

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.7177/M/2013
Assessment Year: 2009-10**

M/s. Crest Logistics and Engineers Private Limited, (Erstwhile REL Utility Engineers Ltd. Formerly known as REL Utility Engineers Ltd. Formerly known as Sonata Investments Ltd.), Devidas Lane, Near MTNL, Off SVP Road, Borivali (W) – 400 103 PAN: AACCR 7266A	Vs.	Addl. CIT-10(1), [New Jurisdiction Addl. CIT 14(3)(1)] Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

**ITA No.6931/M/2013
Assessment Year: 2009-10**

Dy. Commissioner of Income Tax-14(1)(2), Room No.470, 4 th Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai - 400020	Vs.	M/s. Crest Logistic & Engineering Ltd., (Formerly known as Sonata Investments Ltd.) 307, Chartered House, 297/299, dr. Cawasji Hormosji Street, New Marine Lines, Mumbai – 400 002 PAN: AACCR 7266A
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Jitendra Sanghvi, A.R.
Revenue by : Shri B. Pruseth, D.R.

Date of Hearing : 05.06.2017
Date of Pronouncement : 14.07.2017

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 24.09.2013 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. The assessee originally has taken only one substantive ground. Later on, the assessee moved an application for admission of additional grounds of appeal. Arguments were heard in respect of original ground No.1 of the appeal as well as on the issue of admission of application for taking additional grounds of appeal and also on the merits of additional grounds of appeal. First we take up the ground No.1 of the appeal.

Ground No.1

Ground No.1 of the appeal read as under:

“1. a) The learned Commissioner of Income Tax (Appeals) [hereinafter referred to as CIT(A) erred in disallowing the claim for loss on assignment of loans amounting to Rs.69,53,99,282/-)”

5. The assessee, in this ground, has agitated the action of the lower authorities in disallowing the claim for loss on assignment of loans amounting to Rs.69,53,99,282/-. The brief facts relevant to the issue under consideration are that the assessee company is engaged in the business of investment and non banking financial activities. The assessee during the year had granted loans and earned interest thereupon. During the year, the assessee vide agreement dated 23.02.2007 purchased from another company “M/s Reliance Capital Ltd.” an outstanding loan standing against one “Parvati Trading and Finance Co. Pvt. Ltd.”. The loan originally granted by ‘Reliance Capital’ to ‘Parvati trading’ from time to time was Rs.64,38,00,000/- and along with interest thereon ‘Reliance Capital’ had to receive an amount of Rs.69,53,99,282/- as on 31.12.2006. This loan of Rs.69,53,99,282/- was assigned by ‘Reliance Capital’ to the assessee. The assessee also had earlier given loan of Rs.6,66,00,000/- to ‘Parvati Trading’. Thus the total outstanding amount receivable by the assessee from ‘Parvati Trading and Finance Co. Pvt. Ltd’. was Rs.76,19,99,282/-. On account of non repayment of the interest & loan granted to ‘Parvati Trading and Finance Co. Pvt. Ltd’, the assessee assigned the loan to ‘Pearl Housing

Finance (India) Ltd'. as per the letter of assignment dated 31.03.2009 for an amount of Rs.1,00,00,000/-. Thus the loss in respect of the above loan assignment transaction amounting to Rs.75,19,99,282/- was debited to profit and loss account and was claimed as business loss.

The AO disallowed the said loans treating it as capital in nature observing that the same represents the loss of principal amount of loan and does not constitute write off of income by way of interest.

6. In appeal, the Ld. CIT(A) confirmed the above observations of the AO observing as under:

"3.3. I have considered the facts and circumstances of the case. Reliance Capital has lent a loan of Rs.64,38,00,000/- to Parvati Trading and Finance Co. P. Ltd. and alongwith interest the amount comes to Rs.69,53,99,282/-. This loan was assigned to the appellant on 23.02.2007. The appellant had earlier given loan of Rs.6,66,00,000/- to Parvati Trading and Finance Co. Pvt. Ltd.. Thus the total outstanding amount receivable from Parvati Trading and Finance Co. Pvt. Ltd. was Rs.76,19,99,282/-. On account of non repayment of the loan granted to Parvati Trading and Finance Co. Pvt. Ltd., the appellant assigned the loan to Pearl Housing Finance (India) Ltd. for an amount of Rs.1,00,00,000/- as per assignment letter dated 31.03.2009. The rest of the amount i.e. Rs.75,19,99,282/- is written off as loss. The A.O. disallowed this loss treating it as capital in nature.

If we examine the above two transactions which were written off by the appellant and was assigned by the appellant to Pearl Housing Finance (India) Ltd. for Rs.1,00,00,000/-, in one transaction the appellant had purchased loan from Reliance Capital Ltd. of Rs.69,53,99,282/- on 23.02.2007. On examination of details it is clear that Parvati Trading and Finance Co. Pvt. Ltd. was not even paying interest and principle to Reliance Capital. This loan was shifted by Reliance Capital to its sister concern for the same amount which was due in their books. Thus shifting of the loan clearly shows that appellant had no chance of receiving any interest from that loan as Parvati Trading and Finance Co. Pvt. Ltd. is not paying single paisa as interest to Reliance Capital Ltd. Appellant had purchased this loan only to recover the capital as there is no revenue receiving potential in the case of Parvati Trading and Finance Co. Pvt. Ltd. The aim of the appellant is to recover the capital. This loan which was purchased by the appellant is only for the purpose of capital purposes and any loss incurred by the appellant is capital loss. Hence, A.Os treating this loan as capital in nature is correct and disallowance of Rs.69,53,99,282/- is upheld.

The appellant had relied on the case laws of Kotak Securities Ltd. v Addl. CIT 318 ITR (AT) 268, CIT v D B (India) Securities 318 ITR 26 (Delhi), Madhur

Shares & Stock (P.) Ltd. v ACIT 41 SOT 373 (Ahd). On examination of the facts of the above case laws, they are all in the case of only first assignment of loan i.e. appellant assigned the loan to some other purchases but in our case the loan was shifted to appellant by Reliance Capital this in turn was assigned to Pearl Housing Finance (India) Ltd. Hence, the facts are totally different and the issue involved is distinguishable.

Regarding second transaction where the appellant had extended Rs.6,66,00,000/- loan to Parvati Trading and Finance Co. Pvt. Ltd. which was assigned by the appellant to Pearl Housing Finance (India) Ltd. For this amount deduction can be allowed following the above mentioned three decisions.

Hence, A.O's addition is restricted to Rs.69,53,99,282/-. These grounds of appeal are **partly allowed.**"

7. Being aggrieved by the above confirmation of disallowance by the Ld. CIT(A) of loss on loan assignment, the assessee has come in appeal before us.

8. We have heard the rival contentions and have also gone through the record. Admittedly, the loan advanced by 'Reliance Capital' to 'Parvati Trading and Finance Co. Pvt. Ltd.' had been assigned to the assessee on 23.02.07 which was two years back, the genuineness of the said transaction has not been doubted by the AO. Moreover, it will not be proper to look into the genuineness or otherwise of the said transaction during the subsequent year. Even, it is also an admitted fact that the assessee company had already been running into losses whereas as per the version of Ld. D.R., himself, the assigner company 'Reliance Capital' has a good financial status. The loan was assigned at its actual cost without any loss by the 'Reliance Capital' to the assessee company. Hence, under the circumstances there was no attempt on the part of the assigner company to reduce its tax liability. Thus the said assignment transaction between assessee and Reliance Capital, can not be said to be a colourable device at this stage.

