

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

श्री धुव्वुरु आर.एल. रेड्डी, न्यायिक सदस्य एवं
श्री एस. जयरामन, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU R.L. REDDY, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.106/Chny/2019
निर्धारण वर्ष /Assessment Year: 2014-15

M/s.Srinivasa Foundation,
No.7, Vidyodaya 1st Cross Street,
T.Nagar, Chennai-600 017.

Vs. The Dy. Commissioner-
of Income Tax,
Non-Corporate Circle-2,
Chennai.

[PAN: ABAFS 7944 N]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.Gautham Venkata –
Narayanan, Adv.

प्रत्यर्थी की ओर से /Respondent by

: Mr. R.Clement Ramesh –
Kumar, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 20.08.2019

घोषणा की तारीख/Dt. of Pronouncement

: 26.08.2019

आदेश / O R D E R

PER SHRI DUVVURU R.L. REDDY, JUDICIAL MEMBER:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)-2, Chennai, in ITA No.361/2016-17 dated 13.11.2018 for the AY 2014-15.

2. The only grievance of the assessee is that the Ld.CIT(A) erred in confirming the addition of Rs.4,16,367/- made u/s.14A r.w.r.8D. Brief facts of the case of the assessee are that the assessee is a partnership

firm engaged in real estate business. The assessee filed the return of income for the AY 2014-15 on 16.09.2014 admitting a total income of Rs.11,35,41,780/-. The assessment came to be completed u/s.143(3) determining the total income at Rs.11,39,58,147/- by disallowing Rs.4,16,367/- u/s.14A r.w.r.8D.

3. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A). After considering the submissions of the assessee, the Ld.CIT(A) dismissed the appeal filed by the assessee.

4. On being aggrieved, the assessee preferred an appeal before the Tribunal and raised the following grounds:

- 1. The Ld.CIT(A) was not justified in making the addition.*
- 2. The Ld.CIT(A) ought to have appreciated that the assessee has made these investments out of its own funds.*

5. It was the submission of the assessee that there is no need of any disallowance since the assessee had invested out of its own funds. He further submitted that the Hon'ble ITAT in the assessee's own case for the AY 2009-10 remitted this issue back to the file of the AO to examine whether the assessee is having its own funds or the assessee had invested these investments out of borrowed funds and pleaded to remit the issue back to the file of the AO.

6. On the other hand, the Ld.DR submitted that the assessee had received dividend income of Rs.21,70,771/-. Therefore, the disallowance u/s.14A r.w.r.8D(2)(iii) will attract to the present case. Thus, the disallowance made u/s.14A r.w.r.8D(2)(iii) at the rate of 0.5% on the average value of investments is mandatory under the law. Therefore, the orders passed by the Ld.CIT(A) be confirmed.

7. We have heard both the parties, perused the materials available on record and gone through the orders of authorities below.

8. There is no dispute that the assessee had received a sum of Rs.21,70,771/- as dividend income for the impugned assessment year. Therefore, it cannot be denied that the assessee would be required to expend some administrative expenses in order to earn the exempt income/maintain the portfolio of such investments. Apart from this, the disallowance under the third limb of Rule 8D(2)(iii) is a mandatory requirement under the law and it comes to Rs.4,16,367/- (0.5% of Rs.8,32,73,324/-). The AO disallowed the said amount of Rs.4,16,367/- and the Ld.CIT(A) also confirmed the same. Since, it is mandatory under the law, the Ld.AR relied on the decision of the Hon'ble ITAT in the assessee's own case for the AY 2009-10 but it is not applicable to the facts of the present case since the issue involved in the earlier AY 2009-10 is relating to interest expenditure but in the present case on hand, the AO himself admitted that there is no investments from borrowed funds.

Hence, there is no need to remit the issue back to the file of the AO. However, the disallowance is made u/s.14A r.w.r.8D(2)(iii). Therefore, considering the facts and circumstances of the present case, we are of the firm view that the disallowance made u/s.14A r.w.r.8D(2)(iii) is a mandatory requirement. Therefore, the orders passed by the Ld.CIT(A) needs no interference. Consequently, the grounds raised by the assessee are dismissed.

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

Order pronounced on the 26th day of August, 2019, in Chennai.

Sd/-

(एस. जयरामन)

(S. JAYARAMAN)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(धुव्वुरु आर.एल. रेड्डी)

(DUVVURU R.L. REDDY)

न्यायिक सदस्य /JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 26th August, 2019.

TLN

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