

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

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
डॉ. मनीष बोराड, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
DR. MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1290/Chny/2019
निर्धारण वर्ष /Assessment Year: 2013-14

The Dy. Commissioner –
of Income Tax,
Corporate Circle-1,
Coimbatore.

v. M/s.Bannari Amman –
Sugars Ltd.,
1212, Trichy Road,
Coimbatore-641 018.

(अपीलार्थी/Appellant)

[PAN: AAACB 8933 G]
(प्रत्यर्थी/Respondent)

Department by

: Mr.M.Rajan, CIT

Assessee by

: Mr.R.Vijayaraghavan, Adv.

सुनवाई की तारीख/Date of Hearing

: 20.04.2023

घोषणा की तारीख /Date of Pronouncement

: 25.04.2023

आदेश / ORDER

PER MANISH BORAD, AM:

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-1, Coimbatore, dated 25.02.2019 and pertains to assessment year 2013-14.

2. The Revenue has raised the following grounds of appeal:

1	<i>On the facts and circumstances of the case, the CIT(A) erred in deleting the disallowance made u/s 14A r.w.rule 8D(2)(iii), in the light of section 14A as inserted by the Finance Act, 2006 w.e.f. 01.04.2007?</i>	<i>Rs.27,367/- (Notional)</i>
2	<i>On the facts and circumstances of the case, the CIT(A) erred in placing reliance in the case of Patco investment & Consultancy Services (P) Ltd to delete the disallowance made u/s 14 A, in which the A.Y. involved is earlier to the insertion in the section vide Finance Act, 2006 w.e.f. 01.04.2007?</i>	
3	<i>On the facts and circumstances of the case, the CIT(A) erred in deleting the addition made of Rs.84,350/- on the computation of</i>	<i>Rs.16,877/- (Notional)</i>

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	<i>book profit u/s 115JB by relying upon the decision of Apollo Tyres Limited vs CIT 255 ITR 273 (SC) in the light sub-clause (f) of Explanation 1 given in section 115JB?</i>	
4	<i>On the facts and in the circumstances of the case the learned CIT(A) erred by directing the Assessing Officer to allow the deduction claimed on account of "Provision no long required" without appreciating the fact that assessee had given the amount as advance for using the quarry of the concerned party, therefore, the payment is capital in nature which could be written off over the period of lease. Since quarrying activity could not be carried out, write-off of the amount would be a capital loss and not revenue loss/expenditure.</i>	<i>Rs.19,28,214/- (Notional)</i>
5	<i>On the facts and circumstances of the case, the CIT(A) erred in relying upon the decision of Jurisdictional High Court in the case of CIT vs IndenBiselers (1990) reported in 181 ITR 69 MAD), in which the advances did not result in making a capital asset?</i>	
6	<i>On the facts and circumstances of the case, the CIT(A) erred in directing the Assessing Officer to treat the receipt on sale of Carbon Credit as capital receipt not liable to tax without appreciating the fact that assessee is eligible to claim the credit only because it was running the Co-generation Unit. If the Unit had not operated assessee would not have got any Carbon Credit. Also the Cochin IT AT has in the case of Apollo Tyres Ltd. vs ACIT 149 ITD 0756 held Carbon Credit as business Income.?</i>	<i>Rs.22,36,109/- (Notional)</i>
7	<i>On the facts and circumstances of the case, the CIT(A) erred in treating the sale of carbon credit as capital receipt without appreciating the fact that the decision in the case of CIT-IV vs My Home Power Ltd. (2014) 365 ITR 82 is not accepted by the Revenue and SLP is pending before the Hon'ble Supreme Court?</i>	
8	<i>On the facts and in the circumstances of the case the learned CIT(A) erred by deleting the disallowance made under section 80IA without appreciating the fact that, as per details filed by assessee during the course of assessment proceedings, in some months the electricity units imported from the State Electricity Board have only been partly consumed by the Co-generation Unit, the value of the balance imported units have been claimed as captive consumption by the other manufacturing units and deduction incorrectly claimed under section 80IA.</i>	<i>Rs.60,08,771/- (Notional)</i>
9	<i>The Hon'ble ITAT is requested to cancel the order of the learned CIT(A)-1, Coimbatore and uphold the order of the Assessing Officer on the above points.</i>	
10	<i>The Hon'ble ITAT is requested leave to add, amend or modify the grounds of appeal, if necessary</i>	
	<i>Total tax effect</i>	<i>Rs.1,02,17,338/- (Notional)</i>

3. The brief facts of the case are that the assessee is a limited company engaged in the business of manufacturing of sugar, alcohol, granite and co-generation of power. Income of Rs.107,59,48,470/- declared in the e-return filed for AY 2013-14. Case selected for scrutiny through CASS after serving valid notice u/s.143(2) of the Act. After considering the assessee's

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submissions, the assessment has been completed after making various disallowance and additions amounting to Rs.3,14,60,641/-, assessing income at Rs.110,74,09,111/- in the following manner:

<i>Returned Income</i>		<i>Rs.107,59,48,470/-</i>	<i>Tax thereon</i>
<i>Add: Disallowance of expenditure u/s 14A of the IT Act as discussed in paragraph 5</i>	<i>Rs.84,350</i>	<i>-</i>	<i>-</i>
<i>Add: Disallowance of personal expenditure u/s 37 of the IT Act as discussed in paragraph 6</i>	<i>Rs.21,400</i>	<i>-</i>	<i>-</i>
<i>Add: Disallowance of provision no longer required as discussed in paragraph 7</i>	<i>Rs. 59,49,023</i>	<i>-</i>	<i>-</i>
<i>Add: Treating carbon credit income as revenue receipt as discussed in paragraph 8</i>	<i>Rs.68,92,000</i>	<i>-</i>	<i>-</i>
<i>Add: Disallowance of deduction u/s 8 01 A as discussed in paragraph 9</i>	<i>Rs.1,85, 19,868</i>	<i>3,14,60,641/-</i>	<i>-</i>
<i>Revised income</i>	<i>-</i>	<i>Rs. 110,74,09,111/-</i>	<i>Rs.33,22,22,733/-</i>
<i>Returned book profit</i>	<i>-</i>	<i>Rs.32,34,00,975/-</i>	<i>-</i>
<i>Add: 14A disallowance</i>	<i>-</i>	<i>Rs.84,350/-</i>	<i>-</i>
<i>Revised book profit</i>	<i>-</i>	<i>32,34,85,325/-</i>	<i>Rs.5,98,44,785/-</i>

4. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) and succeeded.

5. Now the Revenue is in appeal before this Tribunal, challenging the findings of the Ld.CIT(A).

6. The Id.DR vehemently supported the orders of the Ld.CIT(A) & lower authorities. On the other hand, the Ld.Counsel for the assessee except for the disallowance u/s.14A of the Act, at Rs.84,350/- for which no specific submissions were made before us, strongly supported the findings of the Ld.CIT(A)

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7. We have heard both the parties, perused the materials available on record. The Revenue is aggrieved with the findings of the Ld.CIT(A) deleting the addition/disallowance made by the AO.

8. As regards Ground Nos.1 & 2 are concerned, which is against deletion of disallowance u/s.14A of the Act, at Rs.84,350/-, since, the Ld.Counsel for the assessee did not make any specific submissions, we therefore considering the fact that the assessee has earned exempt income of Rs.4,46,946/- and average investments in the equity shares stood at Rs.168.70 lakhs and also considering the fact that the Ld.CIT(A) has deleted the said disallowance merely observing that the AO failed to establish the nexus between the expenditure incurred and exempt income earned, hold that disallowance made u/s.14A of the Act r.w.r. 8D((2)(iii) of the Income Tax Rules, 1962, at Rs.84,350/-, is justified. Finding of Ld.CIT(A) is reversed and Ground Nos.1 & 2 raised by the Revenue are allowed.

9. Ground No.3 of the Revenue is against not considering disallowance u/s.14A of the Act, for computing book profit u/s.115JB of the Act. We noticed that Ld.AO while computing book profit has added disallowance u/s.14A of the Act, for the purpose of computing book profit. We, however, considered the ratio laid down by the Hon'ble Supreme Court in the case of *Apollo Tyres Ltd. v. CIT reported in 255 ITR 273 (SC)* that where the accounts have been prepared in accordance with Schedule -VI of the Companies Act, then the AO is permitted to make only such adjustments

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as prescribed u/s.115JB of the Act, while computing book profit under MAT provisions, are inclined to hold that no interference is called for in the findings of the Ld.CIT(A), who has rightly held that the AO erred in considering disallowance u/s.14A of the Act, for the purpose of computing book profit u/s.115JB of the Act. Ground No.3 raised by the Revenue is dismissed.

10. Ground Nos.4 & 5 raised by the Revenue are related to deduction of Rs.59,43,023/- claimed on account of disallowance of "provision no longer required". We notice that under the head 'other expenses', assessee claimed expenses of Rs.59,43,023/- and the nomenclature used is "provision no longer required". Ld.AO while carrying out the assessment proceedings noticing the said claim, invoked provisions of Sec.36(2) of the Act, and held that since the assessee did not satisfy the conditions mentioned in Sec.36(2) of the Act, such claim under the head 'provision no longer required' cannot be allowed. Further, we notice that before the lower authorities, it has been stated that the assessee gave an advance to M/s.Anand Granites, Bangalore, at Rs.59,43,023/- towards environmental protection fees and dead rent and the same was adjustable against the consideration to be received towards sale contract. On perusal of the details filed in the Paper Book and the findings of the Ld.CIT(A) which remain uncontroverted by the Ld.DR, we find that said transaction of giving advance to M/s.Anand Granites, was in the regular course of business and the amount was adjustable against sale consideration. Further, since the

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transactions could not materialize and the advance could not be recovered, it was in the nature of business loss, which was written off after being resolved in the meeting of Board of Directors. We further notice that the alleged expenditure is neither capital in nature nor personal in nature. We, therefore, hold that the alleged business transaction is a genuine transaction and since, the advance could not be recovered and the same was written off it is in the nature of business loss, which the assessee is entitled to set off against the income. However, the assessee should take precaution to mention the correct nomenclature of the expenditure in the financial statement, because, in the instant case, the issue was preferred because of the nomenclature i.e. "provision no longer required", even though, the alleged expenditure was not in the nature of any provision but in the nature of advance written off. Thus, we confirm the finding of the Ld.CIT(A) and dismiss Ground Nos.4 & 5 raised by the Revenue.

11. Ground Nos.6 & 7 relates to Carbon Credit. The assessee received Rs.68,92,000/- as Carbon Credit and claimed as capital receipt. Ld.AO treated it as Revenue receipt u/s.28(iv) of the Act. Thereafter, Ld.CIT(A) respectfully following the judgment of the Hon'ble Andhra Pradesh High Court in the case of *CIT v. My Home Power Ltd., reported in [2014] 365 ITR 82 (Andhra Pradesh)* deleted the addition made by Ld.AO. Before us, it is not in dispute that the alleged receipt is on account of Carbon Credit. Further, the said receipt being capital in nature, has been consistently held by the Hon'ble Courts. The Ld.CIT(A) has placed reliance on the judgment

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of the Hon'ble Andhra Pradesh High Court in the case of *My Home Power Ltd. (supra)*. Similar view has also been taken in the case of *PCIT v. Chemplast Sanmar Ltd., in TCA No.525 of 2021 vide order dated 25.11.2021*. We, therefore, respectfully following the judicial precedents fail to find any infirmity in the findings of the Ld.CIT(A) holding the Carbon Credit receipt of Rs.68,92,000/- as a capital receipt. Thus, Ground Nos.6 & 7 raised by the Revenue are dismissed.

12. Ground Nos.8 & 9 relates to deduction u/s.80IA of the Act, at Rs.1,85,19,868/-. The assessee has claimed deduction u/s.80IA of the Act, at Rs.102,70,48,360/- against income from generation of power from 5 independent power generation undertaking units. Ld.AO noticed that the assessee has purchased power units from the grids of TNEB & KPTCL totaling to Rs.1,85,19,868/-. Ld.AO was of the opinion that since for the said amount assessee has not generated power and has purchased it from other power units. This amount does not represent the value of own power generation and therefore, the same should be reduced from the claim made u/s.80IA of the Act. Further, we notice that during the course of hearing before Ld.CIT(A), the assessee submitted that the power units imported were utilized for industrial co-generating units and the cost of the same has already been charged as an expenditure in the statement of profit & loss. It was further submitted before the Ld.CIT(A) that profit has been arrived only after deducting the expenditure incurred on purchase of units from Grid and therefore, making further disallowance will tantamount to double

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deduction of expenditure. We find that the Ld.CIT(A) on examining the facts as well as going through the financial statement found merit in the submissions of the assessee and has rightly held that the assessee has charged the cost of imported power from TNEB & KPTCL to the P & L A/c before arriving at the figure of eligible profit of the industrial undertaking for the purpose of deduction u/s.80IA of the Act. In this issue, Ld.AO ought to have computed the sale price of units purchased by the assessee in question before us and should have denied the benefit of Sec.80IA of the Act on the profit element. But for lack of any such working, we find no reasons to interfere in the findings of the Ld.CIT(A) deleting the said disallowance of Rs.1,85,19,868/- on a valid ground that the assessee has claimed it an expenditure before computing income eligible for deduction u/s.80IA of the Act. Thus, Ground Nos.8 & 9 raised by the Revenue are dismissed.

13. Ground No.10 is general in nature, which does not require any specific adjudication.

14. In the result, appeal filed by the Revenue is partly allowed.

Order pronounced on the 25th day of April, 2023, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(डॉ. मनीष बोराड)

(DR. MANISH BORAD)

लेखा सदस्य/ACCOUNTANT MEMBER

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चेन्नई/Chennai,
दिनांक/Dated: 25th April, 2023.

TLN

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