IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2020

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

T.C.A.No.299 of 2019

The Commissioner of Income Tax,
Chennai. .. Appellant

Versus

M/s.PVP Ventures Ltd,
KRM Centre, 9th Floor,
No.2, Harirngton Road, Chepet,
Chennai 600 031
PAN AAACS310IP .. Respondent

Prayer:- Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, ''B'' Bench, Chennai dated 19.09.2018 in I.T.A.No.593/Chny/2018 preferred against the order of the Commissioner of Income Tax(Appeals)-3, chennai-34, dated 30.11.2017 made in ITA.No.269/16-17/A3, against the order of the Deputy Commissioner of Income Tax Corporate Circle 5(2), Chennai 34 dated 14.12.2016, made in PAN.No.AAACS3101P

For Appellant : Ms.R.Hemalatha
Senior Standing counsel

For Respondent: Mr.R.Sivaraman

JUDGMENT

[Order of the Court was made by T.S.SIVAGNANAM, J.]

This appeal, filed by the Revenue, under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) is directed against the order dated 19.09.2018 passed by the Income Tax Appellate Tribunal Bench 'B', Chennai ('the Tribunal' for brevity), in I.T.A.No.593/Chny/20185 for the assessment year 2014-15. The appeal was admitted on 04.06.2019 with the following Substantial Question of Law:

''Whether on the facts and in the circumstances of the case, the Tribunal was right in restricting the amount of disallowance made under Section 14A read with Rule 8D to the extent o exempt income earned during the assessment year especially when the Statute does not provide for any such restriction and the assessing officer is bound to apply the provision of section 14A read with Rule 8D?''

2. We have elaborately heard Ms.R.Hemalatha, learned Senior Standing counsel for the appellant / Revenue and Mr.R.Sivaraman, learned counsel for the respondent / assessee. The Tribunal considered the correctness of the order passed by the Commissioner of Income Tax (Appeals)-3, Chennai, dated 13.11.2017 by which the CIT (A) partly allowed the assessee's appeal and restricted the disallowance to the extent of exempt income by taking note of the earlier decision of the Chennai Bench of the Tribunal in Royala Corporation Limited in ITA.No.908/MDS/2015 and the Revenue challenging the said order before the Tribunal, which confirmed the order passed by the CIT (A), the correctness of which has been questioned in this appeal and therefore the substantial question of law to be decided in this appeal.

3. We did not go much into the issue as the same has been considered by the Division Bench of this Court, for which one of us (Hon'ble Mr.Justice T.S.SIVAGNANAM) is a party in the case of Commissioner of Income Tax, Corporate Circle - III(1), Chennai-600 034 VS. M/s.Tidel Park Limited, No.4, Rajiv Gandhi Salai, Taramani, Chennai - 600 013 (T.C.A.No.732 and 733 of 2018) dated 07.07.2020. The Substantial Question of Law framed for consideration in this appeal is identical to the question no.2 framed for consideration in the above decision. The Appeals were dismissed and the Substantial Question of Law was decided against the Revenue with the following reason:

> 4. We take up for consideration the substantial question of law no.2 referred above. The tribunal in paragraph No.8.1, held that the Assessing Officer is not justified in making excessive disallowance and that the CIT(A) rightly restricted the disallowance to the extent the dividend income declared by the assessee. In fact the tribunal records that the revenue could not controvert the findings rendered by the High Court of Delhi in the case of Joint Investments Private Limited Vs. CIT, reported in (2015) 372 ITR 0694 (Del).
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> 5. It is relevant to point out that in the said

decision the Division Bench of the Delhi High Court referred the decision in the case of Commissioner of Income Tax VI Vs. Taikisha Engineering India Limited [ITA No.115/2014 decided on 25.11.2014]

6. Further, the Bombay High Court in the case of Godrej & Boyce Manufacturing Company Limited, Mumbai Vs. Deputy Commissioner of Income Tax, reported in (2010) 328 ITR 0081, has elaborated the procedure to be followed by the Assessing Officer under Section 14A in the following terms.

> "The following principles would emerge from s. 14A : (a) the mandate of s. 14A is to prevent claims for deduction of expenditure in relation to income which does not form part of the total income of the assessee; (b) sec. 14A(1) is enacted to ensure that only expenses incurred in respect of earning taxable income are allowed; (c) the principle of apportionment of expenses is widened by s. 14A to include even the apportionment of expenditure between taxable and non-taxable income of an indivisible business; (d) the basic principle of taxation is to tax net income. This principle applies even for the purposes of s. 14A and expenses towards non-taxable income must be excluded; (e) once a proximate cause for disallowance is established which is the relationship of the expenditure with income which does not form part of the total income—a disallowance has to be effected. All expenditure incurred in relation to income which does not form part of the total income under the provisions of the Act has to be disallowed under s. 14A. Income which does not form part of the total income is broadly adverted to as exempt income as an abbreviated appellation. Under sub-s. (2), the AO is required to determine the amount of expenditure incurred by an assessee in relation to such income which does not form part of the total income under the Act in accordance with such method as may be prescribed. The method, having regard to the meaning of the expression 'prescribed' in s. 2(33), must be prescribed by rules made under the Act. What merits emphasis is that the jurisdiction of the AO to determine the expenditure incurred in relation to such

income which does not form part of the total income, in accordance with the prescribed method, arises if the AO is not satisfied with the correctness of the claim of the assessee in respect of the expenditure which the assessee claims to have incurred in relation to income which does not form part of the total income. Moreover, the satisfaction of the AO has to be arrived at, having regard to the accounts of the assessee. Hence, sub-s. (2) does not ipso facto enable the AO to apply the method prescribed by the rules straightaway without considering whether the claim made by the assessee in respect of the expenditure incurred in relation to income which does not form part of the total income is correct. The AO must, in the first instance, determine whether the claim of the assessee in that regard is correct and the determination must be made having regard to the accounts of the assessee. The satisfaction of the AO must be arrived at on an objective basis. It is only when the AO is not satisfied with the claim of the assessee, that the legislature directs him to follow the method that may be prescribed. Sub-s. (3) of s. 14A provides for the application of sub-s. (2) also to a situation where the assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under the Act.

7. The above legal position has been rightly followed by the tribunal while deciding the assessee's case and therefore, rightly dismissed the appeal filed by the revenue. Thus, we find that the Substantial Question of Law No.2 has to be answered against the revenue and in favour of the assessee.

4. Thus following the above decision, this Appeal filed by the Revenue is dismissed and the Substantial Question of Law is answered against the Revenue. No costs.



Sd/-
Assistant Registrar

/true copy/
Sub Asst. Registrar

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To
The Commissioner of Income Tax
Chennai.

2.The Income Tax Appellate Tribunal
B bench
Chennai

3.The Deputy Commissioner of Income Tax
Corporate Circle 5(2) Chennai-34

+1 cc to Mr.T.Ravikumar Advocate sr28529

T.C.A.No.299 of 2019

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