

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

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री जगदीश, लेखक सदस्य के समक्ष
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1238/Chny/2024
निर्धारण वर्ष /Assessment Year: 2018-19

Ramco Industries Ltd.,
47, PSK Nagar,
Rajapalayam – 636 108.
[PAN: AAACR 5284J]

The Asst. Commissioner of
Income Tax,
Corporate Circle,
Madurai.

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by

: Shri S. Muralidhar, FCA &
Shri J. Prabhakar, FCA

प्रत्यर्थी की ओर से /Respondent by

: Shri R. Clement Ramesh Kumar, CIT

सुनवाई की तारीख/Date of Hearing

: 08.08.2024

घोषणा की तारीख /Date of Pronouncement

: 30.09.2024

आदेश / ORDER

PER JAGADISH, A.M :

Aforesaid appeal filed by the assessee for Assessment Year (AY) 2018-19 arises out of the order of Learned Principal Commissioner of Income Tax, Madurai-1 [hereinafter "PCIT"] dated 30.03.2024 passed u/s. 263 of the Income-tax Act, 1961 (hereinafter "the Act").

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2. The only issue to adjudicate is whether Ld. PCIT has jurisdiction to invoke revisionary power u/s 263 of the Act, when the subject matter of the revision, namely disallowances u/s 14A of the Act as per Rule 8D was pending before Ld CIT(A).

3. The brief facts of the case are that the assessee-company has filed its return of income on 03.10.2018 declaring total income of Rs.15,38,59,210/-. The assessment was taken up for scrutiny and the A.O has issued a show cause notice proposing disallowance of Rs. 2,32,34,210/- u/s. 14A of the Act as per Rule 8D of the Income tax Rules, 1962 (hereinafter "the Rules"). The A.O after considering reply of the assessee has passed order u/s. 143(3) of the Act making disallowance u/s. 14A of the Act of Rs. 1,98,74,810/-. The assessee has filed appeal before Ld. CIT(A) on 30.04.2021 objecting the disallowance made u/s 14A of the Act. Meanwhile, the Ld. PCIT on 08.032024 has issued show-cause notice proposing revision u/s. 263 of the Act on the same issue to re-work the disallowance u/s. 14A of the Act based on the fair value of investment as reflected in the balance sheet of the company as per formula in Rule 8D(2). The assessee has objected to the proposal raising the ground that the very same subject matter of disallowance is pending before Ld. CIT(A) and

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therefore, as per clause(c) of Explanation-1 to Section 263 of the Act proceedings u/s. 263 of the Act are not permissible. The Ld. PCIT rejecting the assessee's objection has held the order passed by the A.O is erroneous in so far as it is prejudicial to the interest of Revenue as the A.O while computing disallowance as per Rule 8D(2) of the Rules has taken cost of investment instead of considering the full value of investment. The assessee is in appeal against the order of Ld. PCIT on the issue of jurisdiction as this issue is pending before Ld. CIT(A).

4. The Ld. Authorized Representative (A.R) of the assessee has contended that the A.O in the assessment order has made disallowance as per Rule 8D(2) of the Rules of Rs.1,98,74,810/- and the assessee is in appeal before the Ld. CIT(A). The Ld. PCIT has passed order u/s. 263 of the Act which is not permissible as per clause (4) of Explanation-1 to Section 263 of the Act. The Ld. A.R therefore, requested to quash the order as without jurisdiction.

5. The Ld. Departmental Representative (D.R), on the other hand, has relied on the order of Ld PCIT and argued that the order passed

by AO was erroneous as AO has not computed disallowances correctly.

6 We have heard the rival submissions, and perused the materials available on record. The Ld. PCIT has held the order passed by A.O making disallowance u/s. 14A of the Act of Rs.1,98,74,810/- erroneous and prejudicial to the interest of revenue as the A.O has taken cost of investment rather than fair value of investment in the computation as per Rule 8D(2). The assessee has filed appeal before Ld. CIT(A) against the disallowance made as per Rule 8D by the AO . As per clause (c) of Explanation-1 to Section 263 of the Act, if any order passed by the A.O has been the subject matter of appeal the power of Ld. PCIT is limited only to such matter as had not been considered and decided in such appeal. In the above case, the computation of disallowance u/s. 14A of the Act as per Rule 8D of the Rules is subject matter of appeal before Ld. CIT(A) and the Ld CIT(A) appeal has all power to correct the computation as per Rule 8D . The Hon'ble Madras High Court in the case of *Smt. Renuka Philip vs. ITO [2019] 409 ITR 567 (Mad.)*, has held that when larger issue is pending before the Commissioner of Appeal , the PCIT could not exercise power u/s 263 to revise the assessment order. We therefore, held that revision

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order u/s. 263 of the Act passed by Ld PCIT is bad in law and therefore, liable to be quashed.

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

Order pronounced on 30th September, 2024.

Sd/-
(यस यस विश्वनेत्र रवि)
(SS Viswanethra Ravi)
न्यायिक सदस्य / Judicial Member

Sd/-
(जगदीश)
(Jagadish)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 30th September, 2024.

EDN/-

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

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