

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **1739/CHNY/2014**

निर्धारण वर्ष /Assessment Year: 2008-09

**Carborundum Universal
Limited,**
Parry House, 43, Moore Street,
Chennai – 600 001.

The DCIT,
vs. Large Taxpayer Unit,
Chennai.

PAN: AAACC 2474P

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri R. Vijayaraghavan, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 13.07.2022

घोषणा की तारीख/Date of Pronouncement

: 13.07.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of order of the Commissioner of Income Tax (Appeals), Large Taxpayer Unit, Chennai, in ITA No.81/11-12/LTU(A), order dated 20.03.2014. The assessment was framed by the DCIT(LTU), Chennai for the assessment year 2008-09 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 20.12.2011.

2. The Id.counsel for the assessee at the time of hearing stated that in first round, the Tribunal has deleted the disallowance made by AO in regard to expenses relatable to exempt income u/s.14A of the Act. Aggrieved, Revenue preferred appeal before Hon'ble High Court of Madras in Tax Case Appeal No.456 of 2021 and the Hon'ble High Court vide order dated 16.09.2021 remanded only one issue on disallowance of expenses u/s.14A of the Act and the Hon'ble High Court remanded this matter vide para 8 as under:-

“8.In our considered view, this issue requires to be discussed and conceded after the Revenue places appropriate materials to show that the case would fall within the ambit of the Circular issued by CBDT or whether the case has to be pursued by the Revenue in the event of any Audit objection or it is one of the exceptions mentioned in the Circular issued by the CBDT. Therefore, we are inclined to remand the matter to the Tribunal to decide the issue, which was raised in substantial questions of law Nos.1 and 2.”

The Hon'ble High Court has directed the Tribunal to decide the issue afresh and the Hon'ble High Court observed in para 11 as under:-

“11.In the result, this Tax Case Appeal is partly allowed and the finding rendered by the Tribunal with regard to the effect of Section 14A read with Rule 8D, is set aside and the matter is remanded to the Tribunal for fresh consideration, and the substantial questions of law Nos.3 to 5 are decided against the Revenue. No costs.”

3. In light of above decision of Hon'ble High Court of Madras remanding this issue back to the file of the Tribunal, the Id.counsel for the assessee first of all took us through the assessment order

and stated that the AO has simply applied the rule that is formula prescribed under Rule 8D(2) by invoking the provisions of section 14A of the Act. According to the Id.counsel, the assessee has declared dividend income in the return of income at Rs.5,81,54,413/- and claimed the same as exempt. The AO applied the formula and made disallowance of expenses relatable to exempt income under Rule 8D(2)(i) at Rs.14,541/-, under Rule 8D(2)(ii) at Rs.35,38,990/- and under Rule 8D(2)(iii) at Rs.6,05,610/-. The Id.counsel for the assessee stated that the assessee is not interested in prosecuting the disallowance made by AO under Rule 8D(2)(i) amounting to Rs.14,541/- and under Rule 8D(2)(iii) amounting to Rs.6,06,610/- for the reason that the disallowance is very small and due to smallness of amount, the assessee does not want to contest.

4. The short point remains before us is disallowance under Rule 8D(2)(ii) i.e., interest disallowance amounting to Rs.35,38,990/-. The Id.counsel for the assessee stated that the assessee has more interest free funds in the shape of share capital and Reserves & Surplus amounting to Rs.35.18 crores and the investments are only to the extent of Rs.16.97 crores. For this, he produced balance sheet as on 31.03.2008, from where these amounts are verified.

The Id.counsel for the assessee stated that once the assessee's interest free funds are more than investments made in the instruments giving rise to exempt income, no disallowance can be made on any expenditure of interest for the reason that the presumption is in favour of the assessee, that the assessee has invested in the instruments giving rise to exempt income out of interest free funds i.e., in the share of share capital, Reserves & Surplus. The Id.counsel for the assessee relied on the decision of Hon'ble High Court of Bombay in the case of CIT vs. HDFC Bank Ltd., (2014) 366 ITR 505.

5. On the other hand, the Id.Senior DR stated that the assessee has nowhere proved the nexus by filing cash flow statement that the assessee has invested the funds in the instruments giving rise to exempt income out of interest free funds. The Id.Senior DR further stated that the assessee has not taken this plea before AO or before CITA(). In counter, the Id.counsel for the assessee took us through the order of CIT(A) para 4.2.2, wherein the CIT(A) has discussed this issue of own funds and noted borrowed funds used for investment giving rise to earning of exempt income and CIT(A) has not accepted the same without giving any reason.

6. We have heard rival contentions and gone through the facts and circumstances of the case. The facts are clear that the assessee's interest free funds in the shape of Share Capital, Reserves & Surplus to the tune of Rs.35.18 crores as on 31.03.2018 are available with it and investments are to the tune of Rs.16.97 crores. We have gone through the assessment order, the order of CIT(A) and now the arguments of Id. Senior DR and find no material that the authorities below have found out nexus of the investments made by assessee in the instruments giving raise to exempt income is out of interest bearing funds. In the absence of the same, we are of the view that the presumption will be that the assessee has made investment out of own fund i.e., interest free funds available with it in the form of Share Capital and Reserves & Surplus. This view is as support of Hon'ble High Court of Bombay in the case of HDFC Bank Ltd., *supra*, wherein the Hon'ble Bombay High Court following another decision of Hon'ble Bombay High Court in the case of CIT vs. Reliance Utilities and Power Ltd., 313 ITR 340 discussed this issue as under:-

“We find that the facts of the present case are squarely covered by the judgment in the case of Reliance Utilities and Power Ltd. (*supra*). The finding of fact given by the ITAT in the present case is that the Assessee's own funds and other non-interest bearing funds were more than the investment in the tax-free securities. This factual position is not one that is disputed. In the present case, undisputedly the Assessee's capital, profit reserves, surplus and current account deposits were higher than the

investment in the tax-free securities. In view of this factual position, as per the judgment of this Court in the case of Reliance Utilities and Power Ltd. (supra), it would have to be presumed that the investment made by the Assessee would be out of the interest-free funds available with the Assessee. We therefore, are unable to agree with the submission of Mr Suresh Kumar that the Tribunal had erred in dismissing the Appeal of the Revenue on this ground. We do not find that question (A) gives rise to any substantial question of law and is therefore rejected.”

As the issue is covered in favour of assessee and facts are very clear, respectfully following the decision of Hon'ble High Court of Bombay and the in the given facts that the assessee is having own funds i.e., interest free funds available in the share of Share Capital and Reserves & Surplus more than the investments giving raise to exempt income, no disallowance can be upheld. Hence, we delete the disallowance and allow the appeal of assessee partly.

7. In the result, the appeal filed by the assessee is partly-allowed.

Order pronounced in the open court on 13th July, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 13th July, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |