

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Tax Case Appeal No.1038 of 2010

Commissioner of Income Tax
Chennai. Appellant

Vs.

M/s.Spencer & Co. Ltd.
Spencer Plaza 4th Floor,
769 Anna Salai, Chennai - 02. Respondent

Appeal filed under Section 260A of the Income Tax Act, 1961
against the order of the Income Tax Appellate Tribunal Madras 'B'
Bench, dated 18.12.2009 in ITA.No.1527/Mds/2009.

For Appellant : Mr.J.Narayana Samy
Senior Standing Counsel

For Respondent : Mr.Venkat Narayanan
For Subbaraya Aiyar Padmanaban

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JUDGMENT

(Judgment of the Court was delivered by DR.VINEET KOTHARI,J.)

This Tax Case Appeal has been filed by the Revenue for
Assessment Year 2002-03 raising the following substantial question of

law arising from the order of the Income Tax Appellate Tribunal dated 18.12.2009.

"Whether on the facts and circumstances of the case, the Tribunal was right in upholding the CIT(A)'s deletion of 2.56 Cr. by invoking the provision of section 14A r/2 Rule 8D?"

2. Both the learned counsels fairly submitted that the said issue is no longer *res integra* in view of the decisions of the Hon'ble Supreme Court in the case of **Commissioner of Income Tax Vs. Essar Teleholdings Ltd. [(2018) 401 ITR 0445]** and **Godrej & Boyce Manufacturing Company Limited Vs. Deputy Commissioner of Income Tax and another [(2017) 394 ITR 0449]**, in which the Hon'ble Supreme Court has laid down the provisions of Rule 8D of the Income Tax Rules cannot be applied retrospectively. The said Rules were introduced and brought on the Statute Book with effect from 24.03.2008 and the present assessment year involved in the present Appeal is Assessment Year 2002-03. The relevant observations from both the Judgments are quoted below for ready reference.

(i) Commissioner of Income Tax V. Essar Teleholdings Ltd. [(2018) 401 ITR 0445]:

"49. It is relevant to note that impugned judgment in this appeal relies on earlier judgment of Bombay High Court in Godrej and Boyce Manufacturing Company Limited versus Deputy Commissioner of Income Tax, Mumbai and Another, (2017) 7 SCC 421, where the Division Bench of the Bombay High court after elaborately considering the principles to determine the prospectivity or retrospectivity of the amendment has concluded that Rule 8D is prospective in nature. Against the aforesaid judgment of the Bombay High court dated 12.08.2010 an appeal was filed in this court which has been decided by vide its judgment reported in Godrej and Boyce Manufacturing Company Limited Vs. Deputy Commissioner of Income Tax, Mumbai & Anr. (2017) 7 SCC 421. This Court, while deciding the above appeal repelled the challenge raised by the assessee regarding vires of Section 14A. In para 36 of the judgment, this Court noticed that with regard to retrospectivity of provisions Revenue had filed appeal, hence the said question was not gone into the aforesaid appeal. In the above case, this Court specifically left the question of retrospectivity to be decided in other appeals filed by the Revenue. We thus have proceeded to decide the question of retrospectivity of Rule 8D in these appeals.

50. In view of our opinion as expressed above, dismissal of the appeal by the Bombay High Court is fully sustainable. As held above, the Rule 8D is prospective in

operation and could not have been applied to any assessment year prior to Assessment Year 2008-09."

(ii) Godrej & Boyce Manufacturing Company Limited V. Deputy Commissioner of Income Tax and another [(2017) 394 ITR 0449]

"37. We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. Sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable.

38. In the present case, we do not find any mention of the reasons which had prevailed upon the Assessing Officer,

while dealing with the Assessment Year 2002-2003, to hold that the claims of the Assessee that no expenditure was incurred to earn the dividend income cannot be accepted and why the orders of the Tribunal for the earlier Assessment Years were not acceptable to the Assessing Officer, particularly, in the absence of any new fact or change of circumstances. Neither any basis has been disclosed establishing a reasonable nexus between the expenditure disallowed and the dividend income received. That any part of the borrowings of the assessee had been diverted to earn tax free income despite the availability of surplus or interest free funds available (Rs. 270.51 crores as on 1.4.2001 and Rs. 280.64 crores as on 31.3.2002) remains unproved by any material whatsoever. While it is true that the principle of *res judicata* would not apply to assessment proceedings under the Act, the need for consistency and certainty and existence of strong and compelling reasons for a departure from a settled position has to be spelt out which conspicuously is absent in the present case. In this regard we may remind ourselves of what has been observed by this Court in *Radhasoami Satsang vs. Commissioner of Income-Tax* (1992) 193 ITR (SC) 321 [At Page 329].

"We are aware of the fact that strictly speaking *res judicata* does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the

different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year."

39. *In the above circumstances, we are of the view that the second question formulated must go in favour of the assessee and it must be held that for the Assessment Year in question i.e. 2002-2003, the assessee is entitled to the full benefit of the claim of dividend income without any deductions.*

40. *Consequently, the appeal is allowed and the order of the High Court is set aside subject to our conclusions, as above, on the applicability of Section 14A with regard to dividend income on which tax is paid under Section 115-O of the Act"*

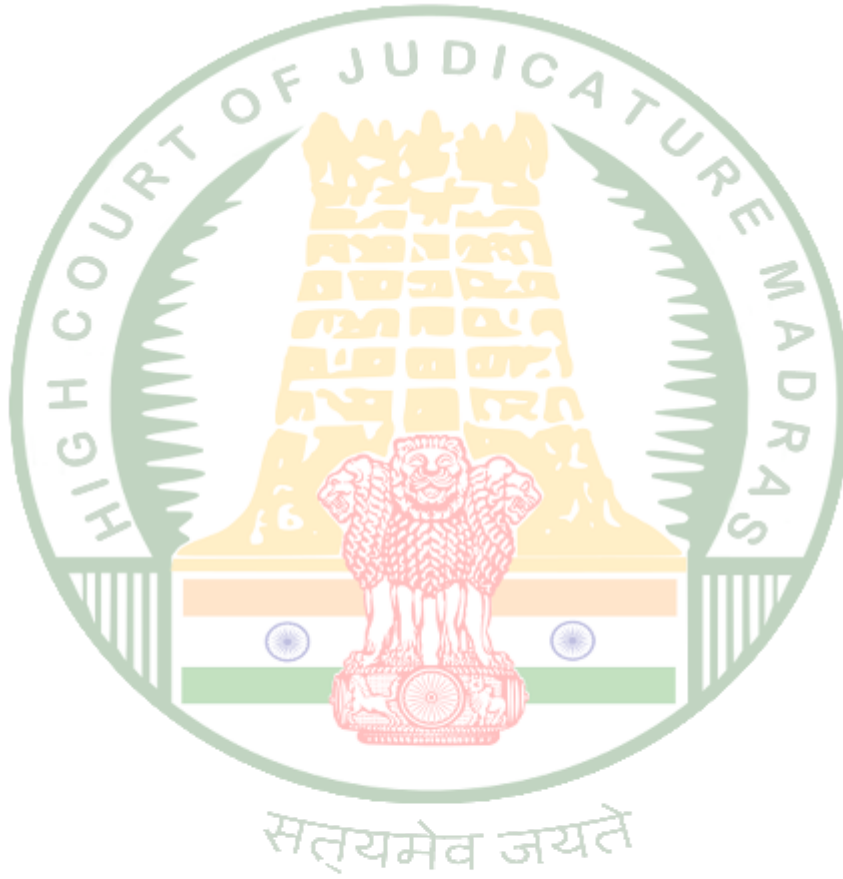
3. In view of the aforesaid submission, there is no merit in the present appeal filed by the Revenue and the question of law deserves to be answered against the Revenue and in favour of the Assessee. In view of the aforestated Supreme Court decisions, the Appeal is accordingly dismissed. No costs.

(V.K.J.) (R.S.K.J.)
21.01.2020

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To

Income Tax Appellate Tribunal,
Madras 'B' Bench.



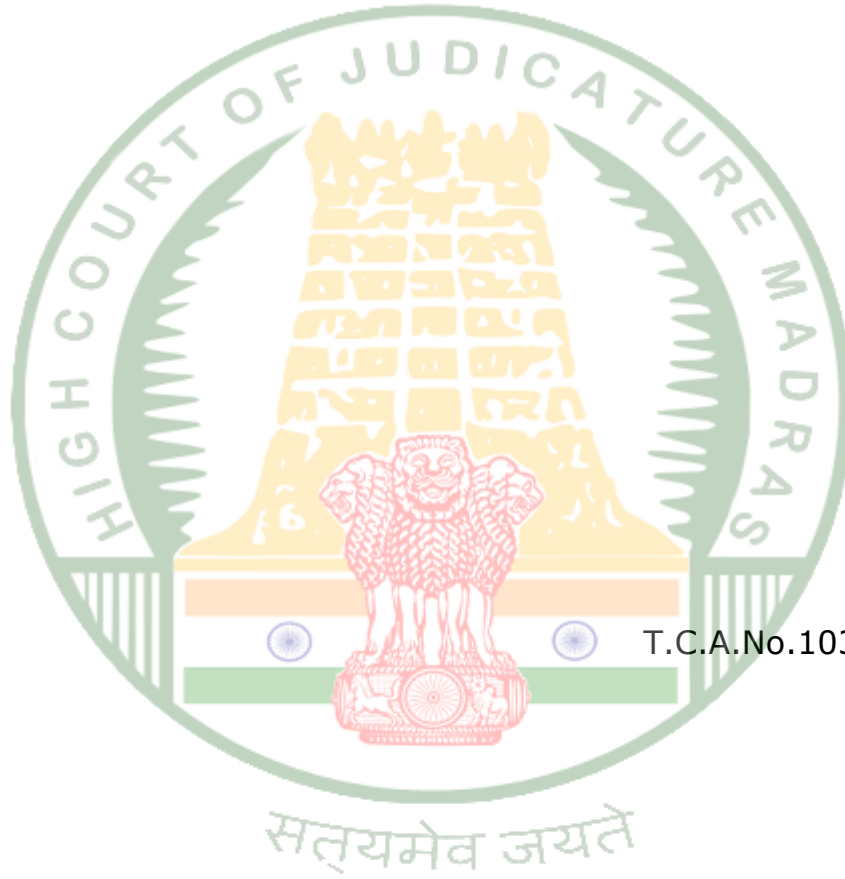
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Judgment in TCA No.1037/2010 dated 21.01.2020
(Commissioner of Income Tax Vs. M/s.Spencer & Co. Ltd)

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DR.VINEET KOTHARI, J.
And
R. SURESH KUMAR, J.

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T.C.A.No.1038 of 2010

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