

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'B' BENCH: CHENNAI**

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं  
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND**  
**SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1081/Chny/2018  
निर्धारण वर्ष /Assessment Year: 2012-13

M/s.Indeco Ventures Ltd.,  
[Previously known as  
M/s.Karumuthu Finance Pvt. Ltd.],  
4<sup>th</sup> Floor, No.114, Kothari Building,  
Mahatma Gandhi Road,  
Nungambakkam,  
Chennai-600 034.  
[PAN: AAACK 3514 E]  
(अपीलार्थी/Appellant)

v. The Dy. Commissioner-  
of Income Tax,  
Corporate Circle-4(2),  
Chennai.

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.1082/Chny/2018  
निर्धारण वर्ष /Assessment Year: 2013-14

M/s.Indeco Ventures Ltd.,  
[Previously known as  
M/s.Karumuthu Finance Pvt. Ltd.],  
4<sup>th</sup> Floor, No.114, Kothari Building,  
Mahatma Gandhi Road,  
Nungambakkam,  
Chennai-600 034.  
[PAN: AAACK 3514 E]  
(अपीलार्थी/Appellant)

v. The Income Tax Officer,  
Corporate Ward-4(3),  
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.S.Sridhar, Adv.  
प्रत्यर्थी की ओर से /Respondent by : Mr.P.Muthushankar, Addl.CIT  
सुनवाई की तारीख/Date of Hearing : 27.04.2022  
घोषणा की तारीख /Date of Pronouncement : 22.06.2022

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आदेश / ORDER

**PER G. MANJUNATHA, ACCOUNTANT MEMBER:**

These two appeals filed by the assessee are directed against common order passed by the Commissioner of Income Tax (Appeals)-8, Chennai, dated 26.02.2018 and pertains to assessment years 2012-13 & 2013-14.

**2.** The assessee has, more or less, raised common grounds of appeal for both the assessment years. Therefore, for the sake of brevity, grounds of appeal filed for the AY 2012-13, are re-produced as under:

*1. The common order of The Commissioner of Income Tax (Appeals) - 8, Chennai dated 26.02.2018 in I.T.A.Nos.106/15-16 & 31/16-17 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.*

*2. The CIT (Appeals) erred in rejecting the plea for excluding the income offered to the extent of Rs.1,30,00,000/- in the return of income filed which plea was made in consequence to the rejection of the revenue loss claimed towards the advance for allotment of equity shares in the immediately preceding assessment year 2012-13 without assigning proper reasons and justification.*

*3. The CIT (Appeals) failed to appreciate that the application of the decision of the Supreme Court to reject the said plea for exclusion of income was completely misdirected and ought to have appreciated that the cascading effect of the decision rendered in the appeal pertaining to the assessment year 2012-13 should have been implemented in entertaining the said plea for exclusion of income and further ought to have appreciated that the powers of the First Appellate Authority should be reckoned as the powers in co-terminus with the powers of the Assessing Officer, thereby negating the wrong decision in taxing the sum twice.*

*4. The CIT (Appeals) went wrong in recording the findings in this regard from para 16 to para 20 of the impugned order without assigning proper, reasons and justification.*

*5. The CIT (Appeals) erred in confirming the disallowance of Rs.10,55,389/- on the application of section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 without assigning proper reasons and justification.*

*7. The CIT (Appeals) failed to appreciate that in any event the provisions of section 14A of the Act had no application to the facts of the case and ought to have appreciated that the lack of requisite satisfaction on the incurring of expenses for earning tax free income as well as the lack of requisite satisfaction with regard to the adequacy of suo moto disallowance of notional expenses would vitiate the mechanical application of section 14A of the Act.*

*8. The CIT (Appeals) went wrong in recording the findings in this regard in para 13 of the impugned order without assigning proper reasons and justification and ought to have*

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*appreciated that the quantification of the notional expenses for making disallowance was wrong, erroneous, unjustified, incorrect and not sustainable in law.*

*9. 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.*

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

**3.** The brief facts of the case are that the assessee company M/s.Karumuthu Finance Pvt. Ltd., is merged with M/s.Indowind Energy Ltd. The assessee had filed its return of income for the AY 2012-13 on 28.09.2012 admitting loss of Rs.21,61,880/-. The case was taken up for scrutiny. During the course of assessment proceedings, the AO noticed that the assessee has debited an amount of Rs.1,59,08,333/- under the head 'business loss'. The AO called upon the assessee to explain the loss with necessary evidences, for which, the assessee vide letter dated 17.03.2015 submitted that the loss represents written off 25% investment made in equity shares in the capital of M/s.Indowind Energy Ltd. Since, the assessee could not pay balance consideration for allotment of shares, it could not get allotment of shares and thus, amount paid for allotment of shares, has been written off as 'business loss'. The AO, however, was not convinced with the explanation of the assessee and according to him, loss arise as a transaction of merger of companies and further, it is in the nature of capital loss, because, the assessee has paid amount for allotment of equity shares. Therefore, opined that loss debited into P & L A/c, cannot be allowed and hence, made addition of Rs.1,59,08,333/- to total income.

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**4.** Being aggrieved by the assessment order, the assessee filed an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee contended that the main business activity of the erstwhile company, M/s.Karumuthu Finance Pvt. Ltd., in finance and investment and during the course of its business activity, it has made investment in share capital of other company. Therefore, loss on account of write off of investment, is in the nature of revenue loss, it needs to be allowed as deduction. The Ld.CIT(A) after considering relevant submission of the assessee and also by following various judicial precedents, held that loss incurred on foregoing part consideration paid for allotment of equity shares, can only be a capital loss and thus, same cannot be allowed as deduction u/s.37(1) of the Act. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

**5.** The Ld.AR for the assessee submitted that the Ld.CIT(A) erred in sustaining the disallowance of the claim of loss pertaining to the advance payment made for allotment of equity shares as revenue loss by referring to main objects of the erstwhile company while ignoring the objects of the merger entity, as per which, the company was engaged into business of finance and investment and thus, investment made would be in the nature of stock in trade or business advance and consequently, loss on account of said investment, would be in the nature of revenue loss.

**6.** The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that the assessee has made advance payment for allotment of

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equity shares and subsequently, write off said investment voluntarily because, it could not pay balance payment for allotment of equity shares, and consequently, loss on account of said investment, will be in the nature of capital loss and thus, same cannot be allowed as deduction.

**7.** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no dispute with regard to the nature of investment made by the assessee. In fact, assessee itself had admitted the fact that it has paid advance for purchase of equity shares of another company. Therefore, from the above facts, it is very clear that investment made by the assessee in share capital of another company, is on account of capital transaction. In so far as arguments of the assessee that the erstwhile company was engaged into the business of finance and investment and consequently, advance paid for allotment of equity shares, will be in the nature of business advance and loss on account of said investment, would be in the nature of revenue loss. We find that main objects of the erstwhile company is not relevant to decide the nature of loss, but what is relevant is the purpose, for which, said advance was given. If at all, the assessee was engaged into the business of investment activity and in the course of business made, certain investments, then obviously loss arises on account of write off of said investment, will be in the nature of business loss. However, when the assessee is into difference business, made investment in share capital of other company, then said investment partakes the nature of investment

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activity and thus, loss, if any, on account of write off said investment, would be in the nature of capital loss. Therefore, we are of the considered view that there is no error in the reasons given by the AO as well as the Ld.CIT(A) to make additions towards write off investment claimed by the assessee as revenue loss and hence, we reject the arguments of the assessee and confirmed additions made by the AO towards disallowance of write off advance paid for allotment of equity shares.

**8.** The next issue that came up for our consideration from additional grounds filed by the assessee for the AY 2012-13 is rejection of assessee's claim for exclusion of taxation of sum of Rs.1.30 Crs. towards recovery of write off advance in the AY 2012-13. The assessee has filed a revised statement of total income and excluded a sum of Rs.1.30 Crs. from the total income and argued that the assessee has recovered a sum of Rs.1.30 Crs. out of amount written off and claimed as revenue loss amounting to Rs.1,59,08,333/- for the AY 2012-13 on the ground that when the Department has not allowed the loss claimed by the assessee as revenue loss, then, recovery of said advance in the subsequent year, will also be in the nature of capital loss and cannot be included in the total income. The AO rejected the revised statement of total income filed by the assessee on the ground that the assessee has not made a fresh claim by filing revised return as envisaged under the law. The Ld.CIT(A) had also rejected the plea of the assessee on the ground that although, there is a merit in claim made by the assessee for exclusion of sum of Rs.1.30 Crs. from the total

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income, but, the assessee has challenged the order of the AO for the AY 2012-13 before further appeal and thus, claim made by the assessee, cannot be entertained. The Ld.AR for the assessee submitted that when the Department has treated advance paid for allotment of equity shares as capital loss, then, amount recovered out of said advance in the subsequent year also needs to be treated as capital account and excluded from the total income. The Ld.DR fairly agreed that if at all, write off of advance paid for allotment of equity shares is treated as capital loss, then, recovery of said loss in subsequent years, would also be in the nature of capital loss and same cannot be taxed.

**9.** We have heard both the parties and considered relevant materials available on record. We find that the assessee has written off advance paid for allotment of equity shares and debited into P & L A/c as revenue loss for the AY 2012-13. We further noted that the assessee claims to have recovered part of advance written off and offered to tax for the AY 2013-14. It was the argument of the assessee that once loss claimed by the assessee, has been treated as capital loss, then, recovery of said loss in the subsequent year, would also be in the nature of capital loss, which needs to be excluded from taxation. We find merit in the arguments of the assessee, because, write off advance paid for allotment of equity shares is considered to be capital loss and disallowed for the AY 2012-13. Therefore, once loss is considered as capital loss, then, the recovery of said advance in the subsequent years, would also be in the nature of capital loss and

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same needs to be excluded from the total income. Therefore, we direct the AO to verify the claim of the assessee and if AO claim is found correct, then, exclude the amount recovered from the advances in the subsequent years and offered to tax from the total income for the AY 2013-14.

**10.** The next common issue that came up for our consideration from grounds of appeal for both the assessment years is disallowance u/s.14A r.w.r.8D of the Income Tax Rules, 1962. The assessee has made investment in shares and securities and has also computed suo moto disallowance of expenditure relatable to exempt income. The AO did not accept suo moto disallowance computed by the assessee and has invoked Rule 8D and determined disallowance u/s.14A of the Act. It is the argument of the Ld.AR for the assessee that the assessee is not disputing computation of disallowance u/s.14A of the Act. However, it seeks to exclude those investments which does not earned any exempt income for the year under consideration.

**11.** Having heard both the sides and considered material available on record, we find forces in the arguments of the Ld.AR for the assessee for the simple reason that it is a well settled principle of law by the decision of the Hon'ble Delhi High Court in the case of ACIT v. Vireet Investments Pvt. Ltd. reported in [2017] 165 ITD 27 (Del.) that only those investments which yielded exempt income for the relevant assessment years, needs to be

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considered for the purpose of disallowance u/s.14A of the Act. In this case, the AO has considered total investment including those investments which does not yield any exempt income. Therefore, we are of the considered view that the issue needs to be set aside to the file of the AO for re-verification of the claim of the assessee and hence, we set aside the issue to the file of the AO and direct the AO to re-consider the issue and consider only those investments which yield exempt income for both the assessment years for computing disallowance u/s.14A of the Act.

**12.** In the result, the appeals filed by the assessee for both the assessment years are partly allowed for statistical purposes.

Order pronounced on the 22<sup>nd</sup> day of June, 2022, in Chennai.

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

**Sd/-**  
(जी. मंजूनाथा)  
**(G. MANJUNATHA)**  
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,  
दिनांक/Dated: 22<sup>nd</sup> June, 2022.  
**TLN**

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