

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI

Before Shri Mahavir Singh(JUDICIAL MEMBER)

AND

Shri G Manjunatha (ACCOUNTANT MEMBER)

I.T.A No.7595/Mum/2013 - AY 2010-11

I.T.A No.1855/Mum/2015 - AY 2011-12

Tata Industries Limited 24, Bombay House Homi Modi Street, Fort Mumbai 400 001 PAN : AAAC4058L	vs	The ACIT, Range 2(3) Mumbai-20
APPELLANT		RESPONDENT

I.T.A No.612/Mum/2014 - AY 2010-11

I.T.A No.1763/Mum/2015 - AY 2011-12

The ACIT- 2(3) / Dy.CIT- 2(3)(1) Mumbai-20	vs	Tata Industries Limited 24, Bombay House Homi Modi Street, Fort Mumbai 400 001
APPELLANT		RESPONDENT

Assessee by	Smt. Aarti Vissanji
Revenue by	Shri Abhishek Narang

Date of hearing	08-08-2018
Date of pronouncement	-09-2018

ORDER

Per G Manjunatha, AM :

These cross appeals filed by the assessee as well as the revenue are directed against separate, but identical orders of the CIT(A)-6,

Mumbai dated 17-10-2013 and 30-01-2015 for the assessment years 2010-11 & 2011-12. Since facts are identical and issues are common in all the appeals, for the sake of convenience, these appeals were heard together and are disposed of by this common order.

2. The assessee has raised more or less common grounds of appeal for both the assessment years. Therefore, for the sake of convenience, grounds of appeal taken for AY 2010-11 are reproduced below:-

“The following grounds of appeal are distinct and separate and without prejudice to each other:

1. GROUND NO. 1

a) The learned Commissioner of Income-tax (Appeal) ['Id. CIT(A)'] has erred in law and facts in confirming the disallowance of expenditure of Rs. 2,25,21,880 (Rs. 8,11,72,533 - Rs. 5,97,63,078) incurred by the Projects and Investment department of the Head Office under the provisions of Section 14A, as per Rule 8D(2)(i) as "the amount of expenditure directly relating to income which does not form part of total income" for the purposes of computing Income from Business or Profession and also in the computation of Taxable Income u/s 115JB.

b) The Id. CIT(A) has erred in law and facts in not establishing a direct nexus between the tax free income and the expenditure incurred for earning tax free income for the purpose of disallowing Rs. 2,25,21,880 under Rule 8D(2)(i).

c) The Id. CIT(A) has not considered the exclusion of the amount of investments on which the Appellant has not earned any exempt income during the year under consideration for the purpose of computing the "Average Value of Investment" as per rule 8D(2)(iii) r.w.s. 14A of the Act.

2. GROUND NO. 2

On the facts and in the circumstances of the case and without prejudice to the other grounds, the Appellant, while calculating 'Average Value of Investment' as per rule 8D(2)(iii) r.w.s. 14A of the Act has taken gross value of investments without reducing the provision for diminution in the value of investments. In accordance Rule 8D(2)(iii), the learned Assistant Commissioner of Income-tax ['Id. ACIT] in the assessment order, ought to consider the net value of the investments as appearing on the Balance Sheet of the Appellant (i.e. after reducing the provision for diminution in the value of investments).”

3. The assessee has also filed a petition for admission of additional ground of appeal on 25-09-2017 and 20-03-2018 by taking certain additional grounds. The additional grounds taken by the assessee are

reproduced hereunder:-

The Hon' Tribunal be pleased to hold that no disallowance is to be made u/s. 14A of the Act, on the Strategic Investments held in shares of Companies.

Without prejudice to the above and in the alternate

The Hon' Tribunal be pleased to hold that the Ld. CIT(A) having sustained disallowance of expenditure of Rs. 1,37,38,3477- (out of Project and Investment Department) under Rule 8D(2)(i), further disallowance of Rs.6,34,04,103/- (Rs. 6,72,11,1037- less Rs.38,07,0007-) cannot be sustained under Rule 8D(2)(iii).

