

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिकसदस्यकेसमक्ष  
**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. Nos.1868 & 1869/Mds/2016

निर्धारण वर्ष /Assessment year : 2010-11 & 2011-12

The Deputy Commissioner of  
Income Tax,  
Corporate Circle 2(2)  
Chennai 600 034.

**Vs.** M/s. Hansa Vision India Private  
Limited  
(Formerly known as Thiruvengadam  
Investments Pvt. Ltd)  
NO.605 & 606, II floor,  
Film Chamber Building,  
Anna Salai, Chennai 600 006.

**(अपीलार्थी/Appellant)**

**[PAN AABCT 3770E]**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri. Shiva Srinivas, IRS, JCIT.  
प्रत्यर्थी की ओर से /Respondent by : Shri. S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing : 06-09-2016

घोषणा की तारीख /Date of Pronouncement : 08-09-2016

**आदेश / ORDER**

**PER G. PAVAN KUMAR, JUDICIAL MEMBER:**

These appeals filed by the Revenue are directed against common order of Commissioner of Income-tax (Appeals)-6, Chennai for the above assessment years passed u/s.143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act'). Since the issue in these appeals is common in nature, hence these appeals are

combined, heard together, and disposed of by a common order for the sake of convenience. We consider the facts as narrated in ITA 1868/Mds/2016 of assessment year 2010-11 for adjudication.

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

*“2.1. The CIT(A) erred in excluding the investments made by the assessee in its subsidiary company for the purpose of determination of disallowance u/s.14A r.w.r. 8D of the Act.*

*2.2. The CIT(A) ought to have appreciated that the investments made by the assessee company in its subsidiary company is also entitled for dividend and hence the same should be treated on par with the other investments made.*

*2.3. The CIT(A) ought to have appreciated that there is no exception provided in Rule 8D in respect of the investments made in the subsidiary companies.*

*2.4. The order of the Hon'ble ITAT on the similar issue in the case of M/s.EIH Associated Hotels Limited (2013-TOIL- 796-ITAT-MAD, dt. 17.07.2013) has not been accepted by the Department and further appeal in TCA NO.227 of 2014 is pending before the Hon'ble High Court”.*

**3.** The Brief facts of the case are that the assessee company is in the business of investment in shares and properties and filed Return of income electronically on 11.10.2010 with total income of ₹1,32,82,444/- and the Return of income was processed u/s.143(1) of the Act. Subsequently, the case was selected for scrutiny and notice u/s.143(2) of the Act was issued. In compliance to notice, the Id. Authorised Representative of assessee appeared from time to time and

furnished details and case was discussed. In the assessment proceedings, the Id. Assessing Officer found that the assessee company has disclosed investments in the Balance Sheet and the income from investments are exempted from tax. Further, the assessee has not disallowed any expenditure incurred on earning such income and the nature of expenditure being administrative and managerial. The Id. Assessing Officer applying the provisions of Sec. 14A r.w.r. 8D (ii) and (iii) calculated ₹1,14,28,963/- and made addition to Returned income and passed order u/sec. 143(3) of the Act dated 28.03.2013 determining total income of ₹2,47,11,407/-. Aggrieved by the order, assessee filed an appeal before Commissioner of Income Tax (Appeals).

**4.** In the appellate proceedings, the Id. Authorised Representative of assessee argued the grounds and explained that the Id. Assessing Officer has rejected the explanations without assigning proper reasons and justification for disallowance and also filed written submissions on facts and judicial decisions. The assessee company has made investments in subsidiary companies and such investments are to be excluded for computation of disallowance under Rule 8D (ii) and (iii) of the Income Tax Rules and under provisions of Sec. 14A of the Act. The Id. Commissioner of Income Tax (Appeals) considered the submissions and relied on the Delhi High Court judgment in the

case of *M/s. Bharati Overseas P. Ltd* in ITA 802/2015 and elaborately dealt on this issue and directed the Id. Assessing Officer referred at para 8.1, page 10 of order as under:-

*“8.1 The Honble Delhi High Court has thus held that if there is no interest amount which was not directly attributable to either the tax exempt or the taxable income, then no portion of interest survives for allocation under Rule 8D(ii). Following the decision of Hon'ble Delhi High Court as above, the AO is directed to exclude the interest/finance charges attributable to earning of taxable income from the purview of computation of disallowance under Rule 8D(ii) of the Income-tax Rules and verify whether any interest expenditure remains which is not directly attributable either to the taxable income or to the exempt income. Only that portion of interest expenditure, not being directly attributable, has to be taken for allocation under Rule 8D(2) (ii). The AO is therefore directed to recompute the disallowance under 14A of the Act for both, the assessment years under consideration, as under:*

- a. Exclude the investments made in subsidiary companies for the purposes of computation of disallowance under Rule 8D2(ii) & (iii) of the Income-tax Rules.*
- b. For the purposes of allocation of interest expenditure under Rule 8D(2)(ii), exclude all interest/finance charges which are directly attributable to earning either tax exempt or taxable income”.*

and partly allowed the appeal. Aggrieved by the Commissioner of Income Tax (Appeals) order, the Revenue has assailed an appeal before Tribunal.

**5.** Before us, the Id. Departmental Representative argued the grounds and explained that the Id. Commissioner of Income Tax (Appeals) has erred in directing the Id. Assessing Officer to exclude the investments made in subsidiaries companies for the purpose of

determining disallowance u/s.14A of the Act r.w. Rule 8D. The investments cannot be segregated even though in the same management and be treated on par with other investments. Further, the Revenue on similar ground in the case of *EIH Associated Hotels Limited vs DCIT in ITA No.1503/Mds/2012, assessment year 2008-2009 dated 17.07.2013* has not accepted the decision and appeal has been filed before Jurisdictional High Court and prayed for set aside the order of Commissioner of Income Tax (Appeals).

**6.** Contra, Id. Authorised Representative relied on the orders of Commissioner of Income Tax (Appeals) and judicial decisions and represented that investments in subsidiary is not for earning dividend income but with business motive and supported his arguments with the decision of *EIH Associated Hotels Limited (supra)* and prayed for dismissing the appeal.

**7.** We heard the rival submissions, perused the material on record and judicial decision cited. The sole contention of the Id. Departmental Representative on the applicability of provisions of Sec. 14A and Rule 8D(2) are mandatory. The Id. Assessing Officer has rightly calculated disallowance by applying the Rule 8D(ii) and (iii) irrespective of the fact of not making distinction between investments. Further, the assessee company has made investments with a motive to earn exempted income and no proportionate disallowance was made

while computing total income in respect of expenditure incurred for earning such exempted income. In the appellate proceedings, the Id. Commissioner of Income Tax (Appeals) considered the strategic decisions of investments of the assessee company in sister concerns /subsidiary company with a motive to earn profits and promotion of business and relied on the judicial decisions and directed the Id. Assessing Officer in calculating disallowance under Rule 8D (ii) and (iii) and to exclude investments made in subsidiary companies. The Id. Authorised Representative supported his arguments with decision of Co-ordinate Bench in the case of EIH Associated Hotels Limited (supra) observed at para 6 page 10 to 12 as under:-

*“6. We have heard the submissions made by the rival parties. We have also examined the orders passed by the authorities below and the judgments/orders cited by the representatives of both the parties. The first issue in the appeal of the assessee relates to dis-allowance made u/s. 14A r.w.r. 8D. The Assessing Officer has made dis-allowance to the tune of Rs. 4,32,66,500/-. The contention of the assessee is that the assessee has earned dividend income of ₹ 4.6 Lakhs which is fully exempt u/s. 10(34) of the Act. The assessee has made voluntarily dis-allowance of ₹45,927/- u/s. 14A. The assessee has made fresh investments to the tune of ₹9.4 Crores during the year. The Assessing Officer held that the investments have been made from the fresh secured loans obtained during the year by the assessee. The CIT(Appeals) after going through the submissions made by the parties has come to the conclusion that the assessee has made investments from its own funds except for the short term investments made in HDFC Cash Management Fund and DSPML Cash Plus Fund in respect of which the amounts were invested from interest bearing funds borrowed from HBSC. The Revenue has not been able to controvert the findings of CIT(Appeals).*

*We are of the considered opinion that 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. A perusal of the order of the CIT(Appeals) shows that out of total investment of ₹ 64,18,19,775/-, ₹ 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 investment made by the assessee in its subsidiary are not to be reckoned for dis-allowance 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. Accordingly, this ground of appeal of the assessee is partly allowed and that of the Revenue is dismissed. The findings of the CIT(Appeals) on the issue are accordingly modified”.*

**8.** Further, the contention of the Revenue before us that the Revenue has not accepted the said decision of the Tribunal and appeal has already been filed before Jurisdictional High Court and the same is pending. We are of the opinion that mere pendency of appeal cannot be a reason to take different view. The order of the Tribunal is binding on all authorities in the state of Tamil Nadu and Puducherry. Considering the apparent facts, material evidence and judicial decisions, the Id. Commissioner of Income Tax (Appeals) has dealt elaborately and discussed judicial decisions and directed the Id. Assessing Officer to exclude the investments made in subsidiary

companies for the purpose of computation of disallowance u/s.14A r.w.r. 8D(ii) &(iii) of the Act and also written submissions viz-a-viz the explanations and partly allowed the appeal. We are not inclined to interfere with the order of Commissioner of Income Tax (Appeals) on the direction for recomputation of disallowance u/sec. 14A r.w.r8D (ii) and (iii) and we uphold the order of the Commissioner of Income Tax (Appeals) and dismiss the appeal of the Revenue. The appeal of the Revenue is dismissed.

9. Consequently, the appeal of the Revenue in ITA No.1869/Mds/2016 for assessment year 2011-12 is dismissed.

10. In the result, the appeals of the Department in ITA Nos. 1868 & 1869/Mds/2016 are dismissed.

Order pronounced on Thursday, the 8th day of September, 2016, at Chennai.

Sd/-

(चंद्र पूजारी)

**(CHANDRA POOJARI)**

**लेखा सदस्य /ACCOUNTANT MEMBER**

Sd/-

(जी. पवन कुमार)

**(G. PAVAN KUMAR)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 08.09.2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

3. आयकर आयुक्त (अपील)/CIT(A)

5. विभागीय प्रतिनिधि/DR

2. प्रत्यर्थी/Respondent

4. आयकर आयुक्त/CIT

6. गार्ड फाईल/GF