

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री मंजूनाथा .जी, लेखा सदस्य एवं
श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष
BEFORE SHRI MANJUNATHA. G, ACCOUNTANT MEMBER
AND SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos.902, 903, 905 & 907/Chny/2010
निर्धारण वर्ष /Assessment Years: 1999-2000, 2000-01, 2002-03 & 2005-06
&
आयकर अपील सं./ITA Nos.930 & 931/Chny/2011
निर्धारण वर्ष /Assessment Years: 2004-05 & 2006-07

M/s.The Karur Vysya Bank Ltd.,
Erode Road,
Karur-639 002.

v. The Asst. Commissioner –
of Income Tax,
Company Circle-1,
Tiruchirapalli-620 001.

[PAN: AA ACT 3373 J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.S.Ananthan, CA &
Ms.R.Lalitha, CA

प्रत्यर्थी की ओर से /Respondent by

: Mr. AR.V.Sreenivasan,
Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 05.06.2023

घोषणा की तारीख /Date of Pronouncement

: 09.06.2023

आदेश / ORDER

PER BENCH:

This bunch of six appeals filed by the assessee are directed against separate, but identical orders of the Commissioner of Income Tax (Appeals), Tiruchirappalli, dated 23.03.2010 & 30.03.2011 and pertains to assessment years 1999-2000, 2000-01, 2002-03 & 2005-06, and 2004-05 & 2006-07. Since, the facts are identical and issues are common, for the

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sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

2. The assessee has, more or less, raised common grounds of appeal in all assessment years. Therefore, for the sake of brevity, grounds of appeal filed in ITA No.902/Chny/2010 for AY 1999-2000, are re-produced as under:

I (i) The learned Commissioner of Income tax of Appeal Trichy failed to see that the appellant did not incur any expenditure in earning the tax free income. The estimated disallowance @ 2% of the tax free income is not correct as per the decision of many appellate authorities.

(ii) The learned Commissioner of Income tax of Appeal Trichy failed to see that the Assessing Officer had not proved any expenditure directly related to the tax free income in the case of the appellant.

II (i) The learned Commissioner of Income tax of Appeal Trichy failed to see that the lease agreement of two lessee, viz, M/s Rajender Steels Ltd and M/s Aruna Textiles & Exports Ltd., are genuine. Depreciation claimed by the appellant regarding the two items were remitted back to the assessing offer by the Commissioner of Income tax of Appeal for A Y 96-97. The transactions were genuine.

(ii) In the case of M/s Rajender Steels Ltd, Kanpur-

due to mismanagement of business affairs by the lessee the projects failed after two years from the date of loan.

(iii) The other banks were also advanced money to the lessee under different Scheme.

(iv) Purchase receipts are available. Insurance done and Bank Officials verified the existence of Machinery and all certificates were produced to Assessing Officer and the remitted back case is not yet opened by Assessing Officer for A Y 96-97 and subsequent years.

In the case of M/s Aruna Textiles and Exporters-

(v) Valuation of machinery was done by an eminent valuer. The amount valued by SITRA was equal to the previous valuer.

(vi) Bank officials verified the existence of machinery. Insurance companies insured the machineries.

(vii) The learned CIT (Appeals) did not go through the facts of the case but came to a conclusion that the appellant failed to establish the existence of these assets. This is not correct.

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(For the Asst Year 1996-97, the then CIT (Appeals) remitted some issues to assessing officer, including depreciation on leased assets of M/s Rajender Steels Ltd and M/s Aruna Textiles & Exports Ltd.)

III (i) Pension payments to Bank employees was one of the issue in Bi partite settlement. Pension payment starts after employees retired from active service. The Pension Fund was registered at the office of Chief Commissioner of Income tax, Chennai. Agreement signed by all the parties (ie) Bank, Employees & ISA in January 1998. CBDT was requested to grant exemption from rule 89. The exemption was given to Nationalized Banks in 1996. The application filed by the Private Sector Banks were kept pending by CBDT up to August 2003. In August 2003 the CBDT refused to give exemption to rule 89. The appellant Bank purchased Annuity from October 2003.

(ii) Since exemption application was pending up to August 2003, the Bank started paying pension directly to pensioners.

(iii) Pension scheme is applicable to all employees serving as on that date and those who retired on or after 01-01-1986. As per the settlement with IB A, pension is to be paid to retired employees from 01-11-1993. IB A through its letter dated 02-01-1998 informed Government's decision to delete strike clause in the agreement. After this date only Pension agreement took effective form and acceptable to all Bank employees.

When the Government of India decided in principle to give employees of Banks an option to prefer pension payment, IBA requested the member Banks to form a fund and get it registered with the Chief Commissioner of Income Tax. Accordingly, in 1995 the rules and regulations of the fund were prepared and the CCIT gave his approval to the Fund.

The appellant has got a self-managed Provident Fund. So the IBA on behalf of the members filed an application to grant exemption from Rule 89 (i.e.,) the individual Banks can maintain the fund & pay pension to employees without investing in LIC as per Rule 89.

The CBDT gave exemption to Rule 89 in 1996 to the Nationalized Banks only. So Private Sector Banks through its Association once again requested CBDT to give exemption to Rule 89 to Private Sector Banks also. This petition by Private Sector Banks Association was not rejected immediately by the CBDT. CBDT only on 13th August 2003 refused exemption from Rule 89 to the Private Sector Banks and it was communicated by the Bank's Association through its letter dated 03-09-2003. So the appellant Bank purchased annuity from LIC from October 2003.

During this pendency period, i.e. from 1998 the Private Sector Banks paid pension directly to the pensioners. In other words, the appellant bank as soon as the petition rejected, acted according to Law and purchased Annuity from LIC.

So, LIC Annuity cannot be purchased for past liability (i.e.) from 1993 to 1998. Past liability is to be paid by Bank directly.

These were well and elaborately discussed by the then CIT (Appeals) in the Appeal Order Dt 31-03-2005 for the AY 1998-99.

(iv) Provision for pension liability is made as per Actuary Valuations.

(v) Since employees gave notice for strike, to maintain Industrial peace, the pension paid by Bank directly to pensioners.

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(vi) If pension fund pays pension directly to pensioners without purchasing Annuity it is violation. But, Pension was paid by Bank directly. This is actual payment. So there is no violation.

(vii) This pension payment was made wholly and exclusively for the purpose of business. Paying pension to employees is expenditure for business purposes. The retired employees are also equal to existing employees. They are also Associate members of the Union/Association. The payment was not made for personal or private purposes.

On these grounds the CIT(A) had erred in disallowing the claim with the ruling that the pension payments were not made to any approved pension fund.

IV (i) The Commissioner of Income tax of Appeal, Trichy failed to see that Software expenses are of revenue expenditure as per Income tax appellate Tribunal order dated 14-07-2006 (ITA No.1137/Mds/2003 for AY 94-95).

(ii) The life of the software cannot be determined. The software can become also Obsolete at any time. It is only programme/instruction written by programmers in computer language.

V. CIT(Appeals) erred in confirming disallowance of Rs.2,40,000/- on account of expenses incurred to increase authorized capital, which is one of the fundamental component of business. This amount is paid to Government Statutory authorities (SEBI) as per Government stipulation and so allowable as expenditure.

VI (i) The wages of Bank employees are determined by the Bi-partite settlement. As per the Bye partite settlement ended on 31-10-1997. So from 1-11-1997 Salary to be paid as per the 7 Bi partite settlement. The talks were in progress and on 11.03.99 MOU was signed by the parties. For assessment year 1999 - 2000 relevant financial year is from 01.04.1998 to 31.03.1999. The increase in wage revision was certain; the liability was ascertained.

(ii) Wage revision is not a contingent liability in this case.

(iii) The actual wage revision was more or less equal to provision made.

(iv) The case laws cited by the appellant were not considered by the Commissioner of Income tax (Appeal).

