

**आयकर अपीलीय अधिकरण, 'सी' न्याय पीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI**  
**श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष**  
**BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER**  
**AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.2824/Chny/2019

(निर्धारणवर्ष / Assessment Year: 2015-16)

M/s. Manali Petro Chemicals Ltd. Spic House, 88 Mount Road, Guindy, Chennai -600 032.	Vs	The Deputy Commissioner of Income Tax, Large Tax Payer Unit-1 Chennai.
PAN: AAACM 3404D		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Mr.R.Vijayaraghavan, Advocate
प्रत्यर्थी की ओरसे/Respondent by	:	Mr. G.Johnson, Addl.CIT

सुनवाई की तारीख/Date of hearing	:	14.07.2021
घोषणा की तारीख /Date of Pronouncement	:	28.07.2021

**आदेश / ORDER**

**PER G.MANJUNATHA, AM:**

This appeal filed by the assessee is directed against order of the learned CIT(A)-9, Chennai dated 24.07.2019 and pertains to assessment year 2015-16.

2. Brief facts of the case are that the assessee company is engaged in the business of manufacturing and trading of petro chemical products filed its return of income for assessment year 2015-16 on 30.11.2015 by declaring total income of Rs.97,97,73,029/-. The assessment has been completed u/s.143(3) of the Income Tax Act, 1961 on 28.12.2017

determining total income at Rs.100,62,81,904/- by making disallowance of expenditure in relation to exempt income u/s.14A r.w. Rule 8D for Rs.28,51,669/-, disallowance of subsidy for HCFC phase out for Rs.2,32,50,000/- and further disallowance of rent equalization charges at Rs.4,07,206/-. The assessee carried the matter in appeal before first appellate authority and the learned CIT(A), for the reasons recorded in his appellate order dated 24.07.2019 has partly allowed appeal filed by the assessee, where he has confirmed disallowance of expenses u/s.14A read with Rule 8D under normal provisions of the Act, however, deleted additions made towards recomputation of book profit u/s.115JB of the Income Tax Act, 1961, by holding that computation of book profit u/s.115JB of the Act to be made without resorting to clause (f) to Explanation (1) to section 115JB of the Income Tax Act, 1961. As regards disallowance of subsidy received from HCFC, the learned CIT(A) has confirmed additions made by the Assessing Officer by holding that the assessee could not provide details of actual utilization of funds and further, failed to comply with record keeping requirements stipulated in the memorandum of

agreement. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

3. The first issue that came up for our consideration from ground no.2 of assessee appeal is disallowance of expenses u/s.14A r.w. Rule 8D of the Income Tax Rules, 1962. The learned A.R for the assessee submitted that the learned CIT(A) has erred in confirming disallowance of expenses u/s.14A r.w. Rule 8D without appreciating fact that the assessee has sufficient own funds being share capital and reserves in excess of investments made in shares and securities and consequently, no disallowance can be made towards interest expenditure. He further submitted that as regards disallowance of other expenses, only those investments which yielded exempt income for relevant year needs to be considered, whereas the Assessing Officer has taken total investments including investments which do not yield any exempt income. Therefore, matter may be set aside to file of the Assessing Officer for verification of availability of own funds and category of investments which yield exempt income.

4. The learned DR, on the other hand, strongly supporting order of the learned CIT(A) submitted that disallowance of expenses contemplated under section 14A should be computed by invoking prescribed procedure provided under Rule 8D, as per which once there is exempt income, then the Assessing Officer shall compute disallowance without resorting into whether the assessee has invested own funds or borrowed funds and hence, there is no merit in the arguments of the assessee that it has invested own funds and thus, no disallowance can be made towards interest and other expenses.

5. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Admittedly, it is a well settled principle of law that when the assessee is able to establish availability of mixed funds including borrowed funds, then presumption is drawn in favour of the assessee that investments made in shares and securities is out of own funds. This principle is supported by the decision of the Hon'ble Supreme Court in the case of CIT Vs. Reliance Industries Ltd., 307 CTR 121 (SC) . The Hon'ble Bombay High

Court in the case of CIT Vs. Reliance Utility Power Ltd. (313 ITR 340) has taken a similar view. In this case, it was claim of assessee that it has sufficient own funds, which is in excess of investments made in shares and securities, which yield exempt income. If the assessee is able to establish availability of sufficient own funds in excess of investments, then question of disallowance of interest expenses does not arise. However, facts with regard to availability of own funds was not furnished before the Assessing Officer. Similarly, as regards disallowance of other expenses, it was the claim of assessee that only investments which have actually yielded exempt income needs to be considered for computing average value of investments to determine disallowances under Rule 8D(2)(iii) of Income Tax Rules, 1962. This proposition is supported by the decision of Hon'ble Delhi High Court in the case of M/s. ACB India Ltd. Vs ACIT, reported in 374 ITR 108. This proposition is further supported by the decision of ITAT., Delhi Special Bench in the case of ACIT Vs. Vireet Investments Pvt.Ltd., reported in 165 ITD 27. Therefore, we are of the considered view that issue needs to be reconsidered by the Assessing Officer in light of averments made by the

assessee that it has sufficient own funds to cover investments made in shares and securities and further, the Assessing Officer has considered total investments including investments which does not yield exempt income to compute average value of investments to determine disallowances under Rule 8D of Income Tax Rules, 1962. Hence, we set aside issue to the file of Assessing Officer and direct him to reconsider the issue in light of various averments made by the assessee and also in light of our discussions given herein above.

6. The next issue that came up for our consideration from ground no.3 of assessee appeal is addition towards subsidy from Government of India under Montreal Protocol, United Nations (MoEF), towards environmental pollution control of Rs.2,32,50,000/- . The Assessing Officer has disallowed a sum of Rs.2,32,50,000/- on the ground that the assessee has received subsidy from Government of India, Ministry of Environment & Forest under Montreal Protocol, United Nations towards environment pollution control. It was claim of the assessee that during the year under consideration, it has not received any subsidy from Govt. of India.

7. Having heard both sides and considered material on record, we find that although the Assessing Officer has disallowed Rs.2,32,50,000/-, but has not given any reason how he has arrived at disallowance of Rs.2,32,50,000/-, even though the assessee claimed that it has not received any subsidy from Government of India. We further noted that the assessee claims it has received subsidy from Government of India in the earlier financial year and same has been utilized for the purpose it was received and further, it has maintained separate books of accounts as prescribed in the Memorandum of Understanding with Ministry of Environment & Forest. However, the Assessing Officer as well as the learned CIT(A) have recorded a finding that the assessee has not filed any details and also not recorded separate books of account as required under Memorandum of Understanding. The facts are not clear and therefore, we are of the considered that this issue also needs to go back to the file of the Assessing Officer to reconsider afresh in light of claim of the assessee that it has not received any subsidy from Government of India. Hence, we set aside the issue to file of the Assessing Officer and direct

him to reconsider the issue in light of various averments made by the assessee in accordance with law.

8. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 28<sup>th</sup> July, 2021

Sd/-  
( वी. दुर्गा राव )  
(V.Durga Rao)  
न्यायिक सदस्य /Judicial Member

Sd/-  
( जी. मंजुनाथ )  
( G.Manjunatha )  
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 28<sup>th</sup> July, 2021

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

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