

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 959/CHNY/2019

निर्धारण वर्ष / Assessment Year: 2014-15

Shri S. Ramamirtham,
Old No.19, New No.33,
Sarvanalayam,
P.S. Sivaswamy Salai,
Mylapore, Chennai – 600 004.

Vs **The Income Tax Officer,**
Corporate Ward -5(4),
Chennai – 34.

PAN: AADPR 0369J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri Y. Sridhar, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri Abani Kanta Nayak, CIT

सुनवाई की तारीख/Date of Hearing

: 01.12.2021

घोषणा की तारीख/Date of Pronouncement

: 03.12.2021

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the assessee is arising out of the revision order of Principal Commissioner of Income Tax-5, Chennai u/s. 263 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order No.PCIT-5/ITO(HQ)/SR/263-4/2018-19 dated 20.02.2021. The assessment was framed by the ITO, Corporate Ward-5(4), Chennai for the assessment year 2014-15 vide his order dated 30.06.2016 u/s. 143(3) of the Act.

2. The only issue in this appeal of assessee is as regards to the order of PCIT revising the assessment u/s.263 of the Act, revising the assessment order framed by the AO u/s.143(3) of the Act under limited scrutiny under CASS by issuing notice u/s.143(2) of the Act dated 31.08.2015. The assessee has challenged this issue on jurisdiction as well as on merits i.e., disallowance of expenses relatable to exempt income by invoking the provisions of Section 14A of the Act, read with Rule 8D(2)(ii) & (iii) of the Income Tax Rules, 1962 (hereinafter the 'Rules') i.e., interest disallowance and disallowance of club expenses.

3. Brief facts are that the assessment was framed originally by the AO u/s.143(3) of the Act. As the case of assessee was selected under limited scrutiny scheme under CASS, the AO issued notice u/s.142(1) of the Act on 01.04.2016, whereby the assessee was required to submit details of capital gain computation on sale of flat, computation of disallowance u/s.14A r.w.rule 8D(2) of the Rules and copy of schedules to financial statements. Assessee vide letter dated 28.06.2016 filed complete details including the computation of disallowance u/s.14A of the Act with Rule 8D(2) of the Rules. The assessee has earned dividend income to the tune of Rs.24,71,434/- during the relevant previous year and claimed the

same as exempt u/s.10(33) of the Act. The assessee suo-motto disallowed a sum of Rs.5,13,580/- being expenses relatable to exempt income i.e., under Rule 8D(2)(ii) & (iii) of the Rules. The AO has gone into details and made no further disallowance. The PCIT noted that the assessee has incurred huge interest expenditure and according to the provisions of second and third limb of Rule 8D i.e., Rule 8D(2)(ii) & (iii) of the Rules, the disallowance would be amounting to Rs.31,17,147/-. The Id.AR for the assessee before PCIT contended that the assessee is mainly into the share trading business and stated that the assessee used mostly his own funds for investment in the shares from where the assessee has earned dividend income. The assessee claimed that suo-motto disallowance made at Rs.5,31,580/- is sufficient to meet the expenses relatable to exempt income under Rule 8D(2)(iii). Hence, he also explained before PCIT, the details of available funds i.e., amounting to Rs.27,95,58,933/- and investment in shares from where dividend income earned was to the tune of Rs.19,19,96,254/-. But, PCIT has not gone into the details nor into the accounts of the assessee but suo-motto applied formula prescribed under Rule 8D(2) of the Rules and directed the AO to revise the assessment. Aggrieved, now the assessee is in appeal before the Tribunal.

4. Before us, the Id.AR for the assessee drew our attention to the assessment order enclosed at page 29 of assessee's paper-book dated 30.06.2016 and also reply to notice u/s.142(1) of the Act, which was submitted to the AO vide letter dated 28.06.2016, which includes the disallowance suo-motto made by the assessee under Rule 8D(2)(ii) & (iii) at Rs.5,13,580/-. The relevant details are enclosed in assessee's paper-book at page 35 as Annexure 2 to letter dated 28.06.2016. The Id.AR for the assessee then took us through the accounts of the assessee and balance sheet, wherein assessee's own funds in the shape of capital account is available at Rs.27,95,58,933/- and investments are to the tune of Rs.19,19,96,254/-. However, Id. AR stated that the shares giving raise to exempt income is to the tune of Rs.1,41,45,379/-. Even otherwise, the investment is much lower than the assessee's own funds. This is not disputed. In view of the above facts, the Id.AR stated that once assessee's own funds are available, the presumption will be drawn that the assessee might have invested in the instruments giving raise to exempt income out of own funds. This presumption is supported by Hon'ble Bombay High Court in the case of CIT vs. HDFC Ltd., reported in 366 ITR 505.

