

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

आयकर अपीलसं./ I. T. A. No.374/Chny/2017
(निर्धारणवर्ष / Assessment Years: 2012-13)

M/s.Madras Enterprises Ltd. (Formerly Madras Stock Exchange Ltd.) 30/11, Exchange Building, Second Line Beach, Chennai-600 001.	vs.	The Deputy Commissioner of Income Tax, Corporate Circle-4(1) Chennai-600 034
PAN: AAACM 7611E		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Mr. K. Ramkrishnan, C.A.
प्रत्यर्थीकी ओर से/Respondent by	:	Mr. P.Sajit Kumar,JCIT

सुनवाईकीतारीख/Date of hearing	:	12.05.2022
घोषणाकीतारीख /Date of Pronouncement	:	25.05.2022

आदेश / O R D E R

PER G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against order passed by the learned Commissioner of Income Tax (Appeals)-8, Chennai, dated 30.11.2016 and pertains to assessment year 2012-13.

2. The assessee has raised following grounds of appeal:-

"I. The order of the Learned CIT (A) is contrary to law, facts and circumstances of the case.

II. The learned CIT (A) erred in upholding the disallowances made by AO with regard to the amounts transferred to Various Funds viz. Investors Service Reserve, Investor Protection Reserve, Investors Protection Fund.

III. The learned CIT (A) erred in upholding the disallowance made by the AO with regard to the listing fees.

IV. 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 the appellant's claim be allowed in full."

3. Brief facts of the case are that the assessee company is a recognized stock exchange filed its return of income for the assessment year 2012-13 on 26.09.2012 declaring total income of Rs.39,44,930/-. The assessment has been completed u/s.143(3) of the Income Tax Act, 1961, on 31.03.2015 and determined total income of Rs.3,52,80,816/- by making additions towards listing fees and disallowance of amount transferred to certain reserves as per SEBI directions out of income from other sources. The assessee carried the matter in appeal before the first appellate authority, but could not succeed. The learned CIT(A), for the reasons stated in his appellate order dated 30.11.2016, sustained additions made by the Assessing Officer towards listing fees accounted in the books of account of the assessee, but excluded from total income in the statement of total income and also made additions towards amount transferred to certain reserves. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

4. The first issue that came up for our consideration from ground no.2 of the assessee appeal is additions made towards amount transferred to various funds, including investor service reserve, investor protection reserve and investor protection fund. The assessee has transferred a sum of Rs.65,75,993/- to various reserve funds as per direction of SEBI out of its income and claimed that amount transferred to said reserve funds is not taxable in the hands of the assessee, because of overriding title as per the directions of the SEBI. The Assessing Officer, however, did not accept contention of the assessee and according to him, amount transferred to certain reserve funds is nothing, but appropriation of income and thus, the assessee cannot exclude said amount from its total income and therefore, made additions towards amount transferred to investors service reserve, investors protection reserve and investors education fund.

5. The learned A.R for the assessee submitted that this issue is covered against the assessee by the decision of the Tribunal in the assessee's own case for earlier assessment year 2010-11 in ITA No.2546/Mds/2014 dated 04.02.2015, where the Tribunal observed that amount transferred to various

reserve funds as per directions of the SEBI is nothing but appropriation of profits and thus, the same cannot be excluded from the income of the assessee. The learned A.R further submitted that as regards alternative plea of the assessee to allow deduction towards expenditure incurred out of such reserve funds, the issue has been set aside to the file of the Assessing Officer to verify claim of the assessee.

6. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that the Tribunal has decided this issue against the assessee for earlier assessment year and thus, there is no reason to take different view for the impugned assessment year.

7. We have heard both the parties, perused material available on record and gone through orders of the authorities below. An identical issue had been considered by the Tribunal in the assessee's own case for earlier assessment year 2010-11 in ITA No/2546/Mds/2014, where under identical circumstances, the Tribunal had sustained additions made by the Assessing Officer towards amount transferred to certain reserve funds in terms of SEBI regulations, however, restored

alternative plea of the assessee for deduction of expenditure incurred out of said reserve funds for verification of facts. The relevant findings of the Tribunal are as under:-

“13. We heard the parties on this issue and perused the record. Before us, the Ld A.R placed reliance on the decision rendered by the jurisdictional High Court in the case of Salem Co-operative Sugar Mills Ltd (supra) to contend that there was diversion of income by overriding title. However, a perusal of the facts prevailing in the above said case would show that the assessee therein was directed to collect certain amount along with the sale price fixed for alcohol under the Molasses Control (Amendment) Order. Even before the collection of the amount as per the direction, the assessee was directed to keep this amount under a separate account under the head ‘molasses storage fund’. The said collection was seen to belong to the molasses storage fund and the same could be utilized only for constructing storage tank only. It was further noticed that, if the assessee fails to collect such amount as directed by the Molasses Control (Amendment) Order, the Central Government will construct a molasses storage tank and recoup the construction charges from the assessee. Thus, it was seen that the assessee did not have any control and domain over the amount so collected and it could not also utilize the same for business purposes. Under these set of facts, it was held that the amount so collected did not reach the assessee and got diverted by overriding title at the source itself.

14. The facts prevailing in the instant case are that the assessee herein was not directed to collect any amount separately along with the listing fee. The Molasses Control (Amendment) Order was issued by the Central Government,

whereas in the instant case, the SEBI has issued directives, which read as under:-

“The Exchange is directed to set aside atleast 10% of the listing fees for providing services to the investing public...”

A perusal of the above said direction would show that it was only a direction and the assessee has been given discretion to determine the quantum of amount to be set aside, with a minimum of 10% of the listing fees. We may note here that the very purpose of existence of the assessee and also its objective is to facilitate the investors in their trading activity and the SEBI has only directed to appropriate funds towards investors awareness and protection, which otherwise the assessee is required to incur in the ordinary course of its activities. Hence, in our considered view, the direction issued by the SEBI only prescribes the minimum monetary limit for spending the funds towards investor education and protection activities. At this juncture, we feel it pertinent to extract the following observations made by the Hon'ble Supreme Court in the case of CIT VS. Sitaldas Tirathdas (1961)(41 ITR 367):-

“10..... Where by the obligation income is diverted before it reaches the assessee, it is deductible; but where the income is required to be applied to discharge an obligation after such income reaches the assessee, the same consequence, in law, does not follow. It is the first kind of payment which can truly be excused and not the second. The second payment is merely an obligation to pay another a portion of one's own income, which has been received and is since applied. The first is a case in which the income never reaches the assessee, who even if he were to collect it does so, not as part of his income, but for and on behalf of the person to whom it is payable.”

15. In the instant case, we have already noticed that the assessee was required to carry out the activities like facilitating investors, educating them, protecting them etc. in the ordinary course of its activities. In our considered opinion, by issuing the direction (referred above), the SEBI has only prescribed the minimum amount that should be spent for such purposes. The direction issued by SEBI nowhere states that the amount should be appropriated out of listing fees or it should be kept in separate account disabling the assessee from using it. The direction nowhere states that the SEBI would spend the money towards the specific purposes and recover the same from the assessee, if the assessee fails to spend the same. Hence, we are of the view that the assessee cannot take support of the decision rendered by Hon'ble jurisdictional High Court in the case of Salem Co-operative Sugar Mills Ltd (supra), since the facts prevailing in the instant case are totally different. Accordingly we are of the view that the assessee has only appropriated the listing fees after it reached its hands and the purpose of such transfer was only to earmark the income for spending the same for specific purposes. Hence the same should be considered as mere appropriation of income of the assessee. Hence, we are of the view that the accounting treatment adopted by the assessee to transfer the amount directly from listing fee receipts would not make the same as diversion of income by overriding title at the source. Accordingly, we are of the view that the assessing officer was justified in assessing the income so appropriate to investors reserve account etc., as income of the assessee. In view of the foregoing discussions, we are unable to sustain the order passed by Ld CIT(Appeals) on this issue and accordingly set aside the same.

16. The Ld A.R submitted that the amount so transferred to Investors reserve account etc., if not considered as diversion of

income at source, then the expenditure incurred from out of such reserve accounts should be allowed as deduction. We find merit in the said contentions. However, the Ld D.R submitted that the Assessing Officer assessed only the net amount, i.e., net of expenses only. However, a perusal of the assessment order would show that the same was not clear on this issue. Accordingly, we are of the view that this issue requires examination at the end of the assessing officer. Accordingly, we restore this matter to the file of the assessing officer with the direction to examine the alternative claim of the assessee and take appropriate decision in accordance with the law, after affording necessary opportunity of being heard to the assessee.”

8. In this view of the matter and consistent with the view taken by the co-ordinate Bench of the Tribunal, we are of the considered view that there is no error in the reasons given by the learned CIT(A) to sustain additions made by the Assessing Officer towards amount transferred to certain reserve funds. Hence, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the assessee.

9. As regards, alternative plea of the assessee for deduction towards expenditure incurred out of said reserve funds, the matter is set aside to the Assessing Officer and direct the Assessing Officer to re-examine claim of the assessee and take appropriate decision in terms of

observations of the Tribunal given for the assessment year 2010-11 and take necessary decision for the impugned assessment year.

10. The next issue that came up for our consideration from ground no.3 of the assessee appeal is additions towards listing fee received by the assessee on accrual basis.

11. The learned A.R for the assessee submitted that this issue is covered in favour of the assessee by the decision of the Tribunal in assessee's own case for earlier years in ITA No.2546/Mds/2014 dated 04.02.2015, where under identical set of facts, the issue has been set aside to the file of the Assessing Officer for fresh examination in light of the claim of the assessee, although income in the form of listing fee has been accounted in the books of account, but same has been excluded, because there is uncertainty over its collection. Since, facts are identical for the year under consideration, the issue may be restored back to the file of the Assessing Officer for fresh examination.

12. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that although, the issue had been

set aside to the file of the Assessing Officer in earlier assessment year, but the learned CIT(A) has given categorical finding in light of method of accounting followed by the assessee and held that listing fees is accrued to the assessee in accordance with mercantile principles of accounting and thus, same needs to be taxed, even though, recovery of the same is in doubtful. Therefore, there is no need to set aside the issue to the file of the Assessing Officer.

13. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The assessee had recognized listing fees receivable from its clients on accrual basis as and when bills are raised to the clients in the books of account, however, excluded said income in the statement of total income on the ground that recovery of said income is in doubtful and there is uncertainty in realization of income. The Assessing Officer has made additions towards listing fees on the ground that when the assessee is following mercantile system of accounting, income pertains to relevant assessment year needs to be recognized whether or not said income is received during the relevant period. We find that an identical issue had been considered by

the Tribunal for the assessment year 2010-11 and after considering relevant facts set aside the issue to the file of the Assessing Officer for fresh examination of facts in light of claim of the assessee that there is uncertainty over collection of listing fees, even though, same has been accounted on accrual basis. The relevant findings of the Tribunal are as under:-

“8. We heard the parties and perused the record. There is no dispute with regard to the fact that the aggregate amount of listing fee receivable by the assessee for the year under consideration was Rs.2.49 crores and the assessee has disclosed the receipts only to the extent of Rs.1.15 crores. According to the assessee, there is uncertainty over the collection of balance amount of Rs.1.34 crores and hence the same was not recognized as income as per the Accounting Standard 9 relating to Revenue recognition issued by the Institute of Chartered Accountants of India. Even though, we agree with the contention of the assessee in principle, yet we notice that the assessee has failed to demonstrate the existence of the element of “uncertainty” over the collection of the listing fees. We also notice that the Ld.CIT (Appeals) has also failed to examine this aspect and he has simply accepted the contentions of the assessee. There should not be any dispute with regard to the fact that the element of “Uncertainty” has to be measured on the basis of conduct of the company listed with the assessee. We may quote an example here, i.e, the belated payment received from a company cannot be brought into the ambit of “Uncertainty”. However delinquent companies which are in the habit of committing consistent default would fall in the category of “Uncertainty”. 9. Since the

assessee and the company have entered into a listing agreement, the company is expected to abide by the terms and conditions of the same, which includes payment of listing fee also. Hence, as contended by the Ld D.R, the assessee would automatically get an enforceable right over the collection of the listing fee in terms of the agreement entered between them. At the same time, there is also merit in the submission of the assessee that there is no uncertainty over the continuation of the listing agreement due to the emergence of digital stock exchanges like BSE and NSE. However, we are of the view that the responsibility to show that there was uncertainty over the collection of the listing fee lies with the assessee. Hence, in our view, the assessee should furnish the company wise details relating to Rs.1.34 crores and also demonstrate the existence of "Uncertainty" over its collection. In the absence of the explanations of the assessee as to how the element of uncertainty exists in respect of listing fee receivable from each of the company, it may not be possible for the Tribunal to adjudicate this issue. Accordingly, we are of the view that this issue requires fresh examination at the end of the assessing officer. Accordingly, we set aside the order of Ld.CIT(Appeals) on this issue and restore the same to the file of the assessing officer with the direction to examine the same afresh by duly considering the explanations and information that may be furnished by the assessee. We also direct the assessee to furnish necessary evidences / explanations to the assessing officer to demonstrate the existence of the element of "uncertainty" over the collection of the listing fees from each of the companies."

14. In this view of the matter and consistent with the view taken by the co-ordinate Bench of the Tribunal, we are of the

considered view that the issue needs to go back to the file of the Assessing Officer for fresh examination of facts in light of the claim of the assessee that there is uncertainty over collection of listing fees, even though, same has been recognized in the books of account on accrual basis. Hence, we set aside the issue to the file of the Assessing Officer and direct the Assessing Officer to re-examine the claim in light of various evidences filed by the assessee and also decide the issue in light of observations of the Tribunal given for the assessment year 2010-11 and take appropriate decision for the impugned assessment year.

15. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 25th May, 2022

Sd/-
(वी. दुर्गा राव)
 (V. Durga Rao)
 न्यायिक सदस्य /Judicial Member
 चेन्नई/Chennai,
 दिनांक/Dated 25th May, 2022
 DS

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

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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