

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं ए. मोहन अलंकामणी, लेखा सदस्य के समक्ष
BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.3135/Chny/2017
(निर्धारण वर्ष / Assessment Year: 2013-14)

The Asst. Commissioner of Income Tax, Corporate Circle 6(1), Chennai.	Vs	M/s. Sabari TMT King Pvt. Ltd., 312/31&32, 5-C/D/E, 5 th Floor, Gee Gee Emerald, Nungambakkam, Chennai -34.
		PAN: AALCS7695H
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

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C.O. No.34/Chny/2018
(in ITA No. 3135/Chny/2017)

M/s. Sabari TMT King Pvt. Ltd., 312/31&32, 5-C/D/E, 5 th Floor, Gee Gee Emerald, Nungambakkam, Chennai -34.	Vs	The Asst. Commissioner of Income Tax, Corporate Circle 6(1), Chennai.
PAN: AALCS7695H		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

राजस्व की ओर से /Revenue by	:	Shri V. Nandakumar, JCIT
निर्धारिती की ओर से /Assessee by	:	Shri R. Sivaraman, Advocate

सुनवाई की तारीख/Date of hearing	:	16.05.2018
घोषणा की तारीख/Date of Pronouncement	:	03.07.2018

आदेश / ORDER

Per A. Mohan Alankamony, AM:-

The appeal by the Revenue is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-15,

Chennai, dated 28.09.2017 in ITA No.001/2016-17/CIT(A)-15 for the assessment year 2013-14 passed U/s.250(6) r.w.s. 143(3) of the Act. The assessee has also raised cross objections against the order of the Ld.CIT(A).

2. **Revenue's Appeal:-**

The Revenue has raised three grounds in its appeal however the crux of the issue is that the Revenue is aggrieved by the order of the Ld.CIT(A) who had remitted the issue with respect to the genuineness of the creditors M/s. JKJ Steels amounting to Rs.57,73,421/-, M/s. Star Traders Rs.1,82,593/- and M/s. Arun Teja Castings Pvt. Ltd., Rs.27,04,284/- aggregating to Rs.86,60,298/- back to the file of Ld.AO for verifying the authenticity of the confirmation letters of those creditors and to verify the payment of excise duty and to verify the disallowance U/s. 14A r.w.r. 8D of the Act and if found to be correct directed the Ld.AO to delete the additions which is in violation of Section 251(1)(a) of the Act because the power to set aside or examine the issue afresh by the Ld.CIT(A) has been omitted with effect from 01.06.2001 as per Finance Act, 2001.

3. **Assessee's Cross Objection:**

The assessee has raised several grounds in its cross objection however the cruxes of the issues are as follows:-

- (i) The Ld.CIT(A) has erred in remitting back the issue with respect to disallowance U/s.14A r.w.r.8D of the Rules amounting to Rs.3,69,646/- to the file of Ld.AO in order to consider the ratio laid down by the Hon'ble Jurisdictional Madras High Court .
- (ii) The Ld.CIT(A) has erred in confirming the additions U/s.68 of the Act amounting to Rs.1,93,28,263/- without considering the submissions and evidence placed on record by the appellant. The Ld.CIT(A) ought to have considered that the appellant have duly discharged their onus by providing the confirmation of balances from suppliers aggregating to Rs.9,07,24,468/- which is 80% of the total outstanding sundry creditors and therefore treat the entire outstanding balance of sundry creditors amounting to Rs.11,52,731/- as genuine. Further the Ld.CIT(A) failed to consider the unabsorbed depreciation and carry forward losses amounting to Rs.5,25,53,835/- and Rs.1,07,54,112/- respectively in the

appellant's case which if adjusted would have reduced the tax liability further for the relevant assessment year.

4. The brief facts of the case are that the assessee is a private limited company engaged in the business of manufacturing of mild steel ingots, filed its return of income for the assessment year 2013-14 on 14.08.2013 admitting total income of Rs.6,54,820/-. The case was selected for scrutiny under CASS and notice U/s.143(2) of the Act was issued. Finally assessment order was passed U/s.143(3) of the Act on 10.03.2016 wherein the Ld.AO had made several additions.

5. Since cross objection raised by the assessee and the appeal of the Revenue are interconnected relating to the same issue, for the sake of convenience, cross objection of the assessee is taken up first for adjudication.

Assessee's Cross Objection:

6. Ground No. 3(i) :Disallowance U/s.14A r.w.r.8D of the Rules amounting to Rs.3,69,646/-:-

During the course of scrutiny assessment proceedings, it was observed by the Ld.AO that the assessee company had made investment in equity shares to the tune of Rs.1,07,37,500/- which is capable of earning dividend income which is exempt from tax. It was also observed by the Ld.AO that the assessee had claimed an amount of Rs.1,41,63,759/- as interest expenditure. On query, the assessee had explained that the aforesaid investment was made due to business exigencies being investment in captive generating plant. However the Ld.AO rejected the explanation offered by the assessee and since it was not established that the investment were made from interest free own funds, the Ld.AO invoked the provisions of Section 14A r.w.r.8D of the Rules and made addition of Rs.3,69,646/-. On appeal the Ld.CIT(A) directed the Ld.AO to follow the ratio laid down by the Hon'ble Madras High Court in the case Redington India Ltd., and assess accordingly. Aggrieved by the decision of the Ld.CIT(A) both the Revenue and the assessee are in appeal and cross appeal before us.

6.1 Before us the Ld.AR argued in support of the order of the Ld.CIT(A) while as the Ld.DR relied on the orders of the Ld.Revenue Authorities.

6.2 We have heard the rival submissions and carefully perused the materials on record. From the facts of the case, we find that neither the Ld.AO nor Ld.CIT(A) had extensively examined the issue. No doubt for portfolio management, the assessee is bound to incur certain expenditure. Therefore in earlier occasion on the very same issue in ITA Nos.1729 & 1730/Chny/2016 in the case M/s. Sthithi Insurance Services Pvt. Ltd., vide order dated 18.06.2018, we have held as follows:-

“5.2 We have heard the rival submissions and carefully perused the materials on record. It is apparent from the facts of the case, that the assessee has made huge investments in shares which earn dividend income exempt from tax. According to Section 14A of the Act the expenditure incurred towards earning exempt income cannot allowed as deduction from the taxable income of the assessee. In the case of the assessee, it is evident that for the process of decision making as to which shares the assessee has to invest, dis-invested, and at what point of time etc., will involve cost. Such expenditures incurred towards earning dividend income which is exempt from tax cannot be claimed as deduction from the taxable profit of the assessee company. As per the provisions of the Act, the assessee is bound to compute the actual expenses incurred by it towards investment that would earn exempt income and disallow the same. In the case of the assessee, such computation is neither made nor the expenditure towards earning exempt disallowed by the assessee. Therefore we are of the view that the Ld.AO was right in his realm to invoke the provisions of Section 14A r.w.r.8D of the Rules. Further it is pertinent to mention that there is no correlation between the dividend income

earned by the assessee and the expenditure incurred by the assessee towards investment that earns exempt income. For example:- during a particular year the assessee would not have earned any dividend income though it has made heavy investments during the previous year or the earlier years, but the assessee is bound to incur cost for acquiring / maintaining /dis-investing such investments. Hence it cannot be inferred that the dividend income would be directly proportional to the expenditure incurred on the investment earning exempt income. Therefore we do not find any merit in the order of the Ld.CIT(A) for having restricted the disallowance U/s.14A of the Act to the extent of exempt income earned by the assessee. However since the assessee has not computed its actual expenditure incurred towards the investment that earns exempt income, in the interest of justice, we remit back the matter to the file of Ld.AO for both the assessment years thereby affording one more opportunity to the assessee to work out the actual expenditure incurred by it towards the investment that earn exempt income and disallow the same. We further hereby direct the Ld.AO to verify the computation submitted by the assessee for both the assessment years and thereafter decide the matter in accordance with law and merit.”

6.3 Following the same ratio we hereby remit back the matter to the file of Ld.AO with similar directions. Thus the first ground raised by the assessee in its cross objections and the ground raised by the Revenue in para 2.2 & 2.3 are disposed off.

7. Ground No.3(ii) : Additions U/s.68 of the Act:-

With respect to disallowance U/s.68 of the Act, the Ld.CIT(A) had observed as follows:-

- (i) The Ld.AO had issued notice to long term creditors aggregating to approximately Rs.11 crores for submitting confirmation letters.
- (ii) All those notice were returned as un-served with remark of postal official as "left".
- (iii) The assessee could not furnish confirmation letters from 17 parties against whom outstanding balance was to the extent of Rs.1.72 crores. Since the assessee could not explain the credit entries satisfactory, the Ld.AO assessed them as unexplained cash credit U/s.68 of the Act.
- (iv) Subsequently before the Ld.CIT(A), the assessee has filed confirmation statement and VAT return for 3 creditors out of the 17 creditors after tracing them.

7.1 In view of the above the Ld.CIT(A) directed the Ld.AO to verify those documents submitted by the assessee and delete the addition with respect to the three creditors. However in respect of the remaining 14 parties since the assessee could not furnish the confirmation letters confirmed the addition.

7.2 Before us the Ld.AR submitted that the assessee had produced the confirmation balance from its creditors to the extent of Rs.9,07,24,468/- out of the aggregate outstanding sundry creditors of Rs.11,00,52,731/- which is nearly 80% of the total outstanding sundry creditors. It was therefore argued that by producing the confirmation statements from almost 80% of the outstanding sundry creditors the assessee had discharged its onus and it was up to the Revenue to disprove the same. Further the Ld.AR argued stating that if at all additions has to be confirmed then the same should be set off against the unabsorbed depreciation and carry forward business loss because the sundry creditors are genuine and additions can be made only invoking Section 41 of the Act with respect to cessation of debts by the sundry creditors. The Ld.DR on the other hand relied on the order of the Ld.AO and argued in support of the same.

7.3 We have heard the rival submissions and carefully perused the materials on record. From the facts of the case it is apparent that the assessee has run out of its business activity for quite some time. The sundry creditors pertain to earlier years which yet remain unpaid. The assessee has also obtained confirmation

statements from most of the sundry creditors and it is not in dispute. The only grievance of the Revenue is that the notices sent to the sundry creditors have been returned marked as 'left'. Since the notice issued by the Ld.Revenue Authorities have been returned marked as 'left', it is obvious that those sundry creditors were housed earlier in the same address and their existence cannot be doubted. Further since the assessee had obtained confirmation statement from most of the sundry creditors the onus has now shifted on the Revenue to disprove their existence. It appears from the facts of the case that the Ld.Revenue Authorities have failed to investigate the matter further but hurriedly jumped to the conclusion that the sundry creditors are not genuine which is not appreciable. Moreover during the earlier assessment years the genuineness of sundry creditors was not doubted though it is also the duty of the assessee to prove that as on date the sundry creditors remained unpaid. But as it appears from the facts of the case, that the assessee's business has almost closed down and there are no business transactions between the assessee and its sundry creditors for quite some period of time. In this situation, since the assessee has predominantly submitted the confirmation statement from most of

its creditors, it is the preliminary duty of the Revenue to establish to a certain extent that the sundry creditors are not genuine by initiating some enquiry which they have failed. It is pertinent to mention that the Revenue has the requisite machinery to trace the sundry creditors through their bank accounts and it is not the case of the Revenue that the assessee had not co-operated in the assessment proceedings by failing to produce the requisite documents such as the bank statement of the assessee in order to establish link to the sundry creditors bank accounts etc.. However in the case of the assessee, no effort has been carried out by the Revenue to pursue the matter. In this situation, we do not find any merit on the part of the Revenue for making additions in the hands of the assessee by treating the sundry creditors to be bogus. Hence we hereby direct the Ld.AO to delete the additions made by invoking the provisions of Section 68 of the Act which is in appeal before us. Since we have deleted the additions on account of sundry creditors which is in appeal before us the issue with respect to adjust the unabsorbed depreciation and carried forward of losses from the addition made on account of sundry creditors does not arise.

8. Since we have decided the cross objections of the assessee, the grounds raised by the Revenue in their appeal has become infructuous.

9. In the result the cross objections of the assessee is partly allowed for statistical purposes and the appeal of the Revenue is dismissed.

Order pronounced on the 03rd July, 2018 at Chennai.

Sd/-

(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

Sd/-

(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 03rd July, 2018

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|-------------------------|------------------------------|
| 1. निर्धारिती/Assessee | 2. राजस्व/Revenue | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |