

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI
BEFORE SHRI RAJENDRA, AM AND SHRI RAVISH SOOD, JM**

ITA Nos. 7543, 7544, 7515 and 7546/Mum/2016

(निर्धारण वर्ष / Assessment Years:2009-10, 2011-12, 2013-14 & 2014-15)

M/s Anand Rathi Capital Advisors P. Ltd, 47A, 3 rd Floor, Plot No. 308 Hanuman Bldg, Perin Nariman Street, Fort, Mumbai – 400 001.	बनाम/ Vs.	DCIT, Central Circle-5(1) R. No. 1928, 19 th Floor, Air India Building, Nariman Point, Mumbai-400 021
स्थायी लेखा सं./जीआइआर सं./PAN No. AAACR2791N		
(अपीलार्थी / Assessee)	:	(प्रत्यर्थी / Revenue)

ITA Nos. 7472 to 7474/Mum/2016

(निर्धारण वर्ष / Assessment Years:2011-12, 2013-14, & 2014-15)

DCIT, Central Circle-5(1) R. No. 1928, 19 th Floor, Air India Building, Nariman Point, Mumbai-400 021.	बनाम/ Vs.	M/s Anand Rathi Capital Advisors P. Ltd, 47A, 3 rd Floor, Plot No. 308 Hanuman Bldg, Perin Nariman Street, Fort, Mumbai – 400 001.
स्थायी लेखा सं./जीआइआर सं./PAN No. AAACR2791N		
(अपीलार्थी / Revenue)	:	(प्रत्यर्थी / Assessee)

अपीलार्थी की ओर से / Assessee by	:	Shri Anuj Kisnadwala, A.R
प्रत्यर्थी की ओर से / Revenue by	:	Shri Abhijit Patankar, D.R

सुनवाई की तारीख / Date of Hearing	:	08.11.2017
घोषणा की तारीख /	:	03.01.2018

Date of Pronouncement		
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आदेश / O R D E R

PER RAVISH SOOD, JUDICIAL MEMBER:

The present set of cross appeals filed by the assessee and the revenue for A.Ys 2009-10, 2011-12, 2013-14 and 2014-15 (except for A.Y. 2009-10 where only the assessee is in appeal) are directed against the respective orders passed by the CIT(A)-53, Mumbai, dated. 31.08.2016, which arises from the orders passed by the A.O for A.Ys 2009-10, 2011-12 and 2013-13 under Sec. 153A r.w.s 143(3) of the Income-tax act, 1961 (for short 'Act'), dated. 28.03.2016 AND for A.Y. 2014-15 under Sec. 143(3) of the Act, dated. 28.03.2016. That as common issues are involved in these appeals, therefore, these are being taken up and disposed by way of a consolidate order. We shall first take up the appeal of the assessee for A.Y 2009-10, wherein the order of the CIT(A) had been assailed before us on the following grounds of appeal:

ITA No. 7543/Mum/2016 AY: 2009-10

“Grounds of appeal against the order dated 31.08.2016 passed by the learned Commissioner of Income-tax (appeals)-53, Mumbai.

Following grounds of appeal are without prejudice to each other:

- 1. The learned CIT(A) ought to have held that disallowance made by the Assessing Officer u/s. 14A of the Act, while passing assessment order u/s. 153A r.w.s. 143(3) of the Act, is unsustainable and bad in law.*
- 2. The learned CIT(A) has erred in law and on facts in upholding the disallowance made by the Assessing Officer u/s. 14A of the Act read with Rule 8D of I.T. Rules, 1962.*
- 3. The learned CIT(A) has erred, after giving clear finding of fact that the Assessing Officer has not given cogent reasons for rejecting the claim of the appellant that no disallowance is called for u/s.14A of the Act, in holding that such omission is a procedural lapse on the part of the Assessing Officer.*

4. *The learned CIT(A) has erred in holding that, in the facts and circumstances of the case, satisfaction of the Assessing Officer is deemed to have arrived at through the exercise of examination of accounts.*
5. *The appellant craves leave to add to, amend, alter or delete all or any of the foregoing grounds of appeal.*

2. Briefly stated, the facts of the case are that the assessee company is engaged in the business of investment and trading in shares, securities and commodities. Search & seizure proceedings under Sec. 132(1) of the Act were conducted on 24.09.2013 in the case of Anand Rathi group and its associate concerns. The assessee filed its return of income for the year under consideration under Sec. 153A on 24.04.2015, declaring a loss of Rs. 89,37,001/-.

3. The assessee had during the year under consideration earned dividend income of Rs. 3,04,736/- and LTCG of Rs. 48,20,436/- which were claimed as exempt from tax. The A.O during the course of the assessment proceedings while deliberating on the claim of the assessee that as no expenditure was incurred for earning of exempt income during the year under consideration, therefore, no disallowance under Sec. 14A r.w Rule 8D was called for in its hands, was not satisfied with the correctness of the assessee's claim. The A.O observed that the assessee could not substantiate its claim that the borrowed funds were not utilized for the purpose of investing in the investments yielding exempt income. The A.O further was of the view that the expenditure which was liable to be disallowed under Sec. 14A(1) took within its sweep all form of expenditure, regardless of whether they were fixed, variable, direct, indirect, administrative, managerial or financial and after the insertion of Rule 8D, it was no longer open to the A.O to work out the disallowance under Sec. 14A as per his discretion. The A.O reworked the disallowance under Sec. 14A r.w Rule 8D at Rs. 16,82,004/-, as under:

(i).	The amount of expenditure directly		
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	relating to income which does not form part of total income.	Nil
(ii).	Proportionate of interest expenditure computed in accordance with the formula given in Rule 8D(2)(ii).	(A X B/C)	Rs. 14,64,075/-
(iii).	Amount equal to one-half percent of the average of the value of investment, income from which does not or shall not form part of the total income as appearing in the Balance Sheet of the assessee, on the first day and the last day of the previous year.	0.5% of Rs. 4,35,85,730/-	Rs. 2,17,929/-
	Total expenditure disallowed u/s 14A		Rs.16,82,004/-
Note			
(i).	A=Interest (finance cost) debited to Profit & Loss a/c = Rs. 30,80,929/-		
(ii).	B=Average of exempt income bearing investments = Rs. 4,35,85,730/-		
(iii).	C= Average of total assets appearing in the Balance Sheet on the first and last day of the previous year = Rs. 9,17,19,725/-		

4. Aggrieved, the assessee carried the order of the A.O in appeal before the CIT(A). The assessee assailed the reworking of the disallowance by the A.O under Sec. 14A r.w Rule 8D on multiple grounds, viz. (i). the A.O had failed to record any valid satisfaction for invoking Rule 8D having regard to the books of account; (ii). the A.O had erred in including the strategic investments held by the assessee in its subsidiaries and associate concerns while computing the disallowance under Sec. 14A r.w Rule 8D; (iii). the A.O while making the disallowance as regards the interest expenditure had lost sight of the fact that the self owned funds of Rs. 6.58 crores with the assessee were in excess of the investment made in shares and securities; (iv). the A.O had erred by failing to appreciate that while making disallowance of interest under Rule 8D(2)(ii) only the net interest and not the gross interest was to be considered; (v). the A.O had erred by not appreciating that the

disallowance under Sec. 14A was only to be made in relation to investments on which tax free income was earned during the year, and that the disallowance under Sec. 14A could not have been made in excess of the exempt income; and (vi). the onus was cast on the A.O to establish that interest bearing funds were used in making investments which have yielded tax free income.

5. The CIT(A) after deliberating at length on the multiple grounds on which the disallowance made by the A.O under Sec. 14A r.w Rule 8D was challenged before him, observed that the assessee had during the year under consideration opening investments of Rs. 4.14 crores and closing investments of Rs. 4.58 crores in shares of its group and other companies. The CIT(A) observed that the assessee had during the year under consideration made fresh investments of Rs. 0.45 crores (net) in equity shares of various companies. The CIT(A) further observed that the assessee had during the year debited interest expenses of Rs. 30,79,297/- in its Profit & loss account. It was also observed that the assessee was not maintaining separate accounts for the purpose of exempt income and had a mixed pool of funds which were utilized for the business and investment activities of the assessee. The CIT(A) observed that the assessee had incurred other administrative expenses of Rs. 13,79,038/- during the year under consideration. Thus, in the backdrop of the aforesaid facts the CIT(A) observed that though the invoking of the provisions of Sec. 14A was found to be justified, however, the A.O had failed to give any cogent reason for rejecting the claim of 'Nil' disallowance by the assessee under Sec. 14A in its return of income. However, the CIT(A) holding a conviction that as the powers vested with him were co-terminus with those of the A.O, he therefore deliberated on the facts of the case and concluded that having regard to the accounts of the assessee, the A.O would have no valid reason to be satisfied with the correctness of the claim of Nil disallowance under Sec. 14A , and was

thus justified in determining the amount of the expenses attributable to the earning of the exempt income in accordance with the methodology prescribed in Rule 8D. The CIT(A) in the backdrop of his aforesaid observations concluded that it could safely be concluded that the satisfaction of the A.O as regards incorrectness of claim of Nil disallowance under Sec.14A of the assessee was deemed to have been arrived at through the exercise of examination of the accounts of the assessee carried out at the appellate stage.

6. The CIT(A) further relying on the judgment of the **Hon'ble High Court of Delhi** in the case of **Maxopp Investment Ltd. Vs. CIT 347 ITR 272 (Del)**, observed that the investments made by the assessee in shares of its group companies/subsidiaries income from which does not form part of the total income were also to be considered for the purpose of computing the disallowance under Sec. 14A r.w Rule 8D. Thus, in the backdrop of his aforesaid observations the CIT(A) rejected the claim of the assessee that the shares held as strategic investments were to be excluded while computing the disallowance under Sec. 14A r.w Rule 8D.

7. The CIT(A) further deliberating on the claim of the assessee that as the investment in the shares etc. were made from its own funds, therefore, no disallowance of any part of the interest expenditure was called for under Rule 8D(2)(ii), observed that the said claim could not be accepted as the assessee had failed to show that the exempt income yielding investments, viz. shares etc. were acquired from its own funds. The CIT(A) observed that as the assessee was not maintaining separate accounts for the purpose of exempt income, therefore, in the case of mixed funds now when the assessee could not establish that there was no nexus between the exempt income and the interest expenditure, the disallowance of the same on a proportionate basis as provided in Sec. 14A r.w Rule 8D(2)(ii) was justified. The CIT(A) observed that the

assessee had failed to demonstrate with the help of its bank statements etc. that the additions to the exempt income yielding investments were not made by utilizing interest bearing funds during the year. The CIT(A) was also not persuaded to subscribe to the claim of the assessee that as it had own interest-free funds to the extent of Rs. 6.58 crores which were far in excess of the investment in shares of Rs. 4.58 crores, therefore, no disallowance of the interest expenditure under Rule 8D(2)(ii) was called for in its hands. The CIT(A) observed that the aforesaid claim of the assessee could not be accepted for certain reasons, viz. (i). the assessee had not given any break-up of the interest free funds of Rs. 6.58 crores; (ii). that a perusal of the records revealed that the assessee had a). Share capital of Rs. 0.99 crores and b). Opening accumulated surplus of Rs. 0.49 crores; AND (iii). the net profit of Rs. 4,147/- earned by the assessee during the year under consideration was to be deemed to have accrued to the assessee only on the last day of the year under consideration. The CIT(A) on the basis of his aforesaid observations concluded that the assessee had self-owned funds only to the tune of Rs. 1.48 crores (i.e Rs. 0.99 crores + Rs. 0.49 crores) which could safely be held to be available with it for making investments in the exempt income yielding investments. Thus, the CIT(A) observed that as the interest free funds available with the assessee were to the extent of Rs. 1.48 crores while its investments in shares stood at Rs. 4.58 crores, therefore, it could safely be concluded that the interest bearing funds were utilised by the assessee for making the investments. The CIT(A) further observed that the reserves aggregating to Rs. 1.80 crores, viz. Capital Redemption Reserve (Rs. 0.05 crores) and Share Premium Account (Rs. 1.75 crores) were capital reserves which could not at all be used for financing the acquisition of investments yielding tax free income. The CIT(A) while concluding as hereinabove, further observed that the assessee had not brought on record any provision of the Companies Act under which the

aforesaid reserves aggregating to Rs. 1.80 crores could be considered to be available for the purpose of investment in shares etc. yielding tax free income. The CIT(A) further fortifying his aforesaid view, observed that the amount of share premium and capital redemption reserve could only be used for the specific purposes described under Sections 78 (application of premiums received on issue of shares) and Sec. 80 (power to issue redeemable preference shares) of the Companies Act, 1956, and the investment in shares of Indian companies or Government securities did not figure among such specified purposes. The CIT(A) further observed that as the assessee had failed to produce the bank statements and other relevant evidence before the A.O in order to facilitate examination by him to verify as to whether the interest bearing funds were utilized for making investments in the shares etc., therefore, the disallowance of the indirect interest expenditure by the A.O under Rule 8D(2)(ii) could not be faulted with.

8. The CIT(A) also did not find favour with the claim of the assessee that the disallowance of the interest expenditure under Rule 8D(2)(ii) was to be made considering the net interest and not with reference to the gross interest expenditure. The CIT(A) further directed the A.O to disallow the demat expenses of Rs. 993/- under Rule 8D(2)(i), as the same were directly attributable to the earning of the exempt income. However, the CIT(A) found favour with the claim of the assessee that while computing the disallowance under Sec.14A r.w Rule 8D(2)(ii), 8D(2)(iii), only the investments from which the assessee had received exempt income were to be considered. Thus, in the backdrop of his aforesaid observations the CIT(A) directed the A.O that while calculating the disallowance as per Rule 8D(2)(ii) and Rule 8D(2)(iii), the “average value of investment” was to be worked out by taking into account not the entire opening and closing non-current investments, but only the

investments in those shares which have yielded tax free income to the assessee by way of dividend during the year under consideration.

8. The assessee being aggrieved with the order of the CIT(A) had carried the same in appeal before us. The ld. Authorised representative (for short 'A.R') for the assessee submitted that as the assessee had sufficient self owned funds to cover the value of the investments in the exempt income yielding investments, therefore, no disallowance under Sec. 14A r.w Rule 8D(2)(ii) in respect of the interest expenditure was called for in the hands of the assessee. The ld. A.R submitted that the CIT(A) had failed to appreciate the factual position as regards availability of self owned funds with the assessee in the right perspective and had erred to the extent he had sustained the disallowance out of interest expenditure made by the A.O under Rule 8D(2)(ii). The ld. A.R in support of his contention that now when the assessee had self owned funds available with to cover the value of investment in the investments yielding tax free income, therefore, no disallowance under Sec. 14A r.w Rule 8D(2)(ii) was called for in its hands, relied on the judgment of the **Hon'ble High Court of Bombay** in the case of **Commissioner of Income-tax Vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom)**. The ld. A.R submitted that the disallowance under Sec. 14A in the present case, was rightly shown by the assessee in its return of income at Rs. Nil. The Ld. A.R further submitted that the CIT(A) after observing that the A.O had failed to give any cogent reason for rejecting the claim of Nil disallowance claimed by the assessee under Sec. 14A, therein erred in characterising such omission on the part of the A.O as a procedural lapse. Per Contra, the ld. Departmental representative (for short 'D.R') relied on the orders of the lower authorities. It was submitted by the ld. D.R that the CIT(A) while computing the disallowance under Rule 8D(2)(ii) had duly taken cognizance of the self owned funds which were available with the assessee during the year for making the investment.

The ld. D.R submitted that the appeal of the assessee was devoid of any merit and was liable to be dismissed.

9. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. We find that our indulgence in the present appeal had been sought to adjudicate as to whether the CIT(A) was right in upholding the addition of interest expenditure under Sec. 14A r.w Rule 8D(2)(ii), despite the fact that the assessee had self owned funds to cover the value of investments made in such tax free income yielding shares. We have given a thoughtful consideration to the issue before us and are of the considered view that the disallowance of the interest expenditure as per Rule 8D(2)(ii) had been sustained by the CIT(A) on multiple grounds, viz. (i) that the assessee had failed to substantiate that the investments in the exempt income yielding investments was made out of interest free funds available with the assessee; (ii). that there was no break up of the self owned interest free funds to the extent of Rs. 6.58 crores which were claimed by the assessee to be available with it to cover the investment in shares of Rs. 4.58 crores; (iii). that a perusal of the records revealed that the assessee had interest free funds of Rs. 1.48 crores [i.e Share capital : Rs. 0.99 crores (+)Op. Accumulated surplus : Rs. 0.49 crores], while for its tax free income yielding investments stood at Rs. 4.58 crores; (iv). that the reserves aggregating to Rs. 1.80 crores, viz. Capital Redemption Reserve (Rs. 0.05 crores) and Share Premium Account (Rs. 1.75 crores) was a capital reserve which could not at all be used for financing the acquisition of investments yielding tax free income; AND (v). that as the net profit of Rs. 4,147/- earned during the year was to be deemed to have accrued only on the last day of the financial year, therefore, the same could not be held to be available with the assessee for making of investment in the exempt income yielding investments during the year.

10. We have deliberated on the facts of the case and given a thoughtful consideration to the reasons given by the CIT(A) for justifying disallowance of interest expenditure under Sec. 14A r.w Rule 8D(2)(ii). We are of the considered view that the observation of the CIT(A) that despite availability of interest free funds with the assessee, the failure on his part to establish a nexus between the investments in the exempt income yielding investments and the interest free funds available with it would justify drawing an inference that the investments were made from the interest bearing funds, cannot be sustained. We find that the **Hon'ble High Court of Bombay** in the case of **Commissioner of Income-tax Vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom)** being of the view that where assessee's capital, profit reserves, surplus and current account deposits were higher than the investment in tax-free securities, it would have to be presumed that investment made by the assessee would be out of the interest-free funds available with the assessee and no disallowance was warranted u/s 14A, had observed as under:

*4. We do not agree. In the case at hand, as recorded by the ITAT, undisputedly the Assessee's own funds and other non-interest bearing funds were more than the investment in the tax free securities. The ITAT therefore held that there was no basis for deeming that the Assessee had used the borrowed funds for investment in tax free securities. On this factual aspect, the ITAT did not find any merit in the contention raised by the Revenue and therefore, accordingly answered the question in favour of the Assessee. On going through the order of the CIT (Appeals) dated 28th March 2005 as well as the impugned order, we do not find that the CIT (Appeals) or the ITAT erred in holding in favour of the Assessee. In this regard, the submission of Mr Mistry, the learned Senior Counsel appearing on behalf of the Assessee, that this issue is squarely covered by a judgment of this Court in the case of **Commissioner of Income Tax v/s Reliance Utilities and Power Ltd., reported in (2009) 313 ITR 340 (Bom)** is well founded. The facts of that case were that the Assessee viz. M/s Reliance Utilities and Power Ltd. had invested certain amounts in Reliance Gas Ltd. and Reliance Strategic Investments Ltd. It was the case of the Assessee that they themselves were in the business of generation of power and they had earned regular business income therefrom. The investments made by the Assessee in M/s Reliance Gas Ltd. And M/s Reliance Strategic Investments Ltd. were done out of their own funds and were in the regular course of business and therefore no part of the interest*

could be disallowed. It was also pointed out that the Assessee had borrowed Rs.43.62 crores by way of issue of debentures and the said amount was utilised as capital expenditure and inter-corporate deposit. It was the Assessee's submission that no part of the interest bearing funds (viz. Issue of debentures) had gone into making investments in the said two companies. It was pointed out that the income from the operations of the Assessee was Rs.313.53 crores and with the availability of other interest free funds with the Assessee the amount available for investments out of its own funds were to the tune of Rs.398.19 crores. In view thereof, it was submitted that from the analysis of the balance-sheet, the Assessee had enough interest free funds at its disposal for making the investments. The CIT (Appeals) on examining the said material, agreed with the contention of the Assessee and accordingly deleted the addition made by the Assessing Officer and directed him to allow the same under the provisions of the Income Tax Act, 1961. The Revenue being aggrieved by the order preferred an Appeal before the ITAT who upheld the order of the CIT (Appeals) and dismissed the Appeal of the Revenue. From the order of the ITAT, the Revenue approached this Court by way of an Appeal. After examining the entire factual matrix of the matter and the law on the subject, this Court held as under :-

“If there be interest-free funds available to an assessee sufficient to meet its investments and at the same time the assessee had raised a loan it can be presumed that the investments were from the interest-free funds available. In our opinion, the Supreme Court in East India Pharmaceutical Works Ltd. v. CIT (1997) 224 ITR 627 had the occasion to consider the decision of the Calcutta High Court in Woolcombers of India Ltd. (1982) 134 ITR 219 where a similar issue had arisen. Before the Supreme Court it was argued that it should have been presumed that in essence and true character the taxes were paid out of the profits of the relevant year and not out of the overdraft account for the running of the business and in these circumstances the appellant was entitled to claim the deductions. The Supreme Court noted that the argument had considerable force, but considering the fact that the contention had not been advanced earlier it did not require to be answered. It then noted that in Woolcombers of India Ltd.'s case (1982) 134 ITR 219 the Calcutta High Court had come to the conclusion that the profits were sufficient to meet the advance tax liability and the profits were deposited in the over draft account of the assessee and in such a case it should be presumed that the taxes were paid out of the profits of the year and not out of the overdraft account for the running of the business. It noted that to raise the presumption, there was sufficient material and the assessee had urged the contention before the High Court. The principle, therefore, would be that if there were funds available both interest-free and over draft and/or loans taken, then a presumption would arise that investments would be out of the interest-free funds generated or available with the company if the interest-free funds were sufficient to meet the investment. In this case this presumption is established considering the finding of fact both by the Commissioner of Income-tax (Appeals) and the Income-tax Appellate Tribunal.”
(emphasis supplied)

5. We find that the facts of the present case are squarely covered by the judgment in the case of Reliance Utilities and Power Ltd. (supra). The

finding of fact given by the ITAT in the present case is that the Assessee's own funds and other non-interest bearing funds were more than the investment in the tax-free securities. This factual position is not one that is disputed. In the present case, undisputedly the Assessee's capital, profit reserves, surplus and current account deposits were higher than the investment in the tax-free securities. In view of this factual position, as per the judgment of this Court in the case of Reliance Utilities and Power Ltd. (supra), it would have to be presumed that the investment made by the Assessee would be out of the interest-free funds available with the Assessee. We therefore, are unable to agree with the submission of Mr Suresh Kumar that the Tribunal had erred in dismissing the Appeal of the Revenue on this ground. We do not find that question (A) gives rise to any substantial question of law and is therefore rejected.”

We thus being of the view that as the issue that in case an assessee has sufficient interest free funds available with it, then it would have to be presumed that investment made by the assessee in the exempt income yielding investments was out of the interest-free funds available with assessee and no disallowance was warranted u/s 14A, is no more *res integra* in light of the aforesaid judgment of the **Hon'ble High Court of jurisdiction** in the case of **HDFC Bank Ltd. (supra)**, therefore, are of the considered view that the observation of the A.O holding to the contrary cannot be sustained.

11. We now advert to the observation of the CIT(A) that as the net profit of Rs. 4,147/- earned by the assessee during the year was to be deemed to have accrued only on the last day of the financial year, therefore, the same could not be held to be available with the assessee for making of investment in the exempt income yielding investments during the year. We are unable to persuade ourselves to subscribe to the said view of the CIT(A). We are of the considered view that as the profits of the year are spread over the whole of the year under consideration, therefore, the observation of the CIT(A) that they are to be deemed to have accrued to the assessee on the last day of the financial year, and thus cannot form part of the funds available with the assessee for explaining the source of the exempt income yielding investments made by the assessee, cannot be accepted. We find that our aforesaid view as regards availability of the

profits of the year with the assessee for making interest free advances, though, in context of disallowance of interest on borrowed capital under Sec. 36(1)(iii) of the Act, had been looked into by the **Hon'ble Supreme Court** in the case of **Munjal sales Corporation Vs. CIT & Anr. (2008) 298 ITR 298 (SC)**, wherein the **Hon'ble Apex Court** had observed as under:

*“17. One aspect needs to be mentioned during the asst. yr. 1995-96, apart from the loan given in August/September 1991, the assessee advanced interest free loan to its sister concern amounting to Rs. 5 lacs. According to the Tribunal, there was nothing on record to show that the loans were given to the sister concern by the assessee firm out of its own funds and, therefore, it was not entitled to claim deduction under s. 36(1)(iii). This finding is erroneous. The opening balance as on 1st April, 1994 was Rs. 1.91 crores whereas the loan given to the sister concern was a small amount of Rs. 5 lacs. **In our view, the profits earned by the assessee during the relevant year were sufficient to cover the impugned loan of Rs. 5 lacs.**”*

We thus in the backdrop of our aforesaid observations are unable to subscribe to the view of the CIT(A) that the net profit of Rs 4,147/- earned by the assessee during the year under consideration, would not be available with the assessee to explain the investment in the shares to the said extent during the year. We thus set aside the aforesaid observation of the CIT(A) and conclude that the net profit of Rs. 4,147/- earned by the assessee would to the said extent be available for explaining the investment made by the assessee for purchase of shares during the year.

12. We now advert to the observations of the CIT(A) as regards quantification of the self owned interest free funds available with it to cover the investment in shares. We find that the CIT(A) had observed that a perusal of the records revealed that the assessee had interest free funds of Rs. 1.48 crores [i.e Share capital : Rs. 0.99 crores (+) Op. Accumulated surplus : Rs. 0.49 crores], while for its tax free income yielding investments stood at Rs. 4.58 crores. We find that the CIT(A) had further observed that the reserves aggregating to Rs. 1.80 crores,

viz. Capital Redemption Reserve (Rs. 0.05 crores) and Shares Premium Account (Rs. 1.75 crores) was a capital reserve which could not at all be used for financing the acquisition of investments yielding tax free income. We find substantial force in the observations of the CIT(A) that as per Sec. 78 of the Companies Act, 1956, the amount available in the Securities Premium Account could only be utilised for the purposes therein specified. We find that as per Sec. 78 of the Companies Act, 1956, the amount available therein can only be utilised for certain specific purposes, viz. (i). to issue fully paid bonus shares to the members; (ii). to write off preliminary expenses of the company; (iii). to write off the expenses of or commission paid or discount allowed on any issue of shares or debentures of the company; and (iv). to provide for the premium payable on the redemption of any debenture of the company. We thus are of the considered view that as the Share premium account cannot be utilised for making of investments by the assessee in shares of third companies, therefore, are persuaded to be in agreement with the CIT(A), that funds to the said extent would not be available with the assessee to explain the investments made by it in purchase of shares. Similarly, we find that as Capital redemption reserve can only be utilised for issuing fully paid bonus shares, therefore, on a similar footing the amount therein available with the assessee cannot explain investments made by the assessee in the shares of other companies. We thus in the backdrop of our aforesaid observations are of the considered view that as the amounts of the aforesaid reserves would not be freely available with the assessee company for investing in shares of third companies, therefore, are persuaded to be in agreement with the view of the CIT(A) that the amounts available therein would not explain the source of the investments in shares by the assessee. We thus uphold the aforesaid observations of the CIT(A).

13. We have deliberated on the contention of the assessee that the CIT(A) despite observing that the A.O had failed to give any cogent reason for rejecting the claim of Nil disallowance made by the assessee under Sec. 14A in its return of income, but however, had sustained the said disallowance by holding that the said omission on the part of the A.O was a procedural lapse. We have perused the order of the CIT(A) and are in agreement with the ld. A.R that the A.O without giving any cogent reason had discarded the Nil disallowance claimed by the assessee under Sec. 14A in its return of income for the year under consideration. We have given a thoughtful consideration to the facts of the case and find ourselves to be in agreement with the contention of the ld. A.R that the very process of determination of the amount of expenditure incurred in relation to exempt income would be triggered only if the A.O. returns a finding that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. We are of the considered view that it is only if the A.O. is not satisfied with the correctness of the claim of the assessee that no expenditure had been incurred in relation to the exempt income, it is only then after recording cogent reasons as regards the same that the A.O. can embark upon the determination of the amount of expenditure in accordance with the method prescribed in Section 14A r.w. Rule 8D. We find that our aforesaid view stands fortified by the recent judgment of the **Hon'ble Supreme Court** in the case of : **Godrej & Boyce Manufacturing Company Limited Vs. DCIT & Anr. (Civil Appeal No. 7020 of 2011, dt. 08.05.2017**, wherein the **Hon'ble Apex Court** had held as under:-

“Whether such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D

of the Rules or a best judgment determination, as earlier prevailing, would become applicable.

However, we find that the CIT(A) duly appreciating the said material lapse on the part of the A.O, keeping in view the fact that his powers were co-terminus with those of the A.O, and that he could what the A.O had failed to do, thereafter deliberated on the facts of the case and on the basis of cogent reasons rejected the claim of Nil disallowance shown by the assessee in its return of income. We find the aforesaid exercise of powers by the CIT(A) was well within the realm of his jurisdiction. We are of the considered view that the observations of the CIT(A) that the lapse or omission on the part of the A.O to give cogent reasons for not accepting the disallowance claimed by the assessee under Sec. 14A in its return of income was a procedural lapse and not fatal to the making of the disallowance, were rendered in context of the fact that such lapse had been undone by him in exercise of his powers which were co-terminus with that of the A.O. We are of the considered view that now when the lapse on the part of the A.O had been undone by the CIT(A) in exercise of his jurisdiction which is co-terminus with that of an A.O, therefore, the aforesaid grievance on the part of the assessee does not survive any more. We thus reject the said contention of the assessee.

14. We further find substantial force in the alternative contention of the ld. A.R that the disallowance under Sec. 14A r.w Rule 8D cannot be more than the exempt income itself. The ld. A.R in order to drive home his aforesaid contention had relied on the judgment of the **Hon'ble High Court of Delhi** in the case of **Joint Investment Private Limited Vs. CIT (2015) 372 ITR 694 (Del)** and that of the **Hon'ble High Court of Punjab & Haryana** in the case of **Principal Commissioner of Income-tax Vs. Empire Package Pvt. Ltd. (2016) 286 CTR 0457 (P&H)**. We are not oblivious of the fact that such a proposition was not advanced by the assessee before the lower authorities, but then, keeping in view the

judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Pruthvi Brokers and Shareholders Pvt. Ltd. (2012) 349 ITR 336 (Bom)**, wherein the Hon'ble Court had observed that the assessee is entitled to raise not merely additional legal submissions before the appellate authorities, but is also entitled to raise additional claim before them, therefore, admit the aforesaid plea of the assessee which we find is based on the facts already available on record. The Hon'ble High Court observed that 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. We further find that the **Hon'ble High Court of Bombay** in the cases of **Ahemadabad Electricity Company Vs. CIT** and **Godavari Sugar Mills Ltd. Vs. CIT**, had by way of a common order, dated 30.04.1992 **(1993) 199 ITR 351 (Bom)** 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 and the material on record before it for the purpose of determining the correct tax liability of the assessee. We further find that the issue under consideration that where the *suo motto* disallowance made by the assessee under Sec. 14A is found to be suffering from a legal infirmity, then in the course of the appellate proceedings such a mistake has to give way and has to be brought in conformity with the provisions of law, had been looked into and adjudicated in favour of the assessee by a coordinate bench of the Tribunal, viz. ITAT, "G" Bench, in the case of **M/s Weizmann Ltd. Vs. ACIT, Range 1(3), Mumbai (ITA No. 7102/Mum/2014; dated. 04.08.2016)**. Needless to say, the A.O shall during the course of the set aside proceedings afford an opportunity of being heard to the assessee,

who shall remain at a liberty to support and substantiate its claim. We thus in the backdrop of our aforesaid observations, keeping in view the aforesaid settled position of law therein direct the A.O to subject the disallowance under Sec. 14A in the hands of the assessee to an upper capping of the amount of exempt income received by it during the year under consideration.

15. We thus in the backdrop of our aforesaid observations restore the issue to the file of the A.O for the limited purpose of reworking the disallowance under Sec. 14A r.w Rule 8D, in terms of our aforesaid observations.

16. The appeal is partly allowed for statistical purposes.

ITA No. 7544/Mum/2016
AY: 2011-12

17. We shall now take up the appeal of the assessee for A.Y. 2011-12, marked as ITA No. 7544/Mum/2016. The assessee assailing the order of the CIT(A) had raised before us the following grounds of appeal:

“Grounds of appeal against the order dated 31.08.2016 passed by the learned Commissioner of Income-tax (Appeals)-53, Mumbai.

Following grounds of appeal are without prejudice to each other:

- 1. The learned CIT(A) has erred in law and on facts in upholding the disallowance made by the Assessing Officer u/s. 14A of the Act read with Rule 8D of I.T. Rules, 1962.*
- 2. The learned CIT(A) has erred, after giving clear finding of fact that the Assessing Officer has not given cogent reasons for rejecting voluntary disallowance of Rs.45,59,283/- made by the appellant u/s.14A of the Act, in holding that such omission is a procedural lapse on the part of the Assessing Officer.*
- 3. The learned CIT(A) has erred in holding that, in the facts and circumstances of the case, satisfaction of the Assessing Officer is deemed to have arrived at through the exercise of examination of accounts.*
- 4. The order passed by the learned CIT(A) is in violation of principles of natural Justice and bad in law.*

5. *The appellant craves leave to add to, amend, alter or delete all or any of the foregoing grounds of appeal.*

18. Briefly stated, the facts of the case are that the assessee company had filed its return of income in compliance to notice issued under Sec. 153A for the year under consideration on 24.04.2015, declaring loss of Rs. 6,98,67,358/-. The assessee had during the year under consideration earned dividend income of Rs. 55,55,834/- and LTCG of Rs. 20,94,271/- which were claimed as exempt. The A.O during the course of the assessment proceedings while deliberating on the working of the disallowance of Rs. 45,59,,283/- by the assessee under Sec. 14A r.w Rule 8D, was not satisfied with the claim of the assessee that the borrowed funds were utilized for the purpose of investing in the investments yielding exempt income. The A.O further observing that the expenditure which was liable to be disallowed under Sec. 14A(1) took within its sweep all form of expenditure regardless of whether they were fixed, variable, direct, indirect, administrative, managerial or financial, and with the insertion of Rule 8D it was no longer open to the A.O to work out the disallowance under Sec. 14A as per his discretion, reworked the disallowance under Sec. 14A r.w Rule 8D at Rs. 1,07,38,797/-, as under:

(i).	The amount of expenditure directly relating to income which does not form part of total income.	Nil
(ii).	Proportionate of interest expenditure computed in accordance with the formula given in Rule 8D(2)(ii).	(A X B/C)	Rs. 95,10,905/-
(iii).	Amount equal to one-half percent of the average of the value of investment, income from which does not or shall not form part of the total income as appearing in the Balance	0.5% of Rs. 24,55,78,389/-	Rs. 12,27,892/-

	Sheet of the assessee, on the first day and the last day of the previous year.		
	Total expenditure disallowed u/s 14A		Rs.1,07,38,797/-
Note			
(i).	A=Interest (finance cost) debited to Profit & Loss a/c = Rs. 6,17,79,586/-		
(ii).	B=Average of exempt income bearing investments = Rs. 24,55,78,389/-		
(iii).	C= Average of total assets appearing in the Balance Sheet on the first and last day of the previous year = Rs. 159,51,93,148/-		

19. Aggrieved, the assessee carried the order of the A.O in appeal before the CIT(A). The CIT(A) while disposing of the appeal deliberated on the multiple grounds on the basis of which the assessee had assailed the disallowance made under Sec. 14A by the A.O. The CIT(A) after deliberating on the disallowance of interest expenditure of Rs. 95,10,905/- made by the A.O as per Rule 8D(2)(ii), observed that the assessee had during the year under consideration opening investments of Rs. 11.90 crores and closing investments of Rs. 37.20 crores in shares of its group and other companies. The CIT(A) observed that the assessee had during the year made fresh investments of Rs. 25.30 crores in shares of other companies as well as in Government securities yielding tax free income. The CIT(A) further observed that the assessee had during the year debited finance expenses of Rs. 6,17,79,586/- in its Profit & loss account. It was also observed that the assessee was not maintaining separate accounts for the purpose of exempt income and had a mixed pool of funds which were utilized for the business and investment activities of the assessee. The CIT(A) observed that the assessee had incurred other administrative expenses of Rs. 4,29,788/- during the year under consideration. Thus, in the backdrop of the aforesaid facts the CIT(A) observed that though the invoking of the provisions of Sec. 14A was found to be justified, however, the A.O had failed to give any cogent reason for rejecting the claim of disallowance of

Rs. 45,59,283/- under Sec. 14A made by the assessee in its return of income. However, the CIT(A) holding a conviction that as the powers vested with him were co-terminus with those of the A.O, therefore, after deliberating on the facts of the case concluded that having regard to the accounts of the assessee, the A.O would have no valid reason to be satisfied with the correctness of the claim of disallowance of Rs. 45,59,283/- under Sec. 14A, and was thus justified in determining the amount of the expenses attributable to the earning of the exempt income in accordance with the methodology prescribed in Rule 8D. The CIT(A) in the backdrop of his aforesaid observations concluded that it could safely be concluded that the satisfaction of the A.O as regards incorrectness of claim of disallowance of Rs. 45,59,283/- under Sec.14A of the assessee was deemed to have been arrived at through the exercise of examination of the accounts of the assessee carried out at the appellate stage.

20. The CIT(A) further deliberating on the claim of the assessee that as the investment in the shares etc. were made from his own funds, therefore, no disallowance of any part of the interest expenditure was called for under Rule 8D(2)(ii), observed that the said claim could not be accepted as the assessee had failed to show that the exempt income yielding investments, viz. shares etc. were acquired from his own funds. The CIT(A) observed that as the assessee was not maintaining separate accounts for the purpose of exempt income, therefore, in the case of mixed funds now when the assessee could not establish that there was no nexus between the exempt income and the interest expenditure, the disallowance of the same on a proportionate basis as provided in Sec. 14A r.w Rule 8D(2)(ii) was justified. The CIT(A) observed that the assessee had failed to demonstrate with the help of its bank statements etc. that the additions to the exempt income yielding investments was not made by utilizing interest bearing funds during the year. The CIT(A) was also not persuaded to subscribe to the claim of the assessee that as

it had own interest-free funds to the extent of Rs. 60.51 crores which were far in excess of the investment in shares etc. of Rs. 37.20 crores, therefore, no disallowance of the interest expenditure under Rule 8D(2)(ii) was called for in its hands. The CIT(A) observed that the aforesaid claim of the assessee could not be accepted for certain reasons, viz. (i). the assessee had not given any break-up of the interest free funds of Rs. 60.51crores; and (ii). that a perusal of the records revealed that the assessee had a). Share capital of Rs. 2.17 crores; and b). Opening accumulated surplus of Rs. 2.64 crores at the beginning of F.Y. 2010-11 which got converted into loss of Rs. 4.39 crores at the end of the year. The CIT(A) on the basis of his aforesaid observations concluded that the assessee could by no means be said to have sufficient own interest free funds to cover its investments amounting to Rs. 37.20 crores. The CIT(A) further observed that the reserves aggregating to Rs. 6.52 crores, viz. Capital Redemption Reserve (Rs. 0.05 crores) and Share Premium Account (Rs. 6.47 crores) which being capital reserves could not at all be used for financing the acquisition of investments yielding tax free income. The CIT(A) while concluding as hereinabove, further observed that the assessee had not brought on record any provision of the Companies Act under which the aforesaid reserves aggregating to Rs. 6.52 crores could be considered to be available for the purpose of investment in shares yielding tax free income. The CIT(A) further fortifying his aforesaid view, observed that the amount of share premium and capital redemption reserve could only be used for the specific purposes described under Section 78 (application of premiums received on issue of shares) and Section 80 (power to issue redeemable preference shares) of the Companies Act, 1956, and the investment in shares of Indian companies or Government securities did not figure among such specified purposes. The CIT(A) further observed that as the assessee had failed to produce the bank statements and other relevant evidence before

the A.O, in order to facilitate examination by him to verify as to whether the interest bearing funds were utilized for making investments in the shares etc., therefore, the disallowance of the indirect interest expenditure by the A.O under Rule 8D(2)(ii) could not be faulted with.

21. The assessee being aggrieved with the order of the CIT(A) had carried the matter in appeal before us. The assessee had assailed before us the disallowance of the interest expenditure under Sec. 14A r.w Rule 8D(2)(ii). It was averred by the ld. A.R that the issue involved in the present appeal of the assessee was the same as was involved in its appeal for A.Y. 2009-10, viz. ITA No. 7543/Mum/2016. We have deliberated on the facts of the case in the backdrop of those involved in the appeal of the assessee for A.Y. 2009-10, viz. ITA No. 7543/Mum/2016 and find ourselves to be agreement with the aforesaid claim of the ld. A.R. We find that as similar issues were involved in the appeal of the assessee for A.Y. 2009-10 in ITA No. 7543/Mum/2016, as had been adjudicated by us hereinabove, therefore, direct that our order passed while disposing of the appeal of the assessee for A.Y. 2009-10 in ITA No. 7543/Mum/2016, shall apply *mutatis mutandis* for disposing of the present appeal of the assessee for A.Y. 2011-12, marked as ITA No. 7544/Mum/2016 before us. We thus as observed by us hereinabove, though uphold the order of the CIT(A) as regards the validity of the disallowance under Sec. 14A, in the backdrop of cogent reasons recorded by the CIT(A) for not accepting the voluntary disallowance of Rs. 45,59,283/- shown by the assessee in its return of income for the year under consideration, however, restore the issue to the file of the A.O for the limited purpose of reworking the disallowance under Sec. 14A r.w Rule 8D, in terms of our observations recorded while disposing of the issue under consideration in the appeal of the assessee for A.Y. 2009-10, marked as ITA No. 7543/Mum/2016. Needless to say, the A.O shall during the course of the set aside proceedings afford an opportunity of

being heard to the assessee, who shall remain at a liberty to support and substantiate its claim. Before parting, we may further clarify that as observed by us while disposing of the appeal of the assessee for A.Y. 2009-10, in ITA No. 7543/Mum/2016, the A.O is directed to restrict the disallowance under Sec. 14A in the hands of the assessee to an upper capping of the aggregate of the amount of exempt income received by it during the year under consideration.

22. The appeal is partly allowed for statistical purposes.

ITA No. 7472/Mum/2016
AY: 2011-12

23. We shall now take up the appeal of the revenue for A.Y. 2011-12, marked as ITA No. 7472/Mum/2016. The revenue assailing the order of the CIT(A) had raised before us the following grounds of appeal:

- “1. *Whether on the facts and circumstances of the case and in law, Ld. CIT(A) erred in excluding the value of investments that did not yield exempt income during the year for the purpose of calculation of disallowance as per rule 8D(2)(ii) and 8D(2)(iii) even after considering the fact that the said investment is an investment to earn tax free income.*
2. *Whether on the facts and circumstances of the case and in law, Ld. CIT(A) erred in taking only closing investment of other companies at Rs. 10,42,77,299/- representing 'B' in the formula under Rule 8D(2)(ii) as being the average of the value of investment income from which is exempt instead of Rs. 24,55,78,389/-.*
3. *Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in holding that earning of exempt income from investment is a touchstone for making disallowance u/s 14A in spite of fact that section 14A deals with disallowance of expenditure incurred in relation to income not includible in total income.*

The appellant prays that the order of Commissioner of Income-tax (Appeal) on the above ground be set aside and that of the Assessing Officer be restored.

The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.

24. The revenue had assailed before us the observations of the CIT(A) that for computing the disallowance under Sec. 14A of the Act, Rule

8D(2)(ii) and Rule 8D(2)(iii), “the average value of investments” was to be worked out by taking into account not the entire opening and closing net current investments, but only the investments in those shares which had yielded tax free income to the assessee by way of dividend during the year under consideration.

25. The ld. D.R assailing the aforesaid observations of the CIT(A), submitted that as per the mandate of Rule 8D(2)(ii) and Rule 8D(2)(iii) , the disallowance under Sec. 14A was to be worked out after taking cognizance of the “average value of investments”, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee on the first day and last day of the previous year. The ld. D.R averred that working out the “average value of investments” after excluding the exempt income yielding investments on which no exempt income was received during year, in the absence of any enabling proviso was thus not justified. Per contra, the ld. A.R relied on the order of the CIT(A). The ld A.R submitted that both Rule 8D(2)(ii) and Rule 8D(2)(iii) referred to the “average value of investments”, income from which does not or shall not form part of the total income. It was thus averred by the ld. A.R that now no exempt income was received by the assessee on certain shares held by it, therefore, the value of such shares could not be considered for computing the average value of investments, as in the absence of any exempt income there would be no occasion to disallow any expenses in context of such investments which had not yielded any tax free income during the year. The ld. A.R in support of his contention relied on the judgment of the **Hon’ble High Court of Delhi** in the case of **Cheminvest Ltd. vs. CIT 378 ITR 33 (Del)**.

26. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. We shall before adverting to the controversy in hand, refer to

Rule 8D as had been made available on the statute vide the Income-tax (Fifth amendment) Rules, 2008, w.e.f 24.03.2008, which contemplates the procedure for computing the disallowance of expenses incurred for earning o exempt income, as was available on the statute for the year under consideration and read as under:

“(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely :—

(i) the amount of expenditure directly relating to income which does not form part of total income;

(ii) in a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely :—

$$A \times \frac{B}{C}$$

Where A = amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year;

B = the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

C = the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

(iii) an amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year."

We have perused the aforesaid Rule 8D(2)(ii) and Rule 8D(2)(iii), and find that the methodology contemplated therein for computing the expenses incurred for earning of exempt income, clearly refers to the value of investments, income from which does not or shall not form part of the total income of the assessee. We are of the considered view that in the backdrop of the language used, it can safely and rather inescapably be concluded that the same refers to the investments from which the

assessee had received exempt income during the year under consideration. We further find that our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Delhi** in the case of **Cheminvest Ltd. vs. CIT (2015) 378 ITR 33 (Del)**, wherein the High Court observed that no disallowance u/s14A can be made in a year in which no exempt income was earned or received by the Assessee. The High Court observed that the expression 'does not form part of the total income' in Section 14A envisaged that there should be an actual receipt of income, which was not includible in the total income during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. It was thus concluded that Sec. 14A would not apply if no exempt income was received or receivable during the relevant previous year. We are of the considered view that if the contention of the ld. D.R that the value of the exempt income yielding investments from which no exempt income was received or receivable by the assessee during the relevant previous year, were to be included while computing the "average value of investment" as per Rule 8D(2)(ii) and Rule 8D(2)(iii), then the same would lead to disallowance of expenditure in respect of investments from which no exempt income was received or receivable by the assessee during the year. We are of the considered view that the aforesaid interpretation of the scope of Rule 8D(2)(ii) and Rule 8D(2)(iii) by the revenue, as averred before us by the ld. D.R, clearly militates against both the literal interpretation of the language used in the respective rules, as well as the settled position of law that Sec. 14A would not apply if no exempt income was received or receivable during the relevant previous year. We thus not being able to persuade ourselves to subscribe to the aforesaid view of the ld. D.R and finding ourselves as being in agreement with the view arrived at by the CIT(A), therefore, thus reject the same and uphold the order of the CIT(A) on the issue under

consideration. The **Grounds of appeal Nos. 1 to 3** raised by the revenue before us are dismissed.

27. The appeal of the revenue is dismissed.

ITA NO. 7515/Mum/2016
AY: 2013-14

28. We shall now take up the appeal of the assessee for A.Y. 2013-14, marked as ITA No. 7544/Mum/2016. The assessee assailing the order of the CIT(A) had raised before us the following grounds of appeal:

“Grounds of appeal against the order dated 31.08.2016 passed by the learned Commissioner of Income-tax (Appeals)-53, Mumbai.

Following grounds of appeal are without prejudice to each other:

- 1. The learned CIT(A) has erred in law and on facts in upholding the disallowance made by the Assessing Officer u/s. 14A of the Act read with Rule 8D I.T. Act, Rules, 1962.*
- 2. The learned CIT(A) has erred, after giving clear finding of fact that the Assessing Officer has not given cogent reasons for rejecting voluntary disallowance of Rs.42,31,127/- made by the appellant u/s.14A of the Act, in holding that such omission is a procedural lapse on the part of the Assessing Officer.*
- 3. The learned CIT(A) has erred in holding that, in the facts and circumstances of the case, satisfaction of the Assessing Officer is deemed to have arrived at through the exercise of examination of accounts.*
- 4. The order passed by the learned CIT(A) is in violation of principles of natural Justice and bad in law.*
- 5. The appellant craves leave to add to, amend, alter or delete all or any of the foregoing grounds of appeal.*

29. Briefly stated, the facts of the case are that the assessee company had filed its return of income under Sec. 153A for the year under consideration on 24.04.2015, declaring loss of Rs. 59,865/-. The assessee had during the year under consideration earned dividend income of Rs. 27,97,246/- which was claimed as exempt. The A.O during the course of the assessment proceedings while deliberating on the

working of the disallowance of Rs. 42,31,127/- by the assessee under Sec. 14A r.w Rule 8D, was not satisfied with the claim of the assessee that the borrowed funds were utilized for the purpose of investing in the investments yielding exempt income. The A.O further observing that the expenditure which was liable to be disallowed under Sec. 14A(1) took within its sweep all form of expenditure regardless of whether they were fixed, variable, direct, indirect, administrative, managerial or financial, and with the insertion of Rule 8D it was no longer open to the A.O to work out the disallowance under Sec. 14A as per his discretion, reworked the disallowance under Sec. 14A r.w Rule 8D at Rs. 2,20,62,264/-, as under:

(i).	The amount of expenditure directly relating to income which does not form part of total income.	Nil
(ii).	Proportionate of interest expenditure computed in accordance with the formula given in Rule 8D(2)(ii).	(A X B/C)	Rs. 2,02,08,220/-
(iii).	Amount equal to one-half percent of the average of the value of investment, income from which does not or shall not form part of the total income as appearing in the Balance Sheet of the assessee, on the first day and the last day of the previous year.	0.5% of Rs. 37,08,08,822/-	Rs. 18,54,044/-
	Total expenditure disallowed u/s 14A		Rs.2,20,62,264/-
Note			
(i).	A=Interest (finance cost) debited to Profit & Loss a/c = Rs. 6,49,65,290/-		
(ii).	B=Average of exempt income bearing investments = Rs. 37,08,08,822/-		
(iii).	C= Average of total assets appearing in the Balance Sheet on the first and last day of the previous year = Rs. 119,20,74,427/-		

30. Aggrieved, the assessee carried the order of the A.O in appeal before the CIT(A). The CIT(A) while disposing of the appeal deliberated on the multiple grounds on the basis of which the assessee had assailed the disallowance made under Sec. 14A by the A.O. The CIT(A) after deliberating on the disallowance of interest expenditure of Rs. 2,02,08,220/- made by the A.O as per Rule 8D(2)(ii), observed that the assessee had during the year under consideration opening investments of Rs. 37.07 crores and closing investments of Rs. 37.09 crores in shares of its group and other companies. The CIT(A) further observed that the assessee had during the year debited interest expenses of Rs. 6,49,65,290/- in its Profit & loss account. It was also observed that the assessee was not maintaining separate accounts for the purpose of exempt income and had a mixed pool of funds which were utilized for the business and investment activities of the assessee. The CIT(A) observed that the assessee had incurred other administrative expenses of Rs. 13,86,696/- during the year under consideration. Thus, in the backdrop of the aforesaid facts the CIT(A) observed that though the invoking of the provisions of Sec. 14A was found to be justified, however, the A.O had failed to give any cogent reason for rejecting the claim of disallowance of Rs. 42,31,127/- under Sec. 14A made by the assessee in its return of income. However, the CIT(A) holding a conviction that as the powers vested with him were co-terminus with those of the A.O, therefore, after deliberating on the facts of the case concluded that having regard to the accounts of the assessee, the A.O would have no valid reason to be satisfied with the correctness of the claim of disallowance of Rs. Rs. 42,31,127/- under Sec. 14A, and was justified in determining the amount of the expenses attributable to the earning of the exempt income in accordance with the methodology prescribed in Rule 8D. The CIT(A) in the backdrop of his aforesaid observations concluded that the satisfaction of the A.O as regards incorrectness of claim of disallowance

of Rs. 42,31,127/- under Sec.14A of the assessee was deemed to have been arrived at through the exercise of examination of the accounts of the assessee carried out at the appellate stage.

31. The CIT(A) further deliberating on the claim of the assessee that as the investment in the shares etc. were made from his own funds, therefore, no disallowance of any part of the interest expenditure was called for under Rule 8D(2)(ii), observed that the said claim could not be accepted as the assessee had failed to show that the exempt income yielding investments, viz. shares etc. were acquired from his own funds. The CIT(A) observed that as the assessee was not maintaining separate accounts for the purpose of exempt income, therefore, in the case of mixed funds, now when the assessee could not establish that there was no nexus between the exempt income and the interest expenditure, the disallowance of the same on a proportionate basis as provided in Sec. 14A r.w Rule 8D(2)(ii) was justified. The CIT(A) observed that the assessee had failed to demonstrate with the help of its bank statements etc. that the additions to the exempt income yielding investments were not made by utilizing interest bearing funds during the year. The CIT(A) was also not persuaded to subscribe to the claim of the assessee that as it had own interest-free funds to the extent of Rs. 70,22,91,819/- which were far in excess of the investment in shares etc. of Rs. 37.09 crores, therefore, no disallowance of the interest expenditure under Rule 8D(2)(ii) was called for in its hands. The CIT(A) observed that the aforesaid claim of the assessee could not be accepted for certain reasons, viz. (i). the assessee had not given any break-up of the interest free funds of Rs. 70,22,91,819/-; and (ii). that a perusal of the records revealed that the assessee had a). Share capital of Rs. 3.17 crores; and b). accumulated losses of Rs.0.97 crores at the beginning of F.Y. 2012-13 which went upto Rs. 1.41 crores at the end of the year. The CIT(A) on the basis of his aforesaid observations concluded that the assessee could by

no means be said to have sufficient own interest free funds to cover its investments amounting to Rs. 37.09 crores. The CIT(A) further observed that the reserves aggregating to Rs. 9.52 crores, viz. Capital Redemption Reserve (Rs. 0.05 crores) and Securities Premium Account (Rs. 9.47 crores) which being capital reserves could not at all be used for financing the acquisition of investments yielding tax free income. The CIT(A) while concluding as hereinabove, further observed that the assessee had not brought on record any provision of the Companies Act under which the aforesaid reserves aggregating to Rs. 9.52 crores could be considered to be available for the purpose of investment in shares yielding tax free income. The CIT(A) further fortifying his aforesaid view, observed that the amount of share premium and capital redemption reserve could only be used for the specific purposes described under Section 78 (application of premiums received on issue of shares) and Section 80 (power to issue redeemable preference shares) of the Companies Act, 1956, and the investment in shares of Indian companies or Government securities did not figure among such specified purposes. The CIT(A) further observed that as the assessee had failed to produce the bank statements and other relevant evidence before the A.O in order to facilitate verification by him as to whether the interest bearing funds were utilized for making investments in the shares etc., therefore, the disallowance of the indirect interest expenditure by the A.O under Rule 8D(2)(ii) could not be faulted with.

32. The assessee being aggrieved with the order of the CIT(A) had carried the matter in appeal before us. The assessee had assailed before us the disallowance of the interest expenditure under Sec. 14A r.w Rule 8D(2)(ii). It was averred by the ld. A.R that the issue involved in the present appeal of the assessee was the same as was involved in its appeal for A.Y. 2009-10, viz. ITA No. 7543/Mum/2016. We have deliberated on the facts of the case in the backdrop of those involved in

the appeal of the assessee for A.Y. 2009-10, viz. ITA No. 7543/Mum/2016 and find ourselves to be agreement with the aforesaid claim of the ld. A.R. We find that as similar issues were involved in the appeal of the assessee for A.Y. 2009-10 in ITA No. 7543/Mum/2016, as had been adjudicated by us hereinabove, therefore, direct that our order passed while disposing of the appeal of the assessee for A.Y. 2009-10 in ITA No. 7543/Mum/2016, shall apply *mutatis mutandis* for disposing of the present appeal of the assessee for A.Y. 2013-14, marked as ITA No. 7515/Mum/2016 before us. We thus as observed by us hereinabove, though uphold the order of the CIT(A) as regards validity of the disallowance under Sec. 14A in the backdrop of cogent reasons recorded by the CIT(A) for not accepting the voluntary disallowance of Rs. 42,31,127/-shown by the assessee in its return of income for the year under consideration, however, restore the issue to the file of the A.O for the limited purpose of reworking the disallowance under Sec. 14A r.w Rule 8D, in terms of our observations recorded while disposing of the issue under consideration in the appeal of the assessee for A.Y. 2009-10, marked as ITA No. 7543/Mum/2016. Needless to say, the A.O shall during the course of the set aside proceedings afford an opportunity of being heard to the assessee, who shall remain at a liberty to support and substantiate its claim. Before parting, we may further clarify that as observed by us while disposing of the appeal of the assessee for A.Y. 2009-10, in ITA No. 7543/Mum/2016, the A.O is directed to restrict the disallowance under Sec. 14A in the hands of the assessee to an upper capping of the aggregate of the amount of exempt income received by it during the year under consideration.

33. The appeal is partly allowed for statistical purposes.

ITA No. 7473/Mum/2016
AY: 2013-14

34. We shall now take up the appeal of the revenue for A.Y. 2013-14, marked as ITA No. 7473/Mum/2016. The revenue assailing the order of the CIT(A) had raised before us the following grounds of appeal:

- “1. *Whether on the facts and circumstances of the case and in law, Ld. CIT(A) erred in excluding the value of investments that did not yield exempt income during the year for the purpose of calculation of disallowance as per rule 8D(2)(ii) and 8D(2)(iii) even after considering the fact that the said investment is an investment to earn tax free income.*
2. *Whether on the facts and circumstances of the case and in law, Ld. CIT(A) erred in taking only closing investment of other companies at Rs. NIL/- representing 'B' in the formula under Rule 8D(2)(ii) as being the average of the value of investment income from which is exempt instead of Rs. 37,08,08,822/-.*
3. *Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in holding that earning of exempt income from investment is a touchstone for making disallowance u/s 14A in spite of fact that section 14A deals with disallowance of expenditure incurred in relation to income not includible in total income.*

The appellant prays that the order of Commissioner of Income-tax (Appeal) on the above ground be set aside and that of the Assessing Officer be restored.

The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”

35. The revenue had assailed before us the observations of the CIT(A) that for computing the disallowance under Sec. 14A of the Act, Rule 8D(2)(ii) and Rule 8D(2)(iii), “the average value of investments” was to be worked out by taking into account not the entire opening and closing net current investments, but only the investments in those shares which had yielded tax free income to the assessee by way of dividend during the year under consideration.

36. The ld. D.R assailing the aforesaid observations of the CIT(A), submitted that as per the mandate of Rule 8D(2)(ii) and Rule 8D(2)(iii), the disallowance under Sec. 14A was to be worked out after taking cognizance of the “average value of investments”, income from which

does not or shall not form part of the total income, as appearing in the balance sheet of the assessee on the first day and last day of the previous year. The ld. D.R averred that working out the “average value of investments” after excluding the exempt income yielding investments on which no exempt income was received during year, in the absence of any enabling proviso was thus not justified. Per contra, the ld. A.R relied on the order of the CIT(A). The ld A.R submitted that both Rule 8D(2)(ii) and Rule 8D(2)(iii) referred to the “average value of investments”, income from which does not or shall not form part of the total income. It was thus averred by the ld. A.R that now when no exempt income was received by the assessee on certain shares held by it, therefore, the value of such shares could not be considered for computing the average value of investments, as in the absence of any exempt income there would be no occasion to disallow any expenses in context of such investments which had not yielded any tax free income during the year. The ld. A.R in support of his contention relied on the judgment of the **Hon’ble High Court of Delhi** in the case of **Cheminvest Ltd. vs. CIT 378 ITR 33 (Del)**.

37. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. We find that a similar issue was involved in the appeal of the revenue for A.Y. 2011-12 in ITA No. 7472/Mum/2016, as had been adjudicated by us hereinabove, therefore, direct that our order passed while disposing of the Grounds of appeal No. 1 to 3 of the appeal of the revenue for A.Y. 2011-12 in ITA No. 7472/Mum/2016, shall apply *mutatis mutandis* for disposing of the **Grounds of appeal No. 1 to 3** of the present appeal of the revenue for A.Y. 2013-14, marked as ITA No. 7473/Mum/2016 before us. We thus in terms of our observations recorded while disposing of the appeal of the revenue for A.Y. 2011-12,

dismiss the present appeal of the revenue for A.Y. 2013-14, marked as ITA No. 7473/Mum/2016.

38. The appeal of the revenue is dismissed.

ITA No. 7546/Mum/2016
AY: 2014-15

39. We shall now take up the appeal of the assessee for A.Y. 2014-15, marked as ITA No. 7546/Mum/2016. The assessee assailing the order of the CIT(A) had raised before us the following grounds of appeal:

“Grounds of appeal against the order dated 31.08.2016 passed by the learned Commissioner of Income-tax (Appeals)-53, Mumbai.

Following grounds of appeal are without prejudice to each other:

- 1. The learned CIT(A) has erred in law and on facts in upholding the disallowance made by the Assessing Officer u/s. 14A of the Act read with Rule 8D of I.T. Rules, 1962.*
- 2. The learned CIT(A) has erred, after giving clear finding of fact that the Assessing Officer has not given cogent reasons for rejecting voluntary disallowance of Rs.13,44,586/- made by the appellant u/s.14A of the Act, in holding that such omission is a procedural lapse on the part of the Assessing Officer.*
- 3. The learned CIT(A) has erred in holding that, in the facts and circumstances of the case, satisfaction of the Assessing Officer is deemed to have arrived at through the exercise of examination of accounts.*
- 4. The order passed by the learned CIT(A) is in violation of principles of natural Justice and bad in law.*
- 5. The appellant craves leave to add to, amend, alter or delete all or any of the foregoing grounds of appeal.*

40. Briefly stated, the facts of the case are that the assessee company had filed its return of income for the year under consideration on 29.11.2014, declaring loss of Rs. 22,45,328/-. The assessee had during the year under consideration earned dividend income of Rs. 41,22,626/- which was claimed as exempt. The A.O during the course of the

assessment proceedings while deliberating on the working of the disallowance of Rs. 13,44,586/- by the assessee under Sec. 14A r.w Rule 8D, was not satisfied with the claim of the assessee that the borrowed funds were utilized for the purpose of investing in the investments yielding exempt income. The A.O further observing that the expenditure which was liable to be disallowed under Sec. 14A(1) took within its sweep all form of expenditure regardless of whether they were fixed, variable, direct, indirect, administrative, managerial or financial, and with the insertion of Rule 8D it was no longer open to the A.O to work out the disallowance under Sec. 14A as per his discretion, reworked the disallowance under Sec. 14A r.w Rule 8D at Rs. 1,51,44,746/-, as under:

(i).	The amount of expenditure directly relating to income which does not form part of total income.	Nil
(ii).	Proportionate of interest expenditure computed in accordance with the formula given in Rule 8D(2)(ii).	(A X B/C)	Rs. 1,32,64,612/-
(iii).	Amount equal to one-half percent of the average of the value of investment, income from which does not or shall not form part of the total income as appearing in the Balance Sheet of the assessee, on the first day and the last day of the previous year.	0.5% of Rs. 37,60,26,815/-	Rs. 18,80,134/-
	Total expenditure disallowed u/s 14A		Rs.1,51,44,746/-
Note			
(i).	A=Interest (finance cost) debited to Profit & Loss a/c = Rs. 4,60,02,447/-		
(ii).	B=Average of exempt income bearing investments = Rs. 37,60,26,815/-		
(iii).	C= Average of total assets appearing in the Balance Sheet on the first and last day of the previous year = Rs. 130,40,82,890/-		

41. Aggrieved, the assessee carried the order of the A.O in appeal before the CIT(A). The CIT(A) while disposing of the appeal deliberated on the multiple grounds on the basis of which the assessee had assailed the disallowance made under Sec. 14A by the A.O. The CIT(A) after deliberating on the disallowance of interest expenditure of Rs. 1,32,64,612/- made by the A.O as per Rule 8D(2)(ii), observed that the assessee had during the year under consideration opening investments of Rs. 37.09 crores and closing investments of Rs. 38.12 crores in shares of its group and other companies. The CIT(A) further observed that the assessee had during the year debited finance expenses of Rs. 4,60,02,447/- in its Profit & loss account. It was also observed that the assessee was not maintaining separate accounts for the purpose of exempt income and had a mixed pool of funds which were utilized for the business and investment activities of the assessee. The CIT(A) observed that the assessee had incurred other administrative expenses of Rs. 2,75,307/- during the year under consideration. Thus, in the backdrop of the aforesaid facts the CIT(A) observed that though the invoking of the provisions of Sec. 14A was found to be justified, however, the A.O had failed to give any cogent reason for rejecting the claim of disallowance of Rs. 13,44,586/- under Sec. 14A made by the assessee in its return of income. However, the CIT(A) holding a conviction that as the powers vested with him were co-terminus with those of the A.O, therefore, after deliberating on the facts of the case concluded that having regard to the accounts of the assessee, the A.O would have no valid reason to be satisfied with the correctness of the claim of disallowance of Rs. 13,44,586/- under Sec. 14A, and was justified in determining the amount of the expenses attributable to the earning of the exempt income in accordance with the methodology prescribed in Rule 8D. The CIT(A) in the backdrop of his aforesaid observations concluded that it could safely

be concluded that the satisfaction of the A.O as regards incorrectness of claim of disallowance of Rs. 13,44,586/- under Sec.14A of the assessee was deemed to have been arrived at through the exercise of examination of the accounts of the assessee carried out at the appellate stage.

42. The CIT(A) further deliberating on the claim of the assessee that as the investment in the shares etc. were made from his own funds, therefore, no disallowance of any part of the interest expenditure was called for under Rule 8D(2)(ii), observed that the said claim could not be accepted as the assessee had failed to show that the exempt income yielding investments, viz. shares etc. were acquired from his own funds. The CIT(A) observed that as the assessee was not maintaining separate accounts for the purpose of exempt income, therefore, in the case of mixed funds now when the assessee could not establish that there was no nexus between the exempt income and the interest expenditure, the disallowance of the same on a proportionate basis as provided in Sec. 14A r.w Rule 8D(2)(ii) was justified. The CIT(A) observed that the assessee had failed to demonstrate with the help of its bank statements etc. that the additions to the exempt income yielding investments were not made by utilizing interest bearing funds during the year. The CIT(A) was also not persuaded to subscribe to the claim of the assessee that as it had own interest-free funds to the extent of Rs. 73,72,96,290/- which were far in excess of the investment in shares etc. of Rs. 38.12 crores, therefore, no disallowance of the interest expenditure under Rule 8D(2)(ii) was called for in its hands. The CIT(A) observed that the aforesaid claim of the assessee could not be accepted for certain reasons, viz. (i). the assessee had not given any break-up of the interest free funds of Rs. 73,72,96,290/-; and (ii). that a perusal of the records revealed that the assessee had a). Share capital of Rs. 3.17 crores; and b). accumulated losses of Rs.1.41 crores at the beginning of F.Y. 2013-14 which went upto Rs. 1.76 crores at the end of the year. The CIT(A) on the

basis of his aforesaid observations concluded that the assessee could by no means be said to have sufficient own interest free funds to cover its investments amounting to Rs. 38.12 crores. The CIT(A) further observed that the reserves aggregating to Rs. 9.52 crores, viz. Capital Redemption Reserve (Rs. 0.05 crores) and Securities Premium Account (Rs. 9.47 crores) which being a capital reserve could not at all be used for financing the acquisition of investments yielding tax free income. The CIT(A) while concluding as hereinabove, further observed that the assessee had not brought on record any provision of the Companies Act under which the aforesaid reserves aggregating to Rs. 9.52 crores could be considered to be available for the purpose of investment in shares yielding tax free income. The CIT(A) further fortifying his aforesaid view, observed that the amount of share premium and capital redemption reserve could only be used for the specific purposes described under Section 78 (application of premiums received on issue of shares) and Section 80 (power to issue redeemable preference shares) of the Companies Act, 1956, and the investment in shares of Indian companies or Government securities did not figure among such specified purposes. The CIT(A) further observed that as the assessee had failed to produce the bank statements and other relevant evidence before the A.O in order to facilitate examination by him to verify as to whether the interest bearing funds were utilized for making investments in the shares etc., therefore, the disallowance of the indirect interest expenditure by the A.O under Rule 8D(2)(ii) could not be faulted with.

43. The assessee being aggrieved with the order of the CIT(A) had carried the matter in appeal before us. The assessee had assailed before us the disallowance of the interest expenditure under Sec. 14A r.w Rule 8D(2)(ii). It was averred by the ld. A.R that the issue involved in the present appeal of the assessee was the same as was involved in its appeal for A.Y. 2009-10, viz. ITA No. 7543/Mum/2016. We have

deliberated on the facts of the case in the backdrop of those involved in the appeal of the assessee for A.Y. 2009-10, viz. ITA No. 7543/Mum/2016 and find ourselves to be agreement with the aforesaid claim of the ld. A.R. We find that as similar issues were involved in the appeal of the assessee for A.Y. 2009-10 in ITA No. 7543/Mum/2016, as had been adjudicated by us hereinabove, therefore, direct that our order passed while disposing of the appeal of the assessee for A.Y. 2009-10 in ITA No. 7543/Mum/2016, shall apply *mutatis mutandis* for disposing of the present appeal of the assessee for A.Y. 2014-15, marked as ITA No. 7546/Mum/2016 before us. We thus as observed by us hereinabove, though uphold the order of the CIT(A) as regards validity of the disallowance under Sec. 14A in the backdrop of cogent reasons recorded by the CIT(A) for not accepting the voluntary disallowance of Rs. 13,44,586/- shown by the assessee in its return of income for the year under consideration, however, restore the issue to the file of the A.O for the limited purpose of reworking the disallowance under Sec. 14A r.w Rule 8D, in terms of our observations recorded while disposing of the issue under consideration in the appeal of the assessee for A.Y. 2009-10, marked as ITA No. 7543/Mum/2016. Needless to say, the A.O shall during the course of the set aside proceedings afford an opportunity of being heard to the assessee, who shall remain at a liberty to support and substantiate its claim. Before parting, we may further clarify that as observed by us while disposing of the appeal of the assessee for A.Y. 2009-10, in ITA No. 7543/Mum/2016, the A.O is directed to restrict the disallowance under Sec. 14A in the hands of the assessee to an upper capping of the aggregate of the amount of exempt income received by it during the year under consideration.

44. The appeal is partly allowed for statistical purposes.

ITA No. 7474/Mum/2016
AY: 2014-15

45. We shall now take up the appeal of the revenue for A.Y. 2013-14, marked as ITA No. 7473/Mum/2016. The revenue assailing the order of the CIT(A) had raised before us the following grounds of appeal:

- “1. *Whether on the facts and circumstances of the case and in law, Ld. CIT(A) erred in excluding the value of investments that did not yield exempt income during the year for the purpose of calculation of disallowance as per rule 8D(2)(ii) and 8D(2)(iii) even after considering the fact that the said investment is an investment to earn tax free income.*
2. *Whether on the facts and circumstances of the case and in law, Ld. CIT(A) erred in taking only closing investment of other companies at Rs. NIL/- representing ‘B’ in the formula under Rule 8D(2)(ii) as being the average of the value of investment income from which is exempt instead of Rs. 37,60,26,815/-.*
3. *Whether on the facts and in the circumstances of the case and in law, Ld. O11(A) erred in holding that earning of exempt income from investment is a touchstone for making disallowance u/s 14A in spite of fact that section 14A deals with disallowance of expenditure incurred in relation to income not includible in total income.*

The appellant prays that the order of Commissioner of Income-tax (Appeal) on the above ground be set aside and that of the Assessing Officer be restored.

The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.

46. The revenue had assailed before us the observations of the CIT(A) that for computing the disallowance under Sec. 14A of the Act, Rule 8D(2)(ii) and Rule 8D(2)(iii), “the average value of investments” was to be worked out by taking into account not the entire opening and closing net current investments, but only the investments in those shares which had yielded tax free income to the assessee by way of dividend during the year under consideration.

47. The Id. D.R assailing the aforesaid observations of the CIT(A), submitted that as per the mandate of Rule 8D(2)(ii) and Rule 8D(2)(iii) , the disallowance under Sec. 14A was to be worked out after taking cognizance of the “average value of investments”, income from which does not or shall not form part of the total income, as appearing in the

balance sheet of the assessee on the first day and last day of the previous year. The ld. D.R averred that working out the “average value of investments” after excluding the exempt income yielding investments on which no exempt income was received during year, in the absence of any enabling proviso was thus not justified. Per contra, the ld. A.R relied on the order of the CIT(A). The ld A.R submitted that both Rule 8D(2)(ii) and Rule 8D(2)(iii) referred to the “average value of investments”, income from which does not or shall not form part of the total income. It was thus averred by the ld. A.R that now no exempt income was received by the assessee on certain shares held by it, therefore, the value of such shares could not be considered for computing the average value of investments, as in the absence of any exempt income there would be no occasion to disallow any expenses in context of such investments which had not yielded any tax free income during the year. The ld. A.R in support of his contention relied on the judgment of the **Hon’ble High Court of Delhi** in the case of **Cheminvest Ltd. vs. CIT 378 ITR 33 (Del)**.

48. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. We find that a similar issue was involved in the appeal of the revenue for A.Y. 2011-12 in ITA No. 7472/Mum/2016, as had been adjudicated by us hereinabove, therefore, direct that our order passed while disposing of the Grounds of appeal No. 1 to 3 of the appeal of the revenue for A.Y. 2011-12 in ITA No. 7472/Mum/2016, shall apply *mutatis mutandis* for disposing of the **Grounds of appeal No. 1 to 3** of the present appeal of the revenue for A.Y. 2014-15, marked as ITA No. 7474/Mum/2016 before us. We thus in terms of our observations recorded while disposing of the appeal of the revenue for A.Y. 2011-12, dismiss the present appeal of the revenue for A.Y. 2014-15, marked as ITA No. 7474/Mum/2016.

49. The appeal of the revenue is dismissed.

50. The appeals of the assessee for A.Ys. 2009-10, 2011-12, 2013-14 and 2014-15, marked as ITA No. 7543/Mum/2016, ITA No. 7544/Mum/2016, ITA No. 7515/Mum/2016 and ITA No. 7546 /Mum /2016, respectively, are partly allowed for statistical purposes. The appeals of the revenue for A.Ys. 2011-12, 2013-14 and 2014-15, marked as ITA No. 7472/Mum/2016, ITA No. 7473/Mum/2016 and ITA No. 7474/Mum/2016 are dismissed.

Order pronounced in the open court on 03/01/2018.

Sd/-
(RAJENDRA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 03.01.2018

Ps. Rohit Kumar

Sd/-
(RAVISH SOOD)

JUDICIAL MEMBER

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT,**
Mumbai

