

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

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.1001/PUN/2015

निर्धारण वर्ष / Assessment Year : 2010-11

R.L. Gold Pvt. Ltd.,
169, Balaji Peth,
Jalgaon - 425001

PAN : AABCG5201D

.....अपीलार्थी / Appellant

बनाम / V/s.

Joint Commissioner of Income Tax,
Range - 1, Jalgaon

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1069/PUN/2015

निर्धारण वर्ष / Assessment Year : 2010-11

The Deputy Commissioner of Income Tax,
Circle - 1, Jalgaon

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. R.L. Gold Pvt. Ltd.,
169, Balaji Peth, Johari Bazar,
Jalgaon - 425001

PAN : AABCG5201D

.....प्रत्यर्थी / Respondent

Assessee by : Dr. Sunil Pathak
Revenue by : Shri Mukesh Jha

सुनवाई की तारीख / Date of Hearing : 19-07-2018

घोषणा की तारीख / Date of Pronouncement : 31-08-2018

आदेश / ORDER**PER VIKAS AWASTHY, JM :**

This cross appeals by the assessee and the Revenue are directed against the order of Commissioner of Income Tax (Appeals)-2, Nashik dated 29-05-2-15 for the assessment year 2010-11.

2. The assessee in appeal has raised three grounds. The ground No. 1 is in respect of time barring assessment. In ground No. 2 the assessee has assailed GP addition of Rs.4,17,66,635/- by estimating GP @ 1.20% as against loss of 0.10% declared by the assessee on the total sales of Rs.3,48,05,52,935/-. The ground No. 3 is in respect of addition on account of under valuation of closing stock Rs.15,53,087/-.

3. The Revenue in appeal has assailed the findings of Commissioner of Income Tax (Appeals) on the following grounds :

“01. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs.5,10,91,046/- made on account of fictitious transaction with its sister concerns u/s 40A(2)(a) of the Income Tax Act,1961.

02. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.92,315/- made on account of disallowance u/s.14A r.w. Rule 8D. From the facts of the case it can be seen that assessee has deliberately diverted its interest bearing funds into the purchase of agricultural land and the income derived these agricultural lands are exempt from taxation.

03. On the facts and in the circumstances of the case and in law, the Ld. CIT(A)-II, Nashik be cancelled on the above issue and that of the A.O be restored.

04. The appellant craves leave to add, alter, modify, delete amend any of the grounds with prior permission of the Hon'ble CIT, as per the circumstances of the case.

05. The appellant prays to file any of the additional evidence appropriate to the grounds taken in appeal.”

4. Dr. Sunil Pathak appearing on behalf of the assessee submitted that he is not pressing ground No. 1 in the appeal relating to time barring assessment.

4.1 In respect of ground No. 2, the ld. AR submitted that the assessee had declared GP of (-) 0.10% of the total sales. During the assessment proceedings the Assessing Officer has made itemized addition. No ad hoc addition was made by the Assessing Officer by estimating GP rate. The Commissioner of Income Tax (Appeals) estimated GP @ 1.20% without any basis. The Commissioner of Income Tax (Appeals) before making such ad hoc addition neither gave enhancement notice nor any opportunity of hearing to the assessee. The assessee has maintained day to day stock register wherein all the sales and purchases are recorded. The assessee has also maintained separate register in respect of inward and outward movement of gold and silver to 'Karigars' (workers). The defects as pointed in the books of the assessee are per se not defects.

4.2 The ld. AR further submitted that the Tribunal in the case of assessee's sister concerns M/s. Rajmal Lakhichand has estimated GP @ 1.20% as against 1.13% declared in the period relevant to the assessment year 2009-10. Thus, the addition sustained by the Tribunal was to the tune of 0.07%. The Commissioner of Income Tax (Appeals) in the case of assessee has estimated GP @ 1.20% as against (-) 0.10% declared by the assessee. The addition comes to 1.30% which is very much on the higher side. The ld. AR pointed that the sister concern of the assessee M/s. Rajmal Lakhichand is engaged in retail business of gold and silver whereas, the assessee is in the wholesale trading of gold and silver ornaments. In wholesale business the profit margins are comparatively less than retail business. The ld. AR referred to assessment order for

assessment year 2008-09 at pages 228 to 231 of the paper book to contend that the assessee had suffered loss in assessment year 2008-09 as well and the same was accepted by the Assessing Officer. In assessment year 2009-10 the assessee had declared GP of 2.68%. The rise in GP in assessment year 2009-10 was due to gain in commodity market. The ld. AR submitted that the turnover for assessment year 2010-11 is Rs.348.06 crores as compared to Rs.159 crores in assessment year 2009-10. Hence, reduction in the profit is justified. The ld. AR pointed that in the case of Rajmal Lakhichand for assessment year 2010-11 the Tribunal has upheld addition only to the extent of 0.09%. As against the GP of 0.61% declared by the assessee the Tribunal estimated GP at 0.70%. Thus, in the facts narrated above, the GP addition made by the Commissioner of Income Tax (Appeals) is totally unjustified, arbitrary and unreasonable.

4.3 In ground No. 3 raised in the appeal by the assessee is with respect to addition on account of under valuation of closing stock Rs.15,53,087/- the ld. AR submitted that the assessee is consistently valuing its closing stock on cost or net realizable value, whichever is less. For the purpose of computing net realizable value, the assessee adopted rates quoted by Bombay Bullion Association. The Assessing Officer made the addition by applying Jalgaon rates. The rates at Jalgaon are normally higher than Bombay Bullion rates. The Assessing Officer disturbed the valuation of closing stock only in this particular assessment year. No such addition is made either in earlier or in subsequent assessment year, though the assessee has been calculating net realizable value as per Bombay rates. The ld. AR submitted that addition for identical reason was made by Assessing Officer in the case of assessee's group concern M/s. Rajmal Lakhichand Jewellers Pvt. Ltd. in assessment year 2010-11. The issue travelled to the Tribunal in ITA No. 672/PUN/2015. The Tribunal vide

order dated 07-03-2018 deleted the addition. The ld. AR furnished the copy of Tribunal order in the case of Rajmal Lakhichand Jewellers Pvt. Ltd. Vs. Jt. Commissioner of Income Tax (supra).

4.4 The ld. AR in respect of grounds raised by the Revenue in appeal submitted that the ground No. 1 in the appeal by Revenue is with respect to deleting the addition of Rs.5,10,91,046/- made u/s. 40A(2)(a) of the Act. The ld. AR submitted that the addition has been made in respect of inter-group purchase and sale transactions. The Assessing Officer held that the assessee has paid higher cost to group concerns for purchase of gold/silver ornaments. The Assessing Officer has applied the rate of Bombay Bullion Association whereas, the assessee has applied Jalgaon rates. The ld. AR submitted that the chart at pages 39 to 41 of the paper book clearly shows that the assessee has not paid higher rate to the sister concerns for purchase of gold/silver ornaments. Hence, no disallowance is warranted. The ld. AR further submitted that similar disallowance was made by the Assessing Officer in the case of assessee's sister concern Rajmal Lakhichand in assessment year 2009-10. The Tribunal vide order dated 16-01-2015 in ITA No. 607/PN/2013 deleted the disallowance.

4.5 In respect of ground No. 2 raised in the appeal by the Revenue, the ld. AR submitted that the Commissioner of Income Tax (Appeals) has deleted the disallowance of Rs.92,315/- u/s. 14A r.w. Rule 8D. The ld. AR submitted that the assessee has invested Rs.19,61,012/- in agricultural land. The said investment was made in earlier years, no fresh investment was made during the year under appeal. The assessee has not received any income from the said investment. Since, no tax free income has been received by the assessee from the above investment no disallowance under

the provisions of section 14A r.w. Rule 8D is warranted. In support of his submissions, the ld. AR placed reliance on the following decisions :

- i. Cheminvest Ltd. Vs. Commissioner of Income Tax, 378 ITR 33 (Delhi);
- ii. Commissioner of Income Tax Vs. Corrttech Energy P. Ltd., 372 ITR 97 (Guj);
- iii. Redington (India) Ltd. Vs. Additional Commissioner of Income Tax, 392 ITR 633 (Mad);
- iv. Shri Goyal Ishwarchand Kishorilal Vs. JCIT in ITA No. 422/PN/2013 for assessment year 2009-10 decided on 26-06-2014.

5. On the other hand Shri Mukesh Jha representing the Department vehemently supported the findings of Commissioner of Income Tax (Appeals) in estimating GP @ 1.20%. The ld. DR submitted that the GP estimated by the Commissioner of Income Tax (Appeals) is fair and reasonable. Therefore, it deserves to be upheld.

