आयकर अपीलीय अधिकरण पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA Nos.245 to 250/PUN/2016
निर्धारण वर्ष / Assessment Years : 2006-07 to 2011-12

Poonawalla Investment & Industries
Pvt. Ltd.,
Sarosh Bhavan, 16-B/1,
Ambedkar Road, Pune – 411 001
PAN : AAACP3265B .... अपीलार्थी/Appellant

Vs.

Dy. Commissioner of Income-tax,
Central Circle-1(1), Pune .... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri R.S. Abhyankar
प्रत्यर्थी की ओर से / Respondent by : Ms. Nirupama Kotru, CIT-DR

सुनवाई की तारीख / **Date of Hearing : 26.02.2018**		घोषणा की तारीख / **Date of Pronouncement: 28.02.2018**

आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

There are 6 appeals filed by the Assessee under consideration pertaining to the Assessment Years 2006-07 to 2011-12. ITA Nos. 245 to 247/PUN/2016 relate to non-abated assessments whereas ITA Nos. 248 to 250/PUN/2016 relate to abated assessments.

2. Background facts include that the assessee is a company engaged in the business of stud farm activities and it belongs to Poonawalla group of cases. There was search and seizure action on the assessee's group of cases on 21-06-2011. These assessments were completed u/s.153C r.w.s.143(3) of the Act.

3. We shall now deal with the assessment year-wise adjudication. To start with we shall take up the appeal **ITA No.245/PUN/2016 for A.Y. 2006-07**. Grounds raised by the assessee in the appeal reads as under :

> *"On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in :*
>
> 1. *not appreciating the fact that dividend received on investments in group companies should be excluded while computing disallowance u/s.14A (Refer Para 3.8 of the order u/s.250).*
> 2. *confirming disallowance of Rs.17,817/- being contribution to Group Gratuity Scheme."*

4. Assessee has also raised an additional ground, which is legal in nature, and the same is extracted here as under :

> *"Ld.CIT(A) failed to appreciate the fact that disallowance u/s.14A made by the AO in the assessment order passed u/s.153C r.w.s. 143(3) of the Act is not sustainable in the **non-abated assessment** as there was no incriminating material found during search ignoring the decision in the case of "All Cargo Global Logistics Ltd. Vs. DCIT 147 TTJ 513 (Mum) (SB) and the decision of Bombay High Court reported at 58 Taxmann.com 78 of CIT-II, Thane Vs. Continental Warehousing Corporation (Nhava Sheva) Ltd."*

5. Before us, and at the outset, Ld. AR for the assessee submitted that validity of the additions raised in the additional ground, which is legal and goes into the root of the search assessment u/s.153C of the Act, needs to be adjudicated first. Therefore, Ld. AR started narrating the facts relevant to the additional ground. Assessee filed the return of income originally on 01-11-2006 and the assessment was completed u/s.143(3) of the Act vide order dated 25-03-2008. Therefore, the present assessment made u/s.153C of the Act constitutes a 'non-abated' assessment. Further, coming to the details of the additions, we find the contents of Para No.5 of the assessment order deals with the disallowance u/s.14A of the Act when there is no reference to any incriminating documents to support the same. Otherwise, the general facts relating to this addition include that the assessee claimed the exempt income of around Rs.15 crores and the sum of Rs.22,68,817/-

was considered disallowable by the assessee suo moto. Reacting to the said claims of the assessee, the provisions of section 14A of the Act r.w. Rule 8D of the I.T. Rules were invoked by the AO during the assessment proceedings u/s.153C of the Act. Eventually, the AO determined the disallowance at Rs.34,46,681/- vide the discussion given in Para No.5 of the assessment order. It is evident from the discussion available in the said para along with its sub-paragraphs 5.1 to 5.3 of the assessment order that there is no reference whatsoever to any seized material/incriminating material in support of assuming jurisdiction to make the above said disallowance u/s.14A of the Act r.w. Rule 8D(2) of the I.T. Rules, 1962.

6. During the First Appellate proceedings before the CIT(A), the assessee could only get part relief in the matter. Aggrieved with the order of CIT(A), the assessee raised the above said grounds originally on merits and the said additional ground.

7. During the proceedings before us, Ld. Counsel for the assessee brought our attention to the regular assessment proceedings and submitted that this issue of disallowance u/s.14A of the Act was the subject matter of dispute in the regular assessment too. Eventually, in the said regular assessment, AO made the addition vide his order dated 25-03-2008 by invoking the provisions of section 14A of the Act. Further, the CIT(A) enhanced the assessment on this account vide his order dated 15-12-2008. The Tribunal set-aside the matter back to the AO for doing a reasonable disallowance. The AO is yet to give effect to the said direction of the ITAT.

8. While the disallowance u/s.14A of the Act is the bone of contention in the regular assessment, the same addition is repeated by the AO in the search assessment made u/s.153C of the Act. Further, referring to the additional ground which is legal in nature, Ld. AR for the assessee submitted that such additions are not legally sustainable in this case of a non-abated assessment when there is no

seized material or incriminating material to backup the same. In this regard, Ld. AR brought our attention to various decisions to support his arguments. The decision of Special Bench in the case of All Cargo Global Logistics Ltd. 147 TTJ 513 (Mum) (SB) and the decision of jurisdictional High Court in the case of Continental Warehousing Corporation (Nhava Sheva) Ltd. reported in 58 taxmann.com 78 were heavily relied by the Ld. AR for the assessee. He also relied on the Pune Bench decision in of the group cases, i.e. the case of Serum Institute of India Ltd. for the A.Y. 2008-09 vide ITA No. 1183 and 1537/PUN/2015, order dated 28-11-2017 and submitted that the present additional ground raised by the assessee should be allowed deleting the addition made by the AO u/s.14A of the Act in the non-abated assessment.

9. Ld. DR for the Revenue relied on the orders of the AO and the CIT(A).

10. We heard both the parties on the issue of making of disallowance u/s.14A of the Act in the non-abated assessment. It is an undisputed fact that the AO already made an addition under the said provisions during the regular assessment proceedings u/s.143(3) of the Act. This issue now stands remitted by the Tribunal to the file of AO. Further, it is an undisputed fact that no seized material exists to support the Revenue to assume jurisdiction validly u/s.153C of the Act for invoking the provisions of section 14A of the Act successfully in this non-abated assessment. In this regard, we have perused the contents of Para Nos. 5.1 to 5.3 of the search assessment order and find there is no reference to the seized material of any kind linked to the assessee as well as to the requirement of making disallowance u/s.14A of the Act in the search assessment. From this legal position, we find the judgments of the jurisdictional High Court in the case of Continental Warehousing Corporation (Nhava Sheva) Ltd. (supra) and All Cargo Global Logistics Ltd. (supra) helps the assessee. These judgments do not approve the AO's attempts to resort

to make additions by making disallowance u/s.14A of the Act in the assessment made u/s.153C of the Act in the absence of any incriminating material. Therefore, we are of the opinion that the additional ground raised by the assessee in this regard is required to be allowed in favour of the assessee. Considering the same, we are of the view that adjudication of Ground No.1 becomes an academic exercise. Accordingly, Ground No.1 raised by the assessee is dismissed as academic.

11. Ground No.2 raised by the assessee relates to disallowance of Rs.17,817/- being contribution to Group Gratuity Scheme.

12. Relevant facts include that the assessee debited an amount of Rs.17,817/- towards payment to employees. Invoking the provisions of section 36(1)(v) of the Act which allows such claims on "paid basis", the AO disallowed the claim of the assessee who failed to furnish the supporting documents evidencing the payment and proof of approving of the said Group Gratuity Scheme. CIT(A) confirmed the same again for want of evidences.

13. Aggrieved with the same, the assessee raised the said Ground No.2 stating that such addition is unwarranted and unsustainable in the non-abated assessments made u/s.153C of the Act. According to the Ld. AR for the assessee, the addition is made without having any the support of any incriminating material.

14. Before us, on merits, Ld. AR for the assessee submitted that the said Group Gratuity Scheme has not been approved till date. Notwithstanding the same, Ld. AR submitted that the AO is not empowered to assume jurisdiction u/s.153C of the Act in this case of non-abated assessment. It is a settled legal position in the matter.

15. We find the arguments of Ld. AR are sustainable legally. As such, nothing contrary is brought to our notice by the Ld. DR for the Revenue. Further, perusal of the orders of the Revenue does not indicate the existence of any incriminating material linking to the said claim of the assessee. We find the contents of Para No.7 of the AO and Para Nos. 3.11 and 3.12 of the order of CIT(A) are relevant. Considering the same, we are of the view that this issue also should be decided in favour of the assessee. Accordingly, Ground No.2 raised by the assessee is allowed.

16. In the result, appeal of the assessee is partly allowed.

ITA No.246 and 247/PUN/2016
(A.Yrs. 2007-08 and 2008-09)

17. Grounds raised by the assessee in the appeal for A.Y. 2007-08 read as under:

> *"On the facts and circumstances of the case and in law the Ld.CIT(A) erred in*
>
> 1. *confirming the disallowance of a sum of Rs.49,12,715/- u/s.14A by stating that issue of disallowance u/s.14A was not related to search findings but actually pertains to regular assessment. (Refer Para 4.2 of the order u/s.250).*
> 2. *confirming disallowance of Rs.28,434/- being contribution to Group Gratuity Scheme."*
>
> Similar grounds have been raised by the assessee for A.Y. 2008-09 too.

18. Ground No.1 relates to the issue of disallowance u/s.14A of the Act. During the First Appellate proceedings, CIT(A) held in favour of the assessee stating that this issue relates to the regular assessment proceedings made u/s.143(3) of the Act and granted relief in the appeal relating to the search assessment. Considering the same, before us, Ld. AR for the assessee mentioned that the said Ground No.1 is not pressed. Accordingly, the same is dismissed as 'not pressed'.

19. Ground No.2 relates to disallowance of Rs.28,434/- being contribution to Group Gratuity Scheme. This issue is identical to the one already adjudicated by us in the A.Y. 2006-07. It is the submission of the assessee that such additions are unwarranted and unsustainable in the non-abated assessments made u/s.153C of the Act when there is no incriminating material to support the said additions. Notwithstanding, Ld. Counsel for the assessee did not press this ground. Hence, this ground by the assessee has to be decided against the assessee. Resultantly, the Ground Nos. 1 and 2 by the assessee are dismissed.

20. In the result, appeal of the assessee is dismissed.

21. Regarding the grounds raised by the assessee for A.Y. 2008-09 are identical to the ones raised in the appeal for A.Y. 2007-08. We have already adjudicated the said grounds in Para No. 17 to 21 above against the assessee. Therefore, applying the same reasoning, the grounds raised by the assessee in this assessment year are also dismissed.

22. In the result, appeal of the assessee is dismissed.

23. To sum up, both the appeals of the assessee for A.Yrs. 2007-08 and 2008-09 are dismissed.

ITA Nos.248/PUN/2016
(A.Yr. 2009-10)

24. Assessee raised the following grounds of appeal in this appeal :

"On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in :

1. *confirming the disallowance of a sum of Rs.51,61,884/- u/s.14A by applying Rule 8D.*
2. *not granting set off of the amount offered towards contingency of Rs.60,00,000/- against disallowance u/s.14A (Refer Para 6.26 of CIT(Appeals)'s order.*

3. *confirming disallowance of Rs.40,772/- being contribution to Group Gratuity Scheme.*

4. *confirming the disallowance of PMS (Portfolio Management Scheme) Fees of Rs.17,15,457/- from the sale consideration of shares while computing capital gains.*

Similar grounds have been raised by the assessee for A.Yrs. 2010-11 and 2011-12.

25. Assessee has also raised an additional ground and the same is extracted as under :

> *"Additional Ground of appeal No.2(b) - Alternatively, the Ld.CIT(A) ought to have granted relief by reducing the total income assessed by Rs.60,00,000/- being the contingency offered to tax in return of income as no evidence was found during the course of search and/or in assessment proceedings regarding undisclosed income.*
>
> *With this as additional ground, the original ground No.2 may please be read as ground No. 2(a)."*

Similar additional ground has been raised by the assessee for the A.Yrs. 2010-11 and 2011-12.

26. From the above, it is evident that the Ground Nos. 1 and 2 relates to disallowance u/s.14A of the Act. While Ground No.1 relates to correctness of making of and the Ground No.2 relates to allowability of the benefit of set off against the contingency of Rs.60 lakhs disclosed by the assessee in the return of income in compliance of additional income offered by the assessee in search proceedings.

27. In connection with Ground No.1, Ld. Counsel for the assessee submitted that AO failed to record satisfaction which is required while invoking the provisions of section 14A of the Act r.w. Rule 8D of the I.T. Rules, 1962. Bringing our attention to the contents of Para No.5.1 of the assessment order, Ld. Counsel submitted that the AO failed to record the satisfaction before invoking the provisions u/s.14A of the

Act. Further, Ld. AR read out the relevant lines from the said para of the assessment order. For the sake of completeness, we proceed to extract the same as under :

> *"5.1. . . . . .*
>
> *It is difficult to accept the proposition that all the tax free income has been earned without incurring these expenditures and these expenditure were incurred only for earning taxable income. Therefore, I am satisfied that the assessee has not made adequate disallowance as mandated u/s.14A of the I.T. Act and therefore, the case of the assessee is a fit case for computation of the said disallowance u/s.14A of the I.T. Act."*

28. Further, Ld. AR for the assessee submitted that the above recorded satisfaction , is extremely general and it falls short of the legal requirement as provided in the judgement of Hon'ble Apex Court in the case of Godrej and Boyce Manufacturing Company Ltd vs. DCIT 394 ITR 448 (SC). Contents of Para No.37 of the said judgment is relied heavily and prayed for deletion of the addition made by the AO invoking the provisions of section 14A of the Act.

29. Ld. DR for the Revenue relied on the orders of the AO/CIT(A).

30. We heard both the parties on the issue relating to the issue of recording of satisfaction and perused the above extracted satisfaction recorded by the AO on this issue. We find the legal position was explained by the Hon'ble Apex Court and the Para No.37 of the judgment of Hon'ble Apex Court in the case of Godrej and Boyce Manufacturing Company Ltd. (supra) are relevant. Hon'ble Supreme Court explained the provisions of sub-section (2) and (3) of section 14A of the Act. For the sake of completeness, we proceed the extract the same here as under :

> *"37. We do not see how in the aforesaid fact situation a different view could have been taken for the assessment year 2002-03. Sub-sections (2) and (3) of section 14A of the Act read with rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. 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." (emphasis supplied).

31. The above ratio was adopted by the Pune Bench of the Tribunal in the case of Capgemini Technology Services India Limited, (in the matter of iGate Computer Systems Limited, (formerly Patni Computer systems Limited amalgamated with iGate Global Solutions Limited and name changed) Vs. DCIT vide ITA Nos. 216 and 360/PUN/2015, order dated 25-01-2018 and allowed the issue in favour of the assessee. For the sake of completeness, relevant operational paras are extracted here as under :

"34. We have heard the rival contentions and perused the record. The Assessing Officer while passing the assessment order in para 10 had observed that the assessee had earned significant amount of tax free dividends and in the computation of income, the assessee has disallowed sum of Rs.50 lakhs under section 14A of the Act. Then, reference is made to the Note filed by the assessee on expenditure disallowable under section 14A of the Act. The Assessing Officer thereafter, takes note of the contents of said explanation and observed as under:-

> *"I have gone through the submissions made by the assessee. It is observed that apart from investments in the overseas subsidiaries (where there is no tax-free income since the dividend is also taxable) the investments made by the assessee are in mutual funds. The entire investment in mutual fund is in non-equity scheme. In respect of investment in mutual funds, except for growth funds, the company receives tax free dividend. The amount of dividend received by the company is substantial. This is a clear case for application of Rule 8D. Hence, the contention of the assessee cannot be accepted. The disallowance u/s 14A is required to be made by applying Rule 8D. As per the working of disallowance u/s 14A as per Rule 8D, the amount of disallowance comes to Rs.5,68,32,323/-. The assessee has already disallowed Rs.50,00,000/- in the computation of income."*

35. The requirement of section 14(2) of the Act is that the Assessing Officer is to record as to why the disallowance made by the assessee i.e. Rs.50 lakhs under section 14A of the Act is not correct. The Assessing Officer takes note of the disallowance, considers the explanation of assessee and holds that the contention of assessee cannot be accepted. The preliminary satisfaction to be recorded by Assessing Officer, before making disallowance under section 14A of the Act read with Rule 8D of the Rules, is missing in the case; in the absence of the same, there is no merit in the disallowance made by the Assessing Officer. We find support

from the ratio laid down by the Hon'ble Supreme Court in Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT & Anr. (2017) 394 ITR 449 (SC).

> *"37. We do not see how in the aforesaid fact situation a different view could have been taken for the assessment year 2002-03. Sub-sections (2) and (3) of section 14A of the Act read with rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. 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."*
>
> *(underline provided by us for emphasis)*
>
> *36. The ratio laid down by the Hon'ble High Court of Delhi in Indiabulls Financial Services Ltd. Vs. DCIT (supra) is thus, not applicable. The ground of appeal No.3 raised by the Revenue is thus, dismissed."*

32. From the above, we are of the view that the satisfaction recorded by the AO in Para No.5.1 is extremely based on the suspicion and surmises. The satisfaction arrived at by the AO with reference to the entries in the books of account of the assessee and also having regard to the correctness of the claim of the assessee. In that sense of the matter, the satisfaction recorded by the AO is extremely generic and which falls short of the legal requirement for assuming jurisdiction u/s.14A of the Act.

Considering the above position, we are of the view that the AO failed to record the sustainable satisfaction before invoking the provisions of section 14A of the Act. Therefore, the disallowance made by the AO is unsustainable technically. Accordingly, this part of the argument of Ground No.1 is allowed. We find adjudication of the other issues of the said ground relating to merits becomes an academic exercise. Therefore, the same are dismissed as academic.

33. Ground No.2 raised by the assessee relates to granting of set off of the disallowed sum of Rs.51,61,884/- against the contingency of Rs.60 lakhs disclosed by the assessee in the return of income towards discrepancies/additions if any.

34. Background facts include that this is a case where action u/s.132 of the Act was conducted which resulted in the disclosure of additional income. During the proceedings u/s.132(4) of the Act pertaining to this assessee and in the assessment year assessee disclosed additional income of Rs.60 lakhs towards contingency if any. Assessee filed the return of income offering the said Rs.60 lakhs in the return of income. Infact, assessee computed the income of year at losses both under normal as well as MAT provisions. AO did not give said set off of benefit of said Rs.60 lakhs against the disallowance made by him in the search assessment. It is the claim of the assessee that said Rs.60 lakhs is intended for set off against the disallowance, like the present one made by the AO u/s.14A of the Act. With these background facts, assessee raised Ground No.2 claiming that the disallowance made by the AO in the search assessment should have been accordingly reduced out of the said Rs.60 lakhs with special reference to the disallowance u/s.14A of the Act.

35. Before us, Ld. Counsel for the assessee submitted that similar disallowance was made u/s.14A of the Act in the case of **Adurjee & Brothers Pvt. Ltd.** which belongs to the assessee's group of cases and the Tribunal allowed similar claim of set off in favour of the assessee. Further, Ld. AR for the assessee brought our attention to the decision of the Pune Bench of the Tribunal in the case of Serum Institute of India Ltd. Vs. DCIT in ITA Nos. 985 and 986/PUN/2015 and ITA Nos. 1535 & 1536/PUN/2015, order dated 28-11-2017. Contents of Para No.28 to 41 of the order of the Tribunal are relevant.

36. After hearing both the sides on this issue and on perusal of the said order of the Tribunal, we find (1) the similar issue came up for adjudication both in the case of Adurjee & Brothers Pvt. Ltd. and Serum Institute of India Ltd. In the facts of Serum Institute of India Ltd. (supra), we find the assessee disclosed contingency of Rs.1 crore and there is a demand for set off of the same towards the discrepancies/omissions if any. We also find the case of Adurjee & Brothers Pvt. Ltd. (supra) is relevant for the finding of the Tribunal where the disallowance u/s.14A of the Act was allowed to be set off against the contingency disclosure which is similar to the present case. Contents of Para No.12 of the order of the Tribunal in the case of Adurjee & Brothers Pvt. Ltd. Vs. DCIT in ITA No.1067/PN/2014, order dated 10-08-2016 are relevant in this regard and the same are extracted here as under :

> *"12. We find merit in the alternate contention of the Ld. Counsel for the assessee that the amount of Rs.75 lakhs offered to tax in the statement recorded u/s.132(4) be set off against the disallowance calculated under the provisions of section 14A r.w. Rule 8D. Admittedly, the assessee had made disclosure of Rs.75 lakhs voluntarily as additional income under the head "Contingencies" to cover any other errors, omissions or discrepancies. The submission of the Ld. Counsel for the assessee that the amount of Rs.75 lakhs was voluntarily offered and there was no detection of any incriminating material or undisclosed income could not be controverted by the Ld. Departmental Representative. We, therefore, find merit in the submission of the Ld. Counsel for the assessee that the amount of Rs.75 lakhs offered by the assessee as undisclosed income to cover any errors, omissions or discrepancies in computing the taxable income should be set off against the disallowance made u/s.14A r.w. Rule 8D of the I.T. Act.* ***We, therefore, set aside the order of the CIT(A) and direct the AO to restrict the disallowance u/s.14A r.w. Rule 8D to Rs.18,19,294/- i****.e. (Rs.93,24,674 – Rs.75,00,000/-). Grounds of appeal No.1 to 3 by the assessee are accordingly partly allowed.*

The above decision of the Tribunal allows the set off against the disallowance u/s.14A r.w. Rule 8D(2)

37. From the above, it is settled issue that the contingent disclosure is available for set off against the disallowance u/s.14 of the Act. However, in the present case, the question of set off does not arise as we have already granted relief to the

assessee on legal issue relating to the recording of satisfaction before invoking the provisions of section 14A of the Act r.w. Rule 8D(2) of the I.T. Rules. The Ground No.2/Additional Ground No.2(a) becomes academic.

38. Regarding the Additional Ground to be re-numbered as 2(b), Ld. AR submitted that the assessee's request is for reduction of returned loss by Rs.60 lakhs offered by the assessee during the search & seizure proceedings.

39. Before us, regarding the issue of admission of the said additional ground relating to the reduction of returned loss, Ld. AR submitted that the said ground being legal in nature needs to be admitted. He also submitted that there is no need for investigation into the facts.

40. Per Contra, Ld. DR for the Revenue strongly objected to the admission of the said additional ground raised by the assessee during the second appeal proceedings. According to him, the adjudication of this ground requires investigation into certain facts. Detailing the said investigation, Ld. DR submitted that there is need to examine the manner of disclosure of Rs.60 lakhs given by the assessee for the year under consideration in the name of the assessee. Further, for reduction of the returned loss by Rs.60 lakhs, it requires investigation into the seized material and books of account, if there exists any discrepancy which requires set off against the said contingency of Rs.60 lakhs. According to the Ld. DR, the additional ground should not be admitted when adjudication of the same calls for investigation into facts at the level of the AO. For this proposal, she relied on the Supreme Court judgment in the case of NTPC Ltd. Vs. CIT 243 ITR 83 (SC).

41. We heard both the parties on the issue of admission of the additional ground, and if it is admitted whether adjudication of the same demands investigation into the primary facts. We examined the objections raised by the Ld.

DR for the Revenue and find there is need for investigation into the seized material and other documents that were discovered during the search and seizure operation and the reasons that led to the disclosure of Rs.1.91 crores in general and Rs.60 lakhs in particular for the year under consideration. In our view, this exercise falls in the zone of investigation of facts. Accordingly, the conditions mentioned by the Supreme Court in the case of NTPC Ltd. (supra) do not allow in this case for admission of the additional ground. Accordingly, the additional Ground No.2(b) raised by the assessee is not admitted. Thus, the requirement of going into the allowability of issue becomes academic in nature. Therefore, the additional Ground No.2(b) is dismissed pro tanto.

42. Ground No.3 raised by the assessee relates to the disallowance of Rs.40,772/- being contribution to Group Gratuity Scheme.

43. It is an undisputed fact that the said scheme has never been approved by the CIT till date. No evidence of such approval was placed before the Revenue authorities or even before us. Thus, this issue is consistently being raised by the assessee over the years before the Tribunal. Before us, Ld. AR for the assessee merely submitted that a direction may be issued to the Assessing authority to allow the claim of the assessee as and when the Scheme gets the approval of CIT in accordance with law.

44. On perusal of the orders of the AO, we find this issue is discussed in Para 10 of the assessment order and Para No.6.21 of the order of CIT(A). On hearing both the parties, we are of the opinion that the order of CIT(A) on this issue is fair and reasonable as the scheme has not been approved till date, as admitted by the Ld. AR for the assessee. Hence, it does not call for any interference on this issue. Accordingly, Ground No.3 raised by the assessee is dismissed.

45. Ground No.4 raised by the assessee relates to the confirmation of disallowance of Portfolio Management Fees of Rs.17,15,457/-.

46. Ld. Counsel for the assessee submitted that this issue is identical to the one already discussed and adjudicated by the Tribunal in assessee's favour in the case of Serum Institute of India Ltd. (supra) order dated 28-11-2017.

47. After hearing both the parties on this issue and considering the settled nature of the issue, we proceed to extract the finding of the Tribunal here as under:

> *"59. After hearing both the sides on this issue, we perused the order of the Tribunal in assessee's own case for A.Y. 2007-08. We find the Tribunal in Para Nos. 12 and 12.1 of the order has decided this issue in favour of the assessee relying on the order of Tribunal in the case of KRA Holding and Trading Investment Pvt. Ltd. (supra). We proceed to extract the operational para No.12.1 and the same reads as under :*
>
> > *"12.1 Respectfully following the decision of the Tribunal in the case of KRA Holding and Trading Investment Pvt. Ltd. (supra) we hold that the 'PMS' fees paid by the assessee is an allowable deduction from the capital gains."*
>
> *60. Considering the settled nature of the issue, we are of the opinion that the ground raised by the assessee needs to be allowed. Accordingly, Ground No.6 raised by the assessee is allowed."*

48. Considering the fact that nothing contrary is brought to our notice, we find the claim of the assessee with regard to payment of PMS fees paid by the assessee is an allowable deduction from the capital gains. Therefore, we direct the AO to examine the facts of the present case and apply the ratio laid down by the Tribunal in the case of Serum Institute of India Ltd. (supra). Accordingly, Ground No.4 raised by the assessee is allowed for statistical purposes.

49. In the result, appeal of the assessee is partly allowed.

ITA Nos.249 and 250/PUN/2016
(A.Yrs. 2010-11 and 2011-12)

50. In these two appeals for A.Yrs. 200-11 and 2011-12, the grounds originally raised by the assessee are identical and they relate to (1) the issue of disallowance u/s.14A without recording proper satisfaction, (2) granting of set off of the said disallowance against the contingency of Rs.60 lakhs, (3) disallowance of Contribution to the Group Gratuity Scheme, (4) disallowance of PMS fees. Further, the issue of reducing the returned losses to the extent of contingency was the issue raised in the additional ground vide Ground No.2(b) filed by the assessee for the first time before the Tribunal.

These issues are exactly similar to the ones already adjudicated by us while dealing with the appeal ITA No.248/PUN/2016 for A.Y. 2009-10. The arguments as well as the counter arguments by the Ld. AR for the assessee and Ld. DR for the Revenue were identical. Therefore, we are of the opinion that the decisions and directions given in A.Yrs. 2009-10 are applicable to these appeals also. Considering the same, we are of the opinion that the grounds raised by the assessee are allowed/dismissed, as the case may be.

51. In the result, both the appeals of the assessee are partly allowed.

52. To sum up, appeals of the assessee for A.Y. 2006-07 and A.Yrs 2009-10 to 2011-12 are partly allowed and the appeals of the assessee for A.Yrs. 2007-08 and 2008-09 are dismissed.

Order pronounced on this 28th day of February, 2018.

Sd/-	**Sd/-**
(SUSHMA CHOWLA)	**(D.KARUNAKARA RAO)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक Dated : 28th February, 2018.
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-11, Pune
4. आयकर आयुक्त / The CIT-11, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "**बी**" / DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune