

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.1290/Chny/2018 & C.O. No.102/Chny/2018

[In ITA No.1290/Chny/2018]

(निर्धारणवर्ष / Assessment Year: 2013-14)

Deputy Commissioner of Income Tax, Corporate Circle-1 (2), Chennai.	Vs	M/s. Fuji Electric Consul Neowatt Pvt.Ltd. (Formerly known as M/s.Consul Neowatt Power Solution Pvt. Ltd.) 4/329A, Mahabalipuram Road, Thiruvanmiyur, Chennai-600 041.
		PAN:AABCC 2553Q
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent / Cross Objector)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. AR.V. Sreenivasan, Addl. CIT
प्रत्यर्थीकीओरसे/Respondent by	:	Mrs. N.V.Lakshmi, Advocate

सुनवाईकीतारीख/Date of hearing	:	21.03.2022
घोषणाकीतारीख /Date of Pronouncement	:	28.03.2022

आदेश / ORDER

PER G.MANJUNATHA, AM:

This appeal filed by the Revenue and cross objection filed by the assessee are directed against order passed by the learned Commissioner of Income Tax (Appeals)-4, Chennai, dated 02.01.2018 and pertains to assessment year 2013-14.

2. At the outset, learned AR for the assessee submitted that the cross objection filed by the assessee is time barred by 6 days for which necessary petition for condonation of delay along with affidavit explaining the reasons for the delay has

been filed. The AR further submitted that the assessee could not file cross objection within the time allowed under the Act, due to the fact that there was delay in appointing tax consultants which caused delay of 6 days. The delay in filing cross objection is neither intentional nor willful, but for the unavoidable reasons, therefore, he prayed that delay may be condoned in the interest of advancement of substantial justice.

3. The learned DR, on the other hand, strongly opposing condonation of delay petition filed by the assessee submitted that the reasons given by the assessee do not come within the ambit of reasonable and bonafide reasons, which can be considered for condonation of delay and hence, cross objection filed by the assessee may be dismissed as not maintainable.

4. Having heard both sides and considered the petition filed by the assessee for condonation of delay, we are of the considered view that reasons given by the assessee for not filing the cross objection within the time allowed under the Act comes under reasonable cause as provided under the Act for condonation of delay and hence, delay in filing of cross

objection is condoned and cross objection filed by the assessee is admitted for adjudication.

5. The revenue has raised following grounds of appeal:-

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

2. The learned CIT(A) erred in restricting the disallowance of Rs.69.29 lakhs made by the AO in respect of disallowance u/s.14A r.w. Rule 8D.

2.2 The learned CIT(A) erred in directing the AO to exclude interest on loans while computing disallowance u/s.14A even though no separate books have been maintained by the assessee to establish that no borrowed funds were utilized in the investment in mutual funds and no expenses were incurred in maintenance of these investments.

2.3 The learned CIT(A) failed to appreciate that the assessee would have expended some amount of managerial or administrative resources for maintaining these investments and some expenditure embedded in administrative/managerial expenses incurred during the year would relate to the earning of the dividend income from these tax exempt investments.

2.4 The learned CIT(A) erred in directing the AO to restrict the disallowance to the extent of exempt income earned during the year when no such directions exist in the provisions of Sec. 14A or Rule 8D.

2.5 The learned CIT(A) failed to appreciate that the provisions of Sec. 14A r.w. Rule 8D have been constitutionally valid and has to be mandatorily followed by the AO in accordance with the directions contained therein.

3.1 *The learned CIT(A) erred in deleting the disallowance of the entire expenses of Rs.2.08 crores made by the AO being the cost of AMC.*

3.2 *The learned CIT(A) erred in holding that AMC income has not accrued as soon it is received by the assessee.*

3.3 *The learned CIT(A) failed to appreciate that AMC charges are non refundable and the therefore the AMC charges are required to be brought to tax once the sum is received by the assessee.*

3.4 *The learned CIT(A) failed to appreciate that the method adopted by the assessee in treating the annual maintenance charges by spreading it over the total period of annual maintenance contract is against the concept of matching cost and revenue and Accounting Standard of AS-9)*

3.5 *The CIT(A) failed to appreciate that the matching principle of cost and revenue is not satisfied as the receipts are postponed on the basis of number of months remaining in the unexpired period of AMC but the AMC expenses which are not part of AMC are not postponed or spread over the period of AMC but the entire expenditure is claimed in the year in which they are incurred.”*

6. The assessee has raised following grounds of cross objection:-

“1. The order of the learned CIT(A) is to be upheld as the said order is in consonance with the law and facts and circumstances of the case.

2.1 The learned CIT(A) has rightly restricted the disallowance to Rs.69.29 lakhs made by the AO in respect of the disallowance u/s. 14A r.w. Rule 8D.

2.2 The learned CIT(A) was right in directing the AO to exclude interest on loans while computing disallowance u/s. 14A.

2.3 The learned CIT(A) rightly appreciated the fact that the assessee did not expend any managerial/admin costs attributable to earning dividend income.

2.4 The learned CIT(A) was right in directing the AO in restricting the disallowance to the extent of the exempt income earned during the year as per the provisions of Sec. 14A or Rule 8D.

3.1 The learned CIT(A) was right in allowing the expenditure of Rs.2.08 crores being the cost of AMC.

3.2 The learned CIT(A) was right in holding that AMC income has not accrued as soon it is received by the assessee.

3.3 The learned CIT(A) rightly appreciated that the AMC charges are non-refundable and therefore the AMC charges are not required to be brought to tax once the sum is received by the assessee.

3.4 The learned CIT(A) has rightly appreciated that the method adopted by the assessee in treating the AMC by spreading over the total period of annual maintenance contract is with the concept of matching cost and revenue and Accounting Standard 9.

4. 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 upheld."

7. Brief facts of the case are that the assessee company is engaged in the business of manufacturing and marketing stabilizers and UPS products filed its return of income for the assessment year 2013-14 on 29.09.2013 declaring total loss

of Rs.9,10,69,520/-. The case has been taken up for scrutiny and assessment has been completed u/s.143(3) of the Income Tax Act, 1961, on 14.03.2016 and determined total loss at Rs.5,66,93,841/- by making various additions, including addition towards disallowance u/s.14A of the Income Tax Act, 1961, at Rs.69,29,042/- and additions towards unaccounted income on account of change in method of accounting for Rs.2,56,21,324/-. The assessee carried the matter in appeal before the first appellate authority. The learned CIT(A) for the reasons stated in his appellate order dated 02.01.2018 has partly allowed appeal filed by the assessee, where he has directed the Assessing Officer to restrict disallowance u/s.14A of the Act to the extent of exempt income earned for the year. However, in respect of additions made towards deferred income on account of change in method of accounting, the learned CIT(A) directed the Assessing Officer to delete additions by holding that as per accounting standard, the assessee has accounted income on accrual basis as and when services are rendered. Since, the assessee has collected revenue for AMC charges and period of AMC is spread over to two financial years, revenue pertains to subsequent financial year has been

deferred and accounted in subsequent financial year. Aggrieved by the learned CIT(A) order, the revenue is in appeal before us and assessee has filed cross objection.

8. The first issue that came up for our consideration from ground No.2.1 to 2.4 of the revenue appeal and ground no.2.1 to 2.4 of the cross objection filed by the assessee is disallowance u/s.14A r.w. Rule 8D of Income Tax Rules, 1962. The assessee has earned dividend income of Rs.15,71,210/- from mutual fund and claimed same as exempt u/s.10(34) of the Income Tax Act, 1961, however, the assessee company has not disallowed expenses relatable to exempt income. Therefore, the Assessing Officer considering relevant submissions of the assessee and also taken note of various expenditure debited into profit & loss account has determined disallowance u/s.14A of the Act by applying Rule 8D of the I.T. Rules, 1962 and determined total disallowance of Rs,69,29,042/-.

9. The learned DR submitted that the learned CIT(A) erred in directing the Assessing Officer to restrict disallowance

u/s.14A r.w. rule 8D of the I.T. Rules, 1962, to the extent of exempt income without appreciating fact that the assessee does not maintain separate books of account to establish that no borrowed funds were utilized in investments made in mutual funds.

10. The learned A.R., on the other hand, submitted that the learned CIT(A) has erred in not appreciating fact that the assessee has not utilized borrowed funds for investments in share capital of subsidiary company and thus, question of disallowance of interest expenses does not arise. For this purpose, she has also referred to financial statements and argued that the assessee has raised fresh capital for the impugned assessment year and out of capital investments made in share application money of subsidiary company. Therefore, question of disallowance of interest expenses does not arise.

11. We have heard both the parties, perused material available on record and gone through orders of the authorities below. Although, the assessee claims to have used fresh capital raised during the financial year to make investments in

share application money in subsidiary company, but on perusal of financial statements filed by the assessee, we find that the assessee has availed huge borrowings from banks and paid interest. Further, the assessee failed to prove its claim that it has not utilized borrowed funds for investment purpose with necessary evidence. Therefore, we are of the considered view that there is no error in the reasons given by the Assessing Officer as well as learned CIT(A) to sustain additions towards disallowance of interest u/s.14A r.w.Rule 8D. However, fact remains that the assessee has earned dividend income of Rs.15,71,210/- whereas, the Assessing Officer has disallowed expenses relatable to exempt income at Rs.69,29,042/- which is in excess of dividend income earned for the year. It is well settled principle of law by the decision of various courts, including decision of the Hon'ble Jurisdictional High Court of Madras in the case of M/s. Redington India Ltd. Vs. Addl.CIT (2017) 77 Taxmann.com 257 (Mad), where it has been clearly held that disallowance contemplated u/s.14A r.w. Rule 8D cannot exceed exempt income. The learned CIT(A), after considering relevant facts has rightly directed the Assessing Officer to recompute disallowance u/s.14A of the Act, but

restrict disallowance to the extent of exempt income earned for the year. Hence, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the revenue as well as the assessee.

12. The next issue that came up for our consideration from ground no.3.1 to 3.5 of the revenue appeal and ground no.3.1 to 3.4 of cross objection of the assessee is additions towards deferred income on account of change in method of accounting amounting to Rs.2,56,21,324/-. The assessee is in the business of manufacturing of stabilizers and UPS products has entered into AMC contract with its customers and has collected AMC charges. The said AMC contract spread over to two financial years. The assessee was accounting AMC charges on cash basis upto the assessment year 2012-13, however, from the assessment year 2013-14, the assessee has changed its method of accounting and accounted AMC charges pertains to impugned assessment year and balance AMC charges has been deferred and kept under deferred income to be offered to tax in subsequent financial year. The Assessing Officer had made additions towards deferred income on the ground that

the assessee has failed to explain reasons for change in method of accounting and further, when income has already accrued or deemed to be accrued for the relevant assessment year, question of deferral of income to subsequent year does not arise. On appeal, the learned CIT(A) has deleted additions made by the Assessing Officer.

13. The learned DR submitted that the learned CIT(A) erred in deleting additions made by the Assessing Officer towards deferred income on account of AMC charges without appreciating fact that the assessee has failed to explain reasons for change in method of accounting. The learned DR further submitted that when the assessee has deferred income to subsequent year, however, did not defer expenses relatable to said income. Therefore, learned CIT(A) without appreciating facts has simply deleted additions made by the Assessing Officer.

14. The learned A.R. for the assessee, on the other hand, supporting order of the learned CIT(A) submitted that the assessee has changed its method of accounting from the

impugned assessment year from cash system of accounting to mercantile system of accounting, as per which the assessee has accounted AMC charges on accrual basis on the basis of services rendered. Since, the assessee has not rendered services for part of AMC charges receivable from customers, same has been deferred to subsequent years and offered to tax. The learned CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer and his order should be upheld.

15. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The assessee has changed its method of accounting in respect of AMC charges received from customers and has deferred part of AMC charges pertaining to subsequent financial year and offered to tax in subsequent financial years. The Assessing Officer has made additions towards deferred income on account of AMC charges on the ground that when income has been accrued to the assessee for the relevant assessment year, the assessee cannot defer income to subsequent year by changing its method of accounting.

According to the Assessing Officer, when the assessee has deferred income to subsequent year, ought to have deferred expenses pertains to deferred income also to subsequent financial year. We have given our thoughtful consideration to reasons given by the Assessing Officer in light of various arguments taken by the learned AR for the assessee and we do not ourselves subscribe to the reasons by the Assessing Officer for simple reason that there is no restriction under law to change method of accounting by the assessee from cash system to mercantile system of accounting. The only requirement is to disclose change in method of accounting and its effects to profit or loss for the relevant assessment year. Further, the assessee should follow particular method of accounting consistently, unless situation warrants change in method of accounting. Therefore, on the basis of change in method of accounting, the Assessing Officer cannot make additions towards income deferred to subsequent financial years. Further, the assessee was following cash system of accounting for AMC charges and has recognized income towards AMC charges as and when amount received from customers. However, from the impugned assessment year, the

assessee has changed its method of accounting and thus, deferred AMC charges pertains to subsequent financial year, because the assessee has not rendered services to the customers and thus, question of accrual of any income to the period pertaining to subsequent assessment year does not arise. Therefore, we are of the considered view that when the assessee has explained reasons for change in method of accounting and further, disclosed effects in profit or loss for the relevant financial year in a statement of financial accounts prepared for the year, then the Assessing Officer should not have made additions towards deferred income only on the ground that the assessee does not explain reasons for change in method of accounting. We further noted that the Assessing Officer has observed that when the assessee has deferred income to subsequent financial year, it ought to have deferred expenses pertains to deferred income. We find that the assessee does not incur expenditure relatable to income deferred to subsequent financial year. Therefore, when there is no expenditure incurred and debited into profit & loss account, then question of deferral expenses to subsequent year does not arise. Therefore, we are of the considered view that reasons

given by the Assessing Officer to make additions towards deferred income on account of AMC charges cannot be sustained. The learned CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer. Hence, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the revenue.

16. In the result, appeal filed by the revenue and cross objection filed by the assessee are dismissed.

Order pronounced in the open court on 28th March, 2022

Sd/-
(वी. दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी. मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 28th March, 2021

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.