

आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.259/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2017-18)

RK Powergen Pvt. Ltd. 14, Dr. Giriappa Road, T. Nagar, Chennai – 600 017.	बनाम/ Vs.	ACIT Central Circle-1(1), Chennai.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AABCR-8680-H		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri V. Ravichandran (CA) – Ld. AR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri S. Senthilkumaran (CIT) – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	02-11-2022
घोषणा की तारीख / Date of Pronouncement	:	02-11-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. By way of this appeal, the assessee challenges the revisional jurisdiction u/s. 263 as exercised by learned Principal Commissioner of Income Tax (Central), Chennai-1 [Pr.CIT] vide order dated 07-03-2022. The assessment for this year has been framed by Ld. AO u/s 143(3) on 27.12.2019.
2. The Ld. AR advanced arguments supporting the assessment order which has been controverted by Ld. CIT-DR. The Ld. AR submitted that the amendment as referred to by Ld. Pr. CIT in the

impugned order would not change the settled legal position that the disallowance u/s 14A was to be restricted to the extent of exempt income earned by the assessee. Having heard rival submissions, the appeal is disposed off as under. The grounds raised by the assessee read as under: -

1. The order of the Learned PCIT is contrary to law and the facts of the case.
2. The Learned PCIT has erred in holding that the order of assessment was erroneous when the Assessing Officer had restricted the disallowance under Section 14A to the amount of exempt income received applying the decisions of the Hon'ble Supreme Court of India and the Hon'ble Madras High Court.
3. The Learned PCIT erred in holding that after the amendment to Rule 8D with effect from Assessment Year 2017-18 the principle of law enunciated by the various courts that the disallowance under Section 14A could not exceed the quantum of exempt income would no longer apply.
4. The Learned PCIT ought to have appreciated that Section 14A had not been amended and that consequently the law laid down by the Hon'ble Supreme Court would continue to apply.
5. The Learned PCIT ought to have appreciated that the strategic investments made by the Appellant could not be included in computing the disallowance.
6. The Learned PCIT erred in setting aside the Assessment Order under section 263 and directing the Assessing Officer to consider the applicability of the decision of the Hon'ble Madras High Court as well as the issue of strategic investments thereby indicating that the Learned PCIT had come to no conclusions as to the erroneous nature of the Assessment Order.
7. The Appellant craves leave to raise additional grounds.

3. Upon perusal of the assessment order, it could be seen that the assessee earned exempt income of Rs.20255/- which led Id. AO to invoke disallowance u/s 14A. The assessee computed disallowance of Rs.138.90 Lacs as per Rule 8D but relied on the decision of Hon'ble Supreme Court in the case of **State Bank of Patiala (99 Taxmann.com 286)** for the submission that the disallowance was to be restricted to the extent of exempt income earned by the assessee. Accepting the same, Ld. AO restricted the disallowance to the extent of exempt income earned by the assessee.

4. Subsequently, upon perusal of case records, Ld. Pr.CIT, invoking the provisions of Sec.263, held the order to be erroneous and prejudicial to the interests of revenue. The stem from the observation that Rule 8D was amended with effect from 02.06.2016 and as per the amendment, the amount of disallowance would not exceed the total expenditure claimed by the assessee. There was no mention in the rules that the disallowance was to be restricted to the extent of exempt income. This aspect was not considered by Ld. AO. The assessee relied on the decision of Hon'ble High Court of Madras in **Marg Limited (275 Taxman 502)** to support the working of Ld. AO. Further, the provisions of Sec.14A which were interpreted by Higher Courts had not undergone any amendment. However, rejecting the same, Ld. Pr. CIT directed Ld. AO to determine the disallowance afresh, inter-alia, after considering the cited decision of Hon'ble High Court of Madras. Aggrieved, the assessee has assailed the validity of revisional order.

5. We find that the action of Ld. AO in restricting the disallowance u/s 14A to the extent of exempt income is in consonance with the settled legal position. The case law of Hon'ble Supreme Court in the case of **State Bank of Patiala (99 Taxmann.com 286)** duly support this view. The Rule 8D prescribe a formula to compute the deduction. The amendment to Rule 8D w.e.f. 02.06.2016 has merely stated that the computation so made as per the mechanism of Rule 8D shall not exceed the expenditure claimed by the assessee. The logic is simple. The Rule 8D provides a formula to work out the disallowance. The sub-clause (2) to Rule 8D(2) provide that an amount equal to one percent of the annual average of the monthly average of opening an closing balances of value of investments was to be considered as

disallowance. The computation, in this manner, may result into a situation wherein the disallowance itself exceeds the total expenditure claimed by the assessee in the Profit & Loss Account and hence the insertion of proviso to avoid such a situation. This amendment, in our opinion, has not disturbed the settled legal position that the disallowance is not to exceed exempt income. Therefore, the revision of the order could not be upheld. In the result, the primary condition to invoke the revisional jurisdiction u/s 263 remains unsatisfied. Therefore, we quash the impugned order passed by Ld. Pr. CIT u/s 263. We order so.

6. The appeal stands allowed.

Order pronounced on 02nd November, 2022.

Sd/-

(V. DURGA RAO)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई / Chennai; दिनांक / Dated : 02-11-2022

EDN/-

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखक सदस्य / ACCOUNTANT MEMBER

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded 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