

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1541/Mds/2016

निर्धारण वर्ष / Assessment Year : 2011-12

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

(अपीलार्थी/Appellant)

v. M/s Bherudan Dugar Finance Ltd.,
No.73/1A, Jermiah Road,
Vepery, Chennai - 600 007.

PAN : AAACB 3042 Q

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri V. Nanda Kumar, JCIT

प्रत्यर्थी की ओर से/Respondent by : None

सुनवाई की तारीख/Date of Hearing : 16.08.2016

घोषणा की तारीख/Date of Pronouncement : 23.09.2016

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) – 1, Chennai, dated 09.03.2016 and pertains to assessment year 2011-12.

2. No one appeared for the assessee despite service of notice. Therefore, we heard the Ld. Departmental Representative and proceeded to dispose of the appeal on merit.

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

4. Shri V. Nanda Kumar, the Ld. Departmental Representative, submitted that the Assessing Officer computed the disallowance under Section 14A of the Act. The Assessing Officer has taken the direct expenditure as NIL. After taking into consideration the loan borrowed by the assessee and the interest paid, the Assessing Officer found that the expenditure, which was not directly attributable to any particular income, was at ₹21,21,643/-. According to the Ld. D.R., the Assessing Officer has also found that the average value of investment during the relevant financial year, which does not and shall not form part of total income of the assessee as appearing in the balance sheet, was ₹10,11,55,471/-. After taking into consideration of 0.5% of average value of investment, income from which does not or shall not form part of

total income of the assessee, the average of all the three limbs of rule 8D was taken as ₹51,300/-. However, according to the Ld. D.R., the CIT(Appeals) allowed the claim of the assessee on the ground that the assessee has not earned any income.

5. Referring to Rule 8D of Income-tax Rules, 1962, the Ld. D.R. submitted that for the purpose of computing disallowance under Section 14A of the Act, the method as prescribed in three stages, the average of the three has to be taken into consideration. The first limb of Rule 8D is with regard to expenditure incurred by the assessee which does not relate to any particular income. The third limb of Rule 8D is with regard to 0.5% of average of investment made by the assessee yielded exempt income. Therefore, the Assessing Officer has to compute the disallowance under all the three limbs of Rule 8D and he has to take average of the same. Therefore, according to the Ld. D.R., the CIT(Appeals) is not justified in allowing the claim of the assessee.

6. We have heard the Ld. Departmental Representative and perused the material available on record. For the purpose of making disallowance under Section 14A of the Act, Rule 8D was framed prescribing the method for computing the disallowance. For

the purpose of convenience, we are reproducing Rule 8D of Income-tax Rules, 1962 which reads as follows:-

**"METHOD FOR DETERMINING AMOUNT OF EXPENDITURE
IN RELATION TO INCOME NOT INCLUDIBLE IN TOTAL
INCOME**

(1) Where the Assessing Officer having regard to the accounts of the assessee of the previous year, is not satisfied with-

(a) the correctness of the claim of expenditure made by the assessee ; or

(b) the claim made by the assessee that no expenditure has been incurred in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).

(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:-

(i) the amount of expenditure directly relating to income which does not form part of total income ;

(ii) in a case where the assessee has incurred expenditure by way of interest during the previous year is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely :-

$$A \times \frac{B}{C}$$

C

Where A = amount of expenditure by way of interest other than the amount of interest included in clause(i) incurred during the previous year ;

B = the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance-sheet of the assessee, on the first day and the last day of the previous year ;

C = the average of total assets as appearing in the balance-sheet of the assessee, on the first day and the last day of the previous year ;

(iii) an amount equal to one-half per cent. of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance-sheet of the assessee, on the first day and the last day of the previous year.

(3) For the purposes of this rule, the "total assets" shall mean, total assets as appearing in the balance-sheet excluding the increase on account of revaluation of assets but including the decrease on account of revaluation of assets."

7. Rule 8D(2) provides three limbs. The first limb relates to direct expenditure and the second limb which does not relate to any particular income and the third limb relates to 0.5% of the average value of investment, income from which does not form part of total income of the assessee. In the case before us, the CIT(Appeals) deleted the disallowance on the ground that there was no exempt income earned by the assessee. Therefore, at the best, we may say that the disallowance to be computed under third limb of Rule 8D may be NIL. The direct expenditure incurred by the assessee is also NIL. In view of the factual situation that the assessee borrowed

funds for the purpose of business and paid interest and the assessee was maintaining mixed account, it is very difficult to find out the expenditure which is attributable to any particular income. In other words, one cannot say that the entire expenditure incurred by the assessee is only for the purpose of earning income which is not exempt from income-tax. Therefore, this Tribunal is of the considered opinion that the Assessing Officer is bound to apply the provisions of Rule 8D of Income-tax Rules, 1962 for the purpose of computing disallowance. Since the CIT(Appeals) has not considered the provisions of Rule 8D and simply allowed the claim of the assessee on the ground that no income was earned by the assessee, this Tribunal is of the considered opinion that the matter needs to be reconsidered by the Assessing Officer. Accordingly, the orders of the lower authorities are set aside and the entire 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 reconsider the issue afresh in the light of the provisions of Section 14A of the Act read with Rule 8D of Income-tax Rules, 1962 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 allowed for statistical purposes.

Order pronounced on 23rd September, 2016 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A.Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 23rd September, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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