

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.1089 & 1090/Mds/2017

&

C.O. Nos.98 & 99/Mds/2017

(in I.T.A. Nos.1089 & 1090/Mds/2017)

निर्धारण वर्ष / Assessment Years : 2008-09 & 2012-13

The Deputy Commissioner of
Income Tax,
Corporate Circle – 5(1),
Chennai - 600 034.

(अपीलार्थी/Appellant)

M/s Rane Holdings Ltd.,
v. "Maithri",
No.132, Cathedral Road,
Chennai - 600 086.

PAN : AABCR 5136 J

(Respondent & Cross-objector)

आयकर अपील सं./ITA No.1113/Mds/2017

निर्धारण वर्ष / Assessment Year : 2008-09

M/s Rane Holdings Ltd.,
"Maithri",
No.132, Cathedral Road,
Chennai - 600 086.

(अपीलार्थी/Appellant)

The Deputy Commissioner of
Income Tax.
v. Company Circle V(3),
Chennai - 600 034.

(प्रत्यर्थी/Respondent)

राजस्व की ओर से /Revenue by : Ms. S. Vijayaprabha, JCIT

निर्धारिती की ओर से /Assessee by : Sh. Vikram Vijayaraghavan, Advocate

सुनवाई की तारीख/Date of Hearing : 26.09.2017

घोषणा की तारीख/Date of Pronouncement : 27.10.2017

आदेश / O R D E R

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

Both the appeals of the Revenue and assessee are directed against the common order of the Commissioner of Income Tax (Appeals) -3, Chennai, dated 31.01.2017 for assessment years 2008-09 and 2012-13. For assessment year 2008-09, the assessee has filed the appeal. Apart from that, the assessee filed cross-objections for both the assessment years. Therefore, we heard all the appeals of the Revenue and the assessee and the cross-objections of the assessee together and disposing of the same by this common order.

2. For both the assessment years 2008-09 & 2012-13 in the Revenue's appeals, the only issue arises for consideration is disallowance made by the Assessing Officer under Section 14A of the Income-tax Act, 1961 (in short 'the Act').

3. Ms. S. Vijayaprabha, the Ld. Departmental Representative, submitted that the assessee claimed before the Assessing Officer that no expenditure was incurred for earning the exempted income. According to the Ld. D.R., the assessee declared an income of

₹11,60,79,395/- as deemed dividend income, therefore, the Assessing Officer found that it was hard to believe that no expenditure was incurred to earn income of ₹11,60,79,395/-. The investment made by the assessee yielded dividend income of ₹11.61 Crores. Therefore, according to the Ld. D.R., the assessee has to naturally incur certain expenditure for general advice from financial experts. Without engaging the service of financial experts, the assessee would not have earned this much of dividend income. Therefore, according to the Ld. D.R., the Assessing Officer, after referring to Rule 8D of Income-tax Rules, 1962, found that the assessee has not incurred any direct expenditure. The Assessing Officer also found that the assessee borrowed loan for the purpose of business. Since the expenditure incurred by the assessee could not be ascertained, according to the Ld. D.R., the Assessing Officer applied Rule 8D(2)(ii).

4. The Ld. Departmental Representative further submitted that the Assessing Officer also found that the assessee made investment during the year under consideration. Accordingly, he disallowed 0.5% of average investment made during the year under consideration. While computing, according to the Ld. D.R., the

Assessing Officer found that the expenditure to the extent of ₹2,57,06,601/- has to be disallowed under Section 14A of the Act read with Rule 8D(ii) of the Income-tax Rules, 1962. However, on appeal by the assessee, the CIT(Appeals) found that the investment was made for acquiring shares of the assessee's sister concern. Therefore, according to the Ld. D.R., the CIT(Appeals) by placing reliance on the decision of this Bench of the Tribunal in *EIH Associated Hotels Limited v. DCIT* (2013) 9 TMI 604, found that there cannot be any disallowance. According to the Ld. D.R., the Revenue has already filed appeal against the order of this Tribunal in *EIH Associated Hotels Ltd.* before the High Court and the same is pending for disposal, therefore, the CIT(Appeals) is not correct in deleting the addition made by the Assessing Officer.

5. On the contrary, Sh. Vikram Vijayaraghavan, the Ld.counsel for the assessee, submitted that the assessee invested the funds for the purpose of business in the sister concerns. This is not in dispute. According to the Ld. counsel, when the assessee invested the funds in the subsidiary companies for the purpose of carrying on the business effectively, earning of dividend income is only incidental, therefore, there cannot be any disallowance of

expenditure under Rule 8D(ii) of the Income-tax Rules, 1962. Therefore, according to the Ld. counsel, the CIT(Appeals) by placing reliance on the order of this Tribunal in EIH Associated Hotels Ltd. (supra), found that there cannot be any disallowance when the assessee invested the funds only in the sister concerns. In fact, according to the Ld. counsel, the CIT(Appeals) directed the Assessing Officer to follow the direction of this Tribunal.

6. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the investment was made by the assessee in its sister concerns. This Tribunal examined the issue in EIH Associated Hotels Ltd. (supra) and found that when the investment was made in the subsidiary companies, such investments are for the purpose of business and not for the purpose of earning any capital gain or dividend income. The investment was made by the assessee to promote the subsidiary companies. On identical circumstances, this Tribunal found that no disallowance can be made. The CIT(Appeals) simply followed the order of this Tribunal while deleting the addition made by the Assessing Officer. Now the contention of the Revenue before this Tribunal is that the Revenue

has filed appeal before the High Court against the order of this Tribunal in EIH Associated Hotels Ltd. (supra). This Tribunal is of the considered opinion that mere pendency of appeal before the High Court cannot be a ground to take a contrary view. It is not the case of the Revenue that the operation of the order of this Tribunal was stayed by the High Court. In those circumstances, the CIT(Appeals) has rightly followed the order of this Tribunal. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

7. Now coming to the appeal in I.T.A. No.1113/Mds/2017, the assessee is challenging the order of the CIT(Appeals) for assessment year 2008-09. The first issue arises for consideration is disallowance of foreign exchange loss debited to Profit & Loss account.

8. Sh. Vikram Vijayaraghavan, the Ld.counsel for the assessee, submitted that the assessee suffered a loss of ₹13,99,149/- towards foreign exchange. According to the Ld. counsel, the assessee is consistently adopting the same method in the books of account as well as the return filed before the authorities in respect of foreign

exchange loss. The Ld.counsel further submitted that the foreign exchange loss is in the nature of revenue expenditure for the purpose of business, therefore, the same is allowable under Section 37 of the Act. The Ld.counsel further submitted that an amount of ₹8,90,585/- was held by the Assessing Officer as disallowable, hence, the same amount which was shown as credit item in the immediately succeeding year should also be excluded from total income.

9. On the contrary, Ms. S. Vijayaprabha, the Ld. Departmental Representative, submitted that the Assessing Officer found that the assessee has debited an amount of ₹13,99,149/- in the Profit & Loss account as foreign exchange loss. According to the Ld. D.R., the Assessing Officer further found that the loss claimed by the assessee was occurred due to repayment of loan. Since the loan was borrowed for purchasing a capital asset, the foreign exchange loss incurred by the assessee is a capital loss. Therefore, according to the Ld. D.R., by placing reliance on the judgment of Apex Court in *Sutlej Cotton Mills v. CIT* (116 ITR 1), the Assessing Officer found that when the foreign currency was held as capital asset, such profit or loss can be on the capital nature. By applying

the above mentioned judgment of Apex Court in Sulej Cotton Mills (supra), according to the Ld. D.R., the Assessing Officer found that the foreign exchange loss cannot be allowed, therefore, the CIT(Appeals) has rightly confirmed the disallowance made by the Assessing Officer.

10. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that there was a foreign exchange loss arose on account of repayment of loan and reinstatement of FCNRB loan. The loan was borrowed for acquiring a capital asset. Therefore, this Tribunal is of the considered opinion that the Assessing Officer has rightly disallowed the claim of the assessee by placing reliance on the judgment of Apex Court in Sulej Cotton Mills (supra). Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

11. The next ground of appeal is with regard to provision for diminution in value of investment.

12. Sh. Vikram Vijayaraghavan, the Ld.counsel for the assessee, submitted that the assessee made provision for diminution in value

of investment to the extent of ₹42,06,000/-. According to the Ld. counsel, provision for diminution in value of investment is ascertainable liability, therefore, it has to be allowed under Section 37 of the Act.

13. We have heard Ms. S. Vijayaprabha, the Ld. Departmental Representative also. The assessee admittedly debited a sum of ₹42,06,000/- in Profit & Loss account towards diminution in value of investment. It is only a provision. The Assessing Officer by placing reliance on the judgment of Kerala High Court in Kerala Small Industries Development Corporation Ltd. v. CIT (270 ITR 452), found that diminution in value of investment is not an allowable expenditure. The CIT(Appeals) confirmed the order of the Assessing Officer by placing reliance on the judgment of Kerala High Court in Kerala Small Industries Development Corporation Ltd. (supra). No other contrary judgment was brought to the notice of the Bench. Therefore, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly confirmed the disallowance made by the Assessing Officer. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

14. The next issue arises for consideration is disallowance of Information System Infrastructure expenses.

15. Sh. Vikram Vijayaraghavan, the Ld.counsel for the assessee, submitted that the assessee incurred expenditure towards connectivity charges, lease rentals, hardware maintenance, consumables and other expenses incurred for maintenance of SAP, Data Storage and Mailing Solutions. According to the Ld. counsel, these expenditures are revenue in nature. The assessee filed supporting documents before the Assessing Officer and the CIT(Appeals). In spite of that, the Assessing Officer and the CIT(Appeals) concluded that the expenditure to the extent of ₹1,99,08,716/- was unsubstantiated. According to the Ld. counsel, the assessee has filed all the material before the Assessing Officer, therefore, the Assessing Officer may re-examine the same.

16. On the contrary, Ms. S. Vijayaprabha, the Ld. Departmental Representative, submitted that the main function of the assessee is to provide infrastructure development to other companies. For the purpose of providing infrastructure facilities to other companies, the system provided by the assessee is called Information System

relating to infrastructure. This is a basic apparatus to earn income in the assessee's business. Therefore, according to the Ld. D.R., the expenditure incurred for development of Information System gives enduring benefit to the assessee, therefore, the Assessing Officer disallowed the entire payment of ₹4,18,71,000/-. According to the Ld. D.R., on appeal by the assessee, the CIT(Appeals) found that the assessee could not substantiate payment to the extent of ₹1,99,08,716/-, therefore, he confirmed the disallowance to the extent of ₹1,99,08,716/-.

17. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee claimed ₹4,18,71,000/- towards Information System Infrastructure Expenses. The Assessing Officer found that the expenditure incurred by the assessee was in the capital field. The Assessing Officer also found that the assessee has not deducted tax at source, therefore, it has to be disallowed under Section 40(a)(ia) of the Act also. On appeal by the assessee, the CIT(Appeals) found that the expenditure to the extent of ₹1,99,08,716/- was not substantiated. From the order of the CIT(Appeals) it appears that the CIT(Appeals) called for remand report. The assessee has also filed rejoinder.

The assessee has filed a copy of remand report in the paper-book. In the remand report, the Assessing Officer found that there was no evidence for TDS to the extent of ₹1,99,08,716/-. Based upon it, the CIT(Appeals) restricted the disallowance to ₹1,99,08,716/-.

18. The main reason for disallowance is that the expenditure incurred by the assessee is in the capital field. This issue was not adjudicated by the CIT(Appeals). Therefore, this Tribunal is of the considered opinion that first of all it has to be ascertained whether the expenditure incurred by the assessee is in the capital field or not. Even in the remand report, the Assessing Officer has not whispered anything about the nature of expenditure. Therefore, the matter needs to be re-examined by the Assessing Officer. Accordingly, the orders of both the authorities below are set aside and the issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the issue afresh and point out whether the expenditure incurred by the assessee for Information System Infrastructure is capital expenditure or revenue expenditure and thereafter decide the same in accordance with law, after giving a reasonable opportunity to the assessee.

19. The next issue arises for consideration is disallowance of professional charges.

20. Sh. Vikram Vijayaraghavan, the Ld.counsel for the assessee, submitted that the Assessing Officer disallowed a sum of ₹3,37,27,000/- towards professional charges under Section 40(a)(ia) of the Act. The assessee, according to the Ld. counsel, deducted TDS and paid the same as per law, therefore, there cannot be any disallowance. The Ld.counsel further submitted that the matter may be verified by the Assessing Officer.

21. We have heard Ms. S. Vijayaprabha, the Ld. D.R. also. The assessee claimed that it deducted tax at source while making payment of ₹3,37,27,000/- towards professional charges. Therefore, this fact needs to be verified by the assessee. Accordingly, the orders of both the authorities below are set aside and the issue of disallowance under Section 40(a)(ia) is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the issue afresh in accordance with law and thereafter decide the same after giving a reasonable opportunity to the assessee.

22. Now coming to cross-objections in C.O. Nos.98 & 99/Mds/2017.

23. The assessee filed cross-objections for assessment years 2008-09 and 2012-13 only to support the orders of the CIT(Appeals). Therefore, the cross-objections are infructuous and accordingly stand dismissed.

24. In the result, Revenue's appeal in I.T.A. Nos.1089 & 1090/Mds/2017 are dismissed, assessee's appeal in I.T.A. No.1113/Mds/2017 is allowed for statistical purposes and the C.O. Nos.98 & 99/Mds/2017 are dismissed.

Order pronounced on 27th October, 2017 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 27th October, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती /Assessee
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-3, Chennai-34
4. Principal CIT-5, Chennai.
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.