आयकर अपीलीय अधिकरण 'बी' न्य⃞यपीठ चेन्नई में।

IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI

म⃞ननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA Nos.74/Chny/2015**
(निर्धारण वर्ष / Assessment Years: 2006-07)
&
आयकर अपील सं./ **ITA Nos.75/Chny/2015**
(निर्धारण वर्ष / Assessment Years: 2007-08)
&
आयकर अपील सं./ **ITA Nos.76/Chny/2015**
(निर्धारण वर्ष / Assessment Years: 2008-09)
&
आयकर अपील सं./ **ITA Nos.77/Chny/2015**
(निर्धारण वर्ष / Assessment Years: 2009-10)
&
आयकर अपील सं./ **ITA Nos.78/Chny/2015**
(निर्धारण वर्ष / Assessment Years: 2010-11)

M/s. Sundaram Finance Ltd. 21 Patullos Road Chennai – 600 002.	बनाम/ Vs.	**ACIT** Large Taxpayer Unit, Chennai.
स्थायी लेखा सं./जीआइ आर सं./**PAN/GIR No. AAACS-4944-A**		
(⃞ पीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

&
आयकर अपील सं./ **ITA Nos.287 & 288/Chny/2015**
(निर्धारण वर्ष / Assessment Year: 2006-07)
&
आयकर अपील सं./ **ITA Nos.289 & 290/Chny/2015**
(निर्धारण वर्ष / Assessment Year: 2007-08)
&
आयकर अपील सं./ **ITA No.291/Chny/2015**
(निर्धारण वर्ष / Assessment Years: 2008-09)
&

आयकर अपील सं./ **ITA No.292/Chny/2015**
(निर्धारण वर्ष / Assessment Year: 2009-10)
&
आयकर अपील सं./ **ITA No.293/Chny/2015**
(निर्धारण वर्ष / Assessment Years: 2010-11)

ACIT Large Taxpayer Unit, Chennai.	बनाम/ Vs.	**M/s. Sundaram Finance Ltd.,** 21 Patullos Road Chennai – 600002.
स्थायी लेखा सं./जीआइ आर सं./**PAN/GIR No. AAACS-4944-A**		
(□ पीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थी की ओरसे/ **Appellant by**	:	Shri R. Vijayaraghavan (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/**Respondent by**	:	Shri Kumar Ajeet- Ld. CIT-DR

सुनवाई की तारीख/ **Date of Hearing**	:	18-01-2022
घोषणा की तारीख / **Date of Pronouncement**	:	09-03-2022

आदेश / O R D E R

Per Bench:

1.1 The assessee as well as revenue is in further appeal for Assessment Years (AY) 2006-07 to 2010-11 which arises out of separate orders of learned first appellate authority. However, the facts as well as issues are substantially the common in all the years and it is admitted position that adjudication in one year shall have equal application to the other years also.

1.2 The Ld. AR, placed on record issue-wise chart and submitted that most of the issues are covered by the earlier orders of Tribunal in assessee's own case. The copies of the same have been placed on record. The Ld. CIT-DR also advanced argument.

1.3 Having heard rival submissions and after due consideration of relevant material on record including the orders of Tribunal in earlier

years, our adjudication would be as under. First, we take up assessee's appeal ITA No.74/Chny/2015 for AY 2006-07 which arises out of the order of learned Commissioner of Income Tax (Appeals)-LTU, Chennai dated 14.11.2014 in the matter of assessment framed by Ld. AO u/s 143(3) on 26.12.2008. The assessee has raised additional grounds of appeal which are also taken on record. The effective grounds to be adjudicated by us read as under: -

