

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री एस.आर. रगुनाथा, लेखा सदस्य के समक्ष
Before Shri S.S. Viswanethra Ravi, Judicial Member &
Shri S.R. Raghunatha, Accountant Member

आयकर अपील सं./I.T.A. Nos.818 and 819/Chny/2024
निर्धारण वर्ष/Assessment Year: 2016-17

The Assistant Commissioner of
Income Tax,
Corporate Circle 1(1),
Chennai 600 034.

Vs. IDFC Limited,
4th Floor, Capitale Tower, No. 555,
Anna Salai, Thiru Vi Ka Kudiyiruppu,
Teynampet, Chennai 600 018.
[PAN:AAACI2663N]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri V. Nandakumar, CIT
प्रत्यर्थी की ओर से/Respondent by : Shri Ketan Ved, C.A.
सुनवाई की तारीख/ Date of hearing : 29.08.2024
घोषणा की तारीख /Date of Pronouncement : 04.09.2024

आदेश /O R D E R

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:

Both the appeals filed by the Revenue are directed against separate orders dated both dated 21.09.2022 passed by the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi for the assessment year 2016-17.

2. Since the issue raised in both the appeals are similar based on the same identical facts, with the consent of the both the parties, we proceed to hear all these appeals together and pass consolidated order for the sake of convenience.

3. First we shall take up appeal in ITA No. 819/Chny/2024 for AY 2016-17 for adjudication.

4. We find that this appeal was filed with a delay of 120 days. The appellant-Revenue filed an affidavit stating reasons for the said delay. Upon hearing both the parties and on examination of the affidavit, we find that the reasons stated by the Revenue are bonafide, which really prevented in filing the appeal in time and accordingly, we condone the delay and admit the appeal for adjudication.

5. The Appellant Revenue raised 7 grounds of appeal amongst which the only issue emanates for our consideration as to whether the Id. CIT(A) is justified in holding that the reopening of assessment as invalid in the facts and circumstances of the case.

6. Brief facts emanating from the record are that the assessee filed his original return of income on 30.11.2016 declaring total income of ₹.867,56,06,190/-. Thereafter, the assessee filed its revised return of income on 31.03.2017 on the same amount, which was declared in the original return of income. The assessment was completed determining the income of the assessee at ₹.932,90,04,046/- under section 143(3) of the Income Tax Act, 1961 ["Act" in short]. The said assessment was

reopened by issuing notice under section 148 of the Act, the reasons of which, reproduced at page 1 to 5 of the assessment order.

7. The assessee filed writ petition before the Hon'ble High Court of Madras, which in turn, dismissed the said writ petition by giving liberty to the assessee that the dismissal of the writ petition will not preclude the assessee to challenge the order of assessment passed under section 147 of the Act in the manner known to law.

8. The Assessing Officer completed the reassessment by making, inter alia, addition on account of enhanced disallowance under section 14A read with Rule 8D, disallowance under section 36(1)(viii), enhanced disallowance under section 36(1)(viiia) of the Act and determined the total income of the assessee at ₹.1224,42,26,621/- under section 147 r.w.s. 144B of the Act. The Id. CIT(A) considered the submissions of the assessee and held that the reassessment is invalid on the ground that the reasons recorded for reopening fall in the category of 'change of opinion'.

9. The Id. DR Shri V. Nandakumar, CIT submits that the Assessing Officer rightly reopened the assessment, as having fresh material. The Hon'ble High Court of Madras also did not entertain the contention of the assessee that the Assessing Officer reopened the already completed

assessment on change of opinion and drew our attention to the paper book containing 33 pages. The assessee failed to provide evidence in the original assessment proceedings and the working under section 14A of the Act is not correct.

10. The Id. AR Shri Ketan Ved, C.A., placing on record, the order of this Tribunal for the assessment year 2008-09, which is at page No. 202-208 of the paper book, submitted that on similar identical facts, the Tribunal held the reopening is bad under law by placing reliance on the decision of the Hon'ble Supreme Court in the case of CIT v. Kelvinator of India Limited [2010] 320 ITR 561 (SC).

11. After hearing both the parties and on perusal of the reassessment order, we note that the Assessing officer proceeded to make various disallowances under sections 36(1)(vii-a), 36(1)(viii), 14A of the Act on sale of investment only on examination of computation of statement, which was already there on record during the course of original assessment proceedings as it is clear from paragraphs A, B, C and D of reassessment order. Further, we find from the observations of the Assessing Officer that no new material has come into his possession to reopen the original assessment. On perusal of the order of the Tribunal in assessee's own case for the assessment year 2008-09, we find that the

appellant-Revenue reopened the assessment for AY 2008-09 on the same reasons, which are similar in the present reassessment order. In that case, the Tribunal held that the order of the Id. CIT(A) is correct in holding that the case of the assessee which fall under "change of opinion". The relevant part at para 8 and 9 are reproduced herein below for better understanding:

8. *We have heard the rival contentions, and perused the materials available on record. The A.O has allowed the claim u/s. 36(1)(vii)(c) of the Act after due verification. The assessee in response to notice u/s. 142(1) of the Act has submitted before the A.O the details of provisions and contingency of Rs.57,43,00,000/- mentioned in the detailed notes and claim of interest on debenture u/s. 36(1)(viii) of the Act. The Tribunal in the assessee's own case has held that the provisions against standard assets are allowable u/s. 36(1)(vii)(c) of the Act and interest on debenture allowable u/s. 36(1)(viii) of the Act. Therefore, the A.O has disallowed the claim after due verification. The Hon'ble Apex Court while confirming the decision of Hon'ble Delhi High Court in the case of CIT vs. Kelvinator of India has observed as under:*

"....., we find that, prior to the Direct Tax Laws (Amendment) Act, 1987, reopening could be done under the above two conditions and fulfilment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in section 147 of the Act (with effect from 1st April, 1989), they are given a go-by and only one condition has remained, viz., that where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to reopen the assessment. Therefore, post-1st April, 1989, power to reopen is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, section 147 would give arbitrary powers to the Assessing Officer to reopen assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen.

7. *We must also keep in mind the conceptual difference between power to review and power to reassess. The Assessing Officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfilment of certain preconditions and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, the Assessing Officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view*

gets support from the changes made to section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in section 147 of the Act. However, on receipt of representations from the companies against omission of the words 17 ITA no.4033/Del./2011 "reason to believe", Parliament reintroduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer.

8. *We quote hereinbelow the relevant portion of Circular No. 549 dated October 31, 1989 ([1990] 182 ITR (St.) 1, 29), which reads as follows:*

"7.2 Amendment made by the Amending Act, 1989, to reintroduce the expression 'reason to believe' in section 147.-A number of representations were received against the omission of the words 'reason to believe' from section 147 and their substitution by the 'opinion' of the Assessing Officer. It was pointed out that the meaning of the expression, 'reason to believe' had been explained in a number of court rulings in the past and was well settled and its omission from section 147 would give arbitrary powers to the Assessing Officer to reopen past assessments on mere change of opinion. To allay these fears, the Amending Act, 1989, has again amended section 147 to reintroduce the expression 'has reason to believe' in place of the words 'for reasons to be recorded by him in writing, is of the opinion'. Other provisions of the new section 147, however, remain the same."

9. *We, therefore concur with the findings of the Ld. CIT(A) that this is a case of change in opinion, which is permissible as per law. In view of the above, the appeal filed by the Revenue is dismissed.*

12. In view of the above, we find that the facts and circumstances of the case are similar to the facts in assessee's own case for AY 2008-09. Therefore, we find no infirmity in the order of the Id. CIT(A) in holding that the reassessment is invalid on account of "change of opinion". Thus, the ground raised by the Revenue fails and it is dismissed.

13. Now, we shall take up appeal in ITA No. 818/Chny/2024 for adjudication.

14. We find that this appeal was filed with a delay of 120 days. The appellant-Revenue filed an affidavit stating reasons for the said delay. Upon hearing both the parties and on examination of the affidavit, we find that the reasons stated by the Revenue are bonafide, which really prevented in filing the appeal in time and accordingly, we condone the delay and admit the appeal for adjudication.

15. Ground No. 1 raised by the appellant-Revenue is general in nature and requires no adjudication.

16. Ground Nos. 2, 3 and 4 raised by the Revenue in deleting the addition made by the Assessing Officer on account of disallowance under section 14A read with Rule 8D.

17. We note that the assessee have shown tax free income of ₹.221,98,20,655/- and made disallowance of its own to the extent of ₹.15.23 crores. The Assessing Officer further made disallowance to an extent of ₹.67.90 crores. The Id. CIT(A) deleted the said disallowance made by the Assessing Officer by placing reliance on the order of the Tribunal in assessee's own case to restrict the disallowance to 3% of exempt dividend income. The relevant part in para 4.1.4 to 4.1.5 is reproduced herein below:

4.1.4 I have perused the order u/s 143(3), submissions of the appellant, judicial pronouncements and facts of the case. Vide reply dated 7.8.2023, the appellant has claimed that in F.Y. 2015-16 (upto September), the opening and closing balance of total investments capable of yielding exempt income was Rs. 2894.37 crore and Rs. 1847.40 crores whereas the shareholder's funds were Rs. 16931.74 crore and 15814.93 crore respectively. Thus, the appellant has claimed to have excess of own funds over exempt income yielding investments. Here it is pertinent to note that in the Appellant's own case [ITA Nos. 2065 & 2066 and ITA Nos. 99 to 101 (Chen)] the Hon'ble Chennai ITAT has held that so long as the appellant's own funds at the time of making investment in tax-free securities are greater than its investments in tax-free Income yielding investments, no disallowance of interest cost under Section 14A of the Act needs to be made. Since, the facts in the current year are similar to that of earlier years, respectfully following the decision of the jurisdictional Tribunal, it is held that no disallowance under Section 14A of the Act with respect to interest cost is called for on such investments subject to verification of the details (regarding own funds and investment in exempt income yielding funds) furnished by the appellant during the appellate proceedings.

