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

BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER &
SHRI RAMLAL NEGI, JUDICIAL MEMBER

ITA Nos. 1839 & 1840/Mum/2018
A.Ys : 2013-14 & 2014-15)
&
CO Nos. 82 & 83/Mum/2019
A.Ys : 2013-14 & 2014-15)

DCIT – 14(3)(1) 455 Aayakar Bhavan, M.K. Marg, Mumbai – 400020	**बनाम**/ Vs.	Reliance Infrastructure Ltd, Reliance Centre, Santa Cruze, Mumbai – 400055.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCR7446Q		
Appellant / Respondent	..	Appellant / Respondent)

अपीलार्थी ओर से / **Appellant by :**	Shri Lakshmi V. Prasad, CIT DR
प्रत्यर्थी की ओर से/**Respondent by :**	Shri Jitendra Sanghvi, AR

सुनवाई की तारीख **/ Date of Hearing**	28/08/2019
घोषणा की तारीख /**Date of Pronouncement**	06/11 /2019

आदेश / O R D E R

PER BENCH

These appeals are filed by the Revenue against the order of the Ld. CIT(A)-22, Mumbai dated 28.12.2017 and Cross Objections (Cos) are filed by the assessee. With the consent of both the parties, the appeal filed by the revenue for the A.Y 2013-14 is taken as the lead case.

2. The first issue to be decided in this appeal of the revenue is as to whether the Ld. CIT(A) was justified in allowing the expenses incurred for replacement of electricity meters as deduction in the facts and circumstances of the case.

2.1. The brief facts of this issue are that the assessee had capitalized in its books of accounts the cost of 45514 meters amounting to Rs. 5,62,87,331/-, out of which Rs. 3,19,61,732/- pertained to replacement of 25988 meters. These expenses were not debited to profit and loss account. The assessee claimed the cost of Rs. 3,19,61,732/- on replacement of old meters as deduction in its computation of income. The Ld. AO show caused the assessee as to why the said expenditure should not be treated as capital expenditure. The assessee made a detailed submission in this regard which were not appreciated by the Ld. AO and accordingly the Ld. AO disallowed the assessee's claim for deduction of Rs. 3,19,61,732/- by treating it as capital expenditure and granted

depreciation thereon in the sum of Rs. 35,95,695/- while completing the assessment.

2.2 The assessee before the Ld. CIT(A) submitted that this issue has already been covered in its favour by various orders of this Tribunal in earlier years up to A.Y 2010-11 and also various orders of Hon'ble Jurisdictional High Courts in assessee's own case up to A.Y 2008-09. The Ld. CIT(A) following the decision taken by its predecessor for the A.Y 2012-13 and also placing reliance on the decisions of this Tribunal and Hon'ble Jurisdictional High Court deleted the disallowance made by the Ld. A.O and allowed deduction in respect of replacement of meters. Aggrieved, the revenue is in appeal before us.

2.3. We have heard the rival submissions and perused the materials available on record. The