

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' BENCH, CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य एवं श्री इंटूरी रामा राव, लेखा सदस्य केसमक्ष

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.3059 & 3060/Chny/2017

निर्धारण वर्ष /Assessment Years : 2013-14 & 2014-15

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

v. M/s Shriram Venture Ltd.,
No.4, Mukambika Complex,
Lady Desika Road,
Chennai - 600 034.

PAN : AACCS 9328 J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.3095 & 3096/Chny/2017

निर्धारण वर्ष /Assessment Years : 2013-14 & 2014-15

M/s SVL Limited
(Formerly known as Shriram
Industrial Holdings Limited in
which Shriram Venture Limited
got amalgamated),
Shriram House,
No.4, Burkit Road, T. Nagar,
Chennai - 600 017.

v. The Income Tax Officer,
Corporate Ward 6(3),
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

राजस्व की ओर से/Revenue by : Shri R. Clement Ramesh Kumar, Addl.CIT

निर्धारिती की ओर से/Assessee by : Shri A. Mudit Bohara, Advocate

सुनवाई की तारीख/Date of Hearing : 01.08.2019

घोषणा की तारीख/Date of Pronouncement : 31.10.2019

आदेश / O R D E R**PER INTURI RAMA RAO, ACCOUNTANT MEMBER:**

The Revenue and the assessee are in cross appeals against the common order passed by the Commissioner of Income Tax (Appeals)-15, Chennai ['CIT(A)' in short], dated 28.09.2017 for the assessment years 2013-14 and 2014-15.

2. The brief facts of the case are that the assessee, namely, Shriram Venture Ltd., formerly known as Shriram Industrial Holdings Ltd., is a company incorporated under the Companies Act, 1956. It is engaged in the business of investments. The return of income for the assessment year 2013-14 was filed on 30th November, 2013 declaring loss of ₹6,44,20,867/-. The return of income was revised on 27th March, 2015 declaring total income of ₹2,09,910/-. Against the said return of income, the assessment was completed by the Assessing Officer ('A.O.' in short) vide order dated 31st December, 2016 passed under Section 143(3) read with Section 92CA(4) of the Income-tax Act, 1961 (in short 'the Act') at total income of ₹11,20,24,769/-. While doing so, the A.O. made disallowance of ₹8,08,98,963/- under the provisions of Section 14A of the Act and addition of ₹3,09,15,892/- while computing the income under long term capital gains.

3. Being aggrieved by the above additions, an appeal was preferred before the CIT(A) who, vide impugned order, directed the A.O. to recompute the amount of disallowance made under Section 14A read with Rule 8D of Income-tax Rules, 1962 on the following lines:-

- (a) After excluding the investment in foreign entities
- (b) After excluding investment in subsidiary companies
- (c) After excluding investment in shares and mutual funds from which dividend income is not earned.

The CIT(A) further held that the amount of disallowance should not exceed the exempt income. Thus, the CIT(A) partly granted relief in respect of the addition made under Section 14A of the Act. The CIT(A) has also directed the A.O. to delete the amount of disallowance made under Section 14A of the Act from book profits for the purpose of computing tax liability under Section 115JB of the Act following the decision of Special Bench of ITAT in the case of ACIT v. Vireet Investments Pvt. Ltd. (82 Taxmann.com 415). The assessee had not contested the addition made under the head "capital gain".

4. Being aggrieved by that part of the order of the CIT(A), which is against the assessee-company, the assessee-company is in appeal before us in I.T.A. Nos.3095 & 3096/Chny/2017 and being

aggrieved by that part of the order of the CIT(A), which is against the Revenue, the Revenue is in appeal before us in I.T.A. Nos.3059 & 3060/Chny/2017 for assessment years 2013-14 and 2014-15 respectively.

5. Let's take up the Revenue's appeals first. The Revenue has raised similar grounds for both the assessment years which are as follows:-

1.The order of the Commissioner of Income Tax (Appeals) is contrary to the law and facts of the case.

2. The Ld CIT(A) erred in directing the AO to restrict the disallowance u/s 14A under Rule 8D on the following lines.

a)After excluding the investments in foreign entities.

b)After excluding investments in subsidiary companies.

c)After excluding investment in shares and mutual funds from which dividend income is not earned.

2.1) The CIT(A) ought to have appreciated that as per section 251(1)(a) of the Act, the "power to set aside" or "examining the issue afresh" has been omitted with effect from 01.06.2001 as per Finance Act 2001.

2.2) The Ld CIT(A) erred in directing the AO to restrict the addition on account of u/s 14A amount eventhough, in assessee group case department appeals are pending before High Court.

2.3) The Ld CIT(A) failed to appreciate that the assessee itself made disallowance u/s 14A which confirms that expenditure was incurred in relation to the exempt income.

