

आयकर अपीलीय अधिकरण , ' डी ' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, CHENNAI

श्री धुव्वुरु आर. एल रेड्डी, न्यायिक सदस्य एवं, श्री एस जयरामनलेखा सदस्य समक्

BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 1359/Chny/2019

निर्धारण वर्ष/Assessment Year : 2016-17

M/s. Take Solutions Limited,
No. 27, Tank Bunk Road,
Nungambakkam,
Chennai – 600 034.

Assistant Commissioner of Income
Vs. Tax,
Corporate Circle 3(1),
Chennai.

[PAN: AABCT 3684M]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. M. Mukesh Kumar, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri. R. Anitha, JCIT

सुनवाईकीतारीख/Date of Hearing

: 24.10.2019

घोषणाकीतारीख/Date of Pronouncement

: 20.01.2020

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)- 11, Chennai, in ITA No. 51/18-19 dated 21.02.2019 for assessment year 2016-17.

2. M/s. Take Solutions Limited, the assessee, is engaged in the business of software development and service sector. Its assessment for the assessment year 2016-17 was completed u/s. 143(3) on 23.12.2018, wherein, the Assessing Officer invoked the provisions of section 14A r.w.r. 8D and made a disallowance of Rs. 13,72,828/- under Rule 8D(i), Rs. 1,32,48,900/- under Rule 8D(iii) and thus, arrived a total disallowance at Rs. 1,46,21,428/-. However, applying the Apex court decision in the case of PCIT, Patiala vs State Bank of Patiala (2018) 99 Taxmann.286 (SC) dated 08.11.2018, he restricted the disallowance u/s. 14A r.w.r. 8D to the extent of exempt income at Rs. 24,83,128/- only. Aggrieved, the assessee filed an appeal before the CIT(A). The CIT(A) enhanced the disallowance from Rs. 24,83,128/- to Rs. 1,46,21,428/-. Thus, an enhancement of income of Rs. 1,21,38,300/- was made by the Ld. CIT(A) and he has also initiated penalty proceedings u/s. 271(1)(c). Aggrieved, the assessee filed this appeal.

3. The Ld. AR submitted that aggrieved against the disallowance made by the AO, the assessee filed an appeal before the Ld. CIT(A) pleading, inter alia, that the assessee has not incurred any expenditure for earning exempt income, the Ld. AO erred in applying Rule 8D without having regard to the accounts of the assessee as to why he was not satisfied with assessee's claim that no expenditure was incurred in relation to exempt income, that the interest expenses of Rs. 19,09,178/- was incurred exclusively for the business carried on by the assessee etc and relying on specific case laws of the tribunal on such

issues. Further, the assessee also claimed that the depreciation allowance claimed by it was not allowed by the AO. The Ld.AR submitted that the Ld. CIT(A) without considering the facts and the associated case laws relied on by the assessee, overruled the decision of the AO which is based on the application of the Apex Court decision in the case of PCIT, Patiala vs State Bank of Patiala, (2018) 99 Taxmann.286 (SC) dated 08.11.2018, enhanced the assessment and hence the Ld. AR pleaded to allow the assessee's appeal. He further brought to our notice that the Ld. CIT(A) in the assessee's own case in ITA 65(T)/CIT(A)-7/17-18 dated 15.11.2018 has considered these issues in favour of the assessee. Though, the assessee filed an application u/s. 154 before the Ld. CIT(A), the Ld. CIT(A) while disposing the petition u/s. 154 vide his order in ITA No. 51/18-19 dated 04.04.2019 has partially considered the issues and he has not dealt the other issues. Per contra, the Ld. DR supported the orders of the Ld CIT(A).

4. We heard the rival submissions. It is clear from the order of the Ld. AO that he has applied the Apex Court decision in the case of PCIT, Patiala vs State Bank of Patiala, (2018) 99 Taxmann.286 (SC) dated 08.11.2018 in the assessee's case, and restricted the disallowance u/s. 14A r.w.r 8D to the extent of exempt income only. Aggrieved against that order, the assessee filed an appeal raising specific issues relying on the specific case laws. It is seen from the order of the Ld. CIT(A) that he has not considered the specific points raised by the assessee, however, disposed the appeal by enhancing the assessment. It is also seen that the Ld. CIT(A) has not dealt the ground raised by the assessee with regard to the

depreciation issue. In view of these facts and circumstances, we deem it fit to remit the issues back to the Ld. CIT(A). The assessee shall lay all material in support of its contentions and comply with the requirements of the Ld. CIT(A) in accordance with law. The Ld. CIT(A) after examining the specific issues raised by the assessee and after affording effective opportunity to the assessee, shall pass appropriate order in accordance with law.

5. In the result, the assessee's appeal is treated as partly allowed for statistical purposes.

Order pronounced on 20th January, 2020 at Chennai.

Sd/-

(धुव्वुरुआर.एलरेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एसजयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 20th January, 2020

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त) अपील(/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF