

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री इंटूरी रामा राव, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.318/Chny/2018

निर्धारण वर्ष /Assessment Year : 2010-11

The Deputy Commissioner of
Income Tax,
Corporate Circle 6(2),
Chennai - 600 034.

M/s Siva Industries and Holdings
Ltd. (formerly known as P.S.
v. Realty Pvt. Ltd.),
Sterling Tower,
No.32, Cathedral Garden Road,
Chennai - 600 042.

(अपीलार्थी/Appellant)

PAN : AAACS 4460 M

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Ms. R. Anitha, JCIT

प्रत्यर्थी की ओर से/Respondent by : Sh. T. Banusekar, CA

सुनवाई की तारीख/Date of Hearing : 26.08.2019

घोषणा की तारीख/Date of Pronouncement : 03.09.2019

आदेश /O R D E R

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

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) -15, Chennai, dated 30.10.2017 and pertains to assessment year 2010-11.

2. Ms. R. Anitha, the Ld. Departmental Representative, submitted that the only issue arises for consideration is power of the

CIT(Appeals) to set aside the assessment and examine the issue afresh. Referring to Section 251(1)(a) of the Income-tax Act, 1961 (in short 'the Act'), the Ld. D.R. submitted that the Parliament has specifically omitted the power to set aside the assessment by the CIT(Appeals). Therefore, according to the Ld. D.R., the CIT(Appeals) ought not to have directed the Assessing Officer to verify the availability of exempt income earned by the assessee. On a query whether the availability of exempt income has to be taken into consideration? The Ld. D.R. very fairly submitted that the availability of exempt income has to be brought on record for deciding the issue in view of the judgments of Madras High Court in Redington (India) Ltd. v. Addl. CIT (2017) 392 ITR 633 and CIT v. Chettinad Logistics (P.) Ltd. (2017) 80 taxmann.com 221.

4. We heard Sh. T. Banusekar, the Ld. representative for the assessee also and perused the relevant material available on record. The Madras High Court in Redington (India) Ltd. (supra) and Chettinad Logistics (P.) Ltd. (supra) held that in case there was no exempt income / dividend income earned by the assessee, there cannot be any disallowance under Section 14A of the Act with regard to the expenditure. Therefore, it is obligatory on the part of

the Assessing Officer to examine the availability of exempt income and bring on record the same. Since such an exercise was not done by the Assessing Officer, this Tribunal is of the considered opinion that the matter needs to be re-examined.

5. No doubt, the CIT(Appeals) has coterminous power as that of the Assessing Officer. Instead of asking the Assessing Officer to verify the availability of exempt income, he ought to have examined the same when the Parliament has specifically taken away the power of the CIT(Appeals) to set aside the assessment for verification. However, the fact requires that the availability of exempt income needs to be examined and brought on record. Therefore, in exercise of power conferred on this Tribunal, the issue of disallowance made by the Assessing Officer under Section 14A of the Act is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter and bring on record the availability of exempt income/dividend income and thereafter decide the issue in the light of the judgments of Madras High Court in Redington (India) Ltd. (supra) and Chettinad Logistics (P.) Ltd. (supra).

6. With the above observation, the appeal filed by the Revenue is dismissed.

Order pronounced in the court on 3rd September, 2019 at Chennai.

sd/-

(इंटूरी रामा राव)

(Inturi Rama Rao)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 3rd September, 2019.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-15, Chennai-34
4. Principal CIT- 6, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.