

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "L", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER
AND
SHRI RAVISH SOOD, JUDICIAL MEMBER

ITA No. 6711/Mum/2012
(Assessment Year : 2008-09)

The DCIT -7(2),
Aaykar Bhavan, M.K.Road,
Mumbai 400 020

..... Appellant

Vs.

M/s. Reliance Natural Resources Ltd.
H-Block, 1st Floor,
Dhirubhai Ambani Knowledge City,
Thane-Belapur Road,
Koperkhairane, Navi Mumbai 400 710
PAN:AABCR 7656P

.... Respondent

ITA No. 6843/Mum/2012
(Assessment Year : 2008-09)

M/s. Reliance Natural Resources Ltd.
H-Block, 1st Floor,
Dhirubhai Ambani Knowledge City,
Thane-Belapur Road,
Koperkhairane, Navi Mumbai 400 710
PAN:AABCR 7656P

... Appellant

Vs.

The Addl.CIT -7(2),
Aaykar Bhavan, M.K.Road,
Mumbai 400 020

.... Respondent

Revenue by : Shri Jasbir Chouhan
Assessee by : S/Shri Jitendra Sanghavi/ Deepak Jain

Date of hearing : 17/8/2016
Date of pronouncement : 24/08/2016

ORDER

PER G.S.PANNU,A.M:

The captioned cross-appeals filed by the Revenue and assessee pertaining to A.Y. 2008-09 are directed against an order passed by Ld. CIT(A)-13, Mumbai dated 06/08/2012, which in turn arises out of an order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 28/12/2010.

2. The assessee company is incorporated under the provisions of the Companies Act, 1956 and is, inter-alia, engaged in the business of providing fuel and facilitation services in various forms to power plants Reliance Infrastructure Ltd., and also engaged in joint venture operations for exploration and production of coal based Methane blocks in the states of Madhya Pradesh, Andhra Pradesh, Rajasthan and Mizoram. The assessee company had filed the return of income declaring total income of Rs.30,59,16,629/-, which was subject to scrutiny assessment, whereby the total income has been assessed at Rs.44,40,41,772/-, after making certain addition/disallowances. The assessee carried the matter in appeal before the CIT(A), who has allowed partial relief. The assessee is in appeal on the issues where the CIT(A) has sustained the action of the Assessing Officer and the Revenue is in appeal challenging the order of the CIT(A), wherein reliefs have been allowed.

3. In this back ground we may now take up the appeal of the Revenue, wherein the following Grounds of appeal have been raised:-

“ (i) The Learned CIT(A) has erred in law and on facts in deleting the disallowance of expenses of Rs.12,46,31,327/- on issue of foreign

currency convertible bonds ignoring the fact that these expenses are for the purpose of expansion of the capital base of company.

(ii) The Learned CIT(A) has erred in law and on facts that the amount claimed as deduction pertaining to raising of Foreign Currency Convertible Bonds (FCCB) as revenue expenditure were not allowable and required to be capitalized because the FCCB was raised with the purpose of being required for working capital whereas the same was used in a manner contrary to permitted use as required by RBI Regulation.

(iii) Without prejudice to Ground No.1&2 the Learned CIT(A) has erred in law and on facts in deleting the disallowance mentioned above because in the alternative even if the expenditure was treated as revenue in nature TDS was not deducted as required u/s.195 of the Act and Section 40(a)(ia) of the Income Tax Act, 1961 had to be revoked.

(iv) The Ld.CIT(A)'s order is contrary in law and on facts and deserves to be set aside.

(v) The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the AO restored. The appellant craves leave to amend or alter any ground or add a new ground that may be necessary."

4. In so far as Ground of appeal No.1 & 2 are concerned, the same relate to the expenditure incurred by the assessee on issuance of Foreign Currency Convertible Bonds (FCCB). In this context, the Assessing Officer noted that assessee has incurred expenditure of Rs.12,46,31,327/- in relation to the bonds, which is detailed as under:-

S.No.	Name of the Party	Nature of expenses	Amount (Rs.)
1.	Barclays Bank	Arranger fees	10,12,250
2.	Barclays Bank	L/C Commission and Fronting Fees	11,25,43,284
3.	Deutsche Bank	Trusteeship Fees	1,78,922
4.	Deutsche Bank	Reimbursement of Legal Fee towards Trusteeship charges	18,50,580
5.	Reliance Energy Limited	Keepwell charges	90,46,291
	Total		12,46,31,327

The Assessing Officer noted that in assessment year 2007-08 expenses incurred on issuance of bonds was disallowed on the ground that they were capital in nature. Following his stand for assessment year 2007-08, in the instant assessment year also the Assessing Officer held that such expenses are for the purposes of expansion of capital base of the company and, therefore, they were capital in nature, thus, not allowable under section 37(1) of the Act. The CIT(A) has allowed the claim of the assessee for the reason that for assessment year 2007-08, such expenditure stood allowed as revenue expenditure. Against such a decision, Revenue is in appeal before us.

5. Before us, it was a common point between the parties that for assessment year 2007-08 the Tribunal has considered the issue relating to the nature of expenses incurred for issue of FCCBs and vide its order in cross- appeals ITA Nos.847/Mum/2011& 1425/Mum/2011 dated 8/07/2016, it has been held that such expenses are allowable as revenue expenditure. At the time of hearing, Ld. Representative for the assessee has furnished a copy of the order of the Tribunal dated 08/07/2016 (surpa) and the relevant discussion in the said order reads as under:-

"11. Grounds No. 1 to 3 - Disallowance of Expenditure on FCCB issue – Rs.28,58,28,246/-

11.1 In these grounds, the Revenue contends that the learned CIT(A) erred in deleting the disallowance made by the AO of expenditure of `28,58,28,246/- incurred by the assessee on the issue of Foreign Currency Convertible Bonds (FCCB), since they were capital in nature. It is further contended that the learned CIT(A), while deleting the aforesaid disallowance had wrongly mentioned that the decision of the Hon'ble Karnataka High Court in the case of Samsung Electronics Ltd. (320 ITR 209) was overruled by the Hon'ble Apex Court, when actually it was remanded to the High Court for fresh adjudication. In ground No. 3 Revenue also contends that, without prejudice to the arguments put forth in grounds 1 and 2, even if the aforesaid

expenditure incurred on issue of FCCBs is held to be revenue in nature, TDS was not made thereon as required under section 195 of the Act and section 40(a)(i) had to be invoked. The learned D.R. for Revenue was heard in support of the grounds raised and placed reliance on the order of the AO on these issues, but was not able to bring material on record to controvert the findings of the learned CIT(A) on this issue.

11.2 In the year under consideration, the assessee has issued FCCBs to the tune of Rs.1304.13 crores and for this purpose incurred expenditure of Rs.28,58,28,246/-, which has been reduced from the share premium account in the Balance Sheet. The AO noticed that, however, in the computation of income, the assessee has claimed deduction of this amount as revenue expenditure under section 37(1) of the Act. The AO disallowed the assessee's claim on the ground that the said expenses are capital in nature. The AO was also of the view that the assessee had not deducted tax at source on the payment of the said expenses and therefore the same is to be disallowed under section 40(a)(i) of the Act. The AO also held that out of the total expenditure of Rs.28,58,28,246/-, an amount of Rs.2,28,29,616/- was in respect of payments to Barclays Bank (India) were not covered by TDS certificates and hence the same was to be disallowed. On appeal, the learned CIT(A) held that the FCCBs are in the nature of debentures and unsecured loans and hence the expenditure incurred for issue of FCCBs is allowable deduction under section 37(1) of the Act.

11.3 Before us, the learned A.R. for the assessee reiterated the facts of the matter on this issue as laid out in para 11.2 of this order (supra). According to the learned A.R., FCCBs in the case on hand are issued by the assessee only as debt raising instruments and the FCCB holders never had any voting rights as the same were not converted into equity shares of the company. It is contended that in such circumstances, the FCCB's are to be deemed to be the debentures issued by the assessee for business purposes. In support of the proposition that the said FCCBs were deemed as debentures and the expenses incurred in issuing the FCCBs were to be allowed as revenue expenditure under section 37(1) of the Act, the learned A.R., inter alia, placed reliance on the following judicial pronouncements: -

- i) Prime Focus Ltd. vs. DCIT (ITA No. 836/Mum/2011 dated 04.02.2016)*
- ii) Mahindra & Mahindra Ltd. vs. JCIT (2010) 36 SOT 348 (Mum)*
- iii) CIT vs. Secure Meters Ltd. (2009) 175 Taxman 567 (Raj)*
- iv) CIT vs. Tata Teleservices (व वध आवेदन) Ltd. (2014) 47 taxmann.com 238 (Bom)*
- v) CIT vs. ITC Hotels Ltd. (2011) 334 ITR 198 (Kar)*
- vi) CIT vs. South India Corpn. (Agencies) Ltd. (2007) 290 ITR 217 (Mad)*
- vii) CIT vs. Havells India Ltd. (2013) 352 ITR 376 (Del)*

viii) *CIT vs. First Leasing Co. of India Ltd. (2008) 304 ITR 67 (Mad)*

ix) *Gati Limited (ITA No. 749/Hyd/2012 dated 04.01.2013)*

x) *Gati Limited (ITA No. 1325/Hyd/2015 dated 10.03.2016)*

11.4.1 We have heard the rival contentions of both the parties and perused and carefully considered the material on record, including the judicial pronouncement cited. We find that similar issue of treatment of expenses incurred in issue of FFBs on similar facts, as in the case on hand, was dealt with by a Coordinate Bench of this Tribunal in the case of Prime Focus Ltd. in its order in ITA No. 8364/Mum/2011 dated 04.02.2016 at paras 3 to 13 thereof. The Coordinate Bench at paras 8 to 11 and 13 thereof held that the expenses incurred in connection with issue of FCCBs/raising of debts are in principle of revenue nature and constitute allowable expenditure for the assessee's business purposes. The said finding of the Coordinate Bench is extracted hereunder: -

"8. We have heard both the parties and perused the orders of the Revenue Authorities as well as the citations by the Ld Representatives of both the parties. Our adjudication on the core issue is given in the following paragraphs: 9. Assessee spent Rs. 5,82,40,318/- by way of payments to (i) fee paid to the lead managers to the issue; (ii) fees paid to the legal advisors to the issue and (iii) listing fees paid. The same was paid to those parties who contributed for the success of the issue of FCCB amounting to US \$5.5 millions. In principle, the payments of this nature in our opinion falls in revenue zone. But the fact is that they'd were incurred in connection with issue of FCCBs. Assessee raised these Foreign Currency Bonds of Rs 1 lakh Each. Details of such expenditure is given on page 42 of the APB. In this contest, assessee paid Rs. 5.82 Crs (rounded off) to lead managers / legal advisors and listing fees. AO treated the same as "capital expenditure". Will such revenue expenditure when incurred in connection FCCB makes it of capital nature? We shall examine the nature of FCCBs. 10. Assessee issued the FCCBs for the purpose of Acquisition of the companies in similar lines abroad for expanding the business presence abroad. Whereas the relevant agreements and issue documents suggest that they were issued for equity purposes. It is a fact that the proceeds of the FCCBs were spent on acquiring the companies abroad. Being optionally convertible, the bond holders have the option to convert into equity. But the assessee did not issue shares to the Bond holders as they did not exercise that option. Rather, assessee refunded the Bond money with premium to the Bond Holders. Considering the fact of REFUND of entire FCC Bond money, we are of the opinion that FCCB issue exercise of the assessee amounts to one raising debt for the intended purpose and it is unconnected to the issue of shares. As such the difference between Bond and Debenture is very thin as they both are two different types

of Debt Instruments. Further, we find that there is nexus between the expenditure and the purpose of the bonds of the assessee. In such case, the claim is allowable in view of the decision of the Hon'ble Apex Court in the case of Hero Cycles P Ltd (supra). Relevant para from the said judgment is extracted as under:- "Insofar as loans to the sister concern / subsidiary company are concerned, law in this behalf is recapitulated by this Court in the case of „S.A. Builders Ltd. v. Commissioner of Income Tax (Appeals) and Another“ [2007 (288) ITR 1 (SC)]. Once it is established that there is nexus between the expenditure and the purpose of business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the Board of Directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. It further held that no businessman can be compelled to maximize his profit and that the income tax authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the matter from their own view point but that of a prudent businessman."

11. Legal propositions : Scope of Ld DR - Making out a new case of applicability of Section 35D: Ld DR for the revenue filed written note stating that the claim of such expenses is to be considered within the meaning of the provisions of section 35D of the Act. In this regard, Ld AR for the assessee traced the way AO dealt with this issue and submitted that AO's case is if the said expenses constitutes Revenue or Capital within the meaning of section 37 of the Act. Applicability of the provisions of Section 35D of the Act was never the issue before either the AO or before the CIT(A). At the second appeal, Ld CIT DR cannot make a new case by invoking section 35 D of the Act even if it is correctly invocable. For this proposition, he relied on various binding judgment in the case of Mahendra and Mahendra Ltd (Supra). Therefore, we dismiss the Ld DR's argument on the issue.

12.

Summary

13. We have held that the expenses in question are in principle of revenue nature. It is the trite law such expenses incurred in connection with raising of debts / FCC Bonds constitute allowable expenditure of the Assessee."

11.4.2 Following the ratio of the decision of the Coordinate Bench of this Tribunal in the case of Prime Focus Ltd. (supra), we hold that, in the facts and circumstances of the case on hand, the expenditure incurred by the assessee in connection with the issue of FCCBs was correctly held to be revenue in nature by the learned CIT(A), being expenses incurred in connection with the raising of debts and allowable expenditure under section 37(1) of the Act."

5.1 Following the aforesaid precedent, which has been rendered on a similar issue we hereby affirm the order of the CIT(A) and accordingly, Revenue fails on Grounds of appeal No. 1& 2.

6. In Ground of appeal No.3, the issue relates to an alternate stand of the Assessing Officer, which is to the effect that if the aforesaid expenditure is to be considered as revenue in nature, the assessee ought to have deducted tax at source under section 195 of the Act and since assessee had not deducted the requisite TDS, such expenditure was disallowable under section 40(a)(ia) of the Act . On this aspect also we find that the CIT(A) has disagreed with the Assessing Officer, against which the Revenue is in appeal before us.

6.1 On this aspect of the controversy, the Tribunal in assessment year 2007-08 vide order dated 08/07/2016(supra) held that such expenditures are not liable for deduction of tax at source under section 195 of the Act and the relevant discussion in the order of the Tribunal reads as under:-

"13.1 The AO had also held at para 5 of the assessment order, that since the assessee had not deducted tax at source on the payment of expenditure incurred in connection with the issue of FCCBs under section 195 of the Act, the same is disallowed under section 40(a)(i) of the Act. The details of the nature of payments (i.e. arranger's fees, legal and professional fees, L/C commission and trusteeship fees, principal agent fees, etc.), amounts paid and parties names, etc. are also mentioned at para 5 of the order of assessment. On appeal, the learned CIT(A) held that the said payments were not exigible to tax in India by placing reliance on the judicial pronouncements in the case of ITO vs. Prasad Production Ltd., Chennai (125 ITD 263) (SB Chennai) and VAN Cord ACZ India (P) Ltd. vs CIT (Delhi HC) and therefore the question of making TDS under section 195 of the Act on the said payments did not arise.

13.2 The learned D.R. placed reliance on the decision of the AO on this issue.

13.3 The learned A.R. for the assessee reiterated the submissions put forth before the learned CIT(A). According to the learned A.R. for the assessee, the said payments are not covered within the ambit of the provisions of section 195 of the Act and therefore there was no liability cast upon the assessee to make deduction of tax at source on such payments. It is contended by the learned A.R. that this issue is covered in favour of the assessee by the following judicial pronouncements on which he placed reliance earlier before the learned CIT(A): -

- i) *Raymond Ltd. vs DCIT (2003) 86 ITD 791 (Mum)*
- ii) *Mahindra & Mahindra (30 SOT 374) (Mum SB)*
- iii) *Intratck Testing Services India P. Ltd. (307 ITR 418) (AAR)*
- iv) *DCIT vs. Boston Consulting Group Pte Ltd. (94 ITD 31) (Mum)*
- v) *ITO vs. De Beers India Minerals P. Ltd. (297 ITR (AT) 1760 (Bangalore)*

13.4 We have heard the rival contentions of both the parties and perused and carefully considered the material on record; including the judicial pronouncement cited. We find that the issue under consideration is covered by the decision of the Coordinate Bench of this Tribunal in the case of *Raymond Ltd. vs. DCIT (2003) 86 ITD 791 (Mum)* wherein it was held that neither management commission nor underwriting commission nor selling commission would amount to FTS within the meaning of the DTAA with U.K. and consequently there was no obligation on the part of the assessee-company to deduct tax under section 195 of the Act. Following the decision of the Coordinate Bench, we hold that there is no liability case on the assessee in the case on hand to withhold tax under section 195 of the Act on the said payments which, inter alia, constitute payment of legal and professional fees, L/C Commission, arranger fees, etc., incurred in connection with the issue of FCCBs and therefore no disallowance under section 40(a)(i) of the Act is called for. Consequently, grounds No. 1 to 3 of Revenue's appeal are dismissed."

Following the precedent in assessee's own case for assessment year 2007-08, we hereby affirm the order of the CIT(A) and Revenue fails on this aspect also.

7. In the result, appeal of the Revenue is dismissed.
8. Now we may take up the appeal of the assessee, wherein the Grounds of appeal read as under:-

"1. The learned Commissioner of Income Tax (Appeals) [hereinafter referred to as CIT(A)] erred in confirming the disallowance of Rs 23,47,819/- made u/s 40(a)(i) due to non deduction of tax at source, holding that the said payment

of Rs. 23,47,819/- was liable to tax in India as fee for technical service u/s 9(1)(vii) of the Income Tax Act.

Your appellant submits that the payment made to the Indonesian Resident for tax due diligence services in Indonesia is not liable to tax in India under Double Tax Avoidance Agreement (DTAA) between India and Indonesia. Therefore no tax was deductible u/s 195 of the Act and no disallowance u/s 40(a)(i) ought to have been made with regards to this payment.

2. The learned CIT(A) erred in confirming the disallowance of Rs 1,92,190/- paid as professional fees in connection with listing of Global Depository Receipts (GDRs) holding the same as capital expenditure.

Your appellant submits that the said professional fee was paid for listing of GDRs issued in connection with restructuring and reorganization of existing business and not for expansion of capital base. The expenditure ought to have been allowed as incurred wholly and exclusively for the purposes of business.

3.The Learned CIT(A) erred in confirming the disallowance of administrative expenses u/s 14A for Rs.1,68,976/-.

Your appellant submits that those investment which did not yield any income during the year should have been excluded while computing disallowance u/s 14A.

4. The appellant craves leave to add to, alter, amend or vary all or any of the above grounds of appeal as it may think fit.”

9.1 In so far as Ground of appeal No.1 is concerned, the relevant facts are that the assessee had made payment of Rs.23,47,819/- to the following four concerns, who were residents of Indonesia, on which no tax was deducted under section 195 of the Act.

S.No.	Name of the party	Amount(Rs.)	Country of Residence
1.	P.T.Kilpady and Associate	15,85,010	Indonesia
2	P.T.Kilpady and Associate	51,956	Indonesia
3	Center for Investment and Business Advisory	4,66,577	Indonesia
4.	PT Param Dwi Jaya	2,44,272	Indonesia

As a consequence, the Assessing Officer as well as the CIT(A) have disallowed the corresponding expenditure by invoking section 40(a)(ia) of the Act. Against such a decision assessee is in further appeal before the Tribunal.

9.2 Before the lower authorities as well as before us the plea of the assessee has been that the impugned payments have been made to the tax residents of Indonesia for due diligence services rendered in Indonesia and thus, not liable to tax in India having regard to the Double Taxation Avoidance Agreement between India and Indonesia. On this basis it is sought to be made out that there was no requirement to deduct tax at source under section 195 of the Act and as a consequence disallowance under section 40(a)(ia) of the Act is not merited. At the time of hearing Ld. Representative for the assessee submitted that similar issue had come before the Tribunal in the appeal of the assessee for assessment year 2007-08 and vide order dated 08/07/2016 (supra), the matter was restored back to the file of CIT(A) to re-examine the claim of the assessee in the light of Indo-Indonesia Double Taxation Avoidance Agreement.

9.3 The said factual matrix has not been contested by the Ld. Departmental Representative, and the plea of the assessee for similar remand to the file of the CIT(A) was not opposed.

9.4 We find that in Para 5.5.1 of the order, the Tribunal in ITA No.847/Mum/2011(supra) has considered the payments made by the assessee to Indonesian entities for tax due diligence service rendered in assessment year 2007-08 in following words:-

“5.5.1 We have heard the rival contentions of both the parties and perused and carefully considered the material on record, including the judicial pronouncement cited. It is seen that there is no dispute with the finding of the learned CIT(A) that the amount of Rs.7,31,115/- paid by the assessee to the Indonesian entity for tax due diligence is exigible to tax in India under section 9(1)(vii) of the Act as FTS. The dispute put forth by the assessee is that since the assessee, in this regard, is entitled to the benefit of the India-Indonesia DTAA or the Act, whichever is favourable to it, the learned CIT(A) erred in not considering the DTAA, which is favourable to it, while passing the impugned order. It has been submitted that the India-Indonesia DTAA does not contain any Article in respect of FTS. In these circumstances, it is contended that the said payment for tax due diligence fees to the Indonesian entity would constitute a part of its ‘business income’ as per Article 7 thereof and therefore there is no requirement to deduct tax at source on the said payment under section 195 of the Act. A copy of the said DTAA has also been placed on record and we have perused the same. As contended by the learned A.R. for the assessee, a perusal of the impugned order shows that the learned CIT(A), in coming to the finding he did, has not examined the India-Indonesia DTAA and adjudicated thereon while passing the impugned order which the assessee claims is favourable to it and ought to have been applied. In these circumstances, in the interest of equity and justice, we restore this issue to the file of the learned CIT(A) to examine the assessee’s claim in this regard with respect to the India-Indonesia DTAA and to allow the assessee the benefit of that which is favourable to it, i.e. the DTAA or the Act, in accordance with law and after affording the assessee adequate opportunity of being heard and to submit details/submissions in this regard. It is accordingly ordered. Consequently, ground No. 1 of the assessee’s appeal is treated as allowed for statistical purposes.”

9.5 Following the aforesaid precedent, in the present year too as the issue involved is similar, the matter is remanded back to the file of the CIT(A) to re-adjudicate the claim of the assessee based on the Indo-Indonesia DTTA, keeping in mind the directions of the Tribunal dated 08/07/2016 (supra). Consequently, Ground of appeal No.1 of the assessee is allowed for statistical purposes.

10. In Ground of appeal No.2 the issue relates to a disallowance of Rs.1,92,190/-, which represented professional fee paid in connection with listing of Global Depository receipts(GDRs). The expenditure was

disallowed by the lower authorities on the ground that as it relates to listing of GDRs, it was capital in nature.

10.1 At the time of hearing, it was brought out that similar expenditure incurred in assessment year 2007-08 has been held to be capital in nature by the Tribunal vide its order dated 08/07/2016(supra). As a consequence of the aforesaid precedent, the said Ground of appeal is decided against the assessee. Thus, Ground of appeal No.2 raised by the assessee is dismissed.

11. The last issue in the appeal of the assessee relates to a disallowance of Rs.1,68,976/- sustained by the CIT(A) under section 14A of the Act out of administrative expenses.

11.1 In this context, the relevant facts are that in the return of income assessee had offered a disallowance of Rs.26,62,02,449/- under section 14A of the Act. The Assessing Officer however, computed the disallowance at Rs.26,63,71,425/-, resulting in an additional disallowance of Rs.1,68,976/-. The assessee as well as Assessing Officer computed the disallowance by applying the formula contained in Rule 8D(2) of the Income Tax Rules,1962(in short 'the Rules'). The assessee computed the disallowance by applying Rule 8D of the Rules by considering only those investments which had actually yielded dividend income during the year, whereas the Assessing Officer considered all the investments which were liable to generate exempt incomes, and the aforesaid difference had resulted in the increased disallowance of Rs.1,68,976/-, which is the subject matter of dispute before us. The CIT(A) has also affirmed stand of the Assessing Officer.

12. Before us, the only plea raised by the assessee is based on the judgment of the Delhi High Court in the case of Cheminvest Ltd V/s CIT (378 ITR 33)(Delhi) . On the strength of the aforesaid judgment, the plea of the assessee is that the investments which have not yielded any exempt income during the year, should be excluded for the purpose computing disallowance under section 14A of the Act r.w.s. Rule 8D(2) of the Rules.

13. We have considered the plea of the assessee and find no merit in the same inasmuch as the issue before the Hon'ble Delhi High Court stood on an entirely different footing. The question before the Hon'ble High Court was as to whether disallowance under section 14A of the Act can be made in case no exempt income has been earned or received by the assessee. According to the Hon'ble High Court section 14A will not apply if no exempt income is received or receivable during the relevant previous year. In the present case before us, the fact-situation is different inasmuch as it is not a case whether no exempt income has been earned during the year under consideration. Thus, the controversy before us is not to be governed by the ratio of the judgment of the Hon'ble Delhi High Court (supra). In fact, the Hon'ble Delhi High Court itself, while distinguishing its earlier judgment in the case of Maxopp Investment Ltd. & Ors. vs. CIT, 347 ITR 272(Del) noted such a distinction by observing that Maxopp Investment Ltd. (supra) was a case where the dividend income was earned, whereas the case before it i.e. M/s. Cheminvest Ltd. (supra) was a case where no exempt income at all was earned during the year. Therefore, even going by the parity of reasoning initiated the Hon'ble Delhi High Court in the case of Cheminvest Ltd. (supra), the impugned controversy is not liable to be

decided in favour of the assessee. Thus, the plea of the assessee is rejected and assessee fails in its Ground of appeal No.3.

14. In the result, the appeal of the assessee is partly allowed.

15. As a result, appeal of the Revenue is dismissed and that of assessee is partly allowed.

Order pronounced in the open court on 24/08/2016

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOCUNTANT MEMBER

Mumbai, Dated 24/08/2016
Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

Dy./Asstt. Registrar)
ITAT, Mumbai