

आयकरअपीलीयअधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री जी मंजूनाथ लेखक सदस्य, एवं श्री राहुल चौधरी, न्यायिक सदस्य के समक्ष
BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER AND
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

आयकरअपीलसं./I.T.A No.:1368/CHNY/2018
निर्धारणवर्ष/Assessment Year: 2013 - 2014

The Income Tax Officer,
Corporate Ward – 6(1),
Aayakar Bhavan, New Block, 7th Floor,
121, M.G. Road, Chennai – 600 034

.....अपीलार्थी/Appellant

Vs.

M/s. Scorpio Energy Resources Private Limited,
No.20/6 Rukmani Street, West Mambalam,
Chennai – 600 033
PAN: AADCT 2363B

.....प्रत्यर्थी/Respondent

Appearances:

For the Department : Ms. V. Sreedevi, JCIT
For the Respondent : Mr. R. Sivaraman, Advocate

Date of conclusion of hearing : 31.05.2022
Date of pronouncement of order : 02 .06.2022

आदेश /ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant/Revenue has challenged the order, dated 27.02.2018, passed by the Ld. Commissioner of Income Tax (Appeals)-15, Chennai [hereinafter referred to as the 'the CIT(A)'] partly allowing the appeal filed by the Assessee against the Assessment Order, dated 31.03.2016,

passed under Section 143(3) of the Income Tax Act, 1961
[hereinafter referred to as 'the Act'].

2. The Department has raised the following grounds:

[1] *The Order of the Commissioner of Income Tax (Appeals) is contrary to the law and facts of the case.*

[2] *The Ld CIT(A) erred in directing the AO to delete the addition of unexplained cash credit u/s 68 of the IT Act:*

2.1. *On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in deleting the addition of Rs. 15,75,445/- made u/s 68 of IT Act on account of "Fabrication income" reflected in the P & L account*

2.2. *On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in not appreciating the fact that there is no nexus of income of as fabrication income with commodity trading.*

2.3. *On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in not appreciating that the amount shown to have received as " Fabrication income" has to be taxed as income of the assessee company from and disclosed source since the assessee had failed to substantiate the nature and source of this sum with cogent evidences to rebut the presumption drawn against the assessee under the provisions of section 68 of the IT Act.*

2.4. *The Ld CIT(A) failed to note that "as per contract notes the assessee has traded in "Natural gas" on the commodity exchange & that the net receipt from thesetransaction was Rs. 15,75,445/- which was offered as income. By no stretch of imagination the*

above can be said to be evidence of purchase of "Natural gas" be converted to "Fabrication income"

2.5. The Ld CIT(A) failed to note that "Prima facia" onus is always on the assessee to prove the cash credit entry found in the books of account of the assessee In land mark cases like Kale Khan Mohammad Hanif v CIT[1963] 50 ITR 1 (SC), Roshan Dihatti v CIT [1977] 107 ITR (SC) it has been held that the law is well settled that the onus of proving the source of a sum of money found to have been received by an assessee, is on him Where the nature and source thereof cannot be explained satisfactorily, it is open to the revenue to hold that it is the income of the assessee and no further burden is on the revenue to show that the income is from any particular source. It may also be pointed out that the burden of proof is filed for the purposes of Section 68.

[3] The Ld CIT(A) erred in directing the AO to delete the addition u/s 41(1) of the IT Act.

3.1. The Ld CIT(A) failed to note that (a) the transaction through automatic route of FDI process was false (b) the bank account did not show either debit or credit of such amount payable to M/s Widehope Investments Pvt Ltd (c) no intimation of RBI or certificate thereto seeking permission for transfer of amount was furnished by the assessee (d) the transaction are of doubtful nature.

[4] The CIT(A) erred in restricting the disallowance u/s 14A to the amount of dividend income.

4.1 The CIT(A) ought to have appreciated that as per the CBDT Circular No.5/2014 in para No.8, it has been clarified that disallowance u/s 14A r.w.r.8D has to be

made even if taxpayer in a particular year has not earned any exempt income and that there is no provision in the Act or Rules which provides for disallowance to be restricted to the dividend earned.

4.2 *The order of the Hon'ble ITAT on the similar issue in the case of M/s EIH Associated Hotels Limited (2013-TOIL-796-ITAT-MAD, dt. 17.07.2013) has not been accepted by the Department and further appeal in TCVA No.227 of 2014 is pending before the Hon'ble High Court.*

4.3 *The CIT(A) ought to have appreciated that the investments made by the assessee company in its subsidiary company is also entitled for dividend and hence, the same should be treated on par with the other investments made.*

4.4 *The CIT(A) ought to have appreciated that Rule 8D(iii) do not mention of exempting any investments made in the wholly owned subsidiary companies.*

[5] *For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned Commissioner of Income Tax (Appeals) be set aside and that of the Assessing Officer be restored.*

Ground Nos. 1 and 5

3. Ground No. 1 and 5 are disposed off as being general in nature not requiring adjudication.

Ground Nos. 2 to 2.5

4. The brief facts of the case are that the Assessee, a company engaged in the business of manufacturing of and trading in coke & coal, filed its return of income for the Assessment Year 2013-

2014 on 30.03.2014 declaring total income of INR1,19,858/-. The case of the Assessee was selected for scrutiny. During the assessment proceedings the Assessing Officer noticed that the Appellant had declared fabrication income of INR.15,75,245/- and asked the Assessee to furnish details of the same. The Assessee filed contract notes exhibiting that the Assessee had traded in 'natural gas' on the commodity exchange and had offered to tax the net income/receipts from the aforesaid transactions under the head 'Income from Other Sources'. However, the Assessing Officer was not satisfied with the explanation/documents furnished by the Assessee and therefore, the Assessing Officer invoked the provisions of Section 68 of the Act to make an addition of INR 15,75,445/- holding as under:

"In the present case, it is clearly made out that the explanation offered by the Assessee for the claim of 'Fabrication Income' and to the nature of such credit and their authenticity is not satisfactorily in the opinion of the present Assessing Officer and hence to be treated as Cash Credit under Section.68 of the Act and taken to tax under the head 'Income from Other Sources' now. Accordingly, Rs.15,75,445/- is added to the total income as Cash Credits under Section.68 and brought to tax now."

5. Being aggrieved the Assessee carried the issue in appeal before the CIT(A). After examining the contract notes issued by M/s. Core Commodities Private Limited, and the corresponding Bank statement of the Assessee substantiating the commodity trading,

the CIT(A) deleted the addition of INR 15,75,445/- made by the Assessing Officer under Section.68 of the Act holding as under:

“3.3.4. Respectfully following the ratio of the decision mentioned above, I am of the considered opinion that the Assessing Officer has not controverted the evidences such as contract notes and the bank statements furnished by the Appellant. Just because the Assessing Officer had suspicion about the genuineness of the Appellant’s commodity trading, the entire profit cannot be added as undisclosed income. It is pertinent to note that the Appellant has offered the net profit from the commodity trading and paid tax thereon. The same cannot be added twice in the assessment order. In view of the above remarks, the Assessing Officer’s addition of profit from commodity trading is deleted and the Appellant’s ground on this issue is allowed.”

6. The Learned Departmental representative challenging the Relief granted by the CIT(A) submitted that the Assessee had failed to discharge the primary onus. He submitted that the Assessee had disclosed income of INR.15,75,445/- as fabrication income whereas during the Assessment proceedings the Assessee had filed contract notes showing trading in ‘natural gas’ at commodity exchange. He vehemently argued that the Income arising from the aforesaid cannot be classified as fabrication income and therefore, the Assessing Office was justified in making evidence in absence of any credible evidence.
7. Per contra, the Learned Authorized Representative of the Assessee submitted that the income arising from trading in

'natural gas' at commodity exchange was inadvertently classified as 'fabrication income' in the books of accounts. However, in order to prove the genuineness of the transaction the Assessee had filed before the CIT(A) the contract notes issued by M/s. Core Commodities Private Limited as well as Bank statements of the Assessee substantiating the aforesaid transaction. Thus, discharging the primary onus. After examining the documents/information provided by the Assessee, the CIT(A) deleted the addition made by the Assessing Officer.

8. We have considered the rival submissions and perused the material on record. In response to the queries raised by the Assessing Officer, the Assessee had clearly stated that the income of INR.15,75,445/- was the net income earned by the Assessee from trading in 'natural gas' at the commodity exchange. This was supported by the contract notes and the bank statements. In our view, the Assessee had discharged the prima facie onus cast upon the Assessee to explain the genuineness of the transaction as well as the nature and source of the income. Further, the Assessee had disclosed such income of INR.15,75,445/- in the books of accounts as 'fabrication income' and had offered the same to tax as income under the head 'Income from Other Sources'. Nothing has been placed on record to controvert the findings returned by the CIT(A) after

examining the contract notes and bank statement filed by the Assessee. Therefore, in our view, the CIT(A) was justified in deleting the addition of INR.15,75,445/- made by the Assessing Officer under Section 68 of the Act. We do not find any infirmity in the order passed by the CIT(A) on this issue and to that extent, the same is confirmed.

9. In view of the above, the Ground Nos.2 to 2.5 raised by the Appellant/Revenue are dismissed.

Ground Nos. 3 to 3.1

10. During the Assessment proceedings, the Assessee was asked to produce details of investment made in equity shares of M/s. Widehope Investments Pte. Limited (WIPL) amounting to INR 3,84,24,175/- . The Assessee submitted a reply dated 28.03.2016 in response to the same explaining that the Assessee had entered into a Share Purchase Agreement (SPA) with Mr. Lee Kok Wah [Hereinafter referred to as the 'Vendor'] in the Financial Year 2011-2012 for purchasing 95% share of Widehope Investment Pte. Limited, Singapore for a consideration of USD 9,50,000/-. In terms of the SPA, Mr. Lee transferred his 95% shares of the Company in favour of the Assessee. However, the Assessee could not achieve the desired results and decided to unwind the transaction. SPA was cancelled, and the shares of WIPL were returned to Mr. Lee Kok

Wah. No money was transferred on account of this deal. Thus, there was cancellation of liabilities. However, the Assessing Officer, being not satisfied with the explanation provided by the Assessee, made an addition of INR.3,84,24,175/-. The relevant part of the Assessment Order reads as under:

“The submission of the Assessee that two parties across national frontiers exchanged rights and liabilities and rescinded them at each others convenience runs straight in the face of stringent Government policy for documenting them at various levels. The Assessee’s contention that this was through Automatic Route or Foreign Direct Investment process also is false, as even such Inward/Outward remittances have to be through Banking Channels with requisite intimations to Reserve Bank of India and the certification thereto. No such permissions have been taken by the Assessee in the present case. Moreover, on analysis of the Bank account filed by the Assessee during the course of assessment proceedings it is noticed that no such entries appear for either debits or credits of such amount towards M/s. Widehope, Singapore.

In sum total, the entire transaction is of doubtful nature and treated as such. As to issue of rescinding the same, as the Assessee has already declared in the assessment proceedings for the Assessment Year 2012-13 that the transaction has been rescinded it is its natural corollary that the liability booked against Mr. Lee Kok Wah for Rs.3,84,24,175/- has abated for this year. Viz. A.Y. 2013-14 and has to be considered as cessation of liability and brought to tax in the current year.

This transaction falls surely within the parameters of the said provision. Accordingly, the amount of Rs.3,84,24,175/- is treated as Income for the current year under

Section.41(1)(a) of the Act and added back to the total income for the purposes of this assessment.”

11. Being aggrieved, the Assessee carried the issue in appeal before the CIT(A) who deleted the above additions holding as under:

“5.3.5. I have considered both the points of view and I have come to the following influence:

- a. By no stretch of imagination, the amount payable by the Appellant to the Singapore entity of Rs.3.84 crores can be treated as trading liability so as to invoke Section 41(1) of the Act.*
- b. When the Appellant continues to show the said amount in the Balance sheet as payable and the Singapore entity continues to request for the aforesaid payment, the AO’s conclusion that the said liability of the Appellant ceased to exist is not correct.*
- c. The case-laws relied on by the Appellant are in favour of the Appellant on the issue under consideration.*

In view of the above remarks and the decisions relied on by the Appellant, I am of the considered opinion that the AO’s addition of Rs.3.84 crores by invoking Section 41(1) of the Act treating it as cessation of liability is not correct and therefore is deleted. The Appellant’s ground on this issue is allowed.”

12. Being aggrieved by the above relief granted by CIT(A) to the Assessee, the Revenue is in appeal before us. We have heard

the rival submissions. While the Learned Departmental Representative relied upon the Assessment Order, the Learned Authorised Representative of the Assessee relied upon the order passed by the CIT(A) and relied upon the decision of the Hon'ble Madras High Court in the case of Narayanan Chettiar Industries Vs. Income-tax Officer: 277 ITR 426 (Madras) and CIT Vs. Tamilnadu Warehousing Corporation: 292 ITR 310 (Madras).

13. Having considered the rival submissions and perused the material on record including the judgments relied upon by the parties, we are of the view that the CIT(A) was justified in deleting the addition of INR 3,84,24,175/- made by the Assessing Officer under Section 41(1) of the Act as the addition was made by the Assessing Officer on the basis on conjecture and surmises, without appreciating that the amount of INR 3,84,24,175/- did not represent a trading liability. Further, the Assessee had not claimed any allowance/deduction in respect of the same. Still further, during the relevant previous year, the Assessee continued to show the balance payable as outstanding in his books of accounts. Thus, in our view, the Assessing Officer had erred in invoking provision of Section 41(1) of the Act in the facts and circumstances of the present case. Accordingly, we confirm the order of the CIT(A) of deleting the addition of INR.3,84,24,175/- made by the Assessing Officer under Section

41(1) of the Act. In view of the aforesaid Ground Nos.3 to 3.1 raised by the Revenue are dismissed.

Ground Nos. 4 to 4.5

14. During the Assessment proceedings, the Assessing Officer noticed that the Assessee had made investment of INR 60,34,24,165/- in the equity shares. Since the Assessee had not claimed any interest expenditure, and/or any other direct or indirect expenditure in the profit and loss account in relation to the investment made in the equity shares, the Assessing Officer invoked the provisions of Section 14A of Act read with Rule 8D of the Income Tax Rules, 1962 [Hereinafter referred to as 'the Rules']. The Assessing Officer initially computed disallowance in terms of Rule 8D (iii) of the Act at INR 30,17,120/- and thereafter, restricted the same to INR 12,10,412/- being difference between the total expenditure debited to the profit and loss account (INR 14,58,149/-) and depreciation claimed (INR 2,47,737/-). Thus, the Assessing Officer made a disallowance of INR12,10,412/- under Section 14A of the Act read with Rule 8D(iii) of the Rules.
15. Being aggrieved the Appellant filed appeal before the CIT(A) on this issue and contended that the Assessing Officer had disallowed entire expenditure claimed by the Assessee which included salary to staff, legal and professional charges, travelling

and conveyance expenses and other administrative expenses incurred for day-to-day running of the company and having no relation with the earning of the exempt income. It was pointed out that during the relevant previous year the Assessee neither made any investment in equity shares nor earned any exempt income. It was also contended that the Assessing Officer had proceeded to apply the provisions of Rule 8D of the Rules without recording any satisfaction regarding the claim of the Appellant that no interest/expenditure had been incurred by the Assessee in relation to earning of any exempt income during the relevant previous year. Taking into account the contentions of the Assessee, the CIT(A) deleted the addition of INR 12,10,412/- made by the Assessing Officer under Section 14A of the Act.

16. Being aggrieved, the Revenue is in appeal before us.
17. The Learned Departmental Representative relied upon the order passed by the Assessing Officer while the Learned Authorised Representative of the Assessee supported the order passed by the CIT(A).
18. We note that the Assessee had neither made any investments nor earned any exempt income during the relevant previous year. Further, the Assessee had not claimed deduction for any interest expenses and direct/indirect expenses related to investment in

equity shares. The Assessing Officer had simply rejected the contentions of the Assessee during the assessment proceedings and had proceeded to make disallowance under Section 14A of the Act read with Rule 8D (iii) of the Rule. The CIT(A) has after taking into consideration all the facts and circumstance granted relief to the Assessee. We are not inclined to interfere in the order passed by CIT(A) on this issue. Accordingly, in view of the above, Ground No. 4 to 4.5 raised by the Revenue are dismissed.

19. In view of the above, the present appeal filed by the Revenue is dismissed.

Order pronounced in the court on 02.06.2022 at Chennai.

Sd/-

(जीमंजूनभा)

(G. MANJUNATHA)

लेखासदस्य/ACCOUNTANT MEMBER

Sd/-

(राहुलचौधरी)

(RAHUL CHAUDHARY)

न्यायिकसदस्यएवं /JUDICIALMEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 2nd June, 2022

IA, Sr. PS

- आदेशकीप्रतिलिपिअप्रेषित/**Copy to:** 1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF