

आयकर अपीलीय 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./I.T.A. 753/CHNY/2023
निर्धारण वर्ष /Assessment year :2016-2017

Siemens Gamesa Renewable
Power Private Limited,
No.489, Thandalkazhani Village,
GNT Road,
Vadagarai Post,
Chennai 600 052.

Vs. The Assistant Commissioner of
Income Tax,
Corporate Circle 6(1)
Chennai.

[PAN AACCG 6027C]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri Vinay Jain, C.A.
प्रत्यर्थी की ओर से /Respondent by : Shri. Nandakumar, IRS, CIT

सुनवाई की तारीख/Date of Hearing : 17.10.2023.
घोषणा की तारीख /Date of Pronouncement : 17.10.2023.

आदेश / ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal filed by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-18, Chennai in ITA No.372/CIT(A)-18/2022-2023, Dated 21.04.2023. The assessment was framed by the Assistant Commissioner of Income Tax, Corporate Circle 6(1), Chennai for the assessment year 2016-17 u/s.143(3) r.w.s.250 of the Income Tax Act, 1961 (hereinafter 'the Act'), vide order dated 13.09.2021.

2. After the decision of Hon'ble Madras High Court in Writ Petition No.34174 of 2019, whereby the Hon'ble Madras High Court had allowed the Writ Petition and quashed the transfer pricing order passed by the Transfer Pricing Officer u/s.92CA(3A) of the Act and thereby only one issue remains is with regard to the disallowance of expenditure relatable to exempt income by invoking the provisions of Section 14A of the Act r.w.r 8D (2) (ii) and (iii) of the Income Tax Rules, 1962 (hereinafter "the Rules"). For this, the assessee has raised the following grounds of appeal.

"3. Disallowance under section 14A of the Act

3.1 On the facts and circumstances of the case and in law, the Ld. CIT(A) and the Ld. AO erred in disallowing a sum of INR 0.25 crores under section 14A of the Act by applying the provisions of Rule 8D of the Income tax Rules, 1962 ("the Rules").

3.2. On the facts and circumstances of the case and in law, the Ld. CIT(A) and the Ld. AO erred in applying the provisions of under section 14A of the Act read with Rule 8D of the Rules, without sufficient satisfaction on record and without appreciating that no exempt income was earned by the Appellant during the impugned AY.

3.3 On the facts and circumstances of the case and in law, the Ld. CIT(A) and the Ld. AO failed to appreciate that the issue is squarely covered in favor of the Appellant by the decision of this Hon'ble Tribunal in the Appellant's own case for the AYs 2011-12 and 2012-13, wherein it was held that there cannot be any disallowance under section 14A in the absence of exempt income".

3. The brief facts of the case are that the Assessing Officer made disallowance of expenditure relatable to exempt income under Rule 8D 2(ii) at ₹14,01,291/- and administrative expenses under Rule 8D (2) (iii)

being 0.5% average value of investments at ₹6,14,500/-, thereby aggregated disallowance of ₹20,15,792/-. Aggrieved, assessee preferred an appeal before the Id. CIT(A).

4. Ld. CIT(A) confirmed the action of the Id. Assessing Officer. Aggrieved, now Revenue is in appeal before us.

5. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that assessee before the Assessing Officer as well as the Id. CIT(A) raised this issue that there is no dividend income earned by the assessee. Even before us, the Id. Counsel for the assessee made statement at bar that there is no exempt income earned by the assessee which is evident from the Audited books of accounts of the assessee. This fact is not denied by the Id. CIT –DR. Since there is no exempt income earned by assessee no disallowance can be made by invoking the provisions of Section 14A of the Act r.w.r 8D of the Rules. This view was supported by the decision of Hon'ble Supreme Court in the case of *Maxopp Investment Ltd vs. CIT, (2018) 402 ITR 640*, wherein it was held as under:-

'41. Having regard to the language of section 14A(2) of the Act, read with rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the Assessing Officer needs to record satisfaction that having regard to the kind of the assessee, suo motu disallowance under section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned

but the Assessing Officer was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, the nature of the loan taken by the assessee for purchasing the shares/ making the investment in shares is to be examined by the Assessing Officer”.

Respectfully, following the above decision of Hon'ble Supreme Court in the case of *Maxopp Investment Ltd (supra)*, we decide the issue in favour of the assessee and allow the ground raised by the assessee.

6. In the result, the appeal filed by the assessee in ITA No.753/CHNY/2023 for the assessment year 2016-2017 stands allowed.

Order pronounced in the open court at the time of hearing on 17th October, 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: 17.10.2023.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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