

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

TAX CASE APPEAL NOS.785, 787, 788, 790,
793 TO 797, 812 TO 814 & 947 TO 953 OF 2018

& CMP.NOS.19267, 19276, 19282, 19464, 19466,
19611, 19613, 19616, 19929, 19931, 19933, 22532,
22533, 22535, 22538, 22539 & 22540 OF 2018

The Commissioner of Income Tax,
Corporate Circle 1, Madurai ... Appellant in TCA.Nos.785, 787,
788, 790, 793 to 797 & 812 to
814 of 2018

Vs.

M/s.J.K.Fenner (India) Limited
(formerly known as M/s.Fenner
(India) Limited, Madurai-16.Respondent in
TCA.Nos.785, 787,788, 790, 793
to 797 & 812 to 814 of 2018
& Appellant in TCA.Nos.947 to
953 of 2018

The Joint Commissioner of Income Tax/
Assistant Commissioner of Income Tax,
Corporate Range 1, Madurai-16.Respondent in
in TCA.Nos.947 to 953 of 2018

APPEALS under Section 260A of the Income Tax Act, 1961
against the common order dated 12.3.2018 made in ITA
Nos.1272/Chny/2016, 1883/ Chny/2017, 947/Chny/2017, 1059/Chny/
2016, 1061/Chny/2016, 1076/ Chny/2016, 1846/Chny/2017, 1060/
Chny/2016, 1078/Chny/2016, 1063/ Chny/2016, 1077/Chny/2016 and
967/Chny/2017 on the file of the Income Tax Appellate Tribunal
Chennai 'C' Bench for the assessment years 2012-13, 2014-15,
2013-14, 2008-09, 2010-11, 2008-09, 2014-15, 2009-10, 2010-11,
2012-13, 2009-10 and 2013-14 respectively (appeals filed by the
Revenue).

APPEALS under Section 260A of the Income Tax Act, 1961 against the common order dated 12.3.2018 made in ITA Nos.1060/Chny/2016, 1059/ Chny/2016, 1846/Chny/2017, 1063/Chny/2016, 947/Chny/2017, 1062/ Chny/2016 and 1061/Chny/2016 respectively for the assessment years 2009-10, 2008-09, 2014-15, 2012-13, 2013-14, 2011-12 and 2010-11 (appeals filed by the assessee).

against the order of the Commissioner of Income Tax (Appeals)-I, Madurai in I.T.A.Nos.0092/16-17, 0207/16-17, 0052/15-16, 0054/12-13, 0008/13-14, 0054/12-13, 0207/16-17, 0066/12-13, 0008/13-14, 0052/15-16, 0066/12-13 and 0092/16-17 order dated 27.01.2017, 25.05.2017, 25.02.2017, 29.01.2016, 29.01.2016, 29.01.2016, 25.05.2017, 29.01.2016, 29.01.2016, 25.02.2016, 29.01.2016 and 27.01.2017 respectively and against the order of the Deputy Commissioner of Income Tax, Corporate Circle(1), Madurai, Income Tax Officer Ward-II(1), Kolkata and Assistant Commissioner of Income Tax, Corporate Circle(1), Madurai made in PAN.No.AAACJ7230N, order dated 23.03.2015, 31.12.2016, 30.03.2016, 31.12.2010, 07.03.2013, 31.12.2010, 31.12.2016, 30.12.2016, 07.03.2013, 23.03.2005, 30.12.2010 and 30.03.2006 for the Assessment Years 2012-13, 2014-15, 2013-14, 2008-09, 2010-11, 2008-09, 2014-15, 2009-10, 2010-11, 2012-13, 2009-10 and 2013-14 respectively.

against the order of the Commissioner of Income Tax (Appeals)-I, Madurai made in I.T.A.Nos.0066/12-13, 0054/12-13, 0207/16-17, 0052/15-16, 0092/16-17, 0075/14-15, and 0008/13-14, order dated 29.01.2016, 29.01.2016, 25.05.2017, 25.02.2016, 27.01.2017, 29.01.2016, and 29.01.2016 respectively and against the order of the Income Tax Officer Ward-II(1), Kolkata, Assistant Commissioner of Income Tax, Corporate Circle(1), Madurai, Deputy Commissioner of Income Tax Circle-II, Madurai and Joint Commissioner of Income Tax, Range-I, Madurai made in PAN.No.AAACJ7230N order dated 30.12.2011, 31.12.2010, 31.12.2016, 23.03.2015, 30.03.2016, 21.03.2014 & 07.03.2013 for the Assessment Years 2009-10, 2008-09, 2014-15, 2012-13, 2013-4, 2011-12 and 2010-11 respectively.

For Assessee : Mr.V.K.Vijayaraghavan

For Revenue : Mr.M.Swaminathan, SSC
M/s.S.Premalatha

COMMON JUDGMENT
(Judgment was delivered by T.S.SIVAGNANAM,J)

There are 19 appeals in this bunch of cases, twelve of which are filed by the Revenue and seven appeals are filed by the assessee under Section 260A of the Income Tax Act, 1961

(hereinafter called the Act) against the common order dated 12.3.2018 passed by the Income Tax Appellate Tribunal (for short, the Tribunal), 'C' Bench Chennai in ITA.Nos.1059 to 1063/Chny/ 2016 and 947 and 1846/Chny/2017 for the assessment years 2008-09 to 2014-15 as well as ITA.Nos.1076 to 1078 and 1272/Chny/2016 and 967 and 1883/Chny/2017 for the assessment years 2010-11 and 2012-13 to 2014-15.

2. The twelve appeals filed by the Revenue are numbered as TCA.Nos.785, 787, 788, 790, 793 to 797 and 812 to 814 of 2018 by raising the following substantial questions of law :

i. Whether the Income Tax Appellate Tribunal was right in holding that the expenditure relating to setting up of new unit at Sriperumbudur as revenue expenditure when the same is capital expenditure ? (assessment year 2008-09)

ii. Whether the Income Tax Appellate Tribunal is correct in allowing the unabsorbed depreciation of previous year even if it relates to beyond eight assessment years ? (assessment years 2008-09 to 2010-11)

iii. Whether the Income Tax Appellate Tribunal is correct in holding that the disallowance under Section 14A should be restricted to the dividend income earned for the relevant assessment year ? (all assessment years) and

iv. Whether the Income Tax Appellate Tribunal is correct in law in directing the Assessing Officer not to include the disallowance made under Section 14A while calculating the book profit under Section 115J? (all assessment years) "

3. In the seven appeals filed by the assessee, the following substantial questions of law are framed for consideration :

"Common Questions in TCA.Nos.947 to 953 of 2018 :

i. Whether the provisions of Section 14A read with Rule 8D(2)(ii) and (iii) can be invoked in the absence of requirement of a

satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee ?

ii. Whether the Assessing Officer having not disclosed any basis establishing a reasonable nexus between the expenditure disallowed and the dividend income received, the provisions of Section 14A read with Rule 8D could be invoked ?

iii. Whether the Tribunal was right in law in confirming the disallowance under Section 14A read with Rule 8D(2) without appreciating that the assessee had sufficient own funds and investments were made out of own funds and no borrowings were used for making investments ? And

Additional Question in TCA.Nos.948 to 953 of 2018 :

iv. Without prejudice to the above, whether the Tribunal ought to have directed that disallowance under Section 14A should be restricted only to investments from which exempt income were earned during the year ?
"

4. We have heard Mr.M.Swaminathan, learned Senior Standing Counsel for the Revenue and Mr.V.K.Vijayaraghavan, learned counsel appearing on behalf of the assessee.

5. In so far as the first substantial question of law raised by the Revenue is concerned, it pertains to the expenditure incurred by the assessee for establishing their unit at Sriperumbudur and whether the same to be treated as revenue expenditure or capital expenditure and the assessment is for the assessment year 2008-09. We have perused the findings recorded by the Tribunal in paragraph 23 of the common impugned order and we find that the Tribunal rightly followed the judgment of this Court in the case of CIT Vs. Rane (Madras) Limited [reported in (2007) 293 ITR 459] and the decision in the case of CIT Vs. Sakthi Sugars Limited [reported in (2011) 339 ITR 400]. By applying the said decisions, the Tribunal was right in concluding that the expenditure incurred by the assessee has to

be treated as a revenue expenditure. Accordingly, the finding rendered by the Tribunal is confirmed and substantial question of law No.1 raised by the Revenue is answered against the Revenue.

6. The second substantial question of law raised by the Revenue is regarding unabsorbed depreciation for the previous years.

7. The Revenue contends before us that the eight years limitation in respect of carry forward of the depreciation had expired and therefore, the assessee was not permitted to carry forward. This order was reversed by the CIT(A) on an erroneous ground, which was confirmed by the Tribunal without considering the fact that Section 32(2) of the Act is a substantive provision and not a procedural one.

8. It is further contended by the Revenue that the finding rendered by the Tribunal is not acceptable, as, in the case of Peerless General Finance and Investment Company Limited Vs. CIT [reported in (2016) 380 ITR 165], the Hon'ble Supreme Court held that the unabsorbed depreciation can be set off only against business income for a period of eight years only.

9. Per contra, the learned counsel for the assessee contends that the provision pertaining to the relevant assessment year should be taken into consideration and therefore, the decision of the jurisdictional High Court has decided in favour of the assessee after taking note of the decision in the case of Peerless General Finance and Investment Company Limited.

10. Before the Tribunal, the assessee referred to the decisions of the High Court of Gujarat in the case of CIT Vs. Gujarat Themis Biosyn Limited [reported in (2014) 105 DTR 72] and in the case of General Motors India (P) Ltd. Vs. DCIT [reported in (2013) 354 ITR 244].

11. The learned Senior Standing Counsel for the Revenue would contend that the decision could not have been arrived at by the Tribunal without reference to the decision of the Hon'ble Apex Court in the case of Peerless General Finance and Investment Company Limited.

12. We have gone through the order passed by the Tribunal and we find that this issue was dealt with by the Tribunal in paragraph 28. The Tribunal held that the issue is squarely covered by the principles laid down by the High Court of Gujarat in the aforementioned decisions. However, the factual aspect has not been gone into nor there is a discussion as to how the Tribunal was satisfied that the decisions of the Gujarat High

Court would apply to the assessee's case and that the decision of the jurisdictional High Court would not apply and as to why the decision of the Hon'ble Supreme Court in the case of Peerless General Finance and Investment Company Limited cannot be applied to the facts and circumstances of the case. Therefore, we hold that the Tribunal should have assigned reasons however brief it may be and recorded satisfaction as to how the decisions of the Gujarat High Court would be squarely applicable to the case of the assessee.

13. Therefore, we are of the considered view that this issue relating to unabsorbed depreciation has to be reconsidered by the Tribunal after due opportunity to the Revenue and the assessee to enable them to place all the decisions on this point. Accordingly, the finding rendered by the Tribunal with regard to carry forward of the unabsorbed depreciation relating to the assessment year 1997-98 is set aside and the matters are remanded to the Tribunal for a fresh decision on merits and in accordance with law. Accordingly, substantial question of law No.2 raised by the Revenue is left open.

14. Substantial question of law Nos.3 and 4 raised by the Revenue pertain to disallowance under Section 14A of the Act. On this issue, the assessee is also on appeal before us not being satisfied with the relief granted by the Tribunal. The Tribunal, in paragraph 12 of the impugned order, recorded that it was fairly agreed by both sides that the issue was settled by the decision of the High Court of Delhi in the case of M/s.Joint Investments Private Limited Vs. CIT [reported in (2015) 372 ITR 694]. This is seriously disputed by the learned counsel on either side and the Departmental Representative was not authorized to give any such concession nor the Authorized Representative of the assessee.

15. It is the submission of the Revenue before us that the Tribunal erred in directing the Assessing Officer to restrict the disallowance under Section 14A of the Act by applying Rule 8D of the Income Tax Rules, 1962 (for brevity, the Rules) to the extent of exempt income even without considering the fact that the assessee had not discharged the onus cast upon it and in the absence of accounts maintained by the assessee in regard to its investments, the Tribunal was not right in interfering with such order.

16. On the other hand, the assessee is also aggrieved by the finding rendered by the Tribunal and more particularly in paragraph 15 of the order.

17. The learned counsel for the assessee submits that confirmation of the disallowance of expenditure attributable to

earning dividend income on notional basis by invoking the provisions of Section 14A of the Act read with 8D of the Rules without pointing out any specific expenditure incurred to earn dividend income and without rejecting the assessee's contention is incorrect. It is further contended that the expression 'expenditure incurred' in Section 14A of the Act refers to actual expenditure and not some imaginary expenditure, in relation to or in connection with or pertaining to exempt income and that unless the Assessing Officer establishes that specific expenditure has been incurred by the assessee for earning exempt income, there can be no disallowance under Section 14A of the Act.

18. It is also contended by the assessee that under Section 14A(2) of the Act, expenditure can be determined as prescribed under Rule 8D of the Rules only where the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim that the expenditure made by the assessee in relation to income, which does not form part of total income under the Act.

19. It is further contended by the assessee that the assessee already disallowed an expenditure for the relevant assessment years for earning dividend income and hence, no further notional expenditure could be deducted from the said income. He again submits that the Assessing Officer is bound to give cogent reasons in terms of Section 14A(2) of the Act with regard to his satisfaction with the correctness of the claim of the assessee in respect of such expenditure, which does not form part of the total income.

20. The learned counsel for the assessee has placed reliance on the decision of the Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT [reported in (2017) 394 ITR 449] wherein it has been held as follows :

"We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. Sub-Sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the

requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable."

21. The learned counsel for the assessee submits that in terms of Rule 8D(2)(ii) of the Rules, if to be applied, there must be an expenditure by way of interest, which is not directly attributable to any particular income or receipt. Therefore, it is submitted that the interest expenditure incurred for earning taxable income cannot be reckoned for disallowance under Rule 8D(2)(ii) of the Rules. Reliance is placed on the decision of the High Court of Delhi in the case of CIT Vs. Bharti Overseas Private Limited [ITA.No. 802/2015 dated 17.12.2015].

22. The learned counsel for the assessee has placed reliance on the High Court of Bombay in the case of CIT Vs. HDFC Bank Ltd. [89 CCH 185] wherein it has been held that where the assessee's capital, profit reserves, surplus and current account deposits were higher than the investments in tax free securities, it would have to be presumed that the investments made by the assessee would be out of the interest free funds available with the assessee and no disallowance was warranted under Section 14A of the Act.

23. Reliance is also placed by the assessee on the decision of the Gujarat High Court in the case of CIT Vs. Gujarat State Fertilizers & Chemicals Ltd [reported in 85 CCH 273] to support his argument that if the assessee has sufficient funds available with it, no adhoc disallowance of dividend income under Section 14A of the Act could be made. Further, according to the assessee, while computing disallowance under Section 14A of the Act, only those investments made in the current assessment year that yielded dividend income should be taken.

24. With these submissions, the learned counsel for the assessee contends that specific questions of law were raised before the Tribunal. However, the Tribunal has not considered the same, but disposed of the matter by following the decision of the Delhi High Court in the case of M/s. Joint Investments Private Limited.

25. In our considered view, the disallowance under Section 14A of the Act has been a point of dispute in several cases. Therefore, we opine that the Tribunal shall reconsider the said issue factually taking note of the precedents relied upon by both the Revenue as well as the assessee and take a reasoned decision so that they could be applied in future cases as well. Considering the above, we are of the view that substantial question of law Nos.3 and 4 raised by the Revenue i.e. the issue pertaining to disallowance under Section 14A of the Act for all the assessment years requires to be redone.

26. For all the above reasons, the appeals filed by both the Revenue as well as the assessee are allowed and the matters are remanded to the Tribunal to take a fresh decision on the said issue after sufficient opportunity to both the Revenue as well as the assessee and also after considering the decisions, which may be cited before the Tribunal both by the Revenue as well as the assessee. Accordingly, the substantial questions of law raised by the Revenue and the assessee on this issue are left open.

27. In the result, the appeals filed by the Revenue are partly allowed and the appeals filed by the assessee are allowed for the reasons set out in the preceding paragraphs. No costs. Consequently, the connected CMPs are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Rs

To

- 1.The Income Tax Appellate Tribunal,
Chennai 'C' Bench.
- 2.The Joint Commissioner of Income Tax/
Assistant Commissioner of Income
Tax, Corporate Range 1, Madurai-16.
- 3.The Commissioner of Income Tax (Appeals)-1,
Madurai

- 4.The Deputy Commissioner of Income Tax,
Corporate Circle(1), Madurai.
- 5.The Assistant Commissioner of Income Tax,
Corporate Circle(1), Madurai.
- 6.The Joint Commissioner of Income Tax,
Range -I, No.2, V.P.Rathinasamy Nadar Road,
Bitikulam,Madurai-02
- 7.The Deputy Commissioner of Income Tax,
Circle I, Madurai.
- 8.The Income Tax Officer,
Ward - II (1), Kolkata.

+2cc to M/s.Subbaraya Aiyar Padmanaban,
Advocate, S.R.No.86116, 86117
+1cc to Mr.M.Swaminathan, Advocate, S.R.No.85375

TCA.No.785 of 2018 etc.cases

CP(CO)
CS/31/01/2019



WEB COPY