

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI

श्री जी. मंजुनाथा, माननीय लेखा सदस्य एवं
श्री अनिकेश बनर्जी, माननीय न्यायिक सदस्य के समक्ष
BEFORE SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

आयकर अपील सं./ITA No.2865/Chny/2017
निर्धारण वर्ष /Assessment Year: 2013-14

M/s.Tamil Nadu Fisheries-
Development Corporation Ltd.,
167, Poonamallee High Road,
Kilpauk,
Chennai-600 010.
[PAN: AAAC 2395 J]
(अपीलार्थी/Appellant)

v. The Asst. Commissioner-
of Income Tax,
Corporate Circle-3(1),
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.S.Sridhar, Advocate
प्रत्यर्थी की ओर से /Respondent by : Mr.G.Johnson, Addl.CIT
सुनवाई की तारीख/Date of Hearing : 26.05.2022
घोषणा की तारीख /Date of Pronouncement : 15.06.2022

आदेश / ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-11, Chennai, dated 29.08.2017 and pertains to assessment year 2013-14.

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

1. The common order of The Commissioner of Income Tax (Appeals) 11, Chennai dated 29.08.2017 in I.T.A.Nos.117 & 196/CIT(A)-11/2016-17 in so far as the Assessment Year 2013-14 is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in sustaining the disallowance of the claim of expenses towards investment written off to the extent of Rs.2,40,000/- in the computation of taxable total income without assigning proper reasons and justification.

3. The CIT (Appeals) failed to appreciate that the misreading of the government order dated 14.09.2012 would vitiate the decision in para 8.3 of the impugned order.

:: 2 ::

4. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.

5. The Appellant craves leave to file additional grounds/arguments at the time of hearing.

3. The assessee had also filed a petition for admission of additional grounds of appeal, which is re-produced as under:

The CIT (Appeals) erred in not adjudicating the issue raised on the non-granting of tax credit allowable u/s.115 JAA of the Act, amounting to Rs.27,99,500/- brought forward from the Assessment Year 2012-13 as mentioned in the return of income filed for the Assessment Year under consideration in Schedule MATC in the computation of taxable total income without assigning proper reasons and justification.

4. The brief facts of the case are that the assessee is engaged in the business of management of reservoirs, marketing of fish & fish net, diesel bunks, etc., filed its return of income for the AY 2013-14 on 01.10.2013 declaring income of Rs.7,20,01,780/-. During the course of assessment proceedings, the AO noticed that the assessee has claimed expenditure towards investment written off of Rs.2,40,000/- and after considering relevant details filed by the assessee, has disallowed a sum of Rs.2,40,000/- on the ground that said expenditure is in the nature of capital expenditure, which cannot be allowed as deduction. The assessee carried the matter before the First Appellate Authority, but could not succeed. The Ld.CIT(A) for the reasons stated in his appellate order dated 29.08.2017 sustained additions made by the AO by holding that the expenditure claimed towards write off investment in capital loss and therefore, the same cannot be allowed as deduction. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

:: 3 ::

5. The Ld.AR for the assessee referring to the Government Order vide GO (Ms) No.159 dated 14.09.2012, submitted that the assessee has written off investment in equity share capital in joint venture company promoted by the assessee under the name of M/s.Tamil Nadu Marine Plast Pvt. Ltd., because, said company has closed business and the name has been stricken off by the Registrar of Companies (in short "RoC"), Chennai, and thus, as per the order of the Government of Tamil Nadu, the assessee has written off investment and treated as expenditure. He further submitted that loss of investment is akin to business loss, and needs to be allowed as deduction. In this regard, he relied upon the decision of the Hon'ble Madras High Court in the case of M/s.Electronic Corporation of Tamilnadu Ltd., in Tax Case Appeal No.1499 of 2008 dated 12.11.2018.

6. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A) submitted that claim of the assessee as deduction is capital loss towards written off investment and thus, the AO has rightly disallowed said claim, because in order to claim deduction u/s.37(1) of the Act, it should be in the nature of Revenue expenditure incurred wholly and exclusively for the purpose of business of the assessee.

7. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. In order to claim deduction towards any expenditure, it should not be in the nature of personal expenditure or capital expenditure. Further, said expenditure should be incurred wholly and exclusively for the purpose of business of the

:: 4 ::

assessee. In this case, the assessee has claimed deduction towards written off investment as Revenue expenditure when its investment in joint venture company, has been reduced to nil due to closure of said company by striking off its name by the RoC, Chennai. In this regard, the assessee has taken support from the Government order dated 14.09.2012 and argued that it has claimed deduction towards written off investment as per the order of the Government. The assessee had also taken support from the decision of the Hon'ble Madras High Court in the case of M/s.Electronic Corporation of Tamilnadu Ltd., and argued that on identical circumstances, the Hon'ble High Court has held that written off investment is allowable as business expenditure. We have gone through arguments advanced by the Ld.Counsel for the assessee in light of reasons given by the AO and we ourselves do not inclined to accept the arguments of the assessee for simple reason that the government order allowing the assessee to write off investment is only to facilitate the assessee not to re-pay said investment to the government account. However, said order does not overwrite the provisions of Income Tax Act, 1961, in allowing any expenditure whether it is deductible or not. Therefore, on that basis, the assessee cannot claim deduction towards any expenditure. Further, if you see nature of expenditure claimed by the assessee, the assessee has written off investment in equity share capital in joint venture company, when the said company has been closed due to strike off its name by the RoC. In our considered view, investment made by the assessee in another company is

:: 5 ::

on capital account and further, when loss incurred on account of diminishing in value of said investment is capital in nature and thus, same cannot be claimed as deduction u/s.37(1) of the Act. In so far as case laws relied upon by the assessee in the case of M/s.Electronic Corporation of Tamilnadu Ltd., we find that facts of that case is entirely different in as much as in that case, the assessee was engaged in the business of finance to promote and establish state public sector enterprise for electronic items. Under those facts, the Hon'ble High Court held that the finance provided by the assessee by way of equity participation is akin to loan transactions or advances made and in such cases, if loans are irrecoverable, and they are written off, in the nature of stock in trade and same needs to be deducted as and when reduction in value of investments. In this case, facts are entirely different in as much as the assessee main activity is development of reservoirs and in the course of its business, assessee has participated equity investment in joint venture company. Further, when said investment was reduced to zero on account of closure of said company, the assessee has claimed written off investment as Revenue expenditure in the books of accounts of the assessee. In our considered view, investment made by the assessee in equity capital of joint venture company is on capital gain and consequent loss of said investment is akin into capital loss, which cannot be claimed as deduction. Therefore, case laws relied upon by the assessee does not apply to the facts of the present case and thus, the same is not considered.

:: 6 ::

8. In this view of the matter and considering the facts and circumstances of the present case, we are of the considered view that there is no error in the reasons given by the Ld.CIT(A) to sustain addition towards disallowance of investment written off and thus, we are inclined to uphold the findings of the Ld.CIT(A) and hence, reject the ground taken by the assessee.

9. The assessee has filed additional ground and challenged the order of the Ld.CIT(A) in not adjudicating the issue raised on the non-granting of tax credit allowable u/s.115JAA of the Act, amounting to Rs.27,99,500/- brought forward from the AY 2012-13. We find that additional ground taken by the assessee is purely a legal issue, which can be raised at any time, including proceedings before the Tribunal and thus, the same is admitted for adjudication.

10. As regards, the issue involved in additional ground taken by the assessee is with regard to adjustment of MAT credit available u/s.115JAA of the Act, as per provisions of Sec.115JAA of the Act, if assessee is having MAT credit brought forward from earlier years, then, the same may be adjusted against tax payable for subsequent assessment years. The assessee has taken a ground before the Ld.CIT(A) for adjustment of MAT credit brought forward from AY 2012-13. It was the arguments of the assessee that the Ld.CIT(A) does not adjudicate the ground taken by the assessee. Therefore, we are of the considered view that since, the provisions of Sec.115JAA of the Act, is very clear and as per which, the

:: 7 ::

assessee is entitled for MAT credit brought forward from earlier years and thus, we set aside the issue to the file of the AO and direct the AO to verify the claim of the assessee and allow MAT credit as per the provisions of Sec.115JAA of the Act.

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

Order pronounced on the 15th day of June, 2022, in Chennai.

Sd/-

(अनिकेश बनर्जी)

(ANIKESH BANERJEE)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 15th June, 2022.

TLN

Sd/-

(जी. मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

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