

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 अपीलसं./ITA Nos.: **1550, 1551 & 1552/CHNY/2018**

निर्धारण वर्ष/Assessment Years: 2009-10, 2011-12 & 2014-15

Chakiat Agencies Pvt. Ltd.,
40, Rajaji Salai,
3rd Floor, P.B.No.1880,
Chennai – 600 001.

The ACIT / DCIT,
vs. Company Circle I(3) /
Company Circle I(2),
Chennai.

PAN: AABCC 6281F

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri P.M. Veeramani, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 18.10.2022

घोषणा की तारीख/Date of Pronouncement

: 21.10.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

These appeals by the assessee are arising out of common order of Commissioner of Income Tax (Appeals)-1, Chennai in ITA Nos.78/CIT(A)-1/2011-12, 438 & 264/CIT(A)-1/2016-17 dated 28.03.2018. The assessments were framed by the ACIT / DCIT, Company Circle I(3) / I(2), Chennai for the assessment years 2009-10, 2011-12 & 2014-15 u/s. 143(3) of the Income Tax Act, 1961

(hereinafter the 'Act') vide orders dated 14.12.2011, 28.03.2014 & 05.10.2016 respectively.

2. The only common issue in these three appeals of assessee is as regards to the order of CIT(A) confirming the disallowance of expenses relatable to exempt income by invoking the provisions of section 14A r.w.rule 8D of the Income Tax Rules, 1962 being interest expenses and administrative expenses. For this assessee has raised identically worded grounds which are argumentative and exhaustive and hence, need not be reproduced.

3. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the AO in all the three assessment years i.e., 2009-10, 2011-12 & 2014-15 disallowed interest expenses by invoking the provisions of section 14A r.w.rule 8D(2)(ii) of the Rules i.e., interest expenses amounting to Rs.12,89,237/- in assessment year 2009-10, Rs.13,57,967/- in assessment year 2011-12 and Rs.25,63,382/- in assessment year 2014-15. The AO has also disallowed administrative expenses i.e., 0.5% of average value of investment under Rule 8D(2)(iii) in assessment year 2011-12 amounting to Rs.3,51,790/- and in assessment year 2014-15 amounting to Rs.7,58,458/- . Aggrieved

assessee preferred appeal before CIT(A). The CIT(A) confirmed the disallowance. Aggrieved, assessee in all the three years came in appeal before the Tribunal.

4. Before us, the only contention of the assessee in regard to disallowance of interest was that the AO has not examined the availability of interest free funds which are more than the investments made in the instruments giving raise to exempt income. The Id.counsel for the assessee drew our attention to page 3 of assessee's paper-book, wherein statement of funds and investments for these three years are as under:-

Statement of own funds and investments for various years

Own Funds	31.03.2014	31.03.2011	31.03.2009
Share Capital	3,41,000.00	3,41,000.00	3,41,000.00
Reserves and Surplus	35,49,98,222.48	26,07,86,495.18	20,40,83,421.45
Total	35,53,39,222.48	26,11,27,495.18	20,44,24,421.45
Investments	15,38,81,432.68	14,32,10,905.39	14,34,64,150.05

In view of the above, the Id.counsel stated that once own funds availability is more than the investments made in instruments giving raise to exempt income and in the absence of any finding by the AO that the interest bearing funds are invested in the instruments giving raise to exempt income and no nexus have been proved, presumption will be that the investments is out of own funds, in

view of decision of the Hon'ble Bombay High Court in the case of CIT vs. HDFC Ltd., reported in 366 ITR 505. Hence, he requested that the matter can be remanded back to the file of the AO for verification purpose of these funds position and according take a call.

4.1 In regard to disallowance of administrative expenses in two years i.e., assessment year 2011-12 & 2014-15, he only requested that the disallowance can be restricted to the average value of investment which give raise to exempt income only and not the entire investments can be considered for making disallowance. Hence, he requested that direction can be given to the AO to consider only those instruments which give raise to exempt income.

5. When these were confronted to Id. Senior DR, he agreed that matter can be restored back to the file of the AO.

6. We noted the above arguments and plea of the assessee is quite reasonable and hence on both the issues, we remit the matter back to the file of the AO. The AO will verify the fund position i.e., own funds available with the assessee and investments made in instruments giving raise to exempt income and accordingly, he will

decide. As regards to disallowance of administrative expenses in assessment year 2011-12 & 2014-15, he will only consider the investments which give rise to exempt income for computing average value of investments. In term of the above, these three appeals are allowed for statistical purposes.

7. In the result, the appeals filed by the assessee in ITA Nos.1550, 1551 & 1552/CHNY/2018 are allowed for statistical purposes.

Order pronounced in the open court on 21st October, 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 21st October, 2022

RSR

आदेशकीप्रतिलिपिअग्रेषित/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. |