Without prejudice to the above and in the alternate

The Hon' Tribunal be pleased to hold that the aggregate disallowance under Section 14A read with Rule 8D(2)(i) and (iii) cannot exceed the expenditure incurred by the Project and Investment Department of Rs.2,14,09,4757- (Rs. 8,11,72,5537- less Rs.5,97,63,0787-) being net of disallowances made under the applicable provisions of the Act other than Section 14A.

In view of the decision of the Hon. ITAT, Mumbai, in the appellant's own case vide Order dated 20th July 2016 for A.Y. 2004-05, holding that the appellant is entitled to deduction of expense incurred on investments made with a view to exercise control, it is humbly submitted that the appellant is entitled to deduction of Rs.5,97,63,0787- being legal and professional fees incurred by the Project and Investment Department and other Division or department.

1. Computation of Book Profit u/s. 115JB of the Act

The Hon'ble Tribunal be pleased to hold that the computation u/s. clause (f) of Explanation-1 to Section 115JB(2) is to be made without taking into account disallowance made u/s. 14A read with Rule 8D(2)(iii).

4. The revenue also has taken more or less common grounds of appeal for both the assessment years. The grounds of appeal taken by the revenue for AY 2010-11 are extracted below:-

“On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in allowing relief to the assessee to the extent impugned in the grounds enumerated below:

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of expenditure of Rs.8,11,72,533/- made u/s 14A of the IT Act, without appreciating that disallowance of expenditure of Rs.8,11,72,533/- being related to the investment division was disallowable under Rule 8D(2)(ii), which is clearly apart from the disallowance of Rs.1 1,41,68,7307- made by the assessee voluntarily and thus there is no double disallowance.

2. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in applying Rule 8D(2)(ii) r.w.s 14A by holding that since the amount of investment out of share application money, had not earned any exempt income, the same should be excluded from the calculation without appreciating that Rule 8D(2)(ii) r.w.s 14A does not exclude any form of investment in case of mixed funds.”

5. The brief facts of the case are that the assessee is an investment and finance company and a promoter of various companies in Tata group. It has initiated and promoted Tata group companies into key business areas such as telecom equipment, financial services, oil explorations and drilling services, information technology, process management systems, telecom services, auto components and infrastructure development. The assessee holds investment in share capital of various companies promoted by it and has controlling interest and therefore, takes active interest in the business of those companies. The assessee has divided its business activities into 3 operating divisions, i.e. Tata Strategic Management group (TSMG), Tata Interactive Services (TIS) and Head Office. The Head office looks after investment and project division including finance and accounts. The assessee has filed its return of income for AY 2010-11 declaring total income of Rs.3,20,77,310. The case was selected for scrutiny and notices u/s 143(2) and 142(1) of the Act were issued. In response to notices, the authorized representative of the assessee appeared from time to time and filed various details including audited balance-sheet and

P&L Account, etc.

6. During the course of assessment proceedings, the AO noticed that the assessee has earned dividend income of Rs.15,43,42,348 and claimed the same as exempt u/s 10(34) of the Income-tax Act, 1961. The AO further observed that the assessee has made suo moto disallowance of Rs.6,72,11,103 u/s 14A r.w.r. 8D(2)(iii) of Income-tax Rules, 1962 in respect of expenditure incurred in relation to exempt income. In order to ascertain the correctness of disallowance made by the assessee u/s 14A of the Act, the AO called upon the assessee to file necessary details to justify disallowance quantified u/s 14A of the Act. In response to notice, the assessee has filed complete details of activities undertaken by the company, investments held in various companies and expenditure incurred by 3 divisions. The assessee further contended that it has suo moto disallowed a sum of Rs.6,72,11,103 towards general and administrative expenses u/s 14A by invoking Rule 8D(2)(iii) @0.5% of average value of investments. Therefore, it has made suo moto disallowance in accordance with law and hence, no further disallowance is called for in respect of expenditure incurred by the head office. The AO, after considering relevant submissions of the assessee observed that the assessee has incurred huge expenditure in 3 divisions out of which a sum of Rs.8,11,72,553 has been incurred by investment /

project department which is directly relatable to exempt income and which is evident from the fact that the assessee has made huge investment of Rs.1,344 crores in various group companies which requires an exclusive management to lookafter substantial market research, day today analysis of market trend and real time decisions with regard to acquisition, retention and sale of shares at the most appropriate time. This function is being performed by the investment / project department of the head office, therefore, whatever expenditure incurred at investment / project department is directly attributable to exempt income and accordingly disallowed a sum of Rs.8,11,72,533 u/s 14A r.w.r. 8D(2)(i) of I.T. Rules, 1962.

7. Aggrieved by the assessment order, the assessee preferred appeal before the CIT(A). Before the CIT(A), the assessee has reiterated its submissions made before the AO. The assessee also furnished a detailed submission on the issue which has been reproduced by the Ld.CIT(A) at para 5.1 on pages 5 to 19 of the order. The sum and substance of the arguments of the assessee before the Ld.CIT(A) are that the AO was erred in making further disallowance of Rs.8,11,72,533 u/s 14 r.w.r. 8D(2)(i) in respect of expenses incurred by investment / project department without appreciating the fact that out of total expenses of Rs.8,11,72,533, the assessee has already made

disallowance of Rs.5,97,63,078 being legal fees paid for the arbitration matter in respect of Idea Cellular Ltd, therefore, making disallowance of total expenditure incurred by investment / project department amounts to double addition. The assessee further contended that before making any disallowance u/s 14A r.w.r. 8D(2)(i), the AO has to ascertain the live nexus between exempt income and expenditure incurred by the assessee. In this case, the AO has made arbitrary disallowance of total expenditure incurred by the division without establishing any link between exempt income and expenditure incurred by the division.

8. The Ld.CIT(A), after considering relevant submissions of the assessee and also on analysis of provisions of rule 8D(2)(i) held that the AO has considered whole of the expenditure on investment / project department of the head office of Rs.8,11,72,533 for the purpose of disallowance u/s 14A r.w.r. 8D(2)(i) without ascertaining the correct fact that the assessee has already made suo moto disallowance of Rs.18,73,83,588 out of total expenditure incurred at head office of Rs.23,80,21,561 which means that the remaining expenditure claimed by the assessee at head office is only Rs.5,06,37,973. Therefore, by disallowing a further amount of Rs.8,11,72,533, the AO has obviously made double disallowance of the same expenditure. The Ld.CIT(A) further observed that out of total expenditure of investment / project

department, the assessee has disallowed an amount of Rs.5,97,63,078 being legal fees paid for the arbitration matter in respect of Idea Cellular Ltd. Thus, out of the total expenses debited in investment / project department, the AO could not have disallowed more than Rs.2,25,21,880 as the balance expenditure had already been disallowed by the assessee. The Ld.CIT(A) further observed that out of the net expenditure of Rs.2,25,21,880, the ratio of investment from which the assessee received exempt income and the investment from which the assessee received income chargeable to income-tax is 61% and 39%, respectively. Therefore, out of net claim of expenditure of Rs.2,25,21,880 incurred in respect of investment / project department, the direct expenditure attributable to exempt income can be only Rs.1,37,38,347, hence, out of the total disallowance of Rs.8,11,72,533 the disallowance to the extent of Rs.1,37,38,347 is sustained and the balance disallowance of Rs. 6,74,34,186 is deleted. Insofar as additional ground taken by the assessee in respect of computation of average value of investments by excluding investments, which did not yield exempt income and share application money, the Ld.CIT(A) directed the AO to verify the facts and re-compute the disallowance excluding share application money from the average value of investments. Aggrieved by the order of Ld.CIT(A), the revenue as well

as the assessee are in appeals before us.

