

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री धुव्वुरु आर.एल रेड्डी ,न्यायिक सदस्य एवं श्री जीमंजुनाथ ., लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **1126/CHNY/2019**

निर्धारण वर्ष / Assessment Year: 2013-14

Shri Venkatesh Daggubati,
No.7, Palat Madhavan Road,
Mahalingapuram,
Chennai – 600 034.

The ACIT,
v. Non-Corporate Circle– 20(1),
Chennai.

PAN: AAHPB 0939Q

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: None

प्रत्यर्थी की ओर से/Respondent by

: Shri G. Johnson, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 28.04.2021

घोषणा की तारीख/Date of Pronouncement

: 14.06.2021

आदेश /O R D E R

Per G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-12, Chennai, dated 31.01.2019 and pertains to assessment years 2013-14.

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

1. The order of the Learned Commissioner of Income Tax Appeals, Chennai, in upholding the order of the Assessing Officer in disallowing 25% of the depreciation on the car for probable personal use and the disallowance of expenditure under section 14A are bad in law, against the principles of justice, weight of evidence and probabilities of the case of the appellant.

2. The Learning Assessing Officer and the Appellate Commissioner have erred in ignoring the fact that once a car is acquired and put to use for business the asset falls under the block of asset concept and it becomes business asset which could not be segregated for personal use and business use and disallowing 25% on depreciation for personal use is untenable in law.

3. The Learned Assessing Officer and Commissioner of Income Tax, Appeals were wrong in invoking the provisions of Rule 8D read with Section 14A while that provisions are not applicable to the case and facts of the case of appellant.

4. The Learned Commissioner of Income Tax Appeals erred in not considering the fact that the expenditure in earning the exempted income had not incurred any expenditure which had any nexus with the exempted income.

5. The appellant craves leave to file and furnish in case of a need additional grounds if any before the hearing at the time of hearing.

6. The appellant prays that both the additions made to the income returned be deleted and justice rendered to the appellant.

3. At the outset, we find that the appeal filed by the assessee is time barred by limitation i.e. 11 days and the assessee has filed necessary petition for condonation of delay along with affidavit explaining reason for delay in filing the appeal. The assessee submitted that the delay in filing the said appeal was neither willful nor deliberate but due to circumstances beyond the control of the assessee because he

was not in station due to his daughter's marriage during the period when the assessment order was served. Because of this, the appeal could not be filed within the statutory time allowed under the Income Tax Act, 1961 (hereinafter the 'Act'). Having heard the Revenue and considered petition filed by the assessee, we are of the considered view that reasons given by the assessee for not filing the appeal within the time allowed under the Act comes under reasonable cause as provided under the Act for condonation of delay and hence, delay in filing of above appeal is condoned and appeal filed by the assessee is admitted for adjudication.

4. The brief facts of the case are that the assessee is an individual deriving income from house property, business and other source, filed his return of income for the assessment year 2013-14 on 26.07.2014 declaring total income of Rs.3,11,64,900/-. The assessment was completed u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') on 17.03.2016 by determining total income at Rs.3,13,83,954/- by making addition towards 25% disallowance of depreciation on car, on the ground that use of car for personal purpose cannot be ruled out. Similarly, the AO has made addition towards disallowance of

expenses u/s.14A r.w.r 8D of Income Tax Rules, 1962 for Rs.2,19,054/-. The assessee carried the matter in appeal before the first appellate authority. The Id.CIT(A) for the reasons recorded in his appellate order has partly allowed the appeal filed by the assessee, where he had confirmed addition made towards disallowance of depreciation on car however, restricted disallowance of expenditure u/s.14A to the extent of exempt income earned for the year amounting to Rs.1,990/-. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

5. The first issue that came up for our consideration is disallowance of depreciation on car. The AO has made adhoc disallowance of 25% of depreciation on car, on the ground that use of car for personal purposes cannot be ruled out. It was the claim of the assessee before the AO that asset is purchased for business purpose and unless the AO brings on record to prove that car was used for personal purpose, no adhoc disallowance can be made towards depreciation.

5.1 Having heard the Id.DR and considered material available on record, we find that the AO has disallowed adhoc depreciation on car without bringing on record any evidence to prove that the

assessee has used car for personal purpose. No doubt, if an asset is used for personal purpose, expenses relating to such personal use can be disallowed. However, before doing so, it is for the AO to bring on record to suggest use of asset for personal purpose. In this case, nothing has been brought on record to prove the case of the AO that car was used for personal purpose. Therefore, we are of the considered view that the AO was erred in making adhoc disallowance of depreciation on car and hence, we direct the AO to delete addition made towards adhoc disallowance of depreciation on car.

6. The next issue that came up for our consideration is disallowance of expenses u/s.14A of the Act. The AO has determined disallowance of Rs.2,19,054/- u/s.14A by invoking Rule 8D of the IT Rules, as against total exempt income being dividend income earned for the year at Rs.1,990/-. It is a well settled principle of law that disallowance contemplated u/s.14A of the Act, cannot exceed exempt income earned for the year. In this case, although the assessee has earned exempt income of Rs.1,990/-, the AO has determined disallowance of Rs.2,19,054/- which is over and above exempt income earned for the year, contrary to the legal position. The Id.CIT(A) after

considering relevant facts has rightly restricted disallowance to the extent of exempt income. Therefore, we are of the considered view that there is no error in findings recorded by the Id.CIT(A) to restrict disallowance to the extent of exempt income and hence, we are inclined to uphold the findings of Id.CIT(A) and reject ground taken by the assessee.

7. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the court on 14th June, 2021 at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)
(Duvvuru RL Reddy)

न्यायिक सदस्य/Judicial Member

Sd/-

(जी. मंजुनाथ)
(G. Manjunatha)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai,
दिनांक/Dated, the 14th June, 2021.

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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