

आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं डा. बी.आर.आर. कुमार, लेखा सदस्य
BEFORE: Sh. SANJAY GARG, JM & DR. B.R.R. KUMAR, AM

आयकर अपील सं./ ITA Nos. 1343 & 1344/Chd/2017
निर्धारण वर्ष / Assessment Years : 2010-11 & 2012-13

Dr. Apurva Goswamy Prop. Quantum Solutions Block-D, III rd Floor, Plot No. 22-23, DLF, IT Park, Kishangarh Chandigarh	बनाम	Dy. CIT Circle 1 (1), Chandigarh
स्थायी लेखा सं./PAN NO: AAUPG7800N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri. Harish Nayyar
राजस्व की ओर से/ Revenue by : Smt. Chandrakanta

सुनवाई की तारीख/Date of Hearing : 11/09/2018
उद्घोषणा की तारीख/Date of Pronouncement : 29/11/2018

आदेश/Order

PER DR. B.R.R. KUMAR, A.M:

Both the above appeals have been filed by the Assessee against the separate order of Ld. CIT(A)-1, Chandigar dt. 26/07/2017.

2. Facts as taken from the record, arguments of both the Representatives are as under:

3. The appeal arises from the order of Commissioner of Income Tax passed on 26.7.2017 in which addition of Rs.1,17,82,620 out of the total addition of Rs.1,88,02,360/- made by the AO under the expense head Business Development Expenses by making disallowance of expenses incurred on 'acquiring perpetual license for software' was confirmed.

4. Only ground taken up before this Bench is to contest the confirmation of addition of a sum of Rs.1,17,82,620/- out of the disallowance made by the Assessing Officer. This ground reads as under:

2) That the CIT (A) while adjudicating upon the finding of the AO as regards the nature of expenses i.e. whether capital or revenue has erred in holding that the sum of Rs.11782620 incurred on acquiring the License from Oracle Argus Safety was in the nature of a perpetual asset and only depreciation could be allowed on those assets. The finding of the Id' CIT(A) that the expense was not to be allowed as revenue expense is not correct and deserves to be quashed.

The action of CIT(A) in upholding the orders of the AO in regard to treating the sum of Rs. 11782620 as capital expenditure is not based upon correct appreciation of facts and deserves to be quashed.

5. The addition was made on the following grounds. Excerpts from the order of the Assessing Officer is:

Reply of the assessee has been duly considered, however found to unacceptable, it is very clear that the expenditure of Business Development Expenses of Rs. 2,61,45,208/- incurred on account of business development is of capital nature as the assessee is going to draw enduring benefits from it in the years to come. The assessee cannot claim this expenditure as revenue expenditure as per decision of the IT AT in the case of CIT v. Madras Auto Services Pvt. Ltd. (1998) **233 ITR 468** (SO, the Hon'ble Apex Court summarized the general principle applicable in determining whether a particular expenditure is capital or revenue expenditure as follows.

1. The expenditure at serial number 1,4,6,8,10,11,12,14,21,24 and 26 is consultancy fees paid to Infosys Ltd. On which income tax at source has been duly deducted. On supply of any software or any such support system which is of enduring nature has been undertaken by Infosys. Infosys was engaged to render support services in respect of ERP and was given consultancy fees as detailed in the spread sheet, from time to time.

2. Payments at serial no. 2,5,7,9,13,15,20,22,25 and 27 are made to Ogilvy and Mather, a renowned advertising agency for undertaking art work and other designing work for the purpose of showcasing the organization. No benefit of enduring nature or such benefit which has affect of yielding any result or benefits in subsequent period has been derived. Income tax at source has been duly deducted from payments made to this party.

3. Payments at serial no. 16,17,18 have been made to Oracle for upgradation or Oracle safety which is in nature of antivirus and is consultancy fees paid to them. Income tax at source has been duly deducted from payments made to this party.

4. Other payments have been made for user license of parties like Targus, which are one-time payment made for access of certain websites and have a span of one year only."

3.2 The counsel of the assessee also submitted detail list regarding business development expenses. On perusal of detail list it has seen that assessee has claimed following expenses as revenue expenditure on software development

S.No.	Date	Name of the party	Amount
1.	14.04.2009	Ogilvy	3,30,900/-
2.	24.04.2009	Targus Tech.	Rs.2,24,899/-
3.	01.07.2009	Ogilvy	499524/-
4.	08.07.2009	Ogilvy	716950/-
5.	27.07.2009	Ogilvy one Worldwide	935890/-
		Total	27,42,735/-

Total expenditure : 27,42,735/-
 Depreciation : 16,45,641/-(60%)
 Balance : 10,97,094/-

which capital nature are according the software expenditure.

S.No.	Date	Name of the party	Amount
1.	18.11.2009	Oracle	10682339
		Oracle S. Tax	1100281
2.	30.10.2009	Ogilvy one worldwide	553155
3.	15.03.2010	Ogilvy	917625/-
4.	19.03.2010	Infosys	2437603
5.	29.03.2010	Ogilvy	368622
		Total	1,60,59,625/-

Total expenditure : 1,60,59,625/-
 Depreciation : 48,17,887/-(30% for 6 months)
 Balance : 1,12,41,737/-

3.4 Thus the above expenditure incurred by the assessee is hereby capitalized. Reliance is also place on the ratio of decision of the Hon'ble Supreme Court in the case of Arvind Mills Ltd. V. CIT (1992) **197 ITR 422**, (SC) in which it was held that the cost of development is to be treated as Capital Expenditure. Similar view has also been upheld by Hon'ble Rajasthan HC in the case of Lake Palace Hotels & Motels Pvt.Ltd. V. CIT (1995) **213 ITR 735** (Raj.).

3.5 In view of the above facts and legal position over the issue, the expenses of Rs. 1,23,38,831/- (Rs. 10,97,094/- + 1,12,41,737/- being software assets for the assessee) is disallowed and added back to the income of the assessee.

6. The addition was unsuccessfully challenged before the Ld. CIT(A).
7. Before the Ld' CIT(A), copies of bills of expenses charged to the expense head Business Development Expenses were filed. It was explained that all the expenditure debited under this head were incurred during course of carrying out business activities and these were revenue in nature. Copies of bills of expenses incurred for art work, for user license fees of software, for upgrading the oracle safety software, for optimizing search engine and for various advertisements were filed. It was submitted that nature of these expenses was self explanatory and none of the expense brought into existence any assets of enduring nature or any benefit of enduring nature.
8. The Id CIT(A) after examining the bills and also after taking into consideration the order passed in the case of the appellant in respect of AY 2011-12, held that the payments made in regard to all bills except the payments made to Oracle of Rs.10682339 and Rs.1100281 were revenue in nature. Addition of Rs.11782620 made by the AO in respect of payments made to Oracle for acquiring the software was however confirmed and it was held that depreciation at the rates as applicable to software shall only be allowed. While holding this the Ld. CIT (Appeals) held as under:

4.4.2 *The expenses of Rs.1,17,82,620/- paid to oracle have been incurred for acquiring perpetual license for Oracle Argus Safety and Oracle Argus interchange. The license granted to the appellant being perpetual in nature would in effect mean that the appellant becomes the owner of the license and can use them as per its need and convenience. This will definitely give a long term and enduring benefit to the business of the organization and their expense needs to be spread over. It is a one-time, lump sum payment for benefits to be derived over a period of time. Hence, to that extent the order of the Assessing Officer is upheld by treating them as capital expenses. There is a difference of Rs. 14,571/- in the figures which the Assessing Officer has adopted and submitted by the appellant. The Assessing Officer may assign the excess, if any, on the same way as has been done in this order. The Assessing Officer is directed to allow depreciation as per rules on these expenses. Hence, ground of appeal No. 1 is partly allowed.*

9. During the hearing before us, the Ld. AR argued that while disallowing expenses incurred under the head 'business development expenses' the Assessing Officer applied the judgment of the Hon'ble Supreme Court in the case of Arvind Mills Ltd. in which it was held that cost of development is to be treated as capital expenditure and only depreciation on the amount spent is to be allowed. It was argued that FACTS OF CASE OF ARVIND MILLS APPLIED ARE DIFFERENT FROM FACTS OF THE APPELLANT AND THUS CAN NOT BE APPLIED TO THE present CASE OF THE assessee. Additions under his head was made on the ground that expenses on the software deserve to be disallowed as same were incurred to bring into existence the assets or advantage for enduring benefit of the business. It was contended that the amount paid to Oracle was revenue expenditure and reliance was placed upon the decision of Madras Auto Services Pvt. Ltd. 1998, 233 ITR 468 SC.

10. The facts of the case of Arvind Mills Ltd. were that the betterment charges were paid under the Bombay Town Planning Act. These were statutory charges and the assessee was under obligation to make payment of these charges imposed under the Bombay Town Planning Scheme and it was claimed that since there was no direct nexus between such expenses and the increase in value of property, the expenses incurred by the assessee should be held as capital expenditure as the same was laid-down wholly and exclusively for the purpose of business and the payments of betterment contribution was in the nature of payment for facilities and appreciation in value of land. It was argued that the judgment in the case of Arvind Mills Ltd. cannot be applied to the facts of the case of the appellant, as the matter in question relates to purchase of License to use software which is a technical item. It was concluded on the note that

- Software technology is very rapidly changing and hence there is no enduring benefit.
- Software was installed for carry on the business more efficiently and the expenditure has not brought into existence any asset which is capable of being source of income.
- That merely because expenditure results in an enduring benefit would not be a sufficient reason to treat the expenditure as capital expenditure.
- What had to be interpreted is the real intent and purpose of the expenditure in order to ascertain as to whether it resulted in to a capital asset.

11. It was argued that the software were acquired by it undergo recurring and repeated changes and keeping in view the global requirements of pharma co-vigilance, the software with licenses have to be upgraded and updated periodically. He relied on the judgment of Hon'ble Delhi High Court in case of Asahi India Safety Glass Ltd, where the following issue was propounded and discussed held that the expenses incurred on acquiring software is revenue expenditure:

12. We have gone through the case of Asahi India Safety Glass Ltd cited by the assessee, in that case the expenditure incurred was found as having been broadly spent under following sub-heads:

- (a) Licence fee;
- (b) Annual technical support fee;
- (c) Professional charges;
- (d) Data entry operator charges;
- (e) Training charges; and
- (f) Travelling expenses.

Whereas in the case of the Assessee the amount was paid to Oracle for software update and product support as found out by the invoice dt.

13/11/2001 which is entirely different from the expenditure incurred in the case of Asahi India Safety Glass Ltd. The case referred by the Assessee in the case of Ilink Multitech Solutions Pvt. Ltd. refers to purchase of MS Office Software which is a wider platform for computer appliances whereas the Oracle software is custom built suited for undertaking specific clinical research work. The word software cannot be taken as a generic term to be applied in all different situations alike. The assessee could not provide any up-dations undertaken by the Company from time to time. The nature of the expenses cannot be said to be of purchase of goods or trading material. The Oracle has discharged its liability of installation of the software for the perpetual use of the assessee. The treatment of the item purchased by the assessee can be treated as capital expenses even in circumstances wherein the seller treats the receipts as revenue. The main purpose for obtaining the software is to acquire the source of income by way of obtaining contracts for analyzing data of the clinical research.

13. In the present case the purchase of software license was done by the assessee for carrying out obligation for their clients. The amount spent on increasing the earning capacity of the concerned and any expenditure with relation to such expenses be treated as capital expenditure. The asset can may be tangible or intangible and acquisition of intangible asset need not necessarily be taken as revenue expenditure. Hence keeping in view the nature of the asset, nature of the liability, nature of the transaction, purpose of the transaction, revenue earning capability, maintenance and up-gradation, perpetual utilization, we hereby hold that the purchases by the assessee be treated as capital expenditure and eligible for 60% of depreciation.

ITA No. 1344/CHD/2017 For A.Y. 2012-13

14. The appeal is to challenge the order of the Commissioner of Income-tax on two effective grounds.

15. Ground number 2 relates to disallowance of a sum of Rs.64,02,541/-, by treating the items in the nature of 'Temporary Fixtures' as items of Furniture and Fixtures and not allowing depreciation @100% as claimed by the appellant. The following ground has been taken up:

2} That CIT(A) has erred both on facts and law in confirming the order of AO in not allowing 100 % depreciation claimed on temporary fixtures as per rules, and limiting the depreciation to the extent of 15% on the these temporary fixtures.

The disallowance of depreciation to the extent of Rs.6402541 is not as per the provisions and rules in this regard and is thus illegal.

It is prayed that order action of the CIT in confirming the action of AO of disallowing a sum of Rs.6402541 being depreciation on temporary fixtures may be quashed.

16. While making the addition the Assessing Officer held as under:

Disallowance on account of Depreciation claimed on Temporary Fixtures:

Perusal of the schedule of depreciation as annexed to the Audit Report shows that the assessee has claimed depreciation @ 100% on temporary fixtures. The assessee has shown the total value of temporary fixtures at Rs.15064801/-. This entire addition has been made in the 2nd half of the year and therefore, depreciation of Rs.75,32,401, has been claimed. The assessee was asked to clarify on what these temporary fixtures were and how these were eligible for depreciation @ 100%. The assessee vide his reply dated 15.12.2014 stated that

"the assessee is functioning from the leased /rented premises. During the year under consideration, while carrying out its business activities incurred a sum of Rs.1,50,64,801/- on false ceilings, temporary partitions, electrical wiring and on other repairs etc. The assessee by incurring this expenditure has not derived any benefit of enduring nature or such benefit, which has affect of yielding any result or benefits in subsequent period and therefore the assessee classified all this expenditure under the head 'temporary fixtures' and claimed depreciation @100%. Since this expenditure was incurred by assessee after 30th September 2011 and thus % of the total eligible depreciation was claimed by the assessee."

For claim of depreciation (5)100%, the assessee relied upon the judgment of Hon'ble High Court of Madras in the case of CIT vs. Amrutanjan Finance Limited.

The justification of the assessee is however not acceptable. This is so because perusal of the lease deeds entered into by the assessee with DLF Infocity Developers Chandigarh Ltd. shows that the assessee has hired office space from DLF since December 2006 and the lease has since been renewed from time to time and additional space has also been hired. This shows that the assessee has been operating from the said premises for a long period of time and given the state of affairs as reflected in the financial accounts, it appears that the assessee shall continue to utilize the said office space in the long run. Therefore, the stated to be temporary fixtures shall be put to use over a long period of time and are therefore akin to any other furniture or fixture put to business use by the assessee. The assessee has not been able to show how the said fixtures are temporary in nature given the fact that the assessee continues to operate from the same premises even till date i.e. at least 3 years hence. So, these fixtures are not temporary in nature. For this reason, the case law cited by the assessee is also not applicable to his case. Therefore allowable claim of depreciation has to be restricted to 15%. The said fixtures have been added in the 2nd half of the year and therefore, depreciation @7.5% only is to be allowed. The allowable depreciation works out to 7.5% of Rs. 15064801 i.e. Rs. 11,29,860. Accordingly, an addition of Rs.64,02,541 (75,32,401 -11,29,860) is added to the returned income of the assessee.

17. An appeal was filed before the Ld. CIT(Appeals) before whom it was contended that the amounts spent on making the premises functional was an expense of revenue nature as the same did not bring into existence any asset in the nature of furniture and fixtures. The temporary cabining, structuring, floorings

and other items were in the nature of purely temporary erection such as wooden structure and was entitled to depreciation @ 100% as laid-down in the rules prescribed in this regard. It was also evidenced before the Ld. Commissioner of Income tax(Appeals) that the asset being in the nature of temporary erection wee entitled to depreciation @ 100%. This was demonstrated by way of various charts, bills and invoices etc.

Ld' CIT(A) held as under:

5.2 / have gone through the issue in detail. The appellant has hired business premises from **DLF** Builders in **I.T.** Park, Chandigarh and incurred expenditure by creating partitions, tiling, fire sensing system, renovation etc. for making the office space functional. The Assessing Officer has considered the expense as capital as the appellant has derived benefit out of these so called 'temporary structures' for an extended period of time by renewal of the lease deeds. In my view, the nature of expense should be treated as a capital expense. Even though the office space is a hired space but whatever structure and renovation which are carried out to make it functional are going to give benefit to the appellant for a long time. The appellant has made a lease for 3 years extendable upto 9 years. The Assessing Officer has observe that the lease has been extended repeatedly. During the period of lease the appellant has not created such structures every year. The real character of the structure has a semi-permanent nature rather than temporary nature as claimed by the appellant. Therefore, it provides the appellant an enduring benefit and therefore treated as a capital expense. The issue is also covered by Explanation-1 section 32(1)(ii) of the Act which provides for depreciation on such temporary structure. Hence, the addition is upheld and ground of appeal No. 3 is dismissed.

18. Before us, the Ld. AR argued that the assessee is a 100% Export Oriented Unit engaged in carrying out pharmaco-vigilance services for its foreign clients and exporting its services via electronic media to its clients who are located overseas. The assessee is expected to conform to the global standards of the clients and also is required to have the latest and most sophisticated gadgets and security equipments. The premises of the assessee is also expected to be of global level, these standards of the assessee are checked by the clients from time to time and upgrade these if required.

19. The business was set up in the year 2004 with about 15 employees at a location in Sector 8, Chandigarh. Thereafter the assessee shifted its location to DLF IT Park to accommodate increased employees and for creating a modern and technologically suitable infrastructure. The premises were furnished by the assessee at its own costs. Thereafter the assessee, in order to accommodate the larger business needs hired another four premises in the same location but at different floors. The following premises were acquired on rent by the assessee from time to time.

1. Block-D, IIIrd Floor, Plot Number 22-23, DLF IT Park, Rajiv Gandhi Technology Park, Chandigarh.
2. Block-D, Ist Floor, Plot Number 22-23, Rajiv Gandhi Technology Park, Chandigarh.
3. **Tower-F. IInd Floor, Rajiv Gandhi Technology Park, Chandigarh.**
4. Block-D, 2nd Floor, DLF IT Park, Site No.2, Rajiv Gandhi Technology Park, Chandigarh.
5. Block-E, Ist Floor, DLF IT Park, Site No.2, Rajiv Gandhi Technology Park, Chandigarh.

Necessity to acquire the additional space arose from the increased business volume and number of additional employees required for the purposes of handling and servicing the increased business. During the year under question, the appellant acquired space measuring 21,614 sq. ft. in F-Block, C Tower, 2nd Floor, DLF, IT Park. The lease for these premises commenced on 1.8.2011 and was for a period of **3** years. A copy of lease deed is enclosed herewith for your kind consideration.

A sum of Rs.1,39,34,941 was spent on creating partitions, adding floors, wall tiles, interior decoration, AC ducting, electrical conduit pipe, fire sensing systems and major renovation of this premises which was taken on lease, which was originally in absolutely raw and unusable condition. These expenses were necessitated for making the place livable /functional and some expenses were incurred for increasing the efficiency and for optimum utilization of the area and also to save costs. This was also done to avoid higher rent which would normally be payable had the appellant taken a duly furnished premises on rent. In order to keep the environment attractive, modern, up to date and also as per conformity with the clients' requirements, periodic renovations/ up-gradations are necessary. Since the temporary fixtures were put up by the appellant at a hired place and the lease was for a period of 3 years (extendable to maximum 9 years), considering the nature of the fixtures and that they were not usable and recyclable nor removable and were totally in the nature of temporary fixtures /fittings, 100% depreciation on these was claimed.

20. It is submitted that lease for the premises under question i.e. 2ⁿ Floor, F-Block. C-Tower, commenced w.e.f. 01.08.2011. The premise acquired by the assessee was a bare shell with broken floor, rough surface on the roof and bare

walls. There was no electricity connection and only open air conditioning ducts were provided. To make the place livable, functional and suitable as per the requirements of the company viz. provision of flooring, floor ceiling, plastic ducting for computer wires and piping for security systems and other such related items. The assessee had a lease agreement for a period of three years which is extendable to a period of 9 years, in the instant case it was argued that the hired started from 01/08/2011.

21. The Ld. DR relied on the orders of the lower authorities.

22. We have heard the Ld. Representatives of both the parties and perused the material available on record and we find that the interior decoration of a bare shell was done for optimum utilization of the space and for providing maximum seating, easy moment, adequate lighting, proper air circulation, safety security and prevention of other hazards to personal engaged in carrying out the work by no means can be treated as a temporary erections or temporary fixtures. The fact whether the premises is rented / lease / hired or owned will not change the nature of the expenses incurred from permanent structures to temporary structures. It is clear from the examination of various details placed along with the structures brought on to existence cannot be treated as temporary structures. The furnishing of bare shell with electricity connection, concealed air conditioning, flooring, plastic ducting, laying of granite and marble, tiling cannot be treated as temporary structures. Further we find that the assessee has incurred expenditures on fire sensing systems, fall ceilings, which cannot be treated as temporary structures. Any such treatment to these structural changes will lead to a situation where in all the further construction beyond the bare shell would be deemed to be treated as temporary structures will give rise to a secured accounting and also against the provisions of Chapter 4D of the Income Tax Act,1961 and we lead to a situation where in section 32 becomes in-operational. From the details filed we find that the changes made are structures in the nature of permanency. The assessee's reference to Mehar Projects India Pvt. Ltd. 89 TTJ 1004 cannot have an application to the instant case as the referred case dealt with construction of labour and staff colony which were in the form of huts constructed for housing the labour and staff at the site of work whereas the instant case deals with further construction of the bare shell so as to make it to be utilized as a full-fledged office.

23. Hence keeping in view the entire facts and circumstances, since the expenditure involves the nature of temporary as well as permanent furnishings, the Assessing Officer is hereby directed to determine and apportion the permanent and temporary structures based on the materials utilized and the structure built from the actual furniture and fixtures undertaken by the assessee, based on their utility, life span, nature of the structures and allow 100% depreciation on the amount utilized on temporary part of the structures.

24. The other ground of the appeal which reads as under is to challenge the addition of Rs.4,25,046 on account of disallowance under section 14A of the Income-tax Act:

3) That CIT(A) has erred both on facts and law in confirming the order of AO in making disallowance of a sum of Rs.4,25,046 under section 14A of the Income-tax Act, read with Rule 8D.

The addition has been made without taking into consideration the facts of the case and submissions made during the course of hearing. The addition is illegal, unjustified and therefore deserves to be quashed.

25. The Assessing Officer held as under:

"Further, since the assessee has not claimed any direct expenditure on the investments made and has also not incurred/claimed any expenditure on account of interest, the first two limbs of Rule 8D are not applicable to the case of the assessee. However, the 3rd limb still applies, as it cannot be that such huge investment and volume of transactions is managed by the assessee without incurring any administrative/operational expenses. Such expenses stand included in the amounts debited to the P&L Account. Therefore, in the light of the provisions of section 14A intended to take care of such expenses which may have been incurred on the investments made relating to the exempt income, disallowance is to be made u/s 14A, which is calculated as per Rule 8 D of the I.T. Rules as under:-

*0.5% of average investment = 0.5% of Rs. 8,50,09,252/- = **Rs.4,25,046/-***

Therefore, an amount of Rs. 4,25,046/- is being added to the income of the assessee.

26. Before us, it was argued in writing that at the very outset it is brought out that very small investment were held by the business firm of the appellant. Copies of balance sheet of the assessee as on 1.4.2011 and 31.3.2012 are enclosed to depict the figures of the investment appearing on the first day and last day of the previous year. A perusal of the enclosed balance sheet reveals that investment to the tune of Rs.1,04,21,231 and Rs.5,22,440 only were held in the name of the business firm i.e. Quantum Solutions on the first day of the year or on the last day of the year respectively.

27. Dr Apurva Goswamy, Proprietor of the firm Quantum Solutions was holding investments in his own name and these investments did not form part of the balance sheet. Before the Assessing Officer it was also explained that the assessee had acquired certain investments in his own name (as individual), the income of which depicted in the return of income tax. Being a proprietor of the firm Quantum Solutions, the income derived from the personal sources and income derived from carrying the business under the name and style 'Quantum Solutions' were declared in the return of the assessee. A statement showing the investment held in the name of the proprietor in his individual capacity is enclosed herewith for your kind consideration.

27.1 However, the AO while calculating the disallowance as per Rule 8D of Income tax Rules erred in adopting the figures of investments held by assessee in his personal capacity instead of figures of investments held by the firm appearing in the balance sheet.

28. As per the procedure laid down in Rule 8D of Income tax Rules for calculating the disallowance of expenditure in relation to income not includable in total income read with section 14A of Income tax Act, the following disallowance is to be made:

- (a) The expenditure directly related to income which does not form part of total income;
- (b) Where the expenditure by way of interest has been incurred, the expenditure attributable to exempt income is to be calculated by way of a formula prescribed under the rule.
- (c) Half percent of the value of the investment as appearing in the balance sheet of the assessee on the first day and the last day of the previous year.

First Limb of Rule 8D is not applicable as no expense directly relatable were incurred.

Second limb of Rule 8D is also not applicable to the case of the assessee as no loan has been raised by the assessee for the purpose of making investments. The investments of Rs.5,22,440, as appearing in the balance sheet as at 31.3.2012 were made from his funds and also no other expense has been incurred by the assessee for this purpose.

As regards third limb, the calculation of disallowance is depicted as under;

Opening Balance	10421231
Closig Balance	533440
Average	5477335
0.5 Percent of above	27386

Thus the action of AO in adopting incorrect figures of investments while making calculation of disallowance under Rule 8D resulted in excessive disallowance to the extent of Rs.397660.

29. Keeping in view the above facts and provisions of law laid-down in Rule 8D, the addition of Rs.425046-27386 deserves to be deleted. It is prayed that addition of Rs.397660 may kindly be ordered to be deleted.

30. We have heard arguments of both the parties and agree with the arguments of the assessee that the investments of the business firm only needs to be considered for computing the disallowance. Hence, the matter is being sent back to the file of the Assessing Officer for the limited purpose of re-computing the disallowance as per Section 14A after excluding the investments held in personal capacity

Order pronounced in the open Court.

Sd/-

संजय गर्ग
(SANJAY GARG)
न्यायिक सदस्य/ Judicial Member
29/11/2018

Sd/-

डा. बी.आर.आर, कुमार,
(DR. B.R.R. KUMAR, AM)
लेखा सदस्य/ Accountant Member

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File