

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.Nos.1223 & 1224/CHNY/2019
&
C.O. Nos. 67 & 68/CHNY/2019
[in ITA Nos.1223 & 1224/Chny/2019]
(निर्धारण वर्ष / Assessment Years: 2014-15 & 2015-16)

The Income Tax Officer,
Corporate Ward – 2(2),
Chennai – 34.

Vs **M/s. Four M Maritime Pvt. Ltd.,**
No.4, Buharia Towers, Moores Egmore,
Chennai – 600 006.

PAN: AAACF 6163E

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

राजस्व की ओर से /Revenue by

: Shri AR.V. Sreenivasan, JCIT

निर्धारिती की ओर से /Assessee by

: Ms. S. Sriniranjani, Advocate

सुनवाई की तारीख/Date of hearing

: 20.11.2019

घोषणा की तारीख /Date of Pronouncement

: 06.12.2019

आदेश /O R D E R

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

These appeals of the Revenue are directed against the common order passed by the Commissioner of Income Tax (Appeals)–6, Chennai dated 11.01.2019 and pertain to the assessment years 2014-15 & 2015-16. The assessee has filed cross

objections against the very same orders of the Commissioner of Income Tax (Appeals). Therefore, we heard both the appeals of the Revenue and the cross objections of the assessee together and disposing off the same by this common order.

2. Let us first take the Revenue's appeals for the assessment years 2014-15 & 2015-16.

3. The first issue arises for consideration is whether the assessee's company ship qualifies for deduction U/s.115VD of the Income Tax Act, 1961 (in short 'the Act').

3.1 Shri AR.V. Sreenivasan, the Id. Departmental Representative submitted that the very same issue came before this Tribunal in the assessee's own case for the assessment years 2005-06 to 2009-10 in ITA Nos.897 to 900/Mds/2013 dated 31.07.2013, this Tribunal found that the matter needs to be re-examined by the Assessing Officer. Accordingly the issue was remitted back to the file of the Assessing Officer.

3.2 We heard Ms. S.Sriniranjani, the Ld. Counsel for the assessee also. The Ld.AR also submitted that the identical issue was remitted back to the Assessing Officer for re-consideration by this Tribunal in the assessee's own case for the assessment years 2005-06 to 2009-10.

3.3 Having heard the Ld.DR and the Ld.AR, we find that an identical issue came before this Tribunal in the assessee's own case for the assessment years 2005-06 to 2009-10. This Tribunal after considering its earlier order in M/s. West Asia Maritime Ltd., (2012) 16 ITR (Trib.) 175 found that the ship operated by the assessee is qualified for deduction U/s.115VD of the Act. The Tribunal found that whether the Board of Directors of the company is functioning from an office outside the country or in India needs to be examined. In other words, this Tribunal found that the Assessing Officer has to examine the effective place of management. Accordingly the issue was remitted back to the file of the Assessing Officer for re-examination. Since the issue arises for consideration for the years under consideration are also identical to the issue decided by this Tribunal in the earlier assessment years referred above, this Tribunal is of the

considered opinion that this matter needs to be re-examined by the Assessing Officer in the light of this Tribunal order for the assessment years 2005-06 to 2009-10. Accordingly the orders of the lower authorities below are set aside and the issue raised by the assessee is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the issue in the light of the order of this Tribunal for the assessment years 2005-06 to 2009-10 and thereafter decide the same in accordance with law after giving a reasonable opportunity to the assessee.

4. For the assessment year 2015-16, the Revenue has taken one more ground with regard to the order of the CIT(A) restricting the disallowance U/s14A with regard to exempt income earned by the assessee.

4.1 Shri AR.V. Sreenivasan, the Id. Departmental Representative submitted that in view of the CBDT Circular No.5 of 2014, the disallowance U/s.14A has to be made even there was no exempted income earned by the assessee. We heard Ms. S. Sriniranjani, the Ld. Counsel for the assessee also. The CIT(A) by placing his reliance

on the Judgment of the Apex Court in the case CIT vs. Chettinad Logistics (P.) Ltd., [2017] 80 taxmann.com 221(SC), found that no exempt income earned by the assessee in the relevant assessment year, Section 14A cannot be invoked. The CIT(A) also placed reliance on the judgment of the Apex Court in the case of PCIT vs. State Bank of Patiala [201] 99 taxmann.com 286 (SC). Since the CIT(A) decided the issue restricting the disallowance to the extent of exempt income earned by the assessee on the basis of the judgment of the Apex Court, this Tribunal is of the considered opinion, the circular issued by the CBDT in circular No. 5 of 2014 may not be relevant in deciding the issue. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authorities. Accordingly the same is confirmed.

5. Now coming to the cross objections filed by the assessee, the first issue is with regard to whether the ship used by the assessee is a qualifying ship or not.

5.1 We heard Ms. S. Sriniranjani, the Ld. Counsel for the assessee and Shri AR. V. Sreenivasan, the Ld. Departmental Representative.

This issue was considered by this Tribunal in the earlier para of this order in the Department appeal and the issue was remitted back to the file of the Assessing Officer for reconsideration. In the light of the observation made above, the Assessing Officer shall reconsider the issue.

6. The next issue arises for consideration is disallowance made by the Assessing Officer U/s.14A in respect of notional income under tonnage tax scheme.

6.1 We heard Ms. S. Sriniranjani, the Ld. Counsel for the assessee and Shri AR. V. Sreenivasan, the Ld. Departmental Representative. It is brought to the notice of this Bench that an identical issue was considered by this Tribunal and the issue was remitted back to the file of the Assessing Officer. For the sake of consistency for the year under consideration also, the orders of both the authorities below are set aside and the issue is remitted back to the Assessing Officer for reconsideration in the light of the order of this Tribunal for the assessment years 2005-06 to 2009-10.

7. The next issues arises for consideration in the cross objection of the assessee is with regard to the computation of book profit U/s.115JB of the Act.

7.1 Ms. S. Sriniranjani, the Ld. Counsel for the assessee submitted that this Tribunal considered this issue also for the assessment years 2005-06 to 2009-10 and remitted back the issue to the file of the Assessing Officer for reconsideration. Therefore the Ld.AR submitted that this issue may be remitted back to the file of the Assessing Officer. We heard Shri AR. V. Sreenivasan, the Ld. Departmental Representative also. Since the identical issue was remitted back to the Assessing Officer for reconsideration for the assessment years 2005-06 to 2009-10, this Tribunal is of the considered opinion that the matter needs to be reconsidered for the year under consideration. Accordingly the orders of both the authorities below are set aside and the issue with regard to book profit U/s.115JB of the Act is also remitted back to the file of the Assessing Officer for reconsideration.

8. In the result both the appeals of the Revenue and cross objections of the assessee are allowed for statistical purposes.

Order pronounced in the court on 6th December, 2019 at Chennai.

Sd/-

(एस जयरामन)
(S. Jayaraman)
लेखा सदस्य /Accountant Member

Sd/-

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

चेन्नई/Chennai,
दिनांक/Dated, the 6th December, 2019.

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|-------------------------|-------------------------|------------------------------|
| 1. निर्धारिती /Assessee | 2. राजस्व/Revenue | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |