आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'B' 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.1079/Chny/2018**
(निर्धारण वर्ष / Assessment Year: 2013-14)

M/s. C. Subba Reddy (HUF), Sukriti No, 19/1, III Cross Street, R.A. Puram, Chennai – 600 028.	Vs	The ACIT, Non Corporate Circle 1(1) Formerly known as Business Circle-1, Chennai
PAN: AACHC2523G		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./**I.T.A.No.1464/Chny/2018**
(निर्धारण वर्ष / Assessment Year: 2014-15)

The ACIT, Non Corporate Circle 1(1) Formerly known as Business Circle-1, Chennai	Vs	M/s. C. Subba Reddy (HUF), Sukriti No, 19/1, III Cross Street, R.A. Puram, Chennai – 600 028.
		PAN: AACHC2523G
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by	:	Shri A.S. Sriraman, Advocate
राजस्व की ओर से /Revenue by	:	Dr.S. Pandian, JCIT

सुनवाई की तारीख/Date of hearing	:	05.10.2018
घोषणा की तारीख /Date of Pronouncement	:	14.12.2018

आदेश / O R D E R

Per A. Mohan Alankamony, AM:-

The appeal by the assessee and Revenue are directed against the order passed by the Ld. Commissioner of Income Tax (Appeals)-

2, Chennai, dated 24.01.2018 in ITA No.180/2016-17/A.Y.2014-15/CIT(A)-2 for the assessment year 2014-15 passed U/s. 250(6) r.w.s. 143(3) of the Act.

2. Assessee's Appeal:-

The assessee has raised several grounds in its appeal however the cruxes of the issues are that:-

(i) The Ld.CIT(A) has erred in partly sustaining the addition made by the Ld.AO to the extent of Rs.7,03,110/- towards disallowance U/s. 14A r.w.r.8D of the Rules.

(ii) The Ld.CIT(A) has erred in sustaining the addition made by the Ld.AO to the extent of Rs.3.146 crores towards notional interest with respect to diversion of interest bearing funds to sister concerns.

2. Revenue's Appeal:

The Revenue has raised three grounds in its appeal however the cruxes of the issues are that:-

(i) The Ld.CIT(A) has erred in deleting the addition made by the Ld.AO to the extent of Rs.44,27,148/- as against the addition

made for Rs.51,30,258/- invoking the provisions of Section 14A r.w.s. 8D of the Rules.

(ii) The Ld.CIT(A) has erred in restricting the disallowance to the extent of Rs.3.146 crore as against the addition made by the Ld.AO amounting to Rs.3,49,12,500/- towards notional interest with respect to diversion of interest bearing funds to sister concerns.

4. The brief facts of the case are that the assessee is a HUF and also engaged in the business of construction and property development, filed its return of income for the assessment year 2014-15 on 30.09.2014 admitting total income of Rs.37,91,69,140/-. The case was selected for scrutiny under CASS and notice U/s.143(2) and 142(1) r.w.s. 129 of the Act was issued on 28.08.2015 and 02.08.2016 respectively. Finally assessment order was passed U/s.143(3) of the Act on 22.12.2016 wherein the Ld.AO made addition of Rs.51,30,258/- invoking the provisions of Section 14A r.w.r. 8D of the Rules and Rs.3,49,12,500/- towards notional interest with respect to diversion of interest bearing funds to sister concerns.

Assessee's Appeal

5. Ground No. 2(i) : Sustaining the addition of Rs.7,03,110/- U/s. 14A r.w.r.8D of the Rules:-

During the course of scrutiny assessment, it was observed by the Ld.AO that the assessee has earned dividend income which is exempt from tax. Therefore the Ld.AO directed the assessee to furnish its computation with respect to disallowance U/s.14A of the Act. The assessee voluntarily computed the amount as Rs.7,03,110/- towards the expenditure incurred for earning exempt income. However the Ld.AO was of the view that the disallowance has to be mandatorily computed in accordance with Rule 8D of the Rules and accordingly computed the disallowance at Rs.51,30,258/- and added to the income of the assessee. On appeal, the Ld.CIT(A) restricted the disallowance to Rs.7,03,110/- by observing as under:-

> *"13. I have carefully considered the above contentions of the Ld. AR. and the same are found to be in order. As rightly held by the Hon'ble High Court of Delhi in the case of CIT vs.Taikisha Engineering India Ltd, 370 ITR 033B, the provisions of Rule B 0 cannot be invoked by the AO without a elucidating and explaining why the voluntary disallowance made by the assessee was unreasonable and unsatisfactory. In the present case of the appellant, the amount of disallowance under Rule 8D was arrived at Rs.7,03,110/- in the computation statement furnished by him before the AO in the course of the assessment proceeding. Secondly, the observation of the AO that the invocation of section 14 A was automatic and it comes into operation, without any exception, as soon as the dividend income was claimed as exempt.*

14. These contentions of the AO are not found reasonable. Firstly, as already discussed above, the AO has not mentioned the amount of exempt income which the assessee had derived during the relevant year under consideration. Secondly, the invocation of provisions of section 14A are not automatic as held by the Hon'ble High Court of Delhi in the case of CIT vs.I.P.Support Services India Private Limited, (2015) 378 ITR 0240 wherein the court has held that invocation of section 14A rule 8D (2) was not automatic and it cannot be invoked without recording the satisfaction or indicating cogent reasons that the voluntary disallowance made by the assessee was unreasonable and unsatisfactory.

15. Therefore, considering the above discussed facts and circumstances of the case, in my considered opinion, the amount of disallowance at RS.7,03,110/ as worked out by the appellant himself and submitted to the AO in the course of the assessment proceeding, is the correct figure of disallowance as worked out u/s 14A r.w.r. 8D. Hence, the AO is directed to restrict the disallowance to RS.7,03,110/-."

5.1 Before us the Ld.AR submitted that the assessee in lieu of the provisions of Section 14A of the Act, had voluntarily computed the expenditure incurred towards earning exempt income as Rs.3,08,000/- which is to be disallowed and when challenged by the Ld.AO, the assessee agreed for the disallowance of Rs. 7,03,110/-. However the Ld.AO had simply brushed aside the computation made by the assessee without stating any proper reasons and proceeded to compute the disallowance in accordance with Rule 8D of the Rules which was not required in the case of the assessee. The Ld.AR also argued stating that the view of the Ld.AO is erroneous that computation of disallowance U/s.14A has to be mandatorily in accordance with the Rule 8D of the Rules in all cases. The Ld.AR in

support of his arguments placed reliance in the decision of Hon'ble High Court of Delhi in the case CIT vs. Taikisha Engineering India Ltd., reported in 370 ITR 338 and the decision of the Hon'ble High Court of Delhi in the case CIT vs. I.P. Support Services India Pvt. Ltd., reported in 378 ITR 240. It was further argued that in the case of the assessee substantial investments are made in the assessee's own concerns and therefore the assessee cannot be presumed to have incurred any expenditure for earning exempt income and hence provisions of Section 14A of the Act will not be applicable in the case of the assessee. Hence it was pleaded that the additions made and sustained by the Ld. Revenue Officers may be deleted. The Ld.DR on the other hand vehemently argued in support of the order of the Ld.AO and pleaded for restoring the same.

5.2 We have heard the rival submissions and carefully perused the materials on record. From the facts of the case it is apparent that the assessee itself had computed the disallowance U/s.14A of the Act at Rs.3,08,000/-. When confronted by the Ld.AO, the assessee agreed for the disallowance of Rs.7,03,110/- by considering the third limb of Rule 8D of the Rules. However the Ld.AO was of the view that

the disallowance U/s.14A has to be mandatorily computed in accordance with Rule 8D of the Rules and accordingly worked out the disallowance at Rs.51,30,258/- and made the addition. The Ld.CIT(A) also agreed with the view of the Ld.AO. We do not agree with this stand of the Ld.Revenue Authorities. Provisions of Section 14A of the Act, stipulates that the Assessing Officer shall determine the disallowance in accordance with Rule 8D of the Rules, if he is satisfied that the computation of expenditure incurred towards investment earning exempt income by the assessee is not satisfactory. In the case of the assessee, the assessee has worked out the disallowance at Rs.3,08,000/-. This computation of the assessee is rejected by the Ld.Revenue Authorities without stating any reasons and have ventured to compute the disallowance in accordance with Rule 8D of the Rules and that is not appropriate. From the balance sheet submitted by the assessee it is evident that the investments made by the assessee detailed in Schedule 9 of the balance sheet as on 31.03.2014 reveals that the assessee has invested in shares of third parties viz., Hindustan Everest Limited and L&T Limited for a meager amount of Rs.800 & Rs.2044 respectively. While as investment made by the assessee in all the other shares

pertains to the assessee's own companies. The details of investment are stated herein below for reference:-

Schedule 9 – Investments	
Shares in Ceebros Hotels P Ltd	8439600.00
Shares in Ceebros International P Ltd	50000.00
Shares in Ceebros Power Generation P Ltd	50000.00
Shares in Ceebros Property Development P Ltd	4000000.00
Shares in Hindustan Everest Ltd	800.00
Shares in L&T	2044.00

It is pertinent to mention that no expenditure can be incurred or presumed to be incurred when one makes investment in equity shares of one's own company because there will be no actual administration cost, management cost or any other cost involved when such investments are made. From the facts of the relevant case before us, it is apparent that bearing negligible investments in shares of third parties all other investments in shares are made by the assessee-HUF in its own companies. Further for meager investments of Rs.2044 and Rs.800, it cannot be assumed that the assessee would have incurred any expenditure for making such investment. Therefore we are of the considered view that no addition is required to be made in the case of the assessee by invoking the provisions of Section 14A of the Act because almost all the investments in the

equity shares are in the assessee's own concerns. Further the Hon'ble Delhi High Court in the cases, CIT vs. I.P. Support Services India Pvt. Ltd., and in the case CIT vs. Taikisha Engineering India Ltd., it has been made clear that disallowance U/s.14A of the Act is not automatic and the Assessing Officer has to record his satisfaction for rejecting the computation of the assessee with respect to disallowance U/s.14A of the Act which has not been complied by the Revenue in the case of the assessee. For the above stated reasons we hereby direct the Ld.AO to delete the disallowance made by him invoking the provisions of Section 14A of the Act. Accordingly this issue is decided in favour of the assessee.

6. **Ground No.2(ii) : Addition of Rs.3.146 crores towards notional interest with respect to diversion of interest bearing funds to sister concerns:-**

During the course of scrutiny assessment proceedings it was observed by the Ld.AO that the assessee's capital was only Rs.197 crores as against the investments and advances of Rs.292 crores. On query it was explained by the assessee that interest free loan was extended to M/s.Ceebros hotels and agreed for disallowance of

interest @ 13.25% on the amount of 95 crores (being the excess amount of investments and advances of Rs.292 crores over the assessee's capital of 197 crores) which works out to Rs.3.146 crores [95*13.25*3 / (100*12) = Rs.3.146 crore]. However the Ld.AO adopted the rate of interest @ 14.7% by computing the weighted average of the loan availed from various banks by the assessee as detailed herein below:-

Bank Name	***Loan Availed***	***Rate of Interest***
Karnataka Bank DPN Loan-I	*29 Crore*	*14.5%*
Karnataka Bank DPN Loan-II	*51 Crore*	*15.5%*
HDFC Bank	*24 Crore*	*13.25%*
Weighted Average rate of Interest		*14.7%*

Accordingly the disallowance of interest was computed at Rs.3,49,12,500/- by adopting the rate of interest @14.7% on the excess amount of investments and advances over the assessee's capital which works out to Rs.95 crores for a period of 3 months.

6.1 On appeal, the Ld.CIT(A) sustained the addition made by the Ld.AO by adopting the rate of interest @ 13.25 per month by observing as under

"17. I have considered the above contention of the appellant but fail to agree with the same. During the course of the assessment proceeding, on being confronted by the AO, the assessee himself has agreed for disallowance of interest expenditure of Rs.3.146 crore @13.25% on loan amount of Rs.95 crores advanced to M/s. Ceebros Hotels for three months from 01/01/2014 to 31/03/2014. However, the AO calculated the notional interest at the weighted average rate of 14.7% and the disallowance was arrived at Rs.3,49,12,500/-. Since the appellant himself has agreed for the disallowance before the AO in the course of the assessment proceeding, there is no reason why he should back out from the same at a later period. However, I am of the firm view, this disallowance should be restricted to Rs.3.146 crore @ 13.25% only which the appellant had agreed to. The rate of interest at 13.25% is also the rate of interest charged by the HDFC Bank on the loans advanced to the assessee during the relevant year under consideration. Hence, the AO is directed to restrict the disallowance to Rs.3.146 crore only instead of Rs.3,49,12,500/-."

6.2 Before us the Ld.AR submitted that the action of the Ld.AO for making notional disallowance without recording reasons on the issue of diversion of interest bearing funds for non-business purpose would vitiate the entire disallowance. The Ld.AR further submitted that merely because the advances wherein excess of capital the provisions in Section 36(1)(iii) of the Act cannot be invoked. The Ld.AR argued that in the absence of any finding with regard to use of the funds for non-business purpose, the notional addition made by the Ld.AO is erroneous. It was further submitted that the entire loan was extended for specific purpose in order to develop the business of the assessee HUF's enterprises and therefore there was a business and commercial nexus for the loan advanced by the assessee.

Reliance was placed in the decision of the Hon'ble Apex Court in the case M/s. SA Builders Pvt. Ltd., reported in 288 ITR 0001 and Hero Cycles Pvt. Ltd., vs. CIT reported in 379 ITR 347.. Hence it was pleaded that the addition made by the Ld.AO which was further sustained by the Ld.CIT(A) may be deleted.

6.3 We have heard the rival submissions and carefully perused the material on record. From the facts of the case it is obvious that the assessee has extended interest free loan to its own concern M/s. Ceebros Hotels out of its interest bearing fund of Rs.95 crores. It is also obvious and not in dispute that such amount is advanced to M/s. Ceebros Hotels for the purpose of its business and not for the individual benefit of any of the member of the assessee's HUF. The assessee has further placed reliance in the decisions rendered by the Hon'ble Apex Court in the case S.A. Builders Ltd vs. CIT reported in 288 ITR 0001 and Hero Cycles Pvt. Ltd., vs. CIT reported in 379 ITR 347. In the case S.A. Builders Ltd., the Hon'ble Apex Court has observed as follows:-

> *"32. We wish to make it clear that it is not our opinion that in every case interest on borrowed loan has to be allowed if the assessee advances it to a sister-concern. IT all depends on the facts and circumstances of the respective case. For instance, if the directors of the sister-concern utilize the amount advanced to it by the assessee for their personable benefit,*

> *obviously it cannot be said that such money was advanced as a measure of commercial expediency. However, money can be said to be advanced to a sister-concern for commercial expediency in many other circumstances (which need not be enumerated here). However, where it is obvious that a holding company has a deep interest in its subsidiary, and hence if the holding company advances borrowed money to a subsidiary and the same is used by the subsidiary for some business purposes, the assessee would, in our opinion, ordinarily be entitled to deduction of interest on its borrowed loans."*

Similarly the Hon'ble Apex Court in the case Hero Cycles, it was held that

> *"Once it was established that there was nexus between expenditure and purpose of business, Revenue could not justifiably claim to put itself in arm-chair of businessman or in position of Board of Directors and assume role to decide how much was reasonable expenditure having regard to circumstances of case."*

From the above facts of the case it is clear that the ratio laid down by the Hon'ble Apex Court in the case of S.A. Builders and Hero Cycles will be applicable to the case of the assessee, because the assessee has extended the loan to its own concern only for commercial purpose. Moreover it is not the case of the Revenue that the assessee has ventured into such transaction in order to shift its income to other concerns in order avoid or save from payment of tax. Further noting is brought out before us by the Ld. Revenue Authorities to establish that the Revenue is at loss because if the interest is charged by the assessee from its own concern then in the

hands of the assessee the same would be treated as income however deduction has to be granted to the assessee's own concern towards interest expenditure thus it would be Revenue neutral to the Department. In the case of the assessee neither the assessee had charged interest towards the loan extended to its own concern nor had the concern of the assesse claimed deduction towards interest for the loan obtained from the parent entity. Since the transaction is revenue neutral for the Department and further relying on the decision of the Hon'ble Apex Court cited supra wherein in the facts are identical to the case of the assessee we are of the considered view that addition cannot be made in the hands of the assessee HUF towards notional interest for the loan extended to its own concern. Accordingly we hereby direct the Ld.AO to delete the addition made and sustained by the Ld.CIT(A) towards diversion of interest bearing funds in the case of the assessee.

7. Since we have allowed the appeal in favour of the assessee with respect to both the grounds raised by it, the appeal of the Revenue does not survive which is on the same issue against granting partial relief by the Ld.CIT(A).

8. In the result the appeal of the assessee is allowed and the appeal of the Revenue is dismissed.

Order pronounced on the 14th December, 2018 at Chennai.

Sd/-	Sd/-
(धुव्वुरु आर.एल रेड्डी)	**(ए. मोहन अलंकामणी)**
(Duvvuru RL Reddy)	(A. Mohan Alankamony)
न्यायिक सदस्य /Judicial Member	लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 14th December, 2018

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