

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.3129/Mds/2016

निर्धारण वर्ष / Assessment Year : 2011-12

The Deputy Commissioner of
Income Tax,
Corporate Circle – 1(1),
Chennai - 600 034.

M/s Data Software Research
Company Pvt. Ltd.,
"Kasturi Towers", No.6, Smith Road,
Chennai - 600 002.

(अपीलार्थी/Appellant)

PAN : AAACD 1271 H

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. R. Vijayaraghavan, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri R. Durai Pandian, JCIT

सुनवाई की तारीख/Date of Hearing : 23.02.2017

घोषणा की तारीख/Date of Pronouncement : 23.03.2017

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) – 1, Chennai, dated 04.08.2016 and pertains to assessment year 2011-12.

2. The first issue arises for consideration is with regard to deduction claimed by the assessee under Section 10B of the Income-tax Act, 1961 (in short "the Act").

3. Shri R. Durai Pandian, the Ld. Departmental Representative, very fairly submitted that the Assessing Officer, in fact, set off the losses from various sources before allowing deduction under Section 10A and 10B of the Act. The Apex Court now recently in CIT v. Yokogawa India Ltd. [2016-TIOL-228-SC-IT] held that the losses cannot be set off against the profit of eligible unit before allowing deduction under Section 10A of the Act. In view of judgement of Apex Court, the Ld. D.R. submitted that the issue is covered in favour of assessee.

4. We have heard Shri R. Vijayaraghavan, the Ld.counsel for the assessee also. The CIT(Appeals) by placing reliance on the decision of this Bench of the Tribunal in Scientific Atlanta India Technology (P) Ltd. v. ACIT [129 TTJ 273], in fact, found that it may not be necessary to set off the losses before allowing deduction under Section 10A or 10B of the Act. Now the Supreme Court has also taken the same view. Therefore, this Tribunal do not find any

reason to interfere with the order of the lower authority and accordingly the same is confirmed.

5. The next issue arises for consideration is with regard to disallowance made by the Assessing Officer under Section 14A of the Act.

6. Shri R. Durai Pandian, the Ld. Departmental Representative, submitted that the Assessing Officer has not applied Rule 8D of Income-tax Rules, 1962 in right perspective, therefore, the matter may be remitted back to the file of the Assessing Officer for computing the disallowance strictly under provisions of Rule 8D(2) of Income-tax Rules, 1962.

7. On the contrary, Sh. R. Vijayaraghavan, the Ld. counsel for the assessee, submitted that the Assessing Officer found that the direct expenditure was NIL. The indirect expenditure was ₹47,62,95,321/-. The Assessing Officer also found that the expenditure under third limb of Rule 8D(2) is at ₹7,46,023/-. The CIT(Appeals) by placing reliance on the order of this Tribunal in *Ambattur Clothing Ltd. v. JCIT* in I.T.A. No.1436, 1643/Mds/2014 & 910/Mds/2015 dated 28.12.2015, found that the disallowance need

not exceed the exempt income earned by the assessee. Accordingly, according to the Ld. counsel, the CIT(Appeals) restricted the disallowance to the extent of ₹1760/- being the income earned by the assessee.

8. We have considered the rival submissions on either side and perused the relevant material available on record. We have carefully gone through the provisions of Rule 8D, which reads as follows:-

**"METHOD FOR DETERMINING AMOUNT OF EXPENDITURE
IN RELATION TO INCOME NOT INCLUDIBLE IN TOTAL INCOME**

(1) Where the Assessing Officer having regard to the accounts of the assessee of the previous year, is not satisfied with-

(a) the correctness of the claim of expenditure made by the assessee ; or

(b) the claim made by the assessee that no expenditure has been incurred in relation to income which does not form part of the total income under the Act for such previous year, he shall determine the amount of expenditure in relation to such income in accordance with the provisions of sub-rule (2).

(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:-

(i) the amount of expenditure directly relating to income which does not form part of total income ;

(ii) in a case where the assessee has incurred expenditure by way of interest during the previous year is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely :-

$$\frac{A \times B}{C}$$

Where A = amount of expenditure by way of interest other than the amount of interest included in clause(i) incurred during the previous year ;

B = the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance-sheet of the assessee, on the first day and the last day of the previous year ;

C = the average of total assets as appearing in the balance-sheet of the assessee, on the first day and the last day of the previous year ;

(iii) an amount equal to one-half per cent. of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance-sheet of the assessee, on the first day and the last day of the previous year.

(3) For the purposes of this rule, the "total assets" shall mean, total assets as appearing in the balance-sheet excluding the increase on account of revaluation of assets but including the decrease on account of revaluation of assets."

Rule 8D(2)(i) provides for disallowance of direct expenditure incurred by the assessee for earning the exempted income. Rule 8D(2)(ii) provides for disallowance of indirect expenditure by the assessee, which is not directly attributable to any particular income.

Rule 8D(2)(iii) provides for disallowance of amount equal to 0.5 % of average value of investment, income from which does not or shall not form part of total income. The disallowance shall be the third limb of Rule 8D(2). In this case, the Assessing Officer computed the disallowance under first limb of Rule 8D(2) at NIL, whereas the disallowance under second limb of Rule 8D(2) was computed as ₹17,455/-. Under third limb of Rule 8D(2), the Assessing Officer computed the disallowance at ₹7,46,023/-. The total disallowance came to ₹7,63,478/-. The Ld. counsel for the assessee submitted that the income of the assessee was only ₹1,760/-. Therefore, under third limb of Rule 8D(2), the disallowance can be only at ₹1,760/- and not ₹7,46,023/-. This Tribunal is of the considered opinion that under third limb of Rule 8D(2), 0.5% of average value of investment, income from which shall not form part or does not form part of total income has to be computed. Therefore, what is to be disallowed is 0.5% of average value of investment which resulted in income of ₹1,760/-. Therefore, it is necessary to compute 0.5% of the average value of investment which resulted in income of ₹1,760/-. This aspect was not considered by both the authorities below. Accordingly, the orders of the authorities below are set aside. The Assessing Officer is directed to compute 0.5% of

average value of investment which resulted in income of ₹1,760/- and thereafter compute the disallowance under Rule 8D(2) of Income-tax Rules, 1962.

9. With the above observation, the orders of the authorities below are set aside and the disallowance made under Section 14A of the Act is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter in the light of the observation made above and thereafter decide the issue, in accordance with law, after giving a reasonable opportunity to the assessee.

10. In the result, the appeal filed by the Revenue is partly allowed for statistical purposes.

Order pronounced on 23rd March, 2017 at Chennai.

sd/-

(डि.एस. सुन्दर सिंह)

(D.S. Sunder Singh)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 23rd March, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-1, Chennai
4. Principal CIT, Chennai-1, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.