

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' 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.368/Mds/2016

निर्धारण वर्ष / Assessment Year : 2010-11

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

v. M/s Best & Crompton Engineering Ltd.,
No.28, SIDCO Industrial Estate,
Ambattur, Chennai - 600 034.

PAN : AAACB 2753 N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Shiva Srinivas, JCIT

प्रत्यर्थी की ओर से/Respondent by : None

सुनवाई की तारीख/Date of Hearing : 28.09.2016

घोषणा की तारीख/Date of Pronouncement : 28.10.2016

आदेश /O R D E R

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

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) -1, Chennai, dated 14.12.2015 and pertains to assessment year 2010-11.

2. No one appeared for the assessee inspite of service of notice by RPAD. The Registry has placed on record the postal

acknowledgement as proof of service of notice on the assessee. Therefore, we heard the Ld. Departmental Representative and proceeded to dispose of the appeal on merit.

3. Shri Shiva Srinivas, the Ld. Departmental Representative, submitted that the first issue arises for consideration is disallowance of employees' contribution. According to the Ld. D.R., the assessee could not pay the employees' contribution within the due date prescribed under the provisions of the relevant Act, however, it was paid within the due date for return of income. The CIT(Appeals) by placing reliance on the judgment of Madras High Court in CIT v. Nexus Computer (P) Ltd. (2009) 313 ITR 414, allowed the claim of the assessee. The Ld. D.R. submitted that he is placing his reliance on the observation made by the Assessing Officer.

4. We have considered the submissions Ld. Departmental Representative and perused the relevant material available on record. The CIT(Appeals), in fact, placed his reliance on the judgment of jurisdictional High Court in Nexus Computer (P) Ltd. (supra). The CIT(Appeals) has also referred to the judgment of Delhi High Court in AIMIL Ltd. (321 ITR 508). In view of the judgment of Madras High Court in Nexus Computer (P) Ltd. (supra),

this Tribunal has no reason to interfere with the order of the lower authority and accordingly, the same is confirmed.

5. The next ground of appeal is with regard to disallowance made by the Assessing Officer under Section 14A of the Act.

6. Shri Shiva Srinivas, the Ld. Departmental Representative, submitted that the Assessing Officer disallowed the expenditure for earning the exempt income by applying the provisions of Rule 8D of the Income-tax Rules, 1962. However, the CIT(Appeals) found that the disallowance has to be confined only to the extent of income earned by the assessee. Referring to the provisions of Rule 8D, the Ld. D.R. submitted that there are three limbs in Rule 8D(2). The Assessing Officer has to compute the expenditure in all the three limbs and the aggregate of all the three limbs has to be taken into consideration. Referring to the assessment order, the Ld. D.R. submitted that the Assessing Officer found that there was no direct expenditure for earning the exempt income. However, the assessee has borrowed funds for the business and the interest paid by the assessee cannot be attributable to any part of income of the assessee. Therefore, according to the Ld. D.R., the interest expenditure, which is not attributable to any part of the income of

the assessee, has to be computed in a method prescribed under limb (ii) of Rule 8D(2). Moreover, under limb (iii) of Rule 8D(2), 0.5% of average investment during the year under consideration, which resulted in income, has to be taken into consideration. Therefore, according to the Ld. D.R., only for the purpose of computing expenditure under third limb of Rule 8D(2), the disallowance has to be restricted to the income which does not form part of total income. In respect of other two limbs, there is no question of restriction towards the income earned by the assessee. Therefore, according to the Ld. D.R., the CIT(Appeals) is not justified in allowing the claim of the assessee.

7. We have considered the submissions of the Ld. Departmental Representative and perused the relevant material available on record. We have also gone through the judgment of Delhi High Court in Cheminvest Ltd. v. CIT (378 ITR 33). The Delhi High Court found that when the assessee has not earned any taxable income in the relevant assessment year in question, the corresponding expenditure could not be worked out for disallowance. Referring to the judgment of Apex Court in CIT v. Rajendra Prasad Moody (1978) 115 ITR 519, the Delhi High Court

found that the judgment of Apex Court cannot be used in the reverse to contend that even if no income has been received, the expenditure incurred can be disallowed under Section 14A of the Act. The Delhi High Court had no occasion to consider the provisions of Rule 8D of the Income-tax Rules, 1962. So long as Rule 8D remains in the statute book, this Tribunal being statutory creation under the Income-tax Act, cannot ignore the provisions of Rule 8D. Section 14A(2) clearly says that the Assessing Officer shall determine the expenditure incurred in accordance with the method prescribed under Rule 8D of the Income-tax Rules, 1962. The Delhi High Court had no occasion to consider the provisions of Section 14A(2) of the Act and Rule 8D of Income-tax Rules, 1962. The CIT(Appeals) without considering the provisions of Rule 8D(2), simply allowed the claim of the assessee by placing reliance on the judgment of Delhi High Court. Therefore, this Tribunal is of the considered opinion that the matter needs to be reconsidered by the CIT(Appeals) by applying the provisions of Rule 8D(2) of the Income-tax Rules, 1962. Accordingly, the order of the CIT(Appeals) is set aside and the issue of disallowance made under Section 14A of the Act is remitted back to the file of the CIT(Appeals). The CIT(Appeals) shall re-examine the matter afresh in the light of Rule

8D and thereafter decide the issue in accordance with law, after giving a reasonable opportunity to the assessee.

8. In the result, the appeal filed by the Revenue is partly allowed.

Order pronounced on 28th October, 2016 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 28th October, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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