

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी मंजूनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A No.864/Chny/2019
Assessment Year: 2012 – 2013

M/s. Tamilnad Mercantile Bank Ltd.,
No.57, V.E. Road,
Tuticorin – 628 002.

The Assistant Commissioner of
Income Tax,
Vs. Circle – 1,
Tuticorin – 628 001.

[PAN: AAAC 5558K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Mr. S. Sridhar, Advocate
: Mr. Suresh Periasamy, JCIT

सुनवाई की तारीख/Date of Hearing

: 15.07.2021

घोषणा की तारीख /Date of Pronouncement

: 30.07.2021

आदेश / ORDER

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is against the order of the learned Commissioner of Income Tax, (Appeals)-1, Madurai in I.T.A. No.121/2017-18 dated 25.02.2019 relevant to the Assessment Year 2012 - 2013.

2. The Assessee is a banking company admitting a total income of Rs.371,87,60,340/-. The case was selected was scrutiny under

Computer Assisted Scrutiny Selection [CASS], and a notice u/s.143(2) was issued to the Assessee. The assessment was completed u/s.143(3) on 30.03.2015. Subsequently, a notice u/s.148 was issued on 31.03.2017 on the ground that there is a reason to believe that the income chargeable to tax has escaped assessment. The reasons for reopening by the Assessing Officer vide order dated 07.09.2017 recorded by the Assessing Officer is as under:

“On verification of records, it is found that the Assessee Bank made a disallowance of Rs.24,93,305/- u/s.14A. It is observed that the disallowance u/s.14A is to be calculated as per the methodology prescribed in the Rule 8D of the Income Tax Act, 1961.

The Assessee Bank did not follow the methodology prescribed by the Section 14A read with Rule 8D. The disallowance u/s.14A read with Rule 8D is calculated as follows:

1)	Amount of expenditure directly relating to income which does not form part of total income		NIL
2)	Expenditure by way of interest A*B/C		
	Where A is		12,32,01,89,000
	Amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year		
	Where B is		
	The average of value of investments, income from which does not shall not form part of the total income as appearing in the balance sheet of the Assessee, on the first day and the last day of the previous year		
	Investments as on 01.04.2011	30,03,89,098	
	Investments as on 01.04.2012	69,69,32,784	
	Average value of investments in the previous year 2011 – 2012		49,86,60,941
	Where C is		
	The average of total assets as appearing in the balance sheet of the Assessee, on the first day and the last day of the previous year		
	Assets as on 01.04.2011	1,61,67,30,44,000	
	Assets as on 01.04.2012	2,03,09,21,46,000	
	Average value of total assets in the		1,82,13,25,95,0

	previous year 2011 – 2012		00
	A*B/C =		3,37,31,452
	One half percent of the average investment during the previous year 2011 – 2012		24,93,305
	! + 2 + 3		3,62,24,757

The total disallowance u/s.14A read with rule 8D is Rs.3,62,24,757/-, whereas the Assessee bank disallowed an amount of Rs.24,93,305/- only. The disallowance of Rs.3,37,31,452/- is to be disallowed u/s.14A read with Rule D. Hence, I have the reasons to believe that the income of Rs.3,37,31,452/- chargeable to tax has escaped assessment for the assessment year 2012 – 2013.”

3. The Assessee has raised an objection vide letter dated 13th October, 2017 by stating that there is no tangible material to reopen the assessment and requested to drop the assessment.
4. The Assessing Officer has considered the objections raised by the Assessee and rejected the same by order dated 23.11.2017 by observing that the Assessing Officer has not considered the issue of Section 14A of the Income Tax Act, 1961 and therefore there is no change of opinion. So far as the tangible material is concerned, the Assessing Officer has observed that based on the existing material available on record, assessment is reopened. Accordingly, the objection raised by the Assessee is rejected.
5. Before us, the learned Counsel for the Assessee has submitted that there is no tangible material available before the

Assessing Officer to come to a conclusion that there is an escapement of income and submitted that the reopening is not valid.

6. The learned Counsel for the Assessee had submitted that in the original assessment completed u/s.143(3) of the Act, unless any tangible material come to the notice of the Assessing Officer, reopening cannot be done.

The learned Counsel for the Assessee, to support the above argument placed reliance upon the decision of the Jurisdictional High Court reported in Tax Case Appeal No.702 of 2009 dated 11.07.2019 in the case of the M/s. Tenzing Match Works, Sivakasi Vs. The Deputy Commissioner of Income Tax, Virudhunagar and submitted that the reopening is not valid.

Further, the learned Counsel for the Assessee has submitted that as per the decision of the Hon'ble Supreme Court in the case of M/s. Maxopp Investment Limited Vs. Commissioner of Income Tax, New Delhi reported in [2018] 402 ITR 640 held as "once the Assessee himself *suo motu* made a disallowance u/s.14A of the Income Tax Act, 1961, the Assessing Officer has to record proper satisfaction as to why the quantum of *suo-motu* disallowance is not

correct. No satisfaction recorded by the Assessing Officer, invoked Section 14A r.w.rule 8D which is not valid.

7. The learned Departmental Representative has submitted that the Assessing Officer while passing the assessment order u/s.143(3) of the Act has not considered Section 14A r.w.Rule 8D of the Income Tax Rules, 1962. Subsequently, it came to the notice of the Assessing Officer and the Assessing Officer by considering the entire material available on record, reopened the assessment and submitted that the material need not be from outside instead the material available in the file itself is sufficient to reopen the assessment.

8. The Assessing Officer while passing the order u/s.143(3) of the Income Tax Act, 1961 has not applied his mind in respect of Section 14A r.w.R.8D of the Act and therefore change of opinion does not arise and the Assessing Officer rightly opened the assessment.

9. So far as satisfaction is concerned, the learned Departmental Representative has submitted that the Assessing Officer after verifying the record has fully been satisfied with the *suo-motu*

disallowance made by the Assessee though not in accordance with Section 14A r.w.R.8D of the Income Tax Rules, 1962, reopened the assessment. The learned Departmental Representative strongly supported the order passed by the authorities below and submitted that reopening the assessment is valid.

10. We have heard both the sides, perused the materials available on record and gone through the orders of the authorities below. In the assessment order dated 05.12.2017, the Assessing Officer has noted that the Assessee himself had made a disallowance of Rs.24,93,305/- u/s.14A of the Income Tax Act, 1961. However, the disallowance u/s.14A of the Act should be made as per the methodology prescribed in Rule 8D of the Income Tax Rules, 1962. Further, it is found that the disallowance u/s.14A of the Income Tax Act, 1961 r.w.R.8D of the Income Tax Rules, 1961 was not made by the Assessee during the computation of income as per the methodology mentioned in Section 14A of Rule 8D.

11. From the above, it is clear that the Assessing Officer had recorded the satisfaction with the quantum of suo-motu disallowance made by the Assessee is not correct and not in

accordance with the methodology provided in Rule 8D. Accordingly, by reopening the case of the Assessee, the assessment was completed. In our opinion, the satisfaction recorded by the Assessing Officer is in consonance with the judgement of the Hon'ble Supreme Court in the case of M/s. Maxopp Investment Limited Vs. Commisioner of Income Tax , New Delhi (supra).

12. Though the original assessment was completed u/s.143(3) of the Act, the Assessing Officer has not examined application of Section 14A r.w.R.8D of the Income Tax Rules, 1962. Therefore, the change of opinion does not arise. Thus, the Assessing Officer had rightly reopened the assessment.

So far as tangible material is concerned, we find that the Assessing Officer after examining the entire file, has come to a conclusion that the *suo-muto* disallowance made by the Assessee is not correct and that the Assessee has not followed the formula prescribed in the Act to calculate the dividend income u/s.14A r.w.R.8D of the Income Tax Rules, 1962. Therefore, the reopening is based on the material available on record which is sufficient to reopen the assessment. The tangible material available to the

Assessing Officer in this case is the balance-sheet on the basis of which the assessment is reopened.

13. In our opinion, the balance-sheet which is the tangible material and supposed to have been considered by the Assessing Officer while passing the Assessment Order u/s.143(3) of the Act had totally ignored the balance-sheet. If at all he has considered, he has not even passed the assessment order by ignoring the provisions of law, i.e. Section 14A r.w.R.8D of the Income Tax Rules, 1962.

14. So far as the case-law relied by the learned Counsel for the Assessee in the case of the M/s. Tenzing Match Works, Sivakasi Vs. The Deputy Commissioner of Income Tax, Virudhunagar (supra), we have examined the entire facts and we find that the facts are entirely different from the facts involved in the present appeal.

In this case, tangible material is clearly available to the Assessing Officer and therefore the Assessing Officer validly reopened the assessment. In view of the above, we upheld the reopening made by the Assessing Officer u/s.147 of the Income Tax Act, 1961.

15. So far as the merits of the case is concerned, the learned Counsel for the Assessee has submitted that the Assessee is having more own funds than the borrowed funds. Therefore, the presumption goes in favour of the Assessee and no interest disallowance can be made. The Assessing Officer has taxed the entire investments made by the Assessee which is not correct and in accordance with law. The provisions of Section 14A r.w.Rule.8D(2)(iii) applies only where investments yield exempt income and submitted that the order passed by the learned Commissioner of Income Tax (Appeals) has to be set aside.

16. On the other hand, the learned Departmental Representative has submitted that the Assessee has not given any details in respect of the borrowed funds and own funds and therefore the Assessing Officer and the learned Commissioner of Income Tax (Appeals) has rightly decided on the issue.

17. In so far as the investments which yield exempt income, no such arguments were placed, neither before the Assessing Officer nor before the learned Commissioner of Income Tax (Appeals). He

further strongly supported the orders passed by the authorities below.

18. We have heard both the sides, perused the materials available on record and gone through the orders of the authorities below. In the assessment order, the Assessing Officer has not discussed details of the own and borrowed funds. In the order of the learned Commissioner of Income Tax (Appeals), the learned CIT(A) has categorically given a finding that the Assessee has not maintained separate books of account, year-wise to prove that only interest-free source has been utilized for investments.

19. By considering the above findings of the learned Commissioner of Income Tax (Appeals) and by keeping in view the facts and circumstances of the case, we are of the opinion that one more opportunity should be given to the Assessee to substantiate his case before the Assessing Officer. In so far as the application of Section 14A of the Income Tax Act, 1961 r.w.R.8(2)(iii) of the Income Tax Rules, 1962 is concerned, this argument is neither placed before the Assessing Officer nor before the learned

Commissioner of Income Tax (Appeals). This argument is placed for the first-time before us.

20. In our opinion, this issue is also to be examined by considering the relevant facts and materials. In view of the above, we set aside the order passed by the learned Commissioner of Income Tax (Appeals) and we remit back this issue to the Assessing Officer with a direction to re-compute the disallowance u/s.14A r.w.R.8D of the Income-Tax Rules, 1961, in the light of the decision of the Hon'ble Bombay High Court in the case of Commissioner of Income Tax Vs. Reliance Utilities and Power Limited 313 ITR 340, wherein the Bombay High Court has held in respect of the interest disallowance that ***“if there are funds available both, interest-free and overdraft and/or loans are taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds are sufficient to meet the investments”*** .

As regards, disallowance of other expenses, Section 14A r.w.R.8D(2)(iii), the Delhi Special Bench of this Tribunal in the case of ACIT Vs. Vireet Investment Private Limited [2017] 165 ITD 27 wherein has held that ***“only those investments are to be***

considered for computing the average value of investment which yielded exempt income during the year.”

21. Accordingly, the Assessing Officer is directed to consider only those investments which yield exempt income for the year under consideration is to be considered.

22. In the result, the appeal of the Assessee in I.T.A. No.864/Chny/2019 is allowed for statistical purpose.

Order pronounced on 30th July, 2021 in Chennai.

Sd/-

(श्री जी मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(वी दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 30th July, 2021

IA, Sr. PS

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