(v) Impact of wage revision was provided during the year under consideration. This will reveal correct profit/loss of the concern.

(vi) The case law cited by Assessing officer is irrelevant.

The CIT (Appeals) thus erred in disallowing the claim for provision for wage revision.

3. The brief facts of the case are that the assessee is a banking company filed return of income u/s.139(1) of the Income Tax Act, 1961 (in short "the Act"). The assessment has been completed u/s.143(3) of the Act, where the AO has made proportionate disallowance towards expenditure incurred

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for exempt income. The assessee carried the matter in appeal before the First Appellate Authority and the Ld.CIT(A) for the reasons stated in their appellate order, directed the AO to estimate 2% of exempt income towards disallowance of expenditure relatable to exempt income. The assessee carried the matter in further appeal before the Tribunal and the Tribunal for the reasons stated in their order dated 17.01.2013, upheld the findings of the Ld.CIT(A) in directing the AO to estimate 2% on exempt income towards expenditure relatable to earning exempt income. The assessee preferred an appeal before the Hon'ble Madras High Court and the High Court of Judicature at Madras in TCA No.704-711 of 2013 order dated 07.09.2021 remand the matter back to Tribunal for fresh consideration in respect of Q.No.1 which pertains to disallowance of 2% estimated expenses on exempt income. The present appeals are listed for hearing to decide the issue of disallowance of expenditure relatable to exempt income on the directions of the Hon'ble Madras High Court.

4. The Ld.Counsel for the assessee, Mr.S.Ananthan, CA, submitted that the issue involved in all six appeals are disallowance of expenditure relatable to exempt income and is covered by the decision of ITAT Chennai Benches in the assessee's own case for AYs 2013-14 reported in 2021 (11) TMI 568 - ITAT Chennai, where the Tribunal by following the decision of the Hon'ble Supreme Court in the case of South Indian Bank Ltd. v. CIT reported in [2021] 438 ITR 1 (SC) held that provisions of Sec.14A of the

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Act r.w.r.8D of the IT Rules, 1962, is not applicable in the case of banking companies, where the exempt income has been offered as business income. Therefore, he submitted that the additions made by the AO towards estimated disallowance of expenditure relates to exempt income needs to be deleted.

5. The Ld.DR, Mr. AR.V.Sreenivasan, Addl.CIT, referring to the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. v. CIT, reported in [2018] 91 taxman.com 154 (SC), more particularly, Para Nos.38-41 of the said judgment, submitted that the Hon'ble Supreme Court clearly held that even if in a case of investments held as stock in trade, the assessee earns exempt income proportionate expenses relatable to exempt income and taxable income needs to be apportioned. Although, the Hon'ble Supreme Court in the above case held that proportionate expenses need to be disallowed, in a case, dividend income earned from investments, which are held as stock in trade in the case of latest judgment of the Hon'ble Supreme Court in the case of South Indian Bank Ltd. v. CIT (supra), this issue has not been considered, and thus, argued that even in case of banking companies, provisions of Sec.14A of the Act, are applicable and accordingly, expenses relatable to exempt income needs to be disallowed.

6. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The solitary issue

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that came up for our consideration from all these appeals filed by the assessee relates to disallowance of expenditure relatable to exempt income u/s.14A of the Act. We find that the issue is squarely covered in favour of the assessee by the decision of ITAT, Chennai Benches in the assessee's own case for AY 2013-14, where the Tribunal by following the decision of the Hon'ble Supreme Court in the case of South Indian Bank Ltd. v. CIT (supra) held that shares & securities held by the bank or guarantor and income received for such shares & securities must be considered as business income, and consequently, provisions of Sec.14A of the Act, would not be attracted to such income. The relevant findings of the Tribunal are as under:

12. The first issue that came up for our consideration from Ground No.2 of disallowance of expenditure relatable to exempt income u/s.14A of the Act The earned dividend income of Rs.2,21,85,558/-, however no disallowance as required Act had been made by the assessee. Therefore, the AO has disallowed 2% of such income as expenses relatable to exempt income u/s.14A read with Rule 8D of the Rules, 1962 (hereinafter the 'IT Rules'). On appeal, the Id.CIT(A) has restricted 1.15% of exempt income which is proportionate expenditure of the Treasury CIT (A) has also disallowed an amount of Rs.65,68,526/- being 0.5% of the tax exempt by invoking Rule 8D(2)(iii) of the IT Rules.

12.1 The Id.AR for the assessee at the time of hearing submitted that this issue is favour of the assessee by the decision of ITAT in assessee's own case for 2012-13 in ITA No.54/CHNY/2018, where it has been held that no disallowance u/s.14A is permissible in terms of Rule 8D where the assessee is engaged in banking business He submitted that in a recent decision in the case of South Indian Bank Ltd., vs. CIT, Supreme Court in Civil Appeal No.9606 of 2011, vide order dated 09.09.2021 held that in the case of banking companies, Section 14A is not applicable.

12.2 The Id.DR on the other hand supporting order of the CIT(A) submitted that the exempt income is earned, disallowance contemplated u/s.14A triggers and the AO shall compute such disallowance by invoking Rule 8D of IT Rules, 1962 and thus, there is no error in the reasons given by the authorities below to sustain addition made towards disallowance u/s.14A and their orders should be upheld.

12.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Admittedly, the issue is covered in favour of the assessee by the decision of ITAT in assessee's own case for assessment year 2012-13, where under identical set of facts, the Tribunal by following certain judicial

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precedents including the decision of Hon'ble Punjab & Haryana High Court in the case of Pr.CIT vs. State Bank of Patiala, [2017] (2) TMI 125, held that no disallowance u/s.14A is permissible in terms of Rule 8D, where the assessee is engaged in banking business. A similar view is taken by the Hon'ble Supreme Court in the case of South Indian Bank Ltd vs. CIT in Civil Appeal No.9606 of 2011, and held that shares and securities held by a bank are stock-in-trade and income received on such shares and securities must be considered to be business income. That is why, Section 14A of the Act would not be attracted to such income.

12.4 In this view of matter and consistent with view taken by the Co-ordinate Bench and also by respectfully following the decision of Hon'ble Supreme Court in the case of South Indian Bank Ltd., vs. CIT, supra, we direct the AO to delete addition made towards disallowance u/s.14A r.w.rule 8D of the IT Rules, 1962.

7. Further, the Hon'ble Karnataka High Court in the case of the CIT, LTU, the Addl./Jt.CIT, LTU, Bengaluru v. M/s.Canara Bank, reported in 2023 (1) TMI 243 (Karnataka High Court), had considered an identical issue and by following the decision the Hon'ble Supreme Court in the case of South Indian Bank Ltd. v. CIT (supra) held that provisions of Sec.14A of the Act, are not applicable in case of banking companies, where dividend income has to be considered as business income. The Hon'ble Delhi High Court, in the case of PCIT v. Punjab National Bank had also considered an identical issue and by considering the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. v. CIT reported in [2018] 402 ITR 640 (SC) held that provisions of Sec.14A of the Act, will not apply on profits from shares where held as stock in trade and not as investments. The sum and substance of ratio laid down by the Hon'ble Supreme Court and the Hon'ble High Courts are that in case of banking companies were shares & securities are held as stock in trade, dividend income is considered as business income, and consequently, provisions of Sec.14A of the Act, cannot be applied.

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8. In this view of the matter and by following the decision of ITAT, Chennai Benches in assessee's own case for AY 2013-14, we direct the AO to delete additions made towards disallowance of proportionate expenses relatable to exempt income for all assessment years.

9. In the result, appeals filed by the assessee for all assessment years are allowed.

Order pronounced on the 09th day of June, 2023, in Chennai.

Sd/-

(मनोमोहन दास)

(MANOMOHAN DAS)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 09th June, 2023.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent

Sd/-

(मंजूनाथा.जी)

(MANJUNATHA.G)

लेखा सदस्य/**ACCOUNTANT MEMBER**

3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF