IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH 'A' CHENNAI

Before Shri Abraham P. George, Accountant Member and
Shri George Mathan, Judicial Member

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I.T.A. No. 2148/Mds/2010
Assessment Year : 2006-07

M/s. Siva Industries & Holdings Ltd. (Formerly klnown as Sterling Infotech Ltd.), No. 327, Anna Salai, Teynampet, Chennai-600 006.	v.	The Assistant Commissioner of Income-tax, Company Circle-VI(4), Chennai.

(PAN: AAACS4460M)

(Appellant) (Respondent)

Appellant by : Shri Sriram Seshadri
Respondent by : Shri Shaji P. Jacob

O R D E R

PER GEORGE MATHAN, JUDICIAL MEMBER :

This is an appeal filed by the assessee against the assessment order passed by the Assessing Officer under section 143(3) read with section144C read with section 92CA(4) of the Income Tax Act, 1961dated 26-10-2010 for the assessment year 2006-07.

2. Shri Sriram Seshadri, CA represented on behalf of the assessee and Shri Shaji P. Jacob, learned Sr. DR represented on behalf of the Revenue.

3. It was the submission by the learned authorised representative that the issues in the appeal are three-fold, the first issue being against the disallowance

made by the Assessing Officer under section 14A of the Act, the second being the action of the Assessing Officer in bringing to tax the addition of ₹ 45,23,817,53 suggested by the TPO on account of the adoption of the prime lending rate in respect of the charging of interest on the loan given by the assessee to its sister concern as against the LIBOR rate and the third issue being against the action of the Assessing Officer in not granting the TDS credit as claimed by the assessee.

4. In regard to the first issue being against the action of the Assessing Officer in making a disallowance u/s. 14A it was submitted by the learned authorised representative that originally the assessee had filed its return of income on 27.11.2006 wherein it had made disallowance u/s. 14A. Subsequently on the basis of expert advice the assessee had filed a revised return on 18.3.2008 wherein the assessee had withdrawn the disallowance made u/s 14A to the extent of ₹ 30,89,60,575/- in the original return. It was the submission that as a consequence of the revised return filed wherein the reason for the filing of the revised return was specifically mentioned.

5. There was a survey on the premises of the assessee on 20.8.2009. It was the submission that a draft assessment order was issued on the assessee on 29.12.2009 which was the subject matter of reference before the Dispute Resolution Panel, Chennai. The Dispute Resolution Panel, Chennai vide its order dated 28.9.2010 had approved the additions proposed by the Assessing Officer in the draft assessment order. Consequently, the assessment order in the

assessee's case came to be passed on 26.10.2010. It was the submission that in respect of the disallowance under section 14A the Assessing Officer had made a disallowance of ₹ 33,86,85,626/-. The learned authorized representative submitted that the disallowance was out of the interest paid by the assessee on the loans borrowed for business purposes. It was submitted that the total interest payment during the relevant assessment year was about ₹ 42 crores. It was the submission that the Assessing Officer had accepted the claim of interest payments as incurred for business purposes and excludible from the disallowance u/s 14A to an extent of ₹ 8.14crores. It was the submission that the balance of ₹ 33.86 crores was considered for disallowance by the Assessing Officer. The learned authorised representative of the assessee placed before us the chart showing the break up of the interest disallowed by the Assessing Officer to the extent of ₹ 33.86 crores. This is as follows :

Sr. No.	Break up of interest disallowed bA.O. to the extent of INR 33.86 crores	Amount of Interest (INR in crores)	Paper Book reference U
1.	IDFC Limited (Break-up given below)	25.18	27
2.	Standard Chartered Bank	3.43	28
3.	Standard Chartered Investment and Loans Ltd.	2.37	29
4.	Processing fees paid to Standard Chartered Bank	2.00	32
5.	Kalimati Investment Company Ltd.	0.30	22
6.	ATVL	0.53	19
7.	Interest on IL&FS Subscription Finance Ltd.	0.05	23
	Total	**33.86**	

It was the submission that out of ₹ 33.86 crores, ₹ 25.18 crores relating to IDFC Ltd. was in no way connected to the investments in shares. It was fairly agreed that the balance of ₹ 8.68 crores was connected to the investment in shares. He further drew out attention to a chart showing the details of the investment during the financial year 2005-06 in the shares of companies. It was the submission that as on 1.4.2005 the investment in the shares of companies was to the tune of ₹ 97.63 crores. He drew our attention to page 6 of the paper book which is copy of the schedule attached and forming part of the Balance Sheet for the years ended 31.3.2005 and 31.3.2006 wherein the investments as on 31.3.2005 was to the extent of ₹ 97.63 crores. It was the submission that during the relevant assessment year the assessee had purchased shares in various companies to the extent of ₹ 18.21 lakhs. The main investment during the year was in the investment of shares of Tata Tele Services Ltd. (TTSL) to an extent of ₹ 884 crores. It was the submission that the said investment was through a share subscription agreement for the preferential allotment of shares. It was the submission that the shares had been purchased at a premium of 70%. It was the submission that the assessee had also swapped shares held by the assessee company in Dishnet Wireless Ltd. of a value of ₹ 34.40 crores for shares in Aircel Televentures Ltd., a wholly owned subsidiary by the swap by which the assessee received the shares to the value of ₹ 129 crores. It was the further submission that the assessee had also disposed of certain other investments in some companies. It was the submission that as on the year

ended 31-3-2006 the investments in the shares held by the assessee went up to ₹ 1075 crores. It was the submission that the shares swapped by which the assessee got ₹ 129 crores worth of M/s. Aircel Televentures Ltd. shares as against the Dishnet Wireless Ltd. shares during the year did not involve any fund transfer. It was on the basis of a share swap agreement which was found at pages 99 to 102 of the paper book. It was the submission that the main addition during the year was investment in the shares of Tata Tele Services Ltd. to the extent of ₹ 884 crores for which the assessee had sourced its own funds to an extent of ₹ 35 crores representing a repayment of loan from M/s. Aircel Televentures Ltd. and share application money received from Shri C. Shivsankaran, who is the promoter shareholder to an extent of ₹ 67.10 crores. It was the submission that ₹ 102 crores out of ₹ 884 crores was clearly out of the non-interest bearing funds and it was also not out of any loans taken. The balance 782 crores was sourced by taking a short term loan from M/s. Kalimati Investment Co. Ltd. to an extent of ₹ 132 crores and the balance of ₹ 650 crores was a loan taken from M/s. Standard Chartered Investment and Loans Ltd. as an ICD (Inter Corporate Deposit) of 10.5% per annum for an amount of ₹ 250 crores and 9.5% per annum for ₹ 400 crores. The break up of the same was found at pages 109, 110 and 114 of the paper book. It was thus the submission of the learned authorised representative that the loan from Standard Chartered Bank was taken on 27.2.2006 and the purchase of preferential shares in TTSL was also paid for on 27.2.2006. It was the submission that ₹ 25.18 crores

interest repayment to IDFC Ltd. was on account of ₹ 300 crores secured loan which was taken by the assessee company yon 30.3.2005 from M/s. IDFC Ltd. He drew our attention to the copy of the loan agreement which was found at pages 38 to 71 of the paper book. It was the submission that this amount of ₹ 300 crores was used for granting a loan to the subsidiary Aircel Tele Vemtire Ltd. to an extent of ₹ 128.75 crores as also repayment of the loan taken for business purposes from Hitech Housing Projects P. Ltd. to an extent of ₹ 10.45 crores. Another ₹ 150 crores was used for the repayment of Inter Corporate Deposits from TTSL. Another ₹ 2.25 crores was used for the upfront fee for the loan taken from IDFC Ltd. About ₹ 8.34 crores was in fixed deposits with HDFC Bank and around ₹ 66 lakhs was utilized for business purposes. It was the submission that that ₹ 300 crores taken from IDFC Ltd. was not used for any investment in the shares as the same had been taken on 31.3.2005 and had also been used up substantially on 31.3.2005 itself and this loan amount was not available for making any investment prior to 31.3.2005 or immediately after 31.3.2005. It was thus the submission that from the Balance Sheet as on 31.3.2005 it is clear that if ₹ 300 crores secured loan which was the only secured loan was removed, then ₹ 97.62 crores representing the opening balance of the investment was also not out of any borrowed funds. It was the submission that during the year the assessee had taken a loan of ₹ 650 crores from Standard Chartered Bank and another ₹ 132 crores from Kalimati Investment Co. Ltd. Then ₹ 782 crores was used for making the investment in the preferential shares of Tata Teleservices

Ltd. The investment in TTSL had also been done on 27-02-2006. It was thus the submission that the interest paid to IDFC Ltd. to an extent of ₹. 28.18 crores could not be considered for disallowance of interest under section 14A as no portion of the same had been used for making the investment. Regarding the balance of ₹ 8.68 crores it was fairly agreed that the said interest related to the interest payments to Standard Chartered Bank, M/s. Kalimati Investment Co. Ltd. etc. the funds from which it had been used for making the investments in the shares of TTSL. It was the submission that if at all a disallowance u/s 14A was called for it should be restricted to the said amount odf ₹ 8.68 crores and nothing further as the direct linking of the loans to the purpose for which the same had been used had been clearly shown by the assessee. The learned authorised representative further drew our attention to the financial results of TTSL. It was the submission that during the financial year 2004-05 relevant for the assessment year 2005-06 the profit after taxation was a loss of ₹ 1664.07 crores. For the assessment year 2006-07 it was a loss of ₹ 1878.21 crores. For the assessment year 2007-08 it was a loss of ₹ 2062.52 crores. For the assessment year 2008-09 it was a loss of ₹ 1813.76 crores and for the assessment year 2009-10 it was a loss of ₹ 1814.31 crores. It was the submission that from the financial results of TTSL clearly showed that it would not be turning the corner into a profit any time in the near future. It was the submission that the investment in the shares of TTSL by the assessee was purely a venture capital investment. The learned authorised representative drew our

attention to the financial results of TTSL for the various assessment years which was found at pages 118 to 150 of the paper book. He further drew our attention to section 5 of the Companies Act which clearly states that a company cannot declare dividend if it has carried forward losses during the relevant assessment years for which it wishes to declare any dividend. It was the further submission that the assessee had also not received any dividend nor claimed any amount received by the assessee as dividend. It was the submission that as the assessee had not claimed any dividend income as exempt from tax, the provisions of sec. 14A could not be invoked on the assessee. The learned authorised representative drew our attention to section 115-O of the Act which provided the special provision for tax on distribution of profits of a domestic company. It was the submission that as per sec. 115-O the words used were "declared, distributed or paid by such company by way of dividends (whether interim or otherwise)". It was the submission that no amount had been declared, distributed or paid by TTSL by way of dividend in any manner whatsoever. He further drew our attention to section 8 of the Income Tax Act, 1961 under the head "dividend income" which also uses the words "declared by a company or distributed or paid by it". He also drew our attention to section 10(34) of the Act to support his contention that what was not includible in the total income of the previous year of any person was "any income by way of dividends referred to in sec. 115-O". He further drew our attention to sec. 14A(1) to submit that as per the said section it was only when there was any

income which did not form part of the total income under the Act during any relevant assessment year no deduction in respect of the expenditure incurred for earning such income which does not form part of the total income, was allowable. It was the submission that during the relevant assessment year the assessee did not have any income which did not form part of the total income under the Act and therefore no disallowance by invoking the provisions of sec. 14A could be made on the assessee. For this proposition he relied upon the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Winsome Textile Industries Ltd., reported in 319 ITR 204 (P&H) wherein it has been held that where the assessee did not make any claim for exemption section 14A could have no application. He also placed reliance upon the decision of the Hon'ble Supreme Court in the case of CIT v. Walfort Share and Stock Brokers P. Ltd. reported in 233 CTR 42 (S C) wherein in para 18 of the said order the Hon'ble Supreme Court has held that "for attracting section 14A, there has to be a proximate cause for disallowance, which is its relationship with the tax exempt income." It was the submission that there was no proximate connection between the interest paid by the assessee and any dividend income as the assessee had not received any dividend income nor it had claimed any income as not includible in its total income. He also placed reliance on the circular No. 14 of 2001 dated 22.11.2001 issued bv the CBDT to submit that in the said circular also the Board had explained that the provisions of sec. 14A were for restricting the claim of expenses in relation to the exempt income. It was the submission

that as there was no exempt income no disallowance u/s 14A was liable to be made in the hands of the assessee.

6. In reply the learned DR submitted that as per the decision of the Hon'ble Supreme Court in the case of CIT v. Rajendra Prasad Moody reported in 115 ITR 519 wherein it had been held that just because there is no income the expenditure cannot be disallowed. It was the submission that as per sec. 14A if an assessee has exempted income, then the expenditure in relation to such exempted income is liable to be disallowed. It is not required to be seen as to whether the assessee has exempted income during the relevant assessment year if the expenditure has been incurred to make an investment which helped the assessee to derive exempted income at a future point of time also the expenditure in relation to such exempted income is to be disallowed in view of the provisions of sec. 14A. It was the submission that the decision of the Hon'ble Punjab & Haryana High Court in the case of Winsome Textile Industries Ltd., referred to supra, was not liable to be followed as it was not a jurisdictional High Court decision and it had not considered the decision of the Hon'ble Supreme Court in the case of Rajendra Prasad Moody. He placed reliance on the decision of the Hon'ble jurisdictional High Court in the case of Visvas Promoters (P) Ltd. v. ITAT And Another reported in 323 ITR 114 (Mad) to support his contention that the decision of one High Court is neither binding precedent for another High Court nor for courts or Tribunals outside its own territorial jurisdiction. He also relied upon the decision of the Hon'ble Bombay High Court

in the case of Geoffrey Manners And Co. Ltd. v. CIT reported in 221 ITR 695 for the same proposition. It was the further submission that as per the decision of the Hon'ble Supreme Court in the case of Mrs. Bacha F. Guzdar, Bombay v. CIT reported in 27 ITR 1 (SC) the Hon'ble Supreme Court had categorically held that a shareholder who buys shares does not buy any interest in the property of the company which is a juristic person entirely distinct from the shareholders. The true position of a shareholder in a company is that on buying shares he becomes entitled to participate in the profits of the company if and when the company declares, subject to the articles of association, that the profits or any portion thereof should be distributed by way of dividends among the shareholders. He has a further right to participate in the assets of the company which would be left over after winding up. It was the submission that the fact that the assessee has invested in the shares by using borrowed funds, the expenditure in the form of interest on the borrowals was liable to be disallowed by invoking the provisions of section 14A. It was the submission that as a result of the survey on the assessee on 20-08-2009 the Assessing Officer had directed the assessee to give the details of the interest on the investments. It was the submission that the assessee had given the break up vide a letter dated 26-08-2009 and again by a letter dated 10-09-2009 which were shown at pages 1 and 2 of the paper book. It was the submission that this was to an extent of R 30.89 crores and the assessee had also paid taxes to the tune of ₹ 40 crores keeping in view the disallowance of interest under sec. 14A. It was the submission that

the assessee after having made a declaration should not be permitted to go back from such declaration. It was the further submission that when the assessee had invested its interest-free funds for the purchase of shares and had borrowed money for running its business, it automatically made the investment by the assessee of its interest-free funds in the investments which derived the assessee income which was not includible in the total income of the assessee, to be for non-business purposes and consequently the interest disallowance out of the interest paid on the interest bearing funds has been rightly made. He relied on the decision of the Hon'ble Kerala High Court in the case of CIT v. Accelerated Freeze Drying Co. Ltd. reported in 324 ITR 326 (Ker) as also the decision of the Hon'ble Delhi High Court in the case of Punjab Stainless Steel Inds. v. CIT reported in 324 ITR 396 (Delhi) for this proposition. The learned DR relied on the decision of the Bombay High Court in the case of Godrej And Boyce Mfg. Co. Ltd. v. Deputy Commissioner of Income-tax reported in 328 ITR 81 (Bom) wherein it had been held that the disallowance of expenditure by invoking the provisions of section 14A was applicable to dividend income and income from mutual funds exempt under section 10(33) of the Act. It was the submission that the Hon'ble Bombay High Court had taken into consideration the decision of the Hon'ble Supreme Court in the case of Walfort Share and Stock Brokers P. Ltd., referred to supra to come to the conclusion that the plain meaning of sec. 14A is that no deduction can be allowed in respect of expenditure incurred by an assessee in relation to an income which does not form part of the total income

under the Act. It was the submission that in the decision of the Hon'ble Punjab & Haryana High Court in the case of of Winsome Textile Industries Ltd., referred to supra, the assessee therein had used its own funds whereas in the present case the funds have clearly been admitted to be borrowed funds. It was the further submission that the assessee had in its own letter agreed that ₹ 32 crores of interest relates to the investments and now the assessee cannot be permitted to go back on the same. He also relied upon the decision of the co-ordinate Bench of this Tribunal in the case of M/s. Siva Ventures Ltd., a sister concern of the assessee in ITA No. 1950 and 941/Mds/2008 dated 31-7-2009 wherein, it was submitted, the issue of sec. 14A had been held against the assessee. It was the further submission that the Assessing Officer did not apply the provisions of sec. 8D as one to one linking of the funds was possible. He vehemently supported the order of the Assessing Officer.

7. In reply the learned authorised representative submitted that loan taken in relation to the investments in shares was only to an extent of ₹ 782 crores and the loan was taken only on 25.2.2006. It was the submission that the assessee had no intention to earn dividend. The letters referred to by the Assessing Officer were the letters wherein the assessee was asked to give the details of the interest attributable to the funds used for making the investments. Nowhere was the assessee asked to link the interest expenditure to the loans if any utilized for making the investments. It was the further submission that the decision in the sister concern's case had no applicability yinsofar as the issue in

the said decision was in relation to the carry forward of short term capital loss for which purpose he drew our attention to paras 4 to 4.6 of the order of the Tribunal in the case of M/s. Siva Ventures Ltd., referred to supra. It was the submission that the decision of the Hon'ble Punjab & Haryana High Court in the case of Winsome Textile Industries Ltd., referred to supra, squarely applied insofar as the assessee has not claimed any exemption and consequently no disallowance u/s 14A could be made. He relied on the decision of the Hon'ble Supreme Court in the case of Walfort Share and Stock Brokers P. Ltd., referred to supra.

8. We have considered the rival submissions. At the outset a perusal of the decision of the Hon'ble jurisdictional High Court in the case of Visvas Promotors (P) Ltd., referred to supra, clearly shows that the decision of the Hon'ble Punjab & Haryana High Court in the case of Winsome Textile Industries Ltd., referred to supra as also the decision of the Hon'ble Bombay High Court in the case of Godrej And Boyce Mfg. Co. Ltd., referred to supra, would not have the force of binding precedent on this Tribunal. However, a further reading of the said decision of the Hon'ble jurisdictional High Court clearly shows that the said decisions of the Hon'ble High Courts would have a persuasive effect. Keeping in mind this position, if we see the decision of the Bombay High Court in the case of Godrej And Boyce Mfg. Co. Ltd. it is noticed that the Hon'ble Bombay High Court has considered the decision of the Hon'ble Supreme Court in the case of Walfort Share and Stock Brokers P. Ltd., referred to supra, and the following

principles have been shown to emerge from section 14A and the decision in Walfort Share and Stock Brokers P. Ltd.:

> *"(a) the mandate of section 14A is to prevent claims for deduction of expenditure in relation to income which does not form part of the total income of the assessee;*
>
> *(b) section 14A(1) ios enacted to ensure that only expenses incurred in respect of earning taxable income are allowed;*
>
> *(c) the principle of apportionment of expenses is widened by section 14A to include even the apportionment of expenditure between taxable and non-taxable income of an indivisible business;*
>
> *(d) the basic principle of taxation is to tax net income. This principle applies even for the purposes of section 14A and expenses towards non-taxable income must be excluded;*
>
> *(e) once a proximate cause for disallowance is established – which is the relationship of the expenditure with income which does not form part of the total income- a disallowance has to be effected."*

As per the said decision, one of the main principles are that sec. 14A is to prevent claims of deduction of expenditure in relation to income which does not form part of the total income of the assessee. Similarly, sec. 14A*(1) is enacted to ensure that only expenses incurred in earning taxable income are allowed. Similarly, the basic principle of taxation is to tax the net income and this principle

applies even for the purpose of sec. 14A and expenses towards non taxable income must be excluded. A perusal of the provisions of sec. 5(1) of the Act provides for the scope of the total income. It includes all incomes from whatever source derived which is received or deemed to be received, accrues, arises or is deemed to accrue or arise in India or accrues or arises outside India during "such year". Thus what is to be understood is that the total income is relating to such year. If the assessee does not have any income as falling within the scope of "total income" during any year the provisions of the Act could not be applied to him. A perusal of the provisions of sec. 14A clearly shows that the words used therein are "for the purpose of computing the total income under this Chapter, …….expenditure incurred in relation to income which does not form part of the total income under this Act." Thus for the applicability of sec.14A there must be (i) income which is taxable under the Act for the relevant assessment year and (2) there should also be income which does not form part of the total income under the Act during the relevant assessment year. If either one is absent, then sec. 14A(1) has no applicability. If we have to assume that section 14A(1) would apply, even when the assessee does not have any income which does not form part of the total income, then it would reach in a position where if the assessee makes any investment in any shares even though the assessee does not receive dividend income, the expenditure in relation to the investment in the shares would stand to disallowance. This disallowance would continue year after year as long as the assessee holds the investment, whether he gets

any income out of such investment or not. At a future point of time if the assessee liquidates that investment and derives a profit on investment which would be liable for taxation under the head "long term capital gains", then the profit on the investment would also be taxed. This is not what is contemplated u/s 14A. What is taxable during the relevant assessment year is the total income computed as per the provisions of the Act. When computing the total income as per sec.5 the income should be received or deemed to be received or accrued or arise or deemed to arise any income during the year or accrue or arise to him outside India during the year. A n investment which does not give rise to any income deemed to accrue or arise cannot form part of the total income and therefore cannot form income which does not form part of the total income under the Act. Thus once there is no claim of income which does not form part of the total income under the Act, there cannot be any disallowance in relation to an investment which may or may not give rise to any 0income which does not form part of the total income. In the present case it is noticed thatnone of the investments made by the assessee has generated any dividend income which has been claimed by the assessee ato be not to form part of the total income. In the circumstances, as it is noticed that the assessee does not have any income which does not form part of the total income nor has the assessee made such a claim, we are of the view that no disallowance under sec. 14A can be made on the assessee for the relevant assessment year. This view of ours also finds support from the decisions of the Hon'ble Supreme Court in the case of Walfort

Share and Stock Brokers P. Ltd., referred to supra, of the Hon'ble Bombay High Court in the case of Godrej And Boyce Mfg. Co. Ltd., referred to supra, and is also supported by the view expressed by the Punjab & Haryana High Court in the case of Winsome Textile Industries Ltd. The other decisions relied upon by both the sides are not being discussed as they are found to have no specific relevance to the issue in the appeal before us.

9. In regard to the second issue it was submitted by the learned authorised representative that the assessee had granted a loan of ₹ 50 crores to its subsidiary in Mauritius for the purpose of making investments and has charged interest @ 6% per annum. The issue was referred to the TPO. Before the learned TPO it was submitted that the average of 12 months US $ denominated LIBOR rate for the period 1.4.2005 to 31.3.2006 was 4.42% and consequently no addition on account of the arm's length interest rate was liable to be made. It was the submission that the Assessing Officer had taken a view that the US $ denominated LIBOR rate could not be considered as the loan was given from India and the prime lending rate in India was to be considered. It was the submission that consequently the Assessing Officer had determined the rate at 11.75% and the difference to the extent of R 45,23,817.53 was added to the assessee's income. It was the submission that the prime lending rate was a domestic rate and the transaction done by the assessee was an international transaction for which the LIBOR rate was to be applied. It was the submission that the RBI had also given directions wherein it was specifically mentioned that

the LIBOR rate was to be applied. He drew our attention to pages 151, 153, 169 and 172 of the paper book which were circulars of the RBI, wherein the rate of interest on export credit in foreign currency by bankers themselves was at LIBOR, EURO LIBOR or EURIBOR rate which was applicable. It was the submission that as the transaction was an international transaction, as per the RBI guideline itself the LIBOR rates had been applied. It was the submission that the addition to the total income as made by the Assessing Officer by relying upon the TPO's order was liable to be deleted.

10. In reply the learned DR submitted that LIBOR was applicable if the assessee advances loans in foreign currency. It was the submission that the source of funding is in Indian rupees and therefore prime lending rate was to be applied and not LIBOR. He vehemently supported the order of the Assessing Officer and relied upon the order of the TPO.

11. We have considered the rival submissions. A perusal of the order of the TPO clearly shows that the assessee had raised the funds by way of issuance of 0% optional convertible preferential shares. Thus it is noticed that the funds raised by the assessee company for giving the loan to India Telecom Holdings Ltd., Mauritius, which is its Associated Enterprises and which is the subsidiary company, is out of the funds of the assessee company. It is not borrowed funds. The assessee has given the loan to the Associated Enterprises in US dollars. The assessee is also receiving interest from the Associated Enterprises in Indian rupees. Once the transaction between the assessee and the Associated

Enterprises is in foreign currency and the transaction is an international transaction, then the transaction would have to be looked upon by applying the commercial principles in regard to international transaction. If this is so, then the domestic prime lending rate would have no applicability and the international rate fixed being LIBOR would come into play. In the circumstances, we are of the view that it LIBOR rate which has to be considered while determining the arm's length interest rate in respect of the transaction between the assessee and the Associated Enterprises. As it is noticed that the average of the LIBOR rate for 1.4./2005 to 31.3.2006 is 4.42% and the assessee has charged interest at 6% which is higher than the LIBOR rate, we are of the view that no addition on this count is liable to be made in the hands of the assessee. In the circumstances, the addition as made by the Assessing Officer on this count is deleted.

12. In regard to the third issue it was submitted that the Assessing Officer has not granted TDS credit as claimed by the assessee. It was the submission that before the DRP the issue had been raised and the DRP called for a remand report and the remand report was received on 27-8-2010 as per para 16 of its order and the remand report had not been granted for its rebuttal. It was the submission that the assessee had no objection if the issue was restored to the file of the Assessing Officer for re-verification to grant the assessee opportunity to rectify any defects in the TDS certificates, if any.

13. In reply, the learned DR submitted that he had no objection to the restoring of this issue to the file of the Assessing Officer for re-adjudication.

14. We have considered the rival submissions. As it is noticed that the remand report has been received by the DRP on 27-8-2010 and the same has not been granted to the assessee for its rebuttal, this issue is restored to the file of the Assessing Officer for re-adjudication. The Assessing Officer shall re-consider the issue of grant of credit for the TDS certificates and if he finds any of them to be defective, he shall give the assessee adequate opportunity to rectify the same and re-adjudicate the issue in accordance with law.

15. In the result, the appeal of the assessee is allowed for statistical purposes.

16. The order was pronounced in the court on 20-05-2011.

Sd/-	Sd/-
(Abraham P. George)	(George Mathan)
Accountant Member	**Judicial Member**

Chennai,
Dated the 20th May, 2011.

H.

Copy to: Assessee/AO/CIT (A)/CIT/D.R./Guard file