5.1 In so far as the additions deleted by the Commissioner of Income Tax (Appeals) that have been assailed by the Revenue in appeal, the ld. DR submitted that special audit was carried out. It was found that the assessee has indulged in transaction with its sister concerns and the assessee has paid inflated price for purchase of gold/silver ornaments from sister concerns. However, the ld. DR fairly admitted that this issue of disallowance u/s. 40A(2) had emerged in the case of assessee's sister concerns. The matter travelled up to the Tribunal and the Tribunal deleted the addition.

6. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. We will first take up the appeal of assessee and thereafter the cross appeal by the Revenue.

ITA No. 1001/PUN/2015 (Assessee's Appeal)

7. The first ground raised in the appeal by the assessee relating to time barring assessment has not been pressed by the ld. AR. Thus, in view of the statement made by the ld. AR of assessee at the Bar, ground No. 1 raised in the appeal by the assessee is dismissed as not pressed.

Estimation of Gross Profit – Addition of Rs.4,17,66,635/-

8. With respect to ground No. 2 of the appeal by assessee, we find that similar disallowance was made in the case of assessee's sister concern M/s. Rajmal Lakhichand in assessment years 2009-10 and 2010-11. The Co-ordinate Bench of the Tribunal in the case of M/s. Rajmal Lakhichand in ITA No. 670/PUN/2015 for assessment year 2010-11 decided on 28-02-2018 by following the earlier decisions of Tribunal in the case of M/s. Rajmal Lakhichand Vs. JCIT in ITA No. 532/PN/2013 (supra) deleted the disallowance u/s. 40A(2)(a) by observing as under :

“21. We find that identical disallowances u/s.40A(2)(a) was made by the Assessing Officer in assessee's own case in assessment year 2010-11. The Co-ordinate Bench of the Tribunal, after taking into consideration entire facts of the case concluded that the average price formula adopted by Assessing Officer and Commissioner of Income Tax (Appeal) is not correct. The Tribunal made the addition by estimating GP. The Commissioner of Income Tax (Appeal) in the impugned order has extracted the findings of the Tribunal on this issue. For the sake of brevity, we are not reproducing the same here. However, the gist of observations made by Tribunal on the issue in assessment year 2009-10 are as under:

- (a) The sale and purchase of gold bullion and gold ornaments within a group concerns are only paper transactions without involving any real transfer of bullion/ornaments.*
- (b) The assessee entered into fictitious transactions within the group to inflate purchases and sales to obtain higher bank finance. This fact is evident from increase in turnover of the assessee in the last two years by 11.5 times. The turnover of assessee increased from Rs.82.55 crore in assessment year 2007-08 to Rs.955.78 crores in assessment year 2009-10.*

(c) *The books of account of the assessee do not reflect the correct picture of its true state of financial affairs, therefore, the same are to be rejected.*

(d) *Both the Authorities below i.e. Assessing Officer/ Commissioner of Income Tax (Appeal) have failed to understand the trading transactions in gold bullion and gold ornaments in right perspective. The method of average price of the year is not correct method to determine reasonableness of the amount paid for purchasing gold bullion from sister concerns. There are certain instances where the assessee had paid lesser price as compared to the local market and Bombay market to the sister concerns. This fact has not been considered by both the Authorities below.*

(e) *There are mistakes in the recasted trading account prepared by the Commissioner of Income Tax (Appeal) as the total turnover of the assessee as shown in the recasted trading account is Rs.1065.32 crores whereas the actual turnover is Rs.955.78 crores. Similarly, transactions with the third parties including gold bullion and gold ornaments as per recasted trading account is Rs.679.66 crores as against cost of actual transaction Rs.435.37 crores. Therefore, no reliance can be placed on recasted trading account.*

(f) *While making addition in respect of sale of gold ornaments to group concerns/ sister concerns, both the Authorities below have adopted comparison formula based on the sale of ornaments to the unrelated parties and sale of ornaments to the related parties. The average price method adopted by the Assessing Officer and Commissioner of Income Tax (Appeal), as far as the issue of ornaments is concerned; the price may vary from design to design, item to item, purity of gold etc. Therefore, average price method of ornaments cannot be taken to the entire sale of the year as different factors are involved in the price of ornaments. Apart from difference in design, purity of gold, there is variation in the labour charges as well. Thus, method adopted by the Authorities below on account of lower price charge from sister concerns were rejected by the Tribunal.*

(g) *For invoking the provisions of section 40A(2)(a), the Assessing Officer has to establish that the payments made to the related parties is not reasonable. Both the Authorities below have not considered the local conditions of the gold market. The average price method adopted by both the authorities is erroneous considering the market conditions of the bullion. Thus, the basis for computing excess payments made to sister concerns by assessee is faulty, therefore, provisions of section 40A(2)(b) cannot be applied.*

22. *The Co-ordinate Bench of the Tribunal after taking into consideration various facets of the transaction in sale/purchase of gold ornaments/bullion with related/unrelated parties concluded as under:*

“8.35 In the light of our above discussion, we are of the opinion that approach of both the authorities below is not correct for making high pitch additions in the hands of the assessee by invoking provisions of section 40A(2)(b) and for alleged selling of the ornaments to the related entities at a lower price. As per the financial accounts of the assessee, the GP worked out at 1.13%. The possibility of purchasing the bullion and ornaments from the group entities at a higher price cannot be ruled out even though there is no strict proof against the assessee. Even the exercise done by both the authorities below is not

based on any scientific method. We therefore are of the opinion that adoption of GP rate of 1.20% as against 1.13% disclosed by the assessee will meet the ends of justice. We hold and direct accordingly. We accordingly set-aside the order of the Ld. CIT(A) and direct the AO to work out the GP @1.20% on the total sale of Rs.955,78,81,767/- as per audited accounts. After reducing the GP declared by the assessee at Rs.10,79,15,449/-, the balance GP is to be added to the total income of the assessee. This covers the grounds on the addition made by invoking provisions of section 40A(2) (b) i.e. purchase of bullion from the sister concerns/related entities by paying higher price as well as sale of the ornaments at lower price. Accordingly, the relevant grounds taken by the assessee are partly allowed and the grounds of appeal No. 1 and 2 by the Revenue are dismissed.”

23. Both sides are unanimous in admitting that the transactions carried out by the assessee during the assessment year under appeal are similar in nature and their accounting has also been done in similar manner. The Commissioner of Income Tax (Appeals) while estimating GP at the rate of 0.90% has taken cue from the decision of the Tribunal in assessment year 2009-10. The relevant extracts of the findings of Commissioner of Income Tax (Appeal) in this regard are as under:

“7.17 There is substantial increase in the turnover of the appellant during the year as compared to the last year. However, there is huge fall in G.P. and N.P in this year. The appellant continues to be engaged in the same business and the market conditions remain the same. The appellant has no convincing explanation for such steep fall of G.P. for the year.

7.18. Thus, following the decision of the Hon'ble ITAT, the adoption of G.P. rate of 0.90% as against the G.P. rate of 0.61% disclosed by the appellant will be fair and meet the ends of justice. Therefore, the A.O. is directed to work out the G.P at 0.90% on the total sale of Rs.1961,54,11,702/- as per the audited accounts. The revised G.P. comes to Rs.17,65,38,705 as against G.P. shown by the appellant at Rs.11,99,83,810/-. After reducing the G.P. shown by the appellant at Rs.11,99,83,810/-, the balance G.P. is to be added to the total income of the appellant which comes to Rs.5,65,54,895/-. This covers the grounds on the addition made by invoking provisions of section 40A(2)(a) i.e. purchase of gold bullion and gold ornaments from the sister concerns by paying higher price. The other income shown by the appellant will remain unchanged. The other confirmed additions will not be affected.”

24. The assessee has assailed the G.P. estimated by Commissioner of Income Tax (Appeal) being very much on the higher side. As against the addition of 0.07% made by the Tribunal in assessment year 2009-10, the Commissioner of Income Tax (Appeal) has enhanced G.P. rate by 0.30% (approximately). The assessee in the assessment year under appeal has disclosed G.P. @ 0.61%. Taking into consideration entirety of facts, we are of considered view that increase in G.P. rate by 0.09% would meet the ends of justice. Thus, G.P. is enhanced from 0.61% to 0.70% of the total sale of Rs.1961,54,11,702/- as per audit accounts.

In so far as disallowance made by the Assessing Officer u/s.40A(2)(a) in respect of purchase of gold bullion and gold ornaments is concerned, the same is rejected for the reasons given by the Tribunal in assessment year 2009-10. Thus, in view of our above findings, **the ground No. 3 raised in appeal by assessee is partly allowed and ground No. 1 raised in appeal by Department is dismissed.**

9. We find that in the present case disallowance u/s. 40A(2)(a) has been made by the Assessing Officer for the reasons similar to the reasons in the case of assessee's sister concern. The nature of transactions carried out by the assessee is almost on the same line as were carried out in the case of M/s. Rajmal Lakhichand, except that the assessee is wholesale trader of gold and silver and M/s. Rajmal Lakhichand in the retail business of gold and silver. The assessee in the present assessment year has declared loss of 0.10%. The Commissioner of Income Tax (Appeals) has estimated GP of 1.20%. The GP estimated by the Commissioner of Income Tax (Appeals) is without any basis and is definitely very much on the higher side. We observe that in the past (assessment year 2008-09) the assessee had declared gross loss which was accepted by the Assessing Officer. In assessment year 2009-10 the assessee had disclosed GP of 2.68%. The rise in GP has been attributed to the gain of Rs.9.53 crores earned by the assessee in the commodity market. The ld. AR has pointed that in the assessment year under appeal gain in commodity market is only Rs.4.06 crores hence, there is no much rise in the GP. Taking into consideration totality of facts, we are of considered view that GP if fixed at 0.22% for the assessment year under appeal, it would meet the ends of justice. Accordingly, ground No. 2 raised in the appeal by assessee is partly allowed.

10. In ground No. 3 of appeal, the assessee has assailed addition of Rs.15,53,087/- on account of undervaluation of closing stock confirmed by the Commissioner of Income Tax (Appeals). The contention of assessee is that to value closing stock, the assessee has been consistently adopting rates quoted by Bombay Bullion Association. The Assessing Officer has accepted assessee's method of valuation in the past as well as in the

subsequent assessment years. These facts have not been disputed by the Revenue.

We find that on similar set of facts the addition in valuation of closing stock was challenged in the case of M/s. Rajmal Lakhichand Jewellers Pvt. Ltd. before the Tribunal in ITA No. 672/PUN/2015 (supra). The Co-ordinate Bench deleted the addition by holding as under :

“19. The ground No. 4 of appeal by assessee is with respect to addition on account of under valuation of stock. The contention of ld. AR of assessee is that closing stock is valued by the assessee on cost or net realizable value, whichever is less. For the valuation of stock the assessee adopts closing rate quoted by Bombay Bullion Association. The assessee is consistently following this method of valuation of closing stock in the earlier assessment years as well as in the subsequent assessment years. No objection was ever raised by the Assessing Officer on the method of valuation or rates adopted for valuation either in the earlier assessment years or in the subsequent assessment years. A perusal of impugned order shows that the authorities below have not disputed the method of valuation but has raised objection to the adoption of Bombay Bullion Association rates for the valuation purpose of stock. As per the Revenue the assessee should have applied Jalgaon rates as the assessee has its business at Jalgaon and most of customers of the assessee are located in and around Jalgaon. The fact that the assessee has been consistently valuing its closing stock as per rates quoted by Bombay Bullion Association in the earlier assessment years and subsequent assessment years has not been disputed by the Revenue. The Revenue has also not disputed that in the earlier assessment years or in subsequent assessment years no addition has been made by Assessing Officer for adopting Bombay Bullion Association rates for valuation of closing stock by assessee. It is only in the assessment year under appeal that the Assessing Officer deviated and applied Jalgaon rates instead of rates quoted by Bombay Bullion Association for valuation of closing stock. We do not find any merit in the reasoning given in the impugned order to disturb the method of valuation of closing stock. Accordingly, the findings of Commissioner of Income Tax (Appeals) on this issue are set aside and ground No. 4 raised in appeal by assessee is allowed.”

The Revenue has not placed on record any material to controvert the findings of Tribunal in the aforesaid case. Thus, following the decision of Co-ordinate Bench, we reverse the findings of Commissioner of Income Tax (Appeals) on this issue and allow the ground raised by assessee.

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

ITA No. 1069/PUN/2015 (Revenue's Appeal)

12. Now, we will take up the issues raised by the Department in its appeal. The first ground raised by the Department in appeal is against

deleting the addition of Rs.5,10,91,046/- u/s. 40A(2)(a) of the Act on account of alleged fictitious transactions with sister concerns for purchase of gold/silver ornaments. The Commissioner of Income Tax (Appeals) has deleted the addition by following the order of Tribunal in the case of assessee's sister concerns M/s. Rajmal Lakhichand in ITA No. 607/PN/2013 (supra). Addition for identical reasons was made in assessment year 2010-11 in the case of M/s. Rajmal Lakhichand. In the said case the Commissioner of Income Tax (Appeals) had sought remand report from the Assessing Officer. The Assessing Officer in remand report admitted that the assessee has not made excess payments to the sister concerns for purchase of ornaments. The Commissioner of Income Tax (Appeals) after considering remand report and the order of Tribunal allowed the ground raised by assessee qua alleged excess payments made by assessee to its sister concerns for purchase of gold/silver. The Department carried the issue in appeal before the Tribunal in ITA No. 2463/PUN/2016. The Co-ordinate Bench vide order dated 08-08-2018 confirmed the findings of Commissioner of Income Tax (Appeals) by observing as under :

"7. It is an admitted fact that there is no change in the facts and the nature of transactions are identical. We further observe that similar disallowances were made in the case of other sister concerns of the assessee viz. Rajmal Lakhichand Jewellers Pvt. Ltd. and R.L. Gold Pvt. Ltd. The matter travelled up to the Tribunal and the Tribunal in the cases of Rajmal Lakhichand Jewellers Pvt. Ltd. Vs. Jt. Commissioner of Income Tax (supra) and R.L. Gold Pvt. Ltd. Vs. Dy. Commissioner of Income Tax (supra) has deleted the disallowances u/s. 40A(2) of the Act.

8. We further observe that the Assessing Officer in the remand report has accepted that after applying local rates, the assessee has not made any excessive payments to the sister concerns for the purchase of ornaments. The local rates as published in the local Newspapers have been compared with the rates applied by the assessee and on verification it is found to be in order. Thus, the Assessing Officer accepted that no excessive payments were made by the assessee to its sister concerns. Under such circumstances disallowance u/s. 40A(2)(a) is uncalled for.

In view of the above facts, we do not find any infirmity in the order of Commissioner of Income Tax (Appeals). Accordingly, the same is upheld and the appeal of Revenue is dismissed being devoid of any merit."

No material has been placed on record by the Revenue highlighting the distinguishing feature in the transactions with sister concerns in the present case. The nature of the transactions in all the group concerns are identical. Thus, in the light of the decision of Tribunal in the case of assessee's group concerns no disallowance u/s. 40A(2)(a) of the Act is warranted. Accordingly, the ground No. 1 raised in the appeal by the Revenue is dismissed.

13. The ground No. 2 of the appeal by the Revenue is directed against deleting the addition of Rs.92,315/- u/s. 14A r.w. Rule 8D. It is an undisputed fact that during the period relevant to assessment year under appeal, the assessee has not received any income from investment in agricultural land. The Commissioner of Income Tax (Appeals) has observed that investment of Rs.19,61,012/- made in agricultural land by the assessee was made in the earlier assessment years and no fresh investment was made during the period relevant to assessment year under appeal. The Revenue has not disputed these finding of fact given by the Commissioner of Income Tax (Appeals). The Hon'ble Delhi High Court in the case of Cheminvest Ltd. Vs. Commissioner of Income Tax (supra) has held that where no exempt income has been earned by the assessee in the relevant assessment year no disallowance is to be made u/s. 14A. Similar view has been taken by the Hon'ble Madras High Court in the case of Redington (India) Ltd. Vs. Additional Commissioner of Income Tax (supra) and the Hon'ble Gujarat High Court in the case of Commissioner of Income Tax Vs. Corrttech Energy P. Ltd. (supra). Thus, in view of un rebutted facts and case laws discussed above, we do not find any infirmity in the findings of Commissioner of Income Tax (Appeals) in deleting the disallowance made u/s. 14A r.w. Rule 8D. Accordingly, ground No. 2 raised in the appeal by Revenue is dismissed.

14. The ground Nos. 3, 4 and 5 of the appeal by the Revenue are general in nature, hence, require no adjudication.

15. In the result, the appeal of the Revenue is dismissed.

16. To sum up, the appeal of the assessee is partly allowed and the appeal by the Revenue is dismissed.

Order pronounced on Friday, the 31st day of August, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 31st August, 2018

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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)-2, Nashik
4. The Pr. Commissioner of Income Tax-2, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune