

**आयकर अपीलीय अधिकरण, 'डी' न्याय पीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' 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.3069/Chny/2017

(निर्धारणवर्ष / Assessment Year: 2011-12)

The Deputy Commissioner of Income Tax, Central Circle-1(1) Chennai.	Vs	M/s. TCP Ltd. 10, TCP SapthagiriBhavan Karpagambal Nagar, Mylapore, Chennai-600 004.
		PAN: AA ACT 3615K
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Ms. R.Anita, JCIT
प्रत्यर्थी की ओरसे/Respondent by	:	Mrs. S.Vidya, C.A

सुनवाई की तारीख/Date of hearing	:	22.07.2021
घोषणा की तारीख /Date of Pronouncement	:	28.07.2021

**आदेश / ORDER**

**PER G.MANJUNATHA, AM:**

This appeal filed by the Revenue is directed against order of the learned CIT(A)-18, Chennai dated 18.09.2017 and pertains to assessment year 2011-12.

2. The Revenue has raised following grounds of appeal:-

*"1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.*

*2. The Id. CIT(A) erred in deleting the disallowance of Rs.2,55,22,111/- made by the Assessing Officer (AO) u/s 14A of the Income Tax Act,1961, read with Rule 8D of the Income Tax Rules, 1962, in the assessment order for AY 2011-12 passed u/s 143(3) of the IT Act,1961,in the assessee's case.*

*2.1 The Id. CIT(A) erred in holding that the AC should record his reasons for invoking the provisions of sec.14A r.w Rule 8D and the same should be conveyed to the assessee and its objections if any, should be obtained and since it is not fulfilled in the assessee's case, the AO's action is legally not tenable.*

*2.2 The Id.CIT(A) ought to have appreciated that there are no specific provisions in the Income Tax Act mandating the Assessing officer to record his satisfaction separately and convey the same to the assessee for obtaining objection of the assessee, if any.*

*2.3 The Id.CIT(A) ought to have appreciated that in the assessment order, the AC has quoted the provisions of section 14A (2) of the IT Act, which also includes mention of satisfaction and that after discussing the said provisions, the AO went on to make disallowance u/s 14A as per Rule 8D and as such, it the Id.CIT(A) ought to have appreciated that the AO's satisfaction is embedded in the Assessment order itself.*

*2.4 The Id.CIT(A) is not justified in holding the action of the AO in invoking the provisions of sec.14A read with Rule 8D as legally not tenable when the assessee itself, in its letter dated 12.03.2014 filed during the course of assessment proceedings, worked out disallowance of Rs.60,073/- u/s 14A of the IT Act and offered the same for taxation for A.Y 2011-12.*

*2.5 Having regard to the fact that the AO has rightly computed the disallowance u/s 14A of the IT Act as provided in Rule 8D of the IT Rule 1962, the Ld. CIT(A) ought to have confirmed the disallowance made by the AC in the assessment for 2011-12 in the case of the assessee.*

*3. The Id. CIT(A) erred in deleting the disallowance of Rs.31,98,200/- made by the AO, by treating the claim of commission payment to Managing Director of the company, as dividend within the meaning assigned in section 36(1)(ii) of the Income Tax Act,1961, in the assessment order for AY 2011-12 passed u/s 143(3) of the IT Act,1961,in the assessee's case.*

*3.1 The Id.CIT(A) erred in not appreciating that though the assessee claimed the said payment of commission to be salary and paid as contractual obligation, the nature of services rendered by the Managing Director was not furnished even during the course of appeal proceedings before him.*

*3.2 The Id.CIT(A) ought to have appreciated that, in its submissions before the Id.CIT(A), the assessee has stated that the Managing Director offered the commission income as salary in his individual returns and paid taxes @30% but there is no mention of the assessee company deducting TDS from the said payment of commission and in such case, the Id.CIT(A), having powers co-terminus as that of the AC, alternatively, ought to have subjected the said payment to disallowance u/s 40(a)(ia) of the IT Act.*

*3.3 Having relied on the decision in the case of M/s AMD Metaplast Pvt. Ltd. Vs DCIT 341 ITR 563 (Del) to allow relief to the assessee, the Id.CIT(A) ought to have appreciated that in the said decision, it was clearly mentioned that the MD had rendered services to the company and was entitled to receive commission for services rendered in terms of Board' resolution/appointment as MD and TDS was also made from the said payment and in the present case, the commission as per Annual Audit report, reproduced in the assessment order, is payable at 1% on the profits and not on any turn over achieved or any specific service rendered by MD.*

*3.4 Having regard to the fact that the provisions of sec.36(1)(ii) of the IT Act that "any sum paid to an employee as bonus or commission for services rendered, where such sum would have been payable to him as profits or dividend if it had not been paid as bonus or commission, are attracted in this case, the Ld. CIT(A) ought to have confirmed the disallowance made by the AO in the assessment order for AY 2011-12 passed u/s 143(3) of the IT Act, 1961 in the assessee's case.*

*4. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored."*

3. Brief facts of the case are that the assessee company is in the business of manufacturing and trading of chemicals and generation of power has filed its return of income for assessment year 2011-12 on 30.09.2011. The assessee has subsequently filed revised return on 28.08.2012 declaring total income of Rs.21,81,79,159/- under normal provisions of the Act, and book profit of Rs.29,11,28,921/-, as per section 115JB of the Income Tax Act, 1961. The case has been selected for scrutiny and assessment has been completed u/s.143(3) of the I.T. Act, 1961, on 27.03.2014 and determined

total income of Rs.24,68,99,470/-, by inter-alia, making additions towards disallowance u/s.14A for Rs.2,55,22,111/- and disallowance of commission paid to Managing Director u/s.36(1)(ii) of the Income Tax Act, 1961 for Rs.31,98,200/-.

4. Being aggrieved by assessment order, the assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee has challenged disallowances u/s.14A of the Act on the ground that the Assessing Officer has erred in disallowing of interest expenditure, even though the assessee has filed necessary evidence to prove that it has not used interest bearing funds for making investments in shares and securities which yield exempt income. The assessee has also challenged disallowances computed by the Assessing Officer on the ground that the Assessing Officer has not recorded satisfaction as required u/s.14A(2) of the Act, and hence, in absence of specific satisfaction having regard to books of account, he cannot invoke Rule 8D of Income Tax Rules, 1962 to compute disallowances. The assessee has also challenged disallowance of commission paid to Managing Director on the ground that commission has been paid to Managing Director on the basis of profits of the company, which

is in accordance with section 309 of the Companies Act, 1956. Therefore, the Assessing Officer has erred in making disallowance towards commission paid to Managing Director.

5. The learned CIT(A), after considering relevant submissions of the assessee and has also by relied upon the decision of the Hon'ble Delhi High Court in the case of CIT vs. M/s.Hero Management Services Pvt.Ltd. reported in 360 ITR 60(Del), held that in absence of satisfaction as required under section 14A(2) of the Act, the Assessing Officer cannot proceed to compute disallowance by invoking Rule 8D of Income Tax Rules, 1962, hence, deleted disallowances computed by the Assessing Officer u/s.14A read with Rule 8D of Income Tax Rules, 1962. As regards disallowance of commission paid to Managing Director u/s.36(1)(ii) of the Act, the learned CIT(A) by following decision of Hon'ble Delhi High Court in the case of AMD Metaplast Pvt.Ltd. vs. DCIT reported in 341 ITR 563(Del) held that the assessee has paid commission to Managing Director, as per terms of appointment, which is further authorized by the provisions of section 309 of the Companies Act, 1956, and hence, the Assessing Officer has erred in disallowing commission by invoking provisions of section

36(1)(ii) of the Act. Aggrieved by the learned CIT(A) order, the Revenue is in appeal before us.

6. The first issue that came up for our consideration from ground no.2 of revenue appeal is disallowance of expenditure in relation to exempt income u/s.14A of the Income Tax Act, 1961. The facts with regard to impugned dispute are that the assessee has earned dividend income of Rs.6,99,349/-, which was claimed exempt u/s.10(34) of the Act. The assessee had also disallowed a sum of Rs.60,073/- as expenditure incurred towards earning exempt income. The Assessing Officer has determined disallowance of Rs.2,55,22,111/- by invoking Rule 8D of Income Tax Rules, 1962.

7. The learned DR submitted that the learned CIT(A) has erred in deleting disallowance computed by the Assessing Officer u/s.14A r.w. Rule 8D of Income Tax Rules, 1962, without appreciating fact that the Assessing Officer has recorded satisfaction as required under sub-section (2) of section 14A of the Act. The DR further submitted that disallowances contemplated u/s.14A of the Act, shall be computed in accordance with prescribed method provided under Rule 8D and hence, there is no error in the computation

of disallowances made by the Assessing Officer. However, the learned CIT(A), without assigning any reason has simply deleted additions made by the Assessing Officer by holding that there is no satisfaction recorded by the Assessing Officer as required under law.

8. The learned A.R for the assessee, on the other hand, submitted that the issue is squarely covered in favour of the assessee by the decision of ITAT., Chennai in assessee's own case for assessment years 2012-13 & 2013-14 in ITA Nos.3124 to 3126/Chny/2017, where the Tribunal has directed the Assessing Officer to examine availability of sufficient own funds to cover up investments made in shares and securities which yield exempt income. The AR further submitted that as regards disallowance of other expenses as required under Rule 8D(2)(iii) of Income Tax Rules, 1962, it may be restricted to the extent of exempt income earned for the year.

9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that an identical issue has been considered by the Tribunal in assessee's own case for subsequent

assessment years 2012-13 to 2014-15 in ITA Nos.3124 to 3126/Chny/2017 vide order dated 08.05.2019, where the Tribunal has held that the Assessing Officer has not recorded satisfaction as required u/s.14A(2) of the Income Tax Act, 1961. However, the Tribunal had directed the Assessing Officer to verify claim of the assessee whether it has sufficient own funds being share capital, reserves & surplus to cover up investments made in shares and securities which yield exempt income. Therefore, we are of the considered view that insofar as disallowance of interest expenses under Rule 8D(2)(ii) of Income Tax Rules, 1962, is concerned, by following the decision of co-ordinate bench in assessee's own case dated 08.05.2019, we direct the Assessing Officer to verify claim of assessee that it has sufficient own funds. In case, assessee is able to prove availability of own funds, then delete interest disallowance Rule 8D(2)(ii) of Income Tax Rules, 1962.

10. As regards disallowance of other expenses under Rule 8D(2)(iii), it was the claim of learned AR for the assessee that disallowance computed by the Assessing Officer may be restricted to the extent of exempt income earned for the year under consideration. We find that issue of disallowances of



expenditure u/s.14A in excess of exempt income earned for the year is no longer *res integra*. The Hon'ble Delhi High Court in the case Cheminvest Ltd. vs.CIT (2015) 378 ITR 33 has considered an identical issue and held that disallowances contemplated u/s.14A cannot exceed exempt income earned for the year under consideration. A similar view has been taken by the Hon'ble High Court of Delhi in the case of Joint Investments Pvt .Ltd vs. CIT reported in 372 ITR 694, where it was held that disallowances contemplated u/s.14A cannot swallow entire exempt income for the year under consideration. In this case, the assessee has earned dividend income of Rs.6,99,349/-, whereas the Assessing Officer has computed disallowance of Rs.6,99,349/- . Therefore, we are of the considered view that disallowance computed by the Assessing Officer is disproportionate and contrary to the settled principle of law by various High Courts including the Hon'ble Delhi High Court. Hence, we direct the Assessing Officer to restrict disallowances contemplated u/s.14A read with Rule 8D(2)(iii) of the Income Tax Rules, 1962, to the extent of exempt income earned for the year.

11. The next issue that came up for our consideration from ground no.3 of revenue appeal is disallowance of commission paid to Managing Director u/s.36(1)(ii) of the Act. The Assessing Officer has disallowed commission paid to Managing Director u/s.36(1)(ii) of the Act, on the ground that the assessee has paid commission to Managing Director in lieu of profits or dividend. It was the explanation of the assessee before the authorities that commission has been paid to Managing Director, as per terms of appointment, which is authorized by section 309 of the Companies Act, 1956.

12. Having heard both the sides and considered material available on record, we find that this issue is also covered in favour of the assessee by the decision of the Tribunal in assessee's own case for assessment year 2012-13 to 2014-15 in ITA Nos. 3124 to 3126/Chny/2017 dated 08.05.2019, where the Tribunal has considered an identical issue and by following decision of the Hon'ble High Court of Delhi in the case of M/s. AMD Metaplast Pvt.Ltd.Vs. DCIT reported in 341 ITR 563 deleted additions made by the Assessing Officer towards commission paid to Managing Director. The facts remain unchanged and the Revenue has failed to bring on record any

evidences to prove that findings of fact recorded by the learned CIT(A) in light of decision of Hon'ble Delhi High Court in the case of AMD Metaplast Pv.Ltd.(supra) is incorrect. Therefore, by following the decision of the Tribunal in assessee's own case for subsequent assessment years in ITA Nos.3124 to 3126/Chny/2017 dated 08.05.2019, we are of the considered view that Assessing Officer has erred in disallowing commission paid to Managing Director u/s.36(1)(ii) of the Act and hence, we are inclined to uphold the findings of the learned CIT(A) and reject ground taken by the Revenue.

13. In the result, appeal filed by Revenue is partly 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

DS

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.