

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH, CHENNAI**  
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष  
**BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER**  
**AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A.No.425/Chny/2017  
(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s. Adyar Gate Hotels Limited, 132, TTK Road, Chennai – 600 018.	Vs	The DCIT, Company Circle 1(1), Chennai – 34.
PAN: AAACA9041L		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri K.S. Sathyanarayanan, CFO
प्रत्यर्थी की ओर से/Respondent by	:	Smt. S. Vijayaprabha, JCIT

सुनवाई की तारीख/Date of hearing	:	31.07.2018
घोषणा की तारीख /Date of Pronouncement	:	03.10.2018

**आदेश / ORDER**

**Per A. Mohan Alankamony, AM:-**

This appeal by the assessee is directed against the order passed by the learned Commissioner of Income Tax(Appeals)-1, Chennai, dated 27.12.2016 in ITA No.212/CIT(A)-1/2015-16 for the assessment year 2012-13 passed U/s. 250(6) r.w.s. 143(3) of the Act.

2. The assessee has raised two grounds in its appeal and they are briefly stated herein below for adjudication:-

- (i) The Ld.CIT(A) has erred in holding that the income arising from letting of building viz., "Sai Real Tech Park" is taxable under the head "Income from other sources".
- (ii) The Ld.CIT(A) has erred in upholding the addition made by the Ld.AO amounting to Rs.11,81,732/- by invoking the provisions of Section 14A r.w.r.8D of the Rules.

3. The brief facts of the case are that the assessee is a company engaged in hotel business, filed its return of income for the assessment year 2012-13 on 29.09.2012 admitting total income of Rs.24,55,99,969/-. The case was selected for scrutiny under CASS and notice U/s.143(2) of the Act was issued on 06.08.2013. Finally assessment order was passed U/s.143(3) of the Act on 31.03.2015 wherein the Ld.AO had made several additions.

**4. Ground No. 2(i) :- Head under which income is assessable with respect to letting of building and hire charges of plant and machinery installed in the building :-**

In the earlier assessment years the Id. Assessing Officer had treated the income from letting of the building viz., Sai Real Tech Park under the head "income from house property" instead of income

under the head “income from business” as claimed by the assessee. Since the issue is being agitated by both the parties before various judicial forums, the Id. Assessing Officer followed his earlier Orders treated the rental income accrued from Sai Real Tech Park as income under the head “income from house property” as against the claim made by the assessee as income under the head “income from business”. On appeal, the Id. CIT(A) following the order of the Tribunal in assessee’s own case for the assessment year 2007-08, vide order dated 15.12.2011 in I.T.A. No. 2168/Mds/2010 held that the income arising from Sai Real Tech Park is to be assessed under the head “income from other sources” by observing as under:

*“6. I have carefully perused the facts in issue, the reasons based on which the AO has preferred the disallowance/addition, the arguments advanced by the appellant and material on record. The issue with regard to taxability of income arising from the infrastructure and facilities of Sai Read Tech Park has been a matter of controversy over several preceding assessment years. While in some it has been assessed by the AO as income from house property in some other it has been brought to tax as income from other sources. The Hon’ble ITAT in ITA No. 2168/Mds/2010 for the A.Y. 2007-08 in order dated 15.12.2011 in the appellant’s own case for detailed reasons stated therein held that the income arising from Sai Real The Park which includes building plus plant and machinery and extra facilities was to be brought to tax under the head income from other sources. The same has also been held in ITAT’s order in ITA No. 1502/Mds/2012 for the A.Y. 2009-10 order dated 14.12.2012. The CIT(A) in the appellant’s own case in ITA No. 197/2013-14 for the A.Y. 2010-11 in his order dated 31.3.2014 after elaborately discussing the different views taken has concluded and held that the income has to be brought to tax*

*under the head “income from other sources” as is evident in para 12 of the said order. It has also been brought to the notice by the appellant that the issue with regard to the head under which the income has to be appropriately taxed is receiving the attention by way of an appeal before the ITAT, Chennai and the matter is coming up for hearing in the ensuing month of February, 2017.*

*7. In view of the same and in order to maintain the conformity to the prevalent preceding views taken, I am included to respectfully follow the prevalent view as confirmed by the Hon’ble ITAT in the orders referred above as also followed by CIT(A) in the orders referred above and hold that the income arising from Sai Real Tech Park is to be brought to tax under the head “Income from other sources”. The AO is directed to modify the order accordingly. This ground of appeal is dismissed.”*

4.1. Before us, the Id. AR argued by stating that the assessee has let out the building along with plant and machinery and other facilities, by two separate agreements, which is in the nature of promoting information technology park named as Sai Real Tech Park. He further argued by stating that the entire project has the features of business and therefore the income arising out of the information and technology park has to be necessarily assessed under the head “income from business”. The Id. AR also relied on the decision in the case M/s. Chennai Properties & Investment v. CIT reported in 373 ITR 637. On the other hand, the Id. DR submitted that the Tribunal had consistently held that the income earned by the assessee from

Sai Real Tech Park was assessable under the head “income from other sources” for the assessment year 2007-08, 2009-10 and 2010-11, in I.T.A. No. 2168/Mds/2010, I.T.A. No. 1502, 1620/Mds/2012 & I.T.A. No. 1843/Mds/2014 & C.O. No. 81/Mds/2014. It was therefore pleaded that the decision of the Id. CIT(A) may be upheld.

4.2. We have heard the rival submissions and carefully perused the materials available on record. The assessee has relied on the decision of the Hon’ble Apex Court rendered in the case Chennai Properties & Investment v. CIT reported in 373 ITR 637, which was not available before the Id. Revenue Authorities while deciding the issue against the assessee. In the case Chennai Properties & Investments (supra), the Hon’ble Apex Court has observed as follows:

*“11. We are conscious of the aforesaid dicta laid down in the Constitution Bench judgment. It is for this reason, we have, at the beginning of this judgment, stated the circumstances of the present case from which we arrive at irresistible conclusion that in this case, letting of the properties is in fact is the business of the assessee. The assessee therefore, rightly disclosed the income under the Head Income from Business. It cannot be treated as ‘income from the house property’. We, accordingly, allow this appeal and set aside the judgment of the High Court and restore that of the Income Tax Appellate Tribunal. No orders to costs.”*

4.3. Since the ratio laid down by the Hon'ble Apex Court could not be considered by the Id. Assessing Officer while deciding the issue in the case of the assessee, we hereby remit the matter back to the file of the Id. Assessing Officer to verify whether the facts of the case of the assessee is identical to that of the case decided by the Hon'ble Apex Court cited supra and thereafter decide the matter in accordance with law and merits.

**5. Ground 2 (ii) :- Disallowance of Rs.11,81,732/- invoking the provisions of section 14A of the Act:-**

With respect to addition made by invoking the provisions of section 14A of the Act, this Bench of the Tribunal on several occasions has held that Rule 8D of the Rule is not automatic and can be applied only in situation where the actual expenses incurred for earning exempt income cannot be apportioned. The gist of one such decision in ITA Nos.1729 & 1730/Chny/2016 in the case M/s. Sthithi Insurance Services Pvt. Ltd., vide order dated 18.06.2018 is cited herein below for reference:-

*“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.”*

Since we have already decided the issue with respect to computation of disallowance U/s.14A r.w.r. 8D of the Rules in the decision cited supra, we remit back the matter to the file of Ld.AO to compute the

disallowance U/s.14A of the Act in the similar manner after affording an opportunity to the assessee to compute the expense incurred by it for earning exempt income. It is ordered accordingly.

6. In the result appeal of the assessee is allowed for statistical purposes as indicated herein above.

Order pronounced on the 3<sup>rd</sup> October, 2018 at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)  
( Duvvuru RL Reddy )  
न्यायिक सदस्य /Judicial Member

Sd/-

(ए. मोहन अलंकामणी)  
( A. Mohan Alankamony )  
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 3<sup>rd</sup> October, 2018

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- |                        |                          |                              |
|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT     | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF             |