

आयकर अपीलीय अधिकरण 'डी' न्यायपीठ चेन्नई में।

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं

माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।

BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND

HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM.

आयकर अपील सं./ **ITA No.1040/Chny/2014**
(निर्धारण वर्ष / **Assessment Year: 2009-10**)

M/s. Siva Industries and Holdings Ltd. (merged entity of M/s Siva Ventures Ltd.) New No.19, Old No.32, Cathedral Garden Road, Nugambakkam Chennai – 600 034	बनाम/ Vs.	DCIT Corporate Circle-3(2), Chennai.
स्थायी लेखा सं./जी आइ आर सं./ PAN/GIR No. AAACS-8496-D		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Assessee by	:	Shri B. Ramakrishnan (CA) – Ld. AR
प्रत्यर्थीकी ओरसे/ Department by	:	Ms. Ann L.Kapthuama (CIT) –Ld. DR
सुनवाईकी तारीख/ Date of Hearing	:	29-09-2022
घोषणाकी तारीख / Date of Pronouncement	:	23-12-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal for Assessment Year (AY) 2009-10 was heard along with cross-appeals for AY 2008-09. It was admitted position that facts as well as issues are substantially the same in both the years and adjudication in any one year shall apply to the other appeal also. The cross-appeals for AY 2008-09 has already been disposed-off by us in ITA No.1390/Chny/2016 & ors. order dated

23.12.2022. Accordingly, the appeal for this year is disposed-off as under.

2. In this year, final assessment order has been passed by Ld. Assessing Officer u/s 143(3) r.w.s. 92CA(4) r.w.s. 144C on 17.02.2014 pursuant to the directions of Ld. Dispute Resolution Panel (DRP) dated 20.12.2013. The Arm's Length Price (ALP) of international transactions as carried out by assessee with its Associated Enterprises (AE) has been determined by Ld. Transfer Pricing Officer (TPO) vide order dated 24.01.2013. The issues that arise for our consideration are adjudicated as under.

3. Transfer Pricing Adjustment

3.1 The Ld. TPO has proposed upward adjustment on optionally fully convertible debentures (OFCD) subscribed by the assessee at coupon rate of 2%. The Ld. TPO, considering the same as loan transaction, determined ALP rate of 4.75% and proposed adjustment of Rs.1123.02 Lacs. The Ld. TPO also benchmarked corporate guarantee given by the assessee at 3.5% and proposed another adjustment of Rs.5079.18 Lacs. The Ld. DRP confirmed ALP rate of 4.75% but directed Ld. AO to adopt corporate guarantee rate of 1%. Aggrieved the assessee is in further appeal before us.

3.2 Both these adjustments have been adjudicated by us in AY 2008-09 as under: -

3. Our findings and Adjudication

3.1 So far as the TP adjustment against OFCD is concerned, we find that the assessee has subscribed to debentures of its subsidiary foreign entity and the same carry coupon rate of 2%. The debentures would give an option to the assessee to subscribe to the shares at a later date and therefore, the same would carry inherent benefit for the assessee in future. The recharacterization of the same into a loan transaction could not be held to be justified since this is mere presumption without there being anything contrary on record. The investment in OFCD, therefore, could not be equated to a grating of loan. The benchmarking

rate, on such a transaction, could be compared with Foreign Currency Convertible Bonds (FCCB) which provide similar right of conversion to the investors. The assessee, in its submissions to Ld. TPO vide reply dated 05.09.2011, provided data available in public domain wherein interest rate charged by issuer on FCCB carried zero interest rate as against the fact that the assessee has received coupon rate of 2%. Therefore, the adjustment so made by lower authorities could not be upheld. By deleting the same, we allow this ground raised by the assessee.

3.2 So far as the benchmarking of corporate guarantee is concerned, we find that this issue is squarely covered by the decision of Mumbai Tribunal in **Everest Kanto Cylinders Ltd. vs. DCIT (34 Taxmann.com 19)** as affirmed by Hon'ble Bombay High Court on 08/05/2015 (58 Taxmann.com 254) wherein this transaction was held to be an international transaction and the same was benchmarked @0.50%. Respectfully following the same, we direct Ld. AO / TPO to adopt benchmarking rate of 0.50% and recompute the adjustment. The grounds raised by the revenue stand partly allowed.

Taking the same view, TP adjustment against OFCD stand deleted whereas ALP rate for corporate guarantee is to be taken as 0.50%. We order so. The Ld. AO is directed to make consequential computations. The corresponding grounds stand partly allowed.

4. Disallowance u/s 14A

4.1 The assessee earned exempt dividend income of Rs.270.90 Lacs but did not offer any disallowance u/s 14A on the ground that no connected expenditure was debited in the Profit & Loss Account. However, rejecting the same, Ld. AO worked out aggregate disallowance of Rs.822.89 Lacs u/r 8D which was interest disallowance u/r 8D(2)(ii) for Rs.128.93 Lacs and indirect expense disallowance u/r 8D(2)(iii) for Rs.693.96 Lacs. The Ld. DRP confirmed the same against which the assessee is in further appeal before us.

4.2 This issue has been adjudicated by us in AY 2008-09 as under: -

4.2 The short submissions of Ld. AR are that investment made in overseas entities would not yield any exempt income. Further, considering average of exempt yielding investments, the disallowance u/r 8D(2)(iii) would work out to be Rs.114.86 Lacs. Another submission is that the investments have been sourced out of internal accruals and therefore, interest disallowance would not be justified. Concurring with the same, we direct Ld. AO to consider only those investments which have actually yielded exempt income during the year and re-compute disallowance u/r 8D(2)(iii). If the assessee's own funds exceed the investments

made, no interest disallowance would be justified. The assessee is directed to furnish requisite details and computations. The grounds raised by the assessee stand partly allowed.

Facts being identical, similar directions are given in this year. The Ld. AO is directed to make consequential computations. The corresponding grounds stand allowed for statistical purposes.

5. In one of the grounds, the assessee seeks correct TDS credit for which it would suffice on our part to direct Ld. AO to grant TDS credit in accordance with law with a direction to the assessee to file requisite details. The assessee also seeks correct MAT credit. The Ld. AO is directed to grant the same in accordance with law. Both these grounds stand allowed for statistical purposes. The grounds relating to charging of interest are consequential in nature.

6. The appeal stand partly allowed in terms of our above order.

Order pronounced on 23rd December, 2022.

Sd/-
(MAHAVIR SINGH)

उपअध्यक्ष / VICE PRESIDENT

चेन्नई/ Chennai; दिनांक/ Dated : 23-12-2022

JPV

Sd/-
(MANOJ KUMAR AGGARWAL)

लेखासदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR6. गार्डफाईल/GF