

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A.No.252/Mds/2016
निर्धारण वर्ष /Assessment year : 2011-12

M/s Sumeru Soft Pvt. Ltd
No.50, Capital Olace
South Boag Road
T. Nagar, Chennai 600 017
[PAN AAECs 2260F]
(अपीलार्थी/Appellant)

Vs. The Income Tax Officer
Company Ward VI(1)
Chennai
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri A.V Sreekanth, JCIT
प्रत्यर्थी की ओर से /Respondent by : Shri S. Sridhar, Advocate
सुनवाई की तारीख/Date of Hearing : 24-08-2016
घोषणा की तारीख /Date of Pronouncement : 09-09-2016

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

This appeal of the assessee is directed against the order of the Commissioner of Income-tax (Appeals)-15, Chennai, dated 18.12.2015 for assessment year 2011-12.

2. Assessee has taken altogether nine grounds of which Ground Nos.1,8 and 9 are general in nature needing no specific adjudication.

- 3.** In Ground Nos.2 to 5, the grievance raised by the assessee is against sustaining disallowance of ₹ 2,20,841/- u/s 14A of the Act r.w. rule 8D.
- 4.** Ld. AR submitted that the assessee had not earned any exempt income during the previous relevant to the impugned assessment year. Hence, according to him, invocation of sec. 14A was not called for.
- 5.** Per contra, the Id. DR while admitting that assessee had not earned any exempt income, asserted that disallowance u/s 14A could not be linked to earning of exempt income as such.
- 6.** We heard the rival contentions and perused the orders of the authorities below. The Assessing Officer had made a disallowance of ₹2,20,841/- by invoking sec. 14A r.w.r 8D(2)(iii). Assessing Officer had given a finding that the assessee had not used any borrowed funds for earning exempt income. Further, according to him, for making investment which could earn exempt income, assessee would have incurred some administrative cost. Accordingly, he applied rule 8D(2)(iii) and made the above disallowance. It is not disputed that the assessee for the relevant previous year had not claimed any income as exempt. In other words, even if the investment made by the assessee was capable to raise any exempt income in future, assessee

had not earned any such income during the impugned assessment year. That Sec. 14A cannot be invoked where the assessee has not claimed any income of exempt is a view taken by various High Courts of the country. It has been held so by the Delhi High Court in the case of Cheminvest vs CIT 378 ITR 33, CIT vs Holcin India Pvt Ltd [2014] 90CCH 81, by P&H High Court in the case of CIT vs Hero Cycles Ltd, 323 ITR 518, by Gujarat High Court judgment in the case of CIT vs Corrtch Energy P. Ltd, 372 ITR 97 and by Allahabad High court in the case of CIT vs Shivam Motor India P Ltd, 230 taxman 63. Accordingly, we are of the opinion that disallowance u/s 14A would not have been made and such disallowance is deleted. Ground Nos. 2 to 5 stand allowed.

7. Vide Ground Nos.6 & 7, the grievance of the assessee is disallowance of ₹14,95,000/- being the expenditure incurred for business promotion/advertisement.

8. Facts apropos are that the assessee engaged in the business of software development, had filed its return declaring income of ₹4,81,080/-. During the course of assessment proceedings, it was noted by the Assessing Officer that assessee had claimed business promotion expenditure of ₹14,95,000/-. The details of the expenditure provided by the assessee read as under:

1. Chennai St. Bede's Sports foundation	₹ 45,000
2. Youth Association for classical music	₹ 50,000
3. The Tamilnadu Cricket Association	₹ 4,00,000
4. Sponsorship for special box at MA Chidambaram Stadium, Chennai	₹ 1000000 (1/6 th of ₹60 lakhs)

9. Explanation of the assessee was sought as to why the above expenditure should not be disallowed since it was not wholly and exclusively incurred for the purpose of business. Reply of the assessee was that major part of the expenditure coming to ₹10 lakhs was in relation to sponsorship made for Tamilnadu Cricket Association. As per the assessee, it was felt that visibility of its own name would get enhanced since it would be displayed all over the venue. As per the assessee, the event was to be named after it. Further explanation of the assessee was that through such expenditure it had established an association with Tamilnadu Cricket Association and cricket being an important game in the country, software professionals employed by it being youngsters, the improved visibility of the assessee in cricket would give it a positive business development factor. However, the Assessing Officer was not impressed upon the above contention. According to him, assessee had given explanation only with regard to the expenditure of ₹10 lakhs and vis-à-vis the balance of ₹ 4,95,000/- nothing whatsoever was furnished. Insofar as the former expenditure

