

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री डॉ. मनीष बोराड, लेखा सदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष
BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
AND SHRI MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER

आयकर अपील सं./ITA No.: **3299/Chny/2019**

निर्धारण वर्ष / Assessment Year: 2013-14

The Assistant Commissioner of Income Tax,
Large Taxpayer Unit-2,
Room no. 711, 7th Floor,
Wanaparthy Block,
No. 121, M.G. Road,
Chennai – 600 034.

v. M/s. Tamilnadu Petroproducts Limited
Post Box No. 9, Manali Express Highway,
Manali, Chennai – 600 068.
[PAN: AAAC-1295-M]

अपीलार्थी की ओर से/Appellant by : Shri. R. Vijayaraghavan, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing : 19.04.2023
घोषणा की तारीख/Date of Pronouncement : 21.04.2023

आदेश / O R D E R

PER DR. MANISH BORAD, ACCOUNTANT MEMBER:

This appeal at the instance of revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals)-9, Chennai, dated 20.09.2019 which is arising out of order passed u/s. 143(3) r.w.s. 92CA of the Income-tax Act, 1961 (hereinafter referred to as "the Act") dated 13.02.2017 framed by Id. DCIT, LTU-1, Chennai.

2. Facts in brief are that the assessee is a limited company engaged in manufacturing and marketing petrochemicals viz. Linear Alkyl Benzene, Epichlorohydrin and Chemical intermediates – Caustic Soda and Chlorine, filed nil income return filed on 22.11.2012 for the relevant assessment year 2013-14. The case was selected for scrutiny followed by serving of notice u/s. 143(2) & 142(1) of the Act. Ld. AO, after considering submissions of the assessee completed the assessment proceedings making various additions and disallowance amounting to Rs. 6,05,22,819/-, computing the income of the assessee in the following manner:

	<i>Returned Income</i>		<i>Nil</i>
<i>Add:</i>	1. Disallowance u/s. 92CA 2. Disallowance u/s. 14A r.w.s. rule 8D 3. Disallowance of notional loss 4. Addition in difference in closing stock 5. Addition on long term capital gains	73,74,582/- 1,24,61,660/- 1,93,65,000/- 5,77,270/- 2,07,44,307/-	6,05,22,819/-
	Assessed Income		6,05,22,819/-

3. The assessee challenged these additions before the Id. CIT(A) and partly succeeded.

4. Now the revenue is in appeal raising the following grounds of appeal:

1. The order of the learned CIT(A) is contrary to law and facts and circumstances of the case.

2.1 The learned CIT(A) has erred and held that the disallowance u/s 14A r.w. Rule 8D can be made only when there is exempt income.

2.2 The learned CIT(A) has erred and held that only those investments which yielded exempt income during the relevant assessment year under consideration, ought to be included for the purpose of average value of investment for computing disallowance as per third limb of Rule 8D(2)

2.3 The learned CIT(A) has erred and directed the AO to recomputed the applicable disallowance u/s 14A r.w. Rule 8D on the above lines.

2.3 The learned CIT(A) failed to note as the Hon'ble Supreme court held in the case of '**Maxopp investments**' interpreted in a strict manner to held that dominant or main object would not be a relevant consideration for disallowance u/s 14 A of the Act.

2.4 The learned CIT(A) failed to note that the CBDT has issued circular No.5/2014 dated 11.02.2014 provides for disallowance of the expenditure even whether tax payer in a particular year has not earned any exempt income.

3.1 The learned CIT(A) has erred and directed the AO to delete the addition made on account of closing stock and held that there was a typographical error in the ITR filed in A.Y.2013-14.

3.2 The learned CIT(A) failed to note there is clearly a difference of 5 MT in the opening and closing stock between the ITR and Form 3CD and it's not just a typographical error.

3.3 The learned CIT(A) failed to note that the assessee has not offered any explanation during the course of scrutiny proceedings for this discrepancy.

4. The learned CIT(A) has erred and directed the AO to delete the disallowance of notional foreign exchange loss claimed by the assessee for the reason that it was of the nature of finance charges.

5. The learned CIT(A) has erred and directed the AO to delete the addition made on Long Term Capital Loss.

5.1 The learned CIT(A) failed to note the fact that there is a difference between the sale agreement and sale consideration.

5.2 The learned CIT(A) failed to note the fact that the expenses claimed by the assessee towards sales as they were incurred in the previous Financial year relating to A.Y.2012-13.

6. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing officer be restored.

5. The Id. DR vehemently argued supporting the findings of the Assessing Officer and specifically with regard to the addition for difference in closing stock, it was stated that there was a mismatch in the quantity mentioned in the audit report and the same needs to be rectified, if the assessee is claiming so. Similarly, with regard to the addition for long term capital gain which was on account of profit on sale of shares, it was submitted that there was a sale agreement for sale of share at a agreed price, but the consideration received was less for which no details have been filed by the assessee.

6. On the other hand, Id. Counsel for the assessee vehemently argued supporting the detailed findings of the Id. CIT(A).

7. We have heard rival contentions, perused records placed before us.

8. The revenue's ground no. 1 is general in nature which needs no adjudication.

9. Ground no. 2.1 to 2.4 of revenue's appeal relates to the disallowance u/s. 14A of the Act. During the course of hearing Id. Counsel for the assessee submitted that the assessee company has not earned any exempt income during the year and this fact was not controverted by Id. DR. We, therefore in view of the recent judgment of Hon'bl Delhi High Court in the case of *PCIT vs Era Infrastructure (India) Pvt Ltd 141 Com 289 (2022)*, are inclined to hold that for the year under appeal, in absence of any exempt income disallowance u/s. 14A of the Act is uncalled for. Therefore, no interference is called for in the findings of the Id. CIT(A) and ground no. 2.1 to 2.4 raised by the revenue are dismissed.

10. Ground no. 3.1 to 3.2 relates to the deletion of addition made on account of closing stock. We notice that in the audit report u/s. 44AB of the Act quantity of closing stock of LAB stated at 6973 MT, whereas the figure of 6978 MT has been

stated in the schedule related to quantitative details appearing in the income tax returns. For this error Id. AO made addition for difference in closing stock. We, however going through the findings of the Id. CIT(A) and the submissions made by the Id. Counsel for the assessee find that in the subsequent year, the opening quantity of 6973 MT has been taken. In our view this *prima facie*, seems to be a typographical error which do not call for any addition/disallowance. Thus, no interference is called for in the findings of the Id. CIT(A). Therefore, revenue ground no. 3.1 to 3.2 is dismissed.

11. Ground no. 4 of revenue appeal is against the deletion of addition for notional loss arising on account of foreign exchange loss. Facts in brief are that the assessee claimed deduction of Rs. 1,93,65,000/- under the head 'Finance Cost' on account of notional loss of foreign currency on re-statement of debtors and creditors. The said accounting of net foreign currency loss is shown on the basis of Accounting Standard-16 issued by the ICAI which authorizes such re-statement of foreign exchange loss for the correct presentation of financial statement. The Id. CIT(A) deleted the said disallowance applying the ratio laid down by the Hon'ble Apex Court in the

case of *CIT vs Woodward Governor India Private limited* (2009) 312 ITR 254.

12. We find that the alleged claim of foreign currency loss is notional in nature and the same has been calculated for the outstanding foreign currency payable/receivable by the assessee for the contract which have not expired at the close of the year. In the instant case, such contract which did not expire on 31.03.2013, the foreign currency loss has been calculated, considering the currency value on the last date of the financial year. However, in the subsequent period, when these contracts expire or the liability to be payable or the claim on receiving from debtors is crystallized actual gain/loss is calculated and routed through the profit and loss account. Since, the said claim is notional and has been claimed in order to make the true and fair presentation of the financial statement, therefore, respectfully following the ratio laid down by the Hon'ble Supreme Court in the case of *CIT vs Woodward Governor India Pvt Ltd* (Supra), we find no infirmity in the findings of the Id. CIT(A) deleting the disallowance of Rs. 1,93,65,000/-. Thus, ground no. 4 raised by the revenue is dismissed.

13. Ground no. 5 of revenue appeal related to deletion of addition made on account of long term capital gains. Facts in brief are that the assessee entered into a transaction for sale of 2,75,44,955 shares of SEPC Electric Power Corporation, for a consideration of Rs. 47,76,60,90,000/-. However, the actual consideration received was Rs. 46,64,50,584/- which was calculated @ 16.93 per share. The short fall in the sale consideration i.e., actual sales, less than the one agreed as per the agreement amounted to Rs. 1,01,58,416/-. It is the claim of the assessee that the actual consideration received shall prevail and there is no evidence that the alleged short fall in the consideration has been received by the assessee in any other mode. The Id. CIT(A) has deleted said addition accepting the contention made by the assessee. We, however notice that there has been amendment by Finance Act, 2010 w.e.f. 01.06.2010 inserting sub clause (viiia) to section 56(2) of the Act. It deals with the consideration received against sale of equity shares below the fair market value or without consideration and for receiving any sum below the fair market value, if it exceeds said consideration such excess amount is subjected to tax. Though, Id. AO has not invoked the said

provisions while making the addition in the hands of the assessee, however, fact remains that there has been a change in the sale consideration, as what is received was less than what was agreed. The transaction having entered through an agreement, there must have been some correspondence between both the parties to agree to the rate of Rs. 16.93 per share. Before us, Id. Counsel for the assessee failed to file any documentary evidence to explain the reason of alleged short fall. On the other hand Id. CIT(A) has placed complete burden of proof on the shoulders of the Assessing Officer alleging him to have failed to establish with necessary detailed documentary evidence which in our view is not justified. Sale consideration has been received by the assessee, therefore, the reason for the shortfall has to be explained by the assessee only by placing necessary documentary evidence. Thus, this issue of addition of Rs. 1,01,58,416/- regarding shortfall of receiving sale consideration from sale of equity shares is restored to the Id. AO for examining it afresh for which necessary details shall be filed by the assessee so as to enable the Assessing Officer to decide in accordance with law.

14. The other part of addition of long term capital gains is a disallowance of Rs. 1,05,85,891/- for a cost incurred by the assessee for effecting the said transaction of sale of equity shares which is paid to MAPE Advisory Group, Mumbai- 30. The main reason for the said disallowance by the Assessing Officer was that the major portion of the professional fees to MAPE Advisory Group was paid in the preceding year and the invoice was raised on 09.10.2011. The Id. AO, was of the view that since the invoice relates to financial year 2011-12, expenditure claimed cannot be allowed during the year under appeal. However, Id. CIT(A) accepted submission filed by the assessee observing that the advances was given during the financial year 2011-12 to MAPE Advisory Group, but since, the sale of equity shares finally concluded during the financial year 2012-13 relevant to assessment year 2013-14 claim is justified to calculate the long term capital gains on the sale transaction.

15. We therefore are of the view that expenditure towards professional fees paid for the said sale transaction has been rightly claimed during the year under appeal, because the genuineness of the expenditure is not in doubt and the facts as

narrated by the assessee are found to be correct. We therefore, confirm the findings of the Id. CIT(A) allowing the claim of cost of Rs. 1,05,85,891/- incurred for effecting transaction of sale of equity shares. Thus, ground no. 5 raised by the revenue is partly allowed for statistical purposes.

16. Other grounds being general and consequential in nature needs no adjudication.

17. In the result, appeal filed by the revenue is partly allowed for statistical purposes.

Order pronounced in the court on 21st April, 2023 at Chennai.

Sd/-
(मनोमोहन दास)
(MANOMOHAN DAS)
न्यायिकसदस्य/**JUDICIAL MEMBER**

Sd/-
(मनीष बोराड)
(MANISH BORAD)
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 21st April, 2023

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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