

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.2746/Mds/2016

(निर्धारणवर्ष / Assessment Year: 2013-14)

M/s. SVL Limited, (Formerly Shriram Industrial Holdings Pvt. Ltd.), Mookambika Complex, No.4, Lady Desika Road, Mylapore, Chennai – 600 004.	Vs	The Deputy Commissioner of Income Tax, Corporate Circle 6(1), Chennai.
PAN: AAACS7696D		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

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आयकरअपीलसं./I.T.A.No.3007/Mds/2016

(निर्धारणवर्ष / Assessment Year: 2013-14)

The Deputy Commissioner of Income Tax, Corporate Circle 6(2), Chennai.	Vs	M/s. SVL Limited, (Formerly Shriram Industrial Holdings Pvt. Ltd.) Mookambika Complex, No.4, Lady Desika Road, Mylapore, Chennai – 600 004.
		PAN: AAACS7696D
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	:	Shri R. Sivaraman, Advocate
Revenue by	:	Shri A.V. Sreekanth, JCIT

सुनवाईकीतारीख/Date of hearing	:	13.04.2017
घोषणाकीतारीख /Date of Pronouncement	:	09.05.2017

आदेश / ORDER

Per A. Mohan Alankamony, AM:-

This appeal by the assessee and the Revenue are directed against the order passed by the learned Commissioner of Income Tax (Appeals)-15, Chennai dated 19.07.2016 in ITA No.351/CIT(A)-

15/15-16 for the assessment year 2013-14 passed U/s.250(6) r.w.s. 143(3) of the Act.

2. The appeal in ITA No.3007/Mds/2016 is filed by the Revenue with a delay of 15 days. The Ld. DR submitted that the delay had occurred due to the misplacement of the files. The Ld. DR further pleaded that after strenuous search the records could be traced only during the second week of October and thereafter instantly the appeal was filed by obtaining sanctions from the requisite authorities. It was therefore pleaded that the delay of 15 days in filing the appeal may be condoned. After hearing the Ld.D.R, though we do not appreciate the reason for delay in filing the appeal cited by the Revenue, in the interest of justice, we hereby condone the short delay of 15 days in filing the appeal.

3. **ITA No.2746 of 2016** : The assessee has raised several grounds in its appeal, however the crux of the lone issue is that the Ld.CIT(A) has erred for granting relief only partly by directing the Ld.AO to exclude the investments made in, subsidiary companies, joint venture companies and companies from whom no dividend is received, while calculating the disallowance U/s.14A of the Act,

instead of granting relief fully by restricting the disallowance to Rs.21.92 lakhs computed by the assessee U/s.14A of the Act.

4. **ITA No.3307 of 2016:** The revenue has raised several grounds in its appeal, however the crux of the issue is that the Ld.CIT(A) has erred in directing the Ld.AO to exclude the investments made in, subsidiary companies, joint venture companies and companies from whom no dividend is received, while calculating the disallowance U/s.14A read with Rule 8D.

5. The brief facts of the case are that the assessee is a limited company engaged in the business of investment services, filed its return of income for the assessment year 2013-14 on 30.11.2013. The case was selected up for scrutiny under CASS and finally order U/s. 143(3) was passed on 28.03.2016 wherein the Ld.AO disallowed Rs.4,27,43,253/- taking into account of Rs.21,92,239/- already disallowed by the assessee by invoking the provisions of Section 14A read with Rule 8D of the Rules. Thus the Ld.AO disallowed in all Rs.4,49,35,492/- invoking the provisions of Section 14A read with Rule 8D of the Rules. On appeal the Ld.CIT(A) after taking into consideration of the various case laws

cited in his order directed the Ld.AO to exclude the investments in subsidiary companies, joint venture companies and those companies from whom no dividend is received while calculating disallowance U/s.14A of the Act. The Ld.CIT(A) also directed the Ld.AO that the disallowance U/s.14A read with Rule 8D should not be less than the disallowance made by the appellant *suo-moto*. Aggrieved by the order of the Ld.CIT(A) both the assessee and the Revenue are on appeal before us.

6. At the outset on the issue with respect to applicability of Section 14A and Rule 8D of the Rules, we are reminded of the decision recently passed by the Tribunal which is extracted herein below for reference:

ITA No.3044 of 2016 of M/s. SIDD Life Sciences, order dated 07.04.2017 by Chennai 'C' Bench:

“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 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.”

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.”

7.1 From the above it is crystal clear that the Tribunal after considering the issue has arrived at the following decision:-

Disallowance of expenditure incurred by the assessee company which is attributable for earning exempt income U/s.14A read with 8D of the Rules, will not be applicable, where investments in equity shares / share application money / preference shares etc., are made out of assessee's own interest free funds in sister concerns for strategical reasons, though the assessee earns dividend income out of such investments which is exempt from tax. This decision is arrived at because of the following premises:-

- a) When the assessee invests in its sister concern for strategical reasons there cannot be any presumption with respect to any expenses at all other than interest expenses on the fund deployed by borrowing if any.
- b) There cannot be any expense with respect to the decision making process of making investment in one's own company for strategical reasons.

- c) There cannot be any cost involved for making investment in one's own sister company when the source for such investment are met from own funds such as equity/preference share capital and general reserves.
- d) The assessee is at liberty to pull out its own interest free funds and deploy the same for any other purpose and utilize the interest bearing fund in the business. There is legally no bar for doing so.

7.2 Further on the issue of excluding the companies from whom dividend is not received while computing disallowance under Rule 8D of the Rules, we don't find merit in the same because, the expenses incurred for making such investment has no proportionate bearing on the quantum of exempt income earned. Moreover it is obvious that expenses incurred for earning exempt income cannot be allowed as deduction from the other business activity of the assessee where the income is taxable. For the above reasons we are of the considered view that the decision of the Ld.CIT(A) for excluding the companies from whom dividend is not received while computing disallowance under Rule 8D of the Rules is erroneous.

8. Following the above decision of the Tribunal and the reasoning, in the case of the assessee, we hereby direct the Ld.A.O to compute the disallowance U/s.14A of the Act applying Rule 8D of the Rules by excluding the investments made out of non-interest bearing funds (Own Funds such as equity/preference shares, General Reserves etc.,) in sister/joint venture, companies for strategical reasons from the total investment made, the income derived from which is not taxable. The ground raised by the Assessee and the Revenue in their respective appeals are accordingly disposed off.

9. In the result the appeal of the assessee is dismissed and the appeal of the Revenue is partly allowed as indicated herein above.

Order pronounced in the court on the 09th May, 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 09th May, 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 |