

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI

श्री ए. मोहन अलंकामणी , लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष

BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI. G. PAVAN KUMAR, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.719/Mds/2015
निर्धारण वर्ष /Assessment year : 2010-2011.

M/s. T.T. Krishnamachari & Co, **Vs.** The Assistant Commissioner of
No.6, Cathedral Road, Income Tax,
Gopalapuram, Non Corporate Circle 3,
Chennai 600 086. Chennai.

[PAN AAFT 0395D]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. R. Vijayaraghavan, Advocate
प्रत्यर्थी की ओर से /Respondent by : Shri. Pathlavath Peerya,IRS, CIT.

सुनवाई की तारीख/Date of Hearing : 19-04-2016
घोषणा की तारीख /Date of Pronouncement : 25-05-2016

आदेश / O R D E R

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal filed by the assessee is directed against order of the Commissioner of Income-tax-5, Chennai in C.No.2(6)/NCR - 16/263/CIT-5/2014-2015, dated 18.02.2015 for the assessment year

2010-2011 passed u/s.263 and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The assessee has raised the following grounds:-

'2. The Commissioner of Income Tax erred in assuming jurisdiction u/s.263 and holding that the assessment order is erroneous and prejudicial to the interest of revenue merely because the decision of the Assessing Officer is not inconsonance with the view of the CIT.

2.1 The Commissioner of Income Tax failed to appreciate that the scrutiny assessment was completed u/s.143 (3) after examining the books of account and considering the various details including disallowance u/s 14A filed before the assessing officer.

2.2 The Commissioner of Income Tax ought to have appreciated that if the assessing officer has taken one of the two possible views it cannot be termed as erroneous and prejudicial to the interest of revenue. [Malabar Industrial Co. (vs) CIT 243 ITR 83 (SC)]

3. The Commissioner of Income Tax erred in directing the Assessing officer to disallow the expenditure u/s 14 A by applying Rule 8D(2)(i)/ (ii)/ (iii).

3.1 The Commissioner of Income Tax ought to have appreciated that the expression "expenditure incurred" in sec 14A refers to actual expenditure and not to some imagined expenditure, in relation to or in connection with or pertaining to exempt income for attracting Section 14A, there has to be a proximate cause for disallowance, which is its relationship with the tax exempt income.

3.2 The Commissioner of Income tax ought to have appreciated that the appellant himself in its statement of income has disallowed Rs.82,793/- u/s 14A which the AO has accepted while completing the assessment u/s 143(3).

3.3 Appellant submits that Sec 14A can be invoked only if the assessing officer is not satisfied with the correctness of the claim of the appellant in respect of the expenditure in relation to such income which does not form part of the total income. The appellant relies on DC/T Vs. Jindal Photo Ltd. (ITA No,4539/Del /2010 dated 22nd Dec. 2010, ITAT Delhi), where the Delhi Tribunal held that for S.14A disallowance, even under Rule 8D, the onus is on the AO to show nexus between expenditure and tax-free income.

3.4 The Commissioner of Income Tax ought to have appreciated that a sum of Rs.1 ,00,00,000/- was transferred from the capital account of the erstwhile partners, T.T.Narasimhan was shown as payable to his members of the family viz., daughter in law Smt Shanthi Ranganathan. Because, Smt Shanthi Ranganathan had left the amount to be retained with the firm interest at 10% (Rs.10,00,000/-) was paid every year. Therefore this interest is not payable to any amount borrowed by the company for its business purposes.

3.5 The Appellant company has no borrowing which has been utilized in all its business activity, it has paid interest of Rs.15,86,439 for the year ended 31.03.2007 and Rs.15,36,689/- for the year ended 31.03.2008. As explained in the letter of the firm dated 11.08.2010, the entire amount of interest was paid on amount outstanding to the relative of the partners and the interest paid on rent deposits.

3.6 The Commissioner of Income Tax ought to have appreciated that the firm received the total dividend of Rs.23,78,36,714/- for the year ended 31.03.2007 and ₹3,20, 14,629/-- for the year ended 31.03.2008. Out of this amount the amount of dividend received from associate / promoted concern amounting to Rs.23,78,36,314/- as on 31.03.2007 and 3,10,01,552/-- as on 31.03.2008.

3.7 The Commissioner of Income Tax ought to have appreciated that all investments are not become the subject matter of consideration when computing disallowance u/s 14A r.w.r 8D(2)(iii). the disallowance u/s 14A r.w.r 8D is to be in relation to the income which does not form part of the total income and this can be done only by taking into consideration the investment which has given rise to this income which does not form part of the total income. REI Agro Ltd V. OCIT - 144 ITO 141 (Kol).

3.8 The Commissioner of Income Tax ought to have appreciated that the appellant has made most of the investments in its group companies. the Chennai Tribunal in the case of EIH Associated Hotels Ltd Vs. CIT reported in 2013-TIOL-796-ITAT-MAD, AY-2008-09, by order dated 17.07.2013 has held the investment made by the assessee in its subsidiary are not to be reckoned for disallowance u/s 14A r.w.r. 8D”.

and also dealt on the issue of order passed u/s.263 as erroneous and provisions of disallowance of expenditure u/s.14A r.w.r 8D(2) and three limbs with judicial decisions.

3. The Brief facts of the case the assessee is a partnership firm, the main activity being manufacturing representative, dealer, importer, exporter, warehouse operator, clearing and forwarding and also promoters of TTK Group companies and filed return of income on 08.09.2010 declaring total income of ₹17,51,86,710/- and the case was selected for scrutiny under CASS and notices u/s.143(2) and 142(1) of the Act was issued. In compliance to notice, the Id. Authorised Representative of assessee appeared from time to time and submitted details. The Id. Assessing Officer completed assessment based on the details and records submitted by the assessee vide order u/s.143(3) of the Act dt 21.02.2013. The Id. Commissioner of Income Tax under provisions of Sec. 263 of the Act issued show cause notice dt 9.12.2014 explaining the reasons were the Assessing Officer has accepted returned income irrespective of fact that assessee company suo-motu disallowed u/Section 14A ₹82,793/- and in the financial year 2009-2010, the assessee company received dividend income from the group companies ₹19,81,81,295/- and income from portfolio investment ₹11,47,819/- and same was claimed as exempt from tax. In compliance to the show cause notice, the assessee filed detailed explanation dated 19.12.2014. In the revisionary proceedings, the assessee also filed written submissions on each point of dispute alongwith Audited profit and loss account and balance sheet for the year ending 31st

March, 2010 and judicial decisions. The Commissioner of Income Tax on examination of financial statements, explanations on expenditure and investments observed at para nos. 7 to 10 of the order and directed the Assessing Officer to work out disallowance by application of provisions under Rule 8D(2)(ii) vide revision order dated 18.02.2015. Aggrieved by the order, the assessee assailed an appeal before Tribunal.

4. Before us, the Id. Authorised Representative of assessee reiterated the submissions made in assessment proceedings and before Commissioner of Income Tax in revisionary proceedings supported with financial statements. The Id. Authorised Representative argued on the powers and satisfaction note of the Assessing Officer but the Assessing Officer examined books of accounts and various details including disallowance u/s.14A of the Act. Based on the facts and financial statements, the assessee firm is headed as group firm which derives income from various sources and claims expenditure in relation to earning income. The Id. Commissioner of Income Tax has erred in passing the revision order and treating the assessment as erroneous and prejudicial to the interest of the Revenue and directed the Assessing Officer to make disallowance under provisions of Rule 8D which is against the law as the assessee firm has not incurred any expenditure and disallowed ₹.82,793/-

being 10% of salary of two persons of the office establishment and the Id. Assessing Officer considered in the assessment proceedings. The assessee firm has invested mostly in group companies on commercial expediency and prayed for allowing the appeal.

5. Contra, the Id. Departmental Representative relied on the order of the Commissioner of Income Tax passed in revision proceedings.

6. We heard rival submissions, perused the material on record and judicial decisions. The Id. Authorised Representative arguments has two facets one challenging jurisdiction u/s.263 of the Act were the Id. Commissioner of Income Tax considered the order passed u/s.143(3) of the Act by the Assessing Officer is erroneous and prejudicial to the interest of Revenue irrespective of Assessing Officer verifying the books of accounts and considered the details of disallowances and other issues and applicability of provisions of Sec. 14A r.w.Rule 8D. On the first issue, we on perusal of assessment order found that Assessing Officer has not mentioned any specific findings on disallowance u/s.14A of the Act. The Assessing Officer has accepted the returned income and there are no findings recorded, on merit disputed issue of applicability of provisions of Sec. 14A of the Act. The provisions of Sec. 14A r.w.Rule 8D have been

amended and Rule 8D provisions are implemented from 24.03.2008 which is applicable from assessment year 2008-09 onwards and mandatorily considered for disallowance u/s.14A r.w.r 8D as deeming provisions and supported by the decision of *Godrej & Boyce Mfg. Co. Ltd vs. DCIT 194 Taxmann 203*. The disputed assessment year being 2010-2011, prime facie the assessee had made adhoc disallowance based on salary of two employees and not as per the amended provisions. The disallowance u/s.14A are calculated as per Rule 8D(i)(ii)(iii) of the Act as they are applicable to the current assessment year. The assessee has raised grounds with reasons for not including the investments of group companies and dividend income in computation of disallowance under Rule 8D. The Assessing Officer has not calculated disallowance under Rule 8D applicable for the assessment year 2010-2011. Considering the apparent facts and the observations of Commissioner of Income Tax and the provisions of law and applicability of Rule 8D, the Id. Commissioner of Income Tax has examined the factual aspects and prime facie evidence available on record viz-a-viz explanation made by the assessee and set aside the order of Assessing Officer u/Sec. 143(3) dated 21.02.2013 with directions to workout disallowance u/sec. 14A r.w.r.8D. We do not see

any reason to interfere with order of CIT and we uphold the same and dismiss the grounds of the assessee.

7. In the result, the appeal of the assessee is dismissed.

Order pronounced on Wednesday, the 25th day of May, 2016 at Chennai.

Sd/-

(ए. मोहन अलंकामणी)

(A. MOHAN ALANKAMONY)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(जी. पवन कुमार)

(G. PAVAN KUMAR)

न्यायिक सदस्य /JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:25th May, 2016.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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