

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

श्रीमहावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 369/CHNY/2023

निर्धारण वर्ष /Assessment Year: 2016-17

**Manali Petrochemicals Ltd.,**  
Spic House, 88,  
Mount Road,  
Guindy, Chennai – 600 032.

**The DCIT,**  
v. Large Taxpayer Unit-1,  
Chennai

**PAN: AAACM 3404D**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri Vikram Vijayaraghavan,  
Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 05.07.2023

घोषणा की तारीख/Date of Pronouncement

: 05.07.2023

**आदेश /ORDER**

**PER MAHAVIR SINGH, VICE PRESIDENT:**

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in Appeal No.CIT(A),Chennai-17/10363/2018-19 dated 21.02.2023. The assessment was framed by the ACIT, Circle 1, LTU, Chennai for the assessment year 2016-

17 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 18.12.2018.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in making disallowance of expenses relatable to exempt income by invoking the provisions of section 14A of the Act read with Rule 8D of the Rules amounting to Rs.70,40,476/-. For this, assessee has raised the various grounds but only challenge is the disallowance under clause (ii) of Rule 8D(2) at Rs.43,23,188/- and under clause (iii) of Rule 8D(2) at Rs.38,86,943/-.

3. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the AO noticed from the computation of income statement that the assessee has claimed exempt income of Rs.5,84,83,000/-. The assessee has worked suo-motto disallowance u/s.14A r.w.rule 8D of the Rules at Rs.11,69,655/- but the AO disregarded computation of disallowance made by assessee and made further disallowance under clause (ii) & (iii) of Rule 8D(2) at Rs.43,23,188/- & Rs.38,86,943/-. Now before us the Id.counsel for the assessee filed the financials and fund statement and argued that the assessee has sufficient fund for

making investment and hence, the interest disallowance under Rule 8D(2)(ii) of the Rules is without any basis in view of decision of the Hon'ble Bombay High Court in the case of HDFC Ltd., 366 ITR 505. As regards disallowance under Rule 8D(2)(iii), the Id.counsel stated that the computation made by AO under Rule 8D(2)(iii) is not based on actual investment computed while making average value of 0.5% of investment. On query from the Bench, whether these details were furnished before AO during the course of assessment proceedings or before the CIT(A) during appellate proceedings, the Id.counsel stated that all the financials were before the AO and even fund statement was also before the lower authorities. The assessee now relying on these financials requested that at the best, the matter can be restored back to the file of the AO to reconsider the availability of funds in term of decision of Hon'ble Bombay High Court in the case of HDFC Ltd., *supra* and also the other expenses i.e., 0.5% of average value of investment, the correct computation should be made. When this was pointed to Id. Senior DR, he stated that the assessee has earned exempt income and the disallowance suo-motto made by him of Rs.11,69,655/- is not accurate with the provisions of the Act and hence, the AO has rightly invoked the provisions of section 14A r.w.rule 8D of the Rules but he has not objected in setting aside the issue to the file of the AO for

verification purpose to verify the availability of funds and also the computation made under Rule 8D(2)(iii) of the Rules. The Id.counsel also filed copy of Tribunal order in assessee's own case in earlier assessment year 2015-16 in ITA No.2824/CHNY/2019, order dated 28.07.2001, wherein the Tribunal has remitted back the issue on identical facts vide para 5 as under:-

5. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Admittedly, it is a well settled principle of law that when the assessee is able to establish availability of mixed funds including borrowed funds, then presumption is drawn in favour of the assessee that investments made in shares and securities is out of own funds. This principle is supported by the decision of the Hon'ble Supreme Court in the case of CIT Vs. Reliance Industries Ltd., 307 CTR 121 (SC) . The Hon'ble Bombay High Court in the case of CIT Vs. Reliance Utility Power Ltd. (313 ITR 340) has taken a similar view. In this case, it was claim of assessee that it has sufficient own funds, which is in excess of investments made in shares and securities, which yield exempt income. If the assessee is able to establish availability of sufficient own funds in excess of investments, then question of disallowance of interest expenses does not arise. However, facts with regard to availability of own funds was not furnished before the Assessing Officer . Similarly, as regards disallowance of other expenses, it was the claim of assessee that only investments which have actually yielded exempt income needs to be considered for computing average value of investments to determine disallowances under Rule 8D(2)(iii) of Income Tax Rules, 1962 . This proposition is supported by the decision of Hon'ble Delhi High Court in the case of M/s. ACB India Ltd. Vs ACIT, reported in 374 ITR 108. This proposition is further supported by the decision of ITAT., Delhi Special Bench in the case of ACIT Vs. Vireet Investments Pvt. Ltd., reported in 165 ITD 27 . Therefore, we are of the considered view that issue needs to be reconsidered by the Assessing Officer in light of averments made by the assessee that it has sufficient own funds to cover investments made in shares and securities and further, the Assessing Officer has considered total investments including investments which does not yield exempt income to compute average value of investments to determine disallowances under Rule 8D of Income Tax Rules, 1962. Hence, we set aside issue to the file of Assessing Officer and direct him to reconsider the issue in light of various averments made by the assessee and also in light of our discussions given herein above.

Since the issue is exactly identical, we also remit this issue back to the file of the AO to find the availability of funds while making disallowances under Rule 8D(2)(ii) and other expenses under Rule 8D(2)(iii). Accordingly, the appeal of the assessee is allowed for statistical purposes.

4. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 5<sup>th</sup> July, 2023 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 5<sup>th</sup> July, 2023

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- |                         |                          |                     |
|-------------------------|--------------------------|---------------------|
| 1. अपीलार्थी/Appellant  | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त /CIT |
| 4. विभागीय प्रतिनिधि/DR | 5. गार्ड फाईल/GF.        |                     |