

**आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH, CHENNAI**  
**श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष**  
**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER**  
**AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकरअपीलसं./I.T.A. Nos. 2108/Chny/2012, 1039/Chny/2014,  
**687/Chny/2015 & 884/Chny/2015**

(निर्धारणवर्ष / Assessment Years: 2008-09, 2009-10, 2010-11 & 2010-11)

M/s. Siva Industries & Holdings Ltd (Formerly known as Sterling Infotech Ltd.) 327, Anna Salai, Teynampet, Chennai-600 006.	Vs	Deputy /Assistant Commissioner of Income Tax , Company Circle-VI(4) / VI(3) / DCIT., Corporate Circle-6(2), Chennai.
PAN: AAACS 4460M		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

&

आयकरअपीलसं./I.T.A.Nos.1074/Chny/2014, C.O.No.52/Chny/2014 (In ITA  
No. 1074/Chny/2014 for A.Y.2009-10), ITA Nos. 706/Chny/2015 & 919/Chny/2018  
(निर्धारणवर्ष / Assessment Years: 2009-10, 2010-11 & 2011-12)

Assistant Commissioner of Income Tax, Company Circle-VI(3) / DCIT., Corporate Circle-6(2), Chennai.	Vs	M/s. Siva Industries & Holdings Ltd (Formerly known as Sterling Infotech Ltd.) 327, Anna Salai, Teynampet, Chennai-600 006
		PAN: AAACS 4460M
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent /Cross Objector)

अपीलार्थीकीओरसे/ Assessee by	:	Mr. B.Ramakrishnan, FCA, Ms. Malvi, Mr.J.Sheth, ACA
प्रत्यर्थीकीओरसे/Revenue by	:	Mr. M. Murali, CIT

सुनवाई की तारीख/Date of hearing	:	13.07.2022
घोषणा की तारीख /Date of Pronouncement	:	12.08.2022

**आदेश / O R D E R**

**PER BENCH :**

This bunch of seven appeals and one cross objection filed by the assessee as well as Revenue are directed against separate, but identical orders passed by the learned Commissioner of Income Tax (Appeals)-15, Chennai dated 28.11.2017 / assessment order passed u/s.143(3)

r.w.s144C(13) 92CA(4) all dated 27.09.2012 / 21.02.2014 / 30.01.2015/ 06.02.2015 in pursuant to the directions of the learned DRP, Chennai dated 31.08.2012 / 20.12.2013/ 12.12.2014 u/s.144C(5) r.w.s 144C(8) of the Act and relevant to the assessment years 2008-09 to 2011-12. Since, facts are identical and issues are common, for the sake of convenience, the appeals & cross objection filed by the assessee and the Revenue were heard together and are being disposed off, by this consolidated order.

2. Brief facts of the case are that the assessee is a venture capital infrastructure company with aim of promoting strategic tie ups in emerging sectors such as telecom, shipping, reality, renewable energy, media and others both in India and abroad. The assessee creates sector specific special purpose vehicles (SPV) and invests in capital intensive projects, generally having long gestation period with a view to harness value to its investment. The assessee has filed its return of income for the assessment year 2008-09 to 2011-12 u/s.139(1) of the Income Tax Act, 1961. The assessments have been completed u/s.143(3) r.w.s 144C(13) 92CA(4) of the Act and determined

total income after making disallowances u/s.14A of the Act r.w.r 8D of Income Tax Rules,1962 towards expenditure relatable to exempt income. The Assessing Officer had also made adjustments towards interest receivable from AEs on loan extended and also corporate guarantee given to its AEs. The assessee challenged the matter in appeal before the first appellate authority, but could not succeed. The learned DRP / CIT(A) for the reasons stated in appellate order dismissed appeal filed by the assessee. The assessee carried the matter in further appeal before the Tribunal. The Tribunal in ITA No. 1039/Mds/2014, 2108/Mds/2012, 687 & 884/Mds/2015 and 1074/Mds/2014 & C.O.No.52/Mds/2014, 706/Mds/2015 dated 07.10.2016 partly allowed appeals filed by the assessee, where the Tribunal had confirmed additions made towards disallowance u/s.14A of the Act r.w.Rule 8D of Income Tax Rules, 1962 in respect of expenditure relatable to exempt income, however, deleted additions made towards transfer pricing adjustment on account of interest receivable on loan extended to AEs and corporate guarantee given to its AEs. The assessee challenged order of the Tribunal dated 07.10.2016 by filing appeal before the Hon'ble High Court of Madras. The

Hon'ble High Court of Judicature at Madras vide its order dated 24.11.2020 set aside order of the Tribunal for the assessment years 2008-09 to 2010-11 with regard to disallowance u/s.14A of the Income Tax Act, 1961, and restored appeals to the Tribunal to decide the appeals de novo afresh, in accordance with law laid down by the Hon'ble High Court of Madras in the judgement in the case of M/s.Marg Ltd. Vs.CIT in T.C.A. No.41 to 43 of 2017 dated 30.09.2020. Therefore, present appeals are listed for hearing in pursuant to directions of the Hon'ble High Court on the issue of disallowances u/s.14A of the Act r.w. Rule 8D of Income Tax Rules, 1962 for the assessment years 2008-09 to 2010-11.

3. The first issue that came up for our consideration from appeal filed by the assessee for the assessment years 2008-09 to 2010-11 is disallowance u/s.14A of the Income Tax Act, 1961 read with Rule 8D of I.T. Rules, 1962. The learned A.R for the assessee submitted that the DRP/CIT(A) erred in sustaining additions made by the Assessing Officer towards disallowance u/s.14A r.w.Rule 8D of the Income Tax Rules, 1962, without appreciating fact that the Assessing Officer does

not record satisfaction as required under sub-section (2) of section 14A of the Income Tax Act, 1961, having regard to books of account of the assessee that disallowances made towards expenses relatable to exempt income is not commensurate with exempt income earned for the relevant assessment year. The learned A.R for the assessee further referring to plethora of precedents, including decision of the Hon'ble Madras High Court in the case of M/s. Marg Ltd. Vs.CIT (2020) 120 taxmann.com 84 and also decision of the Hon'ble Supreme Court in the case of M/s. Maxopp Investment Ltd. Vs.CIT (2018) 91 taxmann.com 154 (SC) submitted that the Assessing Officer cannot mechanically apply Rule 8D and compute disallowance u/s.14A, because as per the provisions of section 14A(2) of the Act, the Assessing Officer is required to record satisfaction having regard to books of account of the assessee and expenditure incurred to ascertain whether any expenditure has been incurred to earn exempt income or not and in absence of such satisfaction, A.O. cannot apply Rule 8D and compute disallowance u/s.14A of the Income Tax Act, 1961. The learned A.R for the assessee further made an alternative submissions, without prejudice to

the first argument and submitted that if at all, disallowance is required to be computed u/s.14A, then such disallowances cannot exceed exempt income earned for the relevant assessment year as held by various High Courts, including Hon'ble Madras High Court in the case of Marg Ltd. Vs. CIT (supra).

4. The learned D.R., on the other hand, supporting order of the learned DRP / CIT(A) submitted that the Assessing Officer has recorded satisfaction as required u/s.14A(2) of the Act, which is evident from assessment order passed for all assessment years, where the Assessing Officer, after considering exempt income earned for the year and expenses claimed by the assessee stated that disallowances computed u/s.14A cannot be accepted and said finding constitute satisfaction from the Assessing Officer and thus, there is no merit in the argument taken by the learned counsel for the assessee and that there is no satisfaction as required u/s.14A(2) of the Act. The learned DR further submitted that disallowance contemplated u/s.14A should be computed in accordance with Rule 8D of Income Tax Rules, 1962, and the

Assessing Officer does not have any discretionary powers to deviate from the prescribed formula provided therein. In this case, the Assessing Officer has simply applied formula prescribed in Rule 8D and computed disallowance u/s.14A of the Income Tax Act, 1961. Further, recent decision of the ITAT, Guwahati Bench in the case of ACIT Vs. Williamson Financial Services Ltd. in ITA Nos.154 to 156/Gau/2019 vide order dated 06.07.2022, the Tribunal, after considering amendment made by the legislature to section 14A of the Act has held that said amendment is retrospective in nature and applicable from the date of insertion of provisions of section 14A of the Act and thus, even if no exempt income is earned for any of the financial years, disallowance contemplated u/s.14A should be computed in accordance with Rule 8D of Income Tax Rules, 1962, and thus, there is no question of restriction of disallowance of expenditure to the extent of exempt income earned for the relevant assessment year.

5. Per contra, the learned A.R for the assessee referring to recent decision of the Hon'ble Delhi High Court in the case of PCIT Vs. M/s.Era Infrastructure (India) Ltd. in ITA No.204/2022

dated 20.07.2022 submitted that the Hon'ble High Court has considered very same issue in light of amendment to provisions to section 14A by the Finance Act, 2021 and held that amendment is prospective in nature and does not operate retrospectively for earlier assessment years and thus, as per present settled position of law, disallowances u/s.14A cannot exceed exempt income earned for the relevant assessment year.

6. We have heard both the parties, perused material available on record and gone through orders of the authorities below. As regards first argument of the learned counsel for the assessee on the issue of satisfaction as required to be recorded u/s.14A(2) of the Income Tax Act, 1961, we find that the Assessing Officer has recorded satisfaction having regard to books of account of the assessee and relevant expenditure incurred for the period when compared to exempt income earned by the assessee that disallowances computed u/s.14A of the Act is not correct and thus, in our considered view, said findings of the Assessing Officer constitute satisfaction as required u/s.14A of the Act. Further, the Hon'ble Supreme Court

in the case of Maxopp Investment Ltd. Vs. CIT (2018) 402 ITR 640 (SC) had very clearly held that question of recording satisfaction comes into play only when the assessee makes *suo motu* disallowance of expenditure relatable to exempt income u/s.14A of the Act and only in those cases, the Assessing Officer is required to record his satisfaction as required u/s.14A(2) of the Income Tax Act, 1961. In case, where there is no *suo motu* disallowance by the assessee, then question of recording satisfaction does not arise. In this case, on perusal of details available on record, we find that for the assessment years 2008-09 & 2009-10, the assessee does not make any *suo motu* disallowance and thus, question of the Assessing Officer recording satisfaction as required u/s.14A(2) of the Act does not arise.

7. Insofar as the assessment year 2010-11 & 2011-12, although, the assessee has made *suo motu* disallowance of expenses made relatable to exempt income u/s.14A of the Act, but the Assessing Officer before invoking provisions of Rule 8D of Income Tax Rules, 1962, has satisfied himself about disallowances made by the assessee having regard to books

of account of the assessee for the relevant assessment years and thus, we are of the considered view that the Assessing Officer has recorded satisfaction as required under sub-section (2) of section 14A of the Income Tax Act, 1961, and thus, there is no merit in the arguments advanced by the learned counsel for the assessee on the issue of satisfaction and hence, ground raised by the assessee is rejected.

8. Having said so, let us come to disallowances computed by the Assessing Officer. The Assessing Officer has computed disallowances u/s.14A of the Act by invoking Rule 8D of the Income Tax Rules, 1962 for the assessment years 2008-09 to 2010-11, which is in excess of exempt income earned by the assessee for the relevant assessment years. It is well settled principle of law by decisions of various courts, including Hon'ble High Court of Madras in the case of Marg Ltd. Vs. CIT (supra), where the Hon'ble High Court has very clearly held that disallowance under section 14A w.r.Rule 8D can never exceed exempt income earned by the assessee during particular assessment year. The Hon'ble Delhi High Court in the case of Cheminvest Vs. DCIT 378 ITR 33 (Del) had considered

very similar issue and held that disallowance contemplated u/s.14A cannot swallow entire exempt income earned for the relevant assessment year. The sum & substance of ratios laid down by various High Courts are that disallowance of expenditure u/s.14A of the Act cannot exceed exempt income earned for relevant assessment year. In this case, the assessee has earned exempt income of Rs.1,95,75,000/- for the assessment year 2008-09, whereas, the Assessing Officer had disallowed expenditure u/s.14A of the Act at Rs.75,07,26,240/-, which is in excess of exempt income earned for the relevant assessment year. Therefore, we are of the considered view that disallowance computed by the Assessing Officer cannot exceed exempt income earned for the relevant assessment year and thus, by respectfully following decision of the Hon'ble Madras High Court in the case of Marg Ltd. Vs.CIT (supra), we direct the Assessing Officer to restrict disallowances u/s.14A r.w.Rule 8D of the I.T. Rules, 1962, to the extent of exempt income earned for the relevant assessment years 2008-09 to 2010-11.

9. In the result, appeals filed by the assessee for the assessment years 2008-09 to 2010-11 are partly allowed.

**ITA No.1074/Chny/2014, C.O. No.52/Chny/2014  
& ITA Nos. 687 & 706/Chny/2015:**

10. In these appeals filed by the assessee as well as Revenue, only issue involved is transfer pricing adjustment made on account of corporate guarantee extended by the assessee to its AE and said issue has been decided in favour of the assessee by the Tribunal vide its order in ITA No. 1039/Mds/2014, 2108/Mds/2012, 687 & 884/Mds/2015 and 1074/Mds/2014 & C.O.No.52/Mds/2014, 706/Mds/2015 dated 07.10.2016 and both the parties have accepted decision rendered by the Tribunal on the issue of transfer pricing adjustment. However, the assessee has challenged order of the Tribunal dated 07.10.2016 before the Hon'ble High Court of Madras only on the issue of disallowances u/s.14A of the Income Tax Act, 1961, and the Hon'ble High Court vide its order dated 24.11.2020 set aside order of the Tribunal for the assessment years 2008-09 to 2010-11 only on the issue of disallowance u/s.14A of the Income Tax Act, 1961. However, while listing appeals for disposal in pursuant to direction of the Hon'ble High Court, the Registry has listed appeals filed by the Revenue for very same assessment years, even though issues

involved in those appeals are reached finality. Therefore, we are of the considered view that these appeals filed by the Revenue / the assessee and cross objection filed by the assessee for the assessment years 2009-10 & 2010-11 does not require any adjudication at this juncture and thus, these appeals and cross objection are disposed off without giving any finding on the issue as raised by both the parties.

11. In the result, appeals filed by the Revenue / the assessee and cross objection filed by the assessee are dismissed.

**ITA No.919/Chny/2018 (Assessment year 2011-12):**

12. The first issue that came up for our consideration from ground no.2 to 2.2 of the Revenue appeal is disallowance made u/s.14A r.w.r 8D of the I.T. Rules, 1962. We find that an identical issue has been decided by us in ITA Nos.2108/Chny/2012, 1039/Chny/2014 & 687/Chny/2015 for the assessment years 2008-09 to 2010-11. The reasons given by us in preceding paragraph No.6 to 9 in ITA Nos.2108/Chny/2012, 1039/Chny/2014 & 687/Chny/2015 for the assessment years 2008-09 to 2010-11 shall *mutatis mutandis* shall apply to this appeal, as well. Therefore, for

similar reasons, we direct the Assessing Officer to restrict disallowances made u/s.14A r.w. Rule 8D of the Income Tax Rules, 1962, to the extent of exempt income earned by the assessee amounting to Rs.6,02,87,668/- and delete balance amount of disallowances made u/s.14A of the Income Tax Act, 1961.

13. The next issue that came up for our consideration from ground no.3 to 3.4 of the Revenue appeal is transfer pricing adjustment made on account of corporate guarantee extended by the assessee to its AE amounting to Rs.6,19,73,178/-. The Assessing Officer has made TP adjustment of Rs.6,19,73,178/- on corporate guarantee extended by the assessee to its AE by imputing guarantee commission @ 2.39% on total guarantee extended by the assessee to its AE.

14. The learned A.R. for the assessee submitted that this issue is squarely covered by the decision of the ITAT., Chennai in the case of M/s. Indian Public School Pvt. Ltd. Vs DCIT in IT(TP)A.No.34/Chny/2018 dated 15.06.2022, where the Tribunal by following decision of the Hon'ble Bombay High Court in the case of CIT Vs Everest Kento Cylinders Ltd. (2015)

58 taxmann.com 254 (Bom) held that corporate guarantee is international transaction, however, when it comes to benchmarking, guarantee commission charged by commercial banks cannot be applied. The Tribunal further held that 0.5% commission is reasonable rate for benchmarking corporate guarantee given by the assessee to its AE.

15. The learned DR, on the other hand, supporting order of the CIT(A) submitted that corporate guarantee extended by the assessee to its AE is international transaction and same needs to be benchmarked by taking relevant factors, including risk involved in transactions. The TPO/Assessing Officer, after considering relevant facts has rightly imputed guarantee commission @ 2.39% on total corporate guarantee given by the assessee and thus, their orders should be upheld.

16. We have heard both the parties, perused material available on record and gone through orders of the authorities below. As regards, first argument of the assessee that extending corporate guarantee is not international transaction, we find that Tribunal has considered an identical issue in the case of Indian Public School Pvt. Ltd. Vs DCIT (supra) and held

that after amendment of section 92B of the Income Tax Act, 1961, corporate guarantee given by the assessee to its AE is an international transaction. Therefore, first argument of the assessee is hereby rejected. As regards, rate at which such guarantee is required to be benchmarked, the Tribunal in the very same decision, after considering judgement of the Hon'ble Bombay High Court in the case of Everest Kento Cylinders Ltd (supra) had directed the TPO/A.O. to compute guarantee commission @ 0.5% on total corporate guarantee given by the assessee to its AE. The relevant findings of the Tribunal are as under:-

*"7. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. As regards the first argument of the assessee that providing corporate guarantee **per se** is not an international transaction, we find that the provisions of Sec.92B of the Act, has been amended to expand the definition of international transaction, as per which, lending or borrowing money or any other transaction having a bearing on the profits, income, losses or assets of such enterprises, and shall include a mutual agreement or arrangement between two or more AEs for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such*

*enterprise, is also an international transaction. From plain reading of definition, it is clear that lending or borrowing of money between two or more enterprises also comes under the definition of international transaction. Therefore, when the assessee has provided guarantee on behalf of its AE for availing loan facility, it definitely bearing on the profits or loss of the assessee and thus, it falls within the definition of international transaction and thus, providing corporate guarantee is an international transaction, which needs to be bench marked to determine ALP of such transaction. Therefore, the TPO has rightly held that providing corporate guarantee is an international transaction and hence, we reject the arguments of the Counsel for the assessee.*

**8.** *As regards imputing rate of commission on guarantee. It is a well settled principle of law by the decision of various courts, including the decision of the Hon'ble Bombay High Court in the case of CIT v. Everest Kento Cylinders Ltd. (supra), wherein, It has been clearly held that no Comparison can be made between the guarantee issued by commercial banks as against corporate guarantee issued by holding company for benefit of its AE, a subsidiary company for computing ALP of guarantee commission. The Hon'ble Bombay High Court further held that when it comes rate of commission, at Which, such corporate guarantee needs to be bench marked, then depending upon each case, a reasonable rate may be adopted and thus, in the said case has upheld 0.5% commission on corporate*

*guarantee. Therefore, considering the facts and circumstances of the present case and also by following the decision of the Hon'ble Bombay High Court in the case of CIT v. Everest Kento Cylinders Ltd. (supra), we are of the considered view that 0.5% is the reasonable rate for benchmarking corporate guarantee given by the assessee to its subsidiary AE. Therefore, we direct the AO to make adjustment towards corporate guarantee fee @ 0.5% of total corporate guarantee given by the assessee to its AE."*

17. In this view of the matter, and by following decision of the co-ordinate Bench of the Tribunal in the case of Indian Public School Pvt. Ltd. vs. DCIT (supra), we direct the Assessing Officer to impute guarantee commission @ 0.5% on total corporate guarantee given by the assessee to its AE.

18. In the result, appeal filed by the Revenue for the assessment year 2011-12 is partly allowed.

20. To sum up, the appeals filed by the assessee in ITA Nos.2108/Chny/2012, 1039/Chny/2014 and 884/Chny/2015 for assessment years 2008-09 to 2010-11 are partly allowed. The appeals filed by the Revenue in ITA No.1074/Chny/2014, 706/Chny/2015 for the assessment years 2009-10 & 2010-11

ITA Nos.2108/Chny/2012,1039/Chny/2014,  
687 & 884/Chny/2015 & CO No.52/Chny/2014  
ITA Nos.1074/Chny/2014, 706/Chny/2015 & 919/Chny/2018

are dismissed. The appeal filed by the assessee in ITA No.687/Chny/2015 for the assessment year 2010-11 and C.O No.52/Chny/2014 for the assessment year 2009-10 are dismissed. The appeal filed by the Revenue in ITA No.919/Chny/2018 for the assessment year 2011-12 is partly allowed.

Order pronounced in the open court on 12<sup>th</sup> August, 2022

Sd/-

(वी. दुर्गा राव)

(V.Durga Rao)

न्यायिक सदस्य /Judicial Member

चेन्नई/Chennai,

दिनांक/Dated 12<sup>th</sup> August, 2022

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

Appellant

2. Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF.

Sd/-

(जी. मंजुनाथ)

(G.Manjunatha)

लेखा सदस्य / Accountant Member