

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, ' C' BENCH : CHENNAI

श्री इंटूरी रामा राव, लेखा सदस्य एवं
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष

[BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER]

आयकर अपील सं./I.T.A. No.3175/CHNY/2018
निर्धारण वर्ष /Assessment year : 2013-14

M/s.Sowraj Investments Pvt Ltd., Old NO.476,New No.672, Anna Salai,Nandanam, Chennai 600 035. [PAN: AAACS 3115 M] (अपीलार्थी/Appellant)	Vs. The Deputy Commissioner of Income Tax, Corporate Circle 6(2), Vanaparthy Block, Chennai 600 034. (प्रत्यर्थी/Respondent)
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अपीलार्थी की ओर से/ Appellant by	:	Mr.M.Viswanathan,C.A
प्रत्यर्थी की ओर से /Respondent by	:	Mr.R.Clement Ramesh Kumar, Addl. C.I.T D.R
सुनवाई की तारीख/Date of Hearing	:	18-07-2019
घोषणा की तारीख /Date of Pronouncement	:	08-08-2019

आदेश / ORDER

PER INTURI RAMA RAO, ACCOUNTANT MEMBER

This appeal of the assessee is directed against the order of the Commissioner of Income-tax (Appeals)-16, Chennai dated 25.09.2018 for assessment year 2013-14.

2. The assessee has raised the following grounds.

1. Disallowance u/s.14A – Rs.1,23,54,871/-

The investments made are Strategic in nature. The Appellant has not incurred any expenditure for earning Exempt income and therefore the further Disallowance does not arise.

2. Details of forfeiture of Share Warrants: Rs.6,68,80,000/- claimed as Short Term Capital Loss.

The Appellant has applied for Shares in M/s.Easun Reyrolle Ltd.(ERL). ERL is a Public Listed Company of more than 35 years standing traded in NSE & BSE. The rules for issue are as per strict SEBI guidelines in terms of quantity, eligibility & price. There is no scope for varying the terms.

The fact is when ERL Warrant was issued, the share price was Rs.133/-. By the time the right convert warrant to shares the price of the share traded through exchange was less than Rs.60/- per share. Converting the warrant to share would have meant a loss of Rs.13.2 Crores to Sowraj and hence chose to forego the right and lost Rs.6,60,00,000/-, was purely a commercial decision. ERL is a public company with majority independent Directors & while Sowraj are shareholders by no means they are their associates own majority of the shares.

BY no stretch of logic can this be categorized as tax avoidance measure. This is a normal business activity.

The assessee relied on the following judgements.

DCIT Vs. BPL Sanyo Finance Ltd. (2009) 312 ITR 63(Kar)

C.I.T Vs. Chand Ratan Bagri (2010) 230 CTR 258(Delhi)

CWT Vs. Arvind Narotam 173 ITR 479(SC)

Azad Bachao Andaolan 263 ITR 706(SC)

Vodafone International Holdings Vs. UOI (1999) 8 SCC 667 which water downs the McDowell case.

3. The brief facts of the case are that the Appellant namely, M/s.Sowraj Investments Pvt Ltd., is a company incorporated under the provisions of the Company Act, 1956. It is engaged in the business of investment and finance. The return of income for the assessment year 2013-14 was filed on 28.09.2013 declaring loss of (-)Rs.10,45,83,431/- Against the said return of income, the assessment was completed by The Deputy Commissioner of Income Tax, Corporate Circle 6(2), Chennai, (hereinafter referred as 'AO') vide order dated 31.03.2016 passed u/s.143(3) of the Income Tax Act, 1961 (in short 'the Act') at total loss of Rs.9,21,99,229/-. While doing so, the Assessing Officer made disallowance u/s.14A of the Act of Rs.1,23,54,871/- and also disallowed a sum of Rs.29,330/- being the expenditure incurred ROC filing

charge, holding it be capital nature placing reliance in the judgement of Hon"ble Supreme Court in the case of Brooke Bond India Ltd., Vs. C.I.T in (1997) 225 ITR 798(SC). Further, the Assessing Officer had not allowed the short term capital loss of Rs.6,68,80,000/- to carry forward in respect of forfeiture of share Warrants as short term capital loss. Being aggrieved, the assessee preferred an appeal before the Id.CIT(A), who vide impugned order confirmed the additions. Being aggrieved with the order of the Id.CIT(A), the assessee is before us in the present appeal.

4. It is submitted by Id.AR before us that the Assessing Officer had made disallowance of Rs.1,23,54,871/- u/s.14A of the Act without recording reasons as to how the explanation of assessee that an expenditure of Rs.52,49,390/- was incurred to earn the exempt income of Rs.13,06,20,553/- is incorrect. He further submitted that the investments are made only for strategic purposes and therefore, resort to provisions 14A cannot be made.

4.1 As regards the short term capital loss arising on account of forfeiture of share warrants under the head capital loss, he submitted that the Appellant has applied for Shares in M/s.Easun Reyrolle Ltd.(ERL). ERL is a Public Listed Company, issued share warrants, at the option of the holder is convertible into equity shares within 18 months. It was

submitted that if the option to convert warrant into equity shares is not exercised within the period, the subscription money paid on warrants shall stand forfeited. Ld.AR submitted that the assessee-company is a share holder of ERL. Therefore, it is prayed that share application money paid should be allowed as short term capital loss placing reliance on the following decisions:

- i) DCIT Vs. BPL Sanyo Finance Ltd. (2009) 312 ITR 63(Kar)
- ii) C.I.T Vs. Chand Ratan Bagri (2010) 230 CTR 258(Delhi)

5. On the other hand, Id. Senior D.R placed reliance in the orders of lower authorities.

6. We have heard the rival contentions and perused the material available on record. The first grounds of appeal No.1 relates to disallowance of Rs.1,23,54,871/- u/s.14A of the Act. The contention that Assessing Officer had not recorded the reasons for rejecting the explanation of the assessee that a sum of Rs.52,49,390/- was only expenditure for earning exempt income, is contrary to the material on record. The Assessing Officer vide para 2.5 of the assessment order gave a categorical finding that the explanation of assessee cannot be accepted. Further, the Hon'ble supreme Court in the case of Maxopp Investment Ltd. Vs. C.I.T in [2018] 402 ITR 640 (SC) upheld the applicability of provisions of section 14A, even in respect of strategic investments. Thus, the contentions

of the assessee that provisions of section 14A cannot be invoked are devoid of any merit. Accordingly, this ground of appeal filed by the assessee is dismissed.

6.1 As regards Ground No.2 challenges the disallowance of short term capital gains loss of Rs.6,68,80,000/- towards forfeiture of share warrants. It is an admitted fact that assessee-company applied for shares in M/s.ERL, which is an associated company of the assessee. It is found that when the warrants are issued, the share price of the said company was Rs.133/-. By the time the right to convert the warrant to shares, the price of the share traded was less than Rs.60/- per share. Therefore, the assessee company has chosen to forego the share application money and incurred loss of Rs.6,60,00,000/-. From the material on record, the assessee company could not establish that the assessee company acquired any right on payment of application money on shares. In the absence of any right, the question of extinguishment does not arise. Therefore, the capital loss, if any, cannot be allowed as a capital loss or business loss. The reliance placed by Id.AR on the decision of DCIT Vs. BPL Sanyo Finance Ltd. (2009) 312 ITR 63 (Kar) and decision of C.I.T Vs. Chand Ratan Bagri (2010) 230 CTR 258 (Delhi) does not come to rescue the assessee, in the said case the extinguishment of right is established beyond the doubt.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on 08th August, 2019, at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 08th August, 2019.

K S Sundaram

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 |