

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **2450/CHNY/2018**

निर्धारण वर्ष/Assessment Year: 2013 - 14

The DCIT,

Corporate Circle – 4(2),
Chennai – 34.

vs.

Kamarajar Port Ltd.,

(formerly known as Ennore Port
Ltd.,)
4th Floor, Super Speciality
Diabetic Centre (Erstwhile DLB
Building), Rajaji Salai,
Chennai -600 001.

PAN: AAACE 9013G

(प्रत्यर्थी/Respondent)

(अपीलार्थी/Appellant)

अपीलार्थी की ओर से/Appellant by

: Shri P. Sajit Kumar, JCIT

प्रत्यर्थी की ओर से/Respondent by

: Shri R. Sudharshan, A.C.A

सुनवाई की तारीख/Date of Hearing

: 31.10.2022

घोषणा की तारीख/Date of Pronouncement

: 31.10.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the Revenue is arising out of the order of the Commissioner of Income Tax (Appeals)-6, Chennai, in ITA No.30/CIT(A)-6/2016-17 dated 18.06.2018. The assessment was framed by the ACIT, Corporate Circle 2(1), Chennai for the

assessment year 2012-13 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 21.03.2016.

2. The first issue in this appeal of Revenue is against the order of CIT(A) deleting the disallowance of expenses relating to exempt income made by AO by invoking the provisions of section 14A r.w.rule 8D of the Income Tax Rules, 1962 (hereinafter the 'Rules'). For this, Revenue has raised four grounds which are exhaustive and argumentative and hence, we will not reproduce the same.

3. Brief facts are that the AO on going through the balance sheet of the assessee noted that the assessee had made investments in unquoted equity shares and the closing balance is Rs.43.75 crores. According to AO, the disallowance u/s.14A r.w.rule 8D of the Rules is to be made even no exempt income has been earned because the unquoted equity shares are capable of earning dividend income, which is exempt from tax. The AO invoked clause (ii) of Rule 8D(2) and disallowed interest at Rs.1,36,42,060/- and invoked clause (iii) under Rule 8D(2) and disallowed administrative expenses @ 0.5% of average value of investments at Rs.21,87,500/-. The aggregate disallowance comes to Rs.1,58,29,560/-. Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) simpliciter following

earlier years decision in assessee's own case for assessment year 2012-13 in ITA No.2205/Mds/2015 dated 23.03.2016, deleted the disallowance only on the issue of investments made by sister concerns for strategic business reasons. Aggrieved, Revenue came in appeal before the Tribunal.

4. At the time of hearing, the Id.counsel for the assessee Shri R. Sudarsan, A.C.A requested for adjournment for the reason that his senior is busy and he could not attend the hearing. When a query was put to him, how his senior is busy, he could not state any reason for that. Further, he stated that this matter was a recalled matter. We noticed from the order sheet entries that this matter was fixed before Tribunal atleast 10 to 12 times and once matter was heard ex-parte and recalled. We rejected the request of assessee's counsel i.e., request for adjournment for the simple reason that the matter is adjourned many times and it seems that the assessee was given enough time on the last date of hearing, that was fixed on 10.10.2022 and today is 31.10.2022 and hence, we proceed to hear the matter and accordingly, heard.

5. After hearing Id. Senior DR and going through the facts, we noticed that the CIT(A) has wrongly decided the issue on the basis

of investments made in the sister companies for strategic business reasons by the assessee and according to us, the strategic investment issue has already been decided by the Hon'ble Supreme Court in favour of Revenue and against assessee by the decision of Maxopp Investment Ltd. v. CIT. (2018) 402 ITR 640.

6. Coming to the issue that there is no exempt income earned by assessee on the equity shares, once there is no exempt income, no disallowance can be made by the AO by invoking the provisions of Rule 8D(2). To that effect, we remit the matter back to the file of the AO for the purpose of verification whether the assessee has earned any exempt income or not because this could not be clarified by assessee's counsel during the course of hearing, now before us. This issue is remitted back to the file of the AO for verification purpose only. In case there is no exempt income, no disallowance can be made and in case there is exempt income, the AO will decide the issue accordingly and as directed as under.

7. We noted that the claim of assessee in regard to interest disallowance is that the assessee has more interest free funds available which has not been examined neither by the AO nor by the

CIT(A) and hence, in case the assessee has exempt income, the AO will examine this aspect also.

8. Coming to disallowance of average value of investment i.e., administrative expenses, in case the assessee has exempt income, the AO will make disallowance only the instruments which give raise to exempt income and not the entire investment. In term of the above, the matter is restored back to the file of the AO for verification purposes as directed above.

9. In the result, the appeal filed by the Revenue is partly allowed for statistical purposes.

Order pronounced in the open court on 31st October, 2022 at Chennai.

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 31st October, 2022

RSR

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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