

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 केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1483/Chny/2019

निर्धारण वर्ष /Assessment Year : 2014-15

The Deputy Commissioner of  
Income Tax,  
Corporate Circle – 2(1),  
Chennai - 600 034.

(अपीलार्थी/Appellant)

M/s Express Newspapers Pvt. Ltd.,  
v. "Express Estates", Mount Road,  
Chennai - 600 002.

PAN : AAACE 1702 G

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri AR.V. Sreenivasan, JCIT  
प्रत्यर्थी की ओर से / Respondent by : Shri G. Baskar, Advocate

सुनवाई की तारीख / Date of Hearing : 15.10.2019

घोषणा की तारीख / Date of Pronouncement : 29.11.2019

### **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) -6, Chennai, dated 20.02.2019 and pertains to assessment year 2014-15.

2. Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that the CIT(Appeals) directed the

Assessing Officer to exclude the investments made in the subsidiary companies from the scope of disallowance under Section 14A of the Income-tax Act, 1961 (in short 'the Act') by following his predecessor's order in the assessee's own case for the assessment year 2013-14. Referring to the judgment of Apex Court in Maxopp Investment Ltd. v. CIT (2018) 402 ITR 640, the Ld. D.R. submitted that even to the investments in subsidiary companies, the provisions of Section 14A would be applicable. Referring to Rule 8D(2)(iii) of Income-tax Rules, 1962 as it stood at the relevant point of time, the Ld. D.R. submitted that the expenditure incurred by the assessee in earning exempted income irrespective of the fact whether the investment resulted in income or not, has to be disallowed in view of the language employed in Rule 8D(2)(iii). According to the Ld. D.R., "income from which does not or shall not form part of the total income" indicates that not only the income earned by the assessee during the current year but, the investment has potential to earn money in future has also to be considered for disallowance. The Ld. D.R. placed his reliance on the decision of Hyderabad Bench of this Tribunal in Bellwether Microfinance Fund Pvt. Ltd. v. ITO in I.T.A. No.1743/Hyd/2013 dated 27.06.2014. The Ld. D.R. further

submitted that the Madras High Court in the case of Redington (India) Ltd. v. Addl. CIT (2017) 392 ITR 633 had no occasion to consider the language of Rule 8D(2)(iii) of the Income-tax Rules, 1962.

3. On the contrary, Shri G. Baskar, the Ld.counsel for the assessee, very fairly submitted that in view of the judgment of Apex Court in Maxopp Investment Ltd. (supra), the investments made in subsidiary company for strategic investments are subject matter of disallowance under Section 14A of the Act. However, in this case, Rule 8D(2)(iii) would be applicable. Referring to provisions of Rule 8D(2)(iii), the Ld.counsel submitted that only those investments, income from which does not form part of total income of the assessee, has to be considered for disallowance. A similar view was taken by this Tribunal in Real Talent Engineering Pvt. Ltd. v. DCIT in I.T.A. No.121/Chny/2018. Referring to the argument of the Ld. D.R. that the word “does not” or “shall not” in Rule 8D(2)(iii) indicates that the provisions of Section 14A is applicable even though there was no income during the current year but it has potential to earn income in the subsequent year has to be considered for disallowance, the Ld.counsel submitted that a

Special Bench of Delhi Bench of this Tribunal in ACIT v. Vireet Investment (P.) Ltd. (2017) 165 ITD 27 had an occasion to consider this issue and found that unless there is an exempted income earned by the assessee, there cannot be any disallowance. According to the Ld. counsel, the Special Bench has specifically considered the word “does not” and “shall not” which occur in provisions of Rule 8D(2)(iii). Therefore, according to the Ld. counsel, it may not be correct to say that all the investments have to be subject matter of disallowance under Section 14A of the Act.

4. We have considered the rival submissions on either side and perused the relevant material available on record. From the order of assessment, it appears that the assessee has earned ₹3,08,46,380/- as dividend income and claimed the same as exempted income under Section 10(35) of the Act. The Assessing Officer computed the disallowance under Rule 8D(2)(iii) and disallowed ₹2,21,21,765/-. No disallowance was made under limb (i) and (ii) of Rule 8D(2). The CIT(Appeals) allowed the claim of the assessee on the ground that it was invested in the subsidiary companies for strategic investments. As rightly submitted by the Ld. D.R. and the Ld.counsel for the assessee, even if the investment

was made in subsidiary company and for strategic investment, the provisions of Section 14A of the Act would be applicable. Therefore, the CIT(Appeals) is not correct in saying that the strategic investment made in the subsidiary companies is to be excluded.

5. Now coming to the contention of the Ld. D.R. that in view of the language employed in Rule 8D(2)(iii) of Income-tax Rules, 1962 “does not” and “shall not”, even the investment which has potential to earn profit in the subsequent year also has to be considered for disallowance. This Tribunal is of the considered opinion that in view of the decision of Special Bench of Delhi Bench in the case of Vireet Investment (P.) Ltd. (supra), what is to be considered is only the investments which result in exempted income during the year under consideration. The Madras High Court in Redington (India) Ltd. (supra), after considering provisions of Section 14A of the Act, found that only those investments are to be considered for computing average value of investments which yielded exempted income. The judgment of Madras High Court was followed by this Tribunal in M/s Real Talent Engineering Pvt. Ltd. (supra). In view

of the above, this Tribunal finds no merit in the contention of the Ld. D.R.

6. In view of the decision of Special Bench in Vireet Investment (P.) Ltd. (supra), the decision of Hyderabad Bench in Bellwether Microfinance Fund Pvt. Ltd. (supra) may not be applicable to the facts of the case. Therefore, the Assessing Officer has to find out the investment which yielded exempted income during the year under consideration. Accordingly, the orders of both the authorities below are set aside and the entire issue of disallowance made 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 find out on the basis of material filed by the assessee, the investments which yielded exempted income during the year under consideration and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

7. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the court on 29<sup>th</sup> November, 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 29<sup>th</sup> November, 2019.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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