

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखासदस्य एवं श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष
BEFORE SHRI ABRAHAM P.GEORGE, ACCOUNTANT MEMBER AND
SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 3123/Mds/2016

निर्धारण वर्ष /Assessment year : 2012-2013.

The Deputy Commissioner of
Income Tax,
Corporate Circle 2(1)
Chennai 600 034.

Vs. M/s. Empee Holdings Ltd,
No.59, Empee Towers,
Hams Road,
Pudupet,
Chennai 600 002.

(अपीलार्थी/Appellant)

**[PAN AABCE 5490N]
(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri. S. Sridhar, Advocate
प्रत्यर्थी की ओर से /Respondent by : Shri. S. Nataraja, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 21.12.2017

घोषणा की तारीख /Date of : 21.12.2017

Pronouncement

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

In this appeal filed by the Revenue, it is aggrieved on the
directions given by Id. Commissioner of Income Tax (Appeals)-6,

Chennai to the Assessing Officer for excluding investments made by the assessee in its subsidiary companies while calculating disallowance u/s.14A of the Income Tax Act, 1961 (in short 'the Act').

2. Facts apropos are that assessee engaged in the business of providing management and technical consultations had filed its return of income for the impugned assessment year disclosing income of Rs.85,52,410/-. Ld. Assessing Officer noted that assessee was having investments of Rs.24,30,00,000/- in its group companies. As per the Id. Assessing Officer, assessee having received dividend of Rs.3,15,00,000/-, Section 14A of the Act had to be applied. Though the assessee stated that none of its interest paying loans were used for making investments, this was not accepted by the Id. Assessing Officer. According to him, there was increase in unsecured loans by a sum of Rs.1,32,00,000/-, clearly indicating that interest paying funds were used for making investments. An addition of Rs.32,63,884/- was made applying Rule 8D of the Income Tax Rules, 1962 (in short 'the Rules'). Such addition comprised of Rs.21,20,959/- under Rule 8D(2)(i) and Rs.11,42,925/- under Rule 8D(2)(iii). There was no addition under Rule 8D(2) (ii).

3. Aggrieved, assessee moved in appeal before the Id. Commissioner of Income Tax (Appeals). Argument of the assessee was that Rs.21,20,959/-, out of the total addition of Rs.32,63,884/- was interest expenditure on loans directly used for the purpose of the business of the assessee. Contention of the assessee was that investments made by the assessee in its subsidiary and group companies were strategic in nature and hence such investments fell outside the scope of Sec. 14A of the Act. Reliance was placed on the decision of Co-ordinate Bench in the case of *EIH Associated Hotels vs. DCIT (ITA No.1505/Mds/2012, dated 17.07.2013)*.

4. Ld. CIT(A) after hearing the submissions of the assessee was of the opinion that interest expenditure directly relatable to the taxable business income of the assessee had to be excluded while computing disallowance under Rule 8D. Further, according to him, investments made by the assessee in its group/subsidiary companies also needed to be excluded since such investments were for strategic purposes.

5. Now before us, the Id. Departmental Representative strongly assailing the order of the Id. Commissioner of Income Tax (Appeals) submitted that assessee could not bring in any evidence to show that

interest payments made were on loans, used for the business of the assessee. Further, according to him, there was nothing on record to show that investments made by the assessee in its group/ subsidiary companies were for any strategic purpose. Thus, according to him, Id. Commissioner of Income Tax (Appeals) erred in relying on the decision of Co-ordinate Bench in the case *EIH Associated Hotels (supra)*.

6. Per contra, Id. Authorised Representative strongly supported the orders of the authorities below.

7. We have considered the rival contentions and perused the orders of the authorities below. It is not disputed by the Revenue that investments made by the assessee which gave rise to tax free dividend were in its group companies. Assessee's argument that such investments were for strategic purpose found acceptance from the Id. Commissioner of Income Tax (Appeals). Id. Departmental Representative was unable to show why such finding of the Id. Commissioner of Income Tax (Appeals) was incorrect. Id. Commissioner of Income Tax (Appeals) had also accepted the claim of the assessee that interest bearing borrowings were used for the purpose of its business and not used for making investments in the subsidiaries. Here also Revenue has been unable to place on record anything to contradict this factual finding of the Id. CIT(A). We also

find that Id. Commissioner of Income Tax (Appeals) had relied on a decision of Co-ordinate Bench in the case of *EIH Associated Hotels (supra)*, that of Mumbai Bench of the Tribunal in the case of *J.M. Financial Limited vs. Add. CIT (ITA No.4521/Mum/2012, dated 26.03.2014)* and on a judgment of Hon'ble Delhi High Court in the case of *CIT vs. Oriental Structural Engineers Pvt. Ltd (ITA 605/2012, dated 15.01.2013)*. In the circumstances, we do not find any reason to interfere with the order of the Id.CIT(A).

8. In the result, appeal of the Revenue stands dismissed.

Order pronounced at the time of hearing on 21st December, 2017 at Chennai.

Sd/-
(जॉर्ज माथन)
(GEORGE MATHAN)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-
(अब्राहम पी. जॉर्ज)
(ABRAHAM P. GEORGE)
लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 21st December, 2017.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |