pvt. Ltd.,  
Vs. 6G, 560-562, Century Plaza,  
Anna Salai, Teynampet,  
Chennai 600 018.  
[PAN:AABCS5173Q]

(अपीलाथ /Appellant)

(प्रत्यथ /Respondent)

अपीलाथ का ओर से / Appellant by : Shri P. Nagendra Kumar, JCIT

प्रत्यथ का ओर से/Respondent by : Shri R. Venkatanarayanan, Advocate

सुनवाई का तारख / Date of hearing : 19.06.2017

घोषणा का तारख /Date of Pronouncement : 10.07.2017

**आदेश /ORDER**

**PER DUVVURU RL REDDY, JUDICIAL MEMBER:**

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) 15, Chennai dated 25.10.2016 relevant to the assessment year 2012-13. The only effective ground raised in the appeal of the Revenue is that the Id. CIT(A) has erred in deleting the disallowance made under section 14A of the Income Tax Act, 1961 [Act+in short].

are that the assessee has filed the return of income on 28.09.2012 declaring total income of ₹.1,92,58,140/-. The return filed by the assessee was selected for scrutiny and notice under section 143(2) of the Act dated 08.08.2013 was issued and served on the assessee. Thereafter statutory notices have been issued under section 143(2) r.w.s. 129 as well as under section 142(1) of the Act dated 11.02.2015. In response thereto, the assessee filed all the details. After considering the submissions of the assessee and verification of other details, the Assessing Officer has concluded the assessment under section 143(3) of the Act dated 20.03.2015 by assessing total income of the assessee at ₹.2,43,63,705/- after making disallowance of ₹.51,05,565/- under section 14A of the Act.

3. The assessee carried the matter in appeal before the Id. CIT(A) and made various submissions. After considering the submissions of the assessee and by following the decision in the case of ACIT v. M. Baskaran in ITA No. 1717/Mds/2013 dated 31.07.2014, the Id. CIT(A) has deleted the disallowance made under section 14A of the Act.

4. On being aggrieved, the Revenue is in appeal before the Tribunal. By referring to the Board's circular No. 5/2014, the Id. DR has submitted that the even in cases where corresponding exempt income has not been earned during the relevant financial year, expenditure component has to be determined in view of the provisions of Rule 8D. Moreover, he has also

visions of section 14A of the Act no such condition exists that the assessee should earn exempt income, whereas, the only criteria envisaged in the provision is that there should be investments ~~earning~~ income and not investments ~~earned~~ exempt income during the year. Therefore, the Id. DR has pleaded that the order of the Id. CIT(A) should be reversed and restored that of the Assessing Officer.

5. Per contra, by strongly supporting the order passed by the Id. CIT(A), the Id. Counsel for the assessee has submitted that when there was no fresh investments made in the relevant assessment year under consideration and there is no question of ~~earning~~ income on the investments, the question of determining expenditure does not arise. By filing copy of the judgement in the case of Redington (India) Ltd. v. Addl. CIT in T.C.A. No. 520 of 2016 dated 23.12.2016, wherein, the Hon<sup>ble</sup> Jurisdictional High Court has held that when there is no exempt income there cannot be a disallowance of expenditure, the Id. Counsel for the assessee has submitted that the assessee has not earned any exempt income or incurred any expenditure or made any investment in the financial year relevant to the assessment year under consideration. It was further submitted that the issue is squarely covered in favour of the assessee in view of the above judgement of the Hon<sup>ble</sup> Jurisdictional High Court and prayed that the order of the Id. CIT(A) should be sustained.

es, perused the materials available on record and gone through the orders of authorities below. From the Balance Sheet, the Assessing Officer has observed that the assessee has invested an amount of .4,02,00,000/- in equity/mutual fund units and capable of earning exempt income. Further, the Assessing Officer has noticed that the assessee has claimed interest expenditure to the tune of .2,25,35,930/-. When the Assessing Officer has pointed out that the disallowance under section 14A r.w. Rule 8D is applicable, the assessee submitted that the investments appearing in the balance sheet has been made in the earlier years ending 31.03.2011 and 31.03.2010. It was also submitted that the investment has been made out of profits and internal accruals of the company and the investment has not been made out of borrowed funds in the earlier years. Further, it was submitted before the Assessing Officer that no portion of the borrowings on which interest was paid has been used for making investments in mutual funds and the borrowings have been used for the business operations of the assessee company. Moreover, it was submitted that the assessee has not taken any steps to redeem/change the mutual funds and earned any exempt income in the relevant assessment year. Therefore, the assessee has not incurred any expenditure. However, by applying the provisions of section 14A r.w. Rule 8D, the Assessing Officer has determined the expenditure component and disallowed the same. Before us, the Id. Counsel for the assessee has strongly contended that the

any investment in the relevant assessment year nor earned any exempt income and therefore, there should not be any disallowance of expenditure in view of the decision in the case of Redington (India) Ltd. v. Addl. CIT (supra) and prayed for sustaining the order passed by the Id. CIT(A). We find force in the arguments of the Id. Counsel. We have perused the case law relied on by the Id. Counsel for the assessee in the case of Redington (India) Ltd. v. Addl. CIT (supra), wherein, the Hon'ble Jurisdictional High Court has held as under:

*“15. The exemption extended to dividend income would relate only to the previous year when the income was earned and none other and consequently the expenditure incurred in connection therewith should also be dealt with in the same previous year. Thus, by application of the matching concept, in a year where there is no exempt income, there cannot be a disallowance of expenditure in relation to such assumed income. (Madras Industrial Investment Corporation Ltd. v. CIT (225 ITR 802). The language of s. 14A(1) should be read in that context and such that it advances the scheme of the Act rather than distort it.*

*16. In conclusion, we are of the view that the provisions of s. 14A read with Rule 8D of the Rules cannot be made applicable in a vacuum i.e., in the absence of exempt income. The questions of law are answered in favour of the assessee and against the department and the appeal allowed. No costs.”*

Admittedly, the assessee has not made any investment in the financial year ended 31.03.2012. Moreover, against the investments made in the years 2010 and 2011 in the mutual funds, the assessee has not redeemed and earned any exempt income. When there was no investment and no exempt income earned, the provision of section 14A r.w. Rule 8D cannot be made applicable in a vacuum to determine the expenditure. Under the above facts

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respectfully following the decision in the case of  
Redington (India) Ltd. v. Addl. CIT (supra), we find no infirmity in the order  
passed by the Id. CIT(A). Accordingly, the ground raised by the Revenue is  
dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on the 10<sup>th</sup> July, 2017 at Chennai.

Sd/-  
(SANJAY ARORA)  
ACCOUNTANT MEMBER

Sd/-  
(DUVVURU RL REDDY)  
JUDICIAL MEMBER

Chennai, Dated, the 10.07.2017

Vm/-

आदेश का प्रतिलिपि अर्पण/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/  
Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5.  
प्रभागीय प्रशासक/DR & 6. गार्डफाइल/GF.