

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER
आयकर अपील सं./ ITA No. 1716 /Chny/2024
निर्धारण वर्ष /Assessment Years: 2011-12

Assistant Commissioner of Income
Tax,
Corporate Circle-1(1),
Chennai

IL and FS Tamilnadu Power Company
Limited,
Old No.21, New No.2, KPR Tower,
4th Floor, Greams Road, S.O.
Nungambakkam,
Chennai-600 006.
[PAN: AABCF1176A]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by

: Shri Ashwin, C.A

प्रत्यर्थी की ओर से /Revenue by

: Ms.Gowthami Manivasagam, JCIT

सुनवाई की तारीख/Date of Hearing

: 23.09.2024

घोषणा की तारीख /Date of Pronouncement

: 04.12.2024

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

This appeal is filed against the order bearing DIN & Order No.ITBA/APL/S/250/2023-24/1063081861(1) dated 21.03.2024 of the Learned Commissioner of Income Tax [herein after "CIT(A), for the assessment years 2011-12. Through the aforesaid appeal the revenue has challenged order u/s 250 dated 21.03.2024 passed by CIT(A), Chennai.

2.0 It has been noted that there has been a delay of 10 days in the filing of the present appeal by the revenue. It has been urged by the revenue that there was compelling preoccupation with the time barring works at the fag end of the Financial Year as a result of which the present appeal got delayed by 10 days. Upon consideration of the arguments taken by the revenue we are convinced that sufficient cause existed which has contributed to the delay in the present appeal. The Ld. Counsel for the assessee did not raise any objection. Consequently, we condone the delay and proceed to adjudicate the appeal.

3.0 The ground of appeal number-1 is general in nature and does not require any specific adjudication and hence dismissed.

4.0 The first issue raised through ground of appeal numbers 2 and 3 is regarding the decision of Ld. Assessing Officer in taxing the interest income earned on fixed deposits sourced through borrowed funds, as income from other sources as against the action of the assessee of reducing the same from the construction expenses. The Ld. DR informed that before the AO the assessee had explained that the assessee company is a Public Limited Company set up with the objective of setting

up of 3600 MW thermal power project. The assessee had acquired loans for setting up power plants involving acquisition of land and construction there upon. Given the fact that the acquisition procedure was consuming more time, the idle funds were parked with banks and group companies. It is the case of the assessee that as the borrowed funds were for the purpose of setting up of a power plant, therefore interest earned therefrom goes to reduce the expenditure costs incurred on construction activities to be adjusted against the capital in progress. The assessee accordingly treated the interest as capital in nature. The Ld. AO drawing strength from the decision of Hon'ble Apex Court in the case of M/s.Tuticorn Alkali Chemical and Fertilizers Ltd 93 Taxmann 502 however held the view that the impugned income was of revenue in nature. While doing so, he also relied upon decision of CIT Appeal in assessee's own case for AY-2010-11 confirming AO's action. Consequently he added the amount of Rs.6,27,70,128/- as income from other sources. In appeal the assessee succeeded before the First Appellate Authority who after considering assessee's argument deleted the addition.

5.0 It is the case of the revenue that the relief accorded by Ld. CIT(A) is erroneous and bad in law. As per averments made in the ground

of appeal number 2 and 3 the Ld.CIT(A) has merely reproduced the submissions of the assessee in his appellate order without applying his own mind. It has been argued that the reliance upon the decision in the case of Indian Oil Panipat Power Consortium Ltd of the Hon'ble Delhi High Court is misplaced. The Ld. DR argued in favour of order of the Ld. Assessing Officer and submitted that the decision of Hon'ble Apex Court in Tuticorn Alkali Chemical and Fertilizers Ltd supra supports the stand of the revenue.

6.0 We have heard the rival submissions in the light of material available on records. We have noted that the Ld. First Appellate Authority has discussed the issue on para 3.2 page-7 to para 3.2.4 on page-10 of his order. We have noted that it is not a case where Ld. CIT(A) has merely reproduced the arguments of the assessee and given a decision in favour. Para 3.2.3 of the impugned appellate order a clear finding of having considered the facts of the case and the judgement in appellant own case has been given. Thus a case of application of mind is evident. The Ld. Counsel for the assessee would like us to believe regarding the correctness of the order of the Ld.First Appellate Authority. As regards controversy at hand we have noted that the Ld. CIT(A) has while giving relief , inter-alia, considered decision of Hon'ble Coordinate Bench of this

