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

माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य एवं
माननीय श्री एस.आर. रघुनाथा, लेखा सदस्य के समक्ष

BEFORE HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND HON'BLE SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA Nos.270 & 271/CHNY/2024**
निर्धारण वर्ष/Assessment Years: 2018-2019 & 2020-2021

NLC India Limited, Block 1, Corporate Office Neyveli, Cuddalore 607 801.	Vs.	The Deputy Commissioner of Income Tax, Non Corporate Circle 8(1) Chennai.
PAN: AAACN1121C (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Raghavan Ramabadran, Adv
प्रत्यर्थी की ओर से/Respondent by : Shri R. Clement Ramesh Kumar, IRS, CIT

सुनवाई की तारीख/Date of Hearing : 09.10.2024
घोषणा की तारीख/Date of Pronouncement : 15.10.2024

आदेश /O R D E R

PER MANU KUMAR GIRI (Judicial Member)

These two appeals filed by the assessee are directed against the separate orders of the Ld. Commissioner of Income Tax(Appeals)(NFAC) Delhi [CIT(A)] both dated 06.12.2023 for Assessment Year 2018-2019 and assessment year 2020-2021.

2. First we take up ITA No.270/Chny/2024 for assessment year 2018-2019 as lead case for adjudication wherein only surviving issue is with regard to

disallowance u/s 14A of the Act r.w. Rule 8D of the IT Rules. Our decision on this issue will equally apply to other appeas being ITA Nos. 271/Chny/2024 also.

3. Brief facts of the case are that:

NLC India Limited (formerly Neyveli Lignite Corporation Limited) (NLCIL/Appellant) is a Navratna, Government of India enterprise registered under the Indian Companies Act 1956, engaged in mining of lignite and power generation. NLCIL is a Central Government Public Sector Undertaking (PSU) functioning under the administrative control of the Ministry of Coal.

NLCIL operates mines at the following locations:

i. Three open cast lignite mines at Neyveli in Tamil Nadu

ii. One opencast mine at Barsingsar in Rajasthan.

The Appellant filed its return of income for A.Y. 2018-19 on 29.09.2018 declaring income of Rs. Rs. 16,25,56,24,530/- after setting off of brought forwarded business loss and unabsorbed depreciation and a Book Profit u/s 115JB of Rs. 21,29,96,86,653/-. Subsequently, the Appellant's case was selected for scrutiny under Compulsory selection criteria and notice u/s 143(2) of the Income tax Act, 1961 (in short ''the Act") dated 20.09.2019 was duly served on the Appellant. Further, notice u/s 142(1) of the Act dated 12.02.2021 and 19.02.2021 were issued and the Appellant duly e- filed the submissions from time to time. A Draft Assessment Order dated 30.03.2021 u/s 144C of the Act was passed making the following additions:

i. Disallowance of Additional Depreciation on Plant and Machinery Rs. 59,30,65,350/-

ii. Disallowance of Insurance Spare Consumption Rs. 3,13,46,772/-

iii. Disallowance u/s 14A r.w. Rule 8D Rs 24,21,37,000/-.

During FY 2017-18, the Assessee earned dividend income to the tune of Rs. 19,47,35,738/- from NLC Tamilnadu Power Limited ('NTPL'). The investments in NTPL were made in multiple tranches from FY 2005-06 to FY 2016-17. After FY 2016-17, no additional investments were made in NTPL. All through the above-mentioned years, the Assessee had sufficient own funds to make the investments. Further, no expenditure was incurred in earning the dividend Income. Therefore, the Assessee did not consider any amount as disallowance under Section 14A of the IT Act. The Ld. Assessing Officer has made addition of Rs. 24,21,37,000/- w.r.t. Section 14A of the IT Act.

4. Aggrieved with the assessment order, appeal has been filed before the ld.CIT(A). The ld. CIT(A) partly upheld the disallowance u/s 14A and restricted the disallowance to Rs.19,47,35,738/- following the judgment of the jurisdictional High Court in the case of *Marg Ltd. Vs CIT (2020) 120 taxmann.com 84 (Madras*) and deleted the other additions made by the AO. Now assesse is in further appeal before us.

5. Before us, the ld. Counsel submitted as under:-

It is humbly submitted that the Assessee had sufficient interest free own funds for making the investments and it had not used borrowed funds for

such purpose. Therefore, it is humbly submitted that the addition needs be deleted. To support this contention, the Assessee wishes to rely on decision of CIT v. Torrent Power Ltd. (2014) 44 taxmann.com 441 (Gujarat HC).

The details of the investments made and the quantum of interest free own funds available during the relevant year is captured in the table below:

Relevant year	Investment made in NTPL in crores)	Interest free own funds (in crores)
31.03.2017	200.93	12,198.63
31.03.2016	238.41	12,925.50
31.03.2015	197.94	13,250.18
31.03.2014	242.08	13,903.62
31.03.2012	623.00	12,039.89
31.03.2011	178.00	11,174.53
31.03.2010	178.00	10,324.67
31.03.2009	88.35	9,469.23
31.03.2006	0.65	7,998.79
Total	1947.36	

It is humbly submitted that the where there are funds available both interest free and interest bearing, then the presumption would arise that investment would be out of interest free funds available with the Assessee. Therefore, once there is a presumption that interest free funds were utilized for making exempt investment, assessee would not be expected to establish the same and it would be for the Revenue to establish the contrary. Where the Revenue fails to establish the same, disallowance under Section 14A could not have been made. The Assessee wishes to rely on PCIT v. Ashok Apparels (P.) Ltd., (2019 106 taxmann.com 63 (Bombay) for the above proposition.

6. Per contra the ld. CIT-DR Mr. R. Clement Ramesh Kumar, vehemently supported the impugned order of the ld. CIT(A). He further contended that

during the year the appellant has incurred 204.98 crore as interest expenses, and debited in its books of accounts. In addition to that certain other expenses which includes director salary, rent, communication cost, legal & professional expenses, travelling, printing, stationery etc., have also been debited in the books of account which would have incurred necessarily towards earning exempt income. However, the appellant could not establish with supporting proof that the reserves has been utilized for non taxable entity & the loan for which interest expenses has been incurred is for the taxable entity. Further, all the funds, interest free and interest bearing are put in a common pool of funds and hence, it can be safely deduced that both type of funds (interest bearing and interest free) has been utilized for business purposes as well as for investment from which divided of Rs.19,47,35,738/- earned during the year. In such circumstances, Rule 8D(2)ii would come into practice & amount investment made out of interest bearing fund would be ascertained on the proportionate basis as per Rule 8D(2)ii. Other expenses would also be apportioned accordingly.

7. We have heard the rival submissions and perused the records of the appeal files, assessment orders, impugned orders and case law compilation. It is admitted fact by both the parties that during FY 2017-18, the assessee earned dividend income to the tune of Rs.19,47,35,738/- from the NLC Tamilnadu Power Limited ('NTPL'). It is also not disputed that the investments are made in multiple trenches between FY 2005-06 to FY 2016-17. The only

dispute is that whether investments are out of own funds of assessee or from borrowed funds.

8. We find it necessary to reproduce here the relevant portion of the Hon'ble Supreme Court judgment in the case of *South Indian Bank Ltd. Vs Commissioner of Income Tax [2021] 438 ITR 1 (SC) dated 09.09.2021* which held as under:

> *"17. In a situation where the assessee has mixed fund (made up partly of interest free funds and partly of interestbearing funds) and payment is made out of that mixed fund, the investment must be considered to have been made out of Page 9 of 22 the interest free fund. To put it another way, in respect of payment made out of mixed fund, it is the assessee who has such right of appropriation and also the right to assert from what part of the fund a particular investment is made and it may not be permissible for the Revenue to make an estimation of a proportionate figure. For accepting such a proposition, it would be helpful to refer to the decision of the Bombay High Court in Pr. CIT v. Bombay Dyeing and Mfg. Co. Ltd2 where the answer was in favour of the assessee on the question, whether the Tribunal was justified in deleting the disallowance under Section 80M of the Act on the presumption that when the funds available to the assessee were both interest free and loans, the investments made would be out of the interest free funds available with the assessee, provided the interest free funds were sufficient to meet the investments. The resultant SLP of the Revenue challenging the Bombay High Court judgment was dismissed both on merit and on delay by this Court. The merit of the above proposition of law of the Bombay High Court would now be appreciated in the following discussion.*
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> *18. In the above context, it would be apposite to refer to a similar decision in Commissioner of Income Tax (Large Tax Payer Unit) Vs. Reliance Industries Ltd3 where a Division Bench of this Court expressly held that where there is finding of fact that interest free funds available to assessee were sufficient to meet its investment it will be presumed that investments were made from such interest free funds.*
>
> *19. In HDFC Bank Ltd. Vs. Deputy Commissioner of Income Tax4, the assessee was a Scheduled Bank and the issue therein also pertained to disallowance under Section 14A. In this case, the Bombay High Court even while remanding the case back to Tribunal for adjudicating afresh observed (relying on its own previous judgment in same assessee's case for a different Assessment Year) that, if assessee possesses sufficient interest free funds as against investment in tax free securities then, there is a presumption that*

investment which has been made in tax free securities, has come out of interest free funds available with assessee. In such situation Section 14A of the Act would not be applicable. Similar views have been expressed by other High Courts in CIT Vs. Suzlon Energy Ltd.5, CIT Vs. Microlabs Ltd.6 and CIT Vs. Max India Ltd.7 Mr. S Ganesh the learned Senior Counsel while citing these cases from the High Courts have further pointed out that those judgments have attained finality. On reading of these judgments, we are of the considered opinion that the High Courts have correctly interpreted the scope of Section 14A of the Act in their decisions favouring the assessees.

20. Applying the same logic, the disallowance would be legally impermissible for the investment made by the assessees in bonds/shares using interest free funds, under Section 14A of the Act. In other words, if investments in securities is made out of common funds and the assessee has available, non-interest-bearing funds larger than the investments made in tax- free securities then in such cases, disallowance under Section 14A cannot be made.

28. The above conclusion is reached because nexus has not been established between expenditure disallowed and earning of exempt income. The respondents as earlier noted, have failed to substantiate their argument that assessee was required to maintain separate accounts. Their reliance on Honda Siel (Supra) to project such an obligation on the assessee, is already negated. The learned counsel for the revenue has failed to refer to any statutory provision which obligate the assessee to maintain separate accounts which might justify proportionate disallowance.

29. In the above context, the following saying of Adam Smith in his seminal work – The Wealth of Nations may aptly be quoted:

> "The tax which each individual is bound to pay ought to be certain and not arbitrary. The time of payment, the manner of payment, the quantity to be paid ought all to be clear and plain to the contributor and to every other person."

Echoing what was said by the 18th century economist, it needs to be observed here that in taxation regime, there is no room for presumption and nothing can be taken to be implied. The tax an individual or a corporate is required to pay, is a matter of planning for a tax payer and the Government should endeavour to keep it convenient and simple to achieve maximization of compliance. Just as the Government does not wish for avoidance of tax equally it is the responsibility of the regime to design a tax system for which a subject can budget and plan. If proper balance is achieved between these, unnecessary litigation can be avoided without compromising on generation of revenue.

30. In view of the forgoing discussion, the issue framed in these appeals is answered against the Revenue and in favour of the assessee. The appeals by the Assessees are accordingly allowed with no order on costs".

9. Having gone through the Hon'ble Supreme Court judgment in the case of South Indian Bank Ltd. (supra), we find strength in the argument of the ld. Counsel for the assessee. Therefore, on the basis of above referred chart we find that at March 31, 2017, the appellant had total own funds of Rs.12,198.62 crores whereas investment made in NTPL shown as Rs.200.93 crores. In this case observation of the Hon'ble Supreme Court at para 17 is aptly apply here. Therefore, we conclude that in this case interest free funds are sufficiently available with the assesee for investment. Hence, we delete the part disallowance by the ld. CIT(A) u/s 14A of the Act and direct the AO to recompute the income accordingly.

10. In the result, the appeals of the assessee are allowed.

Order pronounced in the open court on 15th day of October, 2024 at Chennai.

Sd/-	Sd/-
एस.आर. रघुनाथा	**(मनु कुमार गिरि)**
(S.R. RAGHUNATHA)	**(MANU KUMAR GIRI)**
लेखा सदस्य/ ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated, the 15th October, 2024
KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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