

आयकर अपीलीय अधिकरण , 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI**

श्री एन. आर. एस .गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्यके समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकरअपीलसं/.I.T.A. Nos. 516 & 517/Chny/2018

निर्धारणवर्ष/Assessment Year : 2009-10 & 2013-14

Smt. Prabha Parakh,
A-7/8. Rams Building,
21, R.A. Road,
Purasawalkam,
Chennai – 600 084.

Deputy Commissioner of Income Tax,
Vs. Non Corporate Circle -10(1),
Chennai.

[PAN: AHWPP 0329G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकरअपीलसं/.I.T.A. No. 655/Chny/2018

निर्धारणवर्ष/Assessment Year : 2009-10

Assistant Commissioner of Income Tax,
Non Corporate Circle -10(1),
121, Mahatma Gandhi Road,
Chennai 600 034.

Vs. Smt. Prabha Parakh,
A-7/8. Rams Building,
21, R.A. Road,
Purasawalkam,
Chennai – 600 084.

[PAN: AHWPP 0329G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Assessee by
Revenue by

: Shri D. Anand, Advocate
: Shri Guru Bashyam, JCIT

सुनवाईकीतारीख/Date of Hearing

: 31.07.2018

घोषणाकीतारीख/Date of Pronouncement

: 02.08.2018

आदेश / O R D E R**PER S. JAYARAMAN, ACCOUNTANT MEMBER:**

The assessee as well as the Revenue filed these appeals against the order of the Commissioner of Income Tax (Appeals)- 12, Chennai, in ITA No. 117/CIT(A)-12/2015-16 dated 15.12.2017 for assessment year 2009-10 and the assessee filed an appeal against the order of the Commissioner of Income Tax (Appeals)-12, Chennai in ITA No. 150/CIT(A)-12/2015-16 dated 15.12.2017 for assessment year 2013-14.

2. Smt. Prabha Parakh, the assessee, is engaged in trading in dyes and chemicals, deriving income from business and profession and income from other sources. The AO re-opened the assessment for assessment year 2009-10 and noticed that the assessee received dividend income of Rs. 2,30,400/-. On perusal of records, he found that the assessee had investments in quoted and unquoted shares, incurred huge interest expenditure apart from various administrative expenses. Invoking section 14A r.w.r. 8D, he disallowed Rs. 3,07,221/-, relying on the special bench decision in the case of Cheminvest Ltd vs ITO (ITAT Special Bench) Delhi, 121 ITD 318. While making assessment for assessment year 2013-14, he disallowed Rs. 11,78,383/- u/s. 14A r.w.r. 8D(ii) & (iii) on the dividend income at Rs. 12,82,077/-.

2.1 Aggrieved against the order of the Assessing Officer for assessment year 2009-10, the assessee filed appeal before the Ld. CIT(A) challenging the jurisdiction u/s. 147 and the addition made u/s. 14A r.w.r. 8D. Similarly for assessment year 2013-14, the assessee filed appeal against the addition made u/s. 14A r.w.r. 8D. The CIT(A) upheld the validity of re-opening the assessment. Applying the ratio of the Delhi High Court in the case of Joint Investment Pvt. Ltd. vs CIT (2015) 372 ITR 694 Delhi, he directed the AO to restrict the disallowance u/s. 14A r.w.r. 8D to the extent of exempt income. Aggrieved, the assessee filed the above appeals. Aggrieved against the order of the Ld. CIT(A) for assessment year 2009-10, the Revenue also filed an appeal. Since, these appeals are related to the same assessee, for convenience sake, they are disposed together.

3. The Revenue filed the appeal with 3 days delay. The Revenue filed condonation petition. We heard the rival contentions and condone the delay. Let us take the Revenue appeal first.

4. The Revenue pleads that though the decision of the Hon'ble Delhi High Court was not accepted by them on merit, SLP was not suggested on account of low tax effect. It is submitted that though the tax effect for assessment year 2009-10 is less than the monitory limit fixed by the CBDT vide its circular, the Revenue filed the appeal for assessment year 2009-10 as the assessment

was made consequent to the Revenue Audit objections being accepted by the Department. Though, the assessee filed appeal against the order for assessment year 2009-10, after the plea made by the Ld. DR, the Ld. AR did not press the grounds for assessment year 2009-10. However, for assessment year 2013-14, inviting our attention to the copy of the balance sheet, the AR submitted that the assessee's capital as on 31.03.2013 was 12,78,46,445/- and its investments in Govt. and other Securities-Quoted is Rs. 16,26,932/- and Govt. and other Securities-Unquoted is Rs. 1,43,49,730/-. Since, its investment was much lower than the capital, it cannot be said that the impugned investments were made out of borrowed funds. Therefore, the Ld. AR submitted that the addition made for assessment year 2013-14 may be deleted. Per contra, the Ld. DR submitted that the above balance sheet indicates that the assessee had secured loans from banks to the extent of Rs. 1,06,47,806/-, thus, it is not known whether the impugned investments made during the year is out of borrowed funds or out of assessee's non interest bearing funds etc.

5. We heard the rival submissions. Since, the Ld. CIT(A) has applied the ratio of the Delhi High Court decision, supra, we do not find any reason to interfere with his order and hence, the Revenue's appeal as well as the assessee's appeal for assessment year 2009-10 are dismissed. For assessment year 2013-14, since, the facts are not clear, we deem it fit to remit

the issue back to the AO to examine whether the sources of impugned investments made in the current year were out of borrowed funds or not and decide the issue in accordance with law. The assessee shall place all the materials in its support before the AO and comply to the AO's requirements as per law. The AO after due examination and after giving adequate opportunity to the assessee shall decide the matter in accordance with law.

6. In the result, the assessee's appeal and the Revenue 's appeal for the assessment year 2009-10 are dismissed and the assessee's appeal for the assessment year 2013-14 is treated as allowed for statistical purposes.

Order pronounced on Thursday, the 02nd day of August, 2018 at Chennai.

Sd/-

(एन.आर.एस .गणेशन)

(N.R.S. GANESAN)

न्यायिकसदस्य/Judicial Member

Sd/-

(एसजयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 02nd August , 2018

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent

4. आयकरआयुक्त/CIT 5. विभागीयप्रतिनिधि/DR

3. आयकरआयुक्त) अपील(/CIT(A)

6. गार्डफाईल/GF