was concerned, as per the Assessing Officer, assessee had sponsored one special box in MA Chidambaram Stadium, during financial year 2007-08 for a sum of ₹ 60 lakhs. The sponsorship was for a period of six years. The special box could be used by not more than 15 persons during matches held in the stadium. As per the Assessing Officer, only advantage the assessee received was display of its name on the top of the box placed in the stadium. In addition, assessee had paid ₹4,00,000/- for sponsoring 14 cricket tournaments conducted by Tamilnadu Cricket Association. Conclusion of the Assessing Officer was that the assessee was having a very limited clientele viz. M/s Infosys, M/s Standard Chartered Bank, The Cancer Institute and M/s Sundaram BNP Paribas. The only other client the assessee was having, as per the Assessing Officer, was based on US. The sponsorship of the special box did not result in any benefit to the assessee and as per the Assessing Officer, was not an expenditure relatable to the business of software development. The Assessing Officer also noted that the Managing Director of the assessee Shri K.V. Aiyappan was also the Vice President of the Tamilnadu Cricket Association and therefore, the expenditure was incurred for extraneous reasons. He made a disallowance of ₹14,95,000/-.

10. Before the CIT(A), argument of the assessee was that method of promoting assessee's business could not be directly compared to the revenue earned. As per the assessee, sponsorship paid for advertising was directly relatable to the business of the assessee due to the enhanced visibility of the assessee's name in the stadium, due to such sponsorship. Thus, according to the assessee, the claim was unfairly disallowed. However, the CIT(A) was not impressed. According to him, what assessee was not something used for mass consumption and the expenditure incurred was rightly disallowed by the Assessing Officer.

11. Now before us, the Id. AR strongly assailing the disallowance made by the lower authorities, submitted that assessee was in the quest of new clients. As per the Id. AR, it was an admitted position that assessee had only limited clients. Hence, to increase its business, it was necessary to attract new clients. Advertisement through hoardings in the stadium where cricket tournaments were held and sponsorship of special box increased the visibility of assessee-company enhanced the chances for getting new clients. Further, as per the Id. AR, several other concerns like banks and insurance companies sponsored special boxes but Revenue could not show whether any disallowances were made in their cases. In any case, as per the Id.

AR, the expenditure was incurred in relation to the business of the assessee and the Assessing Officer ought not have sat in the chair of the businessman to decide whether the expenditure was required or not.

12. Per contra, the Id. DR strongly supported the orders of the authorities below.

13. We have considered the rival contentions and perused the orders of the authorities below. Out of the total expenditure of ₹14,95,000/- claimed by the assessee under the head business promotion, ₹ 14 lakhs was paid to Tamilnadu Cricket Association. Out of the balance sum of ₹95,000/-, a sum of ₹45,000/- was paid to Chennai St. Bede's sports foundation and ₹50,000/- was paid to Youth Association for classical music. Nothing whatsoever has been brought out by the assessee to show the business purpose of these payments. Coming to the payments made to Tamilnadu Cricket Association, out of the total sum of ₹14 lakhs, ₹10 lakhs was for sponsoring special box at MA Chidambaram Stadium and ₹4 lakhs for sponsoring 14 cricket tournaments conducted by Tamilnadu Cricket Association. Case of the assessee is that it was trying to increase its clients due to the exposure through the cricket medium. However, it is an admitted position that assessee was in the software development and it had only very limited

number of clients. Claim of the assessee is that by sponsoring cricket tournaments its exposure would be enhanced and would result in attracting more clients. This in our opinion, is farfetched. No commercial concern would employ a software concern for development of software through its exposure from hoardings at a cricket tournament. They would be looking into the skills of the concern to decide whether it would be an appropriate choice for developing software. It is also an admitted position that the Managing Director of the assessee-company was the Vice President of Tamilnadu Cricket Association. The special box sponsored by the assessee could be used by 15 persons and was an air-conditioned one. It is difficult to imagine how 15 persons sitting in an air-conditioned box and watching a cricket match would help the business of the assessee. As per the Id AR, similar disallowances ought to have been made in the case of other concerns who had sponsored similar boxes. In our opinion, this would not help the assessee's case in any manner. Sec. 37 mandates that an expenditure could be allowed only if it was incurred wholly and exclusively for the purpose of business. The assessee has not been able to show the nexus of the business of the assessee with the expenditure incurred for sponsoring of special box. Hence, we are of the view that the CIT(A) had rightly confirmed the disallowance made

by the Assessing Officer. We do not find any reason to interfere with the orders of the lower authorities.

14. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 9th September, 2016, at Chennai.

Sd/-

(एन.आर.एस. गणेशन))

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 9th September, 2016

RD

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

4. आयकर आयुक्त/CIT

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF