

आयकर अपीलीय अधिकरण, "बी" न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
Before Shri Duvvuru RL Reddy, Judicial Member &
Shri S. Jayaraman, Accountant Member

आयकर अपील सं./I.T.A.No.2213/Chny/2017
निर्धारण वर्ष/Assessment Year:2010-11

M/s. Tamil Nadu State Transport
Corporation (Coimbatore Division) Ltd.,
37, Mettupalayam Road,
Coimbatore 641 043.

Vs. The Assistant Commissioner of
Income Tax,
Company Circle 1(2),
Coimbatore.

[PAN:AAACC9092M]

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri K. Raghu, C.A.
प्रत्यर्थी की ओर से/Respondent by : Shri Guru Bashyam, JCIT
सुनवाई की तारीख/ Date of hearing : 25.06.2019
घोषणा की तारीख /Date of Pronouncement : 19.07.2019

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 1, Coimbatore dated 27.06.2017 relevant to the assessment year 2010-11. The assessee has raised the following grounds:

(1) *The learned CIT(A) ought to have held that the impugned proceedings u/s 147 of the I.T. Act, 1961, are ab initio void, in the facts and the circumstances of the case and unsustainable in law.*

(2) *The learned CIT(A) has failed to appreciate that there was only a mere change of opinion on the basis of review of the existing material on record and as such, the proceedings u/s 143 (3) rws 147 of the I.T. Act, 1961,*

are opposed to law and unsustainable in the facts and the circumstances of the case.

(3) The learned CIT(A) ought to have held that the AO has erred in treating the expenditure of Rs.58,93,750/-, as capital expenditure, in the facts and the circumstances of the case and in law.

(4) The learned CIT(A) has erred in upholding the disallowance u/s. 14A of Rs.19,69,695/-, in the facts and the circumstances of the case and in law.

(5) For these and other additional grounds of appeal that may be adduced at the time of hearing the order of the CIT(A)-I, Coimbatore, is opposed to law and unsustainable in the facts and the circumstances of the case.

2. Brief facts of the case are that the assessee filed its return of income for the assessment year 2010-11 on 22.09.2010 admitting loss of ₹.98,97,99,667/- under normal computation and a loss of ₹.141,42,32,425/- under section 115JB of the Income Tax Act, 1961 ["Act" in short]. The return was processed under section 143(1) of the Act and the case was selected for security and the assessment was completed under section 143(3) of the Act on 26.12.2012 determining the loss at ₹.98,80,93,519/-. After recording the reasons, the Assessing Officer believed that the income chargeable to tax escaped assessment, notice under section 148 of the Act dated 21.04.2014 was issued to the assessee. After considering the submissions and details furnished by the assessee against statutory notices, the assessment under section 143(3) r.w.s. 147 of the Act was completed by assessing loss at ₹.98,02,30,074/- after making various additions.

3. The assessee carried the matter in appeal before the Id. CIT(A) and challenged the reopening of assessment as well as merits. After considering the submissions of the assessee, the Id. CIT(A) dismissed the appeal. On being aggrieved, the assessee is in appeal before the Tribunal.

4. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. With regard to the issue of reopening of assessment, after recording the reasons, the Assessing Officer believed that the income chargeable to tax escaped assessment, issued notice under section 148 of the Act. The Assessing Officer is required to see if the conditions laid in Explanation 2(c) because in this case the assessment was completed under section 143(3) of the Act are satisfied or not. In case, (i) income chargeable to tax has been under assessed; or (ii) such income has been assessed at too low rate; or (iii) such income has been made the subjective of excess relief under this Act; or (iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed, the Assessing Officer would have valid cognizance under section 147 of the Act. The reasons recorded by the Assessing Officer clearly demonstrates that though the assessee produced books of account, the discrepancy noticed by the Assessing Officer can only be pointed out that due diligent of Assessing Officer. As such, the production of books itself cannot constitute full disclosure of all material facts for the purpose of

assessment. Being so, we are satisfied that the Assessing Officer has “reasons to believe” that income has escaped assessment. This fact confers jurisdiction on the Assessing Officer to reopen the assessment. The power under section 147 to re-assess the income post 1st April, 1989 are much wider than these used to be before. But still the schematic interpretation of the words ‘reason to believe’ failing which section 147 would give arbitrarily powers to the Assessing Officer to reopen the assessment on the power to an Assessing Officer to reopen any and every assessment order which would simply amount to a review. The concept ‘change of opinion’ is an in-built test to check the abuse of power by the Assessing Officer. On the basis of ‘change of opinion’, which, cannot be *per se* a reason to reopen the assessment. In this case, the assessment was reopened by service of notice under section 148 of the Act dated 21.04.2014, which is well within the period of four years.

4.1 On perusal of the reasons recorded for reopening of assessment, the assessee has claimed to have acquired 300 buses at a cost of ₹.58,47,00,000/-, out of which 137 buses were put to use during the year and depreciation was claimed thereon. Out of the total cost, 50% of the cost was met out by the Union Government under the JNNRUM scheme. However, as per the books of the assessee, the cost of 300 buses was accounted only at ₹.55,57,88,448/-. This resulted in excess allowance of

depreciation of ₹.57,01,762/- during the year. Secondly, the assessee's claim in respect of pension trust expenses amount to ₹.40,08,091/- was not disallowed, even though the assessee's provision for the pension fund was disallowed. Thirdly, the claim of deduction for making special contribution (share) to the Institute of Road Transport (IRT) amounting to ₹.58,93,950/- was allowed, though, such share or special contribution to IRT is in the nature of a capital expenditure and fourthly, the assessee had investments in shares as per the balance sheet for the year ending 31.03.2010 which results in disallowance under section 14A of the Act amounting to ₹.19,69,695/-. In view of the above reasons, we are of the considered opinion that the Assessing Officer has valid reason to reopen the assessment under section 147 of the Act. Hence, the reopening of assessment is held to be valid and upheld.

5. The next ground raised in ground No. 3 relates to deduction claimed in respect of special contribution (share) to Institute of Road Transport (IRT), which was disallowed by the Assessing Officer. On perusal of the appellate order, we find that the assessee has raised similar ground at ground No. ii, which is reproduced hereunder:

“ii. The addition of ₹.58,93,750/- and ₹.19,69,695/-, as discussed at paragraph-6 and 7.1 of the impugned order cannot be sustained, in the revenue expenditure-assessment proceedings, as it would amount to mere review of the assessment in the facts and the circumstances of the case and in law.”

However, in para 7 of the appellate order, the Id. CIT(A) has stated that “the assessee has neither challenged nor gave any reasons for treating the deduction of ₹.58,93,750/- claimed in respect of special contribution (share) to Institute of Road Transport (IRT) as capital expenditure and thereby, the ground raised by the assessee was not adjudicated on merits. In view of these facts, we direct the Id. CIT(A) to adjudicate the ground raised by the assessee on merits in accordance with law by allowing an opportunity of being heard on this issue. The assessee is also directed to furnish the details before the Id. CIT(A) as was furnished before the Tribunal in the form of paper book. Thus, the ground raised by the assessee is allowed for statistical purposes.

6. The next ground relates to confirmation of disallowance made under section 14A r.w. Rule 8D. The Assessing Officer observed that the assessee had investments in shares. Even though the assessee claims that they have not incurred any expenditure for the investment, the Assessing Officer was of the opinion that section 14A r.w. Rule 8D is applicable. Accordingly, by applying section 14A r.w. Rule 8D, the Assessing Officer determined expenditure component and disallowed ₹.19,69,695/-. On appeal, the Id. CIT(A) confirmed the disallowance.

6.1 By relying upon the decision in the case of Lodhi Property Co. Ltd. v. DCIT [2019] 69 ITR (Trib) 416 (Delhi), the Id. Counsel for the assessee has

argued that various decisions of various Courts have been followed while deleting the disallowance made under section 14A of the Act in the above referred case. He also relied on the decision in the case of CIT v. Chettinad Logistics (P) Ltd. [2017] 248 taxman 55 (Mad) and prayed for following the same. On the other hand, the Id. DR supported the orders of authorities below.

6.2 We have considered the rival submissions. In this case, against the investments of the assessee, the Assessing Officer made the disallowance under section 14A r.w. Rule 8D. Admittedly, the assessee has not earned any exempt income in the relevant assessment year. Under these circumstances, in the case of CIT v. Chettinad Logistics (P) Ltd. (supra), the Hon'ble Jurisdictional High Court has observed and held that when there was no dividend income in the relevant assessment year, the addition made by the Assessing Officer relying on section 14A of the Act was completely contrary to the provisions of that section as Rule 8D only provides for a method to determine the amount of expenditure incurred in relation to income, which does not form part of total income of the assessee. Against the decision of the Hon'ble High Court, the Department preferred Special leave Petition, which was dismissed by the Hon'ble Supreme Court [2018] 257 Taxman 02. In view of the above judicial pronouncement, the disallowance made by the Assessing Officer under section 14A r.w. Rule 8D

stands deleted. Thus, the ground raised by the assessee is allowed.

7. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on the 19th July, 2019 at Chennai.

Sd/-
(S. JAYARAMAN)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 19.07.2019

Vm/-

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.