

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.: **727, 728 & 729/CHNY/2020**  
निर्धारण वर्ष /Assessment Years: 2013-14, 2014-15 & 2017-18

**The ACIT,**  
Corporate Circle 4(1),  
Chennai – 34.

**L & T Infrastructure**  
v. **Development Projects Ltd.,**  
PB.No.979, TCTC Building,  
1<sup>st</sup> Floor, Mount Poonamallee  
Road, Manapakkam,  
Chennai – 600 089.

(अपीलार्थी/Appellant)

**PAN: AAACL 7617D**  
(प्रत्यर्थी/Respondent)

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

: Shri M.Rajan, CIT  
: Shri N.V.Balaji, Advocate &  
Ms. N.V. Lakshmi, Advocate

सुनवाई की तारीख/Date of Hearing : 04.04.2022  
घोषणा की तारीख/Date of Pronouncement : 08.04.2022

**आदेश /O R D E R**

**PER MAHAVIR SINGH, VP:**

These three appeals by the Revenue are arising out of three different orders of the learned Commissioner of Income Tax (Appeals)-8, Chennai in ITA No.333/CIT(A)-8/2016-17, 76/CIT(A)-8/2017-18 & 49/CIT(A)-8/2019-20 of different dates 21.02.2020 & 17.03.2020.

The assessments were framed by the DCIT / ACIT, Corporate Circle – 4(1), Chennai for the assessment years 2013-14, 2014-15 & 2017-18 u/s.143(3) of the of the Income Tax Act, 1961 (hereinafter `the Act')vide orders of different dates i.e., 30.12.2016 & 19.12.2019 respectively.

2. At the outset, it is noticed that the two appeals were barred by 98 days and one appeal is barred by 87 days and Revenue has filed condonation petitions stating the reason that the orders of CIT(A) dated 21.02.2020 & 17.03.2020 were received by the PCIT on 12.03.2020 & 23.03.2020 and the due dates for filling of appeals before the Tribunal was 12.05.2020 & 22.05.2020 respectively. The Revenue in its condonation petitions stated the reason that due to Covid-19 pandemic, the appeals could not be filed in time, as the appeal before the Tribunal was to be filed on 12.05.2020 & 22.05.2020 but instead on that actually these appeals were filed only on 17.08.2020 with a delay of 98 days and 87 days. We noted that 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 in filing of these appeals by Revenue and admit these appeals for adjudication.

3. The only issue in these three appeals 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, read with Rule 8D(2)(iii) of the Income Tax Rules, 1962 i.e., administrative expenses, made by the AO by computing the investments made in Special Purpose Vehicles. The CIT(A) restricted the disallowance at 2% of income derived from investments other than investments in SPV as disallowance u/s.14A r.w.rule 8D. The assessee has filed a chart of computation of disallowance u/s.14A, which reads as under:-

AY	Exempt Income claimed by assessee	Suo Motto Disallowance made by assessee	Disallowance u/s 14A as per Assessment Order	Outcome of CIT(A) order
2017-18	983000	20,02,219	21,68,10,699	disallow 2% of dividend income
2014-15	983000	16,30,480	13,33,90,378	
2013-14	0	14,25,407	10,92,72,713	

4. At the outset, the Id.counsel for the assessee stated that as far as assessment year 2013-14 in ITA No.727/CHNY/2020 is concerned there is no exempt income earned by the assessee and

for this a specific ground has been raised by the assessee before the CIT(A) and despite the fact, that CIT(A) restricted the disallowance @ 2% of the dividend income earned excluding the investments made in SPVs. According to Id.counsel once there is no dividend income earned, the CIT(A) has rightly deleted the disallowance. The Id.DR could not controvert the above fact situation in this year.

5. After hearing both the sides, we noted that for the assessment year 2013-14, the assessee has not earned any exempt income and in view of the decision of Hon'ble Supreme Court in the case of CIT v. Chettinad Logistics (P) Ltd., (2018) 95 taxmann.com 250 (SC). The Hon'ble Supreme Court has dismissed the SLP against decision of Hon'ble Madras High Court in the case of CIT v. Chettinad Logistics (P.) Ltd., (2017) (80 taxmann.com 221) wherein it was held that that section 14A cannot be invoked where no exempt income was earned by assessee in relevant assessment year. In view of the decision of Hon'ble Supreme Court in the case of Chettinad Logistics (P.) Ltd., *supra*, we dismiss this appeal of the Revenue for the assessment year 2013-14.

5. Coming to ITA Nos.728 & 729/CHNY/2020 for the assessment years 2014-15 & 2017-18, the Id.counsel for the assessee stated

that the CIT(A) relied on Tribunal's decision in assessee's own case for the assessment year 2007-08 in ITA No.2226/Mds/2013 order dated 21.11.2014 and according to Revenue this has not been accepted by Revenue and is pending disposal before Hon'ble Madras High Court in TCA No.757 of 2016. The Id.counsel stated that the CIT(A) has directed exclusion of investments made in Special Purpose Vehicles and for rest of investments he has directed the AO to disallow 2% of interest derived from other investments while computing disallowance under Rule 8D(2)(iii). The Id.counsel stated that according to him, there is no ambiguity in the order of CIT(A).

5.1 On the other hand, the Id. Senior DR stated that there cannot be any estimation that what should be the percentage of disallowance either 2% or 10%, the instruments giving raise to income or investments made in the same has to be excluded while computing disallowance under Rule 8D(2)(iii) i.e., 0.5% of average value of investment and accordingly the disallowance should be made as per rules.

6. After hearing rival contentions and going through the facts of the case, we noted that the CIT(A) erred in holding that only 2% of income deriving from investments is to be disallowed other than

investments in SPVs under Rule 8D(2)(iii). We set aside this finding and remand the matter back to the AO for deciding afresh but he will consider the investments which are giving rise to exempt income only, for the purpose of computation of disallowance of average value of investments. Hence, for these two assessment years, the matter is restored back to the file of the AO with the above directions.

7. In the result, the appeal filed by the Revenue in ITA No.727/CHNY/2020 is dismissed and in ITA Nos.728 & 729/CHNY/2020 are allowed for statistical purposes.

Order pronounced in the court on 8<sup>th</sup> April, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 8<sup>th</sup> April, 2022

**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.            |