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

BEFORE SHRI D. KARUNAKARA RAO, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 2638/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

The Deputy Commissioner of Income Tax,
Circle-8, Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Alfa Laval India Ltd.
Mumbai Pune Road,
Pune-411 012
PAN : AAACA5899A

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak
Revenue by : Smt. Nandita Kanchan

सुनवाई की तारीख / Date of Hearing : 07.01.2019
घोषणा की तारीख / Date of Pronouncement : 09.01.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the Revenue emanates from the order of Ld. CIT(Appeals)-13, Pune dated 04.07.2016 for the assessment year 2011-12 as per following grounds of appeal on record.

> "*1.Whether on the facts and circumstances of the case the Ld. CIT(A) erred in holding that the domestic market segment and the export market*

segment were distinct and not comparable and thereby, the application of the cost plus method adopted by the TPO was incorrect?
2. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) was justified in holding that discount of Rs.72,74,168/- received on pre-payment of liability under the 'Sales Tax Deferral Scheme', as not a remission or cessation of liability u/s 41(1)?

3. Whether on the facts and circumstances of the case the Ld. CIT(A) erred in deleting the disallowance of IT service charges of Rs.6,22,64,471/- by holding that the above expenditure was in the nature of revenue expenditure?

4. Whether on the facts and circumstances of the case the Ld. CIT(A) was justified in deleting the addition on account of IT service charges of Rs. 6,22,64,471/-, ignoring that on similar issue for A.Y.2008-09 the Hon'ble ITAT has restored the matter to the file of AO for fresh verification?

5. Whether on the facts and circumstances of the case the Ld. CIT(A) erred in deleting the disallowance of Rs.21,32,932/- u/s.14(A) ignoring that AO has clearly recorded in his order that he is not satisfied with the quantum of expenses allocated by the assessee against exempt income?

6. The appellant craves leave to add, amend or alter any of the above grounds of appeal."

2. The brief facts in this case are that the assessee company is a subsidiary of Alfa Laval AB, Sweden and is engaged in manufacturing and sale of plate and spiral head exchanges, decanters and separators and also executes complete projects and systems for its customers. The assessee company has three divisions' viz. Equipment division, the Projects division and the Parts and Services division. The Equipment division of the company is engaged in manufacture and sale of plate and spiral exchangers, decanters and separators etc. whereas the Projects division is engaged in installation and Commissioning of projects, plants and systems. The parts and services division is engaged in trading of spares and components and servicing related activities.

3. The international transactions entered into by the assessee during the assessment year 2011-12 are as follows:

Sr. No.	*Nature of Transactions*	*Amounts*	*Method adopted*
1	*Purchase of Raw Materials, parts etc.*	*145,89,05,869/-*	*TNMM*
2	*Purchase of finished goods*	*1,75,18,138/-*	*TNMM*
3	*Sale of equipment*	*245,58,20,589/-*	*TNMM*
4	*Purchase of capital equipment tools*	*1,26,51,609/-*	*TNMM*
5	*Payment of royalty*	*6,24,71,000/-*	*CUP*
6	*Purchase fees*	*1,25,58,520/-*	*TNMM*
7	*Payment of consulting and inspection*	*51,52,438/-*	*TNMM*
8	*Payment of project related services*	*49,52,438/-*	*TNMM*
9	*IT infrastructure cost/ software maintenance fees*	*2,31,96,716/-*	*TNMM*
10	*Payment of ERP up gradation/ encashment services*	*1,05,40,994/-*	*TNMM*
11	*Payment of IT Licence and software maintenance charges*	*34,18,582/-*	*TNMM*
12	*Payment of repairs and maintenance charges*	*9,14,595/-*	*TNMM*
13	*Receipt of commission*	*33,62,088/-*	*TNMM*
14	*Receipt of after sales service charges*	*25,25,845/-*	*TNMM*
15	*Reimbursement of expenses*	*5,53,13,945/-*	*TNMM*
16	*Recovery of expenses*	*1,97,58,267/-*	*TNMM*
		414,90,51,277/-	

4. The assessee aggregated all its international transaction of the equipment division in its Transfer Pricing Study Report. According to the assessee, its international transactions are required to be aggregated because the same are closely interlinked, therefore, it used the Transactional Net Margin Method (TNMM) to benchmark its international transactions. The assessee stated that the net operating margin over sales of its Equipment division was of 13.77% which was higher than the average net operating margin of the comparable companies. Therefore, its international transactions

of the Equipment division were at the arm's length price (ALP). The Transfer Pricing Officer (TPO) in the order passed u/s.92CA(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') rejected the TNMM used by the assessee. The TPO applied the Cost Plus Method (CPM) with the Profit Level Indicator (PLI) with respect to its domestic segment of the traded spares @ 136.15% wherein the PLI in the case of the export of the traded spares to AE is @46.02%. With the result, the TPO made the adjustment of Rs.1,56,00,000/- to the assessee's international transaction of export of spares.

5. With respect to the export of manufactured Equipment, the TPO worked out the gross margin with respect to the assessee's non-AE domestic sales @34.28% as against the gross margin @ 27.09% on transactions of exports to AE. This resulted in to the adjustment of Rs.14,02,00,000/- with respect to the international transactions of exports of manufactured Equipment. Thus, the TPO made the total adjustment of Rs.15,58,00,000/- to the assessee's international transactions.

6. In addition, following disallowances were made and added by the TPO to the assessee's total income:

Particulars	*Amount (Rs.)*
Difference between Sales-tax deferral and NPV	*72,74,168/-*
Disallowance u/s.40A(9)	*2,87,145/-*
Disallowance out of IT Service charges	*6,22,64,471/-*
Disallowance out of brokerage	*1,86,000/-*
Out of depreciation	*46,245/-*
Additional disallowance u/s.14A rw rule 8D	*21,32,932/-*

With the result, the Assessing Officer assessed the assessee's total income at Rs.218,40,15,944/- as against its total returned income of Rs.195,60,24,983/-.

7. With regard to the first ground, at the time of hearing, the Ld. AR of the assessee invited our attention to the Para 2.1.1 to 2.1.4 at pages 10 to 18 of the Ld. CIT(A)'s order wherein on the issue as per the reasons appearing therein, Ld. CIT(A) has provided relief to the assessee which is on record. The Ld. AR submitted that TPO has made an addition while determining ALP of the international transactions relating to the Equipment Division. The assessee has adopted TNMM as the most appropriate method for determining ALP. The TPO held that the cost plus method is the more suitable than TNMM. However, the Ld. CIT(A) has held that TNMM is to be applied following the order of the Co-ordinate Bench, ITAT in assessee's own case for assessment year 2008-09 to 2010-11. The ITAT has held that TNMM is the most appropriate method and accordingly, the addition made has been deleted.

8. The Ld. DR though principally agreed to the submissions of the Ld. AR , however, he has placed strong reliance on the findings of TPO as well as the Assessing Officer.

9. We have perused the case record and heard the rival contentions in the paper book filed before us. The copies of order of ITAT relates to assessee's own case for assessment year 2010-11 have been filed in pages 71 to 81 of the paper book. The relevant portion of the order on this issue is as under:

> *"13. Now, coming to the facts of the present case, the Transfer Pricing Officer (TPO) in para 12 of its order had referred the same list which is similar to as reproduced in para 10 at page 8 of the Tribunal's order dated 30.06.2017 (supra.). The TPO is directed to apply the TNMM method as in earlier years to exclude five concerns i.e. Axtel Industries*

Ltd., Anup Engineering Ltd, Thermax Ltd., Walchandnagar Industries Ltd. and GMM Pfaudler Ltd. It may be pointed out herein itself that the TPO in para 9 has also referred to the order of the Tribunal in assessment year 2008-09. The CIT(A) has also granted the relief to the assessee in para 2.1.15 at page 24 in turn, relying on the order of Tribunal in assessment year 2008-09. We find that the Tribunal further in assessment year 2009-10 has applied similar principle and held as under:

