

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1418/Mds/2014

निर्धारण वर्ष / Assessment Year : 2009-10

M/s Southern Petrochemical
Industries Corpn. Ltd.,
88, Mount Road, Guindy,
Chennai - 600 032.

v. The Asst/Joint Commissioner of
Income Tax,
Company Circle V(1),
Chennai - 600 034.

PAN : AAACS 4668 K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.1821/Mds/2014

निर्धारण वर्ष / Assessment Year : 2009-10

The Deputy Commissioner of
Income Tax,
Company Circle V(1),
Chennai - 600 034.

v. M/s Southern Petrochemical
Industries Corpn. Ltd. (SPIC),
SPIC House,
88, Mount Road,
Guindy, Chennai - 600 032.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by : Sh. R. Vijayaraghavan, Advocate

राजस्व की ओर से /Revenue by : Sh. Pathlavath Peerya, CIT

सुनवाई की तारीख/Date of Hearing : 27.10.2016

घोषणा की तारीख/Date of Pronouncement : 27.12.2016

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

Both the appeals filed by the assessee and the Revenue are directed against the order of the Commissioner of Income Tax (Appeals) –V, Chennai, dated 25.02.2014 and pertain to assessment year 2009-10. Therefore, we heard both the appeals together and disposing of the same by this common order.

Let's first take assessee's appeal in I.T.A. No.1418/Mds/2014.

2. The first issue arises for consideration is disallowance of club expenses to the extent of ₹1,17,478/-.
3. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that he is not pressing this ground. The Ld.counsel made an endorsement to this effect in the appeal folder. The Ld. D.R. has no objection to dismiss this ground as not pressed.
4. In view of the above, the ground relating to disallowance of club expenses of ₹1,17,478/- is dismissed as not pressed.

5. Now coming to next ground of appeal with regard to disallowance made under Section 14A of the Income-tax Act, 1961 (in short 'the Act') read with Rule 8D of the Income-tax Rules, 1962.

6. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that while computing the profit of the assessee, the Assessing Officer disallowed ₹4,83,96,673/-. According to the Ld. counsel, there was no investment during the year under consideration. Therefore, the third limb of Rule 8D is not applicable at all. The assessee has not incurred any direct expenditure for earning exempt income. Therefore, the first limb of Rule 8D is also not applicable. Referring to second limb, the Ld.counsel submitted that the investment was made in the subsidiary companies and group companies. Therefore, there cannot be any disallowance of expenditure. The Ld.counsel further submitted that the assessee itself disallowed a sum of ₹17,59,411/-, therefore, further disallowance cannot be made.

7. We heard Sh. Pathlavath Peerya, the Ld. Departmental Representative, also. Section 14A of the Act read with Rule 8D provides for method of disallowance when the assessee claims that no expenditure was incurred for earning the exempt income. The

first limb of Rule 8D provides for disallowance of direct expenditure; second limb of Rule 8D provides for disallowance of expenditure which is not relatable to any particular income; the third limb provides for 0.5% of investment, income from which does not form part of the total income. The assessee now claims that no investment was made during the year under consideration. However, the balance sheet is not available on the file of this Tribunal. Therefore, we are unable to verify the claim of the assessee. We are also unable to accept the claim of the assessee that there was no direct expenditure, therefore, Rule 8D(2)(i) is not applicable. The assessee claims that investment was made in the subsidiary companies and group companies. The assessee could not explain how the companies in which the investment was made, were sister concerns or group concerns of the assessee. The shareholding pattern of the companies in which the investment was made, was not available on record.

8. For the assessment year 2000-01, this Tribunal in I.T.A. No.2252/Mds/2003 examined this issue and remanded back the matter to the file of the Assessing Officer for re-examination. The assessee has produced a copy of the order of this Tribunal for the

assessment year 2000-01. For the assessment year 2000-01, the assessee claimed before this Tribunal that investment was made in the company which produces the basic raw material required by the assessee. On a query from the Bench, the Ld.counsel for the assessee submitted that raw material was not supplied at free of cost. It is also not the case of the assessee that the assessee had purchased raw material at subsidized price or cost. Moreover, income of the companies, which are outside India, was not taxable in the hands of the assessee in India. All these facts are not brought to the notice of the earlier Bench which decided the case. When the income of the assessee was from the companies which situated outside India and the assessee claims that the money was invested in other companies, which are said to be subsidiary companies, why the expenditure incurred by the assessee should not be disallowed was not examined by this Tribunal for assessment year 2000-01. Therefore, this Tribunal is of the considered opinion that the matter needs to be reconsidered. Accordingly, the orders of both the authorities below are set aside and the issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh and bring on record shareholding pattern of the companies in which the

investment was made by the assessee and how the companies outside India are subsidiary companies of the assessee and thereafter decide the issue in accordance with law, after giving a reasonable opportunity to the assessee.

9. The next ground of appeal is with regard bad debts written off to the extent of ₹8,22,569/-. The Ld.counsel for the assessee very fairly submitted that he is not pressing this ground. The Ld.counsel has also made endorsement in the appeal folder. The Ld. D.R. has no objection to dismiss this ground as not pressed. Accordingly, the ground raised by the assessee with regard to disallowance of bad debts to the extent of ₹8,22,569/- is dismissed as not pressed.

10. Similarly, the ground relates to disallowance of depreciation is also not pressed by the Ld.counsel for the assessee. Accordingly, the same is also dismissed as not pressed.

11. Now the last ground is with regard to disallowance of ₹15,35,279/- while computing profit under Section 115JB of the Act.

12. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that while computing the profit under the normal

provisions of Income-tax Act, the Assessing Officer disallowed a sum of ₹15,35,279/- being electricity tax levied by the Tamil Nadu Electricity Board under Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003. The Ld.counsel submitted that the assessee challenged the very levy of electricity tax and a writ petition is pending before the High Court. Since the tax was levied and it was remaining unpaid, the Assessing Officer disallowed the same under the normal provisions by applying Section 43B of the Act. However, while computing the profit under Section 115JB of the Act, the Assessing Officer has also disallowed on the ground that it is a contingent liability. According to the Ld. counsel, it is not a contingent liability and the tax was already levied. A mere pendency of writ petition before the High Court cannot be a reason to treat the electricity tax levied on the assessee as contingency liability. The liability to pay electricity tax is not on the basis of happening of some event. The tax was already levied, therefore, according to the Ld. counsel, it is not a contingent liability, hence, the Assessing Officer is not justified in disallowing the claim of the assessee.

13. On the contrary, Sh. Pathlavath Peerya, the Ld. Departmental Representative, submitted that Explanation 1(c) to Section 115JB of the Act clearly says that the book profit computed under the Companies Act, 1956 has to be increased by the amount provided for meeting other than the ascertained liability. In the case before us, according to the Ld. D.R., though a demand was raised in the form of electricity tax, the assessee has challenged the same before the High Court and the High Court stayed the payment of electricity tax. The further liability or payment of electricity tax would depend upon the order of the High Court. Therefore, according to the Ld. D.R., the payment would depend upon the contingent, namely, order of the High Court. Therefore, according to the Ld. D.R., it cannot be said that the payment of tax liability is an ascertained liability. Hence, according to the Ld. D.R., it has to be increased over and above the book profit computed under the provisions of Companies Act.

14. We have considered the rival submissions on either side and perused the relevant material available on record. Explanation 1(c) to Section 115JB of the Act clearly says that other than ascertained liability, it has to be increased over and above the book profit. The

assessee now claims that mere pendency of writ petition before the High Court cannot be said that the liability is not an unascertained liability. The fact remains that the liability to pay the electricity tax would depend upon the decision that may be taken by the Madras High Court in the writ petition said to be pending. As on today, even though there was a liability and demand raised by the concerned authority, the High Court stayed the recovery and the payment of electricity tax would depend upon the decision that may be taken by the High Court. Therefore, as on today, it is not an ascertained liability. Hence, it has to be increased as provided in Explanation 1 to Section 115JB of the Act. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

15. Now coming to Revenue's appeal in I.T.A. No.1821/Mds/2014, the only issue arises for consideration is disallowance of proportionate interest expenses on the funds diverted to associate companies.

16. Sh. Pathlavath Peerya, the Ld. Departmental Representative, submitted that the assessee borrowed funds for business purpose in India and invested the same in companies at

Dubai and Jordan. The income of the companies at Jordan and Dubai is not taxable in India. However, the assessee claims that the investment made in those companies from the borrowed funds was for business purpose. According to the Ld. D.R., the funds diverted to foreign country have to be treated as diversion of borrowed funds, therefore, the interest relatable to those funds has to be disallowed.

17. On the contrary, Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that the assessee advanced a sum of ₹9632.96 lakhs to its group companies out of interest free funds. The advance was given for business purpose and out of commercial expediency. For the assessment year 2000-01, this Tribunal, by order dated 20.10.2004, allowed similar claim of the assessee. On a query from the Bench, how the companies at Dubai and Jordan are group companies of the assessee? the Ld.counsel submitted that they are 100% subsidiary of the assessee-company.

18. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee claims that interest free funds were diverted to the companies at Dubai and Jordan. The assessee also claims that they are sister

concerns of the assessee. However, the shareholding pattern of so-called companies at Dubai and Jordon are not available on record. Therefore, it is not known how the assessee claims that the advances were made to sister concerns. Moreover, the balance sheet and other financial documents were not available on record. Therefore, it is not known whether the assessee has advanced funds out of interest free funds or borrowed funds. It is not in dispute that the assessee borrowed funds for business purpose and the same remain outstanding during the year under consideration. Therefore, we have to examine how much funds were borrowed and whether there was any nexus between borrowed funds and investment made in Dubai and Jordon. The shareholding pattern of those companies is also not known. Since these facts were not available on record and the same were also not examined by earlier Bench of this Tribunal during the assessment year 2000-01, this Tribunal is of the considered opinion that the matter needs to be re-examined. Accordingly, the orders of the authorities below are set aside and disallowance of proportionate interest expenses on the advance made to group companies are remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh and bring on record the shareholding pattern of the

companies at Dubai and Jordon and how much advances were made and also find out whether the income from the group companies in which advances were made, is taxable in India, and the object for which the money was advanced and utilization of funds by the companies which received the funds from the assessee and thereafter decide the issue in accordance with law, after giving a reasonable opportunity to the assessee.

19. In the result, the appeal filed by the assessee is partly allowed for statistical purposes and the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on 27th December, 2016 at Chennai.

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. Sunder Singh)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 27th December, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती /Assessee
2. Assessing Officer
3. आयकर आयुक्त (अपील)/CIT(A)-V, Chennai
4. आयकर आयुक्त/CIT-V, Chennai-34
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member