4.1.5 Now coming to the second issue regarding computation of administrative expenditure in accordance with Rule 8D(2)(iii), the appellant has claimed that it has suo-moto disallowed expenses of Rs. 15.23 crores in the return of income for the AY 2016-17. Here it is worthwhile to note that the Hon'ble ITAT in appellant's own case for earlier years (supra) has directed that the disallowance be restricted to 3% of the exempt dividend income. As far as the appellant's request for deduction of disallowance already made by it against the disallowance of administrative expenditure computed @3% of exempt income, the AO must verify what is the nature of expenses disallowed by the appellant. If the disallowance made by the appellant is on account of administrative expenditure, deduction for the same must be given from the disallowance @3% of exempt income. If the disallowance is made on a ground other than administrative expenses, no such deduction is required to be given in the disallowance computed as per the above direction.

4.1.5 The ground of appeal raised is partly allowed.

18. The Assessing Officer did not bring on record any view contrary to the directions given by the Tribunal in restricting the disallowance at 3% of exempt income. We find no infirmity in the order of the Id. CIT(A). Thus, ground Nos. 2, 3 & 4 raised by the Revenue fails and it is dismissed.

19. Ground No. 5 raised by the Revenue in challenging the action of the Id. CIT(A) in allowing the claim of credit for taxes paid by Venture Capital Funds [VCF].

20. According to the Assessing Officer that no claim of credit of VCF was in the return of income and was made through letter dated 14.12.2018 which was rejected in terms of the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. 284 ITR 323. The Id. CIT(A) directed the Assessing Officer to verify and allow TDS credit to the assessee after verification of the fact that the TDS credit claimed by the assessee is in respect of income declared and payment of taxes by VCF in the capacity of representative assessee of the assessee. The relevant portion in para 4.2.3 is reproduced below:

4.2.3 I have gone through the assessment order and submissions of the appellant. It is the position of law that if income has been offered for tax by the beneficiary and any taxes are paid by the VCFs in the capacity of representative assessee on behalf of the beneficiary, the TDS credit for the same should go to the beneficiary. However, in the instant case the AO has categorically given a finding in the assessment order that the VCFs have paid taxes on their own PAN. In the appellate proceedings the appellant has failed to comment and counter the said finding of the AO. The AO is hence directed to verify and allow TDS credit to the appellant after verification of the fact that the TDS credit claimed by the appellant is in respect of income declared by the appellant and the VCF has paid tax on such income in the capacity of representative assessee of the appellant. The ground of appeal is allowed subject to the factual verification by the AO.

21. On perusal of the above, we find no infirmity in the order of the Id. CIT(A) in directing the Assessing Officer for verification that if income has been offered for tax by the beneficiary and any taxes were paid by VCFs in the capacity of representative of assessee on behalf of the beneficiary. If that is the case, the TDS credit for the same should go to the

beneficiary. Thus, ground No. 5 raised by the Revenue fails and it is dismissed.

22. Ground No. 6 raised by the Revenue in challenging the action of the Id. CIT(A) in allowing the claim on account of ESOP expenses.

23. We note that the assessee did not claim ESOP expenses in the original return of income as well as revised return of income. The said claim was made before the Assessing Officer, which was rejected in terms of the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. Considering the same, the Id. CIT(A) directed the Assessing Officer for verification whether the said expenses were really incurred or not. Relevant portion in para 4.3.4 of the impugned order is reproduced below for ready reference:

4.3.4 From the above discussion it transpires that the Appellant had not claimed the ESOP expenses in its original as well as in its revised returns of income. It was during the course of the assessment proceedings that the appellant had made a claim for deduction of Rs. 3,22,53,900/- before the AO which was rejected by the AO citing the apex court decision in the case of Goetze (India) Ltd. [284 ITR 323]. The appellant in its submission made during the appeal proceedings has revised the amount of claim downwards to Rs. 2,67,17,251/- by stating that this is the allowable amount being the difference between the amount taxed as perquisite in the hands of the employees and the amount already claimed in earlier years based on amortization. It is pertinent to note that various courts and Tribunal have repeatedly held that assessee is entitled to raise not merely additional legal submissions before the appellate authorities, but is also entitled to raise additional claims and that the appellate authorities have the jurisdiction to entertain the new claim. Thus, respectfully following the decision of higher courts and Tribunals, the claim of the appellant for ESOP expenses is allowed subject to verification by the AO of the computation of the amount and of verification of the fact that the expense has been actually incurred. The ground of appeal raised is allowed subject to the factual verification by the AO.

24. On perusal of the above, admittedly, there was no claim of the assessee in the original return of income or revised return. The Assessing Officer has no power to entertain new claim which was not supported by any revised return. The Id. CIT(A), having jurisdiction, in terms of the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. (supra), directed the Assessing Officer to verify the same as to whether the assessee really incurred such expenditure or not. Therefore, we find no infirmity in the order of the Id. CIT(A) and it is justified. Thus ground No. 6 raised by the Revenue is dismissed.

25. In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced on 04th September, 2024 at Chennai.

Sd/-
(S.R. RAGHUNATHA)
ACCOUNTANT MEMBER

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Chennai, Dated, 04.09.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant,
2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.