2.3) The Ld CIT(A) erred in directing the AD to delete the addition u/s 14A, holding that the assessee did not earn any exempt income during the year when Rule 8D does not make any distinction and the intention of the assessee in making such investment is relevant to decide the issue as held by the Apex Court in Rajendra Prasad Moody (115 ITR 519) and not the actual earning of interest in a particular year.

2.4) The Ld CIT(A) erred in not following the binding decision of ITAT Chennai Bench in Siva Industries & Holdings Ltd Vs ACIT (ITA 1039/Mds/2014.2108/Mds/2012, 687 & 884/Mds/2014 dated 07/10/2016)

2.5 The Ld CIT(A) erred in deleting the addition made to book profits computed u/s 115JB being expenditure incurred to earn exempt income even though cl.(f) Explanation 1 to Se 115JB specifically provides for it.

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.

6. The Revenue challenges the correctness of finding of the CIT(A) setting aside the matter to the A.O. and directing the A.O. to consider the disallowances after excluding the investments in foreign entities and exclude investment subsidiary companies and investments which had not earned the exempt income and also the finding of the CIT(A) that the amount of disallowance under Section 14A of the Act should not be added back to the book profits for the purpose of computing the taxable liability under Section 115JB of the Act.

7. We find that the finding of the CIT(A) is correct to the extent of directing the A.O. to exclude the investments in foreign entities and investment in shares and mutual funds which had not earned exempt income and restricting the amount of disallowance under Section 14A of the Act to the extent of exempt income. The decision of the CIT(A) is based on the ratio of the judgment of jurisdictional High Court in the case of Redington (India) Ltd. v. Addl. CIT (2017) 392 ITR 633. The Special Bench of ITAT, Delhi in Vireet Investments Pvt. Ltd. (supra) held that the only investments which yielded exempt income alone had to be considered for the purpose of computing the amount of disallowance under Section 14A of the Act. However, the direction of the CIT(A) to A.O. to exclude the investment in subsidiary companies cannot be upheld in view of the law laid down by Hon'ble Supreme Court in Maxopp Investment Ltd. v. CIT (2018) 402 ITR 640 wherein it was laid down that the strategic investments cannot be excluded from the purview of the provisions of Section 14A of the Act. Therefore, the direction of the CIT(A) stands modified to this extent.

8. As regards the ground of appeal challenging the direction of the CIT(A) that the amount of disallowance under Section 14A of the Act should not be added back to the book profit for the purpose

of computing taxable income under Section 115JB of the Act, the CIT(A) cannot be faulted with as he followed the decision of Special Bench of this Tribunal in the case of Vireet Investments Pvt. Ltd. (supra). No contrary decision was cited before us. Hence, we confirm the decision of the CIT(A).

9. Both the appeals filed by the Revenue are partly allowed for statistical purposes.

10. The assessee has raised similar grounds in both the appeals which read as under:-

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

2. The CIT(A) erred in confirming part of the disallowance made u/s.14A r.w. Rule 8D

3. The CIT(A) erred in not appreciating the fact that the appellant is in the business of investment promotion and the investments were not made for earning dividend income but only as strategic investment. Therefore, no disallowance u/s.14A.r.w.Rule 8D is attracted.

4. The CIT(A) erred in not appreciating the fact that the disallowance u/s.14A made by the appellant of Rs.72,77,740/- is reasonable.

5. The CIT(A) erred in not appreciating the fact that before proceeding to apply Rule 8D, the Assessing Officer has not recorded, having regard to the accounts of the appellant, as to why he was not satisfied with the correctness of the amount disallowed by the assessee

uls.14A of Rs. 72,77,740/-. In this connection the appellant relies on the Delhi High Court judgment in the case of CIT Vs Taikisha Engineering India Ltd (299 Taxman 143) and CIT Vs I P Support Services India Ltd (378 ITR 240).

6. For these and other grounds that may be adduced before or at the time of hearing, the Hon'ble ITAT may be pleased to delete the disallowance made u/s.14A r.w. Rule 8D.

11. The assessee contended that the provisions of Section 14A of the Act are not applicable since the investments were made only in subsidiary companies for strategic purposes. The contention of the assessee was overruled by the Hon'ble Supreme Court in Maxopp Investment Ltd. (supra). Hence, we confirm the order of the CIT(A).

12. Both the appeals of the assessee stand dismissed.

13. In the result, Revenue's appeals are partly allowed for statistical purposes and the assessee's appeals are dismissed.

Order pronounced in the court on 31st October, 2019 at Chennai.

sd/-

(जॉर्ज माथन)

(George Mathan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 31st October, 2019.

sd/-

(इंटूरी रामा राव)

(Inturi Rama Rao)

लेखा सदस्य/Accountant Member

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती /Assessee
2. Assessing Officer
3. आयकर आयुक्त (अपील)/CIT(A)-15, Chennai-34
4. Principal CIT- 6, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.