

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. Nos.397, 398, 399, 400 & 401/Chny/2023
Assessment Years: 2008-09, 2012-13, 2013-14, 2016-17 & 2017-18

M/s. Dharani Developers Private
Limited, No. 1, Venus Colony II Street,
Alwarpet, Chennai 600 018.
[PAN:AABCD6222D]

Vs. The Asst/Deputy Commissioner of
Income Tax, Corporate Circle 1(1),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri K. Ramakrishnan, CA
प्रत्यर्थी की ओर से/Respondent by : Shri D. Hema Bhupal, JCIT
सुनवाई की तारीख/ Date of hearing : 09.01.2024
घोषणा की तारीख /Date of Pronouncement : 18.01.2024

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against separate orders of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi, all dated 31.01.2023 relevant to the assessment years 2008-09, 2012-13, 2013-14, 2016-17, and 2017-18.

2. Brief facts of the case are that the assessee is engaged in the business of property development and filed its return of income for the assessment years under appeal. The first ground raised by the assessee

for consideration is whether the income earned out of sale of property has to be treated as business income or capital gains. During the course of assessment proceedings, the Assessing Officer asked the assessee to explain the nature of lands sold and the reason as to why it should not be taxed under the head 'Business'. The assessee explained that these lands were purchased long back in 1994-95 and till now they are held only as investments, and that only recently, the assessee has decided to use those lands for construction purposes. It was further submission before the Assessing Officer that only three transactions of undivided share of lands on this property were registered and resultant capital gains on the sale of lands were offered as income and that the expenditure incurred on the project towards the construction were held as work in progress only and not debited to profit and loss account and that it is only at the initial stage of project. After considering the submissions of the assessee, the Assessing Officer was of the opinion that the assessee is in the business of property development viz., construction of buildings and since the project itself has started any income arising out of these should only be offered under the head "income from business". It was further observed that the period of holding of the land is not relevant since ultimately the lands were used only for construction purposes, which is the assessee's business. Thus, the Assessing Officer held that the profits

out of the sale of the lands as profits from business. Accordingly, the Assessing Officer taxed it under the head income from business' to the extent of ₹.9,25,317/- for the assessment year 2008-09. Similar addition was also made for the assessment year 2012-13, 2013-14, 2016-17 and 2017-18. On appeal, the Id. CIT(A) confirmed the assessment order for all the assessment years under appeal.

3. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the land was purchased way back in 1994-95. Up to the assessment year 2008-09, the lands were held as investment and not as stock in trade. Therefore, the income arising out of sale of property has to be treated as income from capital gains and not as a business income.

4. On the other hand, the Id. DR has submitted that the assessee has not filed any details as to when the asset was converted into stock-in-trade. Therefore, the Assessing Officer has treated income as business income.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. The case of the assessee is that the assessee was holding the asset for long period and

therefore, it has to be treated as income from capital gains. The case of the Assessing Officer is that the assessee was engaged in the business of property development and therefore, it has to be treated as business income. We find that the assessee has not filed any details before the Assessing Officer or Id. CIT(A) or even before the Tribunal as to when the asset was converted into stock-in-trade. Therefore, the assessee has furnish the details, such as how long the asset was treated as long term capital gain and when the assessee has converted the property into stock-in-trade and accordingly up to conversion of the property, the Assessing Officer has to treat it as capital asset and after conversion of the property, it has to be treated as business asset. In this case, neither the assessee nor the Assessing Officer properly computed the property of the assessee. Thus, we set aside the orders of the Id. CIT(A) on this issue and remit the matter back to the file of the Assessing Officer to examine and compute the property under section 45(2) of the Act keeping in view of the above observation and decide the issue afresh in accordance with law after affording reasonable opportunity of being heard to the assessee. Thus, the ground raised by assessee is allowed for statistical purposes for all the assessment years under appeal.

6. The next common ground raised in the appeals of the assessee for

the assessment years 2012-13 and 2013-14 relates to upholding of disallowance made under section 14A of the Act. The assessee has admitted to have earned dividend income of ₹.1,01,938/- and ₹.29,16,801/- in the assessment years 2012-13 and 2013-14 respectively. However, the Assessing Officer determined the disallowance under section 14A of the Act at ₹.58,02,576/- and ₹.49,07,221/- for the assessment years 2012-13 and 2013-14 respectively. On appeal, the Id. CIT(A) upheld the disallowance made under section 14A of the Act.

6.1 We have heard the rival contentions, perused the materials available on record and gone through the orders of authorities below. The exempt income earned during the assessment years 2012-13 and 2013-14 amounts to ₹.1,01,938/- and ₹.29,16,801/- respectively. However, by applying the provisions of section 14A r.w.s. Rule 8D, the Assessing Officer disallowed ₹.58,02,576/- and ₹.49,07,221/- for the assessment years 2012-13 and 2013-14 respectively, which was confirmed by the Id. CIT(A). The contention of the assessee is that the disallowance made under section 14A of the Act should not be in excess of the exempted income of the relevant assessment years. We find that similar issue was subject matter in appeal before the Hon'ble Jurisdictional High Court in the case of PCIT v. Envestor Venture Ltd. [2021] 431 ITR 221 (Mad) and

while affirming the order of the Tribunal, the Hon'ble High Court has observed and held as under:

“The disallowance, under section 14A of the Income-tax Act, 1961 read with rule 8D of the Income-tax Rules, 1962 of the expenditure incurred to earn exempted income has to be computed in accordance with rule 8D of the Rules, which in essence stipulates that the expenditure directly relatable to the earning of such exempted income, can alone be disallowed under section 14A of the Act. The assessing authority has to mandatorily record his satisfaction that the proportionate disallowance of expenditure under section 14A of the Act as made by the assessee is not satisfactory and therefore, the same is liable to be rejected for such cogent reasons as specified and thereafter, the computation method under rule 8D can be invoked to compute the quantum of disallowance. It is well-settled that the Rules cannot go beyond the main parent provision. Therefore, what has been provided as computation method in rule 8D cannot go beyond the roof limit of section 14A itself under any circumstances.

Held, that the Tribunal was right in restricting the disallowance under section 14A of the Act to the extent of exempt income earned during the previous year relevant to the assessment year 2015-16.”

6.2 By referring to various case law including the decision in the case of Joint Investments Private Ltd. v. CIT [2015] 372 ITR 694 (Delhi), the decision in the case of Maxopp Investment Ltd. v. CIT [2018] 402 ITR 640 (SC), the Hon'ble Madras High Court has held that the disallowance under section 14A of the Act should be restricted to the extent of exempt income earned during the previous year. Respectfully following the judgement of the Hon'ble Madras High Court in the case of PCIT v. Envestor Venture Ltd. (supra), we direct the Assessing Officer to restrict the disallowance to the extent of exempted income earned by the assessee. Thus, the ground raised by the assessee is allowed.

7. The next ground raised in the assessment year 2008-09 relates to

confirming the disallowance made under section 14A of the Act when the assessee has not earned any dividend income from investments made in earlier years to the extent of ₹.56,292/-. On appeal, the Id. CIT(A) confirmed the disallowance made under section 14A of the Act.

7.1 We have heard the rival contentions. In the assessment order, the Assessing Officer has noted that the assessee was having investments of ₹.1,12,58,450/-. After considering the submissions of the assessee, the Assessing Officer has observed that even though there was no income derived and claimed as exempt during the current year, since the nature of income out of this investment as and when it arises, is going to be by way of dividend only which are tax free, the third limb of Rule 8D has to be applied for disallowing the expenditure and accordingly disallowed ₹.56,292/- under section 14A of the Act, which was confirmed by the Id. CIT(A).

7.2 In this case, in the assessment order itself, the Assessing Officer has clearly stated that the assessee has not earned exempted income from investments. Thus, it is clear that the assessee has not earned any exempt income in the relevant assessment year under appeal against the investments. In this circumstances, in the case of CIT v. Chettinad Logistics (P) Ltd. [2017] 80 taxmann.com 221 (Madras), the Hon'ble

Jurisdictional High Court has observed and held that when there was no dividend income earned in the relevant assessment year, the disallowance made by the Assessing Officer in view of the provisions of section 14A of the Act read with Rule 8D was completely contrary to the provisions of that section as Rule 8D only provides for a method to determine the amount of expenditure incurred in relation to income, which does not form part of total income of the assessee. Against the decision of the Hon'ble High Court, the Department preferred Special leave Petition, which was dismissed by the Hon'ble Supreme Court [2018] 95 taxmann.com 250 (SC). In view of the above decision in the case of CIT v. Chettinad Logistics (P) Ltd. (supra), the disallowance made by the Assessing Officer stands deleted.

8. The next ground raised in the appeal of the assessee for the assessment year 2008-09 relates to confirmation of disallowance of fee paid to ROC. The assessee has paid ₹.3,30,000/- to ROC for increasing the authorized share capital. By following the decision in the case of Brooke Bond India Ltd. v. CIT 225 ITR 798, the Assessing Officer has held that this expenditure is not allowable as it is capital in nature and accordingly disallowed ₹.3,30,000/- and brought to tax. On appeal, by following the decision in the case of Punjab State Industrial Corporation v.

CIT 225 ITR 792 (SC), the Id. CIT(A) confirmed the addition made by the Assessing Officer.

8.1 Before us, the Id. Counsel for the assessee has submitted that the fee was paid in relation to statutory compliance for increase in authorized share capital. The assessee raised more resources by way of capital for the purpose of increasing/scaling up the operations/business. Since paid up capital cannot exceed authorized capital, the assessee had to increase the authorized capital. Thus, it is in the nature of revenue expenditure.

8.2 On the other hand, the Id. DR strongly supported the orders of authorities below.

8.3 We have heard the rival contentions. The point at issue is whether the fees paid to Registrar of Companies for enhancing the working capital of the company should be treated as revenue expenditure or capital expenditure. We have perused the order of the Hon'ble Supreme Court in the case of Punjab State Industrial Development Corporation Limited v. CIT (supra), wherein, the Hon'ble Supreme Court has held that *"the fee paid to the Registrar for expansion of the capital base of the company was directly related to capital expenditure incurred by the company and*

although incidentally that would certainly help in the business of the company and may also help in profit making, it still retains the character of capital expenditure since the expenditure was directly related to the expansion of capital base of the company and thus it was not an expense in the nature of revenue". Respectfully following the above decision of Hon'ble Supreme Court in the case of Punjab State Industrial Development Corporation Limited v. CIT (supra), the Id. CIT(A) has rightly confirmed the disallowance made by the Assessing Officer and dismissed the ground raised by the assessee. Thus, we find no infirmity in the order passed by the Id. CIT(A). The ground raised by the assessee is dismissed.

9. In the result, the appeals in I.T.A. Nos. 397, 398 & 399/Chny/2023 are partly allowed for statistical purposes and appeals in I.T.A. Nos. 400 and 401/Chny/2023 are allowed for statistical purposes.

Order pronounced on 18th January, 2024 at Chennai.

Sd/-
(MANJUNATHA, G.)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 18.01.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.