

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' 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. No.1388/Mds/2015

निर्धारण वर्ष /Assessment year : 2010-11

M/s. Chettinad Logistics (P)Ltd,
5th floor, Rani Seetha Hall,
603, Anna Salai,
Chennai 600 006.

Vs. The Assistant Commissioner of
Income Tax,
Company Circle I(3),
Chennai.

आयकर अपील सं./I.T.A. No.1647/Mds/2015

निर्धारण वर्ष /Assessment year : 2010-11

The Deputy Commissioner of
Income Tax,
Corporate Circle I(2),
Chennai 600 034

vs

M/s. Chettinad Logistics (P)Ltd,
5th floor, Rani Seetha Hall
Anna Salai
Chennai 600 006.

(PAN No.AABCC4551C)

अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Assessee by : Shri. S. Sridhar, Advocate.
Department by : Mrs. Vijayalakshmi, IRS, CIT.

सुनवाई की तारीख/Date of Hearing : 10-03-2016

घोषणा की तारीख /Date of Pronouncement : 07-06-2016

आदेश / ORDER**PER G. PAVAN KUMAR, JUDICIAL MEMBER:**

These cross-appeals filed by the Revenue and assessee respectively, is directed against order of the Commissioner of Income-tax (Appeals)-1, Chennai in ITA No.283/13-14/A.1, dt 27.03.2015 for the assessment year 2010-2011 passed u/s.143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. First we take up assessee appeal in ITA No.1388/Mds/2015 of assessment year 2010-2011 for adjudication:-. The assessee has raised two substantive grounds that Commissioner of Income Tax (Appeals) erred in confirming the findings of the Id. Assessing Officer in rejecting sale of transfer of windmill division without appreciating provisions of Sec. 2(42C) r.ws. 2(19AA) of the Act which were wrongly interpreted and further Commissioner of Income Tax (Appeals) has confirmed the computation of long term capital gains on land and short term capital gains on transfer of wind mill without appreciating the facts and law.

3. The Brief facts of the case that the assessee is engaged in the business of clearing, forwarding, manufacturing, trading and ship mangement services and filed return of income on 15.10.2010 with total income of ₹18,68,93,580/-. Subsequently filed revised return on

28.02.2011 with total income of ₹27,44,14,678/- and the case was selected for scrutiny under CASS and notice u/s.143(2) and 142(1) of the Act dated 25.08.2011 was issued. In compliance to notices, the Id. Authorised Representative appeared from time to time and submitted details. The Id. Assessing Officer in the assessment proceedings found that the assessee has offered long term capital gains on sale of asset ₹10,49,12,310/- being difference in value of sale consideration ₹12,96,00,000/- and net worth of assets transferred ₹2,46,87,690/-. The Id. Authorised Representative submitted that as per Memorandum of Understanding (MOU) with Clarion Wind Farm Pvt. Ltd the sale of "project assets", being land and windmill for a lumpsum amount of ₹12,96,00,000/- and for the purpose of calculating net worth, the assessee also considered liabilities and supported with the MOU dated 11.12.2009 for claim of slump sale u/s.50B of the Act. The Id. Authorised Representative relied on the computation of net worth as per form 3CEA. The Id. Assessing Officer perused the MOU with Clarion Wind Farm Pvt. Ltd and verified the clauses referred at page 3 of his order and came to a conclusion that assets of the assessee are only "project assets" with 24 nos. of wind energy generators and land measuring 97.58 acres and the MOU does not specify any information of any other asset. The assessee has calculated net worth based on value movable assets which the Id.

Assessing Officer has disputed and sent letter dated 14.03.2013 and in compliance the reply was filed on the query of the fixed deposit, bank balances and other and assessee has referred to provisions of Sec. 2(42C) of the Act as under:-

"As per section 2(42C) slump sale means the transfer of one or more undertaking as a result of sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sale".

and also explanation 1 to clause (19AA) states that "undertaking shall include any part of the undertaking or a unit or division of undertaking or a business activity as a whole". We have transferred our main business activity assets viz land and windmill for a lumpsum consideration without assigning any values to individual assets. Hence, this transaction is slump sale as per Section 2(42C) .The Id. Authorised Representative explained the mode of computation of net worth as per the provisions of sec. 50B of the Act. Considering the assessee's calculation statements and MOU, the Id. Assessing Officer is of the opinion that the assessee has only sold "project assets" being 24 Nos. of windmills and land and the slump sale is nothing but transfer of whole or part of business concern as a going concern as lock, stock and barrel. As per the provisions of Income Tax Act,

further the transfer shall be the entire undertaking including the assets and liabilities of such undertaking without assigning any value to the individual assets and sold for a lump sum consideration. The Id. Assessing Officer examined the Audit report Form 3CEA and understood that the net worth of undertaking shall be the value of asset transferred by way of slump at written down value or book value. But, the assessee has sold the project assets being only land and windmill and not entire undertaking and wrongly calculated computation of the net worth based on MOU with M/s. Clarion Wind Farm P. Ltd and the sale was registered in favour of others. The Id. Assessing Officer with these findings and observations has calculated separately long term capital gains on sale of land ₹11,94,569/- and short term capital gains ₹11,77,17,195/- on transfer of wind mills considering the written down value of wind mills and assessed income and passed order u/s.143(3) of the Act dated 27.03.2013. 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 and explained the facts and the provisions of slump sale. The Id. Commissioner of Income Tax (Appeals) considered the submissions, grounds and the findings of the Id. Assessing Officer and dealt on the provisions of Sec.50B of the Act

and the methodology of calculation of long term gain gains on land ₹11,94,569/- and short term capital gains on windmills ₹11,77,17,195/- referred at page 4 of his order and relied on the definition of provisions of Sec.50B and Sec.2(42C) of the Act on slump sale at page 5 of his order as under:-

“Sec. 2(42C) “Slump sale” means the transfer of one or more undertakings as a result of the sale for a lump sum consideration, without values being assigned to the individual assets and liabilities in such sales.

Explanations:

- 1. For the purposes of this clause, “undertaking” shall have the meaning assigned to it in Explanation 1 to clause (19AA).***
- 2. For the removal of doubts, it is hereby declared that the determination of the value of an asset or liability for the sole purpose of payment of stamp duty, registration fees or other similar taxes or fees shall not be regarded as assignment of values to individual assets or liabilities.***

The definition of ‘undertaking’ as per Explanation 1 to clause 19AA is as under:-

Explanations: 1. For the purposes of this clause, “undertaking” shall include any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity”.

As seen from the above provisions, the slump sale would mean the transfer of entire undertaking or division but not

individual assets/liabilities. Assessing Officer is right in holding that the appellant has transferred only the windmill and the land appurtenant thereto but not the entire assets and liabilities of the undertaking or division, therefore, the appellant is not entitled to claim slump sale benefit u/s.50B. I fully agree with the view taken by the Assessing Officer and the reworking of the capital gains of land and windmill for the purpose of taxation. The ground is dismissed”.

and upheld the order of the Assessing Officer. Aggrieved by the Commissioner of Income Tax (Appeals) order, the assessee filed an appeal before Tribunal.

5. Before us, the Id. Authorised Representative argued the grounds and reiterated the submissions made in the assessment proceedings and appellate proceedings. The only point of dispute is whether slump sale has to be considered for individual assets or undertaking. The Id. Authorised Representative submitted that the Commissioner of Income Tax (Appeals) has confirmed the findings of the Id. Assessing Officer in rejecting the claim of computation of slump sale u/s.50B of the Act whereas the assessee has claimed slump sale as per provisions of sec. 2(42C) r.w.s. 2(19AA) of the Act which the Id. Commissioner of Income Tax (Appeals) has wrongly interpreted. The Id. Assessing Officer calculated long term capital gains and short term capital gains separately which is not in accordance of law. The Id.

Authorised Representative filed paper book to explain the facts and support his submissions. The Windmills are transferred as lot and calculation of net worth based on the asset and liabilities is in accordance with law. The name change in transaction after MOU is supported by the evidence in the paper book. With these submissions, the Id. Authorised Representative prayed for allowing the appeal.

6. Contra, the Id. Departmental Representative relied on the findings of the Commissioner of Income Tax (Appeals) and Assessing Officer and the calculation of net worth by the assessee relying on the movable assets cannot be considered as slump sale, under transaction of slump sale total undertaking should be sold and transferred as lock, stock and barrel but the assessee company has sold individual assets. The Id. Assessing Officer has made elaborate discussions and calculations in assessment order and disallowed the claim and prayed for dismissing the assessee appeal.

7. We heard the rival submissions and perused the material on record. The Id. Authorised Representative contention that as per MOU with M/s. Clarion Wind Farm P. Ltd, the assessee has to sell the wind farm with 24 Nos of WEGs including land measuring 97.58 acres

referred as "projects asset" and also no other liabilities shall be taken over. The Id. Authorised Representative referred to the page 122 of paper book and explained the terms and conditions in respect of transfer of undertaking and the methodology of calculation of net worth as per form 3CEA of the Chartered Accountant's report. The Id. Authorised Representative submitted that net worth of the undertaking is aggregate value of assets and reduced by the liabilities and as per the provisions of Sec. 2(42C) of the Act and Explanation 1 to clause 2 (19AA). The Id. Authorised Representative explained the undertaking shall include any part of undertaking or unit or division of undertaking or a business activity as a whole land and windmills and supported with the letter of Tamil Nadu Electricity Board to M/s. Shriram EPC Ltd for transfer of windmills. The Id. Authorised Representative argued on the transfer of wind mills to M/s. Shriram EPC Ltd as the Business understanding and MOU were M/s. Clarion Wind Far P. Ltd directing the assessee company to raise proforma invoice in the name of M/s. Shriram EPC Ltd as assignee. The Id. AR demonstrated the value and calculation of slump sale which the Assessing Officer has considered in the assessment order and to substantiate the claim referred to the Annual report for the year 2006-07, 2007-08 and 2008-2009. On perusal of the Balance sheet as on 31.03.2009 under fixed asset schedule V, the assessee company has shown the land and

windmills division in the balance sheet and other assets in the fixed asset schedule are excluded from slump sale. Prime face as per the

Memorandum of Association the assessee's main object is as under:-

'1) To Operate and plan movement of goods and vehicles and to enter into contract for carriage of mails, passengers, goods and cargo of any kind by any means and either by its own vehicles or chartered or through railways and other conveyances.

2) To establish, maintain and operate shipping air transport and surface transport services and all ancillary services either as independent undertakings or to purchase, to take on lease charter, hire, construct or otherwise acquire and to work, manage and trade.

3) To undertake technical management and crewing of all types of ships, Tugs and Barges.

4) To undertake and carry on all or any of the trade with Shippers, Ship owners, Ship Surveyors, Managers, Ship Brokers, Shipping Agents and Insurance Brokers, Marine Average adjusters, Arbitrators, Loading Brokers, Freight Contractors and Clearing and Forwarding Agents, Stevedores, collection and delivery of any type of ships and vessels from any part of the world, Salvage, Towage, Storage and other associated technical services as would be necessary and carriers by Land, Air and Water and to carry 'on the said business either as principals or agents or commission or other wise.

**INSERTED BY SPECIAL RESOLUTION PASSED AT THE EXTRAORDINARY GENERAL MEETING OF THE COMPANY HELD ON 30TH DECEMBER, 2013*

5) To operate, plan movement, purchase, sell, import, export, deal and trade in textiles, cotton fabrics yarns, threads for textile use, textiles and textile goods, bed and table covers, lace and embroidery, ribands and braid, buttons press buttons, hooks and eyes, pin and needless, artificial flowers, carpet, rugs, mats and matting, linoleums and other materials for covering existing floors, wall hangings (non textile) ropes, strings, net, tents, awning, tarpaulins, sails, sacks and bags, passing and stuffing coal, limestone, gypsum, silica, unwrought and partly wrought common metals and their alloys, metal building materials, transportable buildings of metal, materials of metal for railway tracks, non electric cables and wires of common metal,

ironmongery, small items of metal hardware, pipes and tubes of metals, safes, goods of common metal and ores, precious metals and their alloys and goods in precious metals or coated therewith (except cutlery, forks and spoons) jewellery, precious stones, horological, chronometric instruments, minerals and all other goods”.

The contention of the Id. DR that it is a sale of individual asset consisting of land and windmills. After sale the assessee company still holds assets and the sale was only restricted to wind mills and land and the only dispute whether slump sale has to be considered for individual assets or undertaking. The Id. Authorised Representative relied on Tribunal decision in respect of software company where the intangible assets as going concern are considered, we are not convinced with the arguments of the Id. AR as the assessee could function on tangible assets and transfer of windmills and land is sufficient to continue operations. The consideration specified in the agreement for transfer of "project assets" has been split into windmills and land but still the company holds assets in the Balance sheet whereas the slump sale is defined under Sec. 2(42C) of the Act being sale for lump sum consideration without assigning any values to the individual assets and liabilities. The assessee's company fixed deposits and current assets still exist in the Balance Sheet and liabilities are not transferred alongwith undertaking but only transfer of project assets. The MOU with M/s. Clarion Wind Farm P. Ltd exclude fixed deposits,

receivables and other current assets and not sale by a lock, stock and barrel but individual assets . Considering the apparent facts, judicial decisions, findings of the Id. Commissioner of Income Tax (Appeals), Annual reports and paper book, we are of the opinion that transaction does not fit in the category of slump sale and it is in the nature of sale of individual asset though projected as "project asset" in the MOU. Therefore, we are not inclined to interfere with the order of Commissioner of Income Tax (Appeals) who has dealt exhaustively on the facts and the provisions and findings of the Assessing Officer and we uphold the same. This ground of the assessee is dismissed.

8. The next ground raised by the assessee on disallowance u/s.14A of the Act. The assessee has made investments in shares and listed group companies and incurred interest expenses of ₹20,20,495/- in the financial year 2009-2010. The assessee has not disallowed any expenses as no dividend was received during the financial year 2009-2010 and whereas for the financial year 2008-2009, dividend income received was ₹8,61,500/-. The assessee company investments as on 31.03.2010 are ₹173,20,05,925/- and these investments includes group companies were the assessee company has substantial equity shares in Durandel Food Pvt. Ltd. In compliance to the letter of the Assessing Officer, the assessee company explained

that company has not received any dividend income and therefore provisions of Sec. 14A of the Act are not applicable. The Id. Assessing Officer considered the submissions and found that the assessee company has claimed substantial administrative and personal expenses in the profit and loss account and also under other heads of expenditure, being bank charges, printing & stationery, travelling expenses, audit fees which are incidental to the administration of the company. The submissions of the assessee that it has not incurred any expenditure does not have rationality as the investments are in listed companies and group companies. Considering the provisions of Sec. 14A r.w.r. 8D. The Id. Assessing Officer made disallowance of ₹82,71,382/-. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals).

9. In the appellate proceedings, the Id. Authorised Representative has argued the grounds and submitted that assessee has not incurred any expenditure and the provisions invoking disallowance u/s.14A r.w.Rule 8D are inapplicable and explained the facts and filed objections as referred by the Commissioner of Income Tax (Appeals) at page 11 of his order with judicial decisions. The Id. Commissioner of Income Tax (Appeals) has exhaustively dealt on the applicability of provisions of Sec. 14A of the Act, Finance Act, Tribunal

and High Court decision from page No. 12 to 16 of his order and distinguished the decisions relied by the assessee and relied on the jurisdictional High Court decision and confirmed the applicability of provisions of Sec. 14A r.w.Rule 8D and partially granted relief to exclude investments in subsidiary companies for calculation of Rule 8D and observed at page 18 of his order as under:-

'It is also to be noted that investment in subsidiaries also will not make much difference when it is the question of interest disallowance so long as there was expenditure involved while earning such exempt income. As was already point out 14A provisions are disallowance provisions and so long as there is an investment in exempt income earning avenues the expenditure need to be disallowed irrespective of whether the investment is in subsidiaries or other concerns and whether there was an intention to earn dividends or not. It is also immaterial whether such dividends were derived during the year or not.

(iv) With regard to applicability of limb (iii) of Rule 80(2) the decision in the case of Escorts Ltd, 102 TT J 522, the ITAT Delhi has clearly held that indirect management and administration expenses qualify for disallowance u/s 14A and there is no decision so far by any similar forum contradicting the above findings. Similar view was also taken by ITAT Chennai in the case of Southern Petrochemical Industries (93 TT J 161) as under:

".Whether to invest or not to invest and whether to retain the investments or to liquidate the same are

very strategic decisions which the management is called upon to take. These are mind-boggling decisions and top management is involved in taking these decisions. This decision-making process is very complicated and requires very careful analysis. Moreover, the assessee had to keep track of various dividend incomes declared by the investee companies and also to keep track of the dividend income having been regularly received by the assessee. That activity itself called for considerable management attention and could not be left to a junior clerk”.

This view has been further supported by the decision of Hon'ble Kerala High Court in the case of Smt. Leena Ramachandran (2011) (339 ITR 293) (Kerala HC).

6.2.4 In view of the above discussion, the Assessing Officer is right in invoking the provisions of s.14A and working of disallowance as per Rule 80. However, as part of the investment made is in the subsidiaries, the Assessing Officer Is directed to eliminate the investment made in such subsidiaries while working out average investment as per Rule 80(2)(ii) and (iii) in view of the decision of the jurisdictional IT AT in the case of EIH Associated Hotels Ltd (supra). The ground is partly allowed”.

and partly allowed the ground. Aggrieved by the order of Commissioner of Income Tax (Appeals) order, the assessee has assailed an appeal before Tribunal.

10. Before us, the Id. Authorised Representative argued the grounds and the assessee company has not received exempted income and lower authorities relied on the provisions of Sec.14A

r.w.Rule 8D which are not applicable to the assessee and reiterated the submissions made in the assessment proceedings and appellate proceedings. The main contention of the Authorised Representative that assessee has not incurred any expenditure and if any disallowance as the provisions should be restricted to exempted income and the Id. Commissioner of Income Tax (Appeals) has erred in confirming the addition and prayed for deleting the addition.

11. Contra, the Id. Departmental Representative relied on the orders of the lower authorities and opposed to the grounds.

12. We heard the rival submissions and perused the material on record. The crux of the issue being applicability of provisions of Sec. 14A r.w.Rule 8D. As per the amendment of Finance Act, 2008 w.e.f. 24.03.2008 and applicable judicial decisions, the disallowance under Sec. 14A of the Act has become mandatory for the Assessing Officer to apply three limbs under Rule 8D. On Perusal of the financial statements, the assessee company has made substantial investments in subsidiary and group companies and claimed expenditure towards personal, administrative overheads in the profit and loss account though indirectly related to the investments as management of the company has taken policy and strategic decisions on investments. The contention of the Id. Authorised Representative as no expenditure

incurred is ruled out as indirectly included in the financial statements and assessee company has not identified direct expenditure. The Id. Assessing Officer considered the applicability and has dealt on the provisions and calculated as per law. The Id. Commissioner of Income Tax (Appeals) has confirmed the applicability of provisions of Sec. 14A r.w.Rule 8D. We perused the order of the Commissioner of Income Tax (Appeals) found that Id. CIT(A) has exhaustively dealt on the provisions of applicability judicial decisions and directed the Assessing Officer to eliminate the investments in subsidiary companies relying on the judicial decisions for calculation of average investments under Rule 8D. The assessee has invested in group companies not to earn exempted income. Considering apparent facts, the investments pattern, judicial decisions and findings of the Id. Commissioner of Income Tax (Appeals) and nature of expenditure claimed as per Audited Financial Statements, we are of the opinion that the matter has to re-examined and direct the Assessing Officer to verify the investments in group subsidiaries on commercial expediency and expenditure attributable to investments and apply the provisions of Sec. 14A r.w. Rule 8D, we remit the issue to the file of Assessing Officer for fresh consideration. This ground of the assessee is allowed for statistical purpose.

13. Now, we adjudicate the Department appeal ITA No.1647/Mds/2015 of assessment year 2010-2011. At the time of hearing, the Id. Departmental Representative has not pressed ground 2.1 to 2.3 and same is treated as dismissed.

14. The next ground raised by the Department is that Commissioner of Income Tax (Appeals) erred in directing to eliminate the investments made in subsidiaries while working out disallowance under Rule 8D(2) of the Act.

15. We have elaborately discussed on the working strategy and applicability of provisions and remitted the issue to the file of Assessing Officer for fresh consideration. Therefore the ground of the Department is allowed for statistical purpose.

16. The last ground raised by the Id. Departmental Representative is that the Id. Commissioner of Income Tax (Appeals) erred in allowing 60% depreciation on UPS as part of block computers instead of 15% allowed by Assessing Officer and UPS falls into the category of office equipment on not computer parts.

17. The assessee has claimed depreciation at the rate of 60% on UPS as the integral part of computer block. But the Id. Assessing Officer

observed that UPS should be included in the block of office equipments and allowed depreciation @15% . Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

18. In the appellate proceedings, the Id. Commissioner of Income Tax (Appeals) allowed the appeal of the assessee by placing reliance on Co-ordinate Bench decision of Tribunal in the case of Sundaram Asset Management Co. Ltd in ITA No.1774/Mds/2012 dated 19.07.2013. Aggrieved by the Commissioner of Income Tax (Appeals) order, the Revenue has assailed an appeal before Tribunal.

19. Before us, Id. Departmental Representative relied on the grounds and argued that UPS cannot be considered as integral part of computer to be included in office equipment and eligible for depreciation @15% only.

20. Contra, the Id. Authorised Representative relied on the orders of Commissioner of Income Tax (Appeals) and opposed to the grounds of the Revenue.

21. We heard the rival submissions, perused the material on record and judicial decision cited. The assessee company considered UPS part of computer block and claimed the depreciation. The fact that

computer alone cannot work without the support of UPS and regulating the voltage stability of the electricity. If there is power fluctuation without UPS, the computer will malfunction and the data will be lost. So, considering the usage and essentiality of the product being integral part of computer, we upheld the order of Commissioner of Income Tax (Appeals) in directing the Assessing Officer to allow depreciation @60% and dismiss the ground of the Revenue.

22. In the result, the appeal of the assessee and Revenue are partly allowed for statistical purpose.

Order pronounced on Tuesday, the 7th day of June, 2016, at Chennai.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 07.06.2016

KV

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

3. आयकर आयुक्त (अपील)/CIT(A)

5. विभागीय प्रतिनिधि/DR

2. प्रत्यर्थी/Respondent

4. आयकर आयुक्त/CIT

6. गार्ड फाईल/GF