

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री अब्राहम पी.जॉर्ज, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.3155/Chny/2016

निर्धारण वर्ष / Assessment Year : 2011-12

&

आयकर अपील सं./ITA No.3026/Chny/2017

निर्धारण वर्ष / Assessment Year : 2012-13

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

(अपीलार्थी/Appellant)

v. M/s Bharath Wind Farm Ltd.,  
4<sup>th</sup> floor, Sigapi Achi Building,  
18/3, Rukmani Lakshmipathy Road,  
Egmore, Chennai - 600 008.

PAN : AADCB 1556 E

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri N. Gopikrishna, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri R. Sivaraman, Advocate

सुनवाई की तारीख/Date of Hearing : 21.06.2018

घोषणा की तारीख/Date of Pronouncement : 26.06.2018

### **आदेश /ORDER**

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

Both the appeals of the Revenue are directed against the respective orders of the Commissioner of Income Tax (Appeals) -1, Chennai, for the assessment years 2011-12 and 2012-13. Since

common issue arises for consideration in both the appeals, we heard both the appeals together and disposing of the same by this common order.

2. The first issue arises for consideration is disallowance made by the Assessing Officer under Section 14A of the Income-tax Act, 1961 (in short 'the Act') read with Rule 8D of Income-tax Rules, 1962.

3. Shri N. Gopikrishna, the Ld. Departmental Representative, submitted that the CIT(Appeals) deleted the disallowance made by the Assessing Officer on the ground that there was no exempted income earned by the assessee. According to the Ld. D.R., the assessee admittedly invested heavy amount in earning the exempted income. For managing investments, the assessee has to necessarily incur expenditure. Without incurring expenditure, according to the Ld. D.R., the assessee cannot manage the investments. Therefore, merely because there was no dividend income, the CIT(Appeals) cannot delete the disallowance made by the Assessing Officer towards expenditure. According to the Ld. D.R., Section 14A of the Act or Rule 8D does not say that there

cannot be any expenditure when there was no exempted income earned by the assessee.

4. We heard Shri R. Sivaraman, the Ld.counsel for the assessee also. The Madras High Court in the case of Redington (India) Ltd. v. Addl. CIT (2017) 77 taxmann.com 257 found that there cannot be any addition towards expenditure unless there was exempted income earned by the assessee. In view of this judgment of Madras High Court, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly deleted the addition made by the Assessing Officer.

5. The next issue arises for consideration is disallowance made by the Assessing Officer under Section 36(1)(iii) of the Act.

6. Shri N. Gopikrishna, the Ld. Departmental Representative, submitted that the assessee has debited ₹9,16,50,523/- for the assessment year 2011-12 towards interest payment. Similarly, a debit was also found for the assessment year 2012-13. According to the Ld. D.R., the assessee diverted the borrowed funds to sister concerns and to various parties without interest or for a nominal interest. Therefore, according to the Ld. D.R., the Assessing Officer

has disallowed the claim of the assessee. The CIT(Appeals) found that certain payments were trade advances, therefore, it cannot be construed as loan. Referring to the assessment order, the Ld. D.R. submitted that the assessee has not produced any evidence before the Assessing Officer to substantiate the claim of trade advances. Therefore, according to the Ld. D.R., what was said to be filed before the CIT(Appeals) was not available before the Assessing Officer for consideration. Hence, according to the Ld. D.R., the CIT(Appeals) is not justified in allowing the claim of the assessee.

7. On the contrary, Shri R. Sivaraman, the Ld.counsel for the assessee, submitted that the assessee made a specific claim before the Assessing Officer that the interest payments were made to banks on term loans. According to the Ld. counsel, the assessee-company has not availed any fresh loan during the financial year under consideration. The interest was paid only in respect of existing loan. Therefore, according to the Ld. counsel, there cannot be any disallowance during the years under consideration. Moreover, the advances were given in the course of trade and it is not a loan at all. Therefore, according to the Ld. counsel, the CIT(Appeals) has rightly deleted the addition.

8. We have considered the rival submissions on either side and perused the relevant material available on record. The question arises for consideration is whether there was any diversion of borrowed funds. The assessee claims that there was no fresh borrowal during the year under consideration and the money borrowed during the earlier year continued to exist during the years under consideration also. Moreover, the advances were given for business purpose. Therefore, these are all trade advances. The fact remains that the assessee has not filed any material evidence before the Assessing Officer to demonstrate that what were given are trade advances. In those circumstances, this Tribunal is of the considered opinion that the matter needs to be re-examined by the Assessing Officer. Accordingly, orders of both the authorities below are set aside in respect of disallowance made under Section 36(1)(iii) of the Act. The Assessing Officer shall re-examine the matter on the basis of the material that may be filed by the assessee and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

9. In the result, both the appeals filed by the Revenue are partly allowed for statistical purposes.

Order pronounced on 26<sup>th</sup> June, 2018 at Chennai.

Sd/-

(अब्राहम पी.जॉर्ज)

(Abraham P. George)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 26<sup>th</sup> June, 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)-1, Chennai
4. Principal CIT, Chennai-1, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.