

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. Nos.28 & 29/Mds/2016

निर्धारण वर्ष /Assessment year : 2011-12 & 2012-2013

M/s. Global Calcium Private
Limited,
125 & 126, SIPCOT Industrial
Complex,
Hosur 635 1260

Vs. The Deputy Commissioner of
Income Tax,
Company Circle II(2)
Chennai 600 034.

[PAN AAACG 2998N]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri. M. Viswanathan, C.A.

: Shri. A.V.Sreekanth, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 11-07-2016

घोषणा की तारीख /Date of Pronouncement : 20-07-2016

आदेश / ORDER

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

These two appeals are filed by the assessee are directed against different orders of Commissioner of Income-tax (Appeals)-6, Chennai dated 30.11.2015 for the assessment years 2011-12 and 2012-13 passed u/s.143(3) and 250 of the Income Tax Act, 1961.

Since the issue in these appeals are common in nature, these appeals are clubbed, heard together, and disposed of by this common order for the sake of convenience. We take up ITA No.28/Mds/2016 of assessment year 2011-12 for adjudication.

2. The assessee has raised the following ground of appeal:-

" The appellant submits that the disallowance u/sec. 14A cannot exceed the dividend income earned. Further, the appellant relies upon the decision of Daga Global Chemicals Pvt. Ltd vs. ACIT, Mumbai in ITA No.592/Mum/2012 of Income Tax Appellate Tribunal, D Bench wherein it is held that the disallowance under Section 14A read with Rule 8D cannot exceed the exempt income".

3. The Brief facts of the case are that the assessee is in the business of Manufacturing of Bulk Drug and filed E-Return on 30.09.2011 declaring total income of ₹2,28,06,150/- and claimed deduction under u/s.80IA of the Act and return of income was processed u/s.143(1) of the Act. Subsequently, the assessee filed Revised return of income on 13.07.2012 declaring Nil income. The case was selected for scrutiny under CASS and notice u/s.143(2) of the Act was issued. In compliance to notices, the Id. Authorised Representative of assessee appeared from time to time and produced particulars called for by Revenue. The Id. Assessing Officer on perusal of the information found that the assessee company has received dividend

income of ₹57,703/-and claimed as exempted u/s.10(33) of the Act and no expenditure was disallowed in respect of earning exempted dividend income and no apportionment of expenditure and relied on the decision of the Special Bench of Delhi Tribunal in the case of *Cheminvest Ltd. ITO in ITA No.87/Del/2008, dated 05.08.2009 and Kolkata High Court decision in the case of Dhanuka and Sons (201 Taxmann 105)*. Further, on verification of the transaction of loans and advances, the assessee company could not explain whether interest free funds were utilized for making investments and bifurcation of secured and unsecured loans. The Id. Assessing Officer determined the disallowance under provisions of u/s.14A r.w.s Rule 8D(2)(i)(ii) (iii) ₹6,24,054/- and made addition to Returned income alongwith other additions and passed assessment order u/s.143(3) of the Act dated 27.03.2014. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Id. Authorised Representative argued the grounds on constitutional validity and applicability of provisions of Sec. 14A of the Act and Rule 8D and explained the analogy that assessee has earned Dividend income ₹57,703/- whereas disallowance u/s.14A r.w.r. 8D is ₹6,24,054/- and further explained that the assessee has not incurred any expenditure

on earning exempted income and submitted elaborately on provisions and relied on High Court and Tribunal decisions. The Id. Commissioner of Income Tax (Appeals) based on the findings of the Assessing Officer and the arguments envisaged by the Id. Authorised Representative and perused the decisions relied by the assessee including Co-ordinate Bench decisions and distinguished the judicial decisions and formed an unilateral opinion as there is no Breakup of non interest bearing funds were provided by the assessee in the assessment proceedings and relied on the Delhi High Court decision of *Maxopp Investment Ltd & Ors. Vs. CIT 347 ITR 272* and observed that the Id. Assessing Officer has recorded satisfaction on invoking applicability of provisions of Rule 8D and calculated disallowance u/s. Rule 8D(2) and sustained addition u/sec. 14A Rule 8D ₹6,24,054/-. Aggrieved by the order of Commissioner of Income Tax (Appeals), the assessee assailed an appeal before Tribunal.

5. Before us, the Id. Authorised Representative argued the grounds and reiterated the submissions made before Id. Assessing Officer and Id. Commissioner of Income Tax (Appeals) with judicial decisions relied before lower authorities and emphasized that there is no rationality in disallowance u/s.14A r.w.r. 8D being ₹6,24,054/- as

against the dividend income received ₹57,703/- and relied on the Mumbai ITAT decision of *Daga Global Chemicals Pvt. Ltd vs. ACIT in ITA No.592/Mum/2012* and prayed for restriction of disallowance under Section 14A r.w.r 8D to the extent of exempted dividend income and also supported with decision in assessee's own case ITA No.81/Mds/2015, assessment year 2010-2011, dated 29.05.2015, where the Tribunal has considered restriction disallowance u/sec. 14A Rule 8D to the extent of exempted income and prayed for allowing the appeal.

6. On the other hand, the Id. Departmental Representative relied on the orders of lower authorities and vehemently opposed to the grounds.

7. We heard the rival submissions, perused the material on record and judicial decisions cited. The Id. Authorised Representative contention that the assessee company made investments out of funds generated in the business and the loans obtained were not utilized for the purpose of investments and the assessee company has claimed interest charges in profit and loss account on secured loans. Further, the Id. Authorised Representative demonstrated adequate Reserve & Surplus of earlier years. Similarly, the investments of the assessee company as on 31.03.2011 are ₹2.93 crores and on

comparing the investments as on 31.03.2010 ₹2.59 crores, the incremental increase is only ₹34.02 lacs. The Id. Authorised Representative demonstrated that the assessee has made investments out of internal accruals of Business operations. We found the analogy adopted by the assessee company relying on the Reserve and Surplus is not accepted and further the assessee company could not substantiate the investments with cash flow statement and bank account with direct nexus and the Id. Assessing Officer has relied on provisions of Sec.14A r.w.s. 8D(2) and calculated disallowance. Considering the apparent facts, financial statements and incremental values, the disputed issue has to be re-examined by the Id. Assessing Officer as there is no proper clear findings by the Id. Assessing Officer in the assessment order. We respect the Co-ordinate Bench decision of earlier year and Mumbai ITAT decision relied by the Id. Authorised Representative. But prime facie the assessee company shall provide information on tax free funds utilized for investments with credible evidence and strategic management details of usage of office establishment and related cost. Hence, we remit the entire disputed issue to the file of Assessing Officer to consider afresh and the assessee shall be provided with adequate opportunity of hearing before passing the order. The ground appeal of the assessee is

allowed for statistical purpose.

8. Consequently, the appeal of the assessee in ITA No.29/Mds/2016 for assessment year 2012-2013 is also allowed for statistical purpose.

9. In the result, the appeals of the assessee in ITA Nos. 28 & 29/Mds/2016 are allowed for statistical purpose.

Order pronounced on Wednesday, the 20th day of July, 2016, at Chennai.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:20.07.2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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