IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2020

CORAM

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

Tax Case Appeal No.288 of 2019

The Commissioner of Income Tax,
Chennai ...Appellant

Vs

M/s.OPG Energy Pvt. Ltd.,
Chennai-15 ...Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 04.10.2018 passed by the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai made in I.T.A.No.185/Chny/2018 for the assessment year 2014-15.

Appeal filed against the order of the commissioner of Income Tax,(Appeals)-3, Chennai dated 27.10.2017 and made in ITA.No.232/16-17/A3 for the Assessment year 2014-15.

Against the order of the Deputy Commissioner of Income-Tax, Corporate Circle-5(1), Chennai dated 18/11/2016 and made in PAN/GIR No.AAACO4724G for the Assessment year 2014-15.

For Appellant: Mrs.R.Hemalatha, SSC

For Respondent: Mr.A.S.Sriraman

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) challenging the order dated 04.10.2018 made in I.T.A.No.185/Chny/2018 on the file of the Income Tax Appellate Tribunal, Chennai, 'A' Bench ('the Tribunal' for brevity) for the assessment year 2014-15.

2. The appeal has been admitted on 03.6.2019 on the following substantial questions of law:

> "i. Whether, on the facts and in the circumstances of the case, the Tribunal was right in deleting the disallowance made under Section 14A read with Rule 8D on the ground that when there was no earning of exempt income during the assessment year, then the provisions of Section 14A cannot be invoked ? And
>
> ii. Whether the Tribunal was right in law in not considering the fact that even in the amendment to Rule 8D brought in Finance Act, 2016 with regard to the quantum of expenditure that could be disallowed under Rule 8D whereby the same has been limited to the extent of expenditure claimed, there is no bar on invoking Section 14A when there is no earning of exempt income during the relevant previous year ?"

3. We have heard Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the appellant/Revenue and Mr.A.S.Sriraman, learned counsel appearing for the respondent/assessee.

4. The assessee is a resident domestic company, in which, public were not substantially interested. They filed return of income for the assessment year under consideration namely 2014-15 on 28.11.2014. Subsequently, they filed a revised return of income disclosing Rs.2,71,75,580/-. The return was processed under Section 143(1) of the Act and thereafter, the case was selected for scrutiny. A notice under Section 143(2) of the Act was also issued on 31.8.2015. During the course of scrutiny, it was found that the assessee company made investments in various companies amounting to Rs.1,23,59,30,000/- as on 31.3.2014. The assessee was called upon to explain as to why the disallowance under Section 14A of the Act should not be made against the said investments, for which, the assessee replied that the assessee had sufficient funds as reserves under the interest on loans borrowed for regular business and therefore, prayed that the disallowance may not be made.

5. The Assessing Officer reworked the disallowance under Section 14A of the Act amounting to Rs.5,57,26,868/- by applying Rule 8D of the Income Tax Rules. Aggrieved by such order, the assessee filed an appeal before the Commissioner of Income Tax Appeals-3, Chennai [for brevity, the CIT(A)] and it was allowed.

The Revenue challenged the said order before the Tribunal by filing an appeal, which was dismissed by the impugned order.

6. It is not disputed by the Revenue that an identical substantial question of law was considered by this Court in the decision in the case of CIT Vs. Celebrity Fashion Ltd. [reported in (2020) 119 Taxmann.com 426], to which, one of us (TSSJ) was a party, wherein it was held that in terms of Section 14A of the Act, only expenditure, which was proved to be incurred in relation to earning of tax free income, could be disallowed and such provision could not be extended to disallow expenditure, which was assumed to have been incurred for earning tax free income. It was further held that to apply provisions of Section 14A of the Act, Assessing Officer should have recorded a finding as to how Sub-Section (1) of Section 14A of the Act would stand attracted and in absence of any such finding, the disallowance made was not justifiable.

7. The relevant portions in the said decision read as follows :

> "24. We had an occasion to consider a similar question in the case of CIT, Corporate Circle-3, Chennai v. Visual Graphics Computing Services India Pvt. Ltd. [TCA.No.414 of 2018 dated 19-8-2020]. In the said appeal, question of law No.5, which was framed for consideration, was as to whether the Tribunal was right in holding that the provisions of Section 14A of the Act read with Rule 8D of the said Rules will have no applicability if there is no exempt income earned or received during the previous year though the disallowance is linked to expenditure incurred on investment fetching exempt income. The said case was decided in favour of the assessee and against the Revenue and in doing so, we have followed the decision of the Hon'ble Division Bench of this Court in the case of CIT v. Chettinad Logistics Pvt. Ltd. [reported in (2017) 80 Taxmann.com 221]. This decision would come to the aid and assistance of the assessee.
>
> ....
>
> 28. In fact, an identical argument was raised for consideration before the Hon'ble Division Bench of this Court in the case of Chettinad Logistics Pvt. Ltd., and such a

contention was rejected by rendering the following findings :

'13. Mr.Senthil Kumar, seeks to distinguish the judgment in Redington (India) Ltd. case (supra) based on the fact that Rule 8D had not kicked-in by AY 2007-08, which was the AY being considered in the said case.

14. According to us, this was not the argument, put forth, before the Division Bench. As a matter of fact, the Revenue relied heavily on Rule 8D.

14.1 Mr.Ravikumar, who appeared for the Revenue, in that matter and who is present in this Court, informs us that he had in fact argued that the Rule was clarifactory in nature and would apply retrospectively, and that, the Division Bench, therefore, discussed the impact of Rule 8D of the Rules.

15. However, it is, our view, as indicated above, independent of the reasoning given in Redington (India) Ltd. case (supra) that Rule 8D cannot be read in a manner, which takes it beyond the scope and content of the main provision, which is, Section 14 A of the Act.

15.1 Therefore, as adverted to above, Rule 8D, cannot come to the rescue of the Revenue.

15.2 In any event, the Tribunal, via, the impugned judgment has remitted the matter to the Assessing Officer.

15.3 Therefore, for the foregoing reasons, we are of the view, that no interference is called for qua the impugned judgment."

As against the decision of this Court in the case of Chettinad Logistics Pvt. Ltd., the Revenue preferred appeals before the Hon'ble Supreme Court and the special leave petitions were dismissed on the ground of delay as well as merits in the decision reported in (2018) 95 Taxmann.com 250.'

8. In the instant case also, the facts are identically cogent and there is no opinion recorded by the Assessing Officer as to how Sub-Section (1) of Section 14A of the Act would stand

attracted.

9. Thus, by following the said decision, the above tax case appeal is dismissed and the substantial questions of law framed are answered against the Revenue. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

RS

To

1.The Income Tax Appellate Tribunal,
'A' Bench, Chennai.

2.The Commissioner of Income Tax,
Chennai.

3.The Commissioner of Income Tax(Appeals)-3
Chennai.

4.The Deputy Commissioner of Income-Tax,
Corporate Circle-5(1), Chennai.

+1cc to Mr.T.Ravikumar, Advocate SR.37085

TCA.No.288 of 2019

SV(CO)
CB(18/12/2020)