

आयकर अपीलीय अधिकरण , ' ए ' न्यायपीठ,चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" 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. No. 185/Chny/2018

निर्धारणवर्ष/Assessment Year : 2014-15

Deputy Commissioner of Income Tax,
Corporate Circle -5(1),
Chennai – 600 034.

M/s. OPG Energy Pvt. Ltd.,
Vs. No. 36, Knowledge Tower IV Floor,
Sanjeevarayanpettai,
Little Mount, Saidapet,
Chennai – 600 015.

(अपीलार्थी/Appellant)

[PAN: AAACO 4724G]

(प्रत्यर्थी/Respondent)

Revenue by
Assessee by

: Shri G.D. Jayanthi Angayarkanni, JCIT
: None

सुनवाईकीतारीख/Date of Hearing

: 30.08.2018

घोषणाकीतारीख/Date of Pronouncement

: 04.10.2018

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The Revenue filed this appeal against the order of the Commissioner of Income Tax (Appeals)-3, Chennai in ITA No. 232/16-17/A-3 dated 27.10.2017 for assessment year 2014-15.

2. M/s. OPG Energy Pvt. Ltd., the assessee, is in the business of generation of power. In the assessment made for assessment year 2014-15, the Assessing Officer found that the assessee made investments in equity instruments on various companies and not admitted any expenditure related to those investments. Invoking section 14A r.w.r. 8D, out of Rs. 11,21,79,607/- finance cost, he disallowed Rs. 5,57,26,868/- under Rule 8D2(ii) & (iii). Aggrieved against that order, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) on the submissions made by the assessee that it has not received any dividend income during the assessment year and the investments, in unlisted companies being strategic investments, section 14A is not applicable etc., applying the decision of this tribunal in the case of ACIT vs M. Baskaran, in ITA No. 1717/Mds/2013 for assessment year 2009-10 held that the disallowance made u/s. 14A was to be deleted as the assessee has not earned or received exempt income during the previous year relevant to assessment year under the appeal.

3. Aggrieved against that order, the Revenue filed this appeal on the following grounds:

1. The order of the Ld CIT(A) is contrary to law and facts and circumstances of the case.

2.1 The Ld CIT(A) erred in deleting the disallowance u/s. 14A r.w.r 8D made by the AC to the tune of Rs.5,57,26,868/-, relying on the decision of the jurisdictional ITAT in the case of Shri M. Bhaskaran, holding that the disallowance cannot be made in the absence of exempt income earned during a year.

2.2 The Ld CIT(A) erred in not appreciating the fact that the assessee had huge value of investments in equity shares capable of earning exempt income and claimed no interest expenditure attributable to such investments, thereby attracting the provisions of Sec. 14A read with rule 8D.

2.3 The Ld CIT(A) ought to have noted that as per the decision of the Hon'ble Mumbai Bench of the Tribunal in the case of M/s. Daga Capital Management Private Limited (117 ITR 169), Rule 8D is applicable in all cases wherein even there is no exempt income is earned.

2.4 The Ld CIT(A) failed to note that the Board, vide Circular No.5 of 2014, has clarified that the disallowance is applicable even in cases where no exempt income was earned during the year, but there is a possibility of earning the exempt income.

3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored."

4. The Ld. DR presented the case on the lines of grounds of appeal. At the time of hearing none appeared from the assessee side, though the hearing notice was served on assessee on 19.06.2018.

5. We heard the Ld. DR. Since, the assessee has not earned any dividend income, this case clearly falls within the ratio of the Jurisdictional High Court in the case of Redington India Ltd. vs ACIT [2017] 77 Taxmann.com 257 (Mad). Following the Jurisdictional High Court decision, supra, we hold that section 14A cannot be invoked and hence, dismiss the Revenue's appeal.

6. In the result, the Revenue's appeal is dismissed.

Order pronounced on Thursday, the 04th day of October, 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: 04th October , 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