

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

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री रमित कोचर, लेखा सदस्य के समक्ष
BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA No.1851/Chny/2019
निर्धारण वर्ष / **Assessment Year: 2014-15**

M/s.Unipres India Pvt. Ltd.,
RNS-6, SIPCOT Industrial Growth
Centre, Oragadam,
Vadakupattu Post,
Sriperumbudur Taluk,
Kancheepuram District,
Tamil Nadu-603 204.

v. The Income Tax Officer,
Corporate Ward-3(2),
Nungambakkam,
Chennai-600 034.

[PAN: AAACU 9830 B]
(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ **Appellant by**

: Mr. SP.Chidambaram,
Advocate

प्रत्यर्थी की ओर से /**Respondent by**

: Mr. J.Pavithran Kumar, JCIT

सुनवाई की तारीख/**Date of Hearing**

: 30.09.2019

घोषणा की तारीख /**Date of Pronouncement**

: 26.11.2019

आदेश / ORDER
PER RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal filed by assessee is directed against appellate Order dated 25.11.2018 passed by learned Commissioner of Income Tax (Appeals)-11, Chennai (hereinafter called "the CIT(A)"), in ITA No.205/16-17 for assessment Year (ay) 2014-15, the appellate proceedings before learned CIT(A) had arisen from assessment order dated 25.11.2016

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 Income-Tax Appellate Tribunal, Chennai (hereinafter called "the tribunal") read as under:-

"1. The order of the Commissioner of Income Tax (Appeals) ["CIT (A)"] is contrary to the law, facts and circumstances of the case.

Under normal provisions of the Act

2. Disallowance under section 14A of the Income Tax Act ("the Act")

2.1 The CIT (A) has erred in confirming the disallowance made by the Assessing Officer ("AO") of INR 15,01,125 as expenditure incurred for earning the exempt dividend income under section 14A of the Act.

2.2 The CIT (A) ought to have appreciated that disallowance under section 14A of the Act is not warranted when the Appellant has not earned any exempt dividend income during the subject Assessment Year.

2.3 The CIT (A) ought to have appreciated that the Appellant has not incurred any expenditure and as such disallowance under section 14A of the Act is uncalled for.

2.4 The CIT (A) and the AO ought to have appreciated that provisions of section 14A of the Act are not applicable in case of strategic investments made for the purpose of acquiring controlling interest.

2.5 The CIT (A) ought to have appreciated that the Appellant had taken a business decision to invest in a joint venture entity and it did not make the investments with a view to earn exempt income and as such notional attribution of expenses is unsustainable.

2.6 The CIT (A) has failed to appreciate that the Appellant has made investments out of its surplus funds and no borrowed funds were utilised for the investments.

2.7 The CIT (A) has erred in rejecting the claim of the Appellant that AO has not formed an opinion regarding the necessity of invoking the provisions of section 14A of the Act.

2.8 Without prejudice to the above, the CIT (A)/AO erred in considering average value of investments which did not yield exempt dividend income while computing the disallowance under section 14A read with Rule 8D of the Income Tax Rules (the Rules).

2.9 Without prejudice to the above, the CIT(A) erred in confirming the action of the AO in considering interest paid on long term loans while computing the quantum of disallowance under clause (ii) of Rule 8D(2) of the Rules.

2.10 Without prejudice to the above, the CIT (A) and the AO have erred in law and in facts in not appreciating that the formula under clause (ii) to sub-rule (2) to Rule 8D of the Rules does not apply to the Appellant as there is no interest attributable to earning the dividend income.

Under section 115JB of the Act

3. *Disallowance under section 14A*

3.1 *The learned CIT (A) and the AO have erred in importing and adopting the provisions of section 14A and Rule 8D while computing book profits under section 115JB of the Act.*

3.2 *The CTT (A) has failed to appreciate that expenses which are not debited to the Profit and Loss Account cannot be added back to net profits under the provisions of section 115JB of the Act.*

3.3 *The CIT (A) has failed to appreciate that disallowance under section 14A is attracted only while computing the total income under the normal provisions of the Act and not for the purpose of section 115JB of the Act.*

4. *The Appellant craves leave to add, alter, amend, substitute, modify and/or withdraw in any manner whatsoever all or any of the foregoing grounds of appeal at or before the hearing of the appeal."*

3. At the outset, it is brought to the notice of Bench that this appeal is filed with tribunal with delay of 133 days beyond time stipulated u/s 253(3) of the 1961 Act for filing of an appeal with tribunal. The Ld.Counsel for assessee brought to notice of the Bench, affidavit dated 27.09.2019 filed by Managing Director of the assessee company, which is placed on record in file. The assessee has explained in the said affidavit that there was a change of officer who was looking after taxation matter and due to this change over of relevant officer incharge , it could not file its appeal in time with tribunal as there was not proper handover by outgoing officer looking after taxation matter to a new officer incharge of taxation matter. It was explained that on similar facts, learned CIT(A) allowed appeal of the assessee for ay: 2013-14 on merits , while for year under consideration viz. ay: 2015-16 , the appeal is decided by learned CIT(A) against assessee. It was explained in affidavit that when statutory auditors were reviewing contingent liabilities of the assessee for year ended 31st March 2019, then this fact of non filing of an appeal with tribunal came to notice and steps were taken to file this appeal with

tribunal. It is also explained in the aforesaid affidavit that Managing Director of assessee company was not in India and after coming back to India , steps were taken to file this appeal with tribunal. The learned counsel for the assessee prayed that this delay of 133 days in filing this appeal late with tribunal be condoned and this appeal be adjudicated on merits in accordance with law. The sum and substance of affidavit and prayers for condonation of delay is that there is no malafide in filing this appeal late with tribunal and there was a sufficient cause shown for filing this appeal late with tribunal. The Ld.DR, on the other hand, fairly stated that it is left to discretion of the Bench to take a decision so far as condonation of delay in admitting this appeal is concerned. In our considered view based on averments made in affidavit as well contentions advanced by learned counsel for the assessee, the assessee has shown sufficient cause in filing this appeal late with tribunal with a delay of 133 days beyond time prescribed u/s 253(3) of the 1961 Act and it is now a well settled position of law that if technicalities are pitted against substantial justice, the Court will lean towards substantial justice and in our considered view the assessee has shown sufficient cause in explaining delay of 133 days in filing of this appeal with tribunal beyond time prescribed u/s 253(3) of the 1961 Act and hence keeping in view, interest of substantial justice, we are inclined to condone this delay of 133 days in filing of this appeal late by assessee beyond time prescribed u/s 253(3) of the 1961 Act, by invoking our powers u/s 253(5) of the 1961 Act and admit this appeal to be adjudicated on merits in accordance with law. It is

pertinent to mention that no averments are made by Revenue nor there is any material on record to show that there is an malafide on part of assessee in filing this appeal late with tribunal and rather it is contended that learned CIT(A) decided the appeal of assessee for immediately preceding year viz. ay: 2013-14 in favour of assessee and on same sets of facts has decided assessee's appeal for this year viz. ay: 2014-15 against assessee on same set of facts and infact it will be traversity of justice, if this appeal will not be allowed to be admitted for reasons of delay and is thrown out at threshold on ground of aforesaid delay in filing this appeal late with tribunal beyond time prescribed u/s 253(3) of the 1961 Act . We condone aforesaid delay and admit this appeal. We order accordingly

4 Briefly stated facts of case are that assessee is engaged in business of manufacturing and supplying automotive ancillary parts. It was observed by AO from Balance Sheet of the assessee that assessee has made investments to the tune of ₹ 5,17,44,000/- in equity share of group company namely M/s.Kanaech India Pvt. Ltd., as on 31.03.2014. Admittedly, assessee did not earn any dividend income during year under consideration and hence no exempt income was claimed by assessee in return of income filed with Revenue. The AO invoked provisions of Sec.14A of the 1961 Act r.w.r.8D of the Income-tax Rules, 1962, to make following disallowance , vide assessment order dated 25.11.2016 passed by AO u/s 143(3) of the 1961 Act:-

<i>Exempted income -</i>	<i>0</i>
<i>(i) The amount of expenditure directly relating to income which does not form part of total income</i>	<i>0</i>
<i>(ii) A. Amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year</i>	<i>Rs.10,17,46,593/-</i>
<i>B. The average 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</i>	<i>Rs.4,64,52,000/-</i>
<i>Value of investment on the first day of the previous year</i>	<i>Rs.4,11,60,000/-</i>
<i>Value of investment on the last day of the previous year</i>	<i>Rs. 5,17,44,000/-</i>
<i>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.</i>	<i>Rs.3,72,48,49,292/-</i>
<i>Increase on account of revaluation of assets in the previous financial year</i>	<i>0</i>
<i>Increase on account of revaluation of assets in the current financial year</i>	<i>0</i>
<i>Total assets on the first day of the previous year</i>	<i>Rs.3,87,19,81,741/-</i>
<i>Total assets on the last day of the previous year</i>	<i>Rs.3,57,77,16,843/-</i>
<i>A X B/C</i>	<i>Rs.12,68,865/-</i>
<i>(iii) One half per cent of average 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</i>	<i>Rs.2,32,260/-</i>
<i>Disallowance under section 14A r.w.Rule 8D</i>	<i>Rs.15,01,125/-</i>

The assessee had claimed before AO that it has not incurred any expenditure in respect of the aforesaid investments made by it.

5. Aggrieved by an assessment framed by the AO u/s 143(3) of the 1961 Act, the assessee filed first appeal before learned CIR(A) but same was dismissed by Ld.CIT(A) , vide appellate order dated 25.11.2018 passed by learned CIT(A). The assessee , however, claimed before learned CIT(A) that it has not incurred any expenditure in respect of investments made by it and also that no exempt income was received by it during previous year under consideration .

6. Aggrieved by an appellate order dated 25.11.2018 passed by learned CIT(A), the assessee has filed an appeal before tribunal. At outset, Ld.Counsel for assessee submitted before the Bench that assessee has not

earned any dividend income during the year under consideration and hence no exempt income was claimed by it in return of income filed with Revenue . The learned counsel for assessee would submit that in view of no exempt income earned by assessee, no disallowance of expenditure is warranted u/s.14A of 1961 Act. The assessee has relied upon decision of Hon'ble Madras High Court in the case of CIT v. Chettinad Logistics (P.) Ltd. reported in [2017] 80 taxmann.com 221 (Madras), wherein, Hon'ble Madras High Court has held that no disallowance of expenditure can be made by invoking provisions of Section 14A of the 1961 Act , when there is no exempt income earned by taxpayer. The SLP filed by Revenue before Hon'ble Supreme Court in CIT v. Chettinad Logistics (P.) Ltd., reported in [2018] 95 taxmann.com 250 (SC) , has since been dismissed by Hon'ble Supreme Court. Similarly, it was submitted that no addition can be made to book profit u/s.115JB as the assessee has not incurred any expenditure in relation to earning of an exempt income. It is claimed that no expenditure has been incurred and debited to P&L A/c which is incurred in relation to earning of an exempt income. On merits, Ld.DR submitted that disallowance of expenditure u/s.14A is to be made even if no exempt income is earned by the assessee. The learned DR would rely on orders of authorities below.

7. We have considered rival contentions and perused material on record including cited case laws. We have observed that assessee is engaged in business of manufacturing and supplying of automotive ancillary parts. The assessee has made investments to the tune of ₹ 5,17,44,000/- in

equity shares of group company namely M/s.Kanaech India Pvt. Ltd., as on 31.03.2014. Admittedly, assessee did not earn any dividend income during the year under consideration and hence no exempt income was claimed by assessee in return of income filed with Revenue . The AO invoked provisions of Sec.14A of the 1961 Act r.w.r.8D of the Income-tax Rules, 1962, to make disallowance of expenditure to the tune of ₹ 15,01,125/- , which was confirmed by learned CIT(A). Now it is a well settled proposition that in case no exempt income is received during year under consideration , no disallowance of expenditure can be made by invoking provisions of Section 14A of the 1961 Act. The assessee has also consistently claimed that no expenditure was incurred by assessee in relation to earning of an exempt income wherein it is matter of fact that the assessee earned no exempt income during the year under consideration . Further, it is observed that AO has not recorded any satisfaction before invoking Rule 8D of the 1962 Rules and has simply invoked provisions of Section 14A of the 1961 Act r.w.r. 8D of the 1962 Rules. The AO has not analyzed modus operandi followed by assessee in making investments, personnel deployed nor has looked into books of accounts of the assessee to rebut contention of the assessee that no expenditure was incurred by it in relation to earning of an exempt income. The assessee is consistently claiming before authorities below that no expenditure was incurred by it relatable to earning of an exempt income . We have observed that Hon'ble Madras High Court has in the case of Chettinad Logistics Private Limited(supra) has held that no disallowance of

expenditure u/s 14A can be made when no exempt income is earned by taxpayer. The SLP filed by Revenue against decision of Hon'ble Madras High Court decision in case of Chettinad Logistics Private Limited(supra) has been dismissed by Hon'ble Supreme Court. It is also relevant here to mention decision of Hon'ble Madras High Court in case of Redington(India) Limited v. Addl. CIT reported in (2017) 392 ITR 633(Mad.) wherein similar view is taken and infact Hon'ble Madras High Court in case of Chettinad Logistics Private Limited(supra) relied upon this decision of Hon'ble Madras High Court in case of Redington India(supra) to hold and decide the issue in favour of tax-payer. The decision of Hon'ble Delhi High Court in case of Cheminvest Limited v. CIT reported in (2015) 378 ITR 33(Delhi) is relevant. The decision of Hon'ble Bombay High Court in the case of PCIT v. Ballarpur Industries Limited ITA no. 51 of 2016, vide judgment dated 13.10.2016 has also held that when no exempt income is earned by taxpayer, no disallowances of expenditure u/s 14A are warranted. Thus, keeping in view decision of Hon'ble jurisdictional High Court cited above, we are of considered view that no disallowance of expenditure by invoking provisions of Section 14A of the 1961 Act is warranted as assessee has not earned any exempt income during the year under consideration and hence we hereby order deletion of disallowances of expenditure made by AO by invoking provisions of Section 14A of the 1961 Act read with Rule 8D of the 1962 Rules, which additions were later confirmed by Ld.CIT(A). Our above decisions shall also apply mutatis mutandis while making disallowance of expenditure incurred for earning of exempt income while

computing book profits u/s 115JB of the 1961 Act. The decision of Hon'ble Special Bench of Delhi-tribunal in the case of ACIT v. Vireet Investment Private Limited reported in (2017) 165ITD 27(Delh-trib.)(SB) is relevant wherein it is held at 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 1962 Rules. We order accordingly.

8. In result, appeal filed by assessee in ITA No.1851 /Chny/2019 for ay: 2014-15 is allowed as indicated above.

Order pronounced on the 26th day of November, 2019 in Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(रमित कोचर)

(RAMIT KOCHAR)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 26th November, 2019.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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