

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' 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

आयकरअपीलसं./I.T.A.No.1251/Chny/2019

(निर्धारणवर्ष / Assessment Year: 2014-15)

Shriram City Union Finance Ltd. Mookambika Complex, No.4, Lady Desika Road, Mylapore, Chennai-600 004.	Vs	The Deputy Commissioner of Income Tax, Corporate Circle-6(1) Chennai-34.
PAN: AAACS 7703H		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

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आयकरअपीलसं./I.T.A.No.1298/Chny/2019

(निर्धारणवर्ष / Assessment Year: 2014-15)

The Deputy Commissioner of Income Tax, Corporate Circle-6(1) Chennai-34.	Vs	Shriram City Union Finance Ltd. Mookambika Complex, No.4, Lady Desika Road, Mylapore, Chennai-600 004.
		PAN: AAACS 7703H
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Mr.R.Sivaraman, Advocate
प्रत्यर्थी की ओरसे/Respondent by	:	Mr.Abani Kanta Nayak, CIT & Mr.G.Johnson, Addl. CIT

सुनवाईकीतारीख/Date of hearing	:	26.08.2021
घोषणाकीतारीख /Date of Pronouncement	:	08 .09.2021

आदेश / ORDER

PER G.MANJUNATHA, AM:

These cross appeals filed by the assessee and revenue are directed against the order passed by the learned CIT(A)-15, Chennai dated 30.01.2019 and pertains to assessment year 2014-15. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off by this consolidated order.

ITA No.1251/Chny/2019 (Assessee appeal):-

2. The first issue that came up for our consideration from ground No.A(i) to A(v) of the assessee appeal is disallowance of amount transferred to reserve fund u/s.45IC of the RBI Act, for Rs.1,54,61,33,983/-. At the outset, the learned A.R for the assessee at the time of hearing submitted that this issue is covered against the assessee by an order of the Tribunal in assessee's group company case in M/s.Shriram Transport Finance Company Ltd. in ITA No.2572 & 2636/Chny/2017 dated 24.05.2018 for assessment year 2014-15, where an identical issue has been considered by the Tribunal and held that amount transferred to reserve fund, as per provisions of section 45IC of the RBI Act is appropriation of profits, which is not deductible while computing profits & gains from business or profession.

3. The learned DR, on the other hand, fairly agreed that this issue is covered against the assessee.

4. We have heard both the parties, perused material available on record and gone through orders of the authorities below. We find that an identical issue has been considered by the Tribunal in the case of Shriram Transport Finance Company

Ltd. in ITA No.2572 & 2636/Chny/2017 dated 24.05.2018, where the Tribunal by following its earlier order in the case of M/s. Shriram Transport Finance Co.Ltd. in ITA No.454/Mds/2016 dated 24.08.2016 held that transfer of funds as required u/s.45IC of the RBI Act, is only application of income, therefore, it is liable for taxation. The facts are being identical for year under consideration and thus, consistent with view taken by the co-ordinate Bench in the cases discussed hereinabove, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the assessee.

5. The next issue that came up for our consideration from ground no.3 of assessee appeal is alternative claim of depreciation on royalty amount disallowed in assessment year 2006-07 to 2013-14. We find that learned CIT(A) has rejected alternative plea taken by the assessee claiming depreciation on royalty on the ground that when royalty expenses has been held to be revenue in nature and deductible, then alternative plea of the assessee for claiming depreciation on said expenditure is infructuous and hence, not maintainable. The fact remains unchanged. The assessee failed to bring on record

any valid reason to take a different view from the view taken by the learned CIT(A) and hence, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the assessee.

6. The next issue that came up for our consideration from ground No.III (A) (i& ii) of assessee appeal is recomputation of book profit u/s.115JB of the Income Tax Act, 1961, by making additions towards amount transferred to statutory reserve amounting to Rs.1,04,40,00,000/-. The counsel for the assessee as well as DR for the revenue have agreed that this issue is covered against the assessee by the decision of the Tribunal in appellant's group company case of M/s. Shriram Transport Finance Co.Ltd./ Shriram Investments Ltd. in ITA Nos.806 & 807/Mds/2008, where under identical set of facts, it was held that amount transferred to reserve fund as required u/s. 45IC of RBI Act, is only an appropriation of income and thus, same cannot be deductible while computing book profit u/s.115JB of the Income Tax Act, 1961.

7. Having heard both the sides and considered materials available on record, we find that the Tribunal has considered

identical issue and held that amount transferred to special reserve fund as required under section 45IC of the RBI Act, is only appropriation of profits below the line in the profit & loss account and thus, same is not deductible while computing book profit u/s.115JB of the Income Tax Act, 1961. Therefore, consistent with view taken by co-ordinate Bench, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the assessee .

8. In the result, appeal filed by the assessee is dismissed.

ITA No.1298/Chny/2019 (Revenue appeal):-

9. The first issue that came up for our consideration from ground No.2 of revenue appeal is deletion of disallowance u/s.14A of the Act for Rs.77,36,000/-. The Assessing Officer has disallowed expenses relatable to exempt income u/s.14A r.w.r.8D of the I.T.Rules, 1962 and determined disallowance of Rs.77,36,000/- under rule 8D(2)(iii) of Income Tax Rules, 1962 @ .5% of average value of investments. The learned A.R for the assessee submitted that this issue is covered in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of CIT Vs.Chettinad Logistics Pvt.Ltd. 95 Taxmann

250, where it was held that section 14A cannot be invoked where no income was earned by the assessee for relevant assessment year .

10. The learned DR, on the other hand, fairly agreed to the proposition, but strongly supported order of the Assessing Officer.

11. Having heard both the sides and considered material on record, we find that issue of disallowance of expenses u/s.14A r.w.r 8D of the I.T.Rules, 1962, when Nil exempt income earned for the relevant assessment year is no longer *res integra*. The Hon'ble Madras High Court in the case of Redington India Pvt.Ltd., 392 ITR 633, had considered an identical issue and after considering Board Circular No.5 of 2014 dated 11.02.2014 held that where there is no exempt income in relevant year, there cannot be disallowance of expenditure u/s.14A of the Act. The Hon'ble Supreme Court has considered an identical issue and dismissed SLP filed by revenue against Hon'ble Madras High Court ruling in the case of CIT vs.Chettinad Logistics Pvt.Ltd, and held that provisions of section 14A cannot be invoked, where no exempt income

was earned by the assessee for relevant assessment year . In this case, the learned CIT(A) has recorded categorical finding that the assessee has not earned any exempt income for impugned assessment year and hence, deleted additions made by the Assessing Officer towards expenses u/s.14A of the Act. Hence, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the revenue.

12. The next issue that came up for our consideration from ground no.3 of revenue appeal is deletion of additions made towards disallowance of royalty expenditure. The learned A.R for the assessee Mr. R.Sivaraman, Advocate and learned DR present for the revenue have agreed that this issue is covered in favour of the assessee by the decision of Tribunal in assessee's own case for assessment year 2006-07 in ITA No. 726/Mds/2010 dated 16.12.2010, where the Tribunal held that royalty paid by the assessee for using logo is not a capital expenditure which gives enduring benefit to the assessee, because the assessee does not acquire any intangible asset, and further said logo is non-transferrable.

13. We have heard both the parties, perused material available on record and gone through orders of the authorities below. We find that the Tribunal has considered an identical issue in the case of M/s.Shriram Transport Finance Company Ltd. in ITA No.2572 & 2636/Chny/2017 dated 24.05.2018 for assessment year 2014-15, where it was held that payment made by the assessee for right to use logo is revenue in nature, which is deductible while computing income from business or profession. Further, similar issue had been considered in assessee's own case for assessment year 2006-07 in ITA No.726/Mad/2010. Therefore, consistent with the view taken by co-ordinate Bench, we are of the considered view that there is no error in the reasoning given by the learned CIT(A) to delete additions made towards royalty and hence, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the revenue.

14. The next issue that came up for consideration from ground no.4 of revenue appeal is restricting disallowance of commission payment u/s.40(a)(ia) of the Act, for failure to deduct TDS u/s.194H of the Act to Rs.18,44,989/-. The Assessing Officer has disallowed commission payment of

Rs.99,34,513/- on the ground that the assessee has failed to deduct TDS as per provisions of section 194H of the Act, even though commission payment exceeds Rs.5000/- in each case. It was explanation of the assessee before the Assessing Officer that out of total commission payment, a sum of Rs.80,89,524/- is out of the scope of provisions of section 194H of the Act, because each payment of commission does not exceed Rs.5000/- to individual recipient. Insofar as, remaining commission payment of Rs.18,44,989/-, the assessee claimed that payment has been made before end of relevant financial year and in light of decision of Hon'ble Allahabad High Court in the case of CIT Vs.Vector Shipping Services Pvt.Ltd. (357 ITR 652) payment is not disallowable, if such payment is made before end of financial year.

15. Having heard both the sides and considered material available on record, we find that the learned CIT(A) has recorded a categorical finding in light of various evidences including list of payment of commission to individual recipients by the assessee and held that a sum of Rs.80,89,524/- is out of scope of section 194H of the Act, because payment in respect

of each person does not exceed Rs.5000/- and hence, the assessee does not require to deduct TDS, as per provisions of section 194H of the Act, and thus, disallowance u/s.40(a)(ia) of the Act for non-deduction of TDS cannot be made. The revenue has failed to bring on record any evidence to counter findings of fact recorded by the learned CIT(A), except stating that the learned CIT(A) has accepted additional evidence in contravention of Rule 46A of Income Tax Rules,1962. Therefore, we are of the considered view that there is no error in the findings recorded by the learned CIT(A) to delete additions made towards commission payment of Rs.80,89,524/- . As regards remaining commission payment of Rs.18,44,989/-, the assessee sought for deduction on the ground that said payment has been made before end of relevant financial year in light of decision of the Hon'ble Allahabad High Court in the case of CIT Vs.Vector Shipping Services Pvt.Ltd.(supra). The fact remains that the Hon'ble Supreme Court has subsequently reversed decisions of various High Courts in the case of Palam Gas Servicevs.CIT (2017) 394 ITR 300, and held that provisions of section 40(a)(ia) of the Act, is applicable for non-deduction of TDS under respective

provisions of the Act, even though impugned payments are made before end of relevant financial year. The learned CIT(A), after considering relevant facts has rightly sustained additions made by the Assessing Officer towards disallowance of commission of Rs.18,44,989/-. Therefore, we are of the considered view that there is no error in the reasoning given by the learned CIT(A) insofar as issue of disallowance of commission and hence, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the revenue.

16. The next issue that came up for our consideration from ground no.5 of revenue appeal is recomputation of book profit u/s.115JB of the Act by making additions towards disallowance u/s.14A r.w.r 8D of the Income Tax Rules, 1962 . We find that this issue is squarely covered in favour of the assessee by the decision of ITAT., Delhi Special Bench in the case of ACIT Vs. M/s.Vireet Investments Pvt.Ltd. (165 ITD 27) (SB), where it was held that computation under clause (f) of Explanation (1) to section 115JB of the Act is to be made without resorting to computation as contemplated u/s.14A r.w.r 8D of Income Tax Rules, 1962. The co-ordinate Bench of ITAT., Chennai in the case of Shriram Transport Finance Company in ITA No.406 &

407/Mds/2017 had considered an identical issue and held that disallowances made u/s.14A by invoking Rule 8D cannot be added back to book profit computed u/s.115JB of the I.T Act, 1961. The learned CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer towards recomputation of book profit by making additions towards disallowance u/s.14A r.w.r 8D of Income Tax Rules, 1962 . Hence, we are inclined to uphold findings of the learned CIT(A) and reject ground taken by the Revenue.

17. In the result, appeals filed by the assessee and revenue are dismissed.

Order pronounced in the open court on 8th September, 2021

Sd/-
(वी.दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member
चेन्नई/Chennai,
दिनांक/Dated 8th September, 2021

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

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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.