1. The Order of the Commissioner of Income tax (Appeals) is contrary to law, weight of evidence and probabilities of the case.
2. The Commissioner of Income tax (Appeals) erred in coming to the conclusion that IRR method reflects the correct method of accounting the real income which has been prescribed to be followed by the Institute of Chartered Accountants of India.
2.1 The Commissioner of Income tax (Appeals) ought to have considered the fact that the appellant company has been following Even Spread Method (ESM) in recognizing the income of hire purchase transactions since inception and the shift made in the books to IRR method was only to comply with the accounting standard issued by the Institute of Chartered Accountants of India.
2.2 Without prejudice to the above, the Commissioner of Income Tax (Appeals) erred in not allowing the claim of the appellant that the difference amount of Rs.4,83,52,8437- being the excess of income under ESM method over IRR method, which was taxed in the earlier years should have been deducted from the taxable income based on the assessments in the earlier assessment years, i.e. income taxed on IRR method, as this amounts to doubly taxing the income.
3. The Commissioner of Income tax (Appeals) erred in holding that provision for non-performing assets (NPAs) which has been duly provided in the books is not an allowable deduction.
3.1 Notwithstanding the above, the Commissioner of Income tax (Appeals) erred in not reducing the provision for non-performing assets amounting to Rs.6,59,11,617/- from the taxable income which was reversed during the year consistent with the stand taken in the assessments.
4. The Commissioner of Income Tax (Appeals) erred in not allowing the claim of the appellant that the amount recovered in respect of bad debts written off in the books of the amalgamating companies of Rs.5,71,47,000/- is not taxable in their hands as successor u/s.41(4) which is the charging section.
4.1 The Commissioner of Income Tax (Appeals) erred in distinguishing the decision of the Madras High Court in PK Kaimal's case (123 ITR 755) whereas the decision is squarely applicable to the facts of the case.
4.2 The Commissioner of Income Tax (Appeals) erred in observing that the bad debts recovery would either be taxable as other income under section 56 of

the Income Tax Act or taxable under section 176(3A) as income of discontinued business.

Additional Grounds of Appeal:

1. The Order of the Commissioner of Income Tax (Appeals) is contrary to law, weight of evidence and probabilities of the case.

2. The Commissioner of Income Tax (Appeals) erred in coming to the conclusion of dismissing the Appellant's appeal against the order of the Assessing officer in disallowing business origination costs of Rs.6,10,17,489/- actually incurred by the appellant during the year on the ground that the appellant, itself, deferred the said amount to the subsequent years in the books.

2.1 The Commissioner of Income Tax (Appeals) ought to have appreciated that under mercantile system of accounting, revenue expenditure should be allowed in the year in which it was incurred irrespective of the treatment given in the books of the Appellant.

2.2 The commissioner of Income Tax (Appeals) has given relief in the AY 2008-09 hence the Appellant has not added the issue in its original grounds of appeal however being advised by its counsel the appellant prays to add it as an additional ground of appeal.

2. The assessee being a resident corporate assessee is stated to be engaged in the business of hire purchasing and leasing. It was assessed u/s 143(3) on 26.12.2018 wherein the returned income of Rs.134.63 Crores was determined at Rs.155.93 Crores after certain additions / disallowances. Upon further appeal, the Ld. CIT(A) granted partial relief to the assessee which has resulted into cross-appeals before us. The issues which form subject matter of assessee's appeal are adjudicated as under: -

3. Ground Nos. 2 to 2.2: Method of recognizing income on hire purchase contracts:

3.1 It transpired that to recognize income on hire purchase contracts, the assessee switched over to Internal Rate of Return (IRR) method from Even-Spread Method (ESM) for apportionment of finance charges on hire purchase transactions. The switch over was stated to be as per the requirements of the Accounting Standard (AS-19) on leases issued by the Institute of Chartered Accountants of India (ICAI). However, for

income tax purpose, the assessee continued to follow ESM method as done in earlier years. Such change resulted in hire purchase finance charges on ESM basis being higher than the income recognized on IRR method in the books to the tune of Rs.483.52 Lacs. Accordingly, the same was added back by the assessee while computing the taxable income. It was submitted that the finance charges on hire purchase transactions were taxed on IRR method in earlier assessment years and assessee's appeal against the same was pending before Hon'ble High Court. However, for the sake of consistency in the assessments, the excess hire purchase income offered on ESM basis was to be deducted from the taxable income. However, rejecting the same, Ld. AO noted that the issue had not reached finality and further similar treatment was give in assessment order for AY 2005-06. Therefore, the plea to reduce the taxable income by Rs.483.52 Lacs was not accepted. The Ld. CIT(A), following the decision of Tribunal for AY 2001-02 in ITA Nos.955 & 829/Mds/2005 dated 31.07.2007 confirmed the stand of Ld. AO against which the assessee is in further appeal before us.

3.2 We find that this issue is covered by the latest order of Tribunal vide ITA Nos.72 & 73/Mds/2015 order dated 04.09.2019 for AYs 2004-05 & 2005-06. The bench, considering the decision of Hon'ble High Court of Madras in assessee's own case (dated 05.03.2019), directed Ld. AO to tax the interest income on EMI method or ESM method which has been consistently being followed by the assessee and allow consequential relief in accordance with law. Since facts as well as issue is pari-materia the same in this year, we issue similar directions to Ld. AO in this year. In other words, the reduction claimed by the assessee for Rs.483.52 Lacs would not be allowed and continue to be added to the income in the

computation of income. The grounds thus raised stand allowed for statistical purpose.

3.3 As per chart placed before us, this issue arises in assessee's appeals for AYs 2007-08 to 2010-11 also and the facts are similar. Therefore, assessee's ground for all these years, stands disposed-off on similar lines.

4. Ground Nos. 3 & 3.1: Provision for reversal of NPA:

4.1 The assessee made provision for non-performing assets (NPA) as per directions of RBI. In the assessment of earlier years, such provision was added to the taxable income and not allowed to the assessee. During this year, the assessee reversed NPA provisions for Rs.659.11 Lacs and submitted that the same should be reduced from income. It was submitted that since the provisions were taxed in earlier years, the reversals should not be taxed in this year. However, Ld. AO rejected the plea in the light of the fact that the issued had not attained finality in earlier years.

4.2 The Ld. CIT(A), following the decision of Tribunal for AY 2001-02 in ITA Nos.955 & 829/Mds/2005 dated 31.07.2007 confirmed the stand of Ld. AO against which the assessee is in further appeal before us.

4.3 We find that what the assessee is claiming is that the reversal should not be included in total income on the ground that provisions were not allowed in earlier years. We also find that this issue has been set-aside by Tribunal in ITA Nos.72 & 73/Mds/2015 dated 04.09.2019. The bench, vide para 5.3 of the order, observed that the assessee's claim would require verification and therefore, the matter has been remitted back to the file of Ld. AO for fresh consideration after affording opportunity of hearing to the assessee. The Ld. AR has sought similar

directions for AYs 2006-07 & 2007-08. Concurring with the same, the matter, for both these years, stands remitted back to the file of Ld. AO on similar lines. The grounds thus raised stand allowed for statistical purposes.

5. Ground Nos. 4 to 4.2: Recovery of Bad debts written-off in the books of amalgamating companies

5.1 The assessee reduced taxable income by Rs.571.47 Lacs, being amount recovered out of bad-debts written-off in the books of amalgamating companies on the ground that it was exempt / non-taxable. It transpired that the assessee recovered this sum out of bad-debts which were written-off in the books of amalgamating companies. The same was claimed on the ground that recovery of bad-debts should be taxed under the specific provision of Sec.41(4) and not u/s. 41(1) of the Act. For taxing recovery of bad debts u/s. 41(4) of the Act, the identity of the assessee should be the same who originally claimed deduction of bad-debts written off. This was as per the decision of Hon'ble Madras High Court in the case of **CIT vs. PK Kaimal 123 ITR 755 (Mad)**. Since the amalgamating companies was no more in existence, the amount of recovery of such bad debts of amalgamating companies are rightly claimed as not taxable in the return of income. However, distinguishing the cited case-law, Ld. AO held that Sec.41(1)(b) of the Act shall apply to the successor of business also. The bad-debts having been allowed as expenditure in the predecessor's hand, the successor would be liable to be taxed when the same are recovered. As per Ld. AO, the successor is specifically defined as the amalgamated company. The provisions of Sec.176(3A) could also be invoked which provide that in case of discontinued business, any sum

received thereafter would be deemed to be the income of the assessee. Accordingly, the taxable income was increased to that extent.

5.2 The Ld. CIT(A), following the appellate order for AY 2004-05 confirmed the stand of Ld. AO against which the assessee is in further appeal before us.

5.3 We find that this issue stood against the assessee vide para 6.2 of order of Tribunal in ITA Nos.72 & 73/Mds/2015 dated 04.09.2019. The bench held that after amalgamation, the assessee has all the rights as well as liabilities of amalgamating company which were transferred to it. Such recoveries of bad-debts were nothing but business receipts for assessee and therefore, assessable in its hands. Respectfully, following the same, we dismiss the grounds urged by assessee, in this regard.

This issue arises in assessee's appeals for AYs 2007-08 to 2010-11 also. Facts being remaining the same, the assessee's ground for all these years stands dismissed.

6. Addl. Ground Nos. 1 to 2.2 : Business Origin Cost

6.1 The assessee paid commission to direct market agents for procurement of business. This amount represents upfront expenditure incurred in the course of business and termed as 'business origin cost'. In the books of accounts, the assessee has apportioned the cost over the terms of the contract and accordingly, debited a sum of Rs.1175.17 Lacs in this year. The balance of Rs.610.17 Lacs was carried over in Balance Sheet for amortization in subsequent years. However, in the computation of income, the assessee has claimed the balance amount of Rs.610.17 Lacs also on the ground that it is a revenue expenditure and allowable in full. Reliance was placed on the decision of Hon'ble Supreme Court in the case of **Madras Industrial Investment Corp. Ltd.**

(225 ITR 802) for the same. However, following assessment order for AY 2005-06, Ld. AO denied the deduction so claimed by the assessee. The Ld. CIT(A) chose to follow appellate order for AY 2005-06 and confirmed the stand of Ld. AO. Aggrieved the assessee is in further appeal before us.

6.2 We find that this issue has been dealt with by Tribunal in ITA Nos.72 & 73/Mds/2015 dated 04.09.2019 for AYs 2004-05 & 2005-06. The bench, vide paras 7.2 & 7.3 of the order, chose to follow the decision of Hon'ble Apex Court in **Taparia Tools Pvt. Ltd. V/s JCIT (372 ITR 605)** wherein it was held that normally revenue expenditure incurred in a particular year has to be allowed in that year and if the assessee claims the full expenditure, department could not deny the same. Finally, the claim was allowed. Therefore, this issue is covered in assessee's favor. We direct Ld. AO to allow the claim. This ground stand allowed.

6.3 This issue arises in assessee's appeals for AYs 2007-08 which also stands allowed on similar lines.

6.4 In AY 2008-09, the amortization of expenditure as claimed by the assessee in the books of accounts was added back by assessee in the computation of income on the ground that these amounts were already claimed in full in earlier years. The assessee submitted that the business organization cost which was not allowed in earlier AYs was to be allowed as deduction in this year since it was charged to profit & loss account in this year. However, Ld. AO denied the deduction. The Ld. CIT(A) held that since the claim was rejected in earlier years, the reversal of the same during this year was to be given credit. Accordingly, Ld. AO was directed to entertain the claim. Aggrieved, the revenue is in further appeal before us. Since we have allowed the assessee's claim in full in

the year of incurrence as per assessee's computation of income, the credit of reversal would not be available to the assessee in this year. Therefore, this ground raised by the revenue in ITA No. 291/Chny/2016 stand allowed.

7. The assessee's appeal for AYs 2006-07, 2007-08 stands partly allowed in terms of our above order.

8. Additional Issues in Assessee's Appeals for AYs 2009-10 & 2010-11

8.1 In AYs 2009-10 and 2010-11, the assessee has raised an additional ground of appeal qua disallowance u/s 40(a)(i) which is adjudicated as under.

8.2 In AY 2009-10, the assessee paid professional charges of Rs.74.62 Lacs to its UK Branch for carrying out marketing of BPO operations relating to IT / ITES sectors. Out of this, an amount of Rs.66.05 Lacs was paid to Singapore branch whereas the balance Rs.8.57 Lacs was paid to Krishna Kalambur of Australia. The assessee did not deduct tax at source on the ground that the expenses were incurred by overseas branch and the payments were not taxable in India. Therefore, there was no obligation of withholding tax liability.

8.3 However, Ld. AO rejected the same on the ground that payment was for the purpose of getting marketing information which was utilized by the assessee for its business purposes. The assessee utilized the data collected by the Singapore Branch for its business purposes in India. Accordingly, Explanation-2 to Sec.9(1)(vii) would apply since the non-resident provided technical support to assessee for its business activities. Relying upon various judicial pronouncements, Ld. AO disallowed the expenditure u/s 40(a)(i).

8.4 The Ld. CIT(A), following appellate order for AY 2007-08, confirmed the disallowance. Aggrieved, the assessee is in further appeal before us.

8.5 It is the submissions of Ld. AR that the issue in appellate order for AY 2007-08, in fact, has been allowed in assessee's favor and Ld. CIT(A) has erred in noticing the proper factual matrix. The submissions of Ld. DR were that the services in that year was utilized outside India which is not the case in this year. Considering the rival submissions, we remit this issue back to the file of Ld. AO to bring on record correct factual matrix and re-adjudicate the same after affording opportunity of hearing to the assessee. Similar additional ground has been raised by the assessee in AY 2010-11 also. The issue, in AY 2010-11, stand remitted back to the file of Ld. AO on similar lines. The additional grounds, in both the years, stands allowed for statistical purposes.

9. Remaining issue in Assessee's Appeal for AYs 2008-09 to 2010-11

The remaining issue in assessee's appeal for AYs 2008-09 to 2010-11 is disallowance u/s 14A which shall be adjudicate along with revenue's grounds of appeal.

Revenue's Appeals

10. ITA No.287/Mds/2015, AY 2006-07

The subject matter of revenue's appeal is-(i) Broken Period interest on securities; (ii) Bad-debts & (iii) Depreciation on UPS. The same is adjudicated as under: -

11. Broken period interest on sale of securities

11.1 It transpired that the assessee was in regular sale and purchase of Government securities. The transactions were classified as investment.

It was noted that in almost every sale or purchase of securities, capital-loss was booked after taking the benefit of indexation. The assessee claimed capital-loss of Rs.33.97 Lacs during this year despite the fact that these instruments were having fixed tenure bearing fixed rate of return. It was explained by the assessee that broken period interest on purchase and sale of securities was recognized as revenue item in the books as per Accounting Standard-13 issued by ICAI. However, for tax purpose, the broken period interest was treated as part of cost / consideration as per the decision of Hon'ble Supreme Court in **Vijaya Bank (187 ITR 547).** Accordingly, the resultant gains / losses were offered to tax under the head capital gains. However, Ld. AO opined that the transactions would be assessable as 'business income' as held in assessment order for AY 2005-06. Accordingly, the loss was added back to the income of the assessee. The Ld. CIT(A), following appellate order for AY 2004-05, allowed the assessee's ground. Aggrieved, the revenue is in further appeal before us.

11.2 We find that this issue is subject matter of Tribunal order ITA Nos.285 & 286/Chny/2015 dated 04.09.2019. The coordinate bench, at para 9.5 of the order, observed that Ld. CIT(A) did not appreciate the facts of the issue properly. The courts have held that if the securities are regularly purchased and sold, they could be stock-in-trade. Therefore, the matter was remitted back to the file of Ld. AO for fresh examination with a direction to the assessee to place all the material before Ld. AO. Since facts are similar in this year and with a view to enable revenue to take consistent stand in the matter, we remit this issue back to the file of Ld. AO on similar lines. As per chart placed before us, this issue also arises in revenue's appeal ITA No.289/Chny/2015 for AY 2007-08, ITA

No.291/Chny/15 for AY 2008-09 and ITA No.293/Chny/2015 for AY 2010-11. Therefore, this issue, in all these years, stands restored back to the file of Ld. AO on similar lines. The grounds thus raised stands partly allowed for statistical purposes.

12. Bad-Debts:

12.1 The assessee debited Rs.816.07 Lacs as bad and doubtful debts. The same were mainly related to the hire purchase and mortgage loan transactions. The assessee relied on the decision of Hon'ble Madras High Court in **CIT vs. Brilliant Tutorials Pvt. Ltd. 292 ITR 399 (Mad).** However, relying upon the decision of Hon'ble High Court of Madras in **M/s South Indian Surgical Corporation Ltd. V/s CIT (287 ITR 62)** and the decision of Hon'ble Gujarat High Court in **Dhall Enterprises & Engineers Ltd. (207 CTR 729),** the claim was disallowed as was done in assessment order for AY 2005-06. The Ld. CIT(A), following appellate order for AY 2005-06, decided this issue in assessee's favor against which the revenue is in further appeal before us.

12.2 We find that this issue has been settled in assessee's favor by coordinate bench in its order ITA Nos.285 & 286/Chny/2015 dated 04.09.2019. The coordinate bench, at para 10.3 of the order, relying upon order for AY 2001-02, dismissed revenue's appeal. Therefore, taking consistent view in the matter, we dismiss the grounds raised by the revenue. As per chart placed before us, this issue also arises in revenue's appeal ITA No.289/Chny/2015 for AY 2007-08, ITA No.291/Chny/15 for AY 2008-09, ITA No.292/Chny/15 for AY 2009-10 and ITA No.293/Chny/2015 for AY 2010-11. Facts being pari-materia the same, the revenue's grounds, for all these years, stand dismissed.

13. Depreciation on UPS:

13.1 The assessee claimed depreciation on UPS system @60% considering the same to be part of computer block. However, rejecting the same, Ld. AO restricted the depreciation to 15% and added an amount of Rs.7.61 Lacs to the income of the assessee. The Ld. CIT(A), following the decision of this Tribunal in ITA No.1774/Mds/2012 dated 19.07.2013 in the case of Sundaram Asset Management Co. Ltd., directed Ld. AO to allow depreciation @60%. Aggrieved, the revenue is in further appeal before us.

13.2 In the absence of any contrary decision brought to the notice of the bench by revenue, we confirm the adjudication of Ld. CIT(A) and dismiss the grounds thus raised in this appeal as well as in ITA No.289/Chny/2015 for AY 2007-08, ITA No.291/Chny/15 for AY 2008-09, ITA No.292/Chny/15 for AY 2009-10 and ITA No.293/Chny/2015 for AY 2010-11.

14. The revenue's appeal for AY 2006-07 stands partly allowed for statistical purposes.

15. ITA No.288/Chny/2015 & 290/Chny/15, AYs 2006-07 & 2007-08

15.1 The assessee was subjected to reassessment proceedings for these years. The assessment was framed u/s 143(3) r.w.s. 147 for AY 2006-07 on 30.12.2011. The sole subject matter of revenue's appeal is grant of indexation benefit by Ld. CIT(A) to the assessee on government securities holding that Bonds and Debentures are distinguishable from government securities. The assessee claimed indexation benefit on government securities. However, Ld. AO denied the same on the ground that all capital assets which are in the nature of debt instruments, excluding capital indexed bonds issued by Government, was not eligible

with the insertion of third proviso to Sec.48. The Ld. CIT(A), following first appellate order for AY 2003-04 allowed indexation benefit. Aggrieved, the revenue is in further appeal before us.

15.2 We find that this issue has been settled in assessee's favor by coordinate bench in its order dated 31.03.2017 ITA No.284/Chny/15 for AY 2003-04 (para 7 to 13). The bench observed that government securities are not excluded from the definition of capital assets. As per Sec.2(42A), the expression 'securities' shall have the meaning as assigned in Clause-11 of Securities Contract Regulation Act, 1956 which includes government securities. It was thus concluded by the bench that bonds and securities are distinguishable. The bonds are not freely tradeable whereas the securities are freely tradeable. The Bonds could not be equated with securities. Further, from plain reading of 3rd proviso to Sec.48. government securities were not excluded for indexation benefit and only bond or debentures were excluded. Accordingly, the revenue's grounds were dismissed. We find that similar is the issue in both the appeals of the revenue. Therefore, facts being pari-materia the same, taking the same view, we dismiss both the appeals of the revenue. This issue also arises in revenue's appeals ITA No.291/Chny/15 for AY 2008-09, ITA No.292/Chny/15 for AY 2009-10 and ITA No.293/Chny/2015 for AY 2010-11. Accordingly, corresponding grounds raised in those years stands dismissed.

16. ITA No.289/Chny/2015, AY 2007-08

The remaining issues in this appeal are – (i) Disallowance u/s 40(a)(i) & (ii) Disallowance u/s 14A. The adjudication of the same would be as under: -

Disallowance u/s 40(a)(i)

16.1 The assessee has been saddled with disallowance u/s 40(a)(i) for Rs.228.67 Lacs for want of TDS on certain payments as detailed in para 13 of the assessment order. The assessee submitted that professional charges were paid for services rendered towards providing lead and market information for the business in Singapore and other countries. The payment would not be fees for technical services or royalty as the services were rendered outside India. However, rejecting the same, Ld. AO disallowed an amount of Rs.228.67 Lacs u/s 40(a)(i). The Ld. CIT(A), after considering assessee's submissions, deleted all the additions except foreign travel expenditure wherein Ld. AO was directed to verify the same after obtaining details from the assessee. Aggrieved, the revenue is in further appeal before us.

16.2 We find that similar issue, in assessee's appeal for AYs 2009-10 & 2010-11 has been remitted back by us to the file of Ld. AO for the reasons stated therein. We find that it is the contention of Ld. AO that the services were utilized in India whereas Ld. CIT(A) concluded that the services were utilized outside India. Therefore, to resolve the contradiction and with a view to enable the revenue to take consistent stand in the matter, we remit this issue to the file of Ld. AO on similar lines. The assessee is directed to furnish the requisite details and Ld. AO, after due verification, may re-adjudicate this issue. Needless to add that the assessee is free to rely on various judicial pronouncements as placed before us. This issue stand allowed for statistical purposes in this year as well as in ITA No.291/Chny/2015 for AY 2008-09.

Disallowance u/s 14A

17. This issue arises in assessee's appeal for AY 2008-09 to 2010-11 as well as in revenue's appeal for AY 2007-08.

Facts in AY 2007-08 are that the assessee earned exempt dividend income of Rs.1881.19 Lacs as well as exempt long-term capital gains for Rs.263.20 Lacs. However, no disallowance was offered u/s 14A and during assessment proceedings, the assessee agreed for disallowance of 2% of exempt income. The Ld. AO, invoking Rule 8D, computed aggregate disallowance of Rs.152.11 Lacs. The Ld. CIT(A) noted that Rule 8D would not apply to this year and accordingly, directed Ld. AO to restrict the disallowance to the extent of 2% as held in various judicial pronouncements. Aggrieved, the revenue is in further appeal before us.

We concur with the adjudication of Ld. CIT(A) that the provisions of Rule 8D were not applicable prior to AY 2008-09. Therefore, the disallowance of 2% considering the facts of the case, was quite fair which is supported by various judicial pronouncements as enumerated in the impugned order. Therefore, finding no infirmity in the impugned order, on this issue, we dismiss the grounds raised by the revenue.

18. Facts in AY 2008-09 are that the assessee earned exempt dividend income of Rs.8726.04 Lacs and exempt capital gain of Rs.462.91 Lacs. The Ld. AO, invoking Rule 8D, computed aggregate disallowance of Rs.240.89 Lacs which was interest disallowance u/r 8D(2)(ii) for Rs.14.39 Lacs and indirect expense disallowance u/r 8D(2)(iii) for Rs.226.49 Lacs. The disallowance, upon confirmation by Ld. CIT(A) is in further appeal before us. Similar are the facts in AY 2009-10 wherein Ld. AO has computed disallowance of Rs.198.84 Lacs which was confirmed in the first appellate order. Similar are the facts in AY 2010-11 wherein

Ld. AO has computed disallowance of Rs.1196.87 Lacs which was confirmed in the first appellate order. Aggrieved, the assessee is in further appeal before us in all these years.

The submissions of Ld. AR are two-fold i.e., own funds are more than the investment and therefore, no interest disallowance should be made. Secondly, the 0.5% as per Rule 8D(2)(iii) should be computed only on those investments which have yielded exempt income during the year. We concur with both the submissions. The Ld. AO is directed to verify whether assessee's own funds are sufficient enough to cover the investment. If so, interest disallowance would not be justified. Further, the indirect disallowance of 0.5% should be computed only on those investments which have yielded exempt income during the year. The grounds, in all the three years, stand allowed for statistical purposes. The assessee's appeal for AYs 2008-09 to 2010-11 stands partly allowed in terms of our above order.

Conclusion

19. The assessee's appeal for AYs 2006-07 to 2010-11 stands partly allowed. The revenue's appeals ITA Nos.288 & 290/Chny/2015 for AYs 2006-07 & 2007-08 stands dismissed. All the other appeals of the revenue stand partly allowed for statistical purposes.

Order pronounced on 09th March, 2022.

Sd/-	**Sd/-**
(MAHAVIR SINGH)	**(MANOJ KUMAR AGGARWAL)**
उपाध्यक्ष /VICE PRESIDENT	**लेखा सदस्य / ACCOUNTANT MEMBER**

न्नई / Chennai; दिनांक / Dated : 09/03/2022.
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