

आयकर अपीलीय अधिकरण “ए” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं ITA No.95/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2009-10)

M/s. Southern Petrochemical Industries Corporation Limited 88, Spic House, Mount Road, Guindy, Chennai-600 032.	बनम / Vs.	Income Tax Officer Corporate Ward-3(1) Chennai-600 034.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAACS-4668-K		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri R. Vijayaraghavan & Shri Saroj Kumar Parida (Advocates)-Ld. ARs
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Nilay Baran Som (CIT) & Shri AR V Sreenivasan (Addl. CIT)-Ld. DRs

सुनवाईकीतारीख/ Date of Hearing	:	16-10-2023
घोषणाकीतारीख / Date of Pronouncement	:	10-01-2023

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee was heard along with other appeals for various assessment years having common issues. This appeal arises out of an order passed by learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] on 30.11.2022 in the matter of an order passed by Ld. Assessing Officer [AO] on 21.12.2017 pursuant to the directions of Tribunal in ITA Nos.1418/Mds/2014 & 1821/Mds/2014 dated 27.12.2016. In this order,

Tribunal remitted back the issue of disallowance u/s 14A for Rs.483.96 Lacs and disallowance of proportionate interest expenditure for Rs.446.86 Lacs. Both these issues were remitted back by Tribunal to the file of Ld. AO for re-adjudication. Pursuant to the same, another order has been passed by Ld. AO. The Ld. CIT(A) has partly allowed the appeal against which the assessee is in further appeal before us with following grounds: -

1. The order of National Faceless Appeal Centre (NFAC), Delhi is contrary to law, facts and in the circumstances of the case.

2. The CIT(A) / NFAC erred in not appreciating that Assessing Officer has not recorded his satisfaction as to the correctness of claim of the Assessee before re-computing disallowance u/s.14A as expenditure incurred for earning exempt income.

2.1 The CIT(A) / NFAC erred in not appreciating that the Assessee has not incurred any direct expenditure for earning exempt income therefore first limb of Rule 8D is not applicable.

2.2 The CIT(A) / NFAC erred in not appreciating that no borrowed funds were utilized for making investments and hence the disallowance made by the AO under Rule 8D is without any basis and has to be deleted.

2.3 The CIT(A) / NFAC ought to have appreciated that the investments were made in the earlier years out of own funds and no fresh investments were made during the year and therefore disallowance of expenditure made by AO is unwarranted.

2.4 The CIT(A) /NFAC erred in not considering the written submissions dated 15.11.2022 wherein the Assessee has explained the year of investments and source of investments and the dividend received.

2.5 The Appellant relies on the following among other decisions further submission that no disallowance can be made under rule 8D(2)(ii) in view of the availability of sufficient own funds for making the investments.

CIT vs. Microlabs Ltd -383 ITR 490 Kar.

PCIT v Sintex Industries - 403 ITR 418 Guj confirmed by 93 Taxman.com 24 SC.

CIT (LTU) Vs. Reliance Industries Ltd - 307 CTR 121 SC.

2.6 The CIT(A) / NFAC ought to have directed that disallowance under Rule 8D(2)(ii) and 8D(2)(iii) should be made only in respect of investments from which Dividend has actually been earned during the year. The Appellant relies on the following among other decisions:

ACB India Ltd vs. ACIT 374 ITR 108 del.

ACIT Vs VIREET INVESTMENT PVT LTD 165 ITD 0027 Del SB.

2.7 The CIT(A) / NFAC erred in relying on the Explanation to section 14A of the Act inserted vide Finance Act 2022 w.e.f 01.04.2022 to hold that sec 14A is applicable even if no exempt income has accrued the income is prospective in application and is not applicable for the year under appeal.

3. The CIT(A) / NFAC erred in confirming the disallowance of proportionate interest expenses on advanced to sister concerns amounting to Rs.4,46,86,613/-.

3.1 The CIT(A) / NFAC ought to have appreciated that Hon'ble ITAT in appellant own case for the AY 2000-01 by order dated 20.10.2004 allowed the claim in respect of advances given to the subsidiaries (Dubai and Jordan) as being made for the purposes of and in the course of the business of the Appellant and hence interest on borrowings cannot be disallowed on the ground that it is relatable to advances to or investments in these units. While giving effect to the ITAT order the Assessing Officer has allowed such advances as business expenditure.

3.2 The CIT(A) /NFAC ought to have appreciated that the appellant had sufficient interest free funds available to them to cover the advances made to the group companies. As has been held by the various High Courts and Supreme Court, if an assessee had sufficient own funds to cover the interest free advances to group concerns, such advances should be considered to have been given out of own funds and no part of the interest on borrowings can be disallowed on account of such advances.

3.3 The appellant reliance on among other decisions:

CIT vs. Bharti Televenture Ltd 331 ITR 502 Del.

Reliance Utility and Power Ltd. vs. CIT, 313 ITR 340 (Bom.)

CIT vs. Hotel Savera -239 ITR 795 (Mad)

CIT (LTU) Vs. Reliance Industries Ltd - 307 CTR 121 SC-Civil Appeal

PCIT v Sintex Industries 403 ITR 418 Guj confirmed by 93 Taxman.com 24 SC.

As is evident, the additions / disallowance which forms the subject matter of this appeal are i.e., (i) Disallowance u/s 14A; (ii) Disallowance of proportionate interest expenditure.

2. The Ld. AR advanced arguments on impugned issues citing various judicial decisions and also filed written submissions to support the case of the assessee. The revenue also advanced arguments and filed written submissions in support of impugned order. Having heard rival submissions and upon perusal of case records, our adjudication would be as given in succeeding paragraphs. The assessee being resident corporate assessee is stated to be engaged in manufacturing and marketing of fertilizers, pharma, biotech products and providing engineering services.

3. Disallowance u/s 14A

3.1 The assessee furnished shareholding pattern of the entities from whom the dividend was received by it during the year. The same has

been tabulated in para 1.2 of the order. The assessee received exempt dividend income of Rs.879.70 Lacs and offered disallowance u/s 14A for Rs.17.59 Lacs by taking into consideration the salary and allowances of the personnel who were entrusted with the management of company's affairs and day-to-day operation pertaining to investments. The assessee also submitted that no new investments were made during this year except securities allotment by Government of India towards subsidy on fertilizers. However, rejecting all the submissions, Ld. AO retained disallowance of Rs.818.26 Lacs as made in assessment order passed u/s 143(3).

3.2 During appellate proceedings, the assessee reiterated that no new investments were made during the year and the investments made in earlier years were out of surplus funds and no borrowings were used to make the investments.

3.3 However, Ld. CIT(A) held that the actual routing of surplus money into investment was not demonstrated. The Ld. CIT(A) provided partial relief and held that the advances made to sister concerns was to be excluded while computing the disallowance. Aggrieved, the assessee is in further appeal before us.

3.4 This issue has been decided by us in ITA No.84/Chny/2023 for AY 2008-09 as under: -

3.4 From the fact, it emerges that the assessee has earned exempt dividend income during the year and offered suo-motu disallowance of Rs.16.55 Lacs during the course of assessment proceedings. In such a situation, it was incumbent on the part of Ld. AO to record an objective satisfaction as to why the said disallowance was not acceptable. The application of Rule 8D was not mechanical but it has to be proceeded by an objective satisfaction of Ld. AO. In the absence of such a satisfaction, impugned disallowance could not be sustained. Another pertinent fact is that all the investments have been made prior to financial year 1999-2000 out of surplus own funds available in the respective years of investment as tabulated by the assessee during appellate proceedings. There are no new

investments during the year. Therefore, interest disallowance u/r 8D(2)(ii) could not be sustained. The suo-motu disallowance of Rs.16.55 Lacs as offered by assessee is not direct expense disallowance since the same is pro-rata salary expenditure which could be said to be attributable to activity of investment. Therefore, considering the fact of the case, the impugned disallowance stand restricted to the extent of Rs.23.94 Lacs and the remaining disallowance stand deleted. The corresponding grounds stand partly allowed.

Since facts are similar, taking the same view, direct expenses disallowance u/r 8D(2)(i) as well as interest disallowance u/s 8D(2)(ii) is not called for. The disallowance u/r 8D(2)(iii) would be computed by considering exempt income yielding investments only. The Ld. AO is directed to re-work the same. The corresponding ground stands partly allowed.

4. Disallowance of proportionate Interest Expenditure

4.1 Pursuant to the directions of the Tribunal, the assessee placed n record shareholding pattern of SPIC Fertilizers and Chemicals FZE, Dubai and Indo Jordon Chemicals Company Ltd. It was submitted that advances were made to set up the business in respective countries. Therefore, no interest disallowance was called for. The Ld. AO noted that though the investment was made in the years 1998-2000, however, the business operations had not started. Further, the advances were capital in nature. Therefore, the impugned interest disallowance was retained at Rs.446.86 Lacs.

4.2 During appellate proceedings, the assessee assailed the impugned disallowance on the ground that all these investments had business nexus and also raised plea of sufficiency of own funds to make these investments. However, rejecting the submissions of the assessee, Ld. CIT(A) confirmed the impugned disallowance against which the assessee is in further appeal before us.

4.3 We find that findings with respect to both the entities under consideration has been rendered by us in assessee's favor in ITA No. 204/Chny/2023 for AY 2004-05 as under: -

Our findings and Adjudication

11. From the facts, it emerges that impugned advances have been given by the assessee in the ordinary course of business to all these entities. The investments have been made in joint ventures entities though the projects may not have fructified for the assessee. It could be seen that SFCL, FZE is 100% subsidiary of SFCL Mauritius in which the assessee owns stake of 83.54%. The investment made by the assessee was for expansion of assessee's business. This business of this entity is stated to be having direct nexus with the assessee's main business of manufacturing of Urea and fertilizers etc. The assessee has undertaken to buy back the entire production of Urea from this entity. The ministry of chemicals and fertilizers, vide its letter dated 03.12.1998, informed the assessee that import of urea by assessee from this entity will be given preference. The aforesaid facts substantiate the arguments that investments made by the assessee had direct business nexus and therefore, the test of commercial expediency, in our opinion, was duly satisfied by the assessee. It could be said that the investments were made in furtherance of business interest and the ratio of decision of Hon'ble Supreme Court in the case of **CIT V/s S.A. Builders (288 ITR 1)** would favor the case of the assessee. In this decision, it was held by Hon'ble Court that once nexus was established between the expenditure and the purpose of the business, which need not necessarily be the business of the assessee itself, revenue could not disallow the claim assuming what was reasonable. In fact, Tribunal in ITA No.232/Chny/2022 order dated 23.09.2022 for AY 2017-18, in similar issue, quashed revisionary proceedings on the ground that the loss of investments so made by the assessee was a business loss and the same was one of the possible views. Considering the same, the view taken by Ld. AO in allowing the business loss was upheld. To allow the expenditure, it would not be necessary that the project should fructify. Considering all these facts, we would hold that impugned disallowance against this entity could not be sustained.

Similarly, the investments made in IJCL were made as a joint venture investment. This entity was to manufacture phosphoric acid and the entire production was to be sold to the assessee. The assessee made 60% contribution in this entity. The venture was to ensure supply of critical raw material for the assessee. Simply because the project could not fructify would not disentitle the claim of the assessee that it had business connection with this entity. The investment made by the assessee has RBI approval vide letter dated 22.09.1994 which is placed on page nos.100 & 101 of paper-book-1. This being so, disallowance of interest either u/s 37(1) or u/s 36(1)(iii) could not be said to be justified. We order so.

The advances given to SPEL have been given by the assessee as a promoter entity to meet its debt obligations and capital expenditure. The advances were given by the assessee to this entity only up-to financial year 2000-01. During impugned year, the advances made by the assessee have been converted into equity shares. In earlier years, when the advances were given, the assessee is having sufficient own interest free funds to make these investments. The working of the same has been given on page nos. 7 & 8 of the paper-book-1. Similar findings have been rendered

by us in assessee's own case vide ITA No.170/Chny/2023 for AY 2003-04. Therefore, the assessee's ground would succeed to that extent both on commercial expediency as well as on the ground of having sufficient own funds.

M/s NAPCL is a joint venture entity of the assessee to produce Benzene, orthoxylene, paraxylene and PTA. However, the project has failed to commence production which has led to impugned disallowance. Nevertheless, there is direct business nexus of making the investment. The reason for delay in execution of the project is the fact that there was delay in getting regulatory approvals which is beyond the control of the assessee. The assessee has entered into MOU with Chennai Petroleum Corporation Limited to establish a large petrochemical plant near Chennai. The plant was to produce raw material for the assessee. The same has resulted into formation of this entity. As per the terms of MOU, the expenses of the joint venture are to be shared equally by the joint venture entities. Considering the same, the assessee has advances sum to this entity towards its share of the expenditure of the project. The investment would ultimately convert into equity shares. All these facts would establish the claim of the assessee that the investment had direct business nexus and therefore, no disallowance could have been made for this investment.

Regarding investment in SPC, upon perusal of page no. 182 of the paper-book, it could be noted that the assessee has, in fact, charged interest from this entity. The outstanding loan amount including interest has been converted into equity and bonds which is evident from assessee's financial statements. Therefore, there is no question of disallowing interest against this investment.

The Ld. AR has pointed out that there is no investment made by the assessee in SPIC Technologies Ltd. for Rs.2200.66 Lacs. In fact, the assessee has made investment of Rs.220.66 Lacs in another entity viz. M/s SPIC Bio technologies Ltd. The Ld. AR has stated that the assessee has surplus net owned funds in the year in which the advances were given. The position of net owned funds has been summarized on page nos. 34 to 37 of paper book-2 along with extract of Balance Sheet, Profit & Loss Account and status of reserves and Surplus. After going through the same, we concur with the submissions of Ld. AR that the assessee had surplus net funds and disallowance need not be made in terms of decision of Hon'ble Supreme Court in the case of **CIT V/s Reliance Industries Ltd. (307 CTR 121)** which held that it could be presumed that the investments were made out of interest free funds available with the assessee. The ratio of decision of Hon'ble Madras High Court in **CIT V/s Hotel Savera (239 ITR 795)** as well the decision of Hon'ble Bombay High Court in **CIT V/s Reliance Utilities (313 ITR 340)** also supports the case of the assessee.

The interest disallowance on inter-corporate deposits of Rs.675 Lacs has been deleted by us in assessee's own case vide ITA No.170/Chny/2023 for AY 2003-04 on the ground that in the year when these deposits were placed, the assessee had sufficient own funds to make the investments. Taking consistent view, no disallowance is called for against these ICDs.

Finally, considering the facts and circumstances of the case, the impugned disallowance of Rs.5519.30 Lacs as sustained in impugned order could not be sustained in law. We order so.

In the above order, detailed findings have been rendered by us with respect to both the parties under consideration. We have concurred

with the plea of business nexus as well as sufficiency of own funds. The facts are quite similar in this year. Therefore, taking the same view, the impugned disallowance stands deleted. The grounds raised in the appeal stand allowed accordingly.

Conclusion

5. The appeal stands partly allowed in terms of our above order.

Order pronounced on 10th January, 2024

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / **VICE PRESIDENT**

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated :10-01-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. भागीयप्रतिनिधि/DR
5. गार्डफाईल/GF