> *"12. Similar issue of selection of most appropriate method arose before the Tribunal in assessee's own case in assessment year 2008-09 and the Tribunal held that CPM method should not be applied and TNMM method is to be applied as most appropriate method. Applying the said ratio to the facts of the present case, where the TPO himself had applied TNMM method in all the earlier years starling from assessment years 2002-03 to 2007-08 and the Tribunal had directed the application of TNMM method in assessment year 2008-09, we hold that for benchmarking the interactional transactions in the equipment division, TNMM method is to be applied. The TPO has already considered the list of comparables selected by the assessee. In respect of comparables at serial Nos.1 and 7 being rejected for non-matching on turnover, we uphold the order of TPO. Similarly, Walchandnagar Industries Ltd. cannot be selected as comparable for different accounting period. In respect of Thermax Ltd. and GMM Pfaudler Ltd., the two concerns are not functionally comparable. Now, looking at the margins of balance four concerns which were selected by the assessee and as pointed out by the learned Authorized Representative for the assessee that the margins of said concerns are much below the margins shown by the assessee at 19.48% and consequently, no adjustment is to be made in the hands of assessee on this account. We also accept the aggregation approach applied by the assessee under the said equipment division as similar aggregation approach has been applied by the TPO in all the earlier years and even by the Tribunal in assessment year 2008-09 Consequently, we delete the addition of Rs.8,87,590/- made in the division of export of equipments."*

14. In view of similarity of the issue, we apply the parity of reasoning as in assessment year 2009-10 to decide the issue in favour of the assessee. The TPO is thus, directed to exclude five concerns i.e. Axtel Industries Ltd., Anup Engineering Ltd., Thermax Ltd., Walchandnagar Industries Ltd. and GMM Pfaudler Ltd. and after excluding the said comparables, the average margin of balance comparables work to 14.01% against which, the assessee has shown the margins of 25.27%. Hence, no adjustment is to be made on account of arm's length price of international transactions. The ground of appeal No.1 raised by the Revenue is, thus, dismissed."

Respectfully, following the decision of the Co-ordinate Bench, we upheld the relief provided by the Ld. CIT(A) on this issue. Hence, **ground of appeal No.1 raised by the Revenue is dismissed.**

10. With regard to the second ground of appeal, during assessment proceedings, the Assessing Officer found that the assessee has reduced the amount of Rs.72,74,170/- from its 'Statement of the Computation of Total Income' contending that this amount is not taxable . The Assessing Officer found that the assessee had total unpaid sales tax liability of Rs.4,60,55,889/- . Out of which, the assessee paid Rs.1,07,17,765/- on the due date. With the result, remaining outstanding sales tax liability became Rs.3,53,38,124/-. During the year, the assessee paid Rs.2,80,63,956/- being the net present value of Rs.3,53,38,124/- clearing its entire sales tax liability. Thus, the assessee received the benefit of Rs.72,74,168/- which the assessee claimed as exempt from tax. The assessee placed reliance on the decision of Special Bench of ITAT in the case of Sulzer India Ltd. 134 TTJ (Mumbai) (SB) 385 and the decision of the ITAT, Pune in the case of ACIT Vs. Spicer India Ltd.

11. Before the Ld. CIT(Appeal), assessee has made following detailed written submissions :

> *"2.1 It is submitted that our company is engaged in manufacture and sale of plate & spiral heat exchangers, decanters and separators and also executes complete projects and systems for its customers. The appellant has set up manufacturing units at Satara. The Appellant became eligible to sales tax deferral benefit under the Package Scheme of Incentives in respect of its unit at Satara which was implemented by SICOM Ltd acting as nodal agency on behalf of the State Government. As per the Scheme, the sales tax collected from customers was allowed to be accumulated and the appellant was liable to repay the amount after 10 years in 5 equal installments. Our company has disclosed the above amount as unsecured loan in its books. Section 38 of the Bombay Sales Tax Act was amended to provide for pre-payment of deferred sales tax liability at Net Present Value (NPV). Accordingly during the relevant previous year, our company decided to pre-pay the above loan at the NPV. Our company made pre-payment of Rs.2,80,63,956/- during the relevant previous year being the net present value of Rs.3,53,38,124/- resulting in surplus of Rs.72,74,170/-. Our company has treated the said surplus as capital receipt. However the learned Assessing officer has not accepted the above submission and offered the same to tax as revenue receipt u/s.41(1) /28(iv).*
>
> 2.2. *Section 41(1) of the Income Tax Act, 1961 reads as under:*

"41(1)Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first-mentioned person) and subsequently during any previous year,-

(a) the first-mentioned person has obtained, whether in cash or in any other manner whatsoever, any amount in respect o(such loss or expenditure or some benefit in respect o(such trading liability by way o(remission or cessation thereof the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not;

(b) the successor in business has obtained, whether in cash or in any other manner whatsoever, any amount in respect of which loss or expenditure was incurred by the first-mentioned person or some benefit in respect of the trading liability referred to in clause.

(c) by way of remission or cessation thereof the amount obtained by the successor in business or the value of benefit accruing to the successor in business shall be deemed to be profits and gains of the business or profession, and accordingly chargeable to income-tax as the income of that previous year.

There are various judicial decisions on the applicability of Section 41(1). It appears from the same that to invoke the provisions of section 41(1), the following conditions must be fulfilled:

(i) In the assessment of the assessee, an allowance or deduction has been made in respect of loss, expenditure the trading liability incurred by the assessee.

(ii) The assessee must have subsequently (a) obtained any amount in respect of such loss or expenditure or (b) obtained any benefit in respect of such trading liability by way of remission or cessation thereof. In case either these events happen, the deeming provision enacted in closing part of sub-so (I) comes into play.

(iii) The amount obtained by the assessee or the value of benefit accruing to him is deemed to be profits and gains the business or profession and it becomes chargeable to income-tax as an income of that previous year.

2.3 Thus to invoke the provisions of section 41(1), the first requirement is as to whether in the assessment of the assessee, an allowance or deduction has been made in respect of loss, expenditure or the trading liability incurred by the assessee and subsequently obtained any benefit in respect of such a trading liabilities by way of remission or cessation thereof. In the present case, our company has only made a pre-payment of its liability as per the option provided by the state government and there is no waiver of such liability. In this case it is submitted that the above prepayment could not be construed as remission of liability because the State Government had not waived of any of the liability but only accepted the amount at its present value which was due later.

2.4 It is submitted that the CBDT has issued circular clarifying that deferred sales tax under the deferred scheme has to be treated as actually paid so that the statutory liability will be taken to be actually

paid for the purposes of Section 43B. After such deemed payment, the unpaid sales tax is by way of deferral loan and not a trading liability and hence remission of such loan cannot be treated as income of the appellant. It is further submitted that in the present case, there is no question of any benefit arising to the appellant. Section 41(1) is applicable when a liability for payment of Rs X is settled for lesser amount at X - Y. In this case, the liability for payment is settled at its present value and there is neither any remission nor any waiver of such amount. On payment of such NPV, such deferred sales tax is assumed to be paid fully and not waived. Benefit has to be understood commercially and not mathematically. In view of this, it is submitted that the appellant company has not derived any benefit due to such pre- payment and therefore the resultant surplus cannot be considered as taxable u/s. 41.

2.5 It is further submitted that in the present case, s. 41(1) has been invoked on the alleged ground that our company has obtained some benefit in respect of a trading liability by way of remission or cessation thereof. In this respect, it is submitted that s.41(1) does not apply in the present case because (1) the appellant has not obtained any benefit (2) there has not been any remission of a liability (3) the benefit if any obtained by the appellant is not in respect of a trading liability (4) the benefit if any obtained by the appellant is on capital account. In view of this, it is respectfully submitted that the provisions of Section 41(1) cannot be invoked in the present case. Our company relies upon the following decisions in support of the above submissions.

(a) CIT Vs. Sulzer India Ltd. (2014) 369 ITR 717 (Bom.)

(b) Jurisdictional Pune Tribunal decision in the case of ACIT Vs. Spicer India Ltd. in ITA No. 1279/PN/2012 for Assessment year 2004-05.

(c) Copies of above decisions are enclosed herewith as Annexure-5

2.6 The learned Assessing Officer has further held that this surplus is taxable u/s.28(iv) of the Income Tax Act, 1961. Section 28(iv) provides as under:

The following income shall be chargeable to income tax under the head "profits and gains of business or profession".-

XXXX

(iv) the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession

It is submitted that in the present case, the appellant has not earned any benefit as submitted in para 2.3 & 2.4 above. The Appellant has only made a pre-payment of its deferred sales tax liability at the Net Present Value. The Net Present Value is the current value of the future liability. Since the payment is made at NPV, there is no remission or waiver of any liability and therefore the allegation that such benefit is taxable u/s. 28 is baseless and without any merit. Section 28 of the Income Tax Act 1961 does not bring capital receipts into the income tax net. It is respectfully submitted that the benefit, if any, was received by our company at the time of setting up' of the unit and the deferral since these benefits are related to the setting up of the units. In view of this, it is submitted that even if it is held that there is any benefit, it has to be considered to be on capital account and not on revenue account. [t is submitted that the learned Assessing officer has not discharged the onus cast upon him by the provisions of the Act to prove as to how a capital

receipt is taxable u/s. 28(iv) and therefore the taxing the same u/s. 28 is without any merit and not in accordance with the provisions of the Income Tax Act 1961.

2.7 In view of this, we request your Honour to kindly direct the learned Assessing Officer to delete the above addition and oblige.

2.8 Without prejudice to the above, it is submitted that the benefit, if any, was received by our company at the time of setting up of the unit and the deferral since these benefits are related to the setting up of the units. In view of this, the same should have been reduced from the respective blocks by the learned Assessing officer as per the provisions of Section 43. In view of this, we request Your Honour to direct the [earned Assessing officer to delete the addition and oblige us."

12. The Ld. CIT(Appeal) after considering the assessment order, submissions of the assessee and the facts of the case held that the issue is covered in assessee's favour by the decision of Hon'ble Jurisdictional High Court in the case of CIT Vs. Sulzer India Ltd. (2014) 369 ITR 717 (Bom.) wherein the Hon'ble High Court has held that the difference between the NPV against the future liability credited by the assessee under the capital reserve account in its books of account, is a capital receipt. It cannot be termed as a remission or cession of a trading liability and consequently, no benefit has arisen to the assessee in terms of the section 41(1). Therefore, by following the decision of the Hon'ble Bombay High Court, the addition of Rs.72,74,140/- made on account of the gain on settlement of the sales tax deferred liability was deleted.

13. We have perused the case record and heard rival contentions in the paper book filed, copies of the decision of Hon'ble Bombay High Court in the case of CIT Vs. Sulzer India Ltd. (supra.) has been placed in pages 82 to 102 of the paper book. We find that this issue is directly covered in favour of the assessee that when there is no cession of a trading liability on account of pre payment of sales tax deferral liability, the addition is not justified. Accordingly,

relief provided to the assessee by the Ld. CIT(Appeal) is sustained. Hence, **ground no. 2 raised in appeal by Revenue is dismissed.**

14. The ground No. 3 and 4 relate to the deletion of disallowance of IT services.

15. On this issue, Ld. DR apprised the Bench that in assessee's own case for assessment year 2008-09, the matter has been set aside to the file of Assessing Officer for fresh consideration and therefore, in the present assessment year i.e. 2011-12, the issue should be set aside to the file of Assessing Officer for fresh consideration.

16. The Ld. AR of the assessee conceded to the arguments of the Ld. D.R.

17. We have perused the case record and heard the rival contentions. We find that in assessee's own case for assessment year 2008-09 and 2010-11, this issue has been remitted back to the file of Assessing Officer for verification. Relevant part of the order in ITA No.1351/PUN/2015 for assessment year 2010-2011 wherein the order of Tribunal for assessment year 2008-09 has considered is as under:

> "*16. In the facts relating to the issue, the assessee during the year under consideration had claimed expenditure incurred towards acquisition and use of software at Rs.5.38 crores. The Assessing Officer on examination of the details of expenditure had found the said expenditure to be capital in nature and allowed depreciation at Rs.1.61 crores on it. The Assessing Officer disallowed net expenditure of Rs.3.76 crores.*
>
> *17. The CIT(A) had deleted the entire disallowance with direction to reverse the depreciation allowed on the said disallowance.*
>
> *18. The Revenue is aggrieved by the order of CIT(A) as similar issue of software expenses had been restored back to the file of Assessing Officer for fresh verification by the Tribunal.*
>
> *19. We find that the Tribunal in assessment year 2008-09 had set aside the said issue for verification as per para 10 at page 53 of the said order.*

> *We are relying on the finding of Tribunal in this regard. However, for the sake of brevity, the same is not being reproduced. In line with the said directions, we remit this issue back to the file of Assessing Officer for verification, as per directions of Tribunal in assessment year 2008-09. The grounds of appeal No.2 and 3 raised by the Revenue are allowed for statistical purposes."*

That, respectfully following the decision of our Co-ordinate Bench, ITAT in assessee's own case, these two grounds are remitted back to the file of Assessing Officer for verification. Accordingly, **grounds No. 3 and 4 raised in appeal by the Revenue are allowed for statistical purpose.**

18. Ground No. 5 is with regard to the deletion of disallowance of Rs.21,32,932/- u/s.14A of the Act. It is seen that the Assessing Officer disallowed the amount of Rs.21,32,932/- u/s.14A of the Act by observing as under :

> "*10.1 On perusal of Statement of Total Income filed by the assessee, it is seen that the assessee has claimed income from dividend of Rs 4,28,70,778 as exempt from tax in view of provisions of Section 10(34) / 10(35) of the Income Tax Act, 1961. The assessee Company has disallowed an ad-hoc sum of Rs 4,00,000/-, u/s. 14A of the Income Tax Act, 1961 being expenses related to exempt income. It was brought to the notice of the assessee's authorized representative that having regard to the accounts of the assessee I am not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to the income which does not form part of total income under the Income Tax Act. It is further seen that the assessee's tax auditor in his report has also given the working of disallowance u/s.14A r.w. rule 8D of Rs.25,32,932/-. In my view the above amount is required to be disallowed u/s 14A r.w. rule 8D.*
>
> *10.2 As the assessee has already disallowed Rs.4,00,000/- u/s.14A of the Income Tax Act, 1961 in its Statement of Total Income, I hereby, disallow net Rs.21,32,932/-/- (i.e. Rs.25,32,932/- less Rs.4,00,000/-) u/s.14A r.w.Rule 8D of the Income Tax Act, 1961."*

19. At the time of appeal before the First Appellate Authority, the assessee advanced similar arguments vide letter dated 19.05.2016 on this disallowance, which were advanced by it against the same disallowance made by the Assessing Officer in the assessment year 2010-11 in assessee's own case. The

Ld. CIT(Appeal) after considering the facts of the case, assessment order and the submissions of the assessee held as follows :

> "*2.6.3 I find that I have deleted the disallowance made by the learned AO u/s 14A in the Appellant's appeal for AY 2010-11 because the learned AO failed to record his satisfaction before invoking Rule 8D, which is held as a mandatory pre- condition provided u/s 14(2). The same facts prevail during the year under consideration as well. I do not find any satisfaction of the learned AO recorded in the assessment Order before invoking the Rule 8D. Accordingly, I delete the disallowance u/s 14A made by the learned AO of Rs 21,32,932 by following my Order of the A.Y.2010-11 in the Appellant's case."*

20. We have perused the case record. We find that the Ld. CIT(Appeal) deleted this disallowance in assessee's case for assessment year 2010-11 because the Assessing Officer failed to record his satisfaction before invoking Rule 8D, which is held as a mandatory precondition provided u/s.14(2) of the Act and the same facts prevail during the year under consideration. Therefore, Ld. CIT(Appeal) had deleted the disallowance as he has done for assessment year 2010-11, maintaining *status quo*.

21. At the time of hearing, the Ld. AR of the assessee appraised the Bench that the Pune Bench of the Tribunal in ITA No.1351/PUN/2015 on the same issue, facts and circumstances has also deleted the disallowance made and has given findings in favour of the assessee. The relevant parts of the findings are as under:

> "*25. We have heard the rival contentions and perused the record. The issue which arises in the present appeal is the preliminary issue of recording of satisfaction by the Assessing Officer before applying provisions of Rule 8D of the Rules in line with section 14A of the Act. We find that similar issue of exercise of jurisdiction by the Assessing Officer in recording the satisfaction while applying the provisions of section 14A of the Act arose before the Tribunal in Kalyani Steels Ltd. Vs. Addl.CIT (supra), wherein it was held as under:-*
>
> > *"10. In the aforesaid background, now, we may examine the facts of the present case. In this case, assessee has earned by way of dividends a sum of Rs.5,45,58,685/-, which is exempt u/s 10(38) of the Act and thus the same does not form part of the total income under the Act. In the computation of income, assessee having*

regard to section 14A of the Act, determined the amount of expenditure incurred in relation to such income at Rs.5,00,000/-. The Assessing Officer has not found it acceptable and has instead determined the amount of expenditure in relation to such income by applying rule 8D of the Rules. Ostensibly, the action of the Assessing Officer cannot be upheld unless he has complied with the pre-requisite of invoking rule 8D of the Rules, namely, recording of an objective satisfaction with regard to the claim of the assessee that an expenditure of Rs.5,00,000/- has been incurred in relation to the exempt income, is incorrect. In order to examine the aforesaid compliance with the pre-condition, we have perused the para 4 to 4.2 of the assessment order and find that no reasons have been advanced as to why the disallowance determined by the assessee was found to be incorrect, having regard to the accounts of the assessee. The only point made by the Assessing Officer is to the effect that "the said disallowance was not acceptable". In-fact, we find that the assessee made detailed submissions to the Assessing Officer, which have been reproduced by the CIT(A) in para 3.2.1 of his order. As per the assessee, the determination of disallowance u/s 14A of the Act of Rs.5,00,000/- was based on the employee costs and other costs involved in carrying out this activity. Further, assessee also explained that the shares which have yielded exempt income were acquired long back out of own funds and no borrowings were utilized. The mutual fund investments were claimed to be also made out of surplus funds. It was specifically claimed that no fresh investments have been made during the year under consideration in shares yielding exempt income. All the aforesaid points raised by the assessee have not been addressed by the Assessing Officer and the same have been brushed aside by making a bland statement that the disallowance is "not acceptable". Therefore, in our view, in the present case, the Assessing Officer has not recorded any objective satisfaction in regard to the correctness of the claim of the assessee, which is mandatorily required in terms of section 14A(2) of the Act and therefore his action of invoking rule 8D of the Rules to compute the impugned disallowance is untenable. Accordingly, the orders of the authorities below are set-aside on this aspect and the Assessing Officer is directed to retain the disallowance u/s 14A of the Act to the extent of Rs.5,00,000/-, as returned by the assessee."

26. In the facts of the present case, the Assessing Officer has failed to record any satisfaction before making the aforesaid disallowance and in the absence of recording of satisfaction, the provisions of section 14A of the Act cannot be invoked as the Assessing Officer has failed to come to a finding as to why the disallowance made by the assessee under section 14A of the Act at Rs.3 lakhs is incorrect. Accordingly, we uphold the order of CIT(A). The ground of appeal No.4 raised by the Revenue is thus, dismissed."

Therefore, respectfully following the decision of the Co-ordinate Bench, we uphold the order of Ld. CIT(Appeal) on this issue and sustain the relief provide to the assessee. **Thus, ground No. 5 raised in appeal by Revenue is dismissed**.

22. The ground No. 6 is general in nature and hence, requires no adjudication.

23. In combined result, appeal of the Revenue is partly allowed for statistical purposes.

Order pronounced on 9th day of January, 2019.

Sd/-	Sd/-
D. KARUNAKARA RAO	**PARTHA SARATHI CHAUDHURY**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 9th January, 2019.
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-13, Pune.
4. The Pr. CIT-5, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**बी**" बेंच, पुणे / DR, ITAT, "**B**" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	07.01.2019	Sr.PS/PS
2	Draft placed before author	08.01.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		