

**आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"B" BENCH, CHENNAI**

**माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ ITA No.1252/Chny/2019  
(निर्धारण वर्ष / Assessment Year: 2010-11)

M/s. Shriram Retail Holdings Pvt. Ltd., (Since amalgamated with Shriram City Union Finance Ltd.) Mookambika Complex, No.4, Lady Desika Road, Mylapore, Chennai – 600 004.	<b>बनाम/ Vs.</b>	DCIT Corporate Circle-6(1), Chennai.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAJCS-7325-N		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ <b>Appellant by</b>	:	Shri R. Sivaraman (Advocate) – Ld. AR
प्रत्यर्थी की ओरसे/ <b>Respondent by</b>	:	Shri D.V. Subba Rao (Addl.CIT) – Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	02-12-2021
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	17-01-2022

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2010-11 arises out of the order of learned Commissioner of Income Tax (Appeals)-15, Chennai [CIT(A)] dated 31.01.2019 in the matter of assessment framed by learned Assessing Officer (AO) u/s 143(3) on 29.06.2017. The grounds raised by the assessee read as under:

1. The order of the CIT(A) in ITA No.20/2017-18 / CIT(A) -15 dated 31.01.2019 is against law and facts of the case.
2. The CIT(A) erred in confirming the disallowance made u/s.14A r.w Rule 8D Rs.1,42,32,7697-.
3. The CIT(A) erred in not appreciating the fact that the appellant is in the business of investments promotion, and the receipt of dividend income is incidental to the appellant's business and therefore disallowance u/s.14A r.w Rule 8D is not attracted.
4. The CIT(A) erred in confirming the disallowance U/S.14A r.w Rule 8D (2)(i) of Lead Management fees of Rs.13,00,300/- paid to DSP Merrill Lynch Ltd and Escrow Management fee of Rs.1,20,00,000/- paid to Standard Chartered Bank which were related to open offer issued for shares of Shriram City Union Finance Limited and advisory fees paid for restructuring of Rs.2,48,175/-.
5. The CIT(A) erred in not appreciating the fact that in the case of our group company viz., Shriram Capital Limited, which is also in the business of investment promotion, the ITAT in their order in ITA Nos. 638,639 & 640 / Mds/2012 dated 04.02.2013 for the assessment year 2005-06, 2007-08 & 2008-09 has deleted the additions of interest and facilitation fees.
6. The CIT(A) erred in not appreciating the fact that in the appellant's case for the assessment year 2009-10, the Hon'ble ITAT in their orders in ITA No.1477/Mds/2013 dated 10.04.2014 has confirmed the CIT(A) order deleting bank guarantee commission and filing fees.
7. The CIT(A) erred in not appreciating the fact that the dividend income which was received by the appellant from Shriram City Union Finance Limited has been credited to the appellant's bank account under ECS and that the appellant has already disallowed Rs.51,220/- u/s.14A.
8. The CIT(A) erred in not appreciating the fact that the Assessing Office has disallowed the entire expenditure though the appellant had admitted interest income of Rs.4,49,00,729/- and other income of Rs.866/- in addition to dividend income of Rs.3,34,37,502/-.
9. The CIT(A) erred in confirming the disallowance of Short Term Capital Loss of Rs.14,00,00,000/- on forfeiture warrants.
10. The CIT(A) erred in relying on the ITAT Delhi decision in the case of Aaa Portfolios Pvt Ltd in ITA No.2483/Del/2014 dated 20.01.2016 and in the case of DCIT Vs B.S. Infosolution Pvt Ltd in ITA No.2989 /Del/2016 dated 23.08.2018 though the facts of the appellant's case are different.
11. The CIT(A) erred in overlooking the Karnataka High court decision in the case of CIT Vs BPL Sanyo Finance Ltd (312 ITR 63) and Delhi High court decision in the case of CIT Vs Chand Ratan Bagri (230 ITR 258) and ITAT Kolkata decision in the case of DCIT Vs Diamond Company Ltd (162 ITD 131)
12. For these and other grounds that may be adduced before or at the time of hearing the ITAT may be pleased to
  - i. delete the disallowance made u/s.14A r.w Rule 8D
  - ii. delete the disallowance of Short Term Capital Loss of Rs.14,00,00,000/-

As evident, the assessee is aggrieved by disallowance u/s. 14A as well as by the fact that Short-term Capital Loss (STCL) on forfeiture of share warrants was not allowed by lower authorities.

2. This is second round of appeal since both the issues under consideration were set aside to the file of Ld. AO by Tribunal vide ITA No.885/Mds/2015 order dated 10.08.2016 for fresh adjudication after considering all the factual aspects. Pursuant to the same, an assessment has been framed by Ld. AO on 29.06.2017. The assessment, upon confirmation by Ld. CIT(A), is in further appeal before us by the assessee.

3. Having heard rival submissions and after due consideration of material on record, our adjudication to the subject matter of appeal would be as under.

#### **4. Disallowance u/s. 14A**

4.1 The assessee being resident corporate assessee is stated to be engaged in dealing in shares and stocks etc. The assessee is in the business of investment and it has invested in various other Shriram Group of entities. These investments are stated to be out of commercial expediency and to strengthen the capital and liquidity base of group entities as a whole. The assessee earned exempt dividend income of Rs.334.37 Lacs and offered suo-moto disallowance of Rs.51,220/- in the computation of income and submitted that no further disallowance would be warranted u/s 14A.

4.2 However, Ld. AO rejected assessee's submissions that the investment in subsidiaries would not attract disallowance u/s 14A. Referring to CBDT circular No.05/2014 dated 11.02.2014, Ld. AO repeated disallowance of Rs.135.48 Lacs in terms of Rule 8D(2)(i) which

comprised-off of advisory fees of Rs.2.48 Lacs, lead management fees of Rs.13 Lacs and Escrow management fees of Rs.120 Lacs paid by the assessee. The Ld. AO has also repeated disallowance u/r 8D(2)(iii) for Rs.6.84 Lacs. No disallowance was made u/r 8D(2)(ii).

4.3 During appellate proceedings, reiterating the business profile of the assessee, it was submitted that entire expenses incurred were related to assessee's business of investment promotion. During the year, the assessee received only two dividend from M/s Shriram City Union Finance Ltd. which was directly credited to assessee's bank through ECS and therefore the suo-moto disallowance of Rs.51,220/- was quite sufficient in terms of Sec.14A. The assessee also relied on the decision of this Tribunal in the case of group concern namely M/s Shriram Capital Limited for AYs 2005-06, 2007-08 & 2008-09 dated 04.02.2013 which was relied upon by learned first appellate authority in assessee's own case for AY 2009-10 to delete the similar disallowance. The revenue's appeal against the same was dismissed by the Tribunal vide ITA No.1477/Mds/2013 dated 10.04.2014. In the above background, the assessee pleaded for deletion of disallowance as made by Ld. AO.

4.4 The Ld. CIT(A), in terms of later decision of Hon'ble Supreme Court in the case of **Maxopp Investments Ltd. (91 Taxmann.com 154)**, held that disallowance would be applicable even in respect of strategic investment in sister concern for controlling stake. Finally, the action of Ld. AO was upheld against which the assessee is in further appeal before us.

5. The primary argument raised before us by Ld. AR is that no objective satisfaction has been recorded by Ld. AO before proceeding to compute disallowance as per Rule 8D which is against the statutory

mandate. The failure to do so would make the disallowance bad in law in terms of various binding judicial pronouncement. Upon due consideration of material fact, it could be gathered that the assessee has offered suo-moto disallowance of Rs.51,220/- in the revised computation of income. In terms of the statutory mandate of Sec.14A r.w.r. 8D, it was incumbent on the part of Ld. AO to record an objective satisfaction, having regards to the accounts of the assessee, as to why the disallowance offered by the assessee was not acceptable. Without recording such a finding, no disallowance could be made u/s 14A r.w.r. 8D. It is settled legal position that the application of Rule 8D is not automatic as held by Hon'ble Supreme Court in **Godrej & Boyce Manufacturing Co. Ltd. V/s DCIT (2017 394 ITR 449)**. Upon perusal of assessment order, we find that Ld. AO has failed to record any objective satisfaction as to why the assessee's stand was not acceptable having regards to the accounts of the assessee as per the mandate of Sec.14A. This jurisdictional requirement was not satisfied by Ld. AO in the present case and Ld.AO straightway proceeded to compute disallowance as per Rule 8D. The application of Rule 8D, in our considered opinion, was not mechanical or automatic.

6. The Hon'ble Apex Court in the cited case of **Godrej & Boyce Manufacturing Co. Ltd. V/s DCIT (2017 394 ITR 449)** held that sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under Rule 8D or in

the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable. The said principle has been reiterated by Hon'ble High Court of Madras in the case of **Marg Limited V/s CIT (TCA NO.41 to 43 & 220 of 2017 dated 30.09.2020)**. Further Hon'ble Apex Court in **Maxopp Investment Limited V/s CIT (91 Taxmann.com 154)** at para-32 observed that it is that expenditure alone which has been incurred in relation to the income which is not includible in total income, is to be disallowed. If expenditure has no casual connection with the exempt income, such expenditure would be an allowable expenditure.

7. Applying the aforesaid principles to the fact of the present case, we find that Ld. AO has mechanically applied the provisions of Rule 8D while making the aforesaid disallowance without establishing any nexus of expenditure claimed by the assessee with that of exempt income earned during the year. Nowhere a finding has been recorded by Ld. AO as to why the suo-moto disallowance of Rs.51,220/- as offered by the assessee was not acceptable. In the absence of such recorded satisfaction, the additional disallowance as made in assessment order could not be sustained in the eyes of law. Accordingly, we are inclined to delete the disallowance of Rs.142.32 Lacs as made by Ld. AO while computing income under normal provisions as well as while computing Book Profits u/s 115JB. This ground stand allowed.

## **8) Disallowance of Short-Term Capital Loss on forfeiture of Share Warrants**

8.1 It transpired that the assessee was issued 35 Lacs share warrants from M/s Shriram City Union Finance Ltd. (SCUFL). These warrants were convertible into equity shares within a period of 18 months. On allotment, the assessee paid amount of Rs.40/- per warrant on 15.05.2008 and the balance Rs.360/- per warrant was payable on conversion of warrant. Since, the assessee could not raise the balance amount payable, it relinquished its right to buy the shares and accordingly, the amount paid by the assessee for Rs.1400 Lacs was forfeited which was claimed as Short-Term Capital Loss.

8.2 The Ld. AO rejected the assessee's claim on the ground that there was no transfer of capital asset and the ratio of decision of Hon'ble Madras High Court in the case of **CIT V/s R.Chidambaranatha Mudaliar (105 Taxman 705)** was held to be applicable. Therefore, the loss was termed as loss of capital and not capital loss and therefore, the claim was held not allowable.

8.3 During appellate proceedings, the assessee relied on the decision of Hon'ble Delhi High Court in the case of **CIT V/s Chand Ratan Bagri (329 ITR 356)** which held that loss on forfeiture of amount paid towards convertible warrants was deductible as Short Term Capital Loss. Similar was stated to be the ratio of decision of Hon'ble Karnataka High Court in the case of **DCIT V/s BPL Sanyo Finance Limited (312 ITR 63)** which held that the assessee would be deemed to have acquired a right in shares even if call monies of the full value of the share has not been

paid. The extinguishment of any right as per Sec.2(47) would cover every possible transaction resulting in the destruction, annihilation, extinction, termination cessation or cancellation, by satisfaction or otherwise, of all or any of the bundle of rights whether qualitative or quantitative, which the assessee has in capital asset, whether or not such an asset is corporeal or incorporeal. Upon forfeiture, the assessee's right in the share stood extinguished and the loss was short-Term Capital loss. The case law of **CIT V/s R.Chidambaranatha Mudaliar (supra)** was stated to be distinguishable on facts and not applicable to the assessee's case.

8.4 However, Ld. CIT(A) observed that the assessee as well as SCUFL was closely related and therefore, the transaction was not at arm's length. Further, the forfeited amount of Rs.1400 Lacs was not offered to tax by SCUFL. Such transaction, in terms of decision of Delhi Tribunal in **M/s AAA Portfolios Ltd. (ITA No.2483/Del/2014 dated 20.01.2016)** was held to be sham transaction and not a genuine loss. Therefore, the transaction was to be viewed as colorable device and the claim was to be rejected. Aggrieved, the assessee is in further appeal before us.

9. Having considered rival arguments and after going through the orders of lower authorities, we find that so far as the factual matrix is concerned, the assessee has applied for 35 Lacs share warrants issued by SCUFL and accordingly, paid a sum of Rs.1400 Lacs upon allotment. The warrant would have entitled the assessee to subscribe the shares of SCUFL at a later date upon further payment. However, since the assessee was unable to pay the remaining amount, the warrants were forfeited and the loss thus suffered by the assessee was claimed as Short-Term Capital Loss. The Ld. AO denied assessee's claim on the



ground that there was no transfer of capital asset. However, the term 'capital asset' as defined in Sec.2(14) would mean property of any kind held by the assessee, whether or not connected with his business or profession. Thus, the definition of capital asset is wide enough to cover property of any kind held by the assessee. The right acquired by the assessee through share warrants, in our considered opinion, was a valuable right and covered within the meaning of capital asset as defined in Sec. 2(14). Proceeding further, transfer as defined in Sec. 2(47) would include sale, exchange or relinquishment of the asset or extinguishment of any rights therein. Clearly, upon forfeiture of share warrants, the assessee's right in acquiring the warrants as well as resultant shares was extinguished and the assessee was deprived of a right in capital asset. Thus, the amount lost on forfeiture of share warrant, in our considered opinion, would give rise to capital loss in the hands of the assessee. It would be wholly immaterial as to how the recipient had accounted for such income in its computation of income.

10. Our aforesaid view is duly fortified by the recent decision of Hon'ble Bombay High Court in **Pr. CIT V/s Kanaiyalal M.Sheth (108 Taxmann.com 455 dated 30.04.2019)** which concurred with the decision of Hon'ble Delhi High Court in **CIT V/s Chand Ratan Bagri (329 ITR 356)** as well as the decision of Hon'ble Karnataka High Court in **DCIT V/s BPL Sanyo Finance Limited (312 ITR 63)**. In the decision of **CIT V/s Chand Ratan Bagri (supra)**, it was held by Hon'ble Court that the forfeiture of convertible warrant would result into extinguishment of the right of the assessee to obtain a share. A share in a company is nothing but share in the ownership of the company. While the right of the assessee to share in the ownership of the company stand extinguished

on account of forfeiture, the company, with all its assets, continues to exist. The forfeiture only results in one less shareholder. Therefore, the loss thus suffered by the assessee would be a capital loss. Respectfully following these decisions, we would hold that loss suffered by the assessee on account of forfeiture of share warrant would be deductible Short-Term Capital Loss. The observation of Ld. CIT(A) that such transactions are to be treated as sham transaction are mere allegations and bereft of any merits. No cogent material to substantiate this allegation is on record. Accordingly, Ld. AO is directed to allow the claim of the assessee. This ground stand allowed.

### **Conclusion**

11. The appeal stand allowed in terms of our above order.

Order pronounced on 17<sup>th</sup> January, 2022.

**Sd/-**  
**(V. DURGA RAO)**  
**न्यायिक सदस्य / JUDICIAL MEMBER**

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
**लेखा सदस्य / ACCOUNTANT MEMBER**

चेन्नई / Chennai; दिनांक / Dated : 17-01-2022  
EDN/-

### **आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

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