

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 1813/Mds/2014

निर्धारण वर्ष / Assessment Year : 2010-11

M/s Tamilnadu Power Finance &
Infrastructure Development Corpn
Ltd., Tufidco Powerfin Tower,
490/3-4, Anna Salai,
Nandanam, Chennai - 600 035.

v. The Assistant Commissioner of
Income Tax,
Company Circle III(1),
Chennai - 600 034.

PAN : AAAC 2840 A

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. R. Vijayaraghavan, Advocate

प्रत्यर्थी की ओर से/Respondent by : Sh. Arun C. Bharath, CIT

सुनवाई की तारीख/Date of Hearing : 04.02.2016

घोषणा की तारीख/Date of Pronouncement : 19.02.2016

आदेश / O R D E R

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

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-III, Chennai, dated 20.01.2014 and pertains to assessment year 2010-11.

2. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that the assessee, a State Government undertaking, received tax free income during the year under consideration. According to the Ld. counsel, the assessee invested ₹5 Crores in 5.45% Tax Free Bond 2005 issued by Chennai Metropolitan Water Supply and Sewerage Board. According to the Ld. counsel, the assessee has not incurred any expenditure. The Ld.counsel further submitted that the reserve available to the assessee to the extent of ₹54,54,90,000/- was, in fact, utilised for making investment of ₹5 Crores. However, the Assessing Officer disallowed the claim of the assessee under Section 14A of the Income-tax Act, 1961 (in short 'the Act') on the ground that the assessee could have incurred managerial, administrative and monitoring expenses. According to the Ld. counsel, the assessee being State Government undertaking and the business of the assessee is to finance infrastructure facilities, no external expenses were incurred. Therefore, the disallowance made by the Assessing Officer is not justified.

3. On the contrary, Sh. A.B. Koli, the Ld. Departmental Representative, submitted that the assessee had invested ₹5 Crores in the tax free bonds issued by Chennai Metropolitan Water

Supply and Sewerage Board. Referring to Section 14A of the Act and Rule 8D of Income-tax Rules, 1962, the Ld. D.R. submitted that even if the assessee claims that no expenditure was incurred, the Assessing Officer has to examine the matter and find out whether the assessee has actually incurred any expenditure for earning the income which does not form part of total income. In the case before us, according to the Ld. D.R., the assessee claims that the reserve available with the assessee was utilised for making investment. For making investment, the assessee has to take administrative decision by taking into consideration of the market situation. Therefore, the assessee has to naturally incur managerial, administrative expenses. Apart from that, the assessee also needs to incur expenditure to monitor the investment. In view of the above, according to the Ld. D.R., it cannot be said that the assessee has not incurred any expenditure at all. Hence, the CIT(Appeals) has rightly confirmed the disallowance made by the Assessing Officer. The Ld. D.R. placed his reliance on the order of this Tribunal in I.T.A. No.2083/Mds/2011 dated 02.03.2012 in M/s Lakshmi Ring Travellers v. ACIT.

4. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, the assessee-company is owned by State Government. The assessee-company is in the business of finance and creating infrastructure facilities. Therefore, in the course of its regular business activity, the assessee would have all the information relating to market situation in the field of finance, investment, etc. It is not in dispute that the assessee utilised the reserves available to the extent of ₹54,54,90,000/- for making investment in Chennai Metropolitan Water Supply and Sewerage Board.

5. We have carefully gone through the order of this Tribunal in Lakshmi Ring Travellers (supra) relied on by the Ld. D.R. In the said case, the assessee is engaged in the business of travel. In those factual situation, the Tribunal found that even in a case where the assessee claims that no expenditure was incurred, the statute has provided for a presumptive expenditure which has to be disallowed. In the case before us, the business of the assessee is finance and infrastructure. Therefore, the presumption is that the assessee has all the information and expertise for taking decision for making the investment. However, the executives of the assessee-Corporation

have to spend considerable time in assessing the market trend for making investment.

6. We have carefully gone through the provisions of Rule 8D of the Income-tax Rules, 1962, which reads as follows:-

(1) Where the Assessing Officer having regard to the accounts of the assessee of the previous year, is not satisfied with-

(a) the correctness of the claim of expenditure made by the assessee ; or

(b) the claim made by the assessee that no expenditure has been incurred

in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).

(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:-

(i) the amount of expenditure directly relating to income which does not form part of total income ;

(ii) in a case where the assessee has incurred expenditure by way of interest during the previous year is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely :-

B

A X---

C

Where A =amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year ;

B =the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance-sheet of the assessee, on the first day and the last day of the previous year ;

C =the average of total assets as appearing in the balance-sheet of the assessee, on the first day and the last day of the previous year ;

(iii) an amount equal to one-half per cent. of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance-sheet of the assessee, on the first day and the last day of the previous year.

3. For the purposes of this rule, the "total assets" shall mean, total assets as appearing in the balance-sheet excluding the increase on account of revaluation of assets but including the decrease on account of revaluation of assets.

Rule 8D was introduced with effect from 24.03.2008. Therefore, the same is very much applicable for the year under consideration. When the Assessing Officer is not satisfied about the correctness of the claim of expenditure or the assessee's claim that no expenditure was incurred, then the Assessing Officer shall recompute the expenditure by applying the procedure laid down in Rule 8D(2). As per sub-Rule (2) of Rule 8D, the aggregate of the three limbs provided therein has to be taken into consideration for the purpose of computing the expenditure. In the case before us, the assessee admittedly utilized the reserve available to the extent of

₹54,54,90,000/-. Therefore, no direct expenditure was incurred for earning the income which does not form part of total income. The assessee also has not incurred any expenditure by way of interest. Therefore, the second limb of the Rule 8D(2) is not applicable. Now coming to the third limb, the amount equal to 0.5% of the average value of the investment, income from which does not or shall not form part of total income as appearing in the balance sheet of the assessee on the first day and the last day of the previous year, has to be taken into consideration. This Tribunal is of the considered opinion that the third limb of Rule 8D(2) has to be applied. Therefore, the computation made by the Assessing Officer by adopting second limb of Rule 8D(2) may not be correct. Accordingly, the orders of the lower authorities are modified and the Assessing Officer is directed to take 0.5% of the average value of the investment, income from which does not or shall not form part of total income as appearing in the balance sheet of the assessee on the first day and the last day of the previous year, as expenditure for earning income.

7. In the result, the appeal of the assessee is partly allowed.

Order pronounced on 19th February, 2016 at Chennai.

Sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 19th February, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-III, Chennai-34
4. आयकर आयुक्त/CIT, Chennai-III, Chennai-34
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.