IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.8.2020

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

TAX CASE APPEAL NO.289 OF 2018

(heard through video conferencing)

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

Vs

M/s.Thiru Arooran Sugar Ltd.,
Chennai-34. ...Respondent/Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 27.9.2017 made in ITA.No.673/Mds/2017 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench for the assessment year 2012-13, against the order of the commissioner of Income Tax Appeal-13 Chennai-34, made in ITA No.103/CIT/(A)/ -13/2012-13 dated 19.12.2016 against the order of the Assistant Commissioner of Income Tax, Corporate circle-3 (1), Chennai-34 made in GIR/PAN.No.AAACT238213 dated 31.03.2015 for the Assessment Year 2012-13.

For Appellant : Mrs.V.Pushpa, SC

For Respondent : Mr.Vijayaraghavan for
Mr.Subbaraya Aiyer Padmanabhan

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act) is directed against the order dated 27.9.2017 made in ITA.No.673/Mds/2017 on the file of the Income Tax Appellate Tribunal, Chennai 'C' Bench (for brevity, the Tribunal) for the assessment year 2012-13.

2. The appeal has been admitted on 10.6.2019 on the following substantial questions of law :

> "(i) Whether the Tribunal was right in holding that the investment made in sister concerns by the assessee are not liable for disallowance under Section 14A read with Rule 8D when the provisions of the said section does not provide for any such exception? and
>
> (ii) Whether the Tribunal was right and justified in remitting back the issue of disallowance under Section 14A to Assessing Officer by directing him to exclude own funds in the form of reserve and surplus when the assessee was maintaining mixed bag of funds and failed to substance that such investment in assets yielding exempt income are out of interest free fund?"

3. When the matter was listed before us earlier, it was pointed out that the respondent - assessee is under liquidation and an Insolvency Resolution Professional (IRP) has been appointed by the concerned National Company Law Tribunal. We were also informed that one Mr.R.Raghavendar, IRP is representing the respondent company. Therefore, we directed the learned Standing Counsel appearing for the Revenue to take private notice by e-mail to the said Mr.R.Raghavendar, IRP about the pendency of this appeal. After notice was served on the said Insolvency Resolution Professional, he had given instructions to Mr.R.Vijayaraghavan, learned counsel to appear for the respondent - assessee.

4. We have heard Mrs.V.Pushpa, learned Standing Counsel appearing for the Revenue and Mr.R.Vijayaraghavan, learned counsel appearing on behalf of M/s.Subbaraya Aiyer Padmanabhan, learned counsel on record for the respondent - assessee.

5. Though the Revenue has raised several contentions, the substantial portion of the contentions both advanced before us as well as raised in the memorandum of grounds of appeal is with regard to the order of remand passed by the Tribunal, which is a conditional remand and not an open remand. The Revenue is not very averse to the order of remand, but is concerned about the observations made by the Tribunal restricting the power of the Assessing Officer as to what has to be done during de novo consideration.

6. The relevant portion of the impugned order of the Tribunal namely paragraph 11 reads as follows :

> "In view of the above judgments, the Assessing Officer has to consider the assessee's own fund i.e capital and reserves

as available for investment, which yields exempted income and thereafter he shall apply the formula in Rule 8D and also exclude investments in subsidiaries as held by the above order of Coordinate Bench. With this observation, we remit the issue to the file of the Assessing Officer for fresh consideration. Hence, this ground is allowed for statistical purposes.”

7. The learned Standing Counsel appearing for the Revenue would rely upon the decision of the Hon’ble Supreme Court in the case of Maxopp Investment Ltd. Vs. CIT, New Delhi [reported in (2018) 91 Taxmann.com 154] wherein the Court held that only expenses proportionate to earning exempt income could be disallowed under Section 14A of the Act and that Rule 8D of the Income Tax Rules, 1962 is prospective in nature and could not have been made applicable in respect of assessment years prior to 2007 when this Rule was inserted.

8. Reliance is also placed on the decision rendered by us in the case of CIT Vs. M/s.Tamil Nadu Industrial Development Corporation Ltd. [TCA.Nos.509 and 510 of 2018 dated 07.7.2020] and the decision of the Division Bench of this Court, to which, one of us (TSSJ) was a party, in the case of Roca Bathroom Products Private Ltd. Vs. PCIT [reported in (2019) 101 Taxmann.com 395] wherein it has been held that where the Assessing Officer made observations under Section 14A of the Act in respect of a dividend income earned by assessee from mutual fund investments, in view of plea raised by assessee that it had utilised only non-interest bearing funds in making investment in mutual funds and interest incurred by assessee was specifically towards acquisition of shares in 'G' Ltd. which company subsequently stood amalgamated with assessee, the impugned disallowance was to be deleted and the matter was to be remanded back to Assessing Officer for disposal afresh.

9. The above decisions were pressed into service by the learned Standing Counsel for the assessee to state that if the Tribunal had chosen to remand the matter, it should have made an open remand and should not have qualified the remand, which, in fact, was the decision taken in the case of Beach Miners Co. Pvt. Ltd. Vs. ACIT [ITA.No.2110/Mds/2014 dated 06.8.2015].

10. Per contra, Mr.R.Vijayaraghavan, learned counsel appearing for the respondent – assessee has relied upon

“(i) the decision of the Delhi High Court in the case of Joint Investments Ltd. Vs. CIT [reported in (2015) 372 ITR 0694];

(ii) another decision of the Delhi High Court in the case of PCIT Vs. Moderate Leasing and Capital Services Pvt. Ltd.

[reported in 2018-TIOL-2459-HC-Del-IT]; and

(iii) the order of the Hon'ble Supreme Court in the case of PCIT-6 Vs. Moderate Leasing and Capital Services Pvt. Ltd. [reported in 2018-TIOL-431-SC-IT] wherein the appeal filed by the Revenue against M/s.Moderate Leasing and Capital Services Private Limited was dismissed."

11. The learned counsel appearing for the respondent – assessee has also placed reliance on

(i) the decision of the Delhi High Court in the case of M/s.ACB India Limited Vs. ACIT [reported in (2015) 374 ITR 108];

(ii) the decision of the Bombay High Court in the case of CIT Vs. Reliance Utilities & Power Ltd. [reported in (2009) 313 ITR 340]; and

(iii) the judgment of this Court, to which, one of us (TSSJ) was a party, in the case of CIT Vs. Tidel Park Ltd. [TCA.Nos.732 and 733 of 2018 dated 07.7.2020].

12. We have perused the impugned order passed by the Tribunal and more particularly paragraph 11, which we have extracted above. The Tribunal, having chosen to remand the matter to the Assessing Officer for a fresh consideration, could have avoided qualifying the remand especially when the questions of law are being raised by both the Revenue as well as the assessee. Therefore, we are inclined to interfere with that portion of the order passed by the Tribunal and remand the matter for a fresh consideration to the Assessing Officer to enable him/her to consider the entire matter afresh without, in any manner, curtailing exercise of his/her power as an Assessing Officer. Further, we find that the Tribunal did not give independent reasons as to why, in its opinion, the direction issued in the case of Beach Miners Co. Pvt. Ltd., should also apply to the case of the assessee.

13. In the light of the above discussions, the tax case appeal is allowed, the findings/observations made by the Tribunal in paragraph 11 of the impugned order are set aside and the order of remand is confirmed. We make it clear that the remand is an open remand and a direction is issued to the Assessing Officer to consider all issues that may be raised before him both by the Revenue as well as the assessee either factual or legal or both and take an informed decision in the matter after affording an opportunity of hearing to the IRP representing the assessee. We request the said Mr.R.Raghavendar,

IRP to appear before the Assessing Officer and put forth all his submissions bearing in mind the interest of the shareholders. The substantial questions of law framed are left open. No costs.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

RS

To

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

2.The Commissioner of Income Tax, Appeal -13,
Chennai-34.

3.The Assistant Commissioner of Income Tax,
Corporate Circle-3 (1), Chennai-34.

+1 cc to Mr.Subbaraya Aiyar, Sr.No. 26181

TCA.No.289 of 2018

NMI(CO)
RMP(01/09/2020)