

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI  
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।  
Before Shri V. Durga Rao, Judicial Member &  
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./I.T.A. No.1122/Chny/2022  
निर्धारण वर्ष/Assessment Year: 2013-14

The Assistant Commissioner of  
Income Tax,  
Central Circle 1(2),  
Chennai

Vs. M/s. Empee Sugars & Chemicals P  
Limited, No. 59, Empee Towers,  
Harris Road, Pudupet,  
Chennai 600 002.

[PAN:AABCE5658G]

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri D. Hema Bhupal, JCIT  
प्रत्यर्थी की ओर से/Respondent by : None  
सुनवाई की तारीख/ Date of hearing : 23.01.2023  
घोषणा की तारीख /Date of Pronouncement : 31.01.2023

**आदेश /ORDER**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

This appeal filed by the Revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals) 18, Chennai, dated 20.10.2022 relevant to the assessment year 2013-14.

2. Brief facts of the case are that the assessee filed the return of income on 30.09.2013 for the assessment year 2013-14 admitting NIL income. Further on 28.03.2015, the assessee filed revised return

declaring the same income. The case was taken up for scrutiny under CASS. Subsequently, the Assessing Officer, after issuing statutory notices, completed the assessment under section 143(3) of the Income Tax Act, 1961 ["Act" in short] dated 31.03.2016 by making disallowance under section 14A r.w. Rule 8D of ₹.1,65,98,305/-. On appeal, the Id. CIT(A) directed the Assessing Officer to delete the addition towards disallowance of ₹.1,65,98,305/-.

3. Aggrieved, the Revenue is in appeal before the Tribunal. The Id. DR has submitted that there is no cap of limiting the 14A disallowance to the extent of dividend income earned, as per the provisions of section 14A read with Rule 8D of the IT Rules. It was further submission that even if no exempt income was earned by the assessee during a particular assessment year, if exempt income bearing investments were available, the assessee would be liable for disallowance under section 14A of the Act.

4. When the appeal was taken up for hearing none appeared on behalf of the assessee or filed any adjournment petition. Hence, we proceed to decide the appeal on merits after hearing the Id. DR.

5. We have heard the Id. DR, perused the materials available on

record and gone through the orders of authorities below. In the assessment order, the Assessing Officer has noted that the total investments made by the assessee in shares of wholly owned subsidiary companies amounts to ₹.23,28,54,000/- as on 31.03.2013 which is as per Note 12 of the Financial statements, the income of which is exempt from tax. Further, the assessee has incurred an interest expenditure of ₹.49,42,32,780/-, which is as per Note-12 excluding bank charges and LC charges, towards working capital as well as term loans. The Assessing Officer was of the view that the assessee has diverted the interest bearing funds to tax exempted investments. Before the Assessing Officer, the assessee claimed that no expenditure was incurred for earning the exempted income. Accordingly, by applying the provisions of section 14A r.w. Rule 8D, the Assessing Officer determined the disallowance of ₹.1,65,98,305/- and brought to tax. On appeal, after considering the submissions of the assessee and by following the decision of the Hon'ble Madras High Court in the case of M/s. Marg Limited v. CIT in Tax Case Appeal Nos. 41 to 43 & 220 of 2017 dated 30.09.2020, the Id. CIT(A) directed the Assessing Officer to delete the addition towards disallowance of ₹.1,65,98,305/- by observing as under:

“7.2 In this context, it is important to refer to the judgment of the Hon'ble Madras High Court in the case of *M/s. Marg Limited v. CIT* in Tax Case Appeal Nos.41 to 43 &220 of 2017 (judgment dated 30.09.2020). The Hon'ble Madras High Court followed the judgment of the Hon'ble Karnataka High Court in the case of *Pargathi Krishna Gramin Bank v. JCIT*[(2018) 95 taxman.com 41 (Kar.)]. In the case considered by the Hon'ble Madras High Court, the assessee therein had made voluntarily disallowance u/s 14A more than the dividend income earned and the Tribunal confirmed the disallowance made u/s 14A. However, the Hon'ble Madras High Court held that the disallowance u/s14A cannot exceed the exempt income earned during the relevant assessment year. The relevant finding of the Hon'ble Madras High Court reads as follows:

