

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

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.659/Chny/2020
निर्धारण वर्ष /Assessment Year: 2012-13

DCIT- Corporate Circle 3(1) Chennai.	<u>बनाम/</u> Vs.	M/s. Tamilnadu Power Finance and Infrastructure Development Corporation Ltd., Tufidco-powerfin Tower, No.490/3-4, Anna Salai, Nandanam, Chennai – 600 035.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AACT-2840-A		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri G. Johnson, (Addl.CIT)-Ld. DR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri R. Vijayaraghavan, (Adv.)- Ld. AR

सुनवाई की तारीख/ Date of Hearing	:	09/12/2021
घोषणा की तारीख / Date of Pronouncement	:	15/12/2021

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2012-13 arises out of the order of learned Commissioner of Income Tax (Appeals)-13, Chennai, [CIT(A)] dated 28/01/2020 in the matter of assessment framed by Ld. Assessing Officer (AO) u/s. 143(3) on 23/03/2015. The sole grievance of the revenue is deletion of disallowance u/s 14A. The grounds read as under:

“1. The order of the learned CIT(A) is contrary to law and facts and circumstances of the case.

2. The Id. CIT(A) has erred in restricting the disallowance made u/s 14A r.w. Rule 8D to be confined to 3rd limb of Rule 8D alone and deleting the disallowance pertaining to 2nd limb of Rule 8D.
3. The Id. CIT(A) has erred in not considering the fact that assessee has debited interest expenses in the books of account and the assessee has been following mixed funds accounting i.e., using its own funds and borrowed funds.
4. The Id. CIT (A) has erred in not considering the decision of the Hon*ble Supreme Court in the case of M/s.Godrej and Boyce Manufacturing Co. Ltd., (CA No.7020/2011), Walfort Share and Stock Brokers Pvt. Ltd. (326 ITR 1) and Maxopp Investment Limited 91 taxmann.com 154 (SC)[2018].
5. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer be restored.”

3. The registry has noted a delay of 97 days in the appeal, the condonation of which has been sought by Ld. DR by submitting that the appeal could not be filed in time due to lockdown situation arising out of Covid-19 pandemic prevailing at that point of time. The Ld. DR submitted that the aforesaid period was marred by Covid-19 pandemic and the same was to be excluded to compute the limitation period. Since Ld. AR did not raise any serious objection against the same, we condone the delay and proceed with adjudication of the appeal on merits.

4. The Ld. AR, at the outset, submitted that the only issue involved in revenue's appeal is disallowance u/s. 14A of the Income Tax Act, 1961 (hereinafter "the Act") r/w Rule 8D of the Income Tax Rules, 1962 (hereinafter "the Rules") and the issue is covered by earlier orders of the Tribunal in assessee's own case. The Ld. AR submitted that the impugned order has merely followed these decisions and therefore, no infirmity could be found in the same. The Ld. AR also placed on record relevant financial statements to demonstrate that assessee's own funds far exceed the investments made by the assessee and therefore, no interest disallowance would be justified. The Ld. DR, on the other hand,

sought distinction in the orders of earlier years by submitting that there was no interest disallowance in those years.

5. Having heard rival submissions and after going through the orders of lower authorities including the judicial decisions rendered in assessee's own case, our adjudication would be as given in succeeding paragraphs.

6. The material facts are that the assessee being resident corporate assessee is registered as Non-Banking Finance Company. It was assessed u/s 143(3) wherein it transpired that the assessee had made investments and it earned exempt income of Rs.9.10 Lacs. Against the same, the assessee offered suo-moto disallowance u/s 14A r/w Rule 8D(2)(iii) @0.5% of average investment which came to Rs.0.83 Lacs. However, Ld. AO, applying Rule 8D, computed aggregate disallowance of Rs.721.61 Lacs which comprised-off interest disallowance u/r 8D(2)(ii) for Rs.681.28 Lacs and expense disallowance u/r 8D(2)(iii) for Rs.40.33 Lacs. After adjusting suo-moto disallowance, the net differential of Rs.720.78 Lacs was added to the income of the assessee.

7. During appellate proceedings, remand report was sought from Ld. AO on the arguments raised by the assessee. The assessee relied on earlier orders of Tribunal and submitted that only exempt yielding investments were to be considered to compute the disallowance. The assessee also submitted that no borrowed funds were used to make the investments. However, Ld. AO maintained the earlier position. The Ld. CIT(A), in the light of favorable decision of the Tribunal for AY 2010-11 as followed in AY 2011-12, directed Ld. AO to delete the additional disallowance. Aggrieved, the revenue is in further appeal before us.

8. After going through the assessment order, it is quite discernible that the assessee offered suo-moto disallowance @0.5% of exempt income yielding average investments. However, rejecting the assessee's working, Ld. AO computed disallowance of Rs.721.61 Lacs which was way more than exempt income of Rs.9.10 Lacs earned by the assessee during the year. It is settled legal position that it was incumbent on the part of Ld. AO to record dissatisfaction, having regards to the accounts of the assessee, as to why the disallowance offered by the assessee was not acceptable. The failure to do so would make the disallowance bad in law. We find that no such dissatisfaction has been recorded by Ld. AO in the assessment order.

Secondly, upon perusal of assessee's financial statements for the year ending 31.03.2011 & 31.03.2012 as placed on record, it could be seen that own funds in the shape of share capital and free reserves far exceed the investments made by the assessee and therefore, unless nexus of borrowed funds vis-à-vis investment was established by Ld. AO, a presumption would run in assessee's favor that the investments were sourced out of assessee's own funds. We find that no such nexus has been established by Ld. AO.

Thirdly, the disallowance as offered by the assessee is in accordance with the earlier decisions of the Tribunal for AYs 2010-11 & 2011-12. In fact, these decisions were followed in AY 2013-14 vide ITA No.2282/CHNY/2019 order dated 04/12/2019. The revenue preferred further appeal against the same before Hon'ble High Court of Madras vide TCA No.250 of 2020 dated 31.08.2020 wherein Hon'ble Court refused to admit the substantial question of law as raised by the revenue.

For all the above stated reasons, we find no infirmity in the impugned order and therefore, dismiss the appeal.

9. The appeal stand dismissed.

Order pronounced on 15th December, 2021

Sd/-
(वी दुर्गा राव)
(V. DURGA RAO)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-
(मनोज कुमार अग्रवाल)
(MANOJ KUMAR AGGARWAL)
लक्षा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai, दिनांक/Dated: 15th December, 2021.
EDN/-

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asst. Registrar)
आयकरअपीलीयअधिकरण, चेन्नई / ITAT, Chennai