Now coming to the assignment of loan by the assessee company to 'Pearl Housing Finance (India) Ltd.' The same has been assigned for an amount of Rs.1,00,00,000/- and the rest of the amount of Rs.75,19,99,282/- has been written off as loss. Admittedly, the assessee is a finance company and is in the

operation of lending activity. It is also an admitted fact that the assessee could not recover the said amount from 'Parvati Trading and Finance Co. Pvt. Ltd.' and hence has assigned the said loan at a loss to 'Pearl Housing Finance (India) Ltd.' The assessee got assignment of loan from Reliance Capital in the ordinary course of business and hence, the assessee become lender of the money advanced to 'Parvati Trading and Finance Co. Pvt. Ltd.'. The money lent, thus, has to be treated as lent by the assessee in the ordinary course of money lending activity carried out by the assessee. Since the amount was not recoverable, the loan was transferred/assigned to the third party at a loss and the nature and character of such a loss is that of a business loss. Even otherwise, said loss can also be said to be of the nature of bad debt written off. Such bad debt written off of the 'money lent' in ordinary course of business of 'money lending' is allowable as deduction under section 36(1)(viii) read with section 36(2)(i) of the Income Tax Act. Under the circumstances, the assessee being a NBFC (Non-banking financial company), the loss written off is allowable as a revenue expenditure being in the nature of bad debts written off. It cannot be said to be a capital loss. Even otherwise, the observation of the Ld. CIT(A) that the assessee had purchased this loan only to recover the capital has no basis or relevance at all so far as the issue under consideration is concerned. Even the Ld. CIT(A) has tried to distinguish the various case laws relied upon by the assessee observing that in those cases there was only first assignment of loan. However, in the case of the assessee there was second assignment of loan. In our view, this cannot be held to be a distinguishable fact for the application of law. If the assignment is in the regular course of business, it is immaterial for the purpose of application of law as whether the assignment was for the first time or second time. We, therefore, do not find any justification on the part of lower authorities in disallowing the claim of the assessee on this issue. The orders of the lower authorities on this issue are set aside and the AO is directed to allow the loss as revenue loss to the assessee.

9. Now coming to the additional grounds of appeal.

The assessee has moved an application for admission of additional grounds of appeal. The additional grounds sought to be pressed by the assessee read as under:

“1. Without prejudice to Ground No. 1 in the Original Memo of Appeal

On the facts and circumstances of the case, the Learned CIT(A) erred in confirming the action of the learned Additional Commissioner of Income Tax, Circle -10(1), Mumbai ("Assessing officer") in disallowing and accepting the claim of business loss of Rs.69,53,99,282/- on assignment of loan and holding the same as Capital Loss and thereafter allowing not short term capital loss on assignment of said loan while computing the income under the head of "Capital Gain". The Appellant submits that the Assessing Officer be directed to allow the short term capital loss of Rs.69,53,99,282/- on assignment of loan while computing the income under the head "Capital Gain".

2. Disallowance u/s.14A

On the facts and in the circumstances of the case and in law, the Learned Assessing Officer erred in not restricting the disallowance u/s. 14A of the Act r.w. Rule 8D of the Rules to the extent of exempt income of Rs. 15,27,01,737/- earned by the Appellant during the year.

The Appellant submits that the Assessing Officer be directed to restrict the disallowance u/s. 14A of the Act to the extent of exempt income of Rs.15,27,01,737/- earned by the Appellant during the year as against the disallowance of Rs. 140,66,66,996/- made in the Assessment order.”

10. A perusal of the above grounds of appeal reveals that no new facts have to be established for the adjudication of the above grounds, rather the assessee has sought to take these legal grounds on the basis of the relevant facts which are already on the file.

Additional ground No.1, sought to be pressed by the assessee, is in the shape of an alternate ground. This ground of appeal, in our view, is not an additional ground of appeal, rather the assessee just has prayed for consequential benefits of claim of capital loss under the relevant head “Capital gains” even if, the disallowance made by the lower authorities is confirmed as capital loss; which obviously the AO otherwise is bound to give.

However, as discussed above, we have already allowed the main claim of the assessee for treating the loss on account of assignment of loan as 'business loss', hence this additional ground taken by the assessee, even otherwise, has become infructuous and does not require any adjudication.

The second additional ground sought to be raised by the assessee is regarding the disallowance under section 14A of the Act. 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. 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 this 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. Even it has been held by the co-ordinate bench of the Tribunal in the case of "Shri Chandrashekhar Bahirwani" ITA No.7810/M/2010 and 6599/M/2011 decided on 17.06.2015 that the additional grounds can be adjudicated even in the circumstances, where, if such grounds are allowed, the resultant income assessed will be less than the returned income. 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. Even in a recent decision of this Tribunal in the case of “M/s. Distributors (Bombay) Pvt. Ltd.” in ITA No.3069/M/2016 decided on 09.06.2017 an identical issue of raising of additional ground praying for restricting the disallowance under section 14A up to the extent of exempt income has been raised for the first time by the assessee before this Tribunal and the Tribunal while adjudicating the issue has observed as under:

“7. We have considered the rival contentions. It is to be noted here that the disallowance *suo moto* offered by the assessee at Rs.7.40 lakhs is much more than the total exempt income earned by the assessee of Rs.4.38 lakhs. It is further to be noted that the special Bench decision of the Tribunal in the case of “Chem Invest Ltd.” (supra) has been reversed by the Hon’ble Delhi High Court. The Hon’ble Delhi High Court in the case of “Chem Investments vs. CIT” (2015) 61 taxman.com 118 has held that section 14A will not apply if no exempt income is received or receivable during the relevant previous year and that the expression ‘does not form part of the total income’, in section 14A of the Act envisages that there should be an actual receipt of income which is not included in the total income during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. Almost identical issue has

been taken by the Hon'ble Allahabad High Court in the case of "CIT Kanpur vs. M/s. Shivam Motors Pvt. Ltd." in ITA No.88 of 2014 vide order dated 05.05.2014; by the Hon'ble Gujarat High Court in the case of "CIT vs. Corrtecth Energy Pvt. Ltd." in ITA No.239 of 2014 vide order dated 24.03.2014 and by the Hon'ble Bombay High Court in the case of "CIT vs. M/s. Delite Enterprises" in ITA No.110 of 2009 vide order dated 26.02.09. Further, the Hon'ble Delhi High Court in the case of Joint Investment Private Limited reported in 372 ITR 694 has held that section 14 of the Act or rule 8D cannot be interpreted so as to mean that the entire tax exempt income of the assessee is to be disallowed. That the window for disallowance is indicated in Section 14A, and is only to the extent of disallowing expenditure incurred by the assessee in relation to the tax exempt income. This proportion or portion of the tax exempt income surely cannot swallow the entire amount of tax exempt income.

8. Admittedly, the assessee before the lower authorities has not claimed that the disallowance be restricted up to the extent of tax exempt income earned by the assessee, that was because the benefit of the legal propositions laid down in the above stated case laws was not available to the assessee at that time. The assessee has raised the above stated legal plea during the course of arguments 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 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. The assessee can not be put to a disadvantageous position because of a mere technicality, when there is no bar to raise a pure legal issue at any stage of litigation. Even otherwise, this tribunal is supposed to apply the law to an issue under consideration as it has emerged in light of various judicial decisions as referred to above. The disallowance u/s 14A of the Act is, accordingly, restricted to the extent of exempt income earned by the assessee."

12. The above findings of the tribunal in the above case are squarely applicable to the case of the assessee also. At this stage, we may point out that the Ld. D.R. has relied upon the following decisions to stress the point that even though no exempt income is earned by the assessee, still the disallowance under section 14A has to be computed as per the provisions of section 14A read with rule 8D of the Income Tax Rules.

1. Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT [(2017) 81 Taxmann.com 111 (SC)]
2. Distributors Baroda Pvt. Ltd. vs. Union of India and others (1985) 22 taxman 0049

3. CIT vs. Walfort Share & Stock Brokers (P) Ltd. (2010) 192 taxman 0211.

13. We have gone through the above case laws relied upon by the Ld. D.R. So far as the decision of the Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT (supra) is concerned, the issue before the Hon'ble Supreme Court was that as to whether the provisions of section 14A would apply to dividend income on which tax is payable under section 115-O. The Hon'ble Supreme Court, after analyzing the provisions of the section 14A read with section 115-O, has held that section 14A of the Act would apply to dividend income on which tax is payable under section 115-O of the Act. Further, in the case of M/s. Distributors Baroda Pvt. Ltd. (supra) the issue before the Hon'ble Supreme Court was as to whether the deduction under section 80M of the Income Tax Act, 1961 is to be allowed in respect of gross dividend income received by the assessee or is to be restricted to the net dividend income received by the assessee. The Hon'ble Supreme Court concluded that deduction under section 80M is to be calculated with reference to the amount of dividend computed in accordance with the provisions of the Act and forming part of the gross total income and not with reference to the full amount of dividend received by the assessee. In the case of Walfort Share & Stock Brokers (P) Ltd. (supra) the issue before the Hon'ble Supreme Court was as to whether the loss on account of dividend stripping can be disallowed under section 14A of the Act. The Hon'ble Supreme Court has held that before insertion of section 94(7) vide Finance Act, 2001 w.e.f. 01.04.2002 the claim of loss on account of dividend stripping could not be disallowed. However, after 01.04.02, such losses to the extent of dividend received by the assessee could be ignored by the AO in view of section 94(7).

However, it may be pointed out here that in none of the above case laws relied upon by the Ld. D.R. the issue as to whether the disallowance of expenditure under section 14A can exceed than the total exempt income earned by the

assessee has been considered or adjudicated. The issue as on date is squarely covered by the various decisions of different Hon'ble High Courts including that of the Hon'ble Delhi High Court in the case of "Chem Investments vs. CIT" (supra), Hon'ble Allahabad High Court in the case of "CIT Kanpur vs. M/s. Shivam Motors Pvt. Ltd." (Supra), Hon'ble Gujarat High Court in the case of "CIT vs. Corrtecth Energy Pvt. Ltd." (supra), of the Hon'ble Delhi High Court in the case of "Joint Investment Private Limited"(supra) and that of the Jurisdictional Hon'ble Bombay High Court in the case of "CIT vs. M/s. Delite Enterprises" (supra), which holds binding precedent upon this Tribunal.

In view of the above discussion and in the light of the various case laws as discussed above, the disallowance under section 14A for the year under consideration is ordered to be restricted up to the extent of exempt income earned by the assessee.

14. In view of our observations made above, the appeal of the assessee is treated as allowed.

ITA No.6931/M/2013 (Revenue's appeal)

The Revenue in its appeal has taken the following grounds of appeal:

"1.1 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in treating the profit on sale of mutual fund amounting to Rs.75,06,93,279/- under the head 'capital gains' instead of 'profits and gains of business or profession.'

1.2 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the claim of the assessee on treatment of profits on sale of mutual funds being 'capital gains' instead of 'business income' without appreciating the fact that the assessee cannot make claim for deduction other than by filing a revised return of income.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of loan of Rs.6,66,00,000/- extended to Parvati Trading and Financial Co. Pvt. Ltd., whereas the amount represents the loss of principal amount of loan and does not include write off of income by way of interest.

3. The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal.
4. The appellant prays that the order of CIT(A) on the above ground be set aside and that of the assessing officer be restored.”

Ground Nos.1 & 2

15. The issue raised in ground Nos.1 & 2 is as to whether the profit on sale of mutual fund is to be assessed under the head “Capital gains” or as “Business income of the assessee” and in its return of income treated the said profit as its business income. However, during the assessment proceedings, the assessee claimed that the investment in mutual funds was not relating to the business activity of the assessee; That the assessee was maintaining two portfolios i.e. trading as well as investment; That the mutual funds were in relation to the investment activity of the assessee. The AO, however, rejected the claim of the assessee observing that the assessee could have put up its claim by way of revised return only. In the appellate proceedings before the Ld. CIT(A), the Ld. CIT(A) relied upon the decision of the Hon’ble Supreme Court in the case of “National Thermal Power Co. Ltd. vs. CIT” (supra) and “Jute Corporation of India Ltd.” 187 ITR 688 and held that if the claim is a legal claim then no verification of facts is required, so the claim can be allowed during the appellate proceedings. He, accordingly, verified the facts on the file and allowed the claim of the assessee in this respect and directed the AO to assess the profits from mutual funds under the head “Capital gains”. The relevant part of the finding of the Ld. CIT(A) is reproduced as under:

“2.3 I have considered the facts and circumstances of the case. The appellant has invested in following mutual funds and profits & gains of mutual funds are as under:

Name		Short Term/Long Term	Date purchase	of	Date of sale
B. Reliance Liquidity fund – Growth Option	1,90,13,279	Short Term	--		--

B(i)	Reliance Fixed Horizon Fund Series 4 – Institutional Growth Plan	55,06,80,000	Long Term	19/11/2007	20/11/2008
(ii)	Reliance Fixed Horizon Fund Series 6 – Institutional Growth Plan	18,10,00,000	Long Term	23/11/2007	20/01/2009

While filing the original return appellant offered Rs.75,06,93,279/- as income in profit & gains of business or profession. Later during assessment proceedings appellant vide letter claimed that this has to be assessed under capital gains. A.O. rejected appellant's claim following the case of Goetze India Ltd.

Now the issue has come into consideration that whether appellant's claim can be considered during appellate proceedings. This issue has come into consideration of Supreme Court in the case of National Thermal Power Co. Ltd. v. CIT 229 ITR 383 and Jute Corporation India Ltd. 187 ITR 688 where it was held that if the claim was legal and no verification of facts is required, the claim can be allowed during the appellate proceedings. Following the above decision, I am considering the claim of the appellant. On examination of the investment of appellant, appellant had invested in Reliance Liquidity fund – Growth Option and earned profit of Rs.1,90,13,279/-. The time elapsed for earning of the profit is less than 365 days, hence, this amount can be considered as short term capital gain. With regard to Reliance Fixed Horizon Fund Series 4 and Series 6 – Institutional Growth Plan, appellant had earned profit of Rs.73,16,80,000/- and time invested in this two issues is above 365 days and there were no multiple transactions. All the funds were purchased at a time and sold after the end of the year. Hence, appellant is eligible to treat this profit as long term capital gain. The AO is directed to assess these two items under long term capital gain and other item in short term capital gains. These grounds of appeal are allowed."

16. We do not find any infirmity in the order of the Ld. CIT(A) as to the application of law as well as to the factual finding arrived after considering the evidences on the file. Even we have already discussed and held in the light of various decisions of the higher courts that the additional legal claim can be raised at the appellate stage. We, therefore, do not find any merit in ground Nos.1 & 2 of the Revenue's appeal and the same are accordingly dismissed.

Ground No.3

17. In ground No.3, the Revenue has agitated the action of the Ld. CIT(A) in deleting the addition of loan of Rs.6,66,00,000/- extended to Pruthvi Trading and Financial Co. Ltd. This issue has been thoroughly discussed by us while adjudicating ground No.1 of the assessee's appeal. The Ld. CIT(A) had allowed the losses on assignment in respect of the loans that were originally advanced by the assessee itself to Pruthvi Trading and Financial Co. Ltd. He, however, has rejected the losses incurred which was in relation to the loans assigned to the assessee by Reliance Capital (supra) and that were further assigned by the assessee to Pearl Housing Finance (India) Ltd. Since we have already held that the loss on assignment of loans has to be treated as business loss, hence, we do not find any infirmity in the order of the Ld. CIT(A) in allowing the claim of the assessee regarding the loss on assignment of loan. This ground of Revenue's appeal is accordingly dismissed.

18. In the result, the appeal of the assessee is allowed and the appeal of the Revenue is dismissed.

Order pronounced in the open court on 14.07.2017.

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

**Sd/-
(Sanjay Garg)
JUDICIAL MEMBER**

Mumbai, Dated: 14.07.2017.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.

		Date	Initial	
WHETHER DICTATION PAD ENCLOSED WITH THE FILE : Yes/No (as the order has been typed with the help of manuscript)				
1.	Draft dictated on	09.06.17		Sr.PS
2.	Draft placed before author			Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS
6.	Date of pronouncement			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the Head Clerk			
9.	Date of dispatch of Order			