

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI**

श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष

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

आयकर अपील सं./ITA No.: 1518/Chny/2015

निर्धारण वर्ष /Assessment Year: 2009-10

M/s. Carburettors Ltd.,
"Raheja Towers", 7th Floor,
Sigma Wing No. 177,
Anna Salai,
Chennai – 600 002.

[PAN: AAACC 1299E]

Vs. Asst. Commissioner of Income
Tax,
Company Circle – (1)3,
Chennai.

आयकर अपील सं./ITA No.: 1642/Chny/2015

निर्धारण वर्ष /Assessment Year: 2009-10

Deputy Commissioner of Income Tax,
Corporate Circle – 1(2),
Chennai 600 034.

Vs. M/s. Carburettors Ltd.,
"Raheja Towers", 7th Floor,
Sigma Wing No. 177,
Anna Salai,
Chennai – 600 002.

[PAN: AAACC 1299E]

(प्रार्थक /Petitioner)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri. S. Sridhar, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Ms. R. Anita, JCIT

सुनवाई की तारीख/Date of Hearing

: 13.07.2021

घोषणा की तारीख /Date of Pronouncement

: 20.07.2021

आदेश / ORDER**PER SHRI S. JAYARAMAN, ACCOUNTANT MEMBER:**

These are the cross appeals filed by the Assessee and the Revenue against the order of the Commissioner of Income Tax (Appeals) -1, in ITA N. 571/13-14/A-1, New No. 123/CIT(A)-1/2013-14 dated 27.03.2015 for the assessment years 2009-10, respectively.

2. M/s. Carburettors Ltd., the assessee, filed its return of income declaring Nil income and claimed a business loss of Rs. 4,41,416/-. While making the assessment, the AO observed that though the assessee is claiming that it is engaged in the business of promoting companies, from the financials it is seen that the assessee company has no other activity apart from borrowing loans and investing in one of its sister concern. During the year, the assessee has borrowed secured loan of Rs. 35 crores from IL & FS Finance & Services, out of which invested Rs. 8,59,39,850/- in equity shares of its sister concern M/s. Ucal Fuel Systems Ltd and advanced Rs. 24 crores as loan to the same concern. The assessee company admitted interest income of Rs. 5,70,56,085/- from its sister concern and other companies and dividend income of Rs. 68,52,960/- received from M/s. Ucal Fuel Systems Ltd. The assessee claimed Rs. 5,27,79,702/- as interest expenditure towards the secured loan of Rs. 35 crores. On due examination, the AO

held that since the assessee invested interest bearing fund of Rs. 8,59,39,850/-, in equity shares in its sister concern and earned dividend income of Rs. 68,52,960/-, interest expenditure of Rs. 1,01,41,579/- has been incurred directly in relation to earning dividend income. Therefore, it has to be disallowed u 14A r.w.r. 8D(i) and accordingly disallowed. Further the AO made disallowance u/s. 14A r.w.r. 8D(iii) also. The AO also found from Schedule-2 "Reserves & Surplus" of the Balance Sheet as on 31.03.2009 that the assessee made addition of Rs. 2,83,40,470/- to "Reserves & Surplus", being capital receipts written back. The AO required the assessee to provide details of the date/year of receipt of the advance and the purpose of utilisation of advance received etc. Since, the assessee was not able to substantiate, relying on the decision of Bombay High Court in the case of Sold Containers Ltd., wherein the court relied on the Apex Court decision in the case of TV Sundaram Iyengar & Sons Ltd, treated the sum written back to the capital reserves as a revenue receipt. Aggrieved, the assessee filed an appeal before the CIT(A). The Ld. CIT(A) partly allowed the appeal. Aggrieved against that order the assessee as well as the Revenue filed these cross appeals.

3. These cases were heard through video conferencing. The Ld. AR submitted that although the assessee has taken various grounds, grounds related to the disallowances made u/s. 14 r.w.r. 8D alone are pressed and

accordingly invited our attention to copy of return in the file, particularly to Part A-BS and submitted that the assessee had total shareholders fund at Rs. 5,63,87,773/-, comprising share capital of Rs. 1,20,58,400/- and capital redemption reserve at Rs. 4,43,25,373/- as on 31.03.2009. In the disallowance made u/s. 14A r.w.r. 8D(i), the AO has not given due credit to these non-interest bearing fund which was in possession of the assessee. Therefore, the Ld. AR pleaded that due credit to this sum need to be given while working out the interest disallowance made towards the investment made in equity shares of Rs. 8,59,39,850/-. Further, the Ld. AR pleaded that the assessee has earned dividend income of Rs. 68,52,960/- only. Now it is a settled law that the disallowance u/s. 14A r.w.r. 8D cannot exceed the exempt income earned during the year. Therefore, the Ld. AR pleaded that the disallowances, to be made u/s. 14A r.w.r. 8D, if any, be restricted to the extent of exempt income earned during the year.

3.1 Per contra, the Ld. DR submitted that the assessee's plea that the shareholders fund and capital redemption reserves being non-interest bearing fund available for the investment in equity shares was not taken before the lower authorities and hence this issue requires examination. With regard to the decision of the Ld. CIT(A) that while working out the disallowance u/s. 14A r.w.r. 8D(iii), the investments made in the subsidiaries has to be eliminated while working out average investment in the formula of 8D(2)(iii),

inviting our attention to the Revenue's appeal grounds, the Ld. DR submitted that although the Ld. CIT(A) relied on the Jurisdictional ITAT decision in the case of EIH Associated Hotels in ITA No. 1503/Mds/2012 dated 17.07.2013, the decision of the Jurisdictional ITAT has not been accepted by the department and an appeal u/s. 260A is pending before the Hon'ble Jurisdictional High Court. Therefore, the order of the Ld. CIT(A) be set aside and the order of the AO be restored. Per contra, the Ld. AR supported the order of the Ld. CIT(A) and relied on it.

4. With regard to the Revenue's appeal, the Ld. DR invited our attention to the relevant portion of the assessment order which is extracted as under:

"5.3 The submissions of the assessee are considered and the issue is examined as under:

As per the submissions of the assessee company the loan was received long back even before 2004. The assessee company has availed a total sum of Rs. 2,83,40,470/- and the details of the creditors are given as below:

<i>PARTICULARS</i>	<i>AMOUNT (Rs.)</i>
<i>Ucal Fuel Systems Ltd.,</i>	<i>2,17,000</i>
<i>Synerfin Stocks (I) P Ltd</i>	<i>69,00,000</i>
<i>Synerfin Factors P Ltd</i>	<i>1,12,07,870</i>
<i>Tandem Investments P Ltd</i>	<i>19,55,300</i>
<i>BT Systems and Services Ltd</i>	<i>75,30,300</i>
<i>India Meters</i>	<i>5,30,000</i>
<i>Total</i>	<i>2,83,40,470</i>

5.4 The company vide letter dated 11.03.2013 has claimed that, assessee has not been doing manufacturing operation since 1992-93, as such receipt of these amounts are not for the working capital operation. The claim of the assessee is not acceptable. Though the company is not doing any manufacturing operation, the company necessarily has to incur certain expenses to perform its day to day activities.

5.5 The onus is on the assessee to prove with satisfactory evidences that, the loan was availed for the purpose of capital acquisition, failing which it could only be taken that the expenses are for the purpose of meeting working capital needs. Further, the company was not able to substantiate, the year of receipt of each of the loan from its creditors and it failed to prove with sufficient evidence that the loan amount borrowed has been utilised for a particular purpose. As it could be seen from the details of the creditors given by the assessee, one of them is the sister concern (Ucal Fuel Systems Ltd.,) of the assessee. However, the assessee has not substantiated till date, why the said sum received from the sister concern (Ucal Fuel Systems Ltd) was written back?.

5.6 Further, as per the financial statements submitted by the assessee, the only capital asset that the company possess is the equity shares of its sister concerns. Furthermore, it is evident from the balance sheet for the year ending 31.03.2009, that, the company has made investment in equity shares out of the loan borrowed from Central Bank of India. Hence it is proved with substantial evidence that the sum of Rs. 2,83,40,470/- has not been utilised for the acquisition of any of its capital assets either movable or immovable. Therefore, the loan borrowed is not a capital receipt but only a revenue receipt.

5.7 In this regard, reliance is placed on the decision of the Bombay High Court in the case of "Solid Containers Ltd, wherein the court relying on the Apex Court decision in the case of T.V. Sundaram Iyengar & Sons Ltd., held that, "if an amount is received in course of a trading transaction, even though it is not taxable in the year of receipt as being of capital character, yet the amount changes its character when the amount becomes the assessee's own money because of limitation or by any other statutory or contractual right. When such a thing happens, common sense demands that the amount should be treated as income of the assessee.

5.8 Therefore, in accordance with the judicial decisions, the sum which is written back to capital reserve is treated as a revenue receipt and the same is added back to the total income declared by the assessee."

and submitted that the assessee made an addition of Rs. 2,83,40,470/-being capital receipts written back under Reserves & Surplus. When the assessee claimed these sums as capital receipts, the onus lies on the assessee to place relevant material and substantiate that the sum is capital receipts and not taxable. Though, the Assessing Officer has sought the details of date/year of receipt of the advance and the purpose of utilisation of the advance received etc, the assessee has neither furnished them either before the AO nor before the Ld. CIT(A) or before the Hon'ble Tribunal. Therefore, the assessee has not discharged its onus. The Ld. AR further submitted that it is clear from the assessment order that the assessee has not been doing manufacturing operations since 1992-93. The assessee merely pleads that these amounts were received as loan prior to 2004 and they were not for working capital operations of the assessee. Since, these amounts were outstanding from long time and there is no claim against the assessee, the assessee on its own written back these amounts as its capital receipts in the books of account for the year ended 31.03.2009. Since, the nature of these receipts are not explained, the Assessing Officer treated the same as trading receipts. Therefore, the Ld. DR submitted that the order of the Ld. CIT(A) is not in order and hence the same may be set aside and the order of the Assessing

Officer be restored. Per contra, the Ld. AR supported the order of the Ld. CIT(A). When the bench asked the Ld. AR what is nature of the impugned transactions, when it has happened, whether any material was placed in support of assessee's contentions before the Ld. CIT(A), the Ld. AR submitted that given an opportunity, the assessee would place such material before the lower authorities.

5. We heard the rival submissions and gone through the relevant material. With regard to the assessee's appeal, though the assessee has a total shareholders fund as per its return at Rs. 5,63,83,773/- as on 31.03.2009 and pleads before us that it had this much non-interest bearing funds available with it which should be given due credit for working out the disallowances u/s. 14A r.w.r. 8D(i), it is seem from the records such plea was not made either before the AO or before the Ld. CIT(A). In the facts and circumstances, we find that this issue requires a fresh examination and hence we remit this issue to the AO for proper examination and due disallowances u/s. 14A r.w.r. 8D(i). In case, the AO determines disallowances u/s. 14A r.w.r. 8D, he would restrict the quantum of such disallowances to the extent of dividend income admitted by the assessee. To this extent, the assessee's appeal is allowed. Since the assessee has not pressed other grounds, they are dismissed. Thus, the assessee's appeal is partly allowed.

6. With regard to the Revenue's plea that the Ld. CIT(A) erred in directing the AO to eliminate the investments made for subsidiaries while working out the average investment in the formula of Rule 8D(2), we find from the assessment order that the AO has not given a clear finding as to what is the nature of assessee's business. He merely observed that the company submitted that it is engaged in the business of promoting companies. However, from the financials, the company offered interest income and dividend income from his sister concern. Thus, the AO has not determined the nature of assessee's activities, the nature and sources of income. Further, it is not clear from the assessment order the nature of investments held by the assessee which were taken for the purpose of disallowance under limb(iii). Therefore, we remit this issue back to the AO for a fresh examination, in the light of the decision of the Hon'ble Supreme Court in the case of Maxopp Investments Ltd., vs CIT (SC) dated 15.02.2018 etc.

7. With regard to the Revenue's appeal towards capital reserves written back, the assessee claims Rs. 2,83,40,470/- written back to the "Reserve & Surplus" in the books are capital receipts, therefore, it is exempted. Thus, when the assessee claims that its receipts are capital in nature which are exempted from income, the onus lies on the assessee to place relevant material before the Revenue Authorities in support of its claim. In the assessee's case, it is seen that the assessee was originally doing

manufacturing operations and stopped them since 1992-93. It claims that it received loan long back, even before 2004, from six of its sister concerns and such receipts are not for working capital operations and these amounts were outstanding for long time and there is no claim against the assessee. Therefore, it has written back these amounts in its books of account for the year ended 31.03.2004. The AO required the assessee to place details of date/year of receipt of advance and the purpose of utilisation of advance etc. The assessee has not furnished them before the Ld. AO. In the absence, the AO treated them as a trading liability. During the year, the assessee had made investments of Rs. 8,59,39,850/- in equity shares and advanced a loan of Rs. 24 crores to M/s. Ucal Fuel Systems Ltd and from that company also the assessee has written back Rs. 2,17,000/- as capital receipts. Further, all these entities are assessee's group concerns, therefore, the onus is more on the assessee to explain the nature of transactions, the date of receipt etc with regard to the impugned transactions and substantiate its claim. The assessee has not placed relevant material neither before the AO nor before the Ld. CIT(A) or before us. The assessee claims that it is engaged in the business of promoting companies. However, the AO has also not examined the nature of assessee's activities, nature and sources of income. Therefore, considering the entire facts and circumstances, we are of the view that this issue also requires re-examination and hence we remit this issue also back to the AO for fresh examination. In respect of the all the issues which are remitted to the

AO, the assessee shall place relevant material in support of its contentions and comply with the requirements of the AO in accordance with law. The AO on due examination of them and after affording adequate opportunity to the assessee shall decide the issues in accordance with law.

8. In the result, the assessee's appeal is partly allowed and the Revenue's appeal is treated as partly allowed.

Order pronounced on 20th July, 2021 in Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 20th July, 2021

JPV

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/-

(एस. जयरामन)

(S. JAYARAMAN)

लेखा सदस्य /ACCOUNTANT MEMBER