

**आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, CHENNAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ITA No. 782/Chny/2001  
(निर्धारण वर्ष / Assessment Year: 1992-93)

&

आयकर अपील सं./ITA No. 1991/Chny/2002  
(निर्धारण वर्ष / Assessment Year: 1993-94)

<b>Indian Overseas Bank</b> Funds & Accounts Department, 762, Anna Salai, Chennai – 600 002.	<b>बनाम/</b> Vs.	<b>JCIT</b> Special Range – I, Chennai.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAACI-1223-J		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओर से/ <b>Appellant by</b>	:	Shri. C. Naresh (CA) – Ld. AR
प्रत्यर्थी की ओर से/ <b>Respondent by</b>	:	Shri. ARV Sreenivasan (Addl. CIT) – Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	18-05-2022
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	15-06-2022

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeals by assessee for Assessment Years (AY) 1992-93 & 1993-94 have been placed before us pursuant to the orders of Hon'ble High Court of Madras in TCA No.947 of 2019 for AY 1992-93 and TCA No.948 of 2019 for AY 1993-94 dated 05.08.2020. The

following substantial question of laws were framed in TCA No.947 of 2019 before Hon'ble High Court: -

1. Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that reopening of assessment is valid?
2. Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that reopening of assessment is valid on the ground that the appeal of the assessee does not arise out of the reasons recorded for reopening ignoring the grounds of appeal taken before it?
3. Whether on the facts and in the circumstances of the case the Tribunal was right in confirming the order of the CIT(A) that the ground relating to estimated disallowance of deduction u/s. 80M does not arise out of the order of the reassessment without verifying the computation of income?

It was noted that there were two issues i.e., reopening of the assessment and computation of deduction u/s 80M. After taking note of the adjudication of Tribunal, the Hon'ble Court allowed the appeal of the assessee and set aside both the issues, in both the years, to Tribunal for fresh consideration. Accordingly, the grounds to be adjudicated by us are as under: -

- (i) The learned CIT(A) had erred in confirming the order of assessing officer in reopening the assessment and charging to tax interest accrued but not due on securities and disallowing loss on revaluation of investments. The appellant had filed details of these claims along with the return of income and the assessing officer in the original assessments had allowed these only after examination of the details filed. Hence, the reopening was based only on change of opinion and the assessment needs to be struck down on these grounds itself.
- (ii) The CIT(A) has erred in confirming reduction of Rs.4.79,494 being 5% of dividend income towards expenditure in computing the deduction u/s 80M. The CIT(A) should have noted that the appellant has not incurred any expenditure for earning the dividend income and hence no amount should have been disallowed. Besides the appellant has huge interest free funds and hence the question of apportionment of any interest towards earning the income also does not arise. This view is supported by a number of judicial decisions including that of Supreme Court and hence no amount should have been disallowed in computing the deduction u/s 80M.

2. Having heard rival submissions and after due consideration of material facts, our adjudication would be as given in succeeding paragraphs. The Ld. DR drew attention to paragraph-7 of TCA No.948 of 2019. This order arises out of ITA No.1991/Mds/02 wherein the matter

has been remanded back by Hon'ble Court to the file of Tribunal. However, while remanding back, ITA No. has been mentioned as 782/Mds/2001 as against correct ITA No.1991/Mds/02. We find that the same is merely a typographical error and the same is to be ignored.

3. The assessee was assessed for AY 1992-93 u/s 143(3) on 13.03.1995 which was revised from time to time. However, the case was reopened vide notice u/s 148 on 05.03.1997. The Ld. AO framed an assessment u/s 143(3) r.w.s. 147 on 23.12.1998 and determined the income at Rs.38.53 Crores. In the assessment, Ld. AO brought to tax interest on securities for Rs.12.66 Crores pertaining to AY 1991-92 on receipt basis. The assessee claimed notional loss on depreciation of investments for Rs.28.12 Crores which was denied by Ld. AO. Finally, the assessee claimed deduction u/s 80M which was reduced by 5% on account of estimated managerial remuneration.

4. During appellate proceedings, the assessee, inter-alia, raised a legal ground that AO embarked on fishing and roving enquiry to re-examine the facts of the case already on record which were already verified by AO at the time of assessment u/s 143(3). However, Ld. CIT(A) rejected the same on the ground that no such plea was taken by the assessee while filing return of income in response to notice u/s 148. The assessment had earlier been under-assessed and therefore, AO was justified in reopening the assessment. On merits, the disallowance of notional loss on investment was confirmed whereas on issue of interest on securities, Ld. AO was directed to follow earlier appellate order. The issue of 80M was stated to be not arising out of present reassessment order. In other words, the quantum additions as made by Ld.AO were partly allowed.

5. Upon further appeal, Tribunal, by common order dated 30.08.2011, rejected the legal grounds by observing that appeal of the assessee for both the years does not arise out of reasons recorded by Ld. AO. Therefore, the ground was dismissed. The issue, on merits, was partly allowed. The issue of interest on securities as well as loss on revaluation of investments was allowed whereas the issue of 80M was held to be not arising out of reassessment order. The other issues raised in the appeal were held as non-pressed.

6. This order was challenged by the assessee before Hon'ble High Court of Madras wherein the above two issues have been remanded back to the Tribunal for re-adjudication. The directions of Hon'ble Court have already been noted by us in the opening paragraphs.

7. The reasons recorded by Ld. AO to reopen the assessment read as under: -

The assessee bank has been maintaining its books of accounts under mercantile basis. However, while admitting the interest on securities for Income Tax purposes, the assessee bank reduced the interest accrued due to profit & loss account and offers the same on receipt basis. In this way, the assessee bank had reduced a sum of Rs.12,66,24,544/- from the total income for the asst year 1991-92. In as much as the assessee offers the interest on securities on receipt basis, the sum of Rs. 12,66,24,544/- reduced from the total income for the asst year 1991-92 should have been offered to tax in the assessment for 1992-93 on case basis. Failure on the part of the assessee to include such income has resulted in under assessment of income to the extent of Rs.12,66,24,544/-. I have reasons to believe that income chargeable to tax has escaped assessment within the meaning of Sec.147 of the Income Tax Act.

Upon perusal of aforesaid reasons, it could be seen that while framing opinion of escapement of income, Ld. AO has not referred to any tangible material coming into the possession of Ld. AO subsequent to the framing of the regular assessment proceedings. It is an allegation that interest on securities have been offered on receipt basis and

therefore, the receipts of earlier years as received in this year, was to be offered to tax.

8. It is discernible from records that the original return of income was already scrutinized by revenue u/s 143(3). The assessee, in its computation of income for AY 1992-93 (Page no. 72 to 78 of paper-book) reduced 'interest on investments in govt. & other securities accrued but not received' for Rs.1173.77 Lacs. The assessee also added a noted in the computation of income which read as under: -

"The interest on securities which is offered to tax under the head "Business" consequent on the amendment to the Income-tax Act, 1961 is accounted and offered to tax under the head "Business". The cash basis of accounting is continued to be adopted for income-tax purposes as the same basis was adopted from the inception, instead of accrued basis. The cash basis of accounting is regularly followed, notwithstanding the change in the head of income, viz, from "Interest on Securities" to Business".

It is evident from the computation of income that the assessee had disclosed full details of its claim in respect of interest accrued but not due in the computation of income furnished along with the return of income. The whole basis of reopening was the aforesaid computation along with notes thereon as furnished by the assessee along with the return of income. In other words, there was no new tangible material before Ld. AO to reopen the case of the assessee and the reopening was based on existing material already available on record. In such a case, the reopening would become mere review of the order which is impermissible as per the decision of Hon'ble Supreme Court in **CIT V/s Kelvinator of India Ltd. (320 ITR 561)**. We are of the opinion that the formation of belief has to be on the basis of some fresh tangible material or new information which is not the case here. This being so, reassessment proceedings are liable to be quashed on legal grounds.

9. The aforesaid conclusion also find support from the decision of Hon'ble High Court of Madras in **Tanmac India V/s DCIT (78 Taxmann.com 155)** wherein reassessment was held to be not justified since the same was sought to be initiated on the basis of return of income and enclosures thereto which was already part of record. Similar is the ratio of decision in **Pr. CIT V/s M.R.Narayanan (131 Taxmann.com 280)** as well as in **CIT V/s RPG Transmissions Ltd. (48 Taxmann.com 57)**.

10. Considering the ratio of aforesaid binding judicial pronouncements, the reassessment proceedings are liable to be quashed. We order so. The legal grounds urged by the assessee stand allowed. The Ld. AR submitted that in such an eventuality, the issue of computation of deduction u/s 80M would not arise. Concurring with the same, the ground thus raised stand dismissed as infructuous. The appeal stands disposed-off accordingly,

11. It is admitted position that facts as well as point of adjudication as well as the direction of Hon'ble High Court are pari-materia the same in AY 1993-94 except for the fact that issue of computation of deduction u/s 80M is not there in this year. The reasons recorded by Ld. AO to reopen the case of the assessee are substantially the same. Accordingly, the legal grounds urged by the assessee stand allowed and the appeal is disposed-off accordingly.

12. Both the appeals stand allowed in terms of our above order.

Order pronounced on 15<sup>th</sup> June, 2022.

**Sd/-**  
**(MAHAVIR SINGH)**  
**उपाध्यक्ष /VICE PRESIDENT**

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
**लेखासदस्य /ACCOUNTANT MEMBER**

चेन्नई/ Chennai; दिनांक/ Dated : 15-06-2022

*JPV*

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF