

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

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

आयकर अपील सं./ **ITA No.12/Chny/2020**
(निर्धारणवर्ष / **Assessment Year: 2010-11**)

ACIT Corporate Circle -1(2), Chennai – 600 034.	बनाम/ Vs.	M/s. Cholamandalam Investment & Finance Company Ltd. No.2, Dare House, NSC Bose Road, Parrys, Chennai – 600 001.
स्थायी लेखा सं./ जी आइ आर सं./ PAN/GIR No. AAACC-1226-H		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

आयकर अपील सं./ **ITA No.260/Chny/2020**
(निर्धारणवर्ष / **Assessment Year: 2010-11**)

M/s. Cholamandalam Investment & Finance Company Ltd., No.2, Dare House, NSC Bose Road, Parrys, Chennai – 600 001.	बनाम/ Vs.	ACIT Company Range -1, Chennai – 600 034.
स्थायी लेखा सं./ जी आइ आर सं./ PAN/GIR No. AAACC-1226-H		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Assessee by	:	Shri Ajit Kumar Jain (Advocate) – Ld. AR
प्रत्यर्थीकी ओरसे/ Revenue by	:	Shri AR V Sreenivasan (Addl. CIT) –Ld. DR

सुनवाईकी तारीख/ Date of Hearing	:	06-09-2022
घोषणाकी तारीख / Date of Pronouncement	:	06-09-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. The assessee as well as revenue is in further appeal for Assessment Year (AY) 2010-11 against the order of learned Commissioner of Income Tax (Appeals)-1, Chennai [CIT(A)] dated 20.09.2019 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 28.03.2013.

2. The Registry has noted delay of 30 days in the assessee's appeal, the condonation of which has been sought by Ld. AR. For the same, our attention has been drawn to the condonation petition as placed on record. Though Ld. DR has opposed the condonation, however, considering the period of delay, we condone the delay and admit the appeal for adjudication on merits.

3. The grounds raised by the Revenue read as under:

1. The order of the learned CIT(A) is contrary to law, facts and circumstances of the case.

2. The Id. CIT(A) failed to appreciate the whole transaction of infusion of equity in a subsidiary when the negotiation for sale of the subsidiary company are underway had no commercial purpose or economic substance and its purpose was merely to evade tax and were colorable transactions with the pretense of corporate and commercial trading and in such circumstances, the corporate veil was necessary to be pierced ?

3. The Id. CIT(A) erred in deciding the issue by observing the prudence or skill of the businessman cannot be called into question and the assessee was doing business within the legal framework since it was not commented upon during scrutiny proceedings and the issue to be decided was whether the infusion of equity by increasing the authorized capital of the subsidiary company, when the negotiations for sale of the subsidiary were underway was to be taken as an equity participation or a clear case of debt camouflaged as equity, by piercing the corporate veil and even if it was debt the irrecoverable loss cannot be allowed since it is not related to assessee's business in view of the decision of the Hon'ble supreme court in the case of Badridas Daga Vs. CIT {1958} 34 ITR 10 (SC) ?

4. The Ld. CIT(A, has failed to appreciate the exercise to increase the Authorized Capital and the augmented subsequent fund flow corresponding to the quantum of increase in Authorized Capital should not be taken as an equity participation as it is clearly a debt camouflaged as equity?
5. The Id. CIT(A) failed to appreciate whole exercise was orchestrated in a manner so as to create a capital loss which would be available for set off against gains made on sale of immovable assets ?
6. The Id. CIT(A) failed to appreciate the claim of the assessee that the infusion of addition equity was to increase the net worth as mandated by SEBI is baseless since the infusion of equity has not made the net worth come to the value of Rs 10 Crores as mandated by SEBI and the infusion of equity would only increase the liability of the Mutual fund and in turn the Net worth would go down further?
7. The Id. CIT(A) failed to appreciate the decision of the Hon'ble Supreme Court in the case of Life Insurance Corporation of India v Escorts Ltd /1986], 1986 AIR 1370 wherein it was held that the corporate veil may be lifted in cases where the aim is to avoid a taxation statute or to evade obligations imposed by the law or for the protection of public interest?
8. The learned CIT(A) erred. in directing the AO to restrict the disallowance to the extent of exempt income earned during the year when no such directions exist in the provisions of Sec. 14A or Rule 8D ?
9. The Id. CIT(A) erred in restricting the disallowance under sec. 14A to the extent of exempt income by relying on the decision of supreme court in the case of Maxopp Investments P. ltd Vs CIT (2018 since the question as to whether disallowance can exceed the exempt income was not before the SC and therefore it did not give any finding on this issue; Moreover, as held in CIT v. Sun Engineering Works Pvt. Ltd. [1992], 198 ITR 297 observations from a judgment have to be considered in the light of questions which were there before the Court and hence not applicable to the facts of this case ?

Evidently, two issues arise out of revenue's appeal- (i) Quantum of capital Loss; (ii) Disallowance u/s 14A. The sole grievance of the assessee is disallowance u/s 40(a)(i) for Rs.324 Lacs. The assessee being resident corporate assessee is engaged in financing.

4.1 So far as the assessee's appeal is concerned, Ld. AR drew attention to various documents in the paper-book and submitted that disallowance u/s 40(a)(i) would not be attracted since the debentures on which interest was paid by the assessee, was subscribed by the Indian entity and not by a foreign entity. The debentures were issued to Indian

entity and the payment was also credited in Indian Bank account of the payee. The Ld. AR submitted that this transaction was erroneously reflected in Form No.3CEB. The Ld. AR further submitted that the payee holds 'nil' deduction certificate u/s 195(3) and therefore, no TDS is required on interest payment. The Ld. Sr. DR submitted that the correct facts may be verified by Ld. AO.

4.2 Upon perusal of assessment order, it could be seen that the assessee paid interest of Rs.324 Lacs on debentures as issued to M/s DBS Bank Ltd., Singapore. The assessee did not deduct tax at source and accordingly, the payment was disallowed u/s 40(a)(i). The Ld. CIT(A) confirmed the same against which the assessee is in further appeal before us.

4.3 Concurring with the submissions of Ld. AR, we are of the considered opinion that correct factual matrix need to be brought on record. Accordingly, this issue is restored back to the file of Ld. AO for fresh adjudication in terms of arguments advanced by Ld. AR. The assessee is directed to substantiate its stand. The assessee's appeal stand allowed for statistical purposes. The revenue's appeal is adjudicated as under.

5. Quantum of Capital Loss

5.1 The assessee set-off short term capital gain on sale of property against short term capital loss on shares. The loss resulted from transfer of shares held by the assessee in its subsidiary entity in the name of M/s DBS Cholamandalam Assets Management Co. Ltd. (AMC). The shares were sold to M/s L & T Ltd. for consideration of Rs.43.38 Crores as against cost of Rs.90.60 Crores resulting into loss of Rs.47.21 Crores. The same has been detailed in para 4.1 of the assessment

order. The sale of shares gave rise to short-term capital loss as well as long-term capital loss for the assessee. The sale transactions were evidenced by Share Purchase Agreement dated 19.10.2009 between assessee and M/s L & T Finance Ltd.

5.2 The Ld. AO alleged that this transaction was planned in a manner so as to create a capital loss which would be available for set-off against gains made on sale of immovable property. The subsidiary had negative net worth in all the years and was in need of additional capital to stabilize the financial position. The assessee subscribed to the equity capital of this entity without any purpose. The additional capital in larger denominations started in August 2008 which was precisely a year before the conclusion of share transfer agreement. Therefore, it would be appropriate to divide the investment in to equity and debt as introduced in the guise of equity. The sum advanced to subsidiary from 31.08.2008 to 24.12.2009 was to be categorized as mere advances to subsidiary instead of equity investment. Accordingly, the losses were reduced proportionately. In other words, the losses arising on equity investment made prior to 31.08.2008 would be available for set-off and the balance losses were to be ignored. The action of Ld. AO reduced the losses to Rs.20.34 Crores and the balance Long Term / Short Term Capital losses were ignored.

5.3 During appellate proceedings, the assessee, inter-alia, submitted that the capital infusion was made to maintain net worth as per prescribed Mutual Fund Regulations and to recoup the losses in the subsidiary entity. There was no alternative left but to infuse capital. It was also submitted that the decision to infuse capital into subsidiary or provide loan was a commercial call which is taken by a businessman

based on his business acumen and could not be governed by any law. The assessee also raised the plea of commercial expediency.

5.4 The Ld. CIT(A) noted that the investments were made during FYs 2005-06 to 2009-10 and the same were made to prevent erosion of net worth of the subsidiary entity. The infusion of capital was made in compliance of applicable laws. Therefore, there was considerable strength in the argument of the assessee. The decision to exit the subsidiary was a conscious business decision. The decision was taken as per the approval of the shareholders and it was not in violation of any law. The case law of Hon'ble Supreme Court in **S.A.Builders V/s CIT (158 Taxman 74)** support the plea of commercial expediency. Further, as per the decision of Chennai Tribunal in **DCIT V/s Alliance Retreat (P) Ltd (61 Taxmann.com 249)**, as long as the assessee was conducting its business affairs within the legal framework, it was at liberty to manage and utilize the resource according to its own prudence and skill. Therefore, the disallowance as made by Ld. AO was held to be unjustified. Aggrieved the revenue is in further appeal before us.

6. Upon careful consideration of material fact, it could be gathered that the assessee has made investments in its subsidiary company starting from FY 2005-06. The subsidiary was dependent upon assessee for infusion of capital and the assessee was under obligation to maintain net worth of the subsidiary entity. Whether the investment was to be made by way of equity or by way of debt, the same was the wisdom of the management and not that of Ld. AO. Without any concrete material on record which would show that the transaction was sham transaction or a colorable device, the equity investment could not be characterized as debt investment. The Ld. CIT(A), in our considered

opinion, has captured the issue in correct perspective which would not require any interference on our part. We order so. The corresponding grounds raised by the revenue stand dismissed.

7. Disallowance u/s 14A

The assessee earned exempt income of Rs.4.72 Lacs which led Ld. AO to compute disallowance u/s 14A. Applying Rule 8D, Ld. AO computed disallowance of Rs.614.04 Lacs as detailed in para 6.6 of the assessment order. The Ld. CIT(A) directed Ld. AO to restrict the disallowance to the extent of exempt income earned by the assessee. Aggrieved, the revenue is in further appeal before us.

8. We find that the action of Ld. CIT(A) is in consonance with settled position of law that the disallowance u/s 14A could not exceed exempt income earned by the assessee. Therefore, we confirm the stand of Ld. CIT(A). The corresponding grounds as well as the appeal of the revenue stand dismissed.

Conclusion

9. In the result, the assessee's appeal stand allowed for statistical purposes. The revenue's appeal stands dismissed.

Order pronounced on 06th September, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

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

चेन्नई/ Chennai; दिनांक/ Dated : 06-09-2022

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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