

**आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' 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**

आयकरअपीलसं./I.T.A.No.3044/Mds/2016  
(निर्धारणवर्ष / Assessment Year: 2012-13)

M/s. SIDD Life Sciences Private Limited, Plot No.4, NH-7, MMDA Industrial Estate, Marimalai Nagar, Chennai – 603 209	Vs	The Deputy Commissioner of Income Tax, Corporate Ward 6(2), Chennai.
PAN: AAEC9251J		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Mukesh Kumar.M, CA
प्रत्यर्थीकीओरसे/Respondent by	:	Shri A.V. Sreekanth, JCIT

सुनवाईकीतारीख/Date of hearing	:	04.04.2017
घोषणाकीतारीख /Date of Pronouncement	:	10.04.2017

**आदेश / ORDER**

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

This appeal by the assessee is directed against the order passed by the Ld. Commissioner of Income Tax (Appeals)-15, Chennai dated 31.08.2016 in ITA No.128/CIT(A)/2015-16 for the assessment year 2012-13 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 invoking the provisions of Section 14A read with Rule 8D of the rules and thereby disallowed the expenditure of Rs.58,26,308/-.

3. The brief facts of the case are that the assessee is a company filed its return of income for the assessment year 2012-13 on 28.09.2012 admitting total loss of Rs.1,22,02,940/-. Subsequently the case was selected for scrutiny and notice was issued. Thereafter the assessment was completed U/s.143(3) of the Act by the Ld.AO on 26.03.2015 wherein he invoked provisions of Section 14A of the Act r.w.r 8D of the Rules because the assessee had invested Rs.81,60,90,842/- on shares which yielded exempt income of Rs.2,72,00,000/- during the relevant assessment year. On appeal, the Ld.CIT(A) also confirmed the order of the Ld. AO citing various decisions of higher judiciary.

4. Before us, the Ld.AR submitted that the entire investment made by the assessee for Rs.81,60,00,000/- was in its associate concerns due to strategic reasons and hence provisions of Section 14A cannot be invoked. The Ld.DR strongly opposed to the submission of the Ld.AR and argued in favour of the orders of the Revenue authorities.

5. We have heard the rival submissions and carefully perused the materials available on record. Relying on various decisions of

the higher judiciary this bench of the Tribunal on the earlier occasion in the case of Lakshmi Electrical Drives Ltd in ITA No.3114/Mds/2016 vide order dated 23.03.2017 has held as follows:-

*“The assessee had invested Rs.18.01 crores which would yield exempt income. Therefore the Ld. AO invoked the provisions of Section 14A and Rule 8D of the Rules and made addition which was subsequently confirmed by the Ld. CIT(A). At the outset, the Ld. AR submitted before us that, the entire investments, for strategically reasons, was made in subsidiary companies and it was sourced from interest free funds. The Ld. AR further argued that on several occasions, the Chennai bench of the Tribunal has held that if such investments are made in sister /subsidiary companies, the provisions of Section 14A cannot be invoked. He therefore pleaded that the addition made by invoking the provisions of Section 14A of the Act, may be deleted. The Ld. DR though opposed to the submission of the Ld. AR could not successfully controvert to the submissions. After hearing both sides, we find merit in the arguments of the Ld. AR. On several instance this bench of the Tribunal has held as what was argued by the Ld. AR. For instance in the case of M/s. Data Software Research Company (International) Pvt. Ltd. v. ACIT, ITA Nos.2169 & 2170/Mds/2015 and ACIT v. M/s. Data Software Research Company (International) Pvt. Ltd., ITA Nos. 2171 & 2172/Mds/2015 vide order dated 03.02.2016, this bench of the Tribunal has held as follows:*

*“7. We have heard both the parties and carefully perused the materials available on record. It is a normal practice to make investment in sister companies due to commercial exigencies. While doing so, no expense can be attributable other than interest expense for making such investments because all management costs will be absorbed for strategic decision making process which is allowable as business expenditure. In the case of the assessee it is submitted that no interest cost was incurred as the entire investments were made out of own*

*funds. Further in the decision of the Tribunal in ITA No.115/Mds/2015 dated 06.01.2016, extracted herein below, it has been held that section 14A of the Act will not be applicable when investments are made in sister companies.*

*“5. We have heard both the parties and carefully perused the materials available on record. On the identical issue as pointed out by the Ld. A.R. the Chennai bench of the Tribunal in ITA No.156/Mds/2013 vide order dated 20/08/13 for the assessment year 2009-10 has remitted back the matter to the Ld. Assessing Officer to decide the matter once again afresh based on the findings whether the assessee had actually incurred any expenditure in earning the dividend income. The relevant portion of the order is extracted herein below for reference:-*

Further, on the identical issue various Benches of the Tribunal and the Hon'ble Bombay High Court have held as follows:-

- i) *Garware wall Ropes Ltd., Vs. ACIT reported in (2014) 65 SOT 086 (Mum.) held as follows:-*

*“When assessee has prima facie brought out case that no expenditure has been incurred for earning income, which does not form part of total income, then in absence of any finding that expenditure has been incurred for earning exempt income provisions 14A cannot be applied..”*

- ii) *Integlobe Enterprises Ltd., Vs. DCIT reported in (2014) 40 CCH 0022(Del. Trib.) held as follows:-*

*“No disallowance of interest is required to be made under rule 8D(i) & 8D(ii) where no direct or indirect interest expenditure was incurred for making investments.*

*Where the assessee had utilized interest free funds for making fresh investments and that too into its subsidiaries, which was not for the purpose of earning exempt income and which was for strategic purposes only, no disallowance of interest was required to be made under Rule 8D(i) & 8D(ii) and strategic investment has to be excluded for purpose of arriving at disallowance under Rule 8D(iii).”*

- iii) *M/s.JM Financial Ltd., Vs. ACIT reported in 2014-TIOL-202-ITAT-MUM held as follows:*

*“...the department has not disputed this fact out of the total investment about 98% of the investment are in subsidiary companies of the assessee and, therefore, the purpose of investment is not for earning the dividend income but having control*

*and business purpose and consideration. The assessee has brought out a case to show that no expenditure has been incurred for maintaining the 98% of the investment made in the subsidiary companies, therefore, in the absence of any finding that any expenditure has been incurred for earning the exempt income, the disallowance made by the Assessing Officer is not justified, accordingly the same is deleted."*

- (iv) CIT Vs. Bharti Televenture Ltd. reported in (2011) 331 ITR 0502.

*"Where the assessee was found to be having adequate non-interest bearing fund by way of share capital and reserves and there was no nexus between the borrowals of assessee and the advances given, no disallowance for interest was called for."*

- (v) CIT Vs. Reliance Utilities & Power Ltd., reported in (2009) 313 ITR 0340(Bom.) has held as follows:-

*"Tribunal having recorded a clear finding that the assessee possessed sufficient interest-free funds of its own which were generated in the course of the relevant financial year, apart from substantial shareholders fund, presumption stands established that the investments in sister concerns were made by the assessee out of interest free funds and therefore no part of interest on borrowings can be disallowed on the basis that the investments were made out of interest bearing funds."*

- (vi) EIH Associated Hotels Ltd Vs. DCIT reported in 2013-TIOL-796-ITAT-MAD

*".... 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. 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 is not to be reckoned for disallowance 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."*

Taking note of the above decisions and the decision of the Chennai bench of the Tribunal in ITA No.156/Mds/13 cited supra, we hereby remit the matter back to the file of Ld. Assessing Officer to examine the issue involved in this case afresh and pass appropriate order as per law and merits and in the light of the decisions cited herein above. While doing so, we also direct the Ld. Assessing Officer to consider the

decision of the Tribunal in the case M/s Agile Electric Sub Assembly Pvt. Ltd. cited supra wherein it was held as follows:-

“7.2 In regard to applicability of Section 14A of the Act read with Rule 8D also; the above view will be applicable. Moreover in the case EIH Associated Hotels Ltd v. DCIT reported in 2013 (9) TMI 604 in ITA No.1503, 1624/Mds/2012 dated 17<sup>th</sup> July, 2013, it has been held by the Chennai Bench of the Tribunal as follows:-

*“Disallowance U/s. 14A rw Rule 8D – CIT upheld disallowance – Held that – 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 Rs.64,18,19,775/-, Rs.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 investments made by the assessee in its subsidiary are not to be reckoned for disallowance 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 – Decided in favour of assessee.”*

*For the above said reasons, we hereby hold that in the case of the assessee the provisions of Section 14A read with Rule 8D will not be applicable in regard to investments made for acquiring the shares of the assessee's sister concerns. Accordingly we restrain ourselves from interfering with the Order of the Ld.CIT(A) on this regard.”*

*8. Therefore, following the aforesaid decision of the Tribunal, we hereby direct the learned Assessing Officer to delete the addition made on account of section 14A where investments are made in sister concerns such as equity shares and share application money. However, if the investments are made from borrowed funds, section 14A of the Act would be applicable and learned Assessing Officer shall compute the disallowance under section 14A read with rules 8D in accordance with law.”*

*6.1 Accordingly we hereby remit back the matter to the file of the Ld. AO to consider the issue afresh in the light of the above order of the Tribunal and pass appropriate order in accordance with merits and law. We also make it clear that for the investments made in mutual funds, provisions of Section 14A read with Rule 8D will be applicable since the assessee would incur some expenditure at least for the decision making process as to in which mutual fund the investment has to be made and at what point of time exit from such funds. It is ordered accordingly.*

Accordingly in this case of the assessee also, we hereby remit the matter back to the file of the Ld. AO for fresh consideration so as to pass appropriate Order as per merit and law and in the light of the above Order of the Tribunal.

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

Order pronounced in the court on the 10<sup>th</sup> April, 2017.

Sd/-  
(धुव्वुरु आर.एल रेड्डी)  
( Duvvuru RL Reddy )  
न्यायिक सदस्य /Judicial Member

Sd/-  
(ए. मोहन अलंकामणी)  
( A. Mohan Alankamony )  
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 10<sup>th</sup> April, 2017

JR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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