

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

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

श्री चंद्र पूजारी, लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष  
**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER AND  
SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 2106/Mds/2016

निर्धारण वर्ष /Assessment year : 2011-12

The Deputy Commissioner of  
Income Tax,  
Corporate Circle 3(1)  
New Block, 4<sup>th</sup> Floor,  
121, Mahatma Gandhi Road,  
Nungambakkam,  
Chennai 600 034.

**(अपीलार्थी/Appellant)**

**Vs.** M/s. Tractors and Farm Equipments  
Ltd.  
No. 35, Pottipatti Plaza,  
Nungambakka High Road,  
Chennai 600 034.

**[PAN AACT2761Q]**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by

: Shri. Durai Pandian, JCIT.  
: Shri. Saroj Kumar Parida, Advocate

सुनवाई की तारीख/Date of Hearing

: 27-10-2016

घोषणा की तारीख /Date of Pronouncement

: 02-11-2016

**आदेश / O R D E R**

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

The appeal filed by the Revenue is directed against order of Commissioner of Income-tax (Appeals)-11, Chennai for the above assessment years passed u/s.143(3) r.w.s. 92CA(4) and 144C(1)and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. Before we proceed for hearing there is a delay of 17 days in filing the appeal of the Revenue. The Id. DR filed condonation petition and explained the circumstances for delay which are not deliberate. Further, Id. AR of the assessee has no serious objections for condonation of delay. After hearing the submissions, we are satisfied with the reasonable cause submitted in affidavit for filing the appeal belatedly. Therefore, the delay is condoned and appeal is admitted.

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

*2.1. The Id.CIT(A) erred in directing the AO to re-computer the disallowance under Rule 8D after excluding the appellant's investment in subsidiary companies.*

*2.2. The learned CIT(A) failed to appreciate that Rule 8D(2) does not differentiate between strategic investments and investments in subsidiary companies with other investments and the word used in the rule is only "value of Investment" and hence the investment in subsidiary company shall be included for calculation of disallowance under Rule 8D(2).*

4. The Brief facts of the case are that the assessee company is in the business of manufacture and sale of tractors, engineering plastic components and batteries and trading in related parts and attachments and filed Return of income electronically on 30.11.2011 with total income of ₹ 547,94,70,605/- 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 the assessee company has international transaction and a reference u/s. 92CA(1) of the Act was made to T.P.O for determining the Arm's Length Price and the Id. TPO passed the order on 25.11.2014 with no adjustment to ALP. The assessee company has investments portfolio in the Balance Sheet Rs. 961,45,76,000/- and the dividend income from investments Rs. 27,02,66,864/- was claimed exempted from tax u/s. 10(34) of the Act. Further, the assessee has disallowed adhoc expenditure of Rs. 29,00,000/- for earning such income. The Id. Assessing Officer applying the provisions of Sec. 14A r.w.r. 8D (ii) and (iii) calculated ₹8,66,34,771/- and made addition to the Returned income with other additions and passed order u/sec. 143(3) r.w.s 92CA(4) and 144C(1) of the Act dated 27.03.2015 determining total income of ₹558,71,10,920/-. Aggrieved by the order, assessee filed an appeal before Commissioner of Income Tax (Appeals).

5. In the appellate proceedings, the Id. Authorised Representative of assessee argued the ground of disallowance 14A r.w.s Rule 8D and explained that the Id. Assessing Officer has rejected the explanations without assigning reasons and justification for disallowance and filed written submissions on facts and law. 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 at page 2 to 4 of the order and relied on co-ordinate bench decision DCIT Vs K H Arinf Pvt Ltd (2015) 64 taxmann.com 409 elaborately dealt and directed the Id. Assessing Officer at para 4.3.4 of page 6 of order as under:-

*"4.3.4 Now coming to the third part of Rule 8D (2)(iii), the appellant's has submitted that the AO has wrongly included the investment in subsidiary companies. However, such submission was not made before the Assessing Officer and there is no mention of such fact in the assessment order. However, the courts have held that the investment in subsidiary companies should be excluded from the computation of Rule 8D. Therefore, the AO is directed to examine the appellant's submission in this regard and to re-compute Rule 8D in view of the above remarks. However, the AO has to take note of AO's disallowance u/s. 14A of Rs. 29,00,000/- by applying Rule 8D. Accordingly, the appellant's ground with regard to Rule 8D(2)(iii) is partly allowed.*

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

6. 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).

7. 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.

8. 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 inadequate 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(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”.*

9. 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(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(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.

10. In the result, the appeal of the Department is dismissed.

Order pronounced on Wednesday, the 2<sup>nd</sup> day of November, 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: 2<sup>nd</sup> November, 2016

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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