4.1 As regards to the allowability of club expenses of Rs.59,175/-, it was contented that the expenditure has been incurred wholly and

exclusively for the purpose of business and assessee incurs this expenditure to maintain contacts, good relationship/goodwill, where he receives market awareness to enable expansion of his business and therefore considering the business expediency, the same has been rightly claimed as business expenditure. For this, he relied on the decision of Hon'ble Supreme Court in the case of SA Builders Ltd., vs. CIT, (2007) 288 ITR 1.

4.2 In view of the above, the Id.AR stated that firstly on jurisdiction, the AO has conducted all enquiries and moreover this was a limited scrutiny assessment and assessee filed relevant details before the AO during the course of assessment proceedings vide letter dated 28.06.2016. Moreover on merits of both the issues, i.e., disallowance u/s.14A of the Act and allowability of club expenses, both are genuine and reasonable expenses.

5. On the other hand, the Id. CIT-DR, Shri Abani Kanta Nayak, argued that on merits, the assessee case should be examined by the AO because as per the assessment order, no enquiry has been conducted by the AO while framing assessment and once there is no enquiry conducted by the AO, the PCIT is within his right u/s.263 of the Act to direct the AO in revision proceedings to reframe the assessment as directed. Further, he mainly relied on

the decision of Hon'ble Supreme Court in the case of Calcutta Discount Company Ltd., vs. ITO, (1961) 41 ITR 191 (SC). The Id.CIT-DR stated that no doubt the decision of Hon'ble Supreme Court in the case of Calcutta Discount Company Ltd., is as regard to assessment of jurisdiction u/s.147 of the Act, but, the PCIT in present case have reasons to assume jurisdiction because the order of AO is erroneous as well as prejudicial to the interest of Revenue. He reasoned that the assessee failed to file details and AO failed to make enquiries in regard to the assessment of disallowance of expenses relatable to exempt income. He stated that the assessee is not put in adverse position, but only the matter is set aside and AO will conduct enquiry on merits. Thus, matter can be examined by the AO. According to him, the Tribunal cannot examine the merits at this stage.

6. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the assessment was framed u/s.143(3) of the Act, by selecting the case of assessee for limited scrutiny under CASS. The assessee before AO during assessment proceedings filed complete details in regard to computation of expenses, disallowance made suo-motto by the assessee in relation to exempt income under Rule 8D(2)(ii) & (iii). The assessee has earned dividend income to the tune of

Rs.24,71,434/- and made suo-motto disallowance of Rs.5,13,580/- while filing return of income. Admitted facts are that first of all this is a limited scrutiny assessment and assessee has filed reply to query raised by AO under notice issued u/s.142(1) of the Act. Further, the assessee before AO as well as before PCIT during revision proceedings filed complete details i.e., balance sheet and schedules forming part of balance sheet where complete details of own funds of Rs.27,95,58,933/- and investments made in purchase of shares amounting to Rs.19,19,96,254/- are available. Once these funds are available which are more than investment made, neither the AO nor PCIT proves any nexus, in that eventuality only presumption can be drawn that the assessee might have invested these funds out of interest free funds available with him. This presumption is supported by Hon'ble Bombay High Court in the case of HDFC Bank Ltd., *supra*. Hence, we find that the revision order passed by PCIT is without any basis on this issue and hence, deserves to be quashed.

6.1 As regards to disallowance of club expenses, we noted that there is no finding by PCIT that these are not incurred for the purpose of business and PCIT himself noted that the AO should have investigated this issue further which he has not done. What

amount of investigation is required, that AO has to take a call and he has made investigation by issuing notice u/s.142(1) of the Act and the assessee had filed details and explained that it is for the purpose of business. Once, this is the case and even on merits, we are of the view that club expenses are for the purpose of business. Hence, on this issue also we reverse the order of PCIT revising the assessment and this issue is decided in favor of the assessee. In the result, the revision order is quashed and the appeal of the assessee is allowed.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the court on 3rd December, 2021 at Chennai.

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 3rd December, 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. |