

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1806/Chny/2017

निर्धारण वर्ष / Assessment Year : 2012-13

The Deputy Commissioner of
Income Tax,
Corporate Circle – 3(2),
Chennai - 600 034.

v. M/s Western Agencies
(Madras) Pvt. Ltd.,
No.109/7, Utility Complex,
Angappa Naicken Street,
Parrys, Chennai - 600 001.

(अपीलार्थी/Appellant)

PAN : AAACW 1558 Q
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri B. Sahadevan, JCIT
प्रत्यर्थी की ओर से/Respondent by : Shri G. Baskar, Advocate

सुनवाई की तारीख/Date of Hearing : 13.02.2018

घोषणा की तारीख/Date of Pronouncement : 28.02.2018

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) -11, Chennai, dated 28.04.2017 and pertains to assessment year 2012-13.

2. The first issue arises for consideration is disallowance made under Section 14A of the Income-tax Act, 1961 (in short 'the Act').

3. Shri B. Sahadevan, the Ld. Departmental Representative, submitted that the CIT(Appeals) restricted the disallowance to the extent of dividend income earned by the assessee. Placing reliance on the judgment of Karnataka High Court in United Breweries Limited v. ACIT 229 Taxman 113 and the judgment of Bombay High Court in Godrej & Boyce Manufacturing Co. Ltd. 328 ITR 81, the Ld. D.R. submitted that the Assessing Officer is duty bound to calculate the expenditure under Rule 8D of Income-tax Rules, 1962. Therefore, according to the Ld. D.R., the CIT(Appeals) is not justified in restricting the disallowance to the exempted income earned by the assessee.

4. We heard Shri G. Baskar, the Ld.counsel for the assessee also. The CIT(Appeals) by placing reliance on the judgment of Delhi High Court in Joint Investments (P) Ltd. v. CIT (2015) 59 taxmann.com 295 and also the judgment of Madras High Court in Redington (India) Ltd. v. Addl. CIT (2017) 77 taxmann.com 257, found that the disallowance has to be restricted to the exempted income earned by the assessee. Since the CIT(Appeals) has

followed the judgment of Madras High Court, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

5. The next issue arises for consideration is with regard to disallowance of interest on belated payment of service tax.

6. We heard Shri B. Sahadevan, the Ld. Departmental Representative and Shri G. Baskar, the Ld.counsel for the assessee. The Ld.counsel for the assessee placed his reliance on the decision of this Bench of the Tribunal in M/s T. Abdul Wahid & Co. v. ACIT in I.T.A. Nos.1796 & 1797/Mds/2017 and submitted that the delayed payment of sales tax is only compensatory nature, therefore, there cannot be any disallowance.

7. We have carefully gone through the order of this Tribunal in M/s T. Abdul Wahid & Co. (supra). This Tribunal found that interest on delayed payment of sales tax is only compensatory in nature, therefore, the same cannot be disallowed. When the interest on delayed payment of sales tax is compensatory in nature, this Tribunal is of the considered opinion that there cannot be any disallowance, therefore, the CIT(Appeals) has rightly allowed the

claim of the assessee. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

8. The next issue arises for consideration is disallowance of hire purchase interest paid to non-banking financial institutions under Section 40(a)(ia) of the Act.

9. We heard Shri B. Sahadevan, the Ld. Departmental Representative and Shri G. Baskar, the Ld.counsel for the assessee. The CIT(Appeals) has directed the Assessing Officer to verify the CBDT Instruction No.1425 dated 16.11.1981. The CIT(Appeals) further found that the disallowance was made only on the ground that tax was not deducted at source under Section 194A of the Act. The CBDT by their circular clarified that there was no requirement to deduct tax on hire purchase transactions under Section 194A of the Act. This Tribunal is of the considered opinion that when the CBDT has clarified that there was no requirement to deduct tax, the same has to be considered by the Assessing Officer. Accordingly, the Assessing Officer is directed to consider the CBDT circular No.1425 dated 16.11.1981 and thereafter decide the issue

afresh in accordance with law, after giving reasonable opportunity to the assessee.

10. The next issue arises for consideration is disallowance of hire charges under Section 40(a)(ia) of the Act.

11. We heard Shri B. Sahadevan, the Ld. Departmental Representative and Shri G. Baskar, the Ld.counsel for the assessee. The Assessing Officer disallowed hire charges for non-deduction of tax at source. The CIT(Appeals) found that the assessee has furnished PAN, certificate from the Chartered Accountant, therefore, he directed the Assessing Officer to verify the same. The assessee also claimed before the CIT(Appeals) that the recipient has paid the taxes. This Tribunal is of the considered opinion that when the recipient has paid the taxes, there is no need for any disallowance. Accordingly, the Assessing Officer is directed to verify whether the recipient has paid the taxes on the hire charges received from the assessee and thereafter decide the issue afresh, in accordance with law, after giving a reasonable opportunity to the assessee.

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

Order pronounced on 28th February, 2018 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 28th February, 2018.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-11, Chennai-34
4. Principal CIT-3, Chennai.
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.