

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

श्री जॉर्ज माथन, न्यायिक सदस्य एवं  
श्री रमित कोचर, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND  
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.2010/Chny/2019  
निर्धारण वर्ष /Assessment Year: 2016-17

The Dy. Commissioner of Income  
Tax, Corporate Circle-6(1),  
Room No. 703, 7<sup>th</sup> Floor  
Wanaparthy Block  
Aayakar Bhawan  
Mahatma Gandhi Road  
Nugambakkam  
Chennai-600034

v. M/s.Shriram Capital Ltd.,  
No.4, Shriram House,  
Burkit Road, T-Nagar,  
Chennai-600 017.

**[PAN: AABCS 2726 B]**

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

Department by  
Assessee by

: Mr.J.Pavithran Kumar, JCIT  
: Mr.S.Gautam Venkata  
Narayanan, Advocate

सुनवाई की तारीख/Date of Hearing

: 22.10.2019

घोषणा की तारीख /Date of Pronouncement

: 31.10.2019

**आदेश / O R D E R**

**PER RAMIT KOCHAR, ACCOUNTANT MEMBER:**

This appeal filed by the Revenue is directed against appellate Order dated 16.04.2019 passed by learned Commissioner of Income Tax (Appeals)-15, Chennai (hereinafter called "the CIT(A)"), in ITA No.197/2018-19/CIT(A)-15 for assessment Year (ay) 2016-17, the appellate proceedings before learned CIY(A) had arisen from assessment

order dated 28.12.2018 passed by learned Assessing Officer ( hereinafter called " the AO") u/s 143(3) of the Income-tax Act, 1961( hereinafter called " the Act").

2. The grounds of appeal raised by assessee in memo of appeal filed with the Income-Tax Appellate Tribunal, Chennai (hereinafter called "the Tribunal") read as under:-

*"1. The order of the Ld. CIT(A) is contrary to the law and facts of the case.*

*2. The Ld. CIT(A) erred in deleting the disallowance of royalty payments of Rs.56,10,000/- relying on the decision of the Chennai Bench of the Hon'ble Tribunal vide its order ITA No.2502/Mds/2016 dated 01-05-2017 for the AY 2013-14 in the assessee's own case, decided in favour of the assessee.*

*2.1. The Ld. CIT(A) failed to appreciate that the Revenue has filed an appeal against the said order of the Hon'ble Tribunal before the Hon'ble Madras High Court, which is still pending.*

*2.2. The Ld. CIT(A) erred in treating the expenditure of royalty payment as revenue in nature, though the assessee had got an enduring benefit on acquiring the said intangible asset.*

*3. The Ld. CIT(A) erred in deleting the addition of expenditure under section 14A of the Act in the computation of book profit under section 115JB of the Act, when clause (f) of Explanation 1 to section 115JB of the Act warrants addition of expenditure relatable to exempt income.*

*4. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld.CIT(A) be set aside and that of the Assessing Officer be restored."*

3. The first issue which arose for our adjudication in this appeal filed by Revenue is with respect to the claim of the assessee to allow as revenue expenditure while computing its income under the head 'Profits and Gains from Business or Profession' , an amount of ₹74.80 lakhs paid towards royalty to 'Shriram Ownership Trust' for use of logo 'SHRIRAM' owned by said Trust. The said party namely 'Shriram Ownership Trust' being undisputedly an related party. The AO treated the said expenditure as capital expenditure and allowed depreciation u/s.32 of the 1961 Act. The

assessee claimed that this payment is an allowable business expenditure as it is only permission to use the logo 'SHRIRAM' by assessee on non-exclusive basis as said logo is owned by 'Shriram Ownership Trust' and no exclusive or proprietary rights over said logo were acquired by the assessee. This is a recurring issue in the case of the assessee as well in its associated concerns which is arising year after year. The assessee has contended that the Tribunal had upheld the said payment for use of logo in earlier years in ITA No.2502/Mds/2016 dated 01.05.2017 for ay: 2013-14 in assessee's own case as Revenue expenditure. The assessee pleaded before the AO to allow these expenses for use of logo as revenue expenses. The AO disallowed the aforesaid expenses to keep the matter alive as Revenue has not accepted the aforesaid appellate order passed by tribunal for earlier year and appeal u/s 260A was filed by Revenue with Hon'ble Madras High Court challenging tribunal order, which was stated to be pending for adjudication, vide assessment order dated 28.12.2018 passed by the AO u/s 143(3) of the 1961 Act.

4. The assessee being aggrieved by an assessment order passed by the AO, filed first appeal with Ld.CIT(A) who was pleased to allow appeal of the assessee by following tribunal's order for earlier year, vide appellate order dated 16.04.2019, by holding as under:

*"4.3 CIT(A)'s remarks and decision:*

*I have carefully gone through the observation of the AO in the assessment order as mentioned above under para 4.1, and the appellant's submission before the CIT(A) under para 4.2.*

*4.3.1. The AO has disallowed the appellant's claim of royalty payment as revenue expenditure, and has treated the same as capital expenditure. Thereafter, the AO proceeded to capitalise royalty payment and allowed depreciation at the rate of 25%. Before the CIT(A), the appellant's AR has relied on a favourable decision from the Hon'ble ITAT in the appellant's case in AY 2013-14 and from the CIT(A) in the AY 2014-15.*

*4.3.2. I have perused the ITAT's order vide 2407/Mds/2016-17 in the appellant's case in AY 2013-14 dated 01-05-2017. In the said order under Para 4.1., the Hon'ble ITAT has decided the issue in favour of the appellant. Similarly, in the appellant's case, the CIT(A) by the order vide 412/2016-17 dated 27-8-2018 under para 4.3.2. has allowed appeal. Respectfully following the decision of Hon'ble ITAT and in line with the order of CIT(A) in the appellant's case, the AO is directed to allow the royalty payment as revenue expenditure. The AO is also directed to withdraw depreciation allowed at the rate of 25%. In view of the above remarks, the appellant's ground is allowed".*

In nut shell, the Ld.CIT(A) allowed the appeal of the assessee based on appellate order passed by tribunal in assessee's own case for ay: 2013-14 dated 01.05.2017 and appellate order passed by learned CIT(A) for ay: 2014-15 in assessee's own case, vide appellate order dated 16.04.2019.

4 Now, the matter has reached tribunal at the behest of the Revenue. The Ld.DR fairly submitted that this issue is covered by the decision of the tribunal in assessee's own case for earlier year i.e. ay: 2013-14. However, Ld.DR submitted that the Department has not accepted the decision of tribunal in assessee's own case for earlier year and the matter is now pending for adjudication before Hon'ble Madras High Court in an appeal filed u/s 260A by Revenue with Hon'ble jurisdictional High Court. The Ld.Counsel for the assessee prayed that this issue is covered by decision of the tribunal in assessee's own case for earlier year and even if the matter is still pending for adjudication before Hon'ble Madras High Court , the same should not be a reason for this tribunal not to adjudicate this appeal.

5. We have considered rival contentions and perused the material on record . We have observed that the assessee has made payment of royalty to the tune of ₹74.80 lakhs to Shriram Ownership Trust, which was

a related party, for non exclusive right to use Logo 'SHRIRAM' owned by said Shriram Ownership Trust. Thus, vide para 2.2 of the assessment order, finding is given by the AO that this royalty payment was made by assessee towards permission to use logo on non-exclusive basis. The assessee is not holding any proprietary or exclusive rights in the said logo as ownership rights are not vested with the assessee. The Tribunal in assessee's own case for preceding year viz. ay: 2013-14 in ITA no. 2502/Mds/2016 vide appellate orders dated 01.05.2017 has decided the issue in favour of the assessee , by holding that these Royalty payments made for use of logo on non exclusive basis are Revenue expenditure which is to be allowed as deduction while computing income under the head "Profits or Gains from Business or Profession". We have observed that the AO treated these expenses as capital expenditure to keep the issue alive as because Revenue had not accepted appellate order passed by tribunal for earlier year in assessee's own case and an appeal is filed by Revenue with Hon'ble Madras High Court u/s 260A of the 1961 Act. Merely because an appeal is filed by Revenue with higher judicial forums will not preclude this tribunal from adjudicating the appeals unless it is shown that substantial question of law is admitted by Hon'ble High Court. The Revenue has an effective remedy available to it wherein it can challenge this tribunal orders before Hon'ble jurisdictional High Court u/s 260A of the 1961 Act. We have also observed that this issue has also arisen in the case of other group companies of the assessee and consistently the tribunal has taken a view that these payments made for

use of logo 'SHRIRAM' on non exclusive basis is to be allowed as Revenue expenses. The decision of tribunal in the case of DCIT v. Shriram Transport Finance Company Limited in ITA no. 2572/Chny2017 for ay: 2014-15 , dated 24.05.2018 is relevant, wherein tribunal has followed its earlier decision for ay: 2012-13 in ITA No. 728/Mds/2016 and allowed these expenses as Revenue expenses. A recent decision in the case of ACIT v. M/s Shriram Transport Finance Company Limited in ITA No. 2007/Chny/2019 for ay:2016-17, dated 22.10.2019 is relevant, of which both of us were part of Division Bench who pronounced the said order, wherein tribunal held the aforesaid expenses to be Revenue expenditure. Similarly , recent decision in the case of ACIT v. M/s Shriram City Union Finance Company Limited in ITA No. 2009/Chny/2019 for ay:2016-17, dated 22.10.2019 is relevant, of which both of us were part of Division Bench who pronounced the said order, wherein tribunal held the aforesaid expenses to be Revenue expenditure. Respectfully following the consistent stand of the tribunal in favour of the tax-payer, we hold that these expenses are to be allowed as Revenue expenses while computing business income of the assessee and therefore, we dismiss the appeal filed by Revenue. The Revenue fails on this issue. We order accordingly.

6. The second issue relates to the disallowance of expenditure by the AO incurred relatable to earning of an exempt income for computing book profits u/s 115JB of the 1961 Act by invoking provisions of Sec.14A r.w.r.8D of the Income-tax Rules, 1962 , for computing liability of the assessee of Minimum alternate tax u/s 115JB. The learned CIT(A) has

decided the issue in favour of the assessee by holding that provisions of Section 14A cannot be invoked for making disallowance of expenses in computing Book Profit u/s 115JB of the 1961 Act. We have heard both the parties and perused the material on record. Before proceeding further, it will be profitable at this stage to refer to clause (f) to Explanation 1 to Sub-section 2 to Section 115JB of the 1961 Act which clearly stipulate that for the purposes of Section 115JB of the 1961 Act, the 'book profit' means the profit as shown in the statement of profit and loss for the relevant previous year prepared u/s 115JB(2) of the 1961 Act, as increased by the amount or amounts of expenditure relatable to any income to which Section 10 ( other than the provisions contained in clause (38) thereof ) or Section 11 or 12 applies. Thus, clearly disallowance of expenses is to be made which are incurred relatable to earning of an exempt income except related to provisions of Section 10(38) of the 1961 Act. The issue is no more *res integra* as Special Bench of Delhi Tribunal in the case of ACIT v. Vireet Investment (P.) Ltd. reported in (2017) 82 taxmann.com 415(Delhi-trib.)(SB) has held in para 6.22 that computation under clause (f) of *Explanation 1* to section 115JB(2). is to be made without resorting to the computation as contemplated u/s 14A read with Rule 8D of the Income-tax Rules, 1962. Thus, this issue need to be remitted back to the file of the AO for fresh adjudication and the AO is directed to compute disallowance of expenses relatable to earning of an exempt income to compute book profits u/s.115JB(2) , clause (f) to Explanation 1, in accordance with the ratio of the decision of the Special Bench of the Delhi-

tribunal in the case of Vireet Investment (P.) Ltd. (supra). We order accordingly.

7. In the result appeal of the Revenue in ITA no.2010/Chny/2019 for ay: 2016-17 is partly allowed for statistical purposes.

Order pronounced on the 31<sup>st</sup> October, 2019 in Chennai.

**Sd/-**

(जॉर्ज माथन)

**(GEORGE MATHAN)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

**Sd/-**

(रमित कोचर)

**(RAMIT KOCHAR)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 31<sup>st</sup> October, 2019.

TLN

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