

आयकर अपीलीय अधिकरण , 'सी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI**

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 3442/Mds/2016

निर्धारण वर्ष/Assessment Year : 2012-13

S. Muthurajan,
4/36, Bharathi Street,
Swarnapuri,
Salem 636 007.

Dy. Commissioner of Income Tax
Vs. Circle -1,
3, Gandhi Road,
Salem 636 007.

[PAN: ADEPM5569P]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by

: Shri. G. Baskar, Advocate

प्रत्यर्थीकीओरसे/Respondent by

: Shri. N. Madhavan, JCIT

सुनवाईकीतारीख/Date of Hearing

: 14.08.2017

घोषणाकीतारीख/Date of Pronouncement

: 24.10.2017

आदेश/ ORDER

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals), Salem, in ITA No. 304/2014-15 dated 28.11.2016.

2. In the assessment made for the assessment year 2012-13, the Assessing Officer found, inter alia, that the assessee is having an investment of Rs. 4,82,43,319/- as on 01.04.2011 which increased to Rs. 4,92,22,319/-

as on 31.03.2012. The assessee is also having huge loan liability as on 01.04.2011 on which interest has been charged/paid at Rs. 1,01,92,948/-. Hence, he required the assessee to categorically establish the fact that no interest bearing funds was utilised to make the investments of Rs. 4,92,22,319/-. Since, the assessee could not establish that the interest bearing funds were not utilised to acquire the investments, based on the CBDT circular no. 5/14 dated 11.02.2014 and on the interpretation of section 14A r.w.r. 8D, the Assessing Officer disallowed proportionate interest at Rs. 35,46,865/- comprising Rs. 33,03,201/- under Rule 8D(ii) & Rs. 2,43,664/- under the Rule 8D(iii). On an appeal, the CIT (A) upheld the disallowances made by the AO. Aggrieved, the assessee filed this appeal with the following grounds of appeal:

1. *The Assistant Commissioner of Income Tax and Commissioner of Income Tax (Appeals) are not justified in holding that Rs. 35,46,865/- is disallowable u/s. 14A in the circumstances of the case.*

2. *The Commissioner of Income Tax (Appeals) ought to have accepted that where missed common pool of funds were utilised for making investments of Rs. 4.92 lakhs in assets yielding exemption income, it should be inferred in assessee's favour, that non-interest bearing funds of Rs. 11,31,18,912/- were available to make such investments (141 DTR 322 @ 328 Bang.)*

3. *No expenditure incurred had nexus nor was attributable for earning exempted income (288 CTR 378 at 381 Del HC, 269 CTR 76 P&H).*

4. *It is now well settled principle that the disallowance towards interest is not tenable if the investments are made out of own funds or non-interest bearing funds and it is necessary to establish a nexus between the interest bearing funds in investments made". (143 DTR 67 at 72 Kar HC)*

5. *Commissioner of Income Tax (Appeals) is not correct in ignoring to consider the above cited decisions, which have interpreted provisions of section 14A in assessee's favour."*

4. The AR filed a paper book and submitted that the assessee is proprietor of GPP Transport company, which is running lorries & trailers for hire, GTP Marbles and Granites which is in trading in Marbles and Shri S. Muthurajan is also running bulk Trailer divisions and Wind mills division. For each of this business, he is having a separate profit and loss account and the balance sheet apart from having a consolidated profit and loss account and consolidated balance sheet. Inviting our attention to each of the profit and loss account and the balance sheets, the AR submitted that the interest on the specific loans, if any, obtained against any business asset is claimed against the specific source of the business and hence such interest claim is not made for any of the impugned investments. The AR submitted that the assessee has taken a loan; of Rs. 1.5 crores and Rs. 2.5 crores, both at the rate of 11.75% interest, from HDFC on 30.12.2010, and Rs. 3 crores loan at the rate of 11.5% per annum from ICICI Bank as on 31.12.2010 towards which he claimed interest of Rs. 80,10,028/- in the consolidated profit and loss account. These loans have been used for acquisition of land etc. Inviting our attention to the breakup of the investments in shares, in page 16 of the paper book, the AR submitted that the investment as on 31.03.1992 was Rs. 37,68,784/- and the investment as on 31.03.1993 was Rs.

2,67,08,784/-. Thereafter , there were additions and deletions in the investments in various years and the investments as on 31.03.2012 is at 4,82,43,319/-, the addition to the investment during the year was Rs. 13,79,000/-, while the deletion was Rs. 4,00,000/- resulting in the closing balance of investment as on 31.03.2013 at Rs. 4,92,22,319/-. The AR further submitted that the assessee has not incurred any interest on the impugned investments. Thereafter, he argued on the lines of the grounds of the appeals and requested to delete the addition. Per contra, the DR supported the orders of the AO and the CIT(A).

6. We heard the rival contentions, gone through the orders and the paper book. It is seen from the individual profit and loss account that the interest related to the respective sources are deducted. In the consolidated profit and loss account, apart from the income and loss from various business sources, the assessee has admitted Rs. 48,07,257 /- under the head "income from other sources" which comprises Rs. 70,603/- dividend income, which is only claimed as exempt income. In the consolidated profit and loss account, the assessee has claimed Rs. 80,10,028/- towards interest on mortgage loan, Rs. 20,000/- towards professional fees and Rs. 27,000/- towards chit loss. Thus, if at all disallowances, if any, has to be made u/s 14A , it could be made only from the expenditure claimed in the consolidated profit and loss account only as the impugned investments made

in the current year has gone from the funds accounted for in the consolidated balance sheet that too after due examination. It is also not known as to whether the investments made in the earlier years suffered interest or not. It appears from the assessment order and the order of the CIT (A) that these aspects were not examined by them duly and hence, we deem it fit that in this case the relevant facts require re-examination. In view of that we set aside the order of the CIT(A) and restore the matter to the Assessing Officer for re-examination and to decide the issues, afresh, by a speaking order after affording adequate opportunity to the assessee.

7. In the result, the assessee's appeal is treated as allowed for statistical purposes.

Order pronounced on 24th October, 2017 at Chennai.

Sd/-
(एन.आर.एस. गणेशन)
(N.R.S. GANESAN)
न्यायिकसदस्य/Judicial Member

Sd/-
(एस.जयरामन)
(S. JAYARAMAN)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 24th October, 2017

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त) अपील(/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF