

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES, MUMBAI**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER &
SH RAJESH KUMAR, ACCOUNTANT MEMBER**

ITA No. 714/Mum/2015
Assessment Year: 2011-12

M/s JSW Holdings Ltd.,
Formerly Jindal South West
Holding Ltd.,
Mumbai

Vs. The DCIT 5(2),
Mumbai

PAN No. AABCJ1531F

(Appellant)

(Respondent)

Appellant By : Sh. Hiro Rai
Respondent By : Smt. Arju Garodia

Date of hearing : 06.06.2017
Date of Pronouncement : 31.08.2017

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order of Commissioner of Income Tax (Appeals)-10[hereinafter referred to as CIT(A)],Mumbai dated 26.11.2014. The assessee originally had taken the following grounds:-

1. The Learned Commissioner of Income Tax-(Appeals) [hereinafter the "CIT (A)"] erred in law and on the facts in upholding the addition of Rs. 50,99,328 resulting from the disallowance of Rs.1,58,46,667 as against Rs.1,07,47,339

disallowed by the Appellant under section 14A read with rule 8D as per its computation.

2. The Learned CIT (A) erred by not establishing any direct nexus between the expenditure disallowed for earning the exempt dividend income of Rs. 16,88,14,470/- and the Total income of Rs. 24,06,62,745/-. As per the law, only the expenditure attributable to the exempt income having a direct nexus for earning such income can be disallowed u/s 14A. Thus, the addition made by the learned assessing officer are upheld on assumptions, without assigning any logical reason for rejecting the claim of the Appellant and without considering the facts and the applicable provisions of the law.

2. However, subsequently, the assessee vide application dated 9.1.2017 has sought to take certain additional grounds of appeal and, accordingly, filed revised the grounds of appeal, which reads as under:-

1. The Learned Deputy Commissioner of Income Tax was not justified in disallowing an amount of Rs.1,97,70,000/- under Section 14A of the Income Tax Act 1961. The Learned Commissioner of Income Tax (Appeals) was not justified in confirming the same, in principle.
2. The Learned Commissioner of Income Tax (Appeals) erred in law and on the facts in directing the AO to allow the claim of the Appellant of the bad-debt written-off amount to Rs.2,50,00,000 on account of irrecoverable overdue matured debentures only if the Appellant was an NBFC at the time of acquisition of the said debentures.
3. The Learned Commissioner of Income Tax (Appeals) further erred in not appreciating the fact that

the Appellant was a finance / investment company since its inception and that the interest on the said overdue matured debentures was included in Taxable Income for A.Y. 2004-05 and A.Y. 2005-06 under the head "Income from Business / Profession" in returns of income filed by the Appellant for the respective years.

4. The Learned Commissioner of Income Tax (Appeals) also erred in not appreciating the fact that the deduction for irrecoverable interest on the said overdue matured debentures has already been allowed as bad-debt written-off by the ITAT while computing "Income from Business/Profession" in A.Y. 2007-08.
 5. The Learned Commissioner of Income Tax (Appeals) erred in not appreciating the fact that the write off of irrecoverable principal amount of overdue matured debentures was allowable as deduction to the Appellant in its normal course of business as finance / investment company.
3. The Department has strongly objected to the admission of additional grounds at this stage. In their letter dated 28.4.2017, it has been pleaded that the ground no.1 of the revised grounds raised by the assessee relates to disallowance u/s 14A the Income-tax Act, 1961 (in short 'the Act'). That the said ground does not arise at all from the order of the CIT(A) and is not maintainable. It has been pleaded that the Ld. CIT(A) has not confirmed the disallowance of Rs. 1,97,70,000/- as pleaded by the assessee rather the CIT(A) in para 5.1 of his order has directed the Assessing officer to verify the contention of the assessee that the entire expenditure claimed in profit and loss account was not relatable to the exempt income

earned by the assessee and to restrict the disallowance to the net expenditure over and above the suo moto disallowance by the assessee. It has been further pleaded that while giving effect to the CIT(A)'s order, the Assessing officer has given a relief of Rs. 44,48,355/- to the assessee regarding the expenditure which was found not relatable to the earning of exempt income. It has, therefore, been pleaded that prima facie the revised ground no.1 raised by the assessee is incorrect.

As regards ground Nos. 2,3,4 & 5 of the revised grounds, it has been pleaded on behalf of the Department that these grounds were not taken at all by the assessee in the originally filed appeal. Further, that the claim of the assessee before the CIT(A) was that the assessee was a Non Banking Financial Company (NBFC). The Ld. CIT(A) has directed the Assessing officer to allow the claim of the assessee after verifying the assessee's claim that it was a NBFC. However, while giving effect to the order of the CIT(A), the Assessing officer observed that the claim of the assessee of an amount of Rs. 2.50 crores claimed as 'bad debt written off' was verified and it was found that the debentures were inherited by the assessee on account of merger of companies as per the order No. 563 of 2003 dated September 3, 2004 of the Hon'ble High Court, the period during which the assessee was not a NBFC. The NBFC certificate of registration was issued to the assessee company by the Reserve Bank of India on 18.9.2005, hence, the claim of the assessee was not accepted. It has, therefore, been pleaded that the revised grounds taken by the assessee are not admissible at this stage.

4. Before adjudicating on the admissibility or non-admissibility of the additional grounds, we deem it fit to first go through the relevant facts relating to the issues raised before us. On perusal of the original grounds of appeal as well the revised grounds of appeal, two effective issues emerge out of this, the first is relating to the disallowance made u/s 14A of the Act read with Rule 8D of the Income Tax Rule, 1962. The second issue is relating to the disallowance of bad debts written off amounting to Rs. 2.50 crores.

5. As regards the issue relating to disallowance u/s 14A of the Act, the brief facts relating to this issue as culled out from the order of the Assessing officer are that the assessee company is engaged in the business of advancement of loan and investing in shares and securities. During the assessment proceedings, on perusal of the profit and loss account, the Assessing officer noticed that the assessee company had earned dividend income of Rs. 16,88,14,470/-. The assessee had suo moto disallowed a sum of Rs. 1,07,47,339/- as expenditure relatable to the earning of the aforesaid tax exempt dividend income as per the provisions of section 14A of the Act. The Assessing officer, however, show caused the assessee as to why the disallowance should not be worked out as per the working prescribed under Rule 8D of the I.T. Rules. The assessee in this respect gave the following explanation:-

“Explanation as to why the disallowance u/s 14A should not be made as per rule 8D

- 1.1 Kindly note that the assessee has taxable business income of Rs. 4,09,60,958/- and Long Term Capital Gain of Rs. 182,397 part from exempt dividend income of Rs. 16,88,14,770/-
- 1.2 For earning the taxable business income, the assessee has incurred the employee expenses and administrative and other expenses which are in the nature of compliance with the provisions of Companies Act, 1956. There is no nexus of these expenditure with the earning of exempt dividend income. Moreover the investments made by the assessee are strategic investment.
- 1.3 Thus the disallowance to be made u/s 14A of the Act, is to be based on the facts of the expenditure actually incurred of earning of exempt income.
- 1.4 The assessee submits that a review of the expenditure debited to the profit and loss account detailed hereunder reveal that none of the expenditure can be attributable to the earning of exempt dividend income except the Demat expenses.

<i>Expenditure</i>	<i>Rupees in thousands</i>	<i>Rupees in thousands</i>
(i) <i>Employee costs</i>		138,65
(ii) <i>Office Administrative and other Expenses</i>		
<i>Repair and Maintenance (other than building and plant and machinery)</i>	1	
<i>Advertisement expenses</i>	188	
<i>Telephone expenses</i>	60	
<i>Travelling and conveyance</i>	253	
<i>Vehicle expenses</i>	119	
<i>Printing & Stationery expenses</i>	248	
<i>Postage and telegrams</i>	487	
<i>Profession fee</i>	49	
<i>Auditors' remuneration</i>	301	
<i>Demat and Custodian Charges</i>	203	
<i>Listing fee</i>	105	
<i>Amount written off</i>	525	

6. The assessee also placed reliance on various case laws. The Assessing officer, however, did not accept the above reply of the assessee and computed the disallowance u/s 14A of the Act as per the provisions of Rule 8-D of the I.T. Rules, observing as under:-

“5.3 The reply of the assessee was duly considered but found not acceptable because in the Income tax Act the principles of res judicata did not apply. The Income tax authority can take different view in the different year based on the facts.

5.4 As per clause (iii) of Sub Rule (2) of Rule 3D, an amount equal to 0.5% of average investment relating to tax free income shall be disallowed under section 14A. In this case, (the average investment is worked out at Rs. 5,373,690,000/-. Disallowance u/s. Rule 8D(iii) worked out at 2,68,68,000/-. However, on going through the expenses incurred by the assessee in the P&L account at Rs.1,97,70,000/- only. Expenses on this account are restricted up to Rs.1.97.70,000/- only because assessee has incurred this much expenses only in P&L account. Since assessee already disallowed himself at Rs.1,07,47,339/-, hence Rs.90,22,661/-is added to the income of the assessee.”

7. Being aggrieved by the above disallowance made by the Assessing officer, the assessee preferred an appeal before the CIT(A). Before the Ld. CIT(A), the assessee pleaded that the total expenditure debited to the profit and loss account of the assessee was Rs. 1,97,70,000/-. In the return of income, the assessee itself had disallowed a sum of Rs. 1,07,47,339/- u/s 14A of the Act being proportionate administrative and other expenses attributable to the exempt income. The Assessing Officer was not justified in making further additional disallowance which was equal to the difference of amount of total expenditure booked in profit and loss account

and the suo moto disallowance made by the assessee u/s 14A of the Act. That the said disallowance was made by the Assessing officer without proper application of section 14A of the Act. That even the amount of Rs. 39,23,333/- was on account of expenditure incurred in respect of certain specific items such as death gratuity, leave encashment, standard assets etc. was not at all relatable to the earning of the exempt income. It was also pleaded that the assessee had earned a taxable income of Rs. 4,11,43,355/- from business, for earning of which the assessee must have incurred expenditure. The assessee thereafter submitted the details of various expenditure and pleaded that none of the expenditure was directly relatable to the earning of the exempt income except the D-mat expenses and further that the disallowance u/s 14A of the Act under the circumstances was required to be made on some logical and rational basis. Considering the ratio of dividend income (exempt income) of the total income, the proportionate disallowance u/s 14A of the Act was calculated at Rs. 1,07,47,339/- and that the Assessing officer was not justified in rejecting the working of the assessee. It was also pleaded that the assessee had earned single huge dividend income from one company and, therefore, entire expenditure could not be said to be relatable to the investment made in that company only. Further, that there was no improvement in the investments as the assessee has not acquired any new equity shares. The investments were old investments. It was, therefore, claimed by the assessee before the CIT(A) that the addition of Rs. 90,22,661/- made by the Assessing officer u/s 14A of the Act, be deleted.

8. The Ld. CIT(A) after considering the above submissions of the assessee held that the provisions of Rule 8-D were applicable from assessment year 2008-09, as has been held by the Hon'ble Bombay High Court in the case of 'M/s Godrej & Boyce Manufacturing. Co. Ltd [2010] 328 ITR 81 (Bom)'. He therefore, held that in principle the invoking of provisions of Rule 8D in the instant case was justified. However, as regarding the claim of the assessee that after making suo moto disallowance u/s 14A of the Act and under other provisions of the Act, balance net expenditure was less than the disallowance made by the AO, he held that the disallowance u/s 14A of the Act cannot exceed the total expenditure. He directed the Assessing officer to verify the above contention and restrict the disallowance to the net expenditure over and above the suo moto made by the assessee.

9. Aggrieved by the above order of the CIT(A) on this issue, the assessee as discussed above, has come in appeal before us with the original ground challenging the addition of Rs. 50,99,328/- which has resulted on account of disallowance of net expenditure after excluding the suo moto disallowance made by the assessee and other expenditure which was not at all relating to the investment activity of the assessee. However, in the revised/additional ground No.1 of the appeal, the assessee has agitated the action of the DCIT (AO) in disallowing the amount of Rs. 1,97,70,000/- u/s 14A of the Act. Though, the assessee, in the original grounds of appeal agitated the confirmation of addition of Rs. 50,99,328/-, that is of the amount which was over and above the suo moto disallowance of Rs.1,07,47,339/- offered by the assessee in its return of income,

however, at this stage, the Ld. counsel for the assessee has contended that no disallowance u/s 14A was attracted in this case. He has pleaded that the assessee company is an investment company and that it had made strategic investment in its associate / subsidiary companies as part of its business activity and to have control over them. The investments were not made for the purpose of earning of dividend or tax exempt income, rather, the dividend income earned by the assessee was incidental to the above business strategy of the assessee, therefore, the addition made by the lower authorities u/s 14A was not justified. He, to stress upon the point that in case of strategic investment made by a company in its subsidiary company, out of its business activity or out of the business exigencies such as to have control over that company, the assessee is entitled to deduction of interest paid on the borrowed amount for making such investment u/s 36(i)(iii) of the Act and that the disallowance u/s 14 A in relation to such strategic investments is not attracted, has relied upon the following case laws:-

1. *202 Taxman 368 (Bom) CIT Vs. Phil Corporation Ltd.*
2. *ITA NO. 6173/Mum/2012 – M/s Shree Shyamkamal Finance and Leasing Co Ltd v ITO*
3. *ITAT No. 4366//Mum/2014 –Jigar P Shah v ACIT.*
4. *ITA No. 6236 & 182/Mumbai/2013 – M/s Creative Global Stock Broking Pvt Ltd Vs. DCIT.*

He has also relied upon the decision of the Hon'ble Supreme Court in the case of 'NTPC vs CIT' 229 ITR 383 to stress that the additional grounds can be raised before the appellate authorities. The Ld. Counsel for the assessee has explained that the assessee had offered the disallowance u/s

14A in the return of income under a mistaken belief that disallowance u/s 14 A was attracted on all type of investments yielding tax exempt income, whether or not the same were made out of business activity. He has further explained that the benefit of the legal propositions laid down in the above referred to case laws was not available to the assessee at that time. The Ld. Counsel for the assessee has further submitted that the said ground by the assessee has been taken at this stage, because of the subsequent evolution of law through judicial interpretation of the relevant provisions of section 14A.

10. We have considered the rival contentions. The question as to whether the assessee can take an additional ground at appellate stage even when the same has not been raised before the lower authorities has been thoroughly discussed by Co-ordinate Mumbai Bench of the Tribunal in the case of "Pandoo P. Naig" in ITA No.7089/Mum/2011 decided on 24.06.2016 [2016 (9) TMI 1062]. The Tribunal, while relying upon the decision of the Hon'ble Supreme Court in the case of "National Thermal Power Company Ltd. vs. CIT" 229 ITR 383, Full Bench of the Hon'ble High Court in the case of "Ahmedabad Electricity Co. Ltd. vs. CIT" (1993) 199 ITR 351, another decision of the Hon'ble Bombay High Court in the case of "CIT vs. Pruthvi Brokers and Shareholders Pvt. Ltd." (2012) 349 ITR 336 (Bom.) has held that the appellate authorities have jurisdiction to deal not merely with additional ground which became available on account of change of circumstances or law, but with additional grounds which were available when the return was filed. The relevant part of the order of the Tribunal in the case of "Pandoo P. Naig" for the purpose of reference is reproduced as under:

“19. Now coming to the point, whether, the claim put by the assessee Shri Pandoo P. Naig by way of additional ground before the Ld. CIT(A) regarding the deletion of addition of Rs.4 crore offered during the survey action and thereby offered in the return of income can be allowed at this stage?

The Ld. Counsel for the assessee in this respect has placed reliance on the decision of the Hon'ble Supreme Court in the case of “National Thermal Power Co. Ltd.” vs. CIT” 229 ITR 383. The facts before the Hon'ble Supreme Court were that the assessee in that case offered the interest amount for taxation and the assessment was completed on that basis. Before the Ld. CIT(A), the assessee though had taken a number of grounds of appeal, however, the inclusion of the said amount of interest was not challenged. The inclusion of the said amount of interest was not objected to even in the grounds of appeal as originally filed before the Tribunal. However, the assessee by way of subsequent letter raised the additional ground in relation to the said inclusion of interest into the income of the assessee. In the above circumstances, the question before the Hon'ble Supreme Court was “Where on the facts found by the authorities below a question of law arises (though not raised before the authorities) which bears on the tax liability of the assessee, whether the Tribunal has jurisdiction to examine the same?” The Hon'ble Supreme Court while answering the said question observed that under section 254 of the Income Tax Act, the power of the Tribunal in dealing with the appeals is expressed in the widest possible terms; the power of the Tribunal under section 254 is not restricted only to decide the grounds which arise from the order of the Commissioner of Income Tax (Appeals); that both the assessee as well as the department have a right to file an appeal/cross objection before the Tribunal and the Tribunal is not prevented from considering questions of law arising in assessment proceedings although not raised earlier. While answering the question in affirmative, the Hon'ble Supreme Court concluded that the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee.

20. The facts of the case in hand are on better footing. In the case in hand, though under consistent pressure, the assessee offered the additional income for taxation in the assessment proceedings but when he was burdened with many more additions, he at the first instance during the appeal before the Ld. CIT(A), challenged the offer of additional income on the basis of statement recorded under section 133A. Even the said ground was also admitted by the Ld. CIT(A) for adjudication though finally decided against the assessee. The full bench of the Hon'ble Bombay High Court in the cases of “Ahmedabad Electricity Company Ltd. vs. CIT” and “Godavari Sugar Mills Ltd. vs. CIT” by way of a common order dated 30.04.1992

(1993) 199 ITR 351 has observed that the basic purpose of an appeal procedure in an income tax matter is to ascertain the correct tax liability of the assessee in accordance with law. Therefore, at both the stages, either by the Appellate Assistant Commissioner or before the Appellate Tribunal, the appellate authority can consider the proceedings before it and the material on record before it for the purpose of determining the correct tax liability of the assessee. The appellate authorities, of course, cannot travel beyond the proceedings and examine new source of income, for that purpose other separate remedies are provided to the department under the Income Tax Act. The Hon'ble full bench of the Bombay High Court observed that apart from the above, there was nothing in section 254 or section 251 which would indicate that the appellate authorities are confined to considering only the objections raised before them or allowed to be raised before them either by the assessee or by the department, as the case may be. They can consider the entire proceedings to determine the tax liability of the assessee.

The Hon'ble Bombay High Court in the case of "CIT vs. Pruthvi Brokers and Shareholders Pvt. Ltd." (2012) 349 ITR 336 (Bom.) has observed that the assessee is entitled to raise not merely additional legal submissions before the appellate authorities, but is also entitled to raise additional claims before them. The appellate authorities have jurisdiction to deal not merely with additional grounds, which became available on account of change of circumstances or law, but with additional grounds which were available when the return was filed. The words 'could not have been raised' must be construed liberally and not strictly. There may be several factors justifying the raising of a new plea in an appeal and each case must be considered on its own facts. The co-ordinate bench of the Tribunal in the case of "Shri Chandrashekar Bahirwani" ITA No.7810/M/2010 and 6599/M/2011 vide order dated 17.06.2015 while deciding the question as to whether the income cannot be assessed less than the returned income has observed as under:

"5. Now coming to the finding of the Ld. CIT(A), that income cannot be assessed less than the returned income, the Ld. A.R. of the assessee has submitted before us that the action of the Ld. CIT(A) in rejecting the claim of the assessee on this ground was not justified. He has further relied upon the decision of the Hon'ble Gujarat High Court in the case of "Gujarat Gas Ltd. vs. JCIT" (2000) 245 ITR 84. In the said case, the words of the Circular No.549, para 5.12, dt. 31st October, 1989, providing that the assessed income under section 143(3) shall not be less than the returned income was considered by the Hon'ble High Court and it was held that as per proviso to section 119 of the Act, the Board cannot issue instructions to the Income Tax Authority to make a particular assessment or to dispose of a particular

case in a particular manner as well as not to interfere with the discretion of the Commissioner in exercise of his appellate functions. It was further held that the AO, while exercising his quasi judicial powers, was not bound by the said circular and should have exercised his powers independently. The Hon'ble High Court, therefore, directed the AO to make the assessment without keeping in mind the said circular. It may be further observed that the Hon'ble Bombay High Court in the case of 'Pruthvi Brokers & Shareholders Pvt. Ltd.' ITA No.3908 of 2010 decided on 21.06.12, while relying upon the various decisions of the Hon'ble Supreme Court and other Hon'ble High Courts has held that even if a claim is not made before the AO, it can be made before the appellate authorities. The jurisdiction of the appellate authorities to entertain such a claim is not barred. The Hon'ble High Court has further observed that the decision of the Hon'ble Supreme Court in the case of 'Goetze (India) Limited v. CIT' (2006) 157 Taxman 1, relating to the restriction of making the claim through a revised return was limited to the powers of the Assessing Authority and the said judgment does not impinge on the power or negate the powers of the appellate authorities to entertain such claim by way of additional ground. Even otherwise, the Ld. CIT(A) ought to have considered the claim of the assessee in exercise of his appellate jurisdiction under section 250 of the Act. Moreover, if the assessee is, otherwise, entitled to a claim of deduction but due to his ignorance or for some other reason could not claim the same in the return of income, but has raised his claim before the appellate authority, the appellate authority should have looked into the same. The assessee cannot be burdened with the taxes which he otherwise is not liable to pay under the law. Even a duty has also been cast upon the Income Tax Authorities to charge the legitimate tax from the tax payers. They are not there to punish the tax payers for their bonafide mistakes. In view of our above observations, it is held that the assessee is not liable to pay Capital Gains Tax, though originally he had subjected himself to the said tax as per his return of income. The AO is directed to process the claim of refund in this respect as per provisions of the law."

21. In view of the above observation, we hold that the Ld. CIT(A) though, rightly admitted the question of law as to whether the income offered by the assessee in the return of income consequent to offer made in his statement recorded during the survey action can be challenged before the appellate authority, but wrongly decided the same in favour of revenue. In view of our findings given above and in view of the various case laws as discussed above, we have no hesitation to hold that the additional income was returned by the assessee perhaps under force, pressure, threat or

coercion and under the mistaken belief. The assessee, in our view, was not liable to pay tax on the said additional income returned. We accordingly direct the Department to refund the taxes, if any, paid by the assessee in respect of additional income offered during the survey action.”

11. Admittedly, the assessee itself has offered the disallowance u/s 14 A in its return of income. However, the Ld. Counsel has explained that was done under a mistaken belief that disallowance u/s 14 A was attracted on all type of investments yielding exempt income, whether or not the same were made out of business activity. He has further explained that the benefit of the legal propositions laid down in the above referred to case laws was not available to the assessee at that time. The assessee has raised the above stated legal plea that the disallowance u/s 14A is not attracted in case of strategic investments made out of business exigency during the course of arguments before us on the basis of subsequent evolution of law through judicial interpretations of the relevant provisions by the Higher Courts. We are of the view that the proposition of law on the issue under consideration as has been evolved as on today through various judicial decisions should also be applied to the case of the assessee as the relevant issue of disallowance u/s 14A is the subject matter of adjudication before this Tribunal and the same has not attained finality.

Even otherwise, the department has been given wide powers under the Act not only at the AO level under section 147 of the Act but also at Commissioner level under section 263 of the Act to reassess the income, in case of under assessment of income of the assessee in assessment proceedings carried out u/s 143 of the Act. Such powers of reassessment are also available to income tax authorities u/s 153A and 153C in case of

detection of undisclosed income in search proceedings carried out u/s 132 of the Act. Even the assessee can be burdened with harsh penalty, in case he is found to have furnished inaccurate particulars of income or concealed his income. In such a situation, if the assessee has mistakenly offered certain amount for taxation, which he is legally not supposed to offer, in our view, he can also raise such an additional claim before the appellate authorities. The assessee cannot be put to a disadvantageous position because of mere technicalities. The assessee cannot be burdened with the taxes which he otherwise is not liable to pay under the law. Even a duty has also been cast upon the Income Tax Authorities to charge the legitimate tax from the tax payers. They are not there to punish the tax payers for their bonafide mistakes.

In view of our above observations and in the light of the proposition of law laid down in the decisions of Hon'ble Supreme Court in the case of "National Thermal Power Company Ltd. vs. CIT" (supra), Full Bench of the Hon'ble High Court in the case of "Ahmedabad Electricity Co. Ltd. vs. CIT" (supra) and another decision of the Hon'ble Bombay High Court in the case of "CIT vs. Pruthvi Brokers and Shareholders Pvt. Ltd." (supra) and of the Coordinate Bench decision in the case of "Pandoo P. Naig" (supra), the additional ground raised by the assessee is admitted and the issue is restored to the file of the Assessing officer with a direction to verify the claim of the assessee regarding strategic investments as to whether the same were related to the business activity of the assessee or as part of its business strategy to invest in the shares of its sister/subsidiary companies to have control over them and not for the purpose of deriving tax exempt income and whether the dividend/ tax

exempt income was incidental to the above business activity of the assessee and decide the issue a fresh in accordance with law in the light of the available decisions of the higher/highest courts/court. It is also held that it will not be an impediment or reason to deny the claim to the assessee that the assessee itself offered the disallowance in its return of income, if the assessee otherwise is found legally entitled to such a claim.

12. Now coming to ground No.1 of the appeal, it is apparent that neither the Assessing officer nor the Ld. CIT(A) had applied their mind to the working given by the assessee. The Hon'ble Bombay High Court in the case of 'Godrej & Boyce Manufacturing Co.' 328 ITR 81 has held that under section 14A of the Act, resort can be made to Rule 8D of the Income Tax Rules for determining the amount of expenditure in relation to exempt income, if, the AO is not satisfied with the correctness of the claim made by the assessee in respect of such expenditure. The satisfaction of the Assessing Officer has to be arrived at, having regard to the accounts of the assessee. Sub section (2) does not ipso facto enable the Assessing Officer to apply the method prescribed by the rules straightaway without considering whether the claim made by the assessee in respect of such expenditure is correct. The satisfaction of the Assessing Officer must be arrived at on an objective basis. In a situation where the accounts of the assessee furnish an objective basis for the Assessing Officer to arrive at a satisfaction in regard to the correctness of the claim of the assessee, there would be no warrant for taking recourse to the method prescribed by the rules. An objective satisfaction contemplates a notice to the assessee, an opportunity to the assessee to place on record all the relevant facts

including his accounts and in the event that he comes to the conclusion that he is not satisfied with the claim of the assessee. However, as observed above, in the case in hand, the Assessing officer has not followed the guidelines of objective satisfaction as laid down by the Hon'ble Bombay High Court in the case of 'Godrej & Boyce' (supra) while making the disallowance. He without recording any reasoning for his dissatisfaction with regard to the working/claim of the assessee, straightway applied Rule 8D against the mandate of the provisions of section 14A of the Income Tax Act. The Id. CIT(A) also ignored the mandate of the provisions of section 14A, while giving part relief to the assessee on a different footing. Since we have already restored the matter to the AO on this issue, we direct that the AO will also look into and consider the above aspects and adjudicate on all alternate contentions also of the assessee on this issue and will comply with the requirements of law, as discussed above, while deciding this issue a fresh.

13. In respect of the issue relating to the 'bad debts written off', no ground has been originally taken by the assessee in this appeal, however, in the revised ground of appeal, ground Nos. 2 to 4 are relatable to this issue. As discussed above in the initial paras of the order, the Department has strongly objected to the admission of this ground of appeal at this stage. However, it is an admitted fact that this issue was already there before the Assessing officer and even the assessee had also preferred an appeal on this issue before the Ld. CIT(A). As no new facts have to be examined on this issue, hence, this ground is admitted for adjudication.

14. The brief facts relevant to the issue are that during the assessment proceedings the Assessing officer noticed that Assessee Company had claimed Rs. 2.50 crores as 'written off' as irrecoverable bad debts. When being asked to explain in this respect, the assessee in its reply explained as under:-

"1. The investment in Optional Convertible Debentures (OCD's) of referred six companies is very old and they have been appearing as Sundry Loans, matured Debentures including interest due wider Loans and advances in the balance sheet of assessee. A copy of audited balance sheet as on 31-3-2005 alongwith breakup of Sundry Loans, matured Debentures including interest amounting to Rs 97,56,28,933/- is enclosed herewith. Your honour would notice that the referred outstanding amount against the underlying companies is appearing in the balance sheet. The details and documents pertaining to issue and court cases filed against these companies have a/ready been furnished.

2. The referred companies belong to Lexicon Group, an NBFC. The details of companies are as follows:

<i>S.No.</i>	<i>Name of the</i>	<i>Address</i>	<i>PAN</i>
<i>1</i>	<i>Karvirvasini Investment and finance Ltd.</i>	<i>21, Sethi Mansion, Kumtha Street, Bakllard Estate, Mumbai 400038</i>	<i>AMCK2140G</i>
<i>2</i>	<i>Kaundimja Investments & Finance Pvt. Ltd.</i>	<i>124, Andheri Univesal Industrial Estate, J.P. Road, Andheri (W), Mumbai- 400058</i>	<i>AAACK200IN</i>
<i>3</i>	<i>Morta Finlease & Investments Put.</i>	<i>124, Andheri Universal Industrial Estate, J.P. Road, Andheri (W), Mumbai 400038</i>	<i>AAACM6864B</i>
<i>4</i>	<i>Atiupa Investment Pvt. Lid.</i>	<i>124, Andheri Universal Industrial Instate, J.P. Road, Andheri (w) fV), Miunbai- 400 058</i>	<i>AAACA8328C</i>

5	<i>Zafonic Finlease & Investments Pvt. Ltd.</i>	<i>1 24, Andheri Universal Industrial Estate, J.P. Rood, Andheri {W}, Mumbai-400058</i>	<i>AAACZ0310K</i>
6	<i>Ottoman Finlease & Investments Pvt. Ltd.</i>	<i>21, Sethi Mansion, Kuinta Street, Bollard Estate, Mumbai 400 038</i>	<i>AAAC01161F</i>

3. *As per the provisions of The Companies Act 1956, a private limited company is not allowed to issue a prospectus as it cannot invite the public for subscription. In view of the fact that all the OCDs were issued by private limited companies there would be no requirement of a prospectus in such cases. The OCDs are issued by private limited companies usually on a private placement basis.*

4. *As the OCDs were issued long back and since matured became a non performing debt, provided for and written off, the copies of certificates are not readily traceable. However, the matured debentures regularly appeared in balance sheet of the company and details ate enclosed herewith.*

5. *As the assessee company has been under litigation with the aforesaid companies, it does not have access to details of OCDs issued by these companies to other persons.*

6. *The assessee company has accounted for interest income during the assessment years 2004-05 and 2005-06 in respect of these debentures before they became non-performing assets. The party wise details of the interest income accrued to assessee and offered to tax on these OCDs is as follows:-*

<i>S.No.</i>	<i>Name of the Company</i>	<i>Interest offered for tax in assessment year 2004-05</i>	<i>Interest offered for tax in assessment year 2005-06</i>
<i>1</i>	<i>Afirupa Investment Pvt Ltd</i>	<i>480,000</i>	<i>480,000</i>
<i>2</i>	<i>Morta Finlease & Investment Pvt Ltd</i>	<i>480,000</i>	<i>480,000</i>
<i>3</i>	<i>Ottomon Finlease & Investments Pvt Ltd</i>	<i>480,000</i>	<i>480,000</i>

4	<i>Zaffonic Finlease & Investments at Ltd</i>	480,000	480,000
5	<i>Karvinvasini Investments & Finlease P. Ltd</i>	540,000	540,000
6	<i>Kaundilya Investments & finlease P. Ltd</i>	540,000	540,000
	<i>Total</i>	3,000,000	3,000,000

7. *The assessee company is a Non Banking Finance Company and its regular business is to advance loan, investment in various income earning Instruments. Hence, the said investment is in normal course of business of the assessee company to earn interest income.*

8. *With regards to comparison with decision in the case of TRF Ltd, it is submitted that as per the decision in the above case, the apex court held as under;*

"This position in law is well-settled. After 1-4-1989, it is not necessary for the assessee to establish that the debt, in fact, has become Irrecoverable. It is enough if the bad debt is written off as irrecoverable in the accounts of the assessee." (para 4) (Emphasis supplied)

Thus, it is sufficient compliance by the assessee for allowance of the bad debts under section 36(l)(vii) of the Income Tax Act, 1961 (the Act), if the bad debts or any part thereof have, been written off as irrecoverable in the accounts of the assessee in the previous year as per the amendments made w.e.f. April I, 1989

The facts of the case of the assessee are similar. The debts due to the assessee in its normal course of business as Non Banking Finance Company have been written off by the assessee in its accounts as these have become Irrecoverable. Following the above judgement, the claim of the assessee is allowable under section 36(l)(vii) of the Act.

For your ready reference and records, we enclose (he copy of the decision of the apex court in the case of TRF. Ltd as CJT (2010] 333 JTR 397 (SC) for your ready reference and records.

9. *The matured OCDs were the recoverable debts of the assessee company in its regular course of business as Non Banking Finance Company. The income on these debts has been offered for taxation as staled above. As per the provisions of the Act, if any debts or part of*

debt is not recoverable, then the assessee is entitled to claim the same, as bad debts under section 36(1)(vii) of the Act. Since the OCDs are not capital assets of the assessee, but its business debts in the course of its business as non banking finance company, the question of treating the bad debts as capital loss does not arise.

10. *Copy of the NBFC registration Certificate issued by RBI to the assessee company is enclosed herewith,."*

15. The Ld. Assessing officer, however, did not accept the above explanation given by the assessee observing as under:-

"6.3 The reply of the assessee has been considered but found not acceptable. The assessee did not file copy of Prospectus issued by the aforesaid companies. He also not furnished the copy of Debenture Certificate. Although assessee filed reply, but details of OCDs issued by the companies to other persons were also not filed. The assessee company has slated that during A.Y. 2004-05 and 2005-06, interest income was offered on non-performing assets, but evidence in this respect was not submitted the assessee. Assessee submitted that as a Non Banking Finance Company, it was a regular business to advance loans and investment in various companies. It claimed at said investment was in normal course of business, to earn interest income. Reply in respect of Non Banking Financial Company is factually incorrect because assessee has obtained NBFC certificate on 11/6/2007 and convertible debentures were issued much prior to F.Y. 2006-07. At the time of advancing loans to the various companies at that time, company was not an NBFC company, in my considered view, loans and advances given by (ie assessee) were investment because at that time company was not a NBFC. NBFC Certificate was obtained in June 2007. Therefore loans and advances given by the assessee is treated as capital asset in the hands of the assessee company and loss incurred on this account is also treated as capital loss. Assessee company is entitled to carry forward the capital loss as per the I.T. Act provisions, but claim as bad debt write off amounting to Rs.2.50 crores is hereby disallowed and added to the total income of the assessee company."

16. Being aggrieved by the above addition made by the Assessing officer, the assessee preferred appeal before the Ld. CIT(A). The Ld. CIT(A) after considering the submissions of the assessee referred back the matter to the Assessing officer directing him to allow the claim of the assessee but only after verifying the contention of the assessee that it was a NBFC at the time of acquisition of the debentures by it. The relevant part of the order of CIT(A) on this issue is reproduced as under:-

“Ground No.2 I s regarding disallowance of claim of amount written off of Rs.2.50 crores. The dispute on this issue is that the AO has not allowed the claim of write off of an amount of Rs.2.50 crores in respect of the debenture on the ground that it is a capital loss which can only be carried forward. On the other hand, it was the claim of the appellant before the AO as well as during appeal proceedings that the appellant was a NBFC company at the time of investment in the debentures in question. The AO has mainly made this addition on the ground that the NBFC certificate of the appellant company was issued to the appellant in June 2007, whereas the convertible debentures which have been written off during the year under consideration were issued prior to F.Y.2006-07. The appellant on the other hand has refuted this observation of the AO and claimed that the AO has misunderstood the NBFC certificate of June 2007 because it was only a renewal of old certificate and the appellant is an old NBFC company from the time when this investment in debenture was made. After considering the rival submission, I agree with the contention of the appellant in principle to the extent that since the business of the appellant company is financing, it being a NBFC company, it is entitled to

claim the write off of bad debt of investment such as convertible debentures after the same have become a nonperforming asset (NPA). Accordingly, the AO is directed to allow the claim of the appellant, but only after verifying contention of the appellant that it was NBFC at the time of acquisition of the debentures by the appellant.”

As discussed above, the assessee could not get relief on this issue from the Assessing officer in the order giving effect to the CIT(A) order as the assessee could not establish that NBFC certificate was granted prior to the issue of debentures. Now the assessee by way of these additional grounds of appeal has pleaded that the assessee was a finance / investment company since its inception. That even the interest on the overdue matured debentures was included in the taxable income for the assessment year 2004-05 and assessment year 2005-06 as its business income. Further, that even the deduction of irrecoverable interest on the old overdue matured debenture has already been allowed as bad debt written off by this Tribunal while computing the income from business / profession in assessment year 2007-08. The Ld. Counsel for the assessee has relied upon the following case laws in this respect:

1. 323 ITR 397 (sc) T.R.F. Ltd v CIT.
2. 155 ITR 152 (SC) CIT Vs. T. Veerabhadra Rao, K. Koteswara Rao & Co.
3. ITA No. 3191/Mum/2010 – Jindal South West holding Ltd v DCIT – assessee own case for assessment year 2007-08

17. We have gone through the order of the Tribunal dated 21.11.2012 passed in ITA No. 3191/Mum/2010 vide which the Tribunal has allowed

the claim of the assessee for write off of the interest on the aforesaid Originally Convertible Debentures (OCDs). The relevant part of the order dated 21.11.2012 of the Tribunal (supra) is reproduced s under:-

“6. The next ground of appeal is about disallowance of Bad Debts of amounting to Rs.44.57 lakhs out of Rs.55.05 lakhs. While framing the assessment the AO found that the assessee had debited expenses on account of reversal of income on non-performing the assets (NPA) of Rs.55.05 lakhs in the Profit and Loss Account. He directed the assessee to justify the said claim. After considering the submissions made by the assessee, he held that the appellant-company had not written off principal amount outstanding of such OCDs in the books of accounts, that the assessee had made a provision of doubtful debts, that the assessee had written off only the interest of the debt. He further held that as per the provision of Section 36(1)(vii) of the Act, bad debts could be allowed only when the debts had been written off as irrecoverable in the accounts of the assessee. Relying upon the order delivered by the Hon’ble Madras High Court in the case of Micromax Systems Pvt. Ltd. (277 ITR 409), he held that the assessee had not written off the debts in his books of accounts. Finally, he disallowed the entire amount of reversed interest (Rs.55.05 lakhs) and added it to the total income of the assessee.

7. Assessee preferred an appeal before the FAA. After considering the submissions of the assessee and the arguments of the AO, he held that the assessee had not stated certain facts correctly in the assessment proceedings, that OCDs were purchased by Jindal Vijaynagar Steel Limited in the year 1994, that OCDs were to be converted into shares or to be redeemed after the expiry of 7 years from the date of allotment, that these OCDs were allotted to the appellant on the merger of M/s Jindal Vijaynagar Steel Limited in financial year 2004-05, that these OCDs were matured in the year 2001, that these assets

were classified as mature debentures by the Jindal Vijaynagar Steel Limited, that the claim of the assessee about acquiring the OCDs in the year 2003-04, 2004-05 & 2005-06 was not correct. He held that the claim of the assessee about reversal of interest income of non-performing assets could not be accepted, that the guidelines issued by the RBI to NFBC were only disclosure guidelines, that the said guidelines did not override the provisions of the Act. Relying upon the order of the Hon'ble Supreme Court delivered in the case of M/s Southern Technologies Limited, in ITA 1337/2003, he held that the assessee was not entitled to deduction on account of provisions of NPA, even though the provisions was made as per the RBI guidelines. He further held that there was no provisions under the Act to allow deduction on account of reversal of income shown in the earlier years unless there was crystallization of liability to return income. He held that as far as interest amounting to Rs.7.47 lakhs was concerned, it was allowable expenditure for the year under consideration. He reduced the disallowance by Rs.7.47 lakhs. Assessee-company has filed the appeal against the disallowance made by the FAA, whereas AO has challenged the relief given by him i.e. Rs.7.47 lakhs.

8. Before us, AR submitted that income from the OCDs were shown in earlier years, that department had accepted the entries about the interest income while passing the assessment orders for those years, that as per the guidelines of the RBI, interest amounting to Rs.55.05 lakhs was reversed in the year under consideration, that as per the provisions of Section 36 (1) (vii) debt or part of it written off in the books of account was allowable. He relied upon the cases of Industrial Financial Corporation of India Limited (201 Taxman 75) and TED Co. Investment and Financial Services (P) Ltd. (330ITR440) delivered by Hon'ble Delhi High Court. He also referred to the page Nos. 31 to 38 and 39 to 41 of the paper book. DR

submitted that reversal of interest was not allowable as per the provisions of the Act. He relied upon the order of the FAA. In his rejoinder AR submitted that the company was declared NBFC only in September, 2005, that interest on NPA was written off in the books of accounts, that conditions for writing off the interest were fulfilled, that all the necessary facts of the case were submitted before AO during the assessment proceedings.

9. We have heard the rival submissions and perused the material before us. The undisputed facts of the case emerging from the file can be summarised as under :-

i).Pursuant to a Scheme of Arrangement and Amalgamation between Jindal Iron & Steel Ltd (JISL) and Jindal Vijayanagar Steel Ltd (JVSL) Investment Portfolio consisting of Investments and Loans & Advances had been transferred to the Company and the Steel business was merged in Jindal Vijayanagar Steel Ltd with effect from 1stApril, 2003.

ii).Transferred investments included 16% Optionally Convertible Debentures (OCD) amounting to Rs,2,50,00,000/- The said OCDs had matured in 2001 and were classified as Matured Debentures under the head 'Loans and Advances'.

iii).Interest on the aforesaid OCDs for FY 2003-04 and for FY 2004-05 amounting to Rs.23, 85,000/- and Rs.23,72,700/- respectively was duly provided for by the appellant company and the same was offered for taxation in relevant AYs.

iv).On 30-06-2005, an amount of Rs.7,47,944/-, accrued as interest on the said OCDs for the period from 01-04-2005 to 30-06-2005, was provided in the books of

accounts-thereby taking the total interest accrued to Rs.55,05,644/-.

v).Assessee company was declared a non-banking financial institute in the year under consideration;

vi).During AY 2005-06,the appellant had written off the aforesaid interest dues, aggregating to Rs.55,05,644/- ,and debited the same to the Profit and Loss Account.

vii).AO disallowed the said amount as he was of the opinion that the assessee has not written off the entire debt outstanding and only part of the debt was written off.

If the above mentioned facts are considered along with the provisions of Section 36(1)(vii) of the Act, then in our opinion, disallowance made by the AO and confirmed by the FAA cannot be upheld.

9.1. There is no doubt that above-referred amount has actually been written off as irrecoverable in the accounts of the appellant company for the relevant Assessment Year and amounts were offered as Interest income for tax during F.Y. 2003-04 to 2005-06 on accrual basis. In these circumstances, in our opinion, the appellant has fulfilled all the requirements of clause (vii) of sub-section (1) of section 36 of the Act. In a recent judgment of T.R.F. Limited (323 ITR 397), the Hon'ble Supreme Court has held that for Bad debts to be claimed u/s 36(1)(vii), it is not necessary for the assessee should establish that the debt, in fact, has become irrecoverable. It is enough if the bad debt were written off as irrecoverable in the accounts of the assessee (323ITR397). We find that assessee has written off the accrued interest amounts in his book of accounts and his action was in accordance with the guidelines issued by the RBI with regard to NPAs. Hence, reversing the order of the FAA, we decide ground No.2 in favour of the assessee."

18. A perusal of the above order which sums up the facts relevant to the aforesaid issue revealed that OCDs were purchased by Jindal Vijaynagar Steel Ltd (JVSL). These OCDs matured in the year 2001 and these assets were classified as Matured Debentures by JVSL and it was part of its OCDs. Pursuant to the Scheme of Arrangement and Amalgamation between Jindal Iron & Steel Ltd (JIST) and JVSL, the investment division consisting of investments and loans & advances was transferred to the assessee company w.e.f. 1.4.2003, which included the OCDs in question amounting to Rs. 2.50 cores. In view of the long overdue status of these OCDs, the assessee company made provisions for these OCDs in financial year 2005-06 and financial year 2006-07 being non-performing assets (NPA). During the year under consideration, the assessee company has written off these NPAs in the books and claimed as bad debts written off in the return of income. The interest on the aforesaid OCDs for financial year 2003-04 and financial year 2004-05 was provided for on accrual basis and the same were offered for taxation during the relevant assessment year. The assessee company was declared Non-banking Financial Institution in the assessment year 2006-07. The assessee company had written off all the aforesaid interest dues as irrecoverable and debited the same to the profit and loss account during the assessment year 2006-07. The Tribunal observed that the assessee had fulfilled all the requirements of Clause (vii) of sub clause (1) of section 36 of the Act. The Tribunal observed that since the assessee had offered the said amount of interest as income which was subsequently written off, because of its non-recovery and that the same was in accordance with the prescribed guidelines. Now the question before

us is that, even if, the said interest has been allowed to be written off, whether the said OCDs are allowable for deduction as bad debts written off. The relevant clause (vii) of section 36(1) of the Act which deals with the bad debts is reproduced as under:-

“36 (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28-

(i)

(vii) subject to the provisions of sub-section (2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year :

Provided that where the amount of such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof becomes irrecoverable or of an earlier previous year on the basis of income computation and disclosure standards notified under sub-section (2) of section 145 without recording the same in the accounts, then, such debt or part thereof shall be allowed in the previous year in which such debt or part thereof becomes irrecoverable and it shall be deemed that such debt or part thereof has been written off as irrecoverable in the accounts for the purposes of this clause.

Provided

(2) In making any deduction for a bad debt or part thereof, the following provisions shall apply-

(i) no such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year, or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee ;

(ii)

19. In our view, the claim of the assessee regarding the aforesaid OCDs claimed as ‘bad debts written off’ is hit by clause (i) of sub section (2) of

section 36 of the Act. The aforesaid OCDs have not been taken into account in computing the income of the assessee in any previous year. The said OCDs were part of investment portfolio of JVSL, the status on merger of the said OCDs is required to be given the same treatment in the hands of the successor. Since the aforesaid OCDs were part of the investments of the predecessor holder and, hence, it cannot be said that the same were business assets of the predecessor holder or that the said OCDs has been taken into account in computing the income of the predecessor holder of any previous year. Hence, it cannot be said that the assessee has acquired any right of the predecessor company to claim deduction on account of bad debts written off in respect of such write off of OCDs, because such rights were not available even to predecessor holder of these OCDs. Nor the said OCDs represents money lent in the ordinary course of business of money lending carried on by the assessee. Admittedly, the assessee was not a NBFC at the time of acquiring the said OCDs, hence, it cannot be said that the OCDs were part of the money lent in the ordinary course of business, though later on the assessee company had offered interest on such OCDs as its business income. The said OCDs neither represent the debt or part thereof which has been taken into account in computing the income of the assessee in any earlier previous year nor the same represents the money lent in the ordinary course of business of money lending carried on by the assessee.

Now coming to the other case laws relied upon by the Ld. Counsel for the assessee on this issue, there is no question of any debate on the proposition of law laid down by the Hon'ble Supreme Court in the case T.R.F. Ltd.(supra) that assessee has to establish that debt was written off and it is

not necessary for the assessee to establish that the debt in fact has become irrecoverable. However, the question before us as to the above claim of write off of OCDs qualify to be 'bad debts written off' to get relief u/s section 36 of the Act, which, in view of discussion made above, is answered in negative. In the case of "CIT Vs. T. Veerabhadra Rao, K. Koteswara Rao & Co." the business was succeeded as a whole along with assets and liabilities of the predecessor firm by the successor assessee including the debts due. It was under these facts that the such debts written off by the successor company were held allowable by the Hon'ble Supreme Court. However in the case in hand the OCDs were part of the investment portfolio of the Predecessor Company and not business debt. The same, therefore, cannot be held to be debts due in the hands of the successor / assessee. This issue is accordingly decided against the assessee.

20. **Ground No.5-** This is altogether a new ground taken by the assessee. The assessee though this ground has pleaded that even otherwise the write off of irrecoverable principle amount of overdue debentures was allowable as deduction to the assessee in normal course of business of finance / investment activity. Though it has come out from the facts on the file that originally the OCDs were held by the JVSL, a part of its investment portfolio, though being a capital asset, however, the contention of the assessee is that it is from the beginning from an investment company and the said asset was treated as a business asset by the company. This issue, in our view, requires reexamination at the hands of the Assessing officer.

21. We, therefore, restore this issue to the file of the Assessing officer to consider this contention of the assessee as to whether the amount of said OCDs can be treated as business loss to the assessee being loss of business asset. The Assessing officer is directed to re-adjudicate this issue after giving proper opportunity to the assessee of hearing and furnish necessary evidence in this regard and then decide the same in accordance with law.

22. In the result, the appeal of the assessee is treated as partly allowed.

Order pronounced in the Open Court on 31.08.2017

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER
Dated : 31st August, 2017
Rkk

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT*
4. *The CIT(A)*
5. *The DR*

