

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI**

श्री जॉर्ज माथन, न्यायिक सदस्य एवं
श्री श्री रमित कोचर, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

HEARD THROUGH VIDEO CONFERENCING

आयकर अपील सं./**ITA No.1736/Chny/2019**

निर्धारण वर्ष /**Assessment Year: 2011-12**

M/s.Sundaram Business
Services Ltd.,
No.21, Pattullos Road,
Chennai-600 002.

[PAN: AAJCS 9232 J]
(अपीलार्थी/ Appellant)

V. The Income Tax Officer,
Corporate Ward-6(3),
No.121, 7th Floor, New Block,
M.G.Road, Nungambakkam,
Chennai-600 034.

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.Saroj Kumar, Adv.

प्रत्यर्थी की ओर से /Respondent by

: Mr.AR.V.Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 19.08.2020

घोषणा की तारीख /Date of Pronouncement

: 19.08.2020

आदेश / O R D E R

PER RAMIT KOCHAR, ACCOUNTANT MEMBER:

This appeal filed by assessee in ITA No. 1736/Chny/2019 is directed against appellate Order dated 29.03.2019 passed by learned Commissioner of Income Tax (Appeals)-15, Chennai (hereinafter called "the CIT(A)"), in ITA No.573/2013-14/CIT(A)-15 for assessment Year (ay) 2011-12, the appellate proceedings before learned CIT(A) had arisen from assessment order dated 23.01.2014 passed by learned Assessing Officer

(hereinafter called "the AO") u/s.143(3) of the Income-tax Act, 1961 (hereinafter called "the Act"). The appellate proceedings are conducted by Income-Tax Appellate Tribunal, Chennai Bench 'A', Chennai through Virtual Court via videoconferencing using webex platform.

2. The grounds of appeal raised by assessee in memo of appeal filed with the Income-Tax Appellate Tribunal, Chennai (hereinafter called "the Tribunal") read as under:-

"a) The order of the Commissioner of the Income Tax (Appeals) is contrary to law, weight of evidence and probabilities of the case.

b) The Commissioner of Income tax (Appeals) has considered in his order that the investments that has yielded the exempted income alone is to be considered for the purpose of calculating the disallowance under Rule 8D(iii). The Commissioner of Income tax (Appeals) ought to have considered the similar stand for the purpose of calculating the disallowance under Rule 8D(ii), which also provides that the investments which yielded exempt income only needs to be taken for computation purposes under Rule 8D(ii).

c) The Commissioner of Income tax (Appeals) has incorrectly invoked the clause (2)(ii) of Rule 8D by considering the entire interest expenditure without appreciating the fact that investments were made out of own funds and not borrowed funds. There is no specific interest expenditure which has been incurred for earning the dividend income.

d) The Commissioner of Income tax (Appeals) ought to have appreciated the fact that the Appellant has earned interest income which has been offered to tax in the return of Income. Even assuming Rule 8D(ii) is to be invoked, only the net interest expense is to be considered for this purpose.

For the reasons stated above and those that may be added at the time of hearing, the Hon'ble Tribunal may be pleased to allow the appeal of the Appellant and grant such relief/reliefs considering the facts and circumstances of the case."

3. The brief facts of the case are that the assessee is a Private Limited Company engaged in the business of 'Business Support Services'. During the course of assessment proceedings conducted by AO u/s 143(3) read with Section 143(2) of the 1961 Act , the disallowance of expenditure to the tune of Rs. 16,12,158/- was made by AO by invoking provisions of

Section 14A of the 1961 Act read with Rule 8D of the Income-tax Rules, 1962 , which disallowance of aforesaid expenditure stood added to income of the assessee chargeable to tax, vide assessment order dated 23.01.2014 passed by AO u/s 143(3) of the 1961 Act. The details of additions made by the AO by invoking provisions of Section 14A of the 1961 Act read with Rule 8D of the 1962 Rules are reproduced in the chart hereunder:

Rule 8D	Amount (in Rs.)
Rule 8D(i)	300282
Rule 8D(ii) = A * B/C	1030697.766
Rule 8D(iii) = 0.5% * B	281178.79
Total disallowance u/s.14A r.w.Rule 8 D	1612158.566
Total interest paid not attributable to any particular receipt (A)	3081476
Investment opening balance	112471516
Investment closing balance	0
Total of opening and closing investment	112471516
Average Investment (B)	56235758
Opening Asset Balance	189699835
Closing Asset Balance	146556135
Total of opening and closing asset	336255970
Average value of asset (C)	168127985

4. The assessee being aggrieved by an assessment order dated 23.01.2014 passed by AO u/s 143(3) of the 1961 Act, filed first appeal with learned CIT(A), which stood partly allowed by learned CIT(A) vide appellate order dated 29.03.2019. The learned CIT(A) accepted the contention of the assessee that disallowance of direct expenditure of Rs. 3,00,282/- made by the AO u/s 14A of the 1961 Act read with Rule 8D(2)(i) of the 1962 Rules , was earlier voluntarily suo motu disallowed by assessee while filing its return of income with Revenue and its disallowance once again by AO while framing assessment u/s 143(3) of

the 1961 Act has led to double disallowance , for which relief was granted by learned CIT(A). This issue has attained finality. Similarly , while adjudicating grievance of the assessee with respect to disallowance of expenditure made by the AO u/s 14A of the 1961 Act read with Rule 8D(2)(iii) of the 1962 Rules, the learned CIT(A) took cognizance of the fact that only one investment with BNP Paribas Global Securities Operations Private Limited to the tune of Rs. 46,30,500/- yielded dividend income which was claimed as an exempt income by the assessee and hence accordingly learned CIT(A) restricted disallowance u/s 14A of the 1961 Act read with Rule 8D(2)(iii) of the 1962 Rules to only those investments which yielded exempt income during the year under consideration by applying disallowing rate of 0.5% of average investments held during the year which actually yielded an exempt income during the year under consideration , which led to restricting disallowance of expenditure to the tune of Rs. 11,576/- by learned CIT(A) as against disallowance of Rs. 2,81,179/- made by the AO. This issue has also attained finality. It is not brought to the notice of the Bench by learned DR during the course of hearing that Revenue is aggrieved by the relief given by learned CIT(A) with respect to aforesaid two disallowances u/s 14A of the 1961 Act read with Rule 8D(2)(i) and 8D(2)(iii) of the 1962 Rules. The only issue which is now agitated by assessee before tribunal is with respect to disallowance of interest expenditure to the tune of Rs. 10,30,698/- as was made by AO while framing scrutiny assessment which was later sustained by learned CIT(A) in the first appellate proceedings,

by invoking provisions of Section 14A of the 1961 Act read with Rule 8D(2)(ii) of the 1962 Rules. The hearing of this appeal before tribunal was held through video conferencing. The learned counsel for the assessee opened arguments and submitted that while making disallowance u/s 14A of the 1961 Act read with Rule 8D(2)(ii) of the 1962 Rules, the authorities below ought to have considered only those investments which actually yielded an exempt income during the year under consideration. It was also brought to the notice of the Bench by learned counsel for the assessee that during the year under consideration , the only investment which actually yielded dividend income of Rs. 20,36,456/- which was claimed as an exempt income by assessee , was an investment in Mutual Fund of BNP Paribas Global Securities Operations Private Limited which was to the tune of Rs. 46,30,500/- as at 31.03.2010 and was at Rs. Nil as at 31.03.2011. It was submitted by learned counsel for the assessee that total investments were to the tune of Rs. 11,24,71,516/- as at 31.03.2010 and the Investments were at Rs. Nil as at 31.03.2011. It was submitted that the assessee sold/redeemed all its investments during the year under consideration and that is how the balance of investment as at year end was at Rs. Nil. It was also submitted that borrowings were made for business purposes and not for making investments. It was submitted that this plea was taken before the authorities below that no part of interest bearing borrowings were utilized for making investments and it is only interest free owned funds which were deployed for making investments. Thus, it was submitted that no disallowance of interest expenditure by

invoking provisions of Section 14A of the 1961 Act read with Rule 8D(2)(ii) of the 1962 Rules can be made. Our attention was drawn to the appellate order of learned CIT(A) as well to the audited financial statement of the assessee which is placed on record by the assessee before the tribunal. It was submitted that the assessee has paid interest of Rs. 30,81,476/- during the year under consideration and assessee has earned interest income of Rs. 29,95,856/-. Without Prejudice and in the alternative, It was submitted by learned counsel for the assessee that at best only net interest expenditure can be considered for disallowance u/s 14A of the 1961 Act read with Rule 8D(2)(ii) of the 1962 Rules and not the gross interest expenditure incurred by assessee. It was also submitted that owned funds of the assessee were to the tune of Rs. 15,00,00,000/- which was much higher than the investments made by the assessee and hence it was submitted that no disallowance u/s 14A of the 1961 Act read with Rule 8D(2)(ii) of the 1962 Rules can be made. Our attention was drawn to appellate order passed by learned CIT(A) and the audited financial statements submitted by the assessee . The learned DR on the other hand relied upon the appellate order passed by learned CIT(A).

5. We have heard rival contentions and perused the material on record. The hearing of this appeal was conducted through video conferencing. The assessee is engaged in the business of 'Business Support Services'. The only short question agitated by assessee in this appeal filed before

tribunal is with respect to disallowance of interest expenditure to the tune of Rs. 10,30,697/- by authorities below by invoking provisions of Section 14A of the 1961 Act read with Rule 8D(2)(ii) of the 1962 Rules. We have observed that admittedly the assessee had investment of Rs.11,24,71,516/- as at beginning of the previous year as on 01.04.2010, while the investments at the close of the previous were to the tune of Rs. Nil as at 31.03.2011 , which gives average investment of Rs. 5,62,35,758/- held by the assessee during the year under consideration . The assessee has sold/redeemed its entire investment portfolio during the year under consideration. It is the contention of the assessee even before authorities below that the interest bearing borrowings were utilized for business purposes and not for making investments. The authorities below have not given any finding to contradict/rebut this plea of the assessee. In any case, the assessee's own interest free funds which were deployed by the assessee in business (share capital-losses) were to the tune of Rs. 1234.83 lacs as at 31.03.2010 and Rs. 1083.75 lacs as at 31.03.2011 , which gives average capital deployed of Rs. 1159.29 lacs during the year under consideration, which was much higher than average investment of Rs. 562.35 lacs held by assessee during the year under consideration. Thus, keeping in view aforesaid facts and in our considered view , the additions as were made by AO which was later sustained by learned CIT(A) by disallowing interest expenditure to the tune of Rs. 10,30,698/- by invoking provisions of Section 14A of the 1961 Act read with Rule 8D(2)(ii) of the 1962 Rules is not sustainable in the eyes of law which we

order deletion. Our decision is supported by decision of Hon'ble Bombay High Court in the case of CIT v. Reliance Utilities and Power Limited (2009) 313 ITR 340(Bom.) ; Hon'ble Bombay High Court in the case of HDFC Bank Limited v. DCIT reported in (2016) 383 ITR 529(Bom); Hon'ble Supreme Court decision in the case of CIT v. Reliance Industries Limited reported in (2019) 102 taxmann.com 52(SC) and dismissal of SLP in the case of PCIT v. Sintex Industries Limited reported in (2018)93 taxmann.com 24 (SC). The assessee succeeds in this appeal. We order accordingly.

6. In the result, the appeal filed by the assessee in ITA No.1736/Chny/2019 for ay: 2011-12 is allowed.

Order pronounced in open court through video conferencing on the conclusion of hearing on 19th August, 2020 in Chennai.

Sd/-
(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-
(रमित कोचर)

(RAMIT KOCHAR)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 19th August, 2020.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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