

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.509 & 510 of 2018

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

... Appellant in both TCAs

versus

M/s.Tamilnadu Industrial Development
Corporation Limited,
No.19-A, Rukmini Lakshmipathy Road,
Egmore, Chennai - 600 008.

... Respondent in both TCAs

Prayer: Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961, against the common order made in ITA Nos.691 & 692/Mds/2017 dated 12.07.2017 passed by the Income Tax Appellate Tribunal 'D' Bench, Chennai, for the Assessment Years 2011-12 and 2012-13 preferred against the order of the Commissioner of Income Tax (Appeals)13, Chennai 34 passed in I.T.A. No. 2050/CIT (A)-13/2011-2012 and I.T.A. No. 127/CIT(A)-13/2012-2013 for the assessment year 2011-2012 and 2012-2013 dated 28.02.2017 against the order passed by the Assistant Commissioner of Income Tax, Company Circle III(1) Chennai dated 20.01.2014 and 22.01.2015 made in PAN/GIR No. AAAC3409P for the Assessment year 2011-2012 and 2012-2013 respectively

For Appellant : Mr.M.Swaminathan
in both TCAs Senior Standing Counsel
Assisted by Mrs.V.Pushpa
Standing Counsel

For Respondent : Mr.R.Vijayaraghavan, Sr. Counsel
in both TCAs for M/s. Subbaraya Aiyar

COMMON JUDGMENT

T.S.SIVAGNANAM, J.

These appeals have been filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity), challenging the common order passed by the Income Tax Appellate

Tribunal 'D' Bench, Chennai, in ITA Nos.691 & 692/MDS/2017 dated 12.07.2017, for the Assessment Years 2011-12 and 2012-13.

2. The Tax Case Appeals were admitted on 21.06.2019 on the following Substantial Questions of Law.

"1. Whether the Tribunal was right in holding that the strategic investments of the assessee capable of fetching exempt income do not attract disallowance u/s 14A even though the Section 14A read with Rule 8D does not differentiate the investments as strategic or non-strategic?

2. Whether the Tribunal was right in observing that the Assessment Officer has not satisfied the mandatory requirement of Section 14A(2)?"

3. The question to be decided in this case is as to whether the tribunal was right in coming to the conclusion that the Assessing Officer has not recorded his mandatory satisfaction as required under Section 14A(2) of the Act.

4. The respondent/assessee is a state owned undertaking which had filed its return of the income for the assessment years under consideration viz., 2011-12 and 2012-13. The assessee had received income by way of dividend for the assessment year 2011-12 which the assessee claimed it as exemption from tax. The Assessing Officer made a disallowance under Section 14A, by applying Rule 8D of the Income Tax Rules, 1962 (the 'Rules' for brevity) and completed the assessment.

5. Aggrieved by the said order, the assessee preferred appeals before the Commissioner of Income Tax (Appeals)-13, Chennai. By orders dated 28.02.2017, the appeals were dismissed. Aggrieved by the same, the assessee filed appeals before the tribunal.

6. For the assessment year 2011-12, the tribunal held that the Assessing Officer has straightaway proceeded to apply Rule 8D for the purpose of disallowance under Section 14A without specifying or complying with the mandatory requirement of Section 14A(2) or Rule 8D(1). So holding, the tribunal held that the Assessing Officer having failed to comply with the statutory requirement, he cannot proceed to make the disallowance under Section 14A(1) of the Act. The tribunal noted that the assessee themselves had voluntarily offered Rs.2,64,14,439/- as disallowance and accordingly, the disallowance made by the Assessing Officer was reduced to the said extent.

7. For the assessment year 2012-13, the tribunal holds that the Assessing Officer had not called for any specific explanation with regard to the fresh investment of Rs.20 Crores, which are also capable of earning dividend income. Considering these facts, the tribunal directed the assessee to work out the expenditure component towards administrative and managerial aspect, so that the same shall be disallowed in the computation of income of the assessee. Accordingly, the appeal filed by the assessee was partly allowed.

8. Mr.M.Swaminathan, learned Senior Standing Counsel appearing for the appellant/revenue assisted by Mrs.Pushpa, learned Standing Counsel for the appellant/revenue submitted that the tribunal committed an error in holding that the Assessing Officer had not followed the procedure under Section 14A(2) when the Assessing Officer had rightly followed the procedure and reading of the assessment order dated 20.01.2014 will clearly show that before resorting to the procedure under Rule 8D, the Assessing Officer has rightly exercised his power under Section 14A(2) of the Act and recorded that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income, which does not form part of total income under the Act. Therefore, it is submitted that the finding of the tribunal is wholly erroneous.

9. In support of his contention, learned counsel placed reliance on the decision of the Division Bench in the case of CIT Vs. J.K.Fenner (India) Limited in TCA No.785 of 2018 etc. batch dated 11.12.2018.

10. With regard to the finding of the tribunal for the assessment year 2012-13, the learned counsels pointed out that though the tribunal directs the assessee to work out the expenditure component towards administrative and managerial aspect, no specific direction has been given to the assessee or to the Assessing Officer as to how to proceed further in the matter, though the tribunal has pointed out that upon working out the expenditure by the assessee, the same should be disallowed in the computation of income of the assessee. Therefore, it is submitted that the order passed by the tribunal suffers from error and the Substantial Questions of Law may be answered in favour of the revenue.

11. Per contra, Mr.R.Vijayaraghavan, learned Senior Counsel appearing for the respondent/assessee placed reliance on the decision of the High Court of Bombay in Godrej & Boyce Manufacturing Company Limited, Mumbai Vs. Deputy Commissioner of Income Tax, reported in (2010) 328 ITR 0081, and the decision of the High Court of Delhi in Principal Commissioner of Income Tax

Vs. Vedanta Limited, reported in (2019) 261 Taxmann 0179 (Delhi).

12. These decisions were referred to by the learned counsel in support of his submissions with regard to the mandate of Section 14A(2) of the Act. It is submitted that the Assessing Officer in terms of the said provision is bound to first record his satisfaction as to the correctness of the claim of the assessee in respect of such expenditure in relation to income, which does not form part of the total income under the Act. Without doing so, the Assessing Officer cannot proceed under Rule 8D. Therefore, it is submitted that by applying the above mentioned decisions, the order passed by the tribunal may be affirmed. So far as the order of the tribunal with regard to the assessment year 2012-13, it is not clear as to why the revenue has preferred the appeal before this Court, since the direction issued by the tribunal is concluded.

13. We have heard the learned counsel for the parties at great length. The principle underlying Section 14A and the procedure therein has been succinctly explained by the High Court of Bombay in the case of Godrej & Boyce Manufacturing Company Limited, Mumbai [cited supra]. It is pointed out that the principles that emerge from Section 14A are

(a) the mandate of Section 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) Section 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 Section 14A to include even the apportionment of expenditure between taxable and non taxable income of a indivisible business;

(d) The basic principle of taxation is to tax a net income. This principle applies even for the purposes of Section 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 total income - a disallowance has to be effected.

14. It is further pointed out that under sub section 2 of Section 14A, the Assessing Officer is required to determine the amount of expenditure incurred by the 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.

15. It is further pointed out that the jurisdiction of the Assessing Officer to determine the expenditure incurred in relation to such income which does not form part of the total income under the Act, in accordance with the prescribed method, arises if the Assessing Officer 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.

16. Further, the satisfaction of the Assessing Officer has to be arrived at, having regard to the accounts of the assessee. It was further held that sub section 2 of Section 14A does not enable the Assessing Officer 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 the income which does not form part of the total income, is correct. Therefore, at the first instance, the Assessing Officer has to determine whether the claim of the assessee in that regard is correct and that the determination must be made having regard to the accounts of the assessee.

17. The satisfaction of the Assessing Officer must be arrived at on an objective basis and it is only when the Assessing Officer is not satisfied with the claim of the assessee, that the legislature directs him to follow the method that may be prescribed.

18. Therefore, what we are required to see for the assessment year 2011-12, is whether such procedure was followed by the Assessing Officer. The Assessing Officer on considering the return of the income failed to note that the assessee has received income by way of dividend from Indian companies amounting to Rs.24,83,08,996, which the assessee claimed to be exempted from tax.

19. Notice dated 27.08.2013 was issued to the assessee calling upon them to file the working sheet of the working done by them under Rule 8D for disallowance of the said sum under Section 14A. The assessee in response to such notice, submitted a letter dated 03.10.2013 giving the working under Rule 8D. The Assessing Officer after going through the submission made by the petitioner pointed out that the assessee had computed the disallowance of dividend by invoking the provisions of Rule 8D, but while doing so, ignored sub rule iii of the said rule. It appears that this was pointed out to the assessee. However, the assessee though filed a response on 09.01.2014, the Assessing Officer states that the assessee did not address the issue of computation of the third limb of Rule 8D.

20. The finding recorded by the Assessing Officer is sufficient and a clear indication of his compliance of the procedure under Section 14A(2), the Assessing Officer at the first instance has considered whether the claim of the assessee is correct and thereafter only has proceeded to determine the amount by adopting the procedure under Rule 8D. Therefore, so far as the assessment for the year 2011-12, is concerned, it cannot be stated to be the case where there is a failure to follow the procedure under Section 14A (2) of the Act. Having held so, we need to point out that the tribunal committed an error in not only allowing the appeal of the assessee on the said ground, but also directed the Assessing Officer to accept the figure mentioned by the assessee in their returns viz., Rs.2,64,14,439/-. If the tribunal was of the view that this figure is liable to be accepted, then the correctness of the petition should have been directed to be decided by the Assessing Officer for which purpose the matter should have been remanded. This in our view is one more error committed by the tribunal.

21. So far as the order passed for the assessment year 2012-13 is concerned, we were also of the same view as expressed by Mr.R.Vijayaraghavan, learned Senior Counsel for the respondent/assessee and wondered as to why the revenue has preferred the appeal. However, on a closer reading of paragraph No.7.3 of the impugned order, we find that though the tribunal directs the assessee to work out the expenditure component towards administrative and managerial aspect so that the same shall be disallowed in the computation of income, but has not issued any specific directions to the Assessing Officer as to what has to be done after the assessee files the working sheet. Therefore, to that extent the tribunal has committed an error. Hence, we are of the considered view that the matter should be remanded for fresh consideration of the Assessing Officer in accordance with law.

22. For the above reasons, the Tax Case Appeals are allowed and the Substantial Questions of Law are answered in favour of the revenue and the matters for both the Assessment years viz., 2011-12 and 2012-13, are remitted to the Assessing Officer for fresh consideration in accordance with law. No Costs.

s/d-

Assistant Registrar

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Sub-Assistant Registrar

To

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

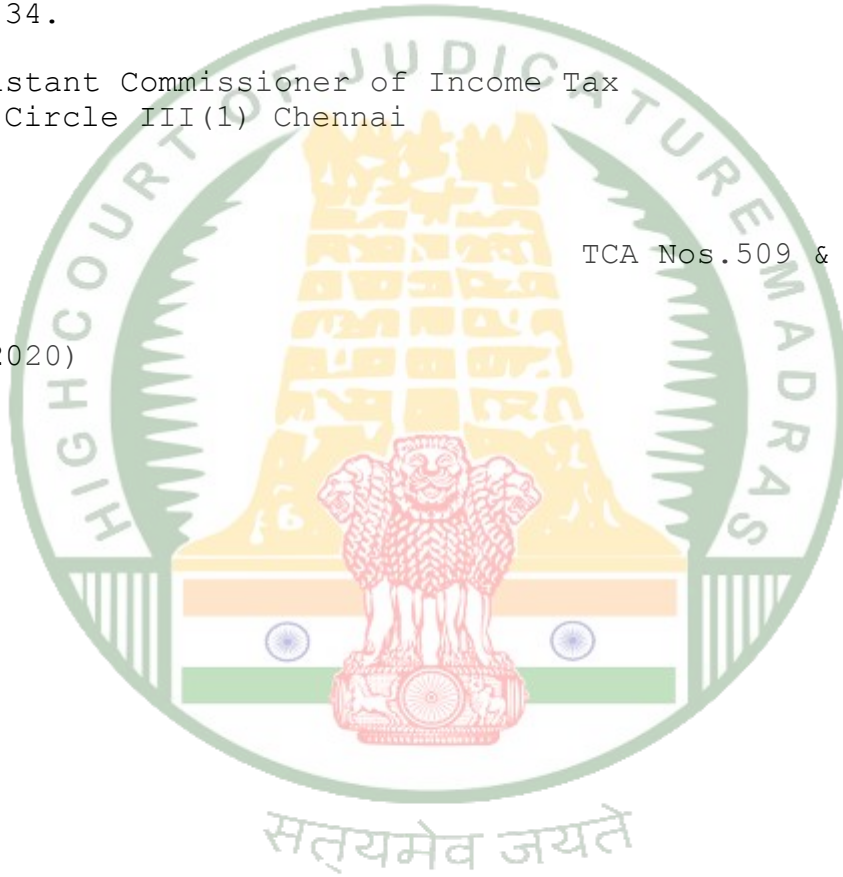
2.The Commissioner of Income Tax
Corporate Circle -3
Chennai

3.The Commissioner of Income Tax (Appeals)13
Chennai 34.

4.The Assistant Commissioner of Income Tax
Company Circle III(1) Chennai

TCA Nos.509 & 510 of 2018

SSV(CO)
SP(29/07/2020)



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