

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI**  
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष  
**BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER**  
**AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A.No.106/Chny/2018  
(निर्धारण वर्ष / Assessment Year: 2014-15)

M/s. Oriental Hotels Ltd., No.37, Paramount Plaza, Nungambakkam, Chennai – 34.	Vs	The DCIT, Corporate Circle 5(1), Chennai – 34.
PAN: AAACO0728N		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri R. Vijayaraghavan, Advocate
प्रत्यर्थी की ओर से/ Respondent by	:	Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of hearing	:	13.06.2018
घोषणा की तारीख /Date of Pronouncement	:	20.08.2018

**आदेश / ORDER**

**Per A. Mohan Alankamony, AM:-**

This appeal by the assessee is directed against the order passed by the learned Commissioner of Income Tax(Appeals)-3, Chennai, dated 29.09.2017 in ITA No.165/16-17/A-3 for the assessment year 2014-15 passed U/s. 250(6) r.w.s. 143(3) of the Act.

2. The assessee has raised several grounds in its appeal however the crux of the issue is that the Ld.CIT(A) has erred in

confirming the addition made by the Ld.AO amounting to Rs.5,05,144/- by invoking the provisions of Section 14A r.w.r.8D of the Rules.

3. The brief facts of the case are that the assessee is a company engaged in hotel business, filed its return of income for the assessment year 2014-15 on 28.11.2014 admitting total income of Rs.2,93,85,350/-. The case was selected for scrutiny and notice U/s.143(2) & 142(1) of the Act was issued on 28.08.2015 & 25.05.2016 respectively. Finally assessment order was passed U/s.143(3) of the Act on 16.12.2016 wherein the Ld.AO had made addition of Rs.5,05,444/- towards disallowance of expenditure by invoking the provisions of Section 14A r.w.r. 8D of the Rules and Rs.1,38,63,427/- towards income earned from its wholly owned subsidiary in Hong Kong. On appeal the Ld.CIT(A) confirmed the addition of Rs.5,05,44/- made by the Ld.AO by invoking the provisions of Section 14A r.w.r 8D of the Rules, against which the assessee is in appeal before us.

4. At the outset, we find that with respect to disallowance U/s.14A of the Act, we had held in ITA Nos.1729 &

1730/Chny/2016 in the case M/s. Sthithi Insurance Services Pvt. Ltd., vide order dated 18.06.2018 that application of Rule 8D is not automatic. If the assessee computes to the satisfaction of the Ld.Revenue Authorities the expenses incurred by it with respect to investments earning exempt dividend then the same should be disallowed. Only when such computation is not possible Rule 8D should be applied for computing the disallowance U/s.14A of the Act. The relevant portion of the order is reproduced herein below for reference:-

*“5.2 We have heard the rival submissions and carefully perused the materials on record. It is apparent from the facts of the case, that the assessee has made huge investments in shares which earn dividend income exempt from tax. According to Section 14A of the Act the expenditure incurred towards earning exempt income cannot allowed as deduction from the taxable income of the assessee. In the case of the assessee, it is evident that for the process of decision making as to which shares the assessee has to invest, dis-invested, and at what point of time etc., will involve cost. Such expenditures incurred towards earning dividend income which is exempt from tax cannot be claimed as deduction from the taxable profit of the assessee company. As per the provisions of the Act, the assessee is bound to compute the actual expenses incurred by it towards investment that would earn exempt income and disallow the same. In the case of the assessee, such computation is neither made nor the expenditure towards earning exempt disallowed by the assessee. Therefore we are of the view that the Ld.AO was right in his realm to invoke the provisions of Section 14A r.w.r.8D of the Rules. Further it is pertinent to mention that there is no correlation between the dividend income earned by the assessee and the expenditure incurred by the assessee towards investment that earns exempt income. For example:- during a particular year the assessee would not have earned any dividend income though it has made heavy investments during the previous year or the earlier years, but the assessee is bound to incur cost for acquiring / maintaining /dis-investing such investments. Hence it cannot be inferred that the dividend income would be directly proportional to the expenditure incurred on the investment earning exempt income. Therefore we do not find any merit in the order of the Ld.CIT(A) for having restricted the disallowance U/s.14A of the Act to the extent of exempt income earned by the assessee. However since the assessee has not computed its actual expenditure incurred towards the*

*investment that earns exempt income, in the interest of justice, we remit back the matter to the file of Ld.AO for both the assessment years thereby affording one more opportunity to the assessee to work out the actual expenditure incurred by it towards the investment that earn exempt income and disallow the same. We further hereby direct the Ld.AO to verify the computation submitted by the assessee for both the assessment years and thereafter decide the matter in accordance with law and merit.”*

Since we have already decided the issue with respect to computation of disallowance U/s.14A r.w.r. 8D of the Rules in the decision cited supra, we remit back the matter to the file of Ld.AO to compute the disallowance U/s.14A of the Act in the similar manner. It is ordered accordingly.

6. In the result the appeal of the assessee is allowed for statistical purposes as indicated herein above.

Order pronounced on the 20<sup>th</sup> August, 2018 at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)  
( Duvvuru RL Reddy )

न्यायिक सदस्य /Judicial Member

चेन्नई/Chennai,

दिनांक/Dated 20<sup>th</sup> August, 2018

Sd/-

(ए. मोहन अलंकामणी)  
( A. Mohan Alankamony )

लेखा सदस्य / Accountant Member

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy 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             |