

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 757/CHNY/2020

निर्धारण वर्ष /Assessment Year: 2011-12

The DCIT,
Corporate Circle – 1(2),
Chennai – 34.

(अपीलार्थी/Appellant)

M/s. Baghmar Finlease
v. **Pvt. Ltd.,**
9th Floor, Sterling Tower,
No.327, Anna Salai,
Teynampet,
Chennai – 600 006.
PAN: AAACB 4097R
(प्रत्यर्थी/Respondent)

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

: Shri G. Johnson, Addl.CIT
: None

सुनवाई की तारीख/Date of Hearing

: 01.03.2022

घोषणा की तारीख/Date of Pronouncement

: 03.03.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

This appeal filed by the Revenue is directed against the order of learned Commissioner of Income Tax (Appeals)-3, Chennai in ITA No.7/CIT(A)-3/2014-15, dated 07.02.2020. The assessment was framed by the ACIT, Company Circle I(2), Chennai for the assessment year 2011-12 u/s.143(3) of the Income Tax Act, 1961 (hereinafter 'the Act'), vide order dated 24.02.2014.

2. At the outset, we noted that this appeal is time barred by 143 days, appeal filed by Revenue before us on 04.09.2020. The date of order of CIT(A) is 07.02.2020, received by the Department on 14.02.2020 as per Certificate under Rule 15 filed by the Department before us. The appeal is to be filed on or before 14th April, 2020. It is the period during which lockdown was imposed and COVID period started. The Hon'ble Supreme Court in Miscellaneous Application No.665 of 2021 vide order dated 23.03.2020 has given directions that the delay are to be condoned during this period 15.03.2020 to 14.03.2021 and they have condoned the delay up to 28.02.2022 in Miscellaneous Application No.21 of 2022 vide order dated 10.01.2022. In term of the directions of Hon'ble Supreme Court, we condone the delay and admit the appeal.

3. The only issue in this appeal of Revenue is as regards to the order of CIT(A) deleting the disallowance of expenses relatable to exempt income by invoking the provisions of section 14A of the Act r.w.rule 8D of the Income Tax Rules, 1962 (hereinafter the 'Rules'). For this, Revenue has raised various grounds, which need not be reproduced for the sake of brevity.

4. Brief facts are that the AO on verification of accounts of the assessee noticed that the assessee has made investments in assets

giving raise to exempt income amounting to Rs.54,63,79,395/- as on 31.03.2011 and he also brought out comparative figures as on 31.03.2010 which was Rs.10,76,61,352/-. The AO noted that the assessee has suo-motto disallowed a sum of Rs.1,13,814/- towards expenses relatable to exempt income u/s.14A of the Act. According to AO, this was not as per the provisions of section 14A r.w.r 8D of the Rules. Thereby, the AO recomputed the disallowance under Rule 8D(2)(ii) at Rs.5,31,23,247/-. Aggrieved, the assessee preferred appeal before CIT(A).

5. The assessee before CIT(A) contended that the assessee has earned exempt income of Rs.22,76,827/- and incurred expenditure in relation to this income amounting to Rs.1,13,814/- suo-motto. It was contended that the AO has made disallowance only under Rule 8D(2)(iii) i.e., the amount equal to one-half percent of the average value of the investment i.e., 0.5% at Rs.5,32,37,089/- being administrative expenses. The assessee before CIT(A) contended that the AO has not recorded any satisfaction for invocation of provisions of section 14A r.w.r8D(2), which is a primary condition under Rule 8D(1) of the Rules. Further, it was contended that the assessee has made investment as on 31.03.2011 and there are six companies which are giving raise to dividend income and in term of

decision of Special Bench of ITAT, Delhi Bench in the case of ACIT vs. Vireet Investments Pvt. Ltd., 50 CCH 0145, only the investments which give rise to exempt income should have been considered for exclusion while computing disallowance under Rule 8D(2)(iii) of the Rules. Before CIT(A), the assessee also cited the case law of Hon'ble Supreme Court in the case of Maxopp Investment Ltd., vs. CIT, (2018) 402 ITR 640 (SC) for the proposition that recording of satisfaction is a precondition for invocation of Rule 8D(2). The CIT(A) after considering the submissions of the assessee allowed the appeal of assessee by observing that the AO has not recorded any satisfaction regarding correctness of the claim of the assessee in relation to the expenditure incurred for earning of exempt income for invocation of Rule 8D(2). The AO has nowhere held that the expenditure suo-motto disallowed by the assessee is unreasonable or he is not satisfied. Accordingly, the CIT(A) allowed the claim of assessee and deleted the disallowance. Aggrieved, Revenue came in appeal before the Tribunal.

6. Before us none is present from assessee's side however Revenue is represented by Id.Addl. CIT, Shri G. Johnson. The Id. Senior DR cited the case law of Hon'ble High Court of Madras in the case of FLSmith Pvt. Ltd., vs. DCIT, in Tax case Appeal No.431 of

2018, order dated 22.07.2020 and argued that the Hon'ble Madras High Court has categorically held that what are required to examine is as to whether satisfaction has been arrived at by the AO having regard to suo-motto disallowance claimed by the assessee in the context of its accounts. The Id. Senior DR for the assessee stated that once show-cause notice calling upon the assessee to explain as to why the provisions of Rule 8D of the Rules should not be invoked to compute the expenses attributable for earning exempt income, according to Id. Senior DR the Hon'ble Madras High Court has considered this issue in great detail.

7. Having heard Id.Senior DR and we have gone through the facts and circumstances of the case. We have perused the case records i.e., the assessment order and the order of CIT(A) as well as grounds raised before us. We noted that the AO has simpliciter invoked the provisions of section 14A r.w.r.8D of the Rules for disallowing expenses relatable to exempt income and has not gone into direct or indirect expenditure incurred for earning such income or there is no correlation pointed out for invoking these provisions. We have gone through the decision of Hon'ble Madras High Court cited by the Id.Senior DR, in the case of FLSmith Pvt. Ltd., *supra*, and noted that the facts before the Hon'ble High Court was very

clear wherein in that case, the AO has gone into the entire expenditure incurred i.e., managerial remunerations and claimed whole of the same as expenditure. The AO in the case before Hon'ble High Court has gone into the rational time spent by the management, administration cost in the management of investments, etc. These facts are narrated by Hon'ble High Court in para 23 & 24 of the judgment. Hence, the facts before Hon'ble High Court and now before us are entirely different. Because the AO in this case has not gone into any of the expenditure incurred in relation to exempt income having regard to the accounts of the assessee. We noted that similar issue came up before Hon'ble Supreme Court in the case of Maxopp Investment Ltd., *supra* wherein the Hon'ble Supreme Court held as under:-

“Having regard to the language of section 14A(2) of the Act, read with rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the Assessing Officer needs to record satisfaction that having regard to the kind of the assessee, suo motu disallowance under section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned the expenditure but the Assessing Officer was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect.”

As in the case of Maxopp Investment Ltd., the Hon'ble Supreme Court has categorically held that once assessee has made suo-motto disallowance, that has to be held as incorrect qua the accounts of

the assessee. In the present case, we are of the view that the AO has not recorded any satisfaction qua the expenses relatable to earning of exempt income having regard to accounts of the assessee. In term of the above and in the given facts of the case, we are inclined to dismiss the appeal of Revenue.

8. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the court on 3rd March, 2022 at Chennai.

Sd/-

(गिरीश अग्रवाल)

(GIRISH AGRAWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 3rd March, 2022

RSR

आदेश की प्रतिलिपि अग्रहित/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. |