

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, CHENNAI**

श्री ए. मोहन अलंकामणी , लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष

**BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER  
AND SHRI. G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.552 & 553/Mds/2016

निर्धारण वर्ष /Assessment year : 2010-2011 & 2011-2012.

TVS Interconnect Systems Private  
Limited,  
(Formerly known as TVS  
Interconnect systems Ltd)  
7-B, West Veli Street,  
Maduarai 625 001.

**Vs.** The Deputy Commissioner of  
Income Tax,  
Circle I(1)  
Madurai.

**[PAN AADCS 3666G]  
(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

Appellant by  
Respondent by

: Shri. S.A. Balasubramanyan, Adv  
: Shri. Shiva Srinivas, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 06-07-2016

घोषणा की तारीख /Date of Pronouncement

: 27-07-2016

**आदेश / O R D E R**

**PER G. PAVAN KUMAR, JUDICIAL MEMBER:**

These two appeals filed by the assessee are directed against different orders of Commissioner of Income-tax (Appeals)-1, Madurai dated 02.12.2015 for the assessment years 2010-2011 and 2011-2012 passed u/s.143(3) and 250 of the Income Tax Act, 1961.

Since the issue in these appeals are common in nature, these appeals are clubbed, heard together, and disposed of by this common order for the sake of convenience, we take up ITA No.552/Mds/2016 of assessment year 2010-2011 for adjudication:-

**2.** The assessee has raised the following grounds of appeal:-

*"1.1 The learned CIT (Appeals) erred in affirming the disallowance of Rs.44,18,136 /- under section 14A of the Act. He failed to note that when the assessee has not received any exempted income this year there was no scope of applying sec. 14A of the Act which enabled the AO to disallow the expenditure incurred in relation to exempted income.*

*1.2 The learned CIT ( Appeals ) failed to appreciate that while the investment in shares were only Rs. 15,00,000/-, as stated by him in his order, the assumed expenditure in relation to the investment has been at Rs.44,18,138/- for disallowance u/s 14A which could never have been the case.*

*1.3 The learned CIT ( Appeals) ought to have held that even if a disallowance u/s 14A is possible in this case, such a disallowance cannot exceed the exempted income. As in this case, admittedly, no dividend income was received this year the expenditure for disallowance could not exceed this amount which is zero.*

*1.4 The learned CIT ( Appeals ) is not justified in holding that even if no disallowance could be made u/s 14A there could be a disallowance under sec. 36(1 )(iii) of the Act. He failed to appreciate that the assessee does not make any stock market investments but all its investments were made only in relation to its business. As these were business related investments it could not be said that the borrowings were diverted for non business purposes and interest could not be disallowed even under section 36(1 )(iii) of the Act.*

*2.1 The learned CIT (Appeals) is not correct in affirming interest at 11.75 % on the two loans advanced by the assessee to M/s NSM Holdings Ltd and M/s NK Tele Systems Ltd. By applying sec. 36(1)(iii) of the Act. He failed to appreciate that these were advanced only for business purposes and no portion of the interest paid by the assessee could be disallowed”.*

**3.** The Brief facts of the case are that the assessee company is in the business of manufacture, sale and trading in cable assemblies, electronic connectors, RF cooks, fibre optic, networking products etc., and filed e-Return of income on 28.09.2010 admitting a loss of ₹24,26,91,184/- under normal provisions of Income Tax and ₹28,50,94,678/- under the provisions of Sec. 115JB of the Act the Return of income was processed u/s.143(1) of the Act on 06.03.2012 and the assessee company filed rectification petitions u/s.154 of the Act and was rectified. Subsequently, the case was selected for scrutiny under CASS and notice u/s.143(2) of the Act was issued. The Id. Authorised Representative of the assessee appeared from time to time and produced Books of account for verification and the case WAS dismissed. The Id. Assessing Officer in the scrutiny proceedings observed that the assessee company has made investment of ₹15,00,000/- in the financial year and claimed exemption of dividend income u/s.10(34) of the Act. The Id. Assessing Officer found that the assessee company is not eligible to claim expenditure on such exempted income and the provisions of Sec. 14A of the Act shall apply

and relied on the Bombay High Court decision of *Godrej & Boyce Mfg. Co. Ltd vs. DCIT 328 ITR 81* and other decisions and calculated disallowance u/s.14A r.w.r.8D. Further, the Id. Assessing Officer also found that the assessee has transactions with associate concerns where the assessee provided loan of ₹26,00,000/- to M/s. NSM Holdings Ltd during the previous year and charged interest only for six months. Similarly, loan was also given to M/s. NK Telesystems Ltd ₹19,00,000/- and the assessee company has not charged any interest. The Id. Authorised Representative explained that the amounts were lent due to Business expediency in the ordinary course of business. The Id. Authorised Representative submissions are not clear, and the Id. Assessing Officer assumed that the loans and advances are only for particular benefit, as the assessee is availing loans for carrying on day to day affairs by pleading the stock and securities and paying interest and but has not charging interest on loans to sister/associate concerns. The Id. Assessing Officer estimated interest @ 17% per annum on advances to M/s. NSM Holdings Ltd for 6 months period and at the rate of @ 11.75% being bank credit rate on advance of Rs.19,00,000/- to M/s. NK Telesystems Ltd and the aggregate interest amount was added to the returned income and order passed u/sec. 143(3) of the Act. Aggrieved by the order of Id. Commissioner of

Income Tax (Appeals) the assessee filed an appeal before the Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Id. Authorised Representative of assessee appeared and argued the grounds and explained the facts that the Id. Assessing Officer erred in applying the provisions of Sec. 14A r.w.r. 8D were assessee company has not received any exempted income. The assessee company has made investments in subsidiaries/sister concerns with business motive over a period. The Id. Assessing Officer erred in charging interest on advances to sister companies were the advances are provided on various business consideration. Further, the Id. Assessing Officer has quantified interest rate differently for calculation of notional interest. The investment in sister concern are based on the business motive and dividend income is incidental. The investee companies are loss making companies and such investments are for strategic stability of Business. The Id. Commissioner of Income Tax (Appeals) considered the findings and grounds of the assessee and CBDT Circular No.5/2014, dated 11.02.2014. Further, the assessee has made investments in four group companies during the year and three companies in the year 2007 and the assessee company could not provide Bonafide evidence that the own funds were utilized for

investments in shares and on perusal of Balance sheet, the outstanding loan funds are ₹122.48 crores. Therefore, there could not be any reason for assessee company to invest out of its own fund and could not substantiate that the investments were made for business expediency. With these findings, the Id. Commissioner of Income Tax (Appeals) confirmed the addition u/s.14A of the Act.

**5.** The Id. Commissioner of Income Tax (Appeals) observed that the assessee has borrowed funds and in the opinion of the Id. Assessing Officer the funds were diverted to non business purpose and under the provisions of Sec. 36(1)(iii) of the Act, interest on capital borrowed for the purposes of business can only be allowed. But the assessee has diverted the borrowed funds to sister concern and the Id. Assessing Officer was right in calculating notional interest but rate of interest varied differently at 11.75% & 17% and Directed the Id. Assessing Officer to recalculate interest at 11.75% instead of 17% and partly allowed the ground. Aggrieved by the Commissioner of Income Tax (Appeals) order, the assessee assailed an appeal before Tribunal.

**6.** Before us, the Id. Authorised Representative reiterated the submissions made before assessment and appellate proceedings and

explained that the assessee has not received any exempted income and therefore provisions of Sec. 14A are not applicable. Further, the assessee has invested ₹15,00,000/- during the year and the disallowance of Sec.14A if applicable cannot exceed the exempted income as there is no dividend income received by the assessee. There could not be any disallowance. The assessee has made investments in subsidiary/sister companies for business purpose, therefore provisions of Sec.14A does not apply and also borrowed funds were not diverted for non business purposes and prayed for allowing the appeal.

**7.** Contra, the Id. Departmental Representative relied on the orders of the Commissioner of Income Tax (Appeals) and opposed to the grounds.

**8.** We heard the rival submissions, perused the material on record and judicial decisions cited. The crux of the issue being the assessee has made investments in subsidiary/sister companies and the contention that own funds generated out of business were invested and no borrowed funds were utilized for the purpose of investments. Further, investments in subsidiary/sister company shall not be considered for the purpose of calculation of disallowance under Rule 8(2). The Id. Authorised Representative drew our attention to the

statement of details of subsidiary group companies and also the investments are reflected in financial statements and relied on judicial decisions. The assessee made investments in these companies on Business expediency and no income has been generated by sister/group companies and shareholding pattern also varied from company to company. The provisions of Sec. 14A r.w.r. 8D are mandatorily applicable from assessment year 2008-09 but while calculating the disallowance u/sec. Rule 8D(2), the Id. Assessing Officer shall consider that the investments in subsidiaries are in ordinary course of business. We found that there are no findings in the assessment order on this subsidiary/group companies considered as investments for calculating disallowance u/sec. 14A r.w.r.8D(2) and we respectfully, follow the Co-ordinate Bench decision of *M/s. Rane Holdings vs. ACIT, Chennai in ITA No.115/Mds/2015*, dated 06.01.2016 were similar issue was held as under:-

*“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 17th 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.”*

It is ordered accordingly’.

We remit the disputed issue to the file of the Id. Assessing Officer to verify and exclude the investment in subsidiary companies for the purposes of calculation of disallowance under Rule 8D and the assessee should be provided adequate opportunity of being heard. The ground of the assessee is allowed for statistical purpose.

**9.** In respect of disallowances of interest on loans and advances by the M/s. NK Tele Systems Ltd. The contention of the Id. Authorised Representative that these loans were provided for the business purpose and interest calculated by the Id. Assessing Officer as notional income is bad in law. The assessee company provided advances on the principle of business expediency and commercial transactions. The assessee company also have borrowed funds in its financial statements whereas sister company M/s. NSM Holdings company is a investment company and M/s. NK Tele Systems Ltd is a manufacturer and engaged in telecom equipments. The financial statements of M/s. NK Tele Systems Ltd does not provided information of income or expenditure. We are of the opinion that the advance/loan by the assessee company are for the benefit of the company but lacks commercial aspects. Therefore, the Id. Assessing Officer is directed to verify the loans provided to the subsidiary company's having commercial motive and decide on charging of interest on merits and this ground of the assessee is allowed for statistical purpose.

**10.** Now, we take up ITA No.553/Mds/2016 of assessment year 2011-2012:- The first ground raised by the assessee is that the Id. Commissioner of Income Tax (Appeals) erred in confirming the disallowance of ₹54,75,162/- in respect of Sec. 14A of the Act.

**11.** We have considered the facts and submissions made by the Id. Authorised Representative and Id. Departmental Representative, similar issue was adjudicated by us for the assessment year 2010-2011 in ITA No.552/Mds/2016 at para 08 and we allow the appeal of the assessee for statistical purpose.

**12.** The second ground raised by the assessee is that the Id. Commissioner of Income Tax (Appeals) erred in confirming the disallowance of interest of ₹15,00,000/- on the interest free loan.

**13.** We have considered the facts and submissions made by the Id. Authorised Representative and Id. Departmental Representative, similar issue was adjudicated by us for the assessment year 2010-2011 in ITA No.552/Mds/2016 at para 09 and we allow the appeal of the assessee for statistical purpose.

**14.** In the last ground were the Id. Assessing Officer has disallowed an amount of ₹53,193/- paid as consultancy charges to M/s. India Telecom Infra Ltd by applying the provisions of Sec. 40(a)(ia) of the Act and the Id. Commissioner of Income Tax (Appeals) has confirmed the addition. Aggrieved by the Commissioner of Income Tax (Appeals) order, the assessee assailed an appeal before Tribunal.

**15.** Before us, the Id. Authorised Representative explained that the amount represents reimbursement of expenses to the company and not consultancy fees as viewed by the Id. Assessing Officer and prayed for allowing the appeal.

**16.** Contra, the Id. Departmental Representative relied on the orders of Commissioner of Income Tax (Appeals) and opposed to the grounds.

**17.** We heard the rival submissions, perused the material on records. The crux of the issue being that the assessee has claimed expenditure of ₹53,193/- towards consultancy charges and was disallowed by applying provisions of Sec.40(a)(ia) of the Act for non deduction of TDS. The Id. Authorised Representative explained that the amount is reimbursement of expenses were debit note was raised and was transferred to the consultancy charges account. The assessee company could not substantiate with any evidence before lower authorities. Therefore, we inclined to provide one more opportunity to assessee to submit complete details before the Id. Assessing Officer and we remit disputed issue to the file of the Id. Assessing Officer to verify the contentions of the assessee company as reimbursement of expenses

alongwith evidence and pass the order on merits. This ground of the assessee is allowed for statistical purpose.

**18.** In the result, the appeals of the assessee in ITA Nos.552 & 553/Mds/2016 are allowed for statistical purpose.

Order pronounced on Wednesday, the 27<sup>th</sup> day of July, 2016 at Chennai.

Sd/-

**(ए. मोहन अलंकामणी)**

**(A. MOHAN ALANKAMONY)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 27th July, 2016.

kv

Sd/-

**(जी. पवन कुमार)**

**(G. PAVAN KUMAR)**

**न्यायिक सदस्य /JUDICIAL MEMBER**

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