

**IN THE INCOME TAX APPELLATE TRIBUNAL 'D' BENCH: CHENNAI  
(CAMP AT COIMBATORE)**

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./ITA Nos.1906, 592 & 1578/Chny/2018

निर्धारण वर्ष /Assessment Years: 2009-10, 2010-11 & 2011-12

The Dy. Commissioner of Income Tax,  
Corporate Circle-1,  
Coimbatore.

M/s. Sharadha Terry Products  
Ltd.,  
**Vs.** No.8, Badrakaliamman Kovil  
Road, Nellithurai Post,  
Mettupalayam,  
Coimbatore – 641 305.

(अपीलार्थी/Appellant)

**[PAN: AADCS 0657H]**  
(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.1324/Chny/2018

निर्धारण वर्ष /Assessment Year: 2011-12

M/s. Sharadha Terry Products Ltd.,  
No.8, Badrakaliamman Kovil Road, **Vs.**  
Nellithurai Post,  
Mettupalayam,  
Coimbatore – 641 305.

The Dy. Commissioner of Income  
Tax,  
Corporate Circle-1,  
Coimbatore.

**[PAN: AADCS 0657H]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by

: Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से /Revenue by

: Shri J.Pavitran Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 05.02.2020

घोषणा की तारीख /Date of Pronouncement

: 05.02.2020

**आदेश / ORDER**

**PER BENCH:**

Appeals in ITA Nos. 1906, 592 & 1578/Chny/2018 for Assessment Years (AYs) 2009-10 to 2011-12 of the Revenue and ITA No.1324/Chny/2018 for AY 2011-12 of assessee are directed against the orders passed by the Commissioner of Income Tax (Appeals)-1, Coimbatore dated 15.03.2018, 05.12.2017 & 22.02.2018 respectively.

**I.T.A No.1578/Chny/2018 for AY 2011-12:**

2. When the appeal is taken for hearing Shri J.Pavitran Kumar, the Ld. Departmental Representative submitted that the tax effect involved in this appeal is less than Rs.50 lakhs. In view of the latest circular issued by the Central Board of Direct Taxes (CBDT), instructing its officers not to file an appeal before this Tribunal, wherein the tax effect is less than Rs.50 lakhs, this Tribunal is of the considered opinion that the appeal filed by the Revenue is not maintainable. Accordingly, the appeal of the Revenue stands dismissed.

3. In the result, the appeal of the Revenue in ITA No.1578/Chny/2018 for AY 2011-12 is dismissed.

**ITA No.1906 & 592/Chny/2018 for AYs 2009-10 & 2010-11:**

4. Shri J.Pavitran Kumar, the Ld. Departmental Representative submitted that the CIT(A) allowed appeal of the assessee on the ground that the reopening of assessment is bad in law. According to the Ld. Departmental Representative, the assessment was reopened beyond four years, since there was wrong claim under Section 10(B) of the Act therefore, the CIT(A) is not justified in allowing the appeal of the assessee.

5. We heard Shri S. Sridhar, the Ld. Counsel for the assessee also and perused both the orders of lower authorities. There is not even whisper in the assessment order that there was any negligence on the part of the assessee in disclosing the particulars which is required for completing the assessment. It is also not in dispute that the assessment was reopened after four years therefore, the provisions of s. 147 of the Act will come into operation. Unless the AO establishes that there was any negligence on the part of the assessee in disclosing all the material facts relevant to the assessment, the assessment cannot be reopened. In this case, it is not the case of the Revenue that there was any negligence on the part of the assessee in disclosing the material facts relevant to the assessment years therefore, the CIT(A) has rightly allowed the appeals of the assessee and the same is confirmed.

6. In the result, the appeals of the Revenue in ITA No.1906 & 592/Chny/2018 for AYs 2009-10 & 2010-11 are dismissed.

**ITA No.1324/Chny/2018 for AY 2011-12:**

7. The first ground of appeal relating to disallowance of Rs. 31,43,000/- being the expenditure incurred by the assessee for registration of trade mark. Shri S. Sridhar, the Ld. Counsel for the assessee submitted that the assessee incurred expenditure for registration of trade mark "micro cotton" in foreign countries the payments were made to attorneys and others in the course of business activity therefore, it has to be considered as revenue expenditure.

8. On the contrary, Shri J. Pavitran Kumar, the Ld. Departmental Representative, submitted that the "micro cotton" it is a brand name. Registration of trade mark is nothing but creation of capital asset therefore, the expenditure incurred by the assessee in the course of creation of capital asset has to be necessarily treated as capital expenditure and the same cannot be allowed. By way of rejoined, the Ld. Counsel submitted that if it is treated as a capital expenditure the assessee is entitled for depreciation.

9. Having heard the Ld. Counsel and the Ld. Departmental Representative, this Tribunal is of the considered opinion that the trade

mark is nothing but a capital asset. Admittedly, the assessee incurred the expenditure for registration of the trade mark in foreign countries therefore, any expenditure incurred by the assessee in connection with creation/establish of capital asset has to be necessarily be treated as a capital expenditure and the assessee cannot claim the same as revenue expenditure. However, as rightly submitted by the Ld. Counsel for the assessee, the assessee is entitled for depreciation. Therefore, the AO may allow depreciation at the applicable rate.

10. The next issue with regard to disallowance of expenditure u/s. 14A of the Act. Shri S. Sridhar, the Ld. Counsel submitted that the assessee has own funds to the tune of Rs. 37003 lakhs in the form of share capital and reserve. The admitted investment is only Rs. 303 lakhs. Moreover, for the limb 2 of Rule 8D (2) of the Income Tax Rules, 1962 (in short "The Rules") and limb 3, the investment which earned the income alone has to be considered. This aspect was neither considered by the AO nor by the CIT(A) therefore, the Ld. counsel submitted that the matter may be remitted back to the file of AO.

11. On the contrary, Shri J. Pavitran Kumar, the Ld. Departmental Representative submitted that whether the assessee has invested its own funds or the borrowed funds, there should be some expenditure

which has to be disallowed therefore, CIT(A) has rightly confirmed the disallowance made by the AO.

12. Having heard the Ld. Counsel for the assessee and the Ld. Departmental Representative, this Tribunal is of the considered opinion that in case the assessee has invested the borrowed funds it has an impact on the expenditure therefore, it has to be ascertained before making any disallowance. Moreover, as rightly submitted by the Ld. counsel for the assessee, the investment which earned dividend income or exempt income alone has to be considered for limb 2 and limb 3 of Rule 8D(2) of the Rules. This aspect also needs to be re-examined. Since, both the authorities below has examined this aspect, the orders of the authorities below are set aside and the entire issue with regard to the disallowance u/s. 14A of the Act is remitted back to the file of AO. The AO shall re-examine the matter afresh in the light of the material that may be filed by the assessee and decide the issue in accordance with law after giving a reasonable opportunity to the assessee.

13. The next issue arising for consideration is exemption claimed u/s. 10B of the Act. The Ld. Counsel for the assessee submitted that the assessee has also earned profit by doing job work during the available time. According to the Ld. Counsel for the assessee the profit of the undertaking has to be considered for exemption u/s. 10B of the Act.

Placing reliance on the judgment of the Madras High Court in the case of Camiceria Apparels India (P.) Ltd. vs. ACIT [2019] 103 taxmann.com 238 (Mad), the Ld. counsel submitted that under the scheme of s. 10B of the Act, the profit of the undertaking has to be considered therefore, the matter may be remitted back to the file of AO for re-consideration in the light of provisions of s. 10B of the Act. The Ld. Counsel for the assessee further submitted that in the assessee's own case this Tribunal decided the matter against the assessee.

14. On the contrary, Shri J. Pavitran Kumar, the Ld. Departmental Representative submitted that in view of decision of this Tribunal in the assessee's own case, the assessee is not entitled for any deduction in respect of profit to earn domestically under Section 10B of the Act.

15. Having heard the Ld. Counsel for the assessee and the Ld. Departmental Representative, this Tribunal is of the considered opinion that in view of the judgment of Hon'ble High Court of Madras High Court in the case of Camiceria Apparels India (P.) Ltd. (supra), the matter needs to be re-examined. It is also necessary to compute the eligible deduction by applying the provisions of sub s. (4) to s. 10B of the Act. This aspect naming the judgment of the Madras High Court and the provisions of Section 10B (4) of the Act was not considered by the earlier Bench of this Tribunal when the issue was decided against the assessee. Therefore, this Bench of the Tribunal is of the considered

opinion that the decision in the assessee's own case for the earlier assessment years may not be applicable for the year under consideration. Accordingly, the orders of the both the authorities below are set aside and the issue with regard to deduction u/s. 10B of the Act is remitted back to the file of AO. The AO shall re-consider the issue in the light of judgment of Madras High Court in *Camiceria Apparels India (P) Ltd (supra)*, under the provisions of sub s. (4) to s. 10B of the Act and thereafter decide the issue in accordance with law after giving a reasonable opportunity to the assessee.

16. In the result, the appeal filed by the Revenue in ITA Nos.1906, 592 & 1578/Chny/2018 for Assessment Years 2009-10, 2010-11 & 2011-12 stand dismissed. However, the appeal filed by the assessee in ITA No.1324/Chny/2018 for Assessment Year 2011-12 stands partly allowed for statistical purpose.

*Order pronounced in the open court on 5<sup>th</sup> February, 2020 at Camp at Coimbatore.*

Sd/-

(एस. जयरामन)

(S. JAYARAMAN)

लेखा सदस्य /ACCOUNTANT MEMBER

Coimbatore,

दिनांक/Dated: 5<sup>th</sup> February, 2020.

*EDN, Sr. P.S*

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER