

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' 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.3172/Mds/2016

निर्धारण वर्ष / Assessment Year : 2012-13

The Deputy Commissioner of
Income Tax,
Corporate Circle – 2(2),
Chennai - 600 034.

v. M/s Harita Seating Systems Ltd.,
No.29, Jayalakshmi Estates,
Haddows Road,
Chennai - 600 006.

(अपीलार्थी/Appellant)

PAN : AAACH 2492 N

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri R. Durai Pandian, JCIT

प्रत्यर्थी की ओर से/Respondent by : Sh. R. Vijayaraghavan, Advocate

सुनवाई की तारीख/Date of Hearing : 03.01.2017

घोषणा की तारीख/Date of Pronouncement : 31.01.2017

आदेश /ORDER

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

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) – 6, Chennai, dated 28.09.2016 and pertains to assessment year 2012-13.

2. The first issue arises for consideration is with regard to disallowance made by the Assessing Officer under Section 14A of

the Income-tax Act, 1961 read with Rule 8D of the Income-tax Rules, 1962.

3. Shri R. Durai Pandian, the Ld. Departmental Representative, submitted that the Assessing Officer computed the disallowance under Rule 8D(2). The Assessing Officer found that there was no direct expenditure for earning exempt income. The assessee admittedly borrowed funds for the purpose of business and payment of interest, which does not relate to any particular income, was considered by the Assessing Officer under Rule 8D(2). According to the Ld. D.R., during the year under consideration, the assessee invested funds for earning exempt income. Therefore, 0.5% of the average value of the investment, income from which does 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, was also considered by the Assessing Officer. Ultimately, the disallowance was computed at ₹1,23,80,285/-. According to the Ld. D.R., the disallowance made by the assessee itself was reduced and the balance amount was disallowed by the Assessing Officer. However, on appeal by the assessee, the CIT(Appeals) found that the investment made in the subsidiary company was not for the purpose of earning capital gain or dividend income. According to

the Ld. D.R., it is not known what was the business purpose for which the investment was made. It is also not known how the investment was made in the subsidiary company. The shareholding pattern of the company in which the investment was made is not available on record. Moreover, Rule 8D does not provide for any exemption in respect of the investment made in the subsidiary companies. Therefore, according to the Ld. D.R., the CIT(Appeals) is not justified in allowing the claim of the assessee.

4. On the contrary, Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that investment was made in the subsidiary companies. On a query from the Bench, what is the shareholding pattern of the subsidiary company? The Ld.counsel could not produce any details. In fact, the CIT(Appeals) placed his reliance on the order of this Tribunal, therefore, no interference is called for.

5. We have considered the rival submissions on either side and perused the relevant material available on record. Even though the assessee claims that the investment was made in the subsidiary companies and for business expediency, it is not known how the company in which the investment was made was subsidiary company to the assessee. The shareholding pattern of the company in which the investment was made is not available on

record. Moreover, the business expediency is also not demonstrated by the assessee. Mere claim that investment was made for business expediency does not serve any purpose. It is for the assessee to demonstrate the business expediency to make investment in the subsidiary company. In the absence of these details, this Tribunal is of the considered opinion that the matter needs to be re-examined by the Assessing Officer. Accordingly, the orders of the lower authorities are set aside and the issue of disallowance made by the Assessing Officer under Section 14A of the Act is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh in the light of the material that may be filed by the assessee and thereafter decide the issue in accordance with law, after giving a reasonable opportunity to the assessee.

6. The next ground of appeal is with regard to additional depreciation under Section 32(1)(iia) of the Act.

7. Shri R. Durai Pandian, the Ld. Departmental Representative, submitted that there is no provision in the Income-tax Act to carry forward the depreciation for the purpose of allowing the same in the previous year. Since the assessee has used machinery for less than 180 days, the Assessing Officer allowed the depreciation at the

rate of 50%. Now the assessee claims remaining 50% to be carried forward and allowed during the year under consideration. In the absence of any specific provision to carry forward additional depreciation, according to the Ld. D.R., the same cannot be allowed during the year under consideration.

8. On the contrary, Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that it is not in dispute that the assessee purchased a new machinery and the same was put to use for less than 180 days. The assessee is entitled for additional depreciation at the rate of 20%. Since the machinery was used for less than 180 days, the Assessing Officer allowed additional depreciation at the rate of 10%. The assessee now claims the balance during the year under consideration. According to the Ld. counsel, the Assessing Officer disallowed the claim of the assessee. However, the CIT(Appeals) by placing reliance on the order of Delhi Bench of this Tribunal in Devi Polymers Limited and judgment of Karnataka High Court in CIT v. Rittal India Pvt. Ltd. (2016) 380 ITR 423, allowed the claim of the assessee.

9. We have considered the rival submissions on either side and perused the relevant material available on record. The CIT(Appeals) by placing reliance on the judgment of Karnataka High

Court in Rittal India Pvt. Ltd. (supra) allowed the claim of the assessee with regard to additional depreciation. Since the Karnataka High Court after examining the provisions of Section 32(1)(iia) of the Act, found that the additional depreciation can be allowed in the subsequent year, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly followed the judgment of High Court in Rittal India Pvt. Ltd. (supra). This Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

10. In the result, the appeal filed by the Revenue is partly allowed for statistical purposes.

Order pronounced on 31st January, 2017 at Chennai.

sd/-

(डि.एस. सुन्दर सिंह)

(D.S. Sunder Singh)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 31st January, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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