

आयकर अपीलीय अधिकरण, ए' (SMC) न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' (SMC) BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष ।

[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No.727/CHNY/2018

निर्धारण वर्ष /Assessment Year : 2011-2012.

M/s. Higginbothams Pvt. Ltd,
No.116, Anna Salai,
Chennai 600 002.

Vs. The Assistant Commissioner of
Income Tax,
Salary Circle 2,
Chennai 600 034.

[PAN AAACH 0838G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri. R. Vijayaraghavan, JCIT.

प्रत्यर्थी की ओर से /Respondent by

: Shri. B. Sagadevan, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 25-07-2018

घोषणा की तारीख /Date of Pronouncement

: 01-08-2018

आदेश / ORDER

In this appeal filed by the assessee, which is directed against an order dated 10.11.2017 of Id. Commissioner of Income Tax (Appeals)-13, Chennai, it assails disallowance of ₹2,96,841/- made u/s.14A of the Income Tax Act, 1961 (in short "the Act") read along with Rule 8D of the Income Tax Rules, 1962 (in short "the Rules").

2. Ld. Counsel for the assessee submitted that assessee had claimed dividend of ₹34,252/- as exempt u/s.10(34) of the Act and mutual fund income of ₹13,60,511/- as exempt u/s.10(35) of the Act. As per the Id. Authorised Representative, assessee had made a suo-

motu disallowance of ₹84,378/- u/s.14A of the Act in its computation of income. However, as per the Id. Authorised Representative, Id. Assessing Officer applied clause (iii) of Rule 8D(2) and computed a disallowance of ₹3,81,219/-. According to the Id. Authorised Representative, Id. Assessing Officer applied 0.5% on the average value of investments, for arriving at the such amount. This, as per the Id. Authorised Representative, resulted in an addition of ₹2,96,841/-. Contention of the Id. Authorised Representative was that assessee's appeal before Id. Commissioner of Income Tax (Appeals) did not yield any success. According to him, it was pointed out to the Id. Commissioner of Income Tax (Appeals) that investments which did not yield any dividend income came to ₹3,32,54,095/- and such investments had to be excluded while working out the disallowance under Rule 8D(2). As per the Id. Authorised Representative, despite pointing out the decision of Co-ordinate of this Tribunal in the case of *Computer Age Management Services (P)Ltd vs. ACIT (ITA No.1259 to 1261/Mds/2014, dated 28.11.2014)*, which had directed exclusion of non-income yielding investments, Id.CIT(Commissioner of Income Tax (Appeals) had confirmed such disallowance.

3. Per contra, Id. Departmental Representative submitted that by virtue of Apex Court judgment in the case of *Maxopp Investment Ltd. vs. CIT, Civil Appeal Nos.104 to 109 /2015, dated 12.02.2018,*

investments whether it yielded any dividend income or not had to be considered, while working out the disallowance as per Rule 8D(2).

4. I have considered the rival contentions and perused the orders of the authorities below. Argument of the Id. Authorised Representative was that while applying clause (iii) of Rule 8D(2), investments which did not yield any dividend income had to be excluded. I am afraid, I cannot accept this line of the argument, considering the judgment of Hon'ble Apex Court in the case of *Maxopp Investment Ltd.(supra)*. One of the contentions raised in the said case before the Hon'ble Apex Court was that investments held in group companies for retaining controlling interest had to be excluded while working out the disallowance u/s.14A of the Act. Their lordships held that dominant purpose test was irrelevant for application of Section 14A of the Act. Their Lordships also observed that purpose of investment, whether it was to gain control over the investee company or not was an irrelevant factor, in computing the disallowance. What I can discern from the judgment of Hon'ble Apex Court is that question like part of the investments which earned dividend income, and part which did not earn any dividend income, are all irrelevant factors for applying Section 14A of the Act and Rule 8D. Only case where there could be an exemption to this, is where the shares were held as stock-in-trade. There is no case for the assessee here that the shares

and units were held as stock-in-trade. In my opinion by virtue of judgment of Hon'ble Apex Court in the case of Maxopp Investment Ltd.(supra), decision of the Co-ordinate in the case of Computer Age Management Services (P)Ltd is no more good law. In the circumstances, I do not find any reason to interfere with the order of the Id. Commissioner of Income Tax (Appeals). Since the disallowance made u/s.14A of the Act is in accordance with law, lower authorities in my opinion was also justified in making similar addition of such amount, while computing book profit u/s.115JB of the Act.

5. In the result, appeal of the assessee stands dismissed.

Order pronounced on the 1st day of August, 2018, at Chennai.

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 1st August, 2018

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 |