“20. Before parting, we may also note with reference to the Table of disallowance voluntarily made by the Assessee, which is part of the Paper Boole before us for the four assessment years in question. In the Table quoted in the beginning of the order, shows that the Assessee himself computed and offered the disallowance beyond the exempted income in the particular year, namely AY 2009-10, as against the dividend income of Rs.41,042/- and the Assessee himself computed disallowance under Rule 8D of the Rules to the extent of Rs.2,38,575/-, which was increased to Rs.98,16,104/- by the Assessing Authority. Similarly, for AY 2012-13, against Nil dividend income, the Assessee himself computed disallowance at Rs.8,50,000/- which was increased to Rs.2,61,96,790/-.

21. We cannot approve even the larger disallowance proposed by the Assessee himself in the computation of disallowance under Rule 8D made by him. These facts are akin to the case of *Pragati Krishna Gramin Bank (2018) 95 Taxman.com 41(Kar.)* decided by Karnataka High Court. The legal position, as interpreted above by various judgments and again reiterated by us in this judgment, remains that the disallowance of expenditure incurred to earn exempted income cannot exceed exempted income itself and neither the Assessee nor the Revenue are entitled to take a deviated view of the matter. Because as already noted by us, the negative figure of disallowance cannot amount to hypothetical taxable income in the hands of the Assessee. The disallowance of expenditure incurred to earn exempted income has to be a smaller part of such income and should have a reasonable proportion to the exempted income earned by the Assessee in that year, which can be computed as per Rule 8D only after recording the satisfaction by the Assessing Authority that the apportionment of such disallowable expenditure under Section 14A made by the Assessee or his claim that no expenditure was incurred is validly rejected by the Assessing Authority by recording

*reasonable and cogent reasons conveyed to Assessee and after giving opportunity of hearing to the Assessee in this regard.*

*22. We, therefore, dispose of the present appeal by answering question of law in favour of the Assessee and against the Revenue and by holding that the disallowance under Rule SD of the IT Rules read with Section 14A of the Act can never exceed the exempted income earned by the Assessee during the particular assessment year and further, without recording the satisfaction by the Assessing Authority that the apportionment of such disallowable expenditure made by the Assessee with respect to the exempted income is not acceptable for reasons to be assigned the Assessing Authority, he cannot resort to the computation method under Rule SD of the Income Tax Rules, 1962.”*

*By following the above binding jurisdictional High court decision, the AO is directed to delete the disallowance of Rs. 1,65,98,305/-.”*

6. In this case, the Assessing Officer has not mentioned anything about the dividend income earned by the assessee during the assessment year under appeal. From the schedule 20, the Id. CIT(A) has noted that no dividend income has been earned by the assessee in this year. Thus, it is clear that the assessee has not earned any exempt income in the relevant assessment year under appeal against the investments. In this circumstances, in the case of CIT v. Chettinad Logistics (P) Ltd. [2017] 248 taxman 55 (Mad), the Hon'ble Jurisdictional High Court has observed and held that when there was no dividend income earned in the relevant assessment year, the disallowance made by the Assessing Officer in view of the provisions of section 14A of the Act read with Rule 8D was completely contrary to

the provisions of that section as Rule 8D only provides for a method to determine the amount of expenditure incurred in relation to income, which does not form part of total income of the assessee. Against the decision of the Hon'ble High Court, the Department preferred Special leave Petition, which was dismissed by the Hon'ble Supreme Court [2018] 257 Taxman 02. In view of the above decision rendered in the case of CIT v. Chettinad Logistics (P) Ltd. (supra), we find no infirmity in the order passed by the Id. CIT(A) in directing the Assessing Officer to delete the addition made towards disallowance of ₹.1,65,98,305/- by following the decision M/s. Marg Limited v. CIT (supra), wherein, the decision of the Hon'ble Madras High Court in the case of CIT v. Chettinad Logistics (P) Ltd. (supra) has been referred. Thus, the ground raised by the Revenue is dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on the 31<sup>st</sup> January, 2023 at Chennai.

Sd/-  
(MANOJ KUMAR AGGARWAL)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, the 31.01.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy 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.