

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1158/Chny/2024
निर्धारण वर्ष/Assessment Year: 2017-18

Sri Saradha Logistics Pvt. Ltd., No.93, Coromandel Towers, Santhome High Road, Karpagam Avenue, RA Puram, Chennai-600 028.	v.	The DCIT, Corporate Circle-3(1), Chennai.
[PAN: AACT 9040 L]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr. R. Vijayaraghavan, Adv.
प्रत्यर्थी की ओर से /Respondent by	:	Ms. R. Anita, Addl.CIT
सुनवाईकीतारीख/Date of Hearing	:	31.07.2024
घोषणाकीतारीख /Date of Pronouncement	:	18.09.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "the Ld.CIT(A)"), Delhi, dated 21.03.2024 for the Assessment Year (hereinafter in short "AY") 2017-18.



:: 2 ::

2. The main grievance of the assessee is against the action of the Ld.CIT(A) confirming the levy of penalty u/s.270A of the Income Tax Act, 1961 (hereinafter in short "the Act") to the tune of Rs.29,06,070/- on the disallowance made u/s.14A r.w.r.8D of the Income Tax Rules, 1962 (hereinafter in short 'the Rules').

3. Brief facts noted by the AO in the assessment order dated 28.12.2019 passed u/s.143(3) of the Act are that the assessee company had filed its return of income (RoI) for AY 2017-18 on 28.10.2017 admitting current year loss of Rs.9,81,95,808/-. He also noted that the assessee has earned income of Rs.1,75,78,988/- in the form of dividend income which was exempted u/s.10(34) of the Act. According to the AO, the assessee didn't show any expenditure for earning the exempt income. Therefore, the AO asked the assessee to substantiate with evidence that it didn't incur any expenditure for earning the exempt income. Further, the AO noted from the financials of the assessee (investment portfolio) as on 31.03.2017 stood at aggregate value of Rs.507,82,69,000/-. According to the AO, since, the assessee couldn't bring any evidence that it didn't incur any expenditure for earning exempt income, he (AO) assumed that the assessee must have incurred expenses in the form of managerial, administrative, monitoring etc., towards earning of exempt income. According to the AO, some portion of the expenditure debited to P & L A/c is attributable to earn exempt income and therefore, he



:: 3 ::

disallowed the same u/s.14A of the Act and computed the disallowance u/r.8D(2)(i) of the Income Tax Rules, 1962 (hereinafter in short 'the Rules') as 'NIL' (direct expenditure) and u/r.8D(2)(ii), 1% of annual average of monthly averages of value of investments yielding exempt income at Rs.4,73,14,603/- by taking note of the decision of the Hon'ble Supreme Court in the case of CIT v. Vision Finstock Ltd., in ITA No.486 of 2017 order dated 07.05.2018, wherein, it was held that disallowance u/s.14A r.w.r.8D of the Rules, shouldn't exceed the quantum of exempt income earned, he restricted the disallowance at Rs.1,75,78,988/- and thus, total income of the assessee was assessed at current year loss of Rs.8,06,16,820/- in place of loss of Rs.9,81,95,808/- returned by the assessee by passing the assessment order u/s.143(3) of the Act on 28.12.2019. Thereafter, the AO initiated penalty proceedings u/s.270A of the Act and vide order dated 09.08.2021 levied penalty of Rs.29,06,070/- u/s.270A(2) of the Act on the total under-reported income of Rs.1,75,78,988/-.

4. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who confirmed the action of the AO.

5. Aggrieved, the assessee is in appeal before this Tribunal.



:: 4 ::

6. We have heard both the parties and perused the material available on record. We note that the assessee has earned exempt income of Rs.1,75,78,988/- and taking note that assessee has not shown any expenditure to earn the exempt income, the AO asked the assessee to prove that it has not incurred any expenditure for earning the exempt income. The assessee brought to the notice of the AO that dividend income earned was directly credited into the personal bank account of the assessee company, without any participation or interaction by any staff/advisers/any persons on behalf of the assessee company. However, the AO was of the opinion that the assessee might have incurred managerial/administrative expenses towards earning of exempt income. On this assumption, the AO applied Rule 8D for determining the amount of expenditure incurred in relation to earn exempt income and without finding any expenditure directly incurred to earn such exempt income u/r.8D(2)(i) of the Rules, he applied Rule 8D(2)(ii) and computed 1% of the annual average of monthly averages of value of investments yielding exempt income and thereafter, restricted the disallowance it to the extent of exempt income earned by the assessee. Thereafter, the AO has levied penalty u/s.270A(2) of the Act on the allegation that assessee has under-reported income of Rs.1,75,78,988/- and levied penalty at Rs.29,06,070/. We don't countenance the impugned action of the Ld.CIT(A) as well as AO since we are satisfied by the explanation given by the assessee on this



:: 5 ::

issue/disallowance [u/s 14A read with Rule 8D(2)(ii)], wherein it (assessee) brought to our notice that the tax-exempt-income was earned by it was without interference/participation of any of its employee but rather through the solicitation & advertisement of the Bank and therefore, the question of attributing any expenditure for earning of such exempt income doesn't arise; and in such factual back-drop, the assessee's action of not allocating any expenditure for earning of such exempt-income cannot be faulted. We having accepted the explanation given by assessee [*on the issue of disallowance*], as reasonable and bonafide and the assessee has disclosed all the material facts to substantiate its explanation, sub-clause (a) of sub-sec.(6) of sec.270(A) of the Act, would come to the rescue of assessee against levy of impugned penalty. For such a proposition, we rely on the decision of the Hon'ble Delhi High Court in the case of Pradeep Khanna v. ACIT [399 ITR 146]. Moreover, it is noted that the AO didn't make any addition as per Rule 8D(2)(i) of the Rules i.e. expenditure directly expended to earn exempt income and has rather restricted the disallowance u/s.14A of the Act to the extent of exempt income earned. Since we find that the explanation offered by the assessee as reasonable and bona fide and the assessee has disclosed all the material facts to substantiate its explanation, therefore, we are of the considered view that the penalty-imposed u/s.270A of the Act in the facts



ITA No.1158/Chny/2024 (AY 2017-18)
Sri Saradha Logistics Pvt. Ltd.

:: 6 ::

of the present case is unsustainable as provided for u/s.270A(6)(a) of the Act. Accordingly, we delete the penalty imposed by the AO.

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

Order pronounced on the 18th day of September, 2024, in Chennai.

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

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 18th September, 2024.
TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित /**Copy to:**

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