

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ “डी” मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE S/SHRI B.R.BASKARAN,AM AND LALIT KUMAR, JM

आयकर अपील सं./I.T.A. No.2663, 2664 and 2665/Mum/2015
(निर्धारण वर्ष / Assessment Years: 2009-10, 2010-11 and 2011-12)

Devkant Synthetics (India) Pvt.Ltd., 1006, Raheja Centre, 10 th Floor, Nariman Point, Mumbai-400021	बनाम/ Vs.	Income Tax Officer 3(1)(2), Mumbai.
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN : AAACD2102K

अपीलार्थी ओर से / Appellant by	Shri Rajiv Khandelwal
प्रत्यर्थी की ओर से/Rspondent by	Ms.Anu Aggarwal

सुनवाई की तारीख / Date of Hearing : 19.8.2015

घोषणा की तारीख /Date of Pronouncement: 28.10.2015

आदेश / O R D E R

Per B.R.BASKARAN:

All the three appeals filed by the assessee are directed against the orders passed by Ld CIT(A)-8, Mumbai for assessment years 2009-10 to 2011-12. All these three appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. The facts relating to the case are that the assessee is an investor and trader in shares. The assessing officer completed the assessments of all the three years under consideration by making certain additions and they were also confirmed by Ld CIT(A). Hence the assessee has filed these appeals before us.

3. We shall first take up the appeal filed for assessment year 2009-10, wherein the assessee is challenging the addition made u/s 36(1)(iii) of the Act. The assessing officer noticed that the assessee has given interest free advances to certain parties, where as it has availed interest bearing loans and was paying interest. The assessee submitted that the interest free advances were given to purchase shares. However, the AO noticed that the said advances have been returned back. Hence, the AO took the view that the explanation about purchase of shares is unreliable and accordingly disallowed a sum of Rs.28.86 lakhs out of interest expenditure. It was confirmed by Ld CIT(A) and hence the assessee took the matter to the ITAT. The Tribunal, vide its order dated 20-12-2013 passed in ITA No.720/M/2013, restored the matter to the file of Ld CIT(A). In the set aside proceedings, the Ld CIT(A) held that the decision rendered by the Hon'ble Bombay High Court in the case of Reliance Utilities & Power Ltd (313 ITR 340) is not applicable to the facts of the instant case and accordingly confirmed the addition again.

4. We heard the parties on this issue and perused the record. At the time of hearing, the Ld A.R invited our attention to pages 102 to 106 of the paper book wherein the details of utilization of loans taken by the assessee are given. The Ld A.R submitted that the unsecured loans have been fully utilized for the purposes of business only. It was further submitted that the assessee has also availed interest free unsecured loans from M/s MW infra holding Pvt Ltd to the tune of Rs.7.60 crores; from M/s Triveni Management consultancy services Ltd to the tune of Rs.31 lakhs and from M/s Global Absolute Research Pvt Ltd to the tune of Rs20.00 lakhs. He submitted the above said interest free funds along with interest free own funds have also been used for running the business. He further submitted that the assessee had given advances only to purchase the

shares and hence the tax authorities are not justified in rejecting the claim without bringing any other material on record. On the contrary, the Ld D.R placed strong reliance on the order passed by Ld CIT(A).

5. Having heard rival contentions, we find that there is merit in the submissions made by Ld A.R. First of all, the assessee's claim that the interest free advances were given in connection with the purchase of shares was not disproved with any material. It is an admitted fact that the assessee's business consisted of investing and trading in shares. Hence, the explanations furnished by the assessee should not have been rejected without bringing any material on record. Secondly, we notice that the Ld CIT(A) has not considered the interest free unsecured loans availed by the assessee. We notice that the interest free unsecured loans along with the own funds available in the form of share capital, share application money and reserves and surplus are sufficient enough to cover the interest free advances given by the assessee, even if the said advances were not considered to be for the purposes of business of the assessee. We notice that the interest free advances noticed by the AO were Rs.5.75 crores, whereas the assessee has availed interest free unsecured loans to the tune of Rs.8.10 crores. Besides the above, the assessee is having own funds also. Hence, in our view, the decision rendered by the Hon'ble Bombay High Court in the case of Reliance Utilities and Power Ltd (supra) is applicable to the facts of the present case. Since the interest free funds available with the assessee is more than the alleged interest free advances, we are of the view that the tax authorities are not justified in disallowing interest claim. Accordingly, we set aside the order of Ld CIT(A) on this issue and direct the AO to delete the disallowance made out of interest expenditure.

6. We shall now take up the appeal filed for assessment year 2010-11, wherein following issues are agitated:-

- (a) Disallowance of interest u/s 36(1)(iii)
- (b) Disallowance made u/s 14A of the Act.

7. In this year also, the assessing officer noticed that the assessee has paid interest expenditure of Rs.48,92,738/- on the unsecured loans taken by it. The AO examined about the utilization of loan and took the view that the interest to the extent of Rs.43,72,880/- is related to the business of purchase of shares. However, the AO noticed that the assessee has given interest free advances to the tune of Rs.1.90 crores. The AO computed interest on the above said interest free advances under product method and the same worked out to Rs.40,04,575/- and the same was disallowed. The Ld CIT(A) confirmed the same.

8. We heard the parties on this issue and perused the record. During the year under consideration also, the assessee has furnished the details of utilization of loans in pages 47 to 49 of the paper book. A perusal of the same shows that the assessee has used major portion of the loans for purchasing shares and giving interest bearing advances. With regard to the interest free advances of Rs.1.90 crores given by the assessee, we notice that the assessee is having following funds as explained in page 112 of the paper book.

Own Funds in the form of Share holders' fund		
Less accumulated losses		109.97 lakhs
Interest free unsecured loans:-		
Hydragen Infrastructures Pvt Ltd	50.00	
Sofkit Educom Pvt Ltd	400.00	
	-----	450.00 lakhs

		559.97 lakhs
		=====

In view of the availability of interest free funds, the disallowance of interest made by the tax authorities is liable to be deleted in view of the decision of Hon'ble Bombay High Court in the case of Reliance Utilities & Infrastructure Ltd (supra). Accordingly, we set aside the order of Ld CIT(A) on this issue and direct the AO to delete the disallowance made out of interest expenditure.

9. The next issue relates to the disallowance made u/s 14A of the Act. In this year, the assessee earned dividend income of Rs.2,52,781/-, but did not make any disallowance u/s 14A of the Act. However, the assessing officer worked out the disallowance as per the provisions of Rule 8D of I.T rules at Rs.55,46,090/- and added the same. The Ld CIT(A) also confirmed the said addition.

10. The Ld A.R submitted that the assessee is a trader in shares and hence he has held the shares as stock in trade only. He further submitted that the disallowance as per rule 8D is required to be made only if the shares are held as investments. In support of this proposition, he placed his reliance on the following case law:-

- (a) CCI Ltd Vs. JCIT (2012)(250 CTR 291)
- (b) CIT Vs. India Advantage Securities Ltd
(ITA No.1131 of 2013 dated 17-03-2015 of Bombay High Court)
- (c) Ganjam Trading Co. P Ltd Vs. DCIT (ITA No.1384/Mum/2007 dated 20-07-2012)

The Ld A.R further submitted that the assessing officer, in the case of India Advantage Securities Ltd (supra) had worked out disallowance as per Rule 8D for the assessment year 2008-09 at Rs.48,73,485/-, but the Ld CIT(A) computed the disallowance by excluding the shares held as stock in trade. Accordingly the Ld CIT(A) computed the disallowance at Rs.47,247/- and the same was upheld by the Tribunal by following the

decision of Hon'ble Karnataka High Court rendered in the case of CCI Ltd (supra). The order of the Tribunal was found by Hon'ble High Court of Bombay to be neither perverse nor vitiated by any error law apparent on the face of the record. Accordingly, the Ld A.R prayed that the shares held as stock in trade should be excluded for computing the disallowance u/s 14A of the Act.

11. On the contrary, the Ld D.R placed strong reliance on the order of Ld CIT(A) on this issue.

12. We heard the parties and perused the record. We notice that the Hon'ble Karnataka High Court has clearly held in the case of CCI Ltd (supra) that the shares held as stock in trade should be excluded for the purpose of computing disallowance u/s 14A of the Act, since they can not be said to be the "investment" made for the purpose of earning dividend income. In the case of India Advantage Securities Ltd (supra), the Hon'ble Bombay High Court has noticed that the CIT(A) took into account the words of the Rule and found that the figures as derived by the Assessing officer cannot be taken into consideration. The Ld CIT(A) had observed that, one can at best disallow the expenses which are incurred for earning dividend income and for that purpose, the figures under the head "Investment" could be taken and some charges apportioned for the purpose of computing expenses. We further notice that the decision rendered in the case of CCI Ltd (supra) has been followed by the coordinate benches of Tribunal in the case of India Advantage Securities Ltd (ITA No.6711/Mum/2011 and Ganjam Trading Co. Pvt Ltd (supra). The decision rendered by the Tribunal in the case of India Advantage Securities Ltd (supra) was found to be neither perverse nor vitiated by any error of law apparent on the face of record by Hon'ble Bombay High Court.

13. We notice that the Tribunal in the case of India Advantage Securities Ltd (supra) has also noted the fact that the decision rendered by the Hon'ble Karnataka High Court in the case of CCI Ltd (supra) has already been followed by the Tribunal in the case of Ganjam Trading Co.P.Ltd (supra) and also the Special Bench of the Tribunal in the decision rendered in ITO V/s.Daga Capital Management (P.) Ltd. [2009] 117 ITD 169 (MUM.) (SB). However, following the decision of Hon'ble Karnataka High Court in the case of CCI Ltd (supra), the Tribunal held that the disallowance of interest in relation to dividend received from shares held as stock-in-trade cannot be made.

14. In the result, the appeal filed for AY 2009-10 is allowed and the appeals filed for AY 2010-11 and 2011-12 are partly allowed.

Pronounced accordingly on 28th Oct, 2015.

घोषणा खुले न्यायालय में दिनांक: 28th Oct, 2015 को की गई ।

Sd

(LALIT KUMAR)
JUDICIAL MEMBER

sd

(B.R. BASKARAN)
ACCOUNTANT MEMBER

मुंबई Mumbai: 28th Oct, 2015.

व.नि.स./SRL , Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ “डी” मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE S/SHRI B.R.BASKARAN,AM AND LALIT KUMAR, JM

आयकर अपील सं./I.T.A. No.2663, 2664 and 2665/Mum/2015
(निर्धारण वर्ष / Assessment Years: 2009-10, 2010-11 and 2011-12)

Devkant Synthetics (India) Pvt.Ltd., 1006, Raheja Centre, 10 th Floor, Nariman Point, Mumbai-400021	बनाम/ Vs.	Income Tax Officer 3(1)(2), Mumbai.
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

CORRIGENDUM

The above said three appeals were pronounced on 28.10.2015. Thereafter we noticed that signatures of the Members have been obtained on the DRAFT and incomplete order, instead of finalized order. Hence, this Corrigendum is issued to rectify the mistake. In the order pronounced on 28.10.2015, paragraphs 3 to 14 shall be replaced by the following paragraphs 3 to 22.

“3. We shall first take up the appeal filed for assessment year 2009-10, wherein the assessee is challenging the addition made u/s 36(1)(iii) of the Act. The assessing officer noticed that the assessee has given interest free advances to certain parties, where as it has availed interest bearing loans and was paying interest. The assessee submitted that the interest free advances were given to purchase shares. However, the AO noticed that the said advances have been returned back subsequently without purchasing shares. Hence, the AO took the view that the explanation about purchase of shares is unreliable and accordingly disallowed a sum of Rs.28.86 lakhs out of interest expenditure. It was confirmed by Ld CIT(A) and hence the assessee took the matter to the ITAT. The Tribunal, vide its order dated 20-12-2013 passed in ITA No.720/M/2013, restored the

matter to the file of Ld CIT(A). In the set aside proceedings, the Ld CIT(A) held that the decision rendered by the Hon'ble Bombay High Court in the case of Reliance Utilities & Power Ltd (313 ITR 340) is not applicable to the facts of the instant case and accordingly confirmed the addition again.

4. We heard the parties on this issue and perused the record. At the time of hearing, the Ld A.R invited our attention to pages 102 to 106 of the paper book wherein the details of utilization of loans taken by the assessee are given. The Ld A.R submitted that the unsecured loans have been fully utilized for the purposes of business only. It was further submitted that the assessee has also availed interest free unsecured loans from M/s MW infra holding Pvt Ltd to the tune of Rs.7.60 crores; from M/s Triveni Management consultancy services Ltd to the tune of Rs.31 lakhs and from M/s Global Absolute Research Pvt Ltd to the tune of Rs20.00 lakhs. He submitted the above said interest free funds along with interest free own funds have been used for giving interest free advances. He further submitted that the assessee had given advances only to purchase the shares and hence the tax authorities are not justified in rejecting the claim without bringing any other material on record. On the contrary, the Ld D.R placed strong reliance on the order passed by Ld CIT(A).

5. Having heard rival contentions, we find that there is merit in the submissions made by Ld A.R. First of all, the assessee's claim that the interest free advances were given in connection with the purchase of shares was not disproved with any material. It is an admitted fact that the assessee's business consisted of investing and trading in shares. Hence, the explanations furnished by the assessee should not have been rejected without bringing any material on record. Secondly, we notice that the Ld CIT(A) has not considered the fact that the assessee has availed interest

free unsecured loans. We notice that the interest free unsecured loans along with the own funds available in the form of share capital, share application money and reserves and surplus are more than the amount of interest free advances given by the assessee. Hence, even if the said advances were not considered to be for the purposes of business of the assessee, disallowance of interest is not warranted. We notice that the interest free advances noticed by the AO were Rs.5.75 crores, whereas the assessee has availed interest free unsecured loans to the tune of Rs.8.10 crores. Besides the above, the assessee is having own funds also. Hence, in our view, the decision rendered by the Hon'ble Bombay High Court in the case of Reliance Utilities and Power Ltd (supra) is applicable to the facts of the present case. Since the interest free funds available with the assessee is more than the alleged interest free advances, we are of the view that the tax authorities are not justified in disallowing interest claim. Accordingly, we set aside the order of Ld CIT(A) on this issue and direct the AO to delete the disallowance made out of interest expenditure.

6. We shall now take up the appeal filed for assessment year 2010-11, wherein following issues are agitated:-

- (a) Disallowance of interest u/s 36(1)(iii)
- (b) Disallowance made u/s 14A of the Act.

7. In this year also, the assessing officer noticed that the assessee has paid interest expenditure of Rs.48,92,738/- on the unsecured loans taken by it. The AO examined about the utilization of loan and took the view that the interest to the extent of Rs.43,72,880/- is related to the business of purchase of shares. However, the AO noticed that the assessee has given interest free advances to the tune of Rs.1.90 crores. The AO computed interest on the above said interest free advances under product method and the same worked out to Rs.40,04,575/-. The AO disallowed

Rs.40,04,575/- out of interest expenditure and the same was confirmed by Ld CIT(A).

8. We heard the parties on this issue and perused the record. In this year also, the assessee has furnished the details of utilization of loans in pages 47 to 49 of the paper book. A perusal of the same shows that the assessee has used major portion of the loans for purchasing shares and giving interest bearing advances. With regard to the interest free advances of Rs.1.90 crores given by the assessee, we notice that the assessee is having following funds as explained in page 112 of the paper book.

Own Funds in the form of Share holders' fund		
Less accumulated losses		109.97 lakhs
Interest free unsecured loans:-		
Hydragen Infrastructures Pvt Ltd	50.00	
Sofkit Educom Pvt Ltd	400.00	
	-----	450.00 lakhs

		559.97 lakhs
		=====

In view of the availability of interest free funds, the disallowance of interest made by the tax authorities is liable to be deleted in view of the decision of Hon'ble Bombay High Court in the case of Reliance Utilities & Infrastructure Ltd (supra). Accordingly, we set aside the order of Ld CIT(A) on this issue and direct the AO to delete the disallowance made out of interest expenditure.

9. The next issue relates to the disallowance made u/s 14A of the Act. In this year, the assessee earned dividend income of Rs.2,52,781/-, but did not make any disallowance u/s 14A of the Act. However, the assessing officer worked out the disallowance as per the provisions of Rule 8D of I.T rules at Rs.55,46,090/- and added the same. The Ld CIT(A) also confirmed the said addition in principle. However, since there was some

error in the computation of average value of investments, the Ld CIT(A) rectified the same, which resulted in reduction of the disallowance to Rs.50,41,315/-.

10. The Ld A.R submitted that the assessee is a trader in shares and hence he has held the shares as stock in trade only. He further submitted that the disallowance as per rule 8D is required to be made only if the shares are held as investments. In support of this proposition, he placed his reliance on the following case law:-

- (a) CCI Ltd Vs. JCIT (2012)(250 CTR 291)
- (b) CIT Vs. India Advantage Securities Ltd
(ITA No.1131 of 2013 dated 17-03-2015 of Bombay High Court)
- (c) Ganjam Trading Co. P Ltd Vs. DCIT (ITA No.1384/Mum/2007 dated 20-07-2012)

The Ld A.R further submitted that the assessing officer, in the case of India Advantage Securities Ltd (supra) had worked out disallowance as per Rule 8D for the assessment year 2008-09 at Rs.48,73,485/-, but the Ld CIT(A) computed the disallowance by excluding the value of shares held as stock in trade. Accordingly the Ld CIT(A) computed the disallowance under Rule 8D(2)(ii) at Rs.1,001/- only. In respect of administrative expenses to be disallowed under Rule 8D(2)(iii), the Ld CIT(A) worked out the same at Rs.250/-. The bank charges was considered as direct expenses and the Ld CIT(A) apportioned 10% thereof as direct expenses relating to dividend and the same worked out to Rs.45,996/-. Accordingly the Ld CIT(A) worked out the disallowance under Rule 8D at Rs.47,247/- and the same was upheld by the Tribunal by following the decision of Hon'ble Karnataka High Court rendered in the case of CCI Ltd (supra). The order of the Tribunal was found by Hon'ble High Court of Bombay to be neither perverse nor vitiated by any error law apparent on the face of the record. In view of the above, the Ld A.R

prayed that the shares held as stock in trade should be excluded for computing the disallowance u/s 14A of the Act.

11. On the contrary, the Ld D.R placed strong reliance on the order of Ld CIT(A) on this issue.

12. We heard the parties and perused the record. We notice that the Hon'ble Karnataka High Court has held in the case of CCI Ltd (supra) that the shares held as stock in trade should be excluded for the purpose of computing disallowance u/s 14A of the Act, since they cannot be said to be "investment" made for the purpose of earning dividend income. In the case of India Advantage Securities Ltd (supra), the Hon'ble Bombay High Court has noticed that the CIT(A) took into account the words of the Rule and found that the figures as derived by the Assessing officer cannot be taken into consideration. The Ld CIT(A) had observed that, one can at best disallow the expenses which are incurred for earning dividend income and for that purpose, the figures under the head "Investment" could be taken and some charges apportioned for the purpose of computing expenses. The decision rendered by the Tribunal in the case of India Advantage Securities Ltd (supra) was found to be neither perverse nor vitiated by any error of law apparent on the face of record by Hon'ble Bombay High Court. We further notice that the decision rendered in the case of CCI Ltd (supra) has been followed by the co-ordinate benches of Tribunal in the case of India Advantage Securities Ltd (ITA No.6711/Mum/2011 and Ganjam Trading Co. Pvt Ltd (supra).

13. In the case of Ganjam Trading Co.P.Ltd (supra), the Tribunal took note of the decision rendered by the Special Bench of the Tribunal in the case of ITO V/s. Daga Capital Management (P.) Ltd. [2009] 117 ITD

169 (Mum)(SB) also. However, following the decision of Hon'ble Karnataka High Court in the case of CCI Ltd (supra), the Tribunal held that the disallowance of interest in relation to dividend received from shares held as stock-in-trade cannot be made. In view of the above, by following the observations made by Hon'ble jurisdictional High Court in the case of India Advantage Securities Ltd (supra) and the decision rendered by Hon'ble Karnataka High Court in the case of CCI Ltd (supra), we also hold that the disallowance of interest expenditure under Rule 8D(2)(ii) of the Act is not warranted if the interest bearing funds have been used for purchasing shares held as stock in trade. We further notice that the co-ordinate bench of Tribunal has also expressed an identical view in the case of Paramount Enterprises Vs. JCIT (ITA No.6205/Mum/2013 dated 20-03-2015)

14. We shall now examine the facts prevailing in the instant case. We notice that the assessee has held all the shares as stock in trade. The value of stock in trade at the end of year, i.e., as on 31.3.2010 was Rs.16.82 crores. The assessee has sold shares for a sum of Rs.11.07 crores and the cost of shares so sold by the assessee was Rs.10.67 crores. Thus the assessee has earned gross profit of Rs.40.00 lakhs, where as the dividend received by the assessee was Rs.2.52 lakhs only. Thus we notice that the dividend received by the assessee becomes negligible when the same is compared with the aggregate sale value of shares. When compared with the Gross profit amount also, the dividend amount works out to around 6% only. Though the interest expenditure claimed by the assessee was Rs.48.92 lakhs, the details of interest payments and utilization of loan funds given in page 47 of the paper book would show that the interest paid to M/s Mangal Keshav Capital Ltd and M/s Mangal Keshav securities Ltd aggregating to Rs.36.32 lakhs alone was related to

the purchase of shares. The remaining loans have been used to give advances to others. We may at this stage notice that the co-ordinate bench of Tribunal has held in the case of DCIT Vs. Damani Estates & Finance Pvt Ltd (ITA No.3029/Mum/2012 dated 17.07.2013) that the interest expenditure to the extent of 20% may be apportioned towards the dividend income, by considering the facts prevailing in that case. However, in the instant case, we are of the view that there is no requirement to apportion any interest expenditure towards dividend income in view of the negligible amount of dividend income vis-à-vis the sale value/profit of stock in trade.

15. In view of the foregoing discussions, we are of the view that there is no requirement to disallow interest on both merits as well as on legal basis. Rule 8D(2)(iii) of I.T Rules also prescribes disallowance of 0.5% of average value of "investments". However, considering the fact that the assessee has claimed the dividend income as exempt, we feel that a reasonable amount out of other expenses should be disallowed. The assessee before us has furnished copies of Rule 8D workings made by the Ld CIT(A) in the case of India Advatage Securities Ltd (supra) at page 35 of the case law paper book. We notice that the Ld CIT(A), in the case of India Advantage Securities Ltd (supra), has disallowed 10% of bank charges under Rule 8D(2)(i). We further notice that the Hon'ble Bombay High Court, in its order, has observed that the disallowance was made to the extent of 10% of income. Hence, we are of the view that the expenses relatable to the earning of income out of expenses is required to be estimated on a reasonable basis and the same is required to be disallowed. Accordingly, in the facts and circumstances of the case, we are of the view that disallowance of 5% of the dividend income would be reasonable to take care of expenses incurred in earning the dividend

income. Accordingly, we set aside the order of Ld CIT(A) on this issue and direct the AO to restrict the addition to 5% of the dividend income.

16. We shall now take up the appeal filed for assessment year 2011-12, wherein also following two issues are agitated:-

- (a) Disallowance out of interest expenses.
- (b) Disallowance made u/s 14A of the Act.

17. The first issue relates to the disallowance made u/s 36(1)(iii) of the Act. In this year also, the AO noticed that the closing balance of interest free advances to the tune of Rs.1.90 crores of the preceding year was brought forward. He further noticed that the said advances have been transferred to a concern named M/s Essem Consultancy P Ltd by way of journal entry passed on 1.4.2010. The assessee submitted that the interest free advances have been assigned to M/s Essem Consultancy P Ltd w.e.f 1.4.2010 by way of agreement. It was further submitted that the entire amount was recovered by June, 2010. The assessing officer noticed that the assessee has been giving advances to M/s Essem Consultancy P Ltd subsequent to June, 2010 and also receiving back the amount. Hence the AO took the view that the interest should be worked out on the debit balances of M/s Essem Consultancy P Ltd and accordingly worked out the interest under product method at Rs.5.80 lakhs and disallowed the same. The Ld CIT(A) also confirmed the same.

18. However, the contention of the assessee is that the interest free funds available with the assessee in the form of share holders funds (Rs.1.30 crores) and interest free trade advances (Rs.17.94 crores) received by it is in far excess of the above said amount of Rs.1.90 crores. Further, the above said amount of Rs.1.90 crores have been received back

in instalments from April, 2010 onwards and the entire outstanding balance has been received back by June, 2010. Hence we find merit in the contentions of the assessee that there is no requirement of disallowing part of interest expenditure, since the interest free funds are sufficient to cover up the above said advances. Further, we notice from the working of interest given in the assessment order that the assessing officer has worked out interest only on debit balances and he did not consider the availability of credit balances on some other days. In our view, the approach of the AO would give distorted working of interest. In any case, since the assessee was possessing sufficient amount of interest free advances, we are of the view that the decision rendered by the jurisdictional Hon'ble Bombay High Court in the case of Reliance Utilities & Infrastructure Ltd (supra) shall be applicable to the year under consideration also. Accordingly, we set aside the order of Ld CIT(A) on this issue and direct the assessing officer to delete the impugned addition.

19. The next issue relates to the disallowance made u/s 14A of the Act. During this year, the assessee received dividend income of Rs.12,85,175/- and it did not make any disallowance u/s 14A of the Act. The assessee has earned profit on sale of shares at Rs.3,44,30,149/-. The value of shares sold by the assessee in this year was Rs.45.15 crores. Thus, it can be noticed that the dividend received by the assessee in this year also very negligible when compared with the profit earned by the assessee as well as with the sale value of shares held as stock in trade. Hence, as held in the preceding year, we are of the view that there is no requirement to disallow interest on both merits as well as on legal basis during this year also in respect of shares held as stock in trade.

20. However, during this year, the assessee has made investment in shares to the tune of Rs.59.00 lakhs. The Ld A.R submitted that, in view of the availability of sufficient amount of interest free funds, interest disallowance is not called for in respect of the above said investments, in view of the decision of Hon'ble jurisdictional Bombay High Court held in the case of HDFC Bank Ltd (366 ITR 505). We find merit in the said contentions. Since the investment amount of Rs.59 lakhs form a small fraction of interest free funds, in our view, the contention of the assessee is required to be accepted. Accordingly we hold that no interest is required to be disallowed as relating to the investment of Rs.59.00 lakhs.

21. However, as held in the preceding year, a portion of expenses is required to be considered as the expenses incurred in relation to the dividend income earned by the assessee. As held in the preceding year, we direct the AO to restrict the disallowance at 5% of the dividend earned by the assessee to take care of expenses incurred in earning the dividend income. The order of Ld CIT(A) rendered on this issue stands modified accordingly.

22. In the result, the appeal filed for AY 2009-10 is allowed and the appeals filed for AY 2010-11 and 2011-12 are partly allowed.

Sd

(LALIT KUMAR)
JUDICIAL MEMBER

मुंबई Mumbai:16th Nov, 2015.

व.नि.स./SRL , Sr. PS

sd

(B.R. BASKARAN)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

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सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai