



**IN THE INCOME TAX APPELLATE TRIBUNAL "H", BENCH MUMBAI**  
**BEFORE SHRI R.C.SHARMA, AM**  
**&**  
**SHRI RAM LAL NEGI, JM**  
**ITA No.6834/Mum/2016**  
**(Assessment Year :2013-14)**

DCIT CC 3(1) CEN RG 3, R.NO.1924 19 <sup>TH</sup> Floor, Air India Building Nariman Point Mumbai-400 021	Vs.	M/s. Wind World Wind Farms (Krishna) Ltd., A-9, Enercon Tower, Veera Desai Road Veera Industrial Estate Andheri (W) Mumbai – 400 053
<b>PAN/GIR No.</b>		<b>AAACE3529M</b>
<b>Appellant)</b>	..	<b>Respondent)</b>

Revenue by	Shri A. Mohan
Assessee by	Shri A.K.Ghosh
<b>Date of Hearing</b>	<b>07/11/2017</b>
<b>Date of Pronouncement</b>	<b>05/02/2018</b>

**आदेश / O R D E R**

**PER R.C.SHARMA (A.M):**

This is an appeal filed by Revenue against the order of CIT(A)-51, Mumbai dated 05/08/2016 for A.Y.2013-14 in the matter of order passed u/s.143(3) of the Income Tax Act, 1961.

2. The following grounds have been taken by the Revenue:-

*“On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in directing the Assessing Officer to exclude the investments made in subsidiary being strategic investment for the purpose of disallowance to be made u/s.14A r.w.Rule.”*

3. Rival contentions have been heard and record perused.

4. The brief facts of the case are that the assessee company is engaged in the business of manufacturing and selling wind energy. There was a search on 14/03/2013 on the assessee group wherein the assessee is also covered. Return of income was filed on 27/09/2013. Assessment is completed by making addition of Rs.17,21,00,702/- u/s. 14A r.w.rule 8D (Rs.15,40,05,702/- u/r. 8D(2)(ii) and Rs.1,76,00,000/- u/r.8D(2)(iii) both to regular income as well as to book profits u/s.115JB.
5. By the impugned order, CIT(A) deleted the disallowance so made by the AO after observing as under:-

*“I have considered the arguments of the assessee and have gone through the decisions relied upon. With regard to the first contention of the assessee, it is held by Hon'ble Mumbai Tribunal in the case of Garware Wall Ropes in ITA No 7899/Mum/2011 that it is not necessary that the assessee should have earned dividend income during the year to invoke the provisions of Sec 14A. With regard to the second preposition raised by the assessee, it is seen from the accounts that the assessee itself disallowed an amount of Rs 2 lakhs on estimated basis u/s 14A. What the AO did is to recalculate the disallowance as per Rule 8D following the Bombay High Court decision in the case of **Godrej & Boyce Manufacturing Co Ltd 328 ITR 081**. From the accounts of the assessee it is clear that there is certain relation between the expenditure made and the share investments made by the and the assessee itself is not able to exactly quantify the disallowance.*

*Therefore, the assessee made an adhoc disallowance in the return of income.*

*Considering the above facts, it is held that the AO is correct in principle in invoking provisions of Sec 14A and in calculating the disallowance as per Rule 8D. Coming to the third contention of the assessee that strategic investments need to be excluded while calculating the average value of investments, the same is found to be correct. Assessee made investments in the subsidiary company M/s Vayu India Power Corporation Ltd., which is not for the purpose of earning dividend but as a strategic investment. As per the Hon'ble Bombay ITAT decision in case of **Garware Wall Ropes in ITA No 5408/M/2012 and also in case of J M Financials Ltd ITA No 4521/M/2012**, investments made in subsidiary company and strategic*

*investment need to be excluded while calculating the average value of investment for the purposes of Sec. 14A. Accordingly AO is directed to exclude the strategic investments after due verification while calculating the disallowance u/s 8D(2)(ii) & 8D(2)(iii). The disallowance will be worked out accordingly. Coming to the issue of disallowance u/s 14A while calculating the book profits u/s 115JB, the same is decided against the assessee by ITAT, Mumbai in the case of **RPK Shareholding P Ltd 37 Taxman.com 128**. Therefore, the assessee loses on this ground. AO is directed to adopt the same disallowance calculated for normal provisions for the purpose of sec. 115JB also.”*

6. Revenue is in further appeal before us.

7. Learned AR placed on record the order of the Tribunal in assessee's own case for the A.Y.2012-13 dated 04/05/2017 in ITA No.6832/Mum/2015, wherein issue has been decided in favour of the assessee. We had also gone through the orders of the Tribunal wherein the Tribunal held as under:-

*2. The assessee is engaged in the business of manufacture and sale of wind energy. Consequent to the search operation conducted in the hands of the assessee, the present assessment was completed by the AO u/s 153A r.w.s. 143(3) of the Act. The AO noticed that the assessee has made investments in shares to the tune of Rs.352 crores and has disallowed a sum of Rs.2.00 lakhs only u/s 14A of the Act. It is pertinent to note that the assessee did not receive any dividend income in the instant year. The AO applied the provisions of Rule 8D of I T Rules and accordingly computed the disallowance. The Ld CIT(A) noticed that the assessee has made entire investment in the equity shares of its subsidiary company, which is strategic in nature. Accordingly, by following the decision rendered by the co-ordinate bench in the case of Garware Wall Ropes (ITA No.5408/M/2012 and J.M. Financials Ltd (ITA No.4521/M/2012), the Ld CIT(A) expressed the view that the strategic investments have to be excluded for the purpose of computing disallowance u/r 8D. In that case, there was no requirement of making any disallowance and accordingly the Ld CIT(A) deleted the addition made by the AO. Revenue is aggrieved by that decision.*

3. I have heard the parties and perused the record. The fact remains that the assessee did not receive any dividend during the year under consideration. I also notice that the entire investment has been made in the subsidiary company named Vayu (India) Power Corporation P Ltd and hence there is commercial expediency in making investment. Under these set of facts, I am of the view that the Ld CIT(A) was justified in deleting the addition made u/s 14A of the Act by following the decision rendered by the co-ordinate bench of Tribunal. Accordingly I uphold his order.

4. In the result, the appeal filed by the revenue is dismissed.

8. As the facts and circumstances during the year under consideration are same, respectfully following the order of the Tribunal in assessee's own case, we do not find any infirmity in the order of CIT(A) for deleting the disallowance made u/s.14A of the IT Act.

**9. In the result, appeal of Revenue is dismissed.**

Order pronounced in the open court on this 05/02/2018

**Sd/-**  
**(RAM LAL NEGI)**  
JUDICIAL MEMBER

**Sd/-**  
**(R.C.SHARMA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 05/02/2018

Karuna Sr.PS

**Copy of the Order forwarded to :**

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

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)  
ITAT, Mumbai