IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.09.2016

Coram:

The Hon'ble Mr.Justice NOOTY. RAMAMOHANA RAO
AND
The Hon'ble DR. Justice P.DEVADASS

TAX CASE APPEAL No.416 of 2007

Commissioner of Income Tax
Chennai. .. Appellant

Versus

TAC Investments Finance
(Madras) Ltd.,
East Coast Centre,
534, Anna Salai,
Teynampet, Chennai-18. .. Respondent

Appeal under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench dated 28.09.2006 in ITA No.1044/Mds/2006.

For Appellant .. Mr.M.Swaminathan,
Standing Counsel

For Respondent .. Mr.R.Venkat Narayanan for
M/s. Subbaraya Iiyar.

JUDGMENT

(Judgment of this Court was delivered by
NOOTY. RAMAMOHANA RAO, J)

This Tax Case Appeal is preferred by the Revenue under Section 260A of the Income Tax Act, aggrieved by the decision of the Income Tax Appellate Tribunal, Chennai 'B' Bench, rendered in ITA No.1044/Mds/2006, dated 28.09.2006.

2. The Substantial Questions of Law which are framed for our consideration are thus:-

> 1) Whether in the facts and in the circumstances of the case, the Tribunal was right in holding that only 2% of the dividend amount should be treated as expenditure for earning the same, and leaving more than 10 times the amount of interest to be treated as expenditure related to earning the interest?
>
> 2) Whether in the facts and circumstances of the case, the Tribunal was right in fixing an arbitrary amount of 2% expenditure as being towards earning exempted income, while the Assessing Officer had apportioned the expenditure in a scientific manner proportionate to the income earned?

3. The Assessing Officer has passed an order of assessment against which the Assessee went in appeal before the Commissioner of

Income Tax (Appeals), who by his order dated 04.01.2006 partly allowed the appeal to the extent of allowing 2% of the exempt income by considering it as a reasonable expenditure necessary for earning the exempted income. For arriving at such a conclusion, the Appellate Authority has relied upon several orders passed by the Income Tax Appellate Tribunal wherein 2% of the exempted income is considered consistently to be a fair and reasonable amount of expenditure the Assessee can indulge in. The Tribunal has reiterated its earlier view on this subject and hence dismissed the appeal preferred by the Revenue.

4. Even before us, it was pointedly brought to our notice that a Division Bench of this Court which dealt with Tax Case Appeal No.2511 of 2006 between the ***EID Parry vs. Assistant Commissioner of Income Tax, Chennai,*** by its judgment dated 30.10.2012, has taken the view that incurring 2% of the exempted expenditure is a fair and reasonable proposition to be accepted. Subsequently, another Division Bench which dealt with Tax Case Appeal Nos.1305 and 1306 of 2007 between ***India Nippon Electricals Limited vs. Deputy Commissioner of Income Tax, Chennai***, has also taken the same view by its Judgment dated 02.02.2015.

5. Sri.M.Swaminathan, learned Standing Counsel for the Income Tax Department strenuously contends that there cannot be any hard and fast rule to universally apply a standardized formula with regard to the expenditure the Assessee would have incurred. The expenditure has got to be shown and demonstrated to have been actually incurred. There could not have been any hypothetical basis on which such expenditure can be assumed to have been incurred.

6. However, since the consistent view of this Court is in favour of accepting 2% of the exempted income as legitimate or reasonable expenditure that the Assessee can indulge, we preserve the contention canvassed by the learned Standing Counsel for a better case, as there is force in the submission that expenditure can not be booked on a hypothetical basis, particularly viewed in the backdrop of amount involved in this case being too marginal, the contention raised by Sri.M.Swaminathan, learned Standing Counsel for the Department can be preserved for a better case. Following the two different judgments rendered earlier by this Court referred to supra by us, we find no merit in this appeal and it is dismissed accordingly. No costs.

(N.R.R.,J) (P.D.S., J)
08.09.2016

Index: Yes/No
Internet:Yes/No
gr.

NOOTY. RAMAMOHANA RAO, J
AND
P.DEVADASS, J

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