

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.302/Chny/2017

निर्धारण वर्ष /Assessment Year : 2012-13

आयकर अपील सं./ITA No.1173/Chny/2018

निर्धारण वर्ष /Assessment Year : 2013-14

M/s Toshni Tek International,
267, Kilpauk Garden Road,
Kilpauk, Chennai - 600 010.

v. The Deputy Commissioner of
Income Tax,
Non-Corporate Circle – 10(1),
Chennai - 600 034.

PAN : AAAFT 2541 D

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri J. Prabhakar, FCA

प्रत्यर्थी की ओर से / Respondent by : Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing : 26.12.2018

घोषणा की तारीख/Date of Pronouncement : 02.01.2019

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

Both the appeals filed by the assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals)-12, Chennai, for the assessment years 2012-13 and 2013-14. Since common issue arises for consideration in both the appeals, we heard

both the appeals together and disposing of the same by this common order.

2. Shri J. Prabhakar, the Ld. representative for the assessee, submitted that the only issue arises for consideration is disallowance made by the Assessing Officer under Section 14A of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. representative, the assessee-partnership firm invested in the mutual funds and earned exempted income. According to the Ld. representative, the assessee invested its own funds in the mutual funds and no borrowed funds were used for investment in the mutual funds. According to the Ld. representative, the Assessing Officer has found that the assessee has paid interest on the capital account of the partners. If these funds were utilised for the purpose of business, the interest paid to the partners could have been avoided. According to the Ld. representative, interest paid to the partners is not an expenditure. According to the Ld. representative, no money was borrowed for making any investment. Placing reliance on the order of this Tribunal in DCIT v. Rajapalayam Mills Ltd. in I.T.A. No.3165/Mds/2016 dated 25.01.2018, the Ld. representative submitted that when the assessee invested its own funds, this Tribunal found that there cannot be any disallowance even though the investment resulted in earning of exempted income. To establish the availability of funds,

according to the Ld. representative, the assessee has also filed copies of balance sheet and other materials.

3. On the contrary, Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that the assessee has invested in mutual funds apart from debt fund and equity fund. According to the Ld. D.R., the assessee has received dividend both from debt fund and equity fund and also earned exempted income from mutual funds. For the assessment year 2012-13, according to the Ld. D.R., the assessee invested to the extent of ₹1,90,92,755/- as on 31.03.2012. The assessee received dividend income of ₹12,94,654/-. Till 31.03.2011, the investment was ₹1,79,64,789/-. As on 31.03.2012, the investment was ₹1,90,92,755/-. The assessee has also paid interest to the extent of ₹27,22,308/- to the partners based on the balances available in the current account of the partners. According to the Ld. D.R., if the available funds were utilised for making investment for earning dividend income for the purpose of business, then the interest paid to the partners could have been avoided. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the disallowance made by the Assessing Officer.

4. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee

admittedly is a partnership firm. The assessee now claims before this Tribunal that the investment in the mutual funds and other investments, which yielded exempted income, were made from their own funds. Disallowance under Section 14A of the Act needs to be made provided the assessee incurred expenditure. In this case, the assessee claims that there was no such expenditure incurred. The assessee also paid interest to the partners on the outstanding balance in the current account. Since the assessee claims that the investments were made from their own funds, this Tribunal is of the considered opinion that the matter needs to be re-examined by the Assessing Officer and find out whether the assessee has invested from its own funds or the borrowed funds.

5. It also needs to be examined whether the assessee has incurred any indirect expenditure of payment of interest by borrowing funds for the purpose of business. In those factual circumstances, this Tribunal is of the considered opinion that the matter needs to be re-examined. Accordingly, orders of both the authorities below are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter in the light of the material that may be filed by the assessee and bring on record whether the assessee borrowed any funds for the purpose of business during the years and consideration and whether the assessee had sufficient funds

for making investment in the mutual funds and other investments for earning exempted income during the years under consideration and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

6. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the court on 2nd January, 2019 at Chennai.

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

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 2nd January, 2019.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-12, Chennai
4. Principal CIT-3, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.