

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

माननीय श्री एबी टी. वर्की, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI ABY T. VARKEY, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

1. आयकरअपील सं./ ITA No.1211/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2018-19)

ACIT Corporate Circle-3(1), Chennai.	बनाम/ Vs.	M/s. Sundaram Finance Holdings Ltd. 21, Patullos Road, Mount Road, Anna Salai, Chennai-600 002.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAACS-3116-J		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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2. आयकरअपील सं./ ITA No.1215/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2018-19)

M/s. Sundaram Finance Holdings Ltd. 21, Patullos Road, Mount Road, Anna Salai, Chennai-600 002.	बनाम/ Vs.	ACIT Corporate Circle-3(1), Chennai.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAACS-3116-J		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Assessee by	:	Shri R. Vijayaraghavan (Advocate)-Ld. AR (Virtual)
प्रत्यर्थीकीओरसे/ Revenue by	:	Shri R. Clement Ramesh Kumar (CIT)-Ld. DR

सुनवाईकीतारीख/ Date of Hearing	:	25-09-2024
घोषणाकीतारीख / Date of Pronouncement	:	09-10-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid cross-appeals for Assessment Year (AY) 2018-19 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] passed on 26-

02-2024 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s 143(3) r.w.s 143(3A) & 143(3B) of the Act on 06-04-2021.

1.2 The grounds raised by the revenue read as under: -

1. The order of the learned CIT(A) is contrary to law and facts and circumstances of the case.
2. The Ld. CIT(A) erred in holding average value of only those investments will have to be taken from which the assessee derived exempted income during the year.
3. The Ld. CIT (A) erred in observing that relied upon decision was not stayed / reversed, whereas in the relied upon case, the disallowance u/s 14A was invoked w.r.t. investments made in foreign companies only not Indian companies and for this reason the order was not challenged further. Hence the decision of the relied upon case is not applicable in instant case.
4. The Ld. CIT (A) erred in not appreciating the note of the Explanation inserted to section 14A of the Act through Finance Act 2022 to clarify the true intention of the legislature w.r.t Sec.14A of the Act.
5. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld. CIT(A) be set aside and that of the Assessing Officer be restored.

1.3 The grounds raised by the assessee read as under: -

1. The order of The NFAC, New Delhi / Commissioner of Income Tax (Appeals) is contrary to law, facts and in the circumstances of the case.
2. The NFAC, New Delhi / Commissioner of Income Tax (Appeals) erred confirming the disallowance u/s.14A to 1% of the investment which yielded exempt income.
3. The NFAC, New Delhi / Commissioner of Income Tax (Appeals) ought to have appreciated that the Appellant had submitted the actual expenditure incurred by them for earning the dividend and in the assessment order there is no mention about satisfaction of the Assessing Officer as to why the suo moto disallowance is not reasonable.
4. The NFAC, New Delhi / Commissioner of Income Tax (Appeals) ought to have directed the Assessing Officer to grant TDS credit of Rs.52,08,511/- being the TDS relating to demerged undertaking taken over by the Appellant but relating to the period from the date of demerger to the actual effective demerger taking place. Income for which period was offered by the Appellant for tax in their return.
5. The NFAC, New Delhi / Commissioner of Income Tax (Appeals) ought to have appreciated that the TDS credit of Rs.52,08,571/- are relatable to the undertaking whose income after demerger belongs to was included in the hands of the Appellant and hence the corresponding TDS should also have been given credit in the hands of the Appellant.

As is evident, the common issue in cross-appeal is disallowance u/s 14A. The assessee also seeks TDS credit of demerged entity. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

2. Disallowance u/s 14A

2.1 The assessee being resident corporate assessee is stated to be wholly owned subsidiary of M/s Sundaram Finance Ltd. (SFL) The main object of the assessee is to undertake investments. The assessee earned exempt dividend income and also interest from tax free bonds for Rs.30.93 Crores and offered disallowance of Rs.18.64 Lacs on account of expenditure. The same was out of employee benefit expenses of Rs.970.59 Lacs.

2.2 However, the disallowance was not acceptable to Ld. AO since the assessee made substantial investments as per its Balance Sheet. The investment was in unquoted shares also which would require substantial exercise. It was also observed that a part of business activity was demerged from SFL and merged with the assessee w.e.f. 01-04-2016. The assessee held investment in 17 portfolio companies as on 31-03-2018 which has substantially increased assessee's opening investment from Rs.3.04 Crores to Rs.155.03 Crores. The assessee admitted to have incurred carrying cost of Rs.118.90 Crores on the investment which came into the books of the assessee as a result of merger.

2.3 As per annual report, against holding cost of Rs.118.89 Crores, the assessee's share in the net-worth of 11 entities was Rs.932.61 Crores. Therefore, Ld. AO applied Rule 8D and computed aggregated disallowance of Rs.1078.64 Lacs as computed on Page No.8 of assessment order. The same include disallowance u/r 8D(2)(i) for proportionate carrying cost of Rs.9.83 Crores and also disallowance of employees benefit expenses for Rs.18.64 Lacs. The disallowance u/r 8D(2)(ii) has been computed as Rs.77.31 Lacs. It could be seen that the assessee did not respond to various notices issued by Ld. AO in this

regard. The impugned disallowance was added to the income of the assessee and the assessment was framed.

2.4 The Ld. CIT(A), following various decision of Special Bench of Tribunal in **Vireet Investments Pvt. Ltd. (82 Taxmann.com 415)** directed Ld. AO to compute disallowance by considering only those investments which have yielded exempt income during the year. The same has led to cross-appeals before us.

2.5 The Ld. AR has referred to the decision of Hon'ble Delhi High Court in the case of **Era Infrastructure India Ltd. (448 ITR 674)** to submit that the amendment made by Finance Act, 2022 to Section 14A by inserting a non-obstante clause and Explanation will take effect only from 01-04-2022 and cannot be presumed to have retrospective effect. The newly inserted explanation to Sec.14A provides that the provisions of this section shall apply and shall be deemed to have always applied in a case where the income, not forming part of the total income under this Act, has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income. The Hon'ble Court held the view that the amendment to Sec.14A, though it was for "for removal of doubts", however, it cannot be presumed to be retrospective even where such language is used, if it alters or changes the law as it earlier stood. Another argument was that the cost of investment has wrongly been taken by Ld. AO.

2.6 Considering the aforesaid decision of Hon'ble Delhi High Court, no fault could be found in the approach of Ld. CIT(A). Regarding the cost of investment, Ld. AO is directed to verify the same and adopt the correct

cost of investments as per assessee's books of accounts. Only those investments would be considered which have actually yielded any exempt income during the year. The cost of investment should not be misunderstood with the 'net worth' of demerged entities. The assessee is directed to provide the requisite details. The grounds raised by the revenue stand dismissed. The corresponding ground of assessee's appeal stand allowed to the extent of correct adoption of cost of investments.

3. TDS Credit

3.1 From para-7 of impugned order, it could be seen that the assessee claimed TDS credit of Rs.68.43 Lacs. The amount of TDS credit as reflected in Form 26AS was Rs.52.08 Lacs. The balance TDS credit of Rs.16.35 Lacs was stated to be pertaining to income transferred to the assessee on account of demerger. Though the Ld. CIT(A) directed Ld. AO to allow credit of Rs.52.08 Lacs after due verification, the remaining TDS credit was not considered owing to assessee's failure to submit relevant specific details by adducing the supporting evidences. Aggrieved, the assessee is in further appeal before us.

3.2 The Ld. AR has submitted that the assessee is in a position to substantiate the TDS credit of Rs.16.35 Lacs also. Accepting the same, we direct Ld. AO to consider the same with a direction to the assessee to substantiate its claim. The corresponding ground stand allowed for statistical purposes.

4. The revenue's appeal stands dismissed. The assessee's appeal stands partly allowed as indicated in the order.

Order pronounced on 9th October, 2024

Sd/-
(ABY T. VARKEY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated : 09-10-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Assessee
2. प्रत्यर्थी/Revenue
3. आयकरआयुक्त/CIT Chennai.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF