

**आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI**  
**श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष**  
**BEFORE SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER, AND**  
**SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.3114/Mds/2016  
निर्धारण वर्ष / Assessment Year : 2011-12

Lakshmi Electrical Drives Ltd., 504, Avinashi Road, Peelamedu, Coimbatore – 641 004.	v.	The Deputy Commissioner of Income Tax, Corporate Circle-2, Coimbatore
PAN: AAACL5264Q		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by	:	Shri K. Raghu, CA
प्रत्यर्थी की ओर से/Respondent by	:	Shri Shiva Srinivas, JCIT

सुनवाई की तारीख/Date of Hearing	:	14.03.2017
घोषणा की तारीख/Date of Pronouncement	:	23.03.2017

**आदेश / ORDER**

**PER A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER:**

This appeal is filed by the assessee aggrieved by the order of the Ld. Commissioner of Income Tax (Appeals), Coimbatore in Appeal No.16/14-15 dated 22.07.2016 passed u/s. 250(6) r.w.s. 143(3) of the Act.

2. There is delay of 7 days in filing the appeal and the Director of the company has filed condonation petition dated

16.12.2016, wherein he has stated that the delay had occurred due to the mistake on the part of the staff of the appellant in understanding the order of the Ld. CIT(A) with respect to the issue of disallowance u/s.14A of the Act read with 8D of the Rules. It was therefore pleaded that the delay of 7 days in filing the appeal may be condoned. Though the Ld. DR vehemently opposed to the submission of the assessee, after considering the issue involved in the appeal and the delay in filing the appeal being short, we hereby condone the delay of 7 days in filing the appeal by the assessee and proceed to hear the matter on merit.

3. The assessee has raised several grounds in its appeal, however the cruxes of the issue are that:-

- i. The Ld. CIT(A) has erred in confirming the disallowance of pooja expenses of Rs.21,594/- made by the Ld. AO by treating it as personal expenditure.
- ii. The Ld. CIT(A) has erred in invoking the provisions of Section 14A read with Rule 8D of the rules and thereby disallowed the notional expenditure. (This ground was modified at the time of argument)

4. The brief facts of the case are that the assessee is a limited company engaged in the business of manufacture of electrical motors and cotton yarns, filed its return of income electronically on 07.09.2011 for the assessment year 2011-12 declaring total income of Rs.12,28,96,229/- and net book profit of Rs.11,00,83,581/- u/s. 115JB of the Act. Initially the return was processed u/s.143(1) of the Act and thereafter the case was selected for scrutiny through CASS and finally assessment was completed u/s.143(3) of the Act on 06.03.2014, wherein amongst certain other disallowance the Ld.A.O made disallowance of Rs.21,594/- towards pooja expenses and Rs.15,57,412/- invoking the provisions of Section 14A read with Rule 8D of the Rules.

**5. Ground i: Pooja Expenses of Rs.21,594/- :-**

During the course of assessment proceedings, it was observed by the Ld. AO that the assessee had debited its profit & loss account Rs.21,594/- as pooja expenses. The Ld. AO opined that the pooja expenses cannot be treated as business expenditure and could be only considered as personal expenditure. Therefore he disallowed the pooja expenses of Rs.21,594/- and added to the income of the assessee. The Ld. CIT(A) also confirmed the addition

because the assessee had not furnished any details with respect to pooja expenses in order to prove that it is not personal expenditure. We do not subscribe to this view of the Revenue authorities. In every business establishment it is customary to follow certain religious procedures in order to please the "Gods" for prosperity and development. Considering the nature and the turnover of the business, we are of the considered view that the amount spent by the assessee as pooja expenditure is quite meager and reasonable. Therefore, we hereby direct the Ld. AO to delete the addition of Rs.21.594/- made towards pooja expenditure.

**6. Ground ii: Invoking of Section 14A and Rule 8D of the Rules:-**

The assessee had invested Rs.18.01 crores which would yield exempt income. Therefore the Ld. AO invoked the provisions of Section 14A and Rule 8D of the Rules and made addition which was subsequently confirmed by the Ld. CIT(A). At the outset, the Ld. AR submitted before us that, the entire investments, for strategically reasons, was made in subsidiary companies and it was sourced from interest free funds. The Ld. AR further argued that on several occasions, the Chennai bench of the Tribunal has

held that if such investments are made in sister /subsidiary companies, the provisions of Section 14A cannot be invoked. He therefore pleaded that the addition made by invoking the provisions of Section 14A of the Act, may be deleted. The Ld. DR though opposed to the submission of the Ld. AR could not successfully controvert to the submissions. After hearing both sides, we find merit in the arguments of the Ld. AR. On several instance this bench of the Tribunal has held as what was argued by the Ld. AR. For instance in the case of M/s. Data Software Research Company (International) Pvt. Ltd. v. ACIT, ITA Nos.2169 & 2170/Mds/2015 and ACIT v. M/s. Data Software Research Company (International) Pvt. Ltd., ITA Nos. 2171& 2172/Mds/2015 vide order dated 03.02.2016, this bench of the Tribunal has held as follows:

*“7. We have heard both the parties and carefully perused the materials available on record. It is a normal practice to make investment in sister companies due to commercial exigencies. While doing so, no expense can be attributable other than interest expense for making such investments because all management costs will be absorbed for strategic decision making process which is allowable as business expenditure. In the case of the assessee it is submitted that no interest cost was incurred as the entire investments were made out of own funds. Further in the decision of the Tribunal in ITA No.115/Mds/2015 dated 06.01.2016, extracted herein*

*below, it has been held that section 14A of the Act will not be applicable when investments are made in sister companies.*

*“5. We have heard both the parties and carefully perused the materials available on record. On the identical issue as pointed out by the Ld. A.R. the Chennai bench of the Tribunal in ITA No.156/Mds/2013 vide order dated 20/08/13 for the assessment year 2009-10 has remitted back the matter to the Ld. Assessing Officer to decide the matter once again afresh based on the findings whether the assessee had actually incurred any expenditure in earning the dividend income. The relevant portion of the order is extracted herein below for reference:-*

Further, on the identical issue various Benches of the Tribunal and the Hon'ble Bombay High Court have held as follows:-

- i) *Garware wall Ropes Ltd., Vs. ACIT* reported in (2014) 65 SOT 086 (Mum.) held as follows:-

*“When assessee has prima facie brought out case that no expenditure has been incurred for earning income, which does not form part of total income, then in absence of any finding that expenditure has been incurred for earning exempt income provisions 14A cannot be applied..”*

- ii) *Integlobe Enterprises Ltd., Vs. DCIT* reported in (2014) 40 CCH 0022(Del. Trib.) held as follows:-

*“No disallowance of interest is required to be made under rule 8D(i) & 8D(ii) where no direct or indirect interest expenditure was incurred for making investments.*

*Where the assessee had utilized interest free funds for making fresh investments and that too into its subsidiaries, which was not for the purpose of earning exempt income and which was for strategic purposes only, no disallowance of interest was required to be made under Rule 8D(i) & 8D(ii) and strategic investment has to be excluded for purpose of arriving at disallowance under Rule 8D(iii).”*

- iii) *M/s.JM Financial Ltd., Vs. ACIT* reported in 2014-TIOL-202-ITAT-MUM held as follows:

*“...the department has not disputed this fact out of the total investment about 98% of the investment are in subsidiary companies of the assessee and, therefore, the purpose of investment is not for earning the dividend income but having control and business purpose and consideration. The assessee has brought out a case to show that no expenditure has been incurred for maintaining the 98% of the*

*investment made in the subsidiary companies, therefore, in the absence of any finding that any expenditure has been incurred for earning the exempt income, the disallowance made by the Assessing Officer is not justified, accordingly the same is deleted.”*

- (iv) CIT Vs. Bharti Televenture Ltd. reported in (2011) 331 ITR 0502.

*“Where the assessee was found to be having adequate non-interest bearing fund by way of share capital and reserves and there was no nexus between the borrowals of assessee and the advances given, no disallowance for interest was called for.”*

- (v) CIT Vs. Reliance Utilities & Power Ltd., reported in (2009) 313 ITR 0340(Bom.) has held as follows:-

*“Tribunal having recorded a clear finding that the assessee possessed sufficient interest-free funds of its own which were generated in the course of the relevant financial year, apart from substantial shareholders fund, presumption stands established that the investments in sister concerns were made by the assessee out of interest free funds and therefore no part of interest on borrowings can be disallowed on the basis that the investments were made out of interest bearing funds.”*

- (vi) EIH Associated Hotels Ltd Vs. DCIT reported in 2013-TIOL-796-ITAT-MAD

*“.... The investments made by the assessee in the subsidiary company are not on account of investment for earning capital gains or dividend income. Such investments have been made by the assessee to promote subsidiary company into the hotel industry. The assessee is not into the business of investment and the investments made by the assessee are on account of business expediency. Any dividend earned by the assessee from investment in subsidiary company is purely incidental. Therefore the investment made by the assessee in its subsidiary is not to be reckoned for disallowance U/s.14A r.w.r.8D. The Assessing Officer is directed to re-compute the average value of investment under the provisions of Rule 8D after deleting investments made by the assessee in subsidiary company.”*

Taking note of the above decisions and the decision of the Chennai bench of the Tribunal in ITA No.156/Mds/13 cited supra, we hereby remit the matter back to the file of Ld. Assessing Officer to examine the issue involved in this case afresh and pass appropriate order as per law and merits and in the light of the decisions cited herein above. While doing so, we also direct the Ld. Assessing Officer to consider the decision of the Tribunal in the case M/s Agile Electric Sub Assembly Pvt. Ltd. cited supra wherein it was held as follows:-

“7.2 In regard to applicability of Section 14A of the Act read with Rule 8D also; the above view will be applicable. Moreover in the case EIH Associated Hotels Ltd v. DCIT reported in 2013 (9) TMI 604 in ITA No.1503, 1624/Mds/2012 dated 17<sup>th</sup> July, 2013, it has been held by the Chennai Bench of the Tribunal as follows:-

*“Disallowance U/s. 14A rw Rule 8D – CIT upheld disallowance – Held that – investments made by the assessee in the subsidiary company are not on account of investment for earning capital gains or dividend income. Such investments have been made by the assessee to promote subsidiary company into the hotel industry. A perusal of the order of the CIT(Appeals) shows that out of total investment of Rs.64,18,19,775/-, Rs.63,31,25,715/- is invested in wholly owned subsidiary. This fact supports the case of the assessee that the assessee is not into the business of investment and the investments made by the assessee are on account of business expediency. Any dividend earned by the assessee from investment in subsidiary company is purely incidental. Therefore, the investments made by the assessee in its subsidiary are not to be reckoned for disallowance U/s. 14A r.w.r. 8D. The Assessing Officer is directed to re-compute the average value of investment under the provisions of Rule 8D after deleting investments made by the assessee in subsidiary company – Decided in favour of assessee.”*

*For the above said reasons, we hereby hold that in the case of the assessee the provisions of Section 14A read with Rule 8D will not be applicable in regard to investments made for acquiring the shares of the assessee’s sister concerns. Accordingly we restrain ourselves from interfering with the Order of the Ld.CIT(A) on this regard.”*

*8. Therefore, following the aforesaid decision of the Tribunal, we hereby direct the learned Assessing Officer to delete the addition made on account of section 14A where investments are made in sister concerns such as equity shares and share application money. However, if the investments are made from borrowed funds, section 14A of the Act would be applicable and learned Assessing Officer shall compute the disallowance under section 14A read with rule 8D in accordance with law.”*

6.1 Accordingly we hereby remit back the matter to the file of the Ld. AO to consider the issue afresh in the light of the above order of the Tribunal and pass appropriate order in accordance with merits

and law. We also make it clear that for the investments made in mutual funds, provisions of Section 14A read with Rule 8D will be applicable since the assessee would incur some expenditure at least for the decision making process as to in which mutual fund the investment has to be made and at what point of time exit from such funds. It is ordered accordingly.

7. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on 23<sup>rd</sup> March, 2017 at Chennai.

Sd/-  
(**जी.पवन कुमार**)  
(G. Pavan Kumar)  
न्यायिक सदस्य /Judicial Member

Sd/-  
(**ए. मोहन अलंकामणी**)  
(A. Mohan Alankamony)  
लेखा सदस्य/Accountant Member

चेन्नई/Chennai,  
दिनांक/Dated, the 23<sup>rd</sup> March, 2017.

JR.

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.            |