आयकर अपीलीय अधिकरण, 'ए 'न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'A' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./**I.T.A.No.1438/Chny/2018**

(निर्धारणवर्ष / Assessment Year: 2014-15)

The Deputy Commissioner of Income Tax, Corporate Circle-2(1) 511, Wanaparthy Block, Chennai-34.	Vs	M/s. Frendi Fashions Pvt.Ltd. 6, MKM Towers, Arcot Road Porur, Chennai-600 116.
		PAN: AAACF 1121A
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. Suresh Periasamy, JCIT
प्रत्यर्थीकीओरसे/Respondent by	:	Mr.B.Ramakrishnan, FCA

सुनवाईकीतारीख/Date of hearing	:	16.03.2021
घोषणाकीतारीख /Date of Pronouncement	:	31.03.2021

आदेश / O R D E R

PER G.MANJUNATHA, AM:

This appeal filed by the Revenue is directed against the order of the learned CIT(A)-6, Chennai dated 31.01.2018 and pertains to assessment year 2014-15.

2. The Revenue has raised the following grounds of appeal:-

> *"1. The Order of the learned Commissioner of Income Tax (Appeals) is contrary to the Law and facts of the case.*
>
> *2.1 The CIT(A) erred in directing the AO to delete the disallowance made u/s.14A as the assessee has not earned any exempt income when there is no such exception provided in Rule 8D of IT Rules.*

2.2 The CIT(A) ought to have appreciated the fact that the CBDT circular No.5/2014 wherein it is clarified that disallowance u/s. 14A r.w.r. 8D has to be made even (the taxpayer in a particular year not earned any exempt income.

2.3 The CIT(A) erred in relying on the decision of the Hon'ble Madras High Court in the case of Redington (India) Limited vs AddI.CIT in TCA No. No.520 of 2013 dated 23.12.2016, has not been accepted by the Department.

3.1 The CIT(A) erred in deleting the addition made on account of employees contribution on ESI & PF when the same were not paid by the assessee within the due date of relevant Acts.

3.2 The CIT(A) ought to have appreciated that the employees contribution of ESI & PF are governed by the section 36(1)(va) of the Act and not under section 43B of the Act

3.3 The recent Boards Circular No.22/2015, dt.17.12.2015 has accepted the decision of the Supreme Court in the case of Alom Extrusions only in respect of disallowance u/s 43B of the Act and has stated that this Circular does not apply to the claim of deduction relating to employees contribution to welfare funds which are governed by section 36(1)(va) of the Act.

4.1 The CIT(A) erred in deleting the disallowance made on account speculative loss amounting to Rs.81,12,608/- by holding that transaction in foreign exchange were incidental to the assessee's regular course of business and thus the loss was not speculative uls.43(5).

4.2 The CIT(A) ought to have appreciated that forward contracts in currency is not covered by the exceptions to the definition of speculative transactions as provided in proviso (a)to (e) to section 43(5) of the Act.

4.3 The CIT(A) ought to have appreciated when the assessee has cancelled the forward contract, the onus was

on the assessee to explain satisfactorily why assessee resorted to cancellation. In the instant case, the assessee neither before the Assessing Officer nor before the Appellate authority, had demonstrate satisfactorily the need of such cancellation.

4.4 The CT(A) failed to appreciate that majority of the cases, the cancellation of contract notes had been made before the due date of the expiry and therefore the loss accounted on the cancellation of contracts represented a loss not related to the business of exports receivables/payables.

5.1 The CIT(A) erred in directing the AO to delete the addition made on account of stitching charges by holding that mere non production of the party cannot be the basis to make a disallowance when all the supporting evidences have been filed and substantiated.

5.2 The CIT(A) failed consider the fact that the addition was made not only by non production of the party, in addition to the absence of details and documentary evidences in support of rendering of services to the assessee company was not proved / substantiated either by the assessee or by the concerned party.

5.3 The CIT(A) omitted to call for remand report ulr 46A when the assessee furnished any details/fresh evidence in support of its claim during the appellate proceedings, on which the CIT(A) relied on the same and allowed the ground of the assessee.

6. For these and other grounds that may be adduced at the time of hearing, it is prayed that the Order of the learned Commissioner of Income Tax (Appeals) be set aside and that of the Assessing Officer be restored."

3. Brief facts of the case are that the assessee company is engaged in the business of manufacturing textiles and export of

readymade garments filed its return of income for the assessment year 2014-15 on 28.11.2014 declaring total income of ₹ 1,01,61,620/-. The case was taken up for scrutiny and assessment has been completed u/s. 143(3) of the Act on 23.12.2016 and determined total income at ₹ 3,59,50,810/- by making various additions including disallowance of expenditure incurred in relation to exempt income u/s.14A r.w. Rule 8D of the Income Tax Rules, 1962, disallowance of employees contribution towards PF & ESI u/s.36(1)(va) r.w.s 2(24)(x), additions towards loss on forward contracts and disallowance of stitching charges for want of evidence. The assessee carried the matter in appeal before the first appellate authority and the learned CIT(A), for the detailed reasons recorded in his appellate order, deleted the additions made by the Assessing Officer towards disallowance of expenditure u/s.14A r.w. Rule 8D, disallowance of employees contribution towards PF & ESI u/s.36(1)(VA) r.w.s 2(24)(x), disallowance of loss on forward contracts and disallowance of stitching charges. Aggrieved by the CIT(A) order, the Revenue is in appeal before us.

4. The first issue that came up for our consideration from ground no.2 of revenue appeal is disallowance of expenditure u/s.14A r.w. Rule 8D of the Income Tax Rules, 1962. The Assessing Officer has disallowed a sum of ₹ 10,61,800/- towards interest expenses under Rule 8D(2)(ii) and other expenses under Rule 8D(2)(iii) on the ground that whether or not exempt income is received during the year, expenses relatable to such exempt income needs to be disallowed. It was the contention of the assessee before the Assessing Officer that it has not received any exempt income for the year under consideration and hence, question of disallowance of expenditure incurred towards said exempt income does not arise.

5. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. We find that issue of disallowance of expenditure u/s.14A read with Rule 8D, when the assessee has not earned any exempt income for the impugned assessment year has been considered by the Hon'ble Jurisdictional High Court of Madras in the case of CIT Vs. Chettinad Logistics Pvt.Ltd. 80

Taxmann.com 221(Mad), where it was held that when there is no exempt income, no disallowance u/s.14A of the Act. Further the Hon'ble Supreme Court has dismissed SLP filed by the Revenue against the order of Hon'ble High Court of Madras and upheld the findings of High Court of Madras holding that if no exempt income, then no disallowance u/s.14A read with Rule 8D of the Income Tax Rules, 1962. The Hon'ble Jurisdictional High Court of Madras in the case of M/s. Redington India Ltd. Vs.Addl.CIT (2017) 77 Taxmann.com 257 (Mad) has taken a similar view and held that no disallowance should be made, if exempt income is shown as Nil. The learned CIT(A), after considering relevant submissions of the assessee and also by following decisions of Hon'ble Jurisdictional High Court of Madras in the cases discussed hereinabove, deleted additions made by the Assessing Officer towards disallowance of expenditure including interest expenditure u/s.14A read with Rule 8D of the Rules. The findings recorded by the learned CIT(A) are uncontroverted . The Revenue has failed to bring on record any contrary decision to support its arguments. Therefore, by following the decision of Hon'ble Jurisdictional

High Court of Madras in the case of M/s. Redington India Ltd. (supra), we are of the considered view that when there is no exempt income earned for the year, no disallowance can be made towards expenses relatable to said exempt income u/s.14A read with Rule 8D. Hence, we are inclined to uphold the findings of the learned CIT(A) and reject ground taken by the Revenue.

6. The next issue that came up for our consideration from ground no.3 of Revenue appeal is disallowance of contribution to PF and ESI u/s.36(1)(va) r.w.s 2(24)(x) of the Act. The Assessing Officer has disallowed a sum of ₹ 33,80,366/- owing to belated payments made towards employees contribution of ESI and PF u/s.36(1)(va) read with 2(24)(x) of the Act. According to the Assessing Officer, employees contribution to PF & ESI not remitted within due date specified under respective Acts is not allowable u/s.36(1)(va) of the Act. It was the claim of the assessee before the Assessing Officer that although, contribution to PF & ESI was not remitted before due date specified under respective Acts, but such contribution has been made on or before due date for furnishing return of

income u/s.139(1) of the Act. Therefore, same cannot be disallowed u/s.36(1)(va) read with 2(24)(x) of the Act.

7. We have heard both the parties, perused the materials available on record and gone through the orders of authorities below. The learned CIT(A) has deleted additions made by the Assessing Officer towards employees contribution to PF & ESI, which was paid belatedly to the credit of employees account, but remitted on or before due date for furnishing return of income u/s.139(1) of the Act, by placing reliance on the decision of Hon'ble Jurisdictional High Court of Madras in the case of CIT Vs. M/s. Industrial Security & Intelligence India Pvt. Ltd., in TCA No.585 & 586 of 2015 dated 24.07.2015 and such finding was further supported by the decision of the Hon'ble Supreme Court in the case of CIT V. Alom Extrusions Ltd. reported in 319 ITR 306, where it was held that if employees contribution to PF & ESI is remitted on or before due date for furnishing return of income filed u/s.139(1) of the Act, then such payments need to be allowed as deduction, irrespective of the fact that such payment has been remitted beyond due date specified under the respective Acts. The Hon'ble Supreme

Court has also considered Board's Circular No.22/2015 dated 17.12.2015 to arrive at such conclusion. Therefore, we are of the considered view that findings recorded by learned CIT(A), in light of decision of the Hon'ble Jurisdictional High Court of Madras and the decision of the Hon'ble Supreme Court in the cases discussed hereinabove, is in accordance with law and does not call for any interference from our end. Therefore, we are inclined to uphold the findings of the learned CIT(A) and reject the ground taken by the Revenue.

8. The next issue that came up for our consideration from ground no.4 of Revenue appeal is disallowance of loss on forward contracts. The facts with regard to impugned dispute are that the assesse is into export of garments and in the process, it has entered into forward contracts for hedging loss on fluctuation in foreign currency. The said loss has been treated as revenue expenditure. The Assessing Officer has disallowed loss claimed on forward contracts on the ground that assessee's case does not fall under any of the exceptions provided under the proviso to section 43(5) of the Act, because the assessee has entered into forward contracts not for goods

or merchandise, but for currency. The claim of the assessee before the Assessing Officer was that it has entered into forward contracts to hedge possible loss on account of fluctuation in foreign currency, therefore, same cannot be considered as speculative loss covered u/s.43(5) of the Act.

9. We have heard both the parties and perused the materials available on record along with the order of the learned CIT(A) . The learned CIT(A) has recorded a categorical finding in light of decision of Hon'ble Gujarat High Court in the case of CIT Vs. Friends & Friends Shipping Pvt Ltd in Tax Case Appeal No.251 of 2010 dated 23.08.2011 that when forward contracts entered into with banks for the purpose of hedging loss due to fluctuation in foreign currency while implementing export of goods, then the same cannot be considered as speculative loss u/s.43(5) of the Act. The learned CIT(A) has further recorded that the assessee has furnished necessary evidences to prove that it has exported goods and hedge possible loss in fluctuation in foreign currency had entered into forward contract with its bankers and incurred loss. Therefore, we are of the considered view that once forward contracts are entered into

with bankers for the purpose of hedging possible loss in fluctuation of foreign currency, then the same is in the nature of revenue expenditure, but not speculative loss u/s.43(5) of the Act. The learned CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer towards disallowance of loss on forward contracts. Hence, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the Revenue.

10. The next issue that came up for our consideration from ground no.5 of Revenue appeal is disallowance of unproved stitching charges of ₹ 1,30,36,426/-. The Assessing Officer has disallowed stitching charges paid M/s.R Design Apparel on the ground that although the assessee has filed necessary evidences including confirmation from the party, but the party had not attended when called upon to appear before the Assessing Officer to cross examine the claim of the assessee. It was the claim of the assessee before the Assessing Officer that stitching charges has been paid and such payment was substantiated by necessary evidence including TDS has been deducted as applicable under the law. Therefore, merely for

non-appearance of party in response to 133(6) notice, no adverse inference can be drawn against the assesse, when assessee has filed complete details about the expenditure.

11. We have heard both the parties, perused the materials available on record and gone through the orders of authorities below. We find that the Assessing Officer has disallowed stitching charges only for the reason that party has not appeared before the Assessing Officer in response to notice u/s.133(6). Except this, no other adverse comment has been made in respect of payment made to M/s.R Design Apparels for stitching charges. In fact, the Assessing Officer has not doubted genuineness of payment. The learned CIT(A), after considering relevant facts has rightly pointed out that payments have been made through banking channels after deducting applicable TDS as per law. Further, the assessee has filed necessary evidences, including bills issued by party for rendering services. Therefore, he opined that mere non-production of the party cannot be a basis to make disallowance, when all other supporting evidences have been filed to substantiate claim of expenditure. The said findings of the

learned CIT(A) goes uncontroverted from the Revenue. The revenue has failed to file any evidence to counter the finding of facts recorded by the CIT(A) . Hence, we are inclined to uphold the findings of learned CIT(A) and reject ground taken by the revenue.

12. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 31st March, 2021

Sd/-	Sd/-
(वी.दुर्गा राव)	**(जी.मंजुनाथ)**
(V.Durga Rao)	(G.Manjunatha)
न्यायिक सदस्य /Judicial Member	लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 31st March, 2021
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आदेश की प्रतिलिपि अग्रेषित/Copy to:

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