

आय आधिकरण, "डी" अपीलपीठ, चेन्नई
APPELLATE TRIBUNAL 'D' BENCH, CHENNAI

श्री चंद्र पूजारी, लेखा सदस्य एवं श्री धुवुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
Before Shri Chandra Poojari, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

I.T.A. Nos.691 and 692/Mds/2017
Assessment Years :2011-12 & 2012-13

Tamilnadu Industrial Development
Corporation Limited,
No. 19-A, Rukmini Lakshmipathy Road,
Egmore, Chennai 600 008.

Vs. The Assistant Commissioner of
Income Tax,
Corporate Circle 3(1),
Chennai 600 034.

[PAN: AA ACT3409P]

(अपीलाथ /Appellant)

(प्रत्यथ/Respondent)

अपीलाथ का ओर से / Appellant by : Shri R. Vijayaraghavan, Advocate

प्रत्यथ का ओर से/Respondent by : Shri Milind Madhukar Bhusari, CIT

सुनवाई का ताराख/ Date of hearing : 22.05.2017

घोषणा का ताराख /Date of Pronouncement : 12.07.2017

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

Both the appeals filed by the same assessee are directed against different orders of the Id. Commissioner of Income Tax (Appeals) 13, Chennai both dated 28.02.2017 relevant to the assessment years 2011-12 and 2012-13. The common ground raised in both the appeals of the assessee is that the Id. CIT(A) has erred in confirming the disallowance made under section 14A of the Income Tax Act [Act+in short] r.w. Rule 8D. For the assessment year 2012-13, the assessee has also raised one more

is erred in confirming the disallowance made under section 43B of the Act.

I.T.A. No. 691/Mds/2017[A.Y. 2011-12]

2. Brief facts of the case are that the assessee has filed its return of income on 28.09.2011 declaring an income of .19,78,00,330/-. The return filed by the assessee was processed under section 143(1) of the Act on 10.01.2012 and accepted the income filed. Subsequently, the case of the assessee was selected for scrutiny and notice under section 143(2) of the Act dated 25.09.2011 was issued. In response thereto, the assessee has filed all details including audit report, computation of income, evidence for payment/credit for taxes claimed, etc. Thereafter, notice under section 142(1) of the Act dated 27.08.2013 issued on the assessee to furnish specific details as contained in the notice. After considering the submissions of the assessee and verification of particulars furnished by the assessee, the Assessing Officer has completed the assessment under section 143(3) of the Act by making disallowance of .14,82,23,866/- under section 14A of the Act r.w. Rule 8D.

3. The assessee carried the matter in appeal before the Id. CIT(A). After considering the submissions of the assessee and facts of the case, the Id. CIT(A) has confirmed the disallowance made under section 14A of the Act.

assessee is in appeal before the Tribunal. By referring to the grounds of appeal, the Id. Counsel for the assessee has submitted that the investments made by the assessee are in the course of their business of promoting industries and these are strategic investments, which cannot be brought under the provisions of section 14A of the Act. It was also submitted that dividend from the investments have been treated as business profits and set off against business loss as per the decision of the Tribunal in assessee's own case for earlier assessment years. Therefore, the Id. Counsel for the assessee has submitted that the provisions of section 14A of the Act will not apply to strategic investments. Thus, the Id. Counsel for the assessee has prayed for deleting the disallowance made under section 14A of the Act.

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

6. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. The assessee is a State Government Corporation engaged in the business of promoting industrial development in the State of Tamil Nadu. The assessee has earned dividend income of .24,83,08,996/- and voluntarily disallowed an amount of .2,64,14,439/- as expenditure incurred with respect to earning the exempt income. By applying the provisions of Rule 8D, the Assessing Officer

penditure component towards earning exempt income. When the assessee has declared expenditure incurred for earning exempt income, without verifying and giving any justification as to how and in what manner the voluntary expenditure offered by the assessee was incorrect, the Assessing Officer has straightaway proceeded to apply Rule 8D for the purpose of disallowance under section 14A of the Act without satisfying the mandatory requirement of section 14A(2) r.w. Rule 8D. Being a State Government Corporation and since the main objects of the assessee was to make investment for the industrial development in the State of Tamil Nadu, we find force in the argument of the Id. Counsel for the assessee that the provisions of section 14A of the Act shall not apply to the strategic investments. Many Courts including the Tribunal held that the strategic investments made by the assessee shall not attract the disallowance under section 14A r.w. Rule 8D.

6.1 On perusal of the balance sheet as at 31.03.2011 of the assessee, we find that the share capital and reserves & surplus are .274,01,39,063.31, whereas the unsecured loans are only .259,89,49,644.25. Therefore, the assessee has sufficient amount for making investment and it cannot be said that the borrowed funds have been utilized for making investment. Moreover, all the investments have been made in the earlier years and therefore, no

the borrowing for the year can be attributed to the investment.

6.2 From the balance sheet, we noticed that the investment as on 31.03.2010 was .331.90 crores, whereas, the investment as on 31.03.2011 was .331.06 crores and therefore, it is clear that there was no fresh investment during the year ended 31.03.2011. From the investments made in the earlier years, the assessee has earned exempt income for which it has been voluntarily admitted expenditure and either the Assessing Officer, or the Id. CIT(A), in their orders have not given any findings as to under what count the admitted expenditure was found incorrect, in violation of the provisions of section 14(A)2 of the Act. The disallowance under section 14A(1) of the Act can only be made, once the conditions under sub-section (2) are satisfied. To workout the disallowance under Rule 8D, the Assessing Officer has to first examine the accounts of the assessee and the correctness of the claim and then, if having regard to such accounts and the claim, he is not satisfied with either the correctness of the claim made by the assessee or made a claim that no expenditure at all has been incurred for the purpose of earning the exempt income, then only he can resort to Rule 8D. In the present case, the Assessing Officer has straightaway proceeded to apply Rule 8D for the purpose of disallowance under section 14A without satisfying or complying with the mandatory requirement of section 14A(2) or

Assessing Officer has failed to comply the statutory requirement, then he cannot proceed to make the disallowance under section 14A(1) of the Act and accordingly, the disallowance made by the Assessing Officer is reduced to the extent of .2,64,14,439/- as was voluntarily offered by the assessee. Hence, the ground raised by the assessee is partly allowed.

I.T.A. No. 692/Mds/2017 [A.Y.2012-13]

7. Facts leading to the first ground with regard to disallowance under section 14A of the Act are that in the investment portfolio of the assessee as on 31.03.2012 stands at an aggregate value of .375,57,17,383/-. The assessee has earned dividend income of .38,76,11,013/-. The assessee has not quantified expenditure for earning the dividend income and made any disallowance in the statement of income. Therefore, by applying the provisions of section 14A of the Act r.w. Rule 8D, the Assessing Officer determined the expenditure component for earning the exempt income at .14,34,85,389/-, disallowed and brought to tax. On appeal, the Id. CIT(A) confirmed the disallowance being less than the dividend income earned by the assessee. On being aggrieved, the assessee is in appeal before the Tribunal.

of the assessee that the investments made by the assessee are in the course of their business of promoting industries and these are strategic investment and cannot be taken into account for the purpose of disallowance under section 14A of the Act. It was also submitted that the dividends from these investments have been treated as business profits and set off against business loss. It was further submitted that all the investments have been made for the earlier years and therefore, no part of the interest payable on the borrowing for the year can be attributed to this investment and pleaded that if at all only 0.5% of the investment from which dividend has been earned can be disallowed under section 14A of the Act.

7.2 Per contra, the Id. DR vehemently argued that even though there was no fresh investment in the assessment year 2011-12, with regard to administrative and managerial activities, the assessee has admitted expenditure and voluntarily disallowed at ₹.2,64,14,439/- when the assessee has received dividend income of ₹.24,83,08,996/-, where, there was no fresh investment. However, in the assessment year 2012-13, the assessee has earned dividend income of ₹.38,76,11,013/- and also made fresh investment of ₹.20 crores as per the details under Note on issues and not admitted any expenses towards administrative and managerial. Therefore, the disallowance made under section 14A of the Act r.w. Rule 8D by the Assessing Officer should be sustained.

es, perused the materials available on record and gone through the orders of authorities below. Against the disallowance made under section 14A of the Act r.w. Rule 8D, the main contention of the assessee is that the investments made by the assessee are in the course of their business of promoting industries and are strategic investment, which cannot be taken into account for the purpose of disallowance under section 14A of the Act. Admittedly, the assessee has earned dividend income of .38,76,11,013/- and not voluntarily admitted any expenditure for earning the exempt income. It is not the case of the assessee that the assessee is a private limited company and made investment in the wholly owned subsidiary and earned exempt income. In this case, the assessee is Corporation functioning under the State Government and whatever investments made as well as income earned in any way has been ploughed back for the industrial development in the State of Tamil Nadu. Basically, the motive of the assessee is not to earn income out of investment, but for industrial development. The Revenue has not disputed that the investments made by the assessee are not strategic investment, which do not attract provisions of section 14A of the Act. However, though in the assessment year 2011-12, while earning dividend income of .24,83,08,996/- for the investments made in the earlier year, it has voluntarily admitted expenditure of .2,64,14,439/-. In the present assessment year, it was stated to have

0 crores, which are also capable of earning dividend income, as per the details under Note on issues and not admitted any expenses towards administrative and managerial. The Assessing Officer has not called for any specific explanation on the above facts. Under the above facts and circumstances, we direct the assessee to work out the expenditure component towards administrative and managerial aspect and so that the same shall be disallowed in the computation of income of the assessee. Accordingly, the ground raised by the assessee is partly allowed.

8. With regard to the disallowance under section 43B of the Act, the assessee has shown an amount of ₹.9,45,680/- under employers contribution to other funds for which a provision is made but not completely paid and thus, attracts disallowance under section 43B of the Act. Similarly for leave salary, the Assessing Officer has calculated the disallowance under section 43B of the Act at ₹.11,45,632/- and totally disallowed ₹.20,91,312/-. On appeal, the Id. CIT(A) confirmed the disallowances. Before us, by filing the details of unpaid expenditure under section 43B of the Act, the Id. Counsel for the assessee has submitted that the assessee itself has disallowed the expenditure in the computation of income, and therefore, he has pleaded that the Assessing Officer cannot make double disallowance, which was already disallowed by the assessee. In view of the above submissions, we direct the Assessing Officer to verify as to whether the

employers' contribution to other fund/leave

salary paid, etc. in its account and if it is found that the assessee has disallowed in its account, the same cannot be again disallowed by the Assessing Officer. Hence, we remit the matter back to the file of the Assessing Officer to verify and decide the issue afresh in accordance with law after allowing an opportunity of being heard to the assessee.

9. The next ground raised in the appeal of the assessee is with regard to confirmation of disallowance of provision for enhanced compensation.

9.1 The Assessing Officer noticed that the assessee has made provision for enhanced compensation of ₹.16,77,14,178/-. As the said entry is only a provision made and not an actual expenditure, the Assessing Officer disallowed the same and added to the income of the assessee. On appeal, the Id. CIT(A) confirmed the same.

9.2 Before us, the Id. Counsel for the assessee has submitted that the assessee has made a provision of ₹.25,66,33,427/- as on 31.03.2009 and has been making the additional compensation every year depending on the cases decided on the basis of the price fixed by the Sub-Court in the cases of land owners. Thus, the assessee has claimed the provision for additional as a deduction for the assessment year 2009-10, and the Assessing Officer has disallowed ₹.7,65,03,412/-, against which the assessee preferred further

During the year under consideration, the assessee has made payment to the extent of ₹.3,52,61,472/-. It was further submitted that the provision of ₹.16,77,14,178/- was the balance of provision made as on 31.03.2009 and was never claimed as deduction for this year. Therefore, the Id. Counsel for the assessee has submitted that if the provision for enhanced compensation of ₹.25.66 crores is not allowed for the assessment year 2009-10, then the payment of ₹.3,52,61,472/- made in the financial year relevant to the assessment year under consideration should be allowed for the year on payment basis. On other hand, the Id. DR supported the orders of authorities below.

9.3 We have heard rival contentions and perused the records. We have also gone through the paper books filed by the assessee. As per schedule 1.5 to the balance sheet, the assessee has made a provision of ₹.20,29,75,650/- as on 31.03.2011 and also made a provision towards enhanced compensation as at 31.03.2012 at ₹.16,77,14,178/- and submitted that the said provision made was never claimed as deduction. However, the Assessing Officer has observed that as the said entry was only a provision made and not an actual expenditure, he disallowed ₹.16,77,14,178/-. However, before the Id. CIT(A), the assessee has claimed to have made payment during the assessment year 2012-13 of ₹.3,52,61,472/- and pleaded for deleting the disallowance made by the Assessing Officer.

observed that the said entry is only a provision made and not an actual expenditure and the same is not allowable under the Act and accordingly, confirmed the disallowance made by the Assessing Officer. By reiterating the submissions made before the Id. CIT(A), the assessee has further submitted that as on 31.03.2012, the assessee has made payment to the extent of .3,52,61,472/- and pleaded that if the provision for enhanced compensation of .25.66 crores is not allowed for the assessment year 2009-10, then the payment of .3,52,61,472/- towards land leased to L & T Shipping Building should be allowed for the year on payment basis. As per trading account of the assessee, filed before us, vide cheque No. 139189 dated 29.03.2012, the assessee has made payment of .12,500/- for the land acquired for PCP in Kattupalli Village. Similarly, vide cheque No. 139189 dated 30.03.2012 and the assessee is stated to have made payment of .1,4074,027/- for the land acquired for PCP in Kattupalli Village. Since there is no possibility to issue one cheque on two different dates with different amounts, the same need to be verified. Further, no payment details are available with regard to the amount stated to have paid to Petrochem Park Project of .2,11,74,945/-, which required to be furnished by the assessee before the Assessing Officer for verification. If the above payments have been made by the assessee against the provisions for enhanced compensation, the Assessing Officer is directed to allow the expenditure after verification of records, which is subjected to the decision of

of allowance of provision for enhanced compensation of .25.66 crores as was not allowed in the assessment year 2009-10 by the Assessing Officer and the same is under adjudication by the Coordinate Benches of the Tribunal. Hence, the ground raised by the assessee is allowed for statistical purposes.

10. In the result, the appeal filed by the assessee in I.T.A. No. 691/Mds/2017 is partly allowed and the appeal in I.T.A. No. 692/Mds/2017 is partly allowed for statistical purposes.

Order pronounced on the 12th July, 2017 at Chennai.

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 12.07.2017

Vm/-

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