9. The only issue that came up for our consideration from assessee's appeal as well as the revenue appeal is computation of disallowance contemplated u/s 14A r.w.r. 8D(2) of I.T. Rules, 1962. The assessee has taken various grounds challenging the action of the CIT(A) in partially sustaining disallowance computed by the AO u/r 8D(2)(i) of I.T. Rules, 1962 and recomputation of average value of investments for the purpose of determination of disallowances contemplated u/r 8D(2)(iii) of I.T. Rules, 1962. The revenue has taken various grounds in respect of disallowances made by the AO u/s 14A r.w.r.8D(2)(i) of the I.T. Rules, 1962. Therefore, the whole grounds taken by the assessee as well as the revenue for the AY 2010-11 are being collectively disposed of.

10. The Ld.AR for the assessee submitted that the Ld.CIT(A) was erred in sustaining disallowance quantified by the AO u/s 14A as per Rule 8D(2)(i) of Rs.137,38,347 without appreciating the fact that all expenditure incurred by the investment / project department is having no relevance to dividend income earned by the assessee. The AO, before making any disallowance u/r 8D(2)(i) should ascertain proximate relationship between the expenditure and income which does not form part of total income. In this case, the AO has disallowed total expenditure incurred by by investment / project department of head

office ignoring the fact that out of the total expenses of Rs.8,11,72,533, the assessee has already suo moto disallowed an amount of Rs.5,86,50,633, therefore, disallowing total expenditure amounts to double disallowance of the same expenditure. The Ld.AR further submitted that the assessee has also examined expenditure incurred at head office by the investment / project department and came to the conclusion that the expenditure incurred at head office division has no relevance to exempt income earned by the assessee and accordingly by applying the prescribed method provided u/r 8D(2)(iii) has made suo moto disallowance of Rs.6,72,11,103. Therefore, the AO was erred in making further disallowance of Rs.8,11,72,533. The Ld.AR further submitted that the assessee has although made suo moto disallowance of Rs.6,72,11,103 @0.50% of average value of investment, but while computing average value of investment, it has included investments in share application money of various companies and also investments on which no exempt income has been received during the year. But, fact remains that while computing average value of investments, investments made in share application money and investments which did not yield any income during the year needs to be excluded. The Ld.CIT(A) although adjudicated upon the issue of share application money, rejected the ground taken by the assessee for the exclusion of

investments, which did not yield any exempt income while computing average value of investment. The Ld.AR further submitted that, law is well settled now as per which, for the purpose of determination of average value of investments only those investments, which yield exempt income needs to be considered but not all investments. In this regard, relied upon the decision of ITAT, Delhi Special Bench in the case of ACIT vs Vireet Investments Pvt Ltd (2017) 165 ITD 27 (Del).

11. The Ld.DR, on the other hand, submitted that the Ld.CIT(A) was erred in allowing partial relief towards disallowance computed by the AO u/s 14A r.w.r. 8D(2)(i) without appreciating the fact that the AO has brought out categorical facts that investment / project department of head office is looking after investment portfolio of the assessee and hence, whatever expenditure incurred by that division needs to be tagged with exempt income earned by the assessee. The Ld.DR further submitted that in respect of exclusion of share application money from the average value of investments for the purpose of determination of disallowances contemplated u/r 8D(2)(iii), the provisions envisaged u/s 14A r.w.r. 8D(2)(iii) does not specify exclusion of any investment for the purpose of computation of disallowance. Therefore, the Ld.CIT(A) was erred in giving direction to the AO to exclude share application money from the average value of investments for the purpose of determination

of disallowance u/r 8D(2)(iii) of IT Rules, 1962.

12. We have heard both the parties, perused the material available on record and gone through the orders of authorities below. There is no dispute with regard to the applicability of provisions of section 14A and Rule 8D(2) of I.T. Rules, 1962. The assessee has earned dividend income of rs.15,43,42,248 and also made suo moto disallowance of Rs.6,72,11,103 by invoking rule 8D(2)(iii) of Income-tax Rules, 1962. There is no dispute with regard to these facts. Although, the assessee has taken additional grounds of appeal for exclusion of share application money and investments which did not yield exempt income for the purpose of computation of average value of investments for the first time before the Ld.CIT(A), the fact remains that the assessee, on its own, determined average value of investments and computed disallowance of Rs.6,72,11,103. The only controversy is with regard to further disallowance quantified by the AO u/s 14A r.w.r. 8D(2)(i) of the I.T Rules, 1962 in respect of total expenditure incurred by the investment / project department of head office. It is an admitted fact that the assessee is a promoter company of various Tata group companies and held investments in various group companies. For this purpose, the assessee has established a separate division in its head office to look after various investments. The investment portfolio of the assessee is

complex in nature which needs day to day monitoring of investments depending upon market conditions and other various factors which involves various level of supervision. Therefore, the claim of the assessee that it has not incurred any direct expenditure which relates to exempt income is not correct.

13. Having said so, let us examine expenditure incurred by the assessee. If, we go through the details of expenditure incurred by the assessee at investment / project department, the assessee has bifurcated its expenses into three major categories, i.e. payment to and provision for employees, establishment expenses and other expenses. Out of establishment expenses of Rs.6,84,30,329, the assessee has made disallowance of Rs.5,97,63,078 being legal fees paid for the arbitration matter in respect of Idea Cellular on its own in the statement of total income. Thus, out of total expenditure incurred at investment / project department of Rs.8,11,72,553, the assessee has made suo moo disallowance of Rs.5,97,63,078. Therefore, the balance amount remains for consideration is only at Rs.2,25,21,880. Therefore, if at all any expenditure needs to be disallowed u/r 8D(2)(i), the AO needs to consider only an amount of Rs.2,25,21,880, but not total expenditure incurred at Rs.811,72,533. Therefore, We are of the considered view that the AO was erred in making total disallowance of expenditure

incurred in respect of investment / project department of Rs.8,11,72,533.

14. Having said so, let us examine whether the Ld.CIT(A) was right in sustaining disallowance of Rs.1,37,38,347 u/s 14A r.w.r. 8D(2)(i) of the I.T. Rules, 1962. The Ld.CIT(A) has worked out a ratio of investments which yielded exempt income and investment which yielded taxable income and accordingly arrived at a ratio of 61% and 39%, respectively. Accordingly, he disallowed 61% of net expenditure incurred by investment / project department of the head office of Rs.2,25,21,880 and sustained disallowance of Rs.1,37,38,347. It is the claim of the assessee that expenditure incurred by the investment / project department has no relation to exempt income earned by the assessee and hence, further disallowance of total expenditure u/r 8D(2)(i) is incorrect. We do not find any merit in the argument of the assessee for the reason that on perusal of details filed by the assessee, the assessee, on its own, filed details of expenditure incurred by investment / project department as per which it has incurred expenditure towards payment and provision to employees and other expenses. It is also an admitted fact that investment / project department has looked after investment portfolio of the assessee. It is also an admitted fact that investment decisions are very complex in nature and they require substantial market research, day to day analysis of market trend and

real time decisions with regard to acquisition, retention and sale of shares at the most appropriate time. Therefore, we are of the considered view that there is no merit in the argument of the assessee that there is no live nexus between expenditure incurred by investment / project department of head office and exempt income earned by the assessee. The Ld.CIT(A), after considering relevant facts has rightly arrived at a conclusion to allocate net expenses claimed by the assessee towards investment / project department of head office @61% towards exempt income and 31% for taxable income. There is no infirmity or error in the findings given by the Ld.CIT(A). Hence, we are inclined to uphold the findings of Ld.CIT(A) and reject ground taken by the assessee as well as the revenue.

15. Coming to the issue of computation of average value of investment. The assessee claims that for the purpose of determination of average value of investments, investment which did not yield exempt income and investment in share application money needs to be excluded. According to the assessee, although it has computed average value of investments by taking into account share application money and investments which did not yield exempt income for the year, but the fact remains that various courts and tribunals have consistently held that for the purpose of determination of average value of investments, investments which did

not yield exempt income and share application money needs to be excluded, therefore, even though the assessee by its own included those investments while computing disallowance u/s 14A, those investments needs to be excluded for the purpose of determination of disallowance u/s 14A r.w.r. 8D(2)(iii) of I.T. Rules, 1962.

16. Having heard both the sides and considered material on record, we do not find any merits in the arguments of the assessee for the reason that the assessee, on its own, has computed disallowance contemplated u/s 14A by invoking Rule 8D(2)(iii) and determined disallowance of Rs.6,72,11,103 being 0.5% of average value of investments. We further notice that the assessee, on its own, computed average value of investments by including share application money and all investments including investments which did not yield exempt income. Therefore, merely on the basis of certain subsequent decisions of Tribunals and Courts making a fresh claim for exclusion of investments which did not yield any exempt income for the purpose of computation of average value of investment, cannot be entertained, that too, in a case of the assessee. No doubt, the Courts have held that for the purpose of determination of average value of investments, only those investments which yield exempt income needs to be considered for the purpose of determination of average value of investments. In this case, the

assessee, on its own, determined average value of investments which may include share application money and investments which did not yield any exempt income. Had it been a case of the assessee that it has made a claim by filing the revised statement of total income before the AO for making fresh claim of exclusion of investments which did not yield any exempt income. The assessee, all along did not disturb suo moto disallowance quantified u/s 14A r.w.s. 8D(2)(iii), but at a later stage, on the basis of certain decisions made a fresh claim by raising additional grounds for exclusions of those investments without any proper facts as to how the computation made by the assessee while filing return of income is incorrect which needs correction on the basis of subsequent decisions of Courts and Tribunals. The assessee being a corporate giant advised by tax consultant is well aware of the provisions. The assessee, on its own, determined disallowance as per the provisions of section 14A r.w.r. 8D(2)(iii). Therefore, we are of the considered view that there is no reason for the assessee to seek revision of its own computation. Accordingly, we reject additional ground taken by the assessee for exclusion of investments, which did not yield any exempt income for the purpose of computation of average value of investments. We also reverse the findings of the Ld.CIT(A) in directing the AO to exclude share application money for the purpose of

computation of average value of investment. Finally, we do not want to disturb suo moto disallowance quantified by the assessee u/s 14A r.w.r. 8D(2)(iii) of Rs.6,72,11,103 and accordingly, we reject all grounds taken by the assessee challenging exclusion of investments which did not yield exempt income including share application money. The case laws relied upon by the assessee in support of its arguments have been considered and found that not applicable to facts of the present case.

17. The next issue that came up for our consideration from additional ground of appeal filed by the assessee, vide letter dated 29-09-2017 is with regard to disallowance of a sum of Rs.5,97,63,078 being legal and professional fees incurred by the project / investment department and other division. The assessee has taken an additional ground in the light of decision rendered by the co-ordinate bench of ITAT, Mumbai in assessee's own case for AY 2004-05 in ITA No.4894/Mum/2008 to argue that any expenditure including legal and professional fees incurred by project / investment department is allowable deduction. Therefore, even though the assessee has made suo moto disallowance of such expenditure, the same needs to be allowed as business expenditure in the light of said decision. The assessee also relied upon the decision of Hon'ble Supreme Court in the case of SA Builders vs CIT 288 ITR 1 (SC) to support its argument.

18. We have heard both the parties and perused the material available on record. The assessee has made suo moto disallowance in respect of legal and professional fees incurred for the arbitration matter in respect of Idea Cellular Ltd in the statement of total income on the ground that the said expenditure has no nexus between its business activity and the expenditure incurred. We further notice that the assessee neither challenged the said addition made by it on its own before the lower authorities. Therefore, we are of the considered view that once a particular expenditure having been disallowed as not allowable deduction while filing return of income, the same cannot be claimed as allowable deduction without there being any changes in facts. No doubt, no tax without authority of law can be collected from any person. Only legitimate taxes payable to the exchequer needs to be collected. Even the assessee, on its own, paid some tax by misconception of law, the same needs to be reconsidered, if later, it is found that such tax is not liable to be paid to the exchequer. There is no dispute with regard to this proposition laid down by the Courts. But, it is for the assessee to prove beyond doubt that the said admission is not under misconception of law and such tax is not payable to the exchequer. In this case, on perusal of facts available on record, we find that the assessee has disallowed legal and professional fees paid in respect of arbitration

matter of Idea Cellular Ltd having considered facts and circumstances in the light of its business activity. Therefore, all of a sudden making a fresh claim and asking for deduction for such expenditure without there being any material changes in facts cannot be entertained. Therefore, we reject the additional ground taken by the assessee.

19. The next issue that came up for our consideration from additional ground of appeal filed vide letter dated 28-03-2018 is with regard to adjustment made to book profit computed u/s 115JB of the I.T. Act, 1961 in respect of disallowance made u/s 14A r.w.r. 8D(2)(iii). The assessee has taken additional ground in the light of decision of ITAT, Delhi Special Bench in the case of ACIT vs Vireet Investment Pvt Ltd (2017) 165 ITD 37 (Del)(SB) to argue that no adjustment could be made to book profit computed u/s 115JB of the Income-tax Act, 1961 in respect of addition made on account of disallowance made u/s 14A r.w.r. 8D(2)(iii) of the IT Rules, 1962.

20. Having heard both sides, we find that additional ground taken by the assessee in the light of in the light of ITAT, Delhi Special Bench in ACIT vs Vireet Investment Pvt Ltd (supra) did not emanate from the order of the AO, as AO has never made any adjustment to book profit computed u/s 115JB of the Income-tax Act, 1961 in his assessment order. in respect of disallowance made u/s 14A of the I.T. Act, 1961. Therefore,

we are of the considered view that there is no merit in the additional ground taken by the assessee in the light of the said decision and accordingly, the ground taken by the assessee is dismissed, as not maintainable.

21. In the result, appeal filed by the assessee in ITA No.7595/Mum/2013 for AY 2010-11 is dismissed and appeal filed by the revenue in ITA No.612/Mum/2014 for AY 2010-11 is partly allowed.

ITA No.1763/Mum/2015 & ITA 1855/Mum/2015 (AY 2011-12)

22. The facts and issues involved in these appeals filed by the assessee as well as the revenue are similar to the facts and issues already considered by us in ITA No.7595/Mum/2013 and ITA No.612/Mum/2014 for AY 2010-11. We have considered two issues in the preceding paragraphs, i.e. (1) computation of disallowance u/s 14A r.w.r. 8D(2)(i) and 8D(2)(iii); and (2) disallowance of legal and professional charges. In the present appeals, the assessee as well as the revenue has taken a ground on the issues which we have already considered in preceding paragraphs. The reasons given by us in the preceding paragraphs in ITA No.7595/Mum/2013 and ITA No.612/Mum/2014 for AY 2010-11 shall mutatis mutandis apply to these appeals also. Therefore, for similar reasons, we dismiss appeal filed by the assessee in ITA No.1763/Mum/2015 and partly allowed the appeal

filed by the revenue in ITA 1855/Mum/2015.

12. In the result, appeals filed by the assessee are dismissed and appeals filed by the revenue are partly allowed.

Order pronounced in the open court on 28th September, 2018.

Sd/-

sd/-

(Mahavir Singh)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 28th September, 2018

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Sr.PS, ITAT, Mumbai