

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
And
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

T.C.A.No.24 of 2017

Commissioner of Income Tax,
Central 1
No.108, Mahatma Gandhi Road,
Chennai. Appellant/Appellant

Vs.

M/s.Chettinad Logistics Pvt. Ltd.,
Rani Seethai Hall, 5th Floor,
603, Anna Salai,
Chennai - 600 006. Respondent/Respondent

Prayer:

Appeal filed under Section 260-A of the Income Tax Act, 1961, against the order dated 25.07.2016 passed in I.T.A.No.637/Mds/2016 by the Income Tax Appellate Tribunal, Madras 'A' Bench preferred as against the order of the Commissioner of Income Tax (Appeals)-I, Chennai dated 09.12.2015 in I.T.A.No.59/CIT(A)-I/2014-15, as against the Assessment Order of the Additional Commissioner of Income Tax, Company Range-I, Chennai dated 10.3.2014 in PAN/GIR No.AABCC4551C.

For Appellant : Mr.T.R.Senthilkumar

For Respondent : Mr.S.Sridhar

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J U D G M E N T

(Judgment of the Court was delivered by RAJIV SHAKDHER,J.)

1. This is an appeal filed under Section 260 A of the Income Tax Act, 1961 (in short, the Act), against the judgment and order of the Income Tax Appellate Tribunal, dated 25.07.2016.

2.The only issue, which arose for consideration, before the Tribunal, was, whether an addition made in the sum of Rs.86,62,748/- qua, the Assessee, by invoking the provisions of Section 14 A of the Act, read with, Rule 8 D of the Income Tax Rules, 1962 (in short, the Rules) was valid.

3.To be noted, the Assessing Officer vide order dated 10.03.2014, had added the aforementioned amount, by disallowing expenditure under Section 14 A of the Act.

3.1.The Assessee had carried the matter in appeal, to the Commissioner of Income Tax (Appeals) [in short, CITA].

3.2.The CIT(A) vide order dated 09.12.2015, reversed the determination made by the Assessing Officer, in respect of this issue.

3.3.The Tribunal, via, the impugned judgment, allowed the Revenue's Appeal for statistical purposes and remanded the matter to the Assessing Officer, to verify, whether the investment made by the Assessee had been made by it, in its sister concerns, out of interest free funds.

3.4.In the body of the impugned judgment and order, the Tribunal has, at length, recorded findings of fact, given by the CIT(A), which include, inter alia that in the given Assessment Year (in short, AY), i.e., AY 2011-12, no income, by way of dividend, had been earned.

3.5.The Revenue, being aggrieved by the direction of remand, have preferred the instant appeal.

4.In order to adjudicate upon the appeal, the following brief facts are required to be noticed:

4.1.The Assessee is engaged in the business of trading, clearing and forwarding.

4.2.Consequently, the Assessee filed its return for the relevant assessment year, i.e., AY 2011-12, on 29.02.2012, whereby, it disclosed an income of Rs.17,58,71,418/-.

4.3.It appears that the Assessee's case was taken up for scrutiny and as a result thereto, assessment was completed under the provisions of Section 143 (3) of the Act, by virtue of the order passed on 10.03.2014, as indicated above.

4.4.The Assessing Officer while passing the said assessment order invoked the provisions of Section 14 A of the Act and as alluded to above, disallowed expenditure, equivalent to a sum of Rs.86,62,748/-, and for this purpose, recourse was also taken to the provisions of Rule 8 D of the Income Tax Rules, 1962 (Rules) and the Board's Circular No.5/2014, dated 11.02.2014 (in short, the Circular).

5.The main plank, on which, the assessment order is based is that, in terms of the aforementioned Circular of the Board and Rule 8D read with Section 14 A of the Act, the expenditure incurred by the Assessee had to be disallowed, even when, admittedly, it had not earned income exempt from tax, in the concerned previous year.

5.1.As indicated above, the CIT(A) disagreed with the Assessing Officer and, consequently, reversed the order dated 10.03.2014. Notably in reaching his conclusion the Assessing Officer relied upon the judgment in the matter of: Cheminvest Ltd., Vs. CIT, 121 ITD 318 (Tribunal - Delhi Bench).

6.The Revenue, being aggrieved, approached the Tribunal. The record shows that during the course of arguments before the Tribunal, the Assessee advanced a submission, to the effect, that in cases, where, investments are made in sister concern(s), out of interest free funds, for strategic purposes, the provisions of Section 14 A of the Act, could not be invoked. In support of this submission, the Assessee relied upon the judgment of the Tribunal in the case of: Rane Holdings Ltd., Vs. ACIT, passed in ITA No.115/Mds/2015, dated 06.01.2016.

7.It is, in this background, that the Tribunal remanded the matter to the Assessing Officer, so as to reach a conclusion as to whether investments had been actually made, in sister concerns of the Assessee, out of interest free funds, albeit, for strategic purposes.

8.According to us, this exercise, in the given facts which emerge from the record, was clearly unnecessary, as the CIT(A) had returned the finding of fact that no dividend had been earned in the relevant assessment year, with which, we are concerned, in the present appeal.

9.In our opinion Section 14 A of the Act, can only be triggered, if, the Assessee seeks to square off expenditure against income which does not form part of the total income under the Act.

9.1.The legislature, in order to do away with the pernicious practice adopted by the Assessee's, to claim expenditure, against income exempt from tax, introduced the said provision.

10.In the instant case, there is no dispute that no income i.e., dividend, which did not form part of total income of the Assessee was earned in the relevant assessment year.

10.1.Therefore, to our minds, the addition made by the Assessing Officer by relying upon Section 14 A of the Act, was completely contrary to the provisions of the said Section.

10.2.Mr.Senthil Kumar, who appears for the Revenue, submitted that the Revenue could disallow the expenditure even in such a circumstance by taking recourse to Rule 8D.

10.3.According to us, Rule 8D, only provides for a method to determine the amount of expenditure incurred in relation to income, which does not form part of the total income of the Assessee.

10.4.Rule 8 D, in our view, cannot go beyond what is provided in Section 14 A of the Act.

11.Furthermore, we may note that a similar argument was sought to be advanced by the Revenue in the matter concerning, M/s.Redington (India) Limited Vs. The Additional Commissioner of Income Tax, which was, subject matter of T.C.A.No.520 of 2016.

11.1.A Co-ordinate Bench of this Court, vide judgment dated 23.12.2016, rejected the plea of the Revenue advanced in that behalf.

11.2.As a matter of fact, a perusal of the judgment would show that the Revenue had sought to argue that because exempt income could be earned in future years, therefore, recourse could be taken to the provisions of Section 14A of the Act, to disallow expenditure. In other words the stand taken by the Revenue was irrespective of the fact whether or not income was earned in the concerned assessment year expenditure under Section 14A could be disallowed against anticipated income.

11.3.Pertinently, the Division Bench in M/s.Redington (India) Limited case has repelled this precise argument.

12.The Division Bench, in our view, quiet correctly held that, the computation of total income, in terms of Section 5 of the Act, is made qua real income and not, vis-a-vis, notional income.

12.1.The Division Bench went on to hold that Section 4 of the Act brings to tax, that income, which is relatable to the assessment year in issue. The Division Bench, thus, held that where no exempt income is earned in the previous year, relevant to the assessment year in issue, provisions of Section 14 A of the Act, read with Rule 8 D could not be invoked.

12.2.While coming to this conclusion, the Division Bench also took note of the aforementioned Circular, issued by the Board.

12.3.The reasoning of the Division Bench is contained in the following part of the judgment:

"4.The admitted position is that no exempt income has been earned by the assessee in the financial year relevant to the assessment year in issue. The order of assessment records a finding of fact to that effect. The issue to be decided thus lies within the short compass of whether a disallowance in terms of s.14A of the Act read with Rule 8D of the Rules can be contemplated even in a situation where no exempt income has admittedly been earned by the assessee in the relevant financial year.

7.Per contra, Sri.T.Ravikumar appearing on behalf of the revenue drew our attention to the marginal notes of s.14 A pointing out that the provision would apply not only where exempted income is 'included' in the total income, but also where exempt income is 'includable' in total income.

8.He relied upon a Circular issued by the Central Board of Direct taxes in Circular No.5 of 2014 dated 11.2.2014 to the effect that s.14A was intended to cover even those situations whether there is a possibility of exempt income being earned in future. The Circular, at paragraph 4, states that it is not necessary for exempt income to have been included in the income of a particular year for the disallowance to be triggered. According to the Learned Standing Counsel, the provisions of s.14A are made applicable, in terms of sub section (1) thereof to income 'under the act' and not 'of the year' and a disallowance under s.14A r.w.Rule 8D can thus be effected even in a situation where a tax payer has not earned any taxable income in a particular year.

9. We are unable to subscribe to the aforesaid view. The provisions of section 14A were inserted as a response to the judgments of the Supreme Court in Commissioner of Income Tax Vs. Maharashtra Sugar Mills Limited (1971) (82 ITR 452) and Rajasthan State Ware Housing Corporation Vs. Commissioner of Income Tax ((2002) 242 ITR 450) in terms of which, expenditure incurred by an assessee carrying on a composite business giving rise to both taxable as well as non-taxable income, was allowable in entirety without apportionment. It was thus that s.14A was inserted providing that no deduction shall be allowable in respect of expenditure incurred in relation to the earning of income exempt from taxation. As observed by the Supreme Court in the judgment in the case of Commissioner of Income Tax vs. Walfort Share and Stock Brokers (P) Ltd (2010) 326 ITR 1

'..... The mandate of s.14A is clear. It desires to curb the practice to claim deduction of expenses incurred in relation to exempt income against taxable income and at the same time avail of the tax incentive by way of an exemption of exempt income without making any apportionment of expenses incurred in relation to exempt income.'

10. The provision this is clearly relatable to the earning of actual income and not notional or anticipated income. The submission of the Department to the effect that s.14A would be attracted even to exempt income 'includable' in total income would entail the assessment of notional income, assumed to be exempt in the future, in the present assessment year. The computation of total income in terms of s.5 of the Act is on real income and there is no sanction in law for the assessment of admittedly notional income, particularly in the context of effecting a disallowance in connection therewith.

11. The computation of disallowance in terms of Rule 8D is by way of a determination involving direct as well as indirect attribution. Thus, accepting the submission of the Revenue would result in the imposition of an artificial method of computation on notional and assumed income. We believe this would be carrying the artifice too far.

(emphasis is ours)"

13.Mr.Senthil Kumar, seeks to distinguish the judgment in M/s.Redington (India) Limited case 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 M/s.Redington (India) Limited case 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.

16.To our minds, questions of law, which could have arisen are already covered by the judgment of a Co-ordinate Bench of this Court rendered in M/s.Redington (India) Limited case.

17.The appeal is accordingly, dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Registrar
The Income Tax Appellate Tribunal,
Madras 'A' Bench,
Chennai-34.

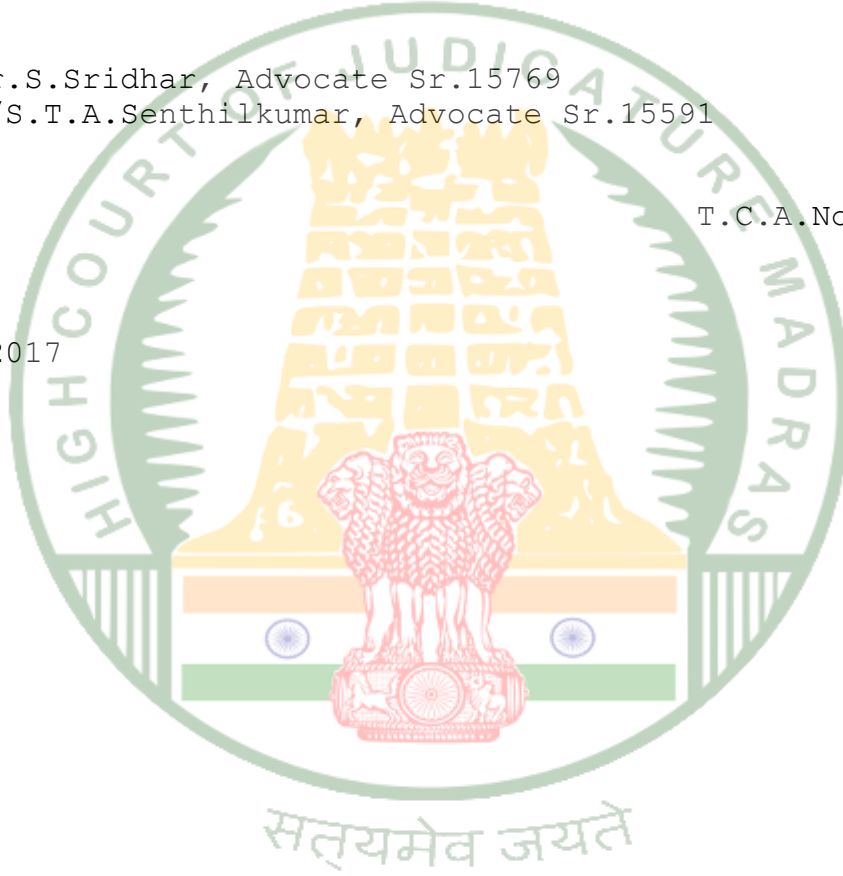
2.The Commissioner of Income Tax (Appeals) I,
Chennai-34.

3.The Additional Commissioner of Income Tax Company Range-I,
Chennai-34.

+1cc to Mr.S.Sridhar, Advocate Sr.15769
+1cc to M/S.T.A.Senthilkumar, Advocate Sr.15591

T.C.A.No.24 of 2017

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