Tribunal in assessee's own case in AY-2012-13 to AY 2014-15 vide ITA No.1989/Chny/2019 dated 03.08.2022 . It is noted that the decision of Hon'ble Apex Court in the case of Tuticorn Alkali Chemical and Fertilizers supra was considered by the Hon'ble Coordinate Bench. Relevant part of the impugned order is reproduced hereunder:-

“...7. After hearing rival contentions and going through the facts, we noted that the facts are undisputed and the assessee has earned interest income by depositing the loans received from banks as temporary deposit of funds with banks and group companies. We also noted that it is undisputed fact that this interest earned will go to reduce the expenditure incurred during construction period and as such, it should be deposited against capital work-in-progress. This view of ours is supported by the decision of Hon'ble Supreme Court in the case of Bokaro Steel Ltd., supra wherein the Hon'ble Supreme Court has considered the identical issue and observed as under:- “The company may also, as in that case, keep the surplus funds in shortterm deposits in order to earn interest. Such interest will be chargeable under Section 56 of the Income-tax Act. This Court also emphasised the fact that the company was not bound to utilize the interest so earned to adjust it against the interest paid on borrowed capital. The company was free to use this income in any manner it liked. However, while interest earned by investing borrowed capital in short-term deposits is an independent source of income not connected with the construction activities or business activities of the assessee, the same cannot be said in the present case where the utilisation of various assets of the company and the payments received for such utilisation are directly linked with the activity of setting up the steel plant of the assessee. These receipts are inextricably linked with the setting up of the capital structure of the assessee-company. They must, therefore, be viewed as capital receipts going to reduce the cost of construction. In the case of Challapalli Sugars Ltd. v. Commissioner of Income-tax, A.P. ([1975] 98 ITR 167), this Court examined the question whether interest paid before the commencement of production by a company on amounts borrowed for the acquisition and installation of plant and machinery would form a part of the actual cost of the asset to the assessee within the meaning of that expression in Section 10(5) of the Indian Income-tax Act, 1922 and

whether the assessee will be entitled to depreciation allowances and development rebate with reference to such interest also. The Court held that the accepted accountancy rule for determining cost off fixed assets is to include all expenditure necessary to bring such assets into existence and to put them in working condition. In case money is borrowed by a newly started company which is in the process of constructing and erecting its plant, the interest incurred before the commencement of production of such borrowed money can be capitalised and added to the cost of the fixed assets created as a result of such expenditure. By the same reasoning if the assessee receives any amounts which are inextricably linked with the process of setting up its plant and machinery, such receipts will go to reduce the cost of its assets. These are receipts of a capital nature and cannot be taxed as income.” 7.1 Similarly, the Hon’ble Supreme Court in the case of Karnal Cooperative Sugar Mills, supra held as under:- 2. In the present case, the assessee had deposited money to open a letter of credit for the purchase of the machinery required for setting up its plant in terms of the assessee's agreement with the supplier. It was on the money so deposited that some interest has been earned. This is, therefore, not a case where any surplus share capital money which is lying idle has been deposited in the bank for the purpose of earning interest. The deposit of money in the present case is directly linked with the purchase of plant and machinery. Hence, any income earned on such deposit is incidental to the acquisition of assets for the setting up of the plant and machinery. In this view of the matter the ratio laid down by this court in Tuticorin Alkali Chemicals and Fertilizers Limited v. CIT , will not be attracted. The more appropriate decision in the factual situation in the present case is in CIT v. Bokaro Steel Ltd. . The appeal is dismissed. There will be no order as to costs. 8. Respectfully following these two Supreme Court decisions, we delete the addition and allow capitalization of the same. Similar are the facts on the other two assessment years on this issue, hence taking a consistent view, we allow this issue of assessee’s appeals....”

7.0 During the course of present hearings, no change in facts of the present case viz-a-viz those of AY-2012-13 to AY 2014-15 have been brought to our notice. Accordingly, in respectful compliance to the decision of the Hon’ble Coordinate Bench in assessee’s own case supra we hold the view that no interference is required to be made to the order of

Ld. First Appellate Authority at this stage. **Accordingly, we confirm the decision of Ld. CIT(A) and dismiss the grounds of appeal number 2 and 3 raised by the revenue.**

8.0 The next issue raised by the revenue vide ground of appeal number 4 and 5 is regarding disallowance u/s 14A r.w. rule-8D made by the Ld. AO and which has been deleted by the Ld.CIT(A). The Ld. DR invited our attention to para 3.3 to 3.3.2 of the order of the Ld. CIT(A) whereby addition made by the AO u/s 14A amounting to Rs.52,37,549/- has been deleted. It is the case of the revenue that the Ld. CIT(A) has erred in giving the relief as disallowance can be made even when there is no exempt income and that rule-8D is applicable after insertion of explanation to section 14A by finance act 2022. The Ld. Counsel for the assessee argued that the relief accorded by Ld.CIT(A) is based upon correct understanding of the facts of the case and is in accordance with contemporaneous law and judicial pronouncements on the matter. It was submitted that the decision of Hon'ble Special Bench of ITAT Delhi in the case of Cheminvest Ltd, relied upon by the Ld. AO, stands overruled by Hon'ble Delhi High Court in 378 ITR 33. The Appellant placed reliance upon the decision of Hon'ble Supreme Court in Chettinad Logistics 95

taxman.com 250 and Redington India Ltd 392 ITR 633 Hon'ble Madras High Court etc in support of its contentions.

9.0 We have heard the rival submissions in the light of material available on records. We have noted that the decision of Ld. CIT(A) to delete the impugned disallowance u/s 14A on account of the fact that the appellant had admittedly not earned any exempt income during the year as well as favorable judicial rulings is based upon correct understanding of facts of the case and does not require any interference at this stage. **Accordingly, we confirm the findings of the Ld.CIT(A) and the grounds of appeal numbers 4 & 5 raised by the revenue are dismissed.**

10.0 The next issue raised by the revenue vide ground of appeal number 6 is regarding the action of the AO of making adjustments to the book profit under 115JB qua additions u/s 14A. The Ld. DR placed reliance upon the action of the Ld. Assessing Officer. The assessee had contended before the Ld. CIT(A) that section 14A section is confined to computation of tax liabilities under five heads of income enumerated in section 14 under normal provisions of the act. The

assessee had argued that computation of book profit u/s 115JB falls in Chapter-XIIB of the act, distinct from chapter in which section 14A falls. The Ld. CIT(A) accorded the relief placing reliance upon submissions of the assessee as well as decision of her predecessor CIT(A) in assessee's own case for AY-2013-14.

11.0 We have heard rival submissions in the light of material available on records. The issue has been noted to be covered the decision of Hon'ble Special Bench of Delhi Tribunal in the case of Vireet Investments Pvt Ltd (2017) 82 Taxman.com 415 Delhi wherein it has been held that computation under clause(f) of explanation-1 to section 115JB(2) is to be made without resorting to computation as contemplated u/s 14A r.w. Rule-8D. In respectful compliance to the decision of Hon'ble Special Bench Supra we hold the view that no interference required to be made to the decision of Ld.First Appellate Authority. **Accordingly, the decision of Ld.CIT(A) on the matter is confirmed and the ground of appeal number 6 raised by the revenue is dismissed.**

12.0 The next issue raised by the revenue vide ground of appeal number 7 & 8 is regarding decision of CIT(A) of directing the AO to verify the nature of disallowance in respect of interest income and the related

TDS liability u/s 40(a)(ii). The Ld. DR informed that the issue at hand is discussed by the Ld. CIT(A) on para 3.4 on page 13 to para 3.4.2 on page 16 of his order. It is the case of the assessee that the Ld. AO had erroneously disallowed Rs.1,49,589/- u/s 40(a)(ii). It was argued that interest on delayed remittance of TDS cannot be disallowed u/s 40(a)(ii) and that it was not penal interest but merely compensatory in nature. In support of its contentions the appellant had relied upon a catena of judgements in support of its case. On the issue of adjustments qua MAT addition the assessee placed reliance upon the decision of Supreme Court in Apollo Tires and in the case of Malayala Manorama. The assessee has further urged that it had never conceded the issue before the Ld. AO, as noted by him in the assessment order.

13.0 We have heard the rival submissions in the light of material available on records. We have noted that the Ld. CIT(A) has rightly contended that the issue at hand is whether interest paid on delayed remittance of TDS u/s 40(a)(ii) is in the character of income tax or not. Accordingly, the directions issued to the Ld. AO to verify the true characters of expenditure whether it is interest or income tax and accordingly take a decision, has been found to be in order and a decision

that does not require any interference at this stage. **Consequently, the ground of appeal 7 & 8 raised by the revenue is dismissed.**

14.0 In the result, the appeal of the revenue is dismissed.

Order pronounced on 4th, December-2024 at Chennai.

Sd/-

(एबी टी. वर्की)

(ABY T VARKEY)

न्यायिक सदस्य / Judicial Member

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 4th, December-2024.

KB/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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