

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' 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 Nos.1042, 1043 & 1044/Mds/2016

निर्धारण वर्ष / Assessment Years : 2011-12, 2012-13 & 2013-14

The Deputy Commissioner of  
Income Tax,  
Central Circle – 2(1),  
Investigation Wing,  
Chennai - 600 034.

v. M/s SNJ Distillers Pvt. Ltd.,  
New No.99, Canal Bank Road,  
CIT Nagar, Nandanam,  
Chennai - 600 035.

(अपीलार्थी/Appellant)

PAN : AALCS 9312 F

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Supriyo Pal, JCIT

प्रत्यर्थी की ओर से/Respondent by : Ms. S. Vidhya, FCA

सुनवाई की तारीख/Date of Hearing : 16.03.2017

घोषणा की तारीख/Date of Pronouncement : 31.05.2017

### **आदेश / O R D E R**

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

All the three appeals of the Revenue are directed against the common order passed the Commissioner of Income Tax (Appeals)-18, Chennai, dated 07.01.2016 and pertain to assessment years 2011-12, 2012-13 and 2013-14. Therefore, we

heard all the appeals together and disposing of the same by this common order.

2. The only issue arises for consideration is disallowance made by the Assessing Officer under Section 14A of the Income-tax Act, 1961 (in short 'the Act') read with Rule 8D of the Income-tax Rules, 1962.

3. Shri Supriyo Pal, the Ld. Departmental Representative, submitted that the entire investment was made by the assessee in the group concern for the purpose of business. Moreover, no income was earned during the assessment year 2011-12. According to the Ld. D.R., the CIT(Appeals) restricted the disallowance to the extent of ₹1,70,216/- to the extent of interest payment made by the assessee for the assessment year 2011-12. According to the Ld. D.R., disallowance has to be computed as per the method prescribed under Rule 8D(2) of Income-tax Rules, 1962, therefore, the CIT(Appeals) is not justified in restricting the disallowance of interest paid. Referring to assessment year 2012-13, the Ld. D.R. submitted that the Assessing Officer disallowed ₹2,08,49,200/-. The CIT(Appeals), however, allowed the claim of the assessee on the ground that investment was made in the

subsidiary company called SNJ Sugars Pvt. Ltd. According to the Ld. D.R., whether the investment was made in subsidiary company or other company, the method prescribed in Rule 8D(2) has to be followed. Therefore, the CIT(Appeals) is not justified in allowing the claim of the assessee.

4. The Ld. Departmental Representative further submitted that for the assessment year 2013-14, the assessee did not earn any income, therefore, the CIT(Appeals) allowed the claim of the assessee on the ground that the disallowance has to be restricted only to the extent of income. According to the Ld. D.R., Rule 8D(2) does not refer earning of income on the investment. The assessee, hence, made the investment for the purpose of earning the income which is not taxable under the provisions of Income-tax Act. According to the Ld. D.R., the expenditure incurred by the assessee has to be disallowed under Section 14A of the Act. The method of computation of expenditure is provided in Rule 8D(2), therefore, according to the Ld. D.R., the CIT(Appeals) is not justified in allowing the claim of the assessee.

5. On the contrary, Ms. S. Vidhya, the Ld. representative for the assessee, submitted that the tax effect involved in the case for

assessment year 2011-12 is less than ₹10,00,000/-, therefore, the appeal for assessment year 2011-12 is not maintainable before the Tribunal. For the assessment years 2012-13 and 2013-14, the investment was made only in subsidiary company, namely, SNJ Sugars Pvt. Ltd. for the purpose of business. According to the Ld. representative, at no point of time, the investment was made for the purpose of earning any exempted income. Since the investment was made in SNJ Sugars Pvt. Ltd., which is admittedly a subsidiary company of the assessee, according to the Ld. representative, it is only a strategic investment for the purpose of business of the assessee-company, therefore, the CIT(Appeals) has rightly allowed the claim of the assessee. Moreover, it is not business of the assessee-company to make investments. The investment was made only on account of business expediency. Moreover, no income was earned by the assessee on such investment. The Ld. representative placed her reliance on the judgment of Madras High Court in Redington (India) Ltd. v. Addl. CIT in T.C.A. No.520 of 2016 dated 23.12.2016.

6. We have considered the rival submissions on either side and perused the relevant material available on record. For the

assessment year 2011-12, the assessee has paid interest of ₹1,70,216/-. Therefore, the CIT(Appeals) found that the expenditure incurred by the assessee can be restricted only to ₹1,70,216/- and not ₹4,67,62,879/-. The CIT(Appeals) also confirmed the disallowance made by the Assessing Officer under third limb of Rule 8D(2) at ₹1,25,009/-. On perusal of order of assessment it shows that the Assessing Officer made a disallowance of ₹18,44,187/- for the assessment year 2011-12 and the tax effect involved is less than ₹10,00,000/-. Therefore, in view of the latest circular of the CBDT instructing its officers not to file appeal wherever the tax effect is less than ₹10,00,000/-, this Tribunal is of the considered opinion that the appeal of the Revenue for assessment year 2011-12 is not maintainable before this Tribunal.

7. Now coming to assessment years 2012-13 and 2013-14, it is not in dispute that the investment was made in SNJ Sugars Pvt. Ltd., which is a subsidiary company of the assessee-company. When the investment was made by the assessee-company in its subsidiary company for the purpose of business, this Tribunal is of the considered opinion that such investment was only for commercial expediency and it has to be construed as strategic

investment. In other words, the investment made by the assessee was for business purpose. Therefore, as rightly observed by the CIT(Appeals), the strategic investment made in the subsidiary company cannot be considered for disallowance under Section 14A of the Act. Therefore, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly deleted the disallowance made by the Assessing Officer under Section 14A of the Act. Moreover, the assessee has not earned any income from the investment. Therefore, in view of this the judgment of Madras High Court in Redington (India) Ltd. (*Supra*), there cannot be any disallowance at all. Therefore, this Tribunal does not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

8. The next issue arises for consideration is disallowance of bogus purchases to the extent of ₹77,75,800/-.

9. Shri Supriyo Pal, the Ld. Departmental Representative, submitted that the Assessing Officer disallowed bogus purchase to the extent of ₹77,75,800/-. The Assessing Officer found that the TIN numbers of the so-called dealers were cancelled and they are not doing any business at all. According to the Ld. D.R., the notice sent to one R.N. Enterprise was returned by the postal authorities.

On physical verification by the Commercial Tax Officers, it was found that there was no such dealer. Therefore, the Assessing Officer made an addition of ₹77,75,800/-.

10. On the contrary, Ms. S. Vidhya, the Ld. representative for the assessee, submitted that the Assessing Officer found that purchases made by the assessee from R.N. Enterprise and Nakoda Agency were bogus. Referring to the order of the CIT(Appeals), the Ld. representative submitted that the assessee was not aware of the fact that TIN Numbers of these dealers were cancelled. However, the assessee purchased pen, pencil, gift packs, etc. from R.N. Enterprise and Nakoda agency. Merely because the TIN was cancelled by Commercial Tax Department of State Government, according to the Ld. representative, it cannot be concluded that the assessee has not purchased anything from the above two business concerns. The fact that the above said two business concerns were carrying on business even after cancellation of TIN registration, was established by the fact that they sold pen, pencil, gift items to the assessee, therefore, according to the Ld. representative, the CIT(Appeals) has rightly allowed the claim of the assessee.

11. We have considered the rival submissions on either side and perused the relevant material available on record. The Assessing Officer made addition, holding that the purchases are bogus on the ground that TIN registration of the dealers was cancelled by State Commercial Tax Department. The purchase bills filed by the assessee show that there were purchases from R.N. Enterprise and Nakoda Agency. It was not the case of the Assessing Officer that there was no contra entry in the payment made to R.N. Enterprise. The Assessing Officer disallowed the claim of the assessee only on the ground that the TIN registration was cancelled by State Commercial Tax Department on 22.02.2013. The Assessing Officer has not made any independent verification with regard to existence of R.N. Enterprise and Nakoda Agency. It is also not the case of the Revenue that the assessee has no stock as claimed. When the existence of stock or availability of pen, pencil, gift boxes is not in dispute, it shows that the assessee has purchased the same. Merely because R.N. Enterprise and Nakoda Agency engaged itself in the business of sale of pen, pencil and gift items, after the cancellation of TIN registration by the Commercial Tax Department, that cannot be a reason to doubt the purchases made by the assessee.

12. At the best, the State Commercial Tax Department may proceed further against R.N. Enterprise and Nakoda Agency for doing business even after cancellation of TIN registration. In those circumstances, when the availability of purchased items is not in dispute, this Tribunal is of the considered opinion that merely because TINs of R.N. Enterprise and Nakoda Agency were cancelled and postal authorities returned the letter sent by State Commercial Tax Department, the Assessing Officer is not justified in disallowing the claim of the assessee without independent verification. Therefore, this Tribunal has no reason to interfere with the order of the lower authority and accordingly, the same is confirmed.

13. In the result, all the appeals filed by the Revenue stand dismissed.

Order pronounced on 31<sup>st</sup> May, 2017 at Chennai.

sd/-

(डि.एस. सुन्दर सिंह)

(D.S. Sunder Singh)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 31<sup>st</sup> May, 2017.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-18, Chennai-34
4. Principal CIT, Central-2, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.