

आयकर अपीलिय अधिकरण "A" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री एम बालगणेश, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI M BALAGANESH, AM

आयकर अपील सं./ ITA No. 5827/Mum/2018

(निर्धारण वर्ष / Assessment Year 2015-16)

Arya Offshore Services Pvt. Ltd. Unit No. 801, Godrej Coliseum, C-Wing, Off Somaiya Hospital Road, Sion Mumbai-400 022	बनाम / Vs.	The Dy. Commissioner of Income Tax, Central Centre 6(4), Room No. 1925, 19 th Floor, Air India Building, Nariman Point, Mumbai-400 021
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./ PAN No. AAACA1034D		

अपीलार्थी की ओर से / Appellant by	:	Shri Hitesh Trivedi, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri S. Michael Jerald, DR

सुनवाई की तारीख / Date of hearing:	12.12.2019
घोषणा की तारीख / Date of pronouncement:	08.01.2020

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/

PER MAHAVIR SINGH, JM:

This appeal by assessee is arising out of order of the Commissioner of Income Tax (Appeals)-54, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-4/IT-10084/DCCC.6(4)/2017-18 vide dated 23.07.2018. The Assessment was framed by the Dy. Commissioner of Income Tax, Central Circle-6(4), Mumbai (in short DCIT/ AO) for the A.Y. 2015-16 vide order dated 17.05.2017 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').



2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in disallowing expenses relatable to exempt income amounting to ₹4,95,439/- by invoking the provisions of section 14A read with rule 8D of the Rules. For this, assessee has raised the following five grounds: -

"1. The Learned CIT (A) erred in confirming disallowance to the extent to Rs. 4,95,439/- out of Rs. 27,31,114/- disallowed by Assessing Officer under section 14A r.w.r. 8D.

2. The Learned CIT (A) erred in not considering plea of the appellant all investments were made in Associated Companies and all Investments were made purely out of internal accruals and not out of borrowed fund and we have not spent any amount in earning dividend income as same is received from group company.

3. The Learned CIT (A) erred in not considering plea of the appellant that strategic investments should not be considered for the purpose of computing amount of disallowance under section 14A r.w.r. 8D.



4. *The Learned CIT (A) erred in not considering several judgements quoted by appellant in submission dated 20.06.2018 ie J. M. Financial Ltd. vs. ACIT [ITA No. 4521/ Mum / Tribunal], Garware Wall Ropes (ITA No. 5408/ Mum / 2012] etc.*

5. *The learned CIT (A) erred in mentioning in para 6 that assessee's AR replied to assessing officer that there is no dividend income and hence no disallowance u/s. 14 A is warranted. However, no such observation was noted by the Assessing Officer in her order passed and in fact the assessee had earned meagre dividend of Rs. 4,95,439/- on which dividend distributed tax was paid by MIS. International Cargo Terminals and Infrastructure Pvt. Ltd. and which was mentioned by the assessee in its submission."*

3. Briefly stated facts are that the assessee company has earned dividend income of ₹4,95,439/- on the preferential shares of 2,50,000 of ₹100 each fully paid up of International Cargo Terminals and Infrastructure Pvt. Ltd. Which were converted into 1,95,313 equity shares of ₹10 each fully paid up. The assessee suo moto disallowed a sum of ₹5000/- under section 14A of the Act. We noted that the AO simply computed



the disallowance under Rule 8D at ₹27,36,114/- straightway applying the formula without recording any satisfaction. Even, the CIT(A) restricting the disallowance at ₹4,95,439/- to the extent of dividend income as against disallowance made by the AO at ₹27,36,114/-. We noted that the CIT(A) relying on the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs. CIT [2018] 402 ITR 640 (SC) held that this strategic investment and this stock-in-trade is not an investment to earn dividend income but to gain control over the investee company. But that does not appear to be relevant factor in determining the issue and fact remain that the assessee has earned dividend income which is not taxable and hence Hon'ble Supreme Court held that expenses relatable to dividend income in such circumstances are to be disallowed. We find that the CIT(A) has rightly restricted the disallowance to the extent of exempt income at ₹4,95,439. We confirm the order of CIT(A) and this appeal of assessee is dismissed.

4. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 08.01.2020

Sd/-

(एम बालगणेश / M BALAGANESH)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 08.01.2020

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)



आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai