

आयकर अपील अथवा अधकरण, श्री दुववुरु आयापीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL BENCH, CHENNAI
श्री धुवु आर.एल रेडी, आयायक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
Before Shri Duvvuru RL Reddy, Judicial Member &
Shri S. Jayaraman, Accountant Member

आयकर अपील सं./I.T.A.No.403/Mds/2017

प्रधान वर्ष **Assessment Year:2012-13**

M/s. Protectron Electromech
Private Limited, No. 9, Athipattan
Street, Mount Road,
Chennai 600 002.
[PAN:AABCP1103B]

Vs. The Deputy Commissioner of
Income Tax, Corporate Circle 5(2),
Aayakar Bhavan,
Chennai 600 034.

(अपीलाथ /Appellant)

(प्रत्यथ /Respondent)

अपीलाथ क ओर से / Appellant by : Shri N. Devanathan, Advocate

प्रत्यथ क ओर से/Respondent by : Shri Guru Bhashyam, JCIT

सुनवाई क तारख / Date of hearing : 23.01.2018

घोषणा क तारख /Date of Pronouncement : 20.04.2018

आदेश / O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 3, Chennai dated 28.10.2016 relevant to the assessment year 2012-13. The assessee has raised two effective grounds in the appeal viz., (i) the Id. CIT(A) erred in confirming the disallowance made under section 14A r.w. Rule 8D and (ii) the Id. CIT(A) erred in confirming the disallowance made under the head "Income from other source".

2. Brief facts of the case are that the assessee is carrying on business in manufacturing of professional electronic components and filed its return of income for the assessment year 2012-13 admitting income of .8,84,70,196/- as well as book profits under section 115JB of the Income Tax Act, 1961 [Act+ in short] at .9,86,38,068/-. The return filed by the assessee was selected for scrutiny and notice under section 143(2) of the Act was issued on 06.08.2013. Notice under section 142(1) of the Act was also issued on 21.08.2014 along with questionnaire calling for details.

2.1 On perusal of the Profit and Loss account, the Assessing Officer noticed that the assessee earned dividend income of .51,53,346/- in respect of investment made, which was claimed exempt. The investment made as on 01.0.2011 was .7,36,00,848/- and as on 31.03.2012, it was .16,56,03,048/-. The Assessing Officer further noticed from the financials that the assessee paid interest charge of .53,89,477/- and has claimed expenses in its profit and loss account. Therefore, the Assessing Officer was of the opinion that the assessee could not have earned the exempt income from the said investments without incurring any expenditure. Thus, the amount of expenditure in relation to such income was determined under section 14A r.w. Rule 8D of .21,90,466/-. Since the assessee has already disallowed a sum of .2,98,421/- in the computation of income, the balance amount of .18,92,045/- was disallowed and brought to tax.

2.2 In the statement of income filed along with the return, the assessee had returned income from house property at .3,64,60,058/-, which includes power charges received of .1,69,503/-. The Assessing Officer was of the opinion that the power charges received by the assessee should have been assessed under the head ~~Income from other sources~~ ~~+~~ Therefore, adding this income to income from house property, the Assessing Officer held that the deduction under section 24(a) of the Act towards repairs has been claimed in excess by the assessee. Accordingly, the Assessing Officer worked the difference between the income from house property overstated and the income from other sources understated of .46,364/- and taxed.

3. On appeal, after considering the submissions of the assessee the Id. CIT(A) confirmed both the disallowances made by the Assessing Officer.

4. On being aggrieved the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted the Assessing Officer has mechanically applied the provisions of section 14A of the Act without satisfying himself of applicability of the same. He further submits that the provisions of section 14A of the Act will be applicable only in respect of the expenditure incurred in respect of income which is not includible in the total income and when no expenditure was incurred, the provisions of the section is not applicable. He also contended that the disallowance is only

to the extent of actual expenditure incurred by the assessee in relation to tax exempt income and the Assessing Officer cannot apply automatically the provisions of section 14A of the Act and prayed for deleting the disallowance made under section 14A of the Act. On the other hand, the Id. DR supported the orders of authorities below.

5. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. In this case, the assessee has earned dividend income of .51,53,346/- against the investment as on 31.03.2012 of .16,56,03,048/-. The assessee also incurred interest expenditure of .53,89,477/- and claimed the expenses in its profit and loss account. The assessee made the investments through Portfolio Managers and Portfolio Managers were paid an amount of .1,72,068/- as their fees. Along with this fees paid for Portfolio Managers and an estimated expenditure of .1,26,353/- towards earning dividend income totalling to .2,98,421/- was disallowed by the assessee in the computation of total income without applying any provisions of section and enunciated in the Income Tax Act. Accordingly, by applying the provisions of section 14A r.w. Rule 8D, the Assessing Officer determined the expenditure component to the extent of .21,90,466/-. Since the assessee has already disallowed a sum of .2,98,421/- in the

computation of income, the balance amount alone of .18,92,045/- was brought to tax, which was confirmed by the Id. CIT(A). On carefully going through the orders of authorities below, we find that earning of dividend income, payment and claim of interest expenditure on borrowals are not in dispute. Nowhere, the assessee has disputed that borrowed funds were not utilized for making investments. Moreover, the assessee has not furnished any methodology adopted for making disallowance of meagre expenditure of .1,26,353/- towards earning of huge dividend income of .51,53,346/-. The reliance placed on the decision of the Tribunal in assessee's own case for the assessment year 2009-10 in I.T.A. No.157/Mds/2013 & CO No. 48/Mds/2013 dated 11.04.2013 has no application to the facts of the present case, because, in that case, against the dividend income of .21,29,578/-, the assessee paid management fee of .12,90,599/- to the Portfolio Managers, which appears to be quite reasonable for making investment of .11.89 crores. Whereas, in the present case against the dividend income of .51,53,346/-, the assessee has paid only .1,72,068/- to the Portfolio Managers as their fees and not furnished any method adopted for estimating disallowance of .1,26,353/- towards earning of dividend income on the huge investment made of .16,56,03,048/- as on 31.03.2012. Therefore, we are inclined to accept with the claim made by the assessee that no expenditure has been incurred in relation to income over and above estimated by the assessee, which does not form part of the total income.

Thus, we are of the considered opinion that the Assessing Officer rightly determined the amount of expenditure in relation to earning of dividend income in accordance with the provisions of section 14A r.w. Rule 8D. In view of the above, the ground raised by the assessee stands dismissed.

6. With regard to the disallowance of difference in house property and other sources, the Id. Counsel for the assessee has submitted that any income or expenditure relating to a property owned and let out by the assessee should be treated as part of income from ~~House Property~~ ~~House Property~~. The assessee had let out a property and earned rental income there from, which were assessed under the head ~~property~~ ~~property~~. For the same property, the assessee spent on common lighting which should get a set off from the rental receipt and accordingly considered under the head ~~property~~ ~~property~~. However, the Assessing Officer has considered the claim of electricity charges on common lighting under the head ~~other sources~~ ~~other sources~~ and not under the head ~~House Property~~ ~~House Property~~, which is incorrect. By placing reliance on the decision in the case of DCIT v. Anil Prabhas (P) Ltd. in I.T.A. Nos. 1013 & 1014/Hyd/2013 dated 05.02.2014, the Id. Counsel for the assessee prayed for deleting the disallowance made by the Assessing Officer. On the other hand, the Id. DR supported the orders of authorities below.

6.1 We have heard rival contentions, perused the materials available on record and gone through the orders of authorities below. The Assessing Officer treated the power charges received by the assessee amount to .1,69,503/- as income from ~~other sources~~. It was the submission of the assessee that the assessee has let out its property situated at Sarakki Industrial Area, JP Nagar, Bangalore. Apart from rent receipt, the assessee also received power charges for using generator facility for common areas, etc. Thus, the Assessing Officer treated and assessed the power charges as income from ~~other sources~~ and the Id. CIT(A) confirmed the same.

6.2 In this case, the assessee has returned income from house property at .3,64,60,058/- and for that property, the assessee spent common lighting by using generator facility and earned power charges, but it was utilized for common areas. Against the disallowance of .1,69,503/-, before the Id. CIT(A) the assessee pleaded that it received power/electricity charges towards common area facilities. While confirming the disallowance, the Id. CIT(A) has not examined the issue in detail as to, out of such sum, how much was paid to Electricity Board, what are the other expenditures incurred and was there any depreciation claimed on the diesel generator, etc. Moreover, on receipt side also, what

are the conditions for the charges from the occupants, etc. have not been examined? The assessee has not filed any details in these regards. Without having clarity on the above observations, the ratio of reliance placed by the assessee cannot be applied. Under the above facts and circumstances, we remit the issue back to the file of the Id. CIT(A) to examine the entire facts and decide the issue afresh after giving adequate opportunities of hearing to both sides. Thus, this ground of appeal is allowed for statistical purposes.

6.3 The charging of interest under section 234C of the Act is mandatory and consequential to the extent of disallowances confirmed.

7. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on the 20th April, 2018 at Chennai.

Sd/-
(S. JAYARAMAN)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 20.04.2018

Vm/-

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