

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री महावीर 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.: **1091/CHNY/2022**

निर्धारण वर्ष /Assessment Year:2012-13

Shri Iyamperumal
Shanmugadurai,
No.42, Paper Mills Road,
Perambur, Chennai – 600 011.

The DCIT,
v. Corporate Circle 10(1),
Chennai.

PAN: AAHPS 8819A

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri R. Vijayaraghavan, Advocate
: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 12.07.2023

घोषणा की तारीख/Date of Pronouncement : 12.07.2023

आदेश /ORDER

PER MAHAVIR SINGH, VP:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in Order No.ITBA/NFAC/S/250/2022-23/1046368411(1) dated 18.10.2022. The assessment was framed by the DCIT, Non-Corporate Circle 10(1), Chennai for the assessment year 2012-13 u/s.143(3) of the Income Tax Act, 1961 (hereinafter 'the Act'), vide order dated 17.03.2015.

2. The first issue in this appeal of assessee is as regards to the order of CIT(A) confirming the disallowance of interest payment of Rs.3,10,35,767/- to Non-Banking Financial Company (NBFC) without deduction of TDS u/s.194A of the Act, thereby invoking the provisions of section 40(a)(ia) of the Act.

3. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the AO during the course of assessment proceedings required the assessee to explain as to why 'HP Finance Charges - Others' amounting to Rs.3,10,35,767/- debited by the assessee has suffered TDS or not. The assessee admitted that no TDS was deducted but it was stated and assessee filed details of NBFCs and certificate issued in Form No.26A thereby paying the amount on the alleged payments to the extent of Rs.2,83,74,079/-. The details were given by the assessee and are reproduced by the CIT(A) in para 4.2.4. However, total disallowance is Rs.3,10,35,767/-. The Id.counsel for the assessee before AO as well as before CIT(A) and even before us claimed that this amount of Rs.2,83,74,079/- has already suffered tax in the hands of the respective NBFCs i.e., namely (1) India Bulls Financial Services Ltd., (2) HDB Financial Services Ltd., (3) Fullerton India Credit Company Ltd., and (4) Bajaj Finance Ltd. The details of the

same were given in the order of CIT(A) at para 4.2.4. The Id.counsel for the assessee stated that this issue is now covered by the decision of Hon'ble Delhi High Court in the case of CIT vs. Ansal Landmark Township (P) Ltd., 377 ITR 635, wherein the Hon'ble Delhi High Court has considered that the second proviso to section 40(a)(ia) of the Act has retrospective effect and it has to be given retrospective effect from 01.04.2005 and the relevant year involved in assessee's appeal is 2012-13.

4. We find that this issue is squarely covered in favour of assessee for an amount of Rs.2,83,74,079/- out of the total disallowance of Rs.3,10,35,767/-. Thereby, we restrict the disallowance only to the extent of Rs.26,61,688/-. This issue of assessee's appeal is partly allowed.

5. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the disallowance of expenses relating to exempt income i.e., interest disallowance under Rule 8D(2)(ii) at Rs.5,61,082/- and administrative expenses being 0.5% of the average value of investment under Rule 8D(2)(iii) at Rs.29,972/- by invoking the provisions of section 14A r.w.rule 8D of the Rules.

6. We noted that the assessee has received dividend income of Rs.3,15,096/- during the financial year 2011-12 relevant to this assessment year 2012-13 and the Id.counsel for the assessee agreed that disallowance can be restricted only to the extent of exempt income claimed by assessee i.e., dividend income of Rs.3,15,096/-. We direct the AO to restrict the disallowance to the extent of dividend income of Rs.3,15,096/- only. This issue of assessee's appeal is partly-allowed.

7. In the result, the appeal filed by the assessee is partly-allowed.

Order pronounced in the open court on 12th 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 12th July, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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