IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2020

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

T.C.A.No.250 of 2020

The Commissioner of Income Tax,
Corporate Circle-3
Chennai. .. Appellant

Versus

M/s.Tamil Nadu Power Finance & Infra
Development Corporation Limited
Tudifco-Powerfin Tower
NO.490/3-4, Anna Salai,
Nandanam, Chennai 600 035
PAN AAACT2840A .. 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, Madras 'D' Bench, Chennai, dated 04.12.2019 made in I.T.A.No.2282/Chny/2019 relating to the Asst Year 2013-14.

For Appellant :Mr.M.Swaminathan senior standing counsel assisted by Ms.V.Pushpa, standing counsel (taxes)

For Respondent : Mr.R.Venkatnarayanan,

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

This appeal by the assessee under Section 260 A of the Income Tax Act, 1961 ('the Act' for brevity) is directed against the order dated 04.12.2019 passed by the Income Tax Appellate Tribunal, Madras, 'A' Bench ('the Tribunal' for brevity), in I.T.A.No.2282/Chny/2019 for the assessment year 2013-14. The appeal has been filed, raising the following substantial questions of law.

1. Whether on the facts and in the circumstance of the case has erred in law by restricting the disallowance made u/s.14A read with Rule 8D to be confined to 3rd limb of Rule 8D alone and deleting the disallowance pertaining to 2nd limb of Rule 8D?

2.Whether on the facts and circumstance of the case and in law the Tribunal has erred in not considering legal aspect that the assessee had debited interest expenses in the books of account and the assessee has been using its own fund and borrowed funds.

2. We have elaborately heard Mr.M.Swaminathan, learned senior standing counsel for the appellant / Revenue assisted by Ms.V.Pushpa, learned standing counsel for the Revenue and Mr.R.Venkatnarayanan, learned counsel for M/s.Subbaraya Aiyar and Padmanabhan, learned counsel for the respondent/assessee.

3. The short issue which falls for consideration is as to whether any perversity in the order passed by the Tribunal as pointed out by Mr.M.Swaminathan, learned senior standing counsel. The assessee is a Government of Tamil Nadu Undertaking filed its Return of Income for the relevant Assessment Year 2013-14 on 23.09.2013 admitting an income of Rs.104,45,91,740/-. The case was selected for scrutiny and notice under Sections 143(2) and 142(1) was issued to the assessee.

4. In this appeal, we are concerned about the disallowance under Section 14 (A) read with Rule 8D of the Income Tax Rules. The Revenue is before us contenting that the Commissioner of Income Tax (Appeals)-11,

Chennai [CIT(A)] followed the assessee's own case for the assessment year 2010-11 in I.T.A.No.1813/mds/2014 and restricted the disallowance under Section 14(A) to Rs.39,70,832/- as against Rs.7.39 Crores. Admittedly, the respondent/assessee did not prefer any appeal as against the order of the CIT(A), restricting the disallowance to Rs.39,70,832/-. The Revenue was on appeal as against that portion of the order of the CIT(A), which did not consider the Revenue's case that is, in respect of their argument to make a disallowance of the entire 7.39 crores.

5. It is the argument of Mr.M.Swaminathan, learned standing counsel that the Tribunal in its cryptic order has not even discussed the issue and dismissed the Revenue's appeal merely on the ground that the assessee has not filed appeal as against confirming disallowance under Section 14(A) at Rs.39,70,832/-.

6. We have heard Mr.R.Venkatnarayanan, learned counsel who have accepted notice on behalf of the respondent, on the above submission of the Revenue.

7. On a cursory reading of paragraph no.6 of the impugned order passed by the Tribunal, one could be on impression that the Tribunal has not dealt with the issue with regard to the disallowance sought for to the tune of Rs.7.00 Crores. However on a closer reading, we find that there are two facets to the discussion made by the Tribunal in paragraph no.6, as of which is that the assessee has not filed an appeal as against the confirmation of disallowance under Section 14(A) at R.39,70,832/-. This is a statement of fact. The second facet of the finding is with regard to the Revenue's contention that CIT(A) erred in restricting the disallowance to only Rs.39,70,832/-. The Tribunal considered the factual position and earlier order passed by the Tribunal in the assesse's own case and held that the Revenue has not been able to point out any error in restricting the disallowance under Section 14(A) to Rs.39,70,832/- being 0.5% of the average value of the investment.

8. Thus, we find that the Tribunal has given a finding as to why it does not find any ground to interfere with the order passed by the CIT(A).

In our considered view, the entire issue involved is fully factual and reasonableness of the expenditure incurred has been computed by the CIT(A) and confirmed by the Tribunal after considering the merits of the matter. Thus, we find no question of law, much less Substantial Questions of Law arises for consideration in this Appeal. In the result, the appeal fails and accordingly dismissed. No costs.

(T.S.S.,J) (P.S.N.,J)
31.08.2020

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Index: Yes / No
Internet: Yes / No
Speaking Order/Non-Speaking Order

To
The Commissioner of Income Tax,
Corporate Circle-3
Chennai.

T.S.SIVAGNANAM, J.
AND
PUSHPA SATHYANARAYANA, J.

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<u>T.C.A.No.250 of 2020</u>

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