

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री चंद्र पूजारी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1248/Mds/2016

निर्धारण वर्ष / Assessment Year : 2010-11

Shri Machina Ranjan Rao,
39/17, Mylai Ranganthan Street,
Chennai - 600 017.

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

PAN : AEEPR 3513 B
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Venugopalan, CA

प्रत्यर्थी की ओर से/Respondent by : Shri A.V. Sreekanth, JCIT

सुनवाई की तारीख/Date of Hearing : 19.07.2016

घोषणा की तारीख/Date of Pronouncement : 01.09.2016

आदेश /ORDER

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

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) – 2, Chennai, dated 03.02.2016 and pertains to assessment year 2010-11.

2. Shri S. Venugopalan, the Ld. representative for the assessee, submitted that the only issue arises for consideration is

with regard to disallowance of ₹6,76,638/- under Section 14A of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. representative, the assessee invested in mutual funds and shares. The investment is only to create wealth. It is not the intention of the assessee to engage in the business of purchase and sale of mutual funds. According to the Ld. representative, the assessee has not borrowed any funds for the purpose of making investment. In fact, the assessee has invested his own funds in shares and mutual funds. The Ld. representative further submitted that the assessee has also not incurred any expenditure for earning the dividend income. According to the Ld. representative, when the assessee has not claimed any expenditure, the Assessing Officer cannot make any disallowance under Rule 8D of Income-tax Rules, 1962. Referring to Rule 8D, the Ld. representative submitted that the Assessing Officer can disallow the expenditure if at all any expenditure was claimed by the assessee. In this case, no expenditure was claimed by the assessee, therefore, according to the Ld. representative, the Assessing Officer is not justified in disallowing the expenditure. On a query from the Bench – whether Rule 8D(2)(iii) would be applicable to the assessee, the Ld.

representative clarified that since the assessee has not claimed any expenditure, even Rule 8D(2)(iii) is not applicable at all.

3. On the contrary, Shri A.V. Sreekanth, the Ld. Departmental Representative, submitted that Section 14A of the Act clearly says that the Assessing Officer can very well determine the expenditure incurred for earning the income, which does not form part of total income, with regard to correctness of the claim of the assessee in respect of such expenditure. Referring to Rule 8D, the Ld. D.R. submitted that the Assessing Officer can very well make disallowance in case he is not satisfied on the claim of the assessee that no expenditure was incurred. Therefore, merely because the assessee claims that no expenditure was incurred for earning the exempt income that cannot be a reason to delete the addition made by the Assessing Officer. Referring to the order of the Assessing Officer, the Ld. D.R. submitted that the CIT(Appeals), by placing reliance on the decision of Special Bench in ITO v. Daga Capital Management P. Ltd. (2009) (117 ITD 169), confirmed the disallowance made by the Assessing Officer. The Ld. D.R. further submitted that Section 14A of the Act is applicable irrespective of the fact whether the assessee trades in shares or investment for creation of wealth.

4. We have considered the rival submissions on either side and perused the relevant material available on record. From the assessment order, it appears that the assessee has invested during the year under consideration to the extent of ₹14,20,65,387/- in shares and mutual funds. The assessee has also received dividend income of ₹10,53,568/-, which was admittedly exempted from taxation. The assessee claims before this Tribunal that no money was borrowed either for making investment or otherwise and no expenditure was incurred for earning exempt income. The Assessing Officer, having not been satisfied with the claim of the assessee, disallowed a sum of ₹6,76,638/-.

5. We have carefully gone through the provisions of Section 14A of the Act and Rule 8D of Income-tax Rules, 1962, which clearly say that when the Assessing Officer is not satisfied with the claim of the assessee that no expenditure was incurred, he can always make disallowance by applying provisions of Rule 8D. In the case before us, the assessee admittedly earned dividend income of ₹10,53,568/-. In other words, the investment made by the assessee resulted income to the extent of ₹10,53,568/-, which was admittedly exempted from taxation. Even though the assessee has

not borrowed funds and used his own funds for making the investment, the Assessing Officer is expected to compute the expenditure in relation to income which does not form part of total income as per the provisions of Rule 8D. Rule 8D(2)(iii) reads as follows:-

“8D (1)

 (2)
 (i)
 (ii)
 (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.”

6. Whenever there was no direct expenditure in relation to income, which does not form part of total income or the expenditure incurred by the assessee was not directly attributed to any particular income or receipt, the disallowance has to be computed under clause (ii) and (iii) of Rule 8D(2) of Income-tax Rules, 1962. In case the assessee has not incurred any expenditure, which was not directly attributable to any particular income, then what remains is clause (iii) of Rule 8D(2). Under Rule 8D(2)(iii), an amount equal to 0.5% 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 as on first day and the last day of the previous year, has to be computed. In the case before us, copies of the balance sheet or Profit & Loss account are not filed by the assessee. During the course of hearing, the Ld. representative for the assessee clarified that the assessee has not prepared any Profit & Loss account and balance sheet. Therefore, it has to be necessarily examined the actual investment made by the assessee between the first day and last day of the previous year of the financial year, which is relevant to assessment year under consideration.

7. Though the Assessing Officer disallowed ₹6,76,638/- under Section 14A of the Act, the exact working of the same is not available on record. It is not known how the Assessing Officer worked out the aggregate amount as provided in Rule 8D of the Income-tax Rules, 1962. Therefore, this Tribunal is of the considered opinion that the matter needs to be reconsidered by the Assessing Officer. The Assessing Officer shall re-examine the provisions of Rule 8D in the light of the submission made by the assessee that no expenditure was claimed for earning the exempt income and no borrowed funds were used for making the

investment and thereafter decide the issue afresh in accordance with law after giving a reasonable opportunity to the assessee.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 1st September, 2016 at Chennai.

sd/-

(चंद्र पूजारी)

(Chandra Poojari)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 1st September, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-2, Chennai-34
4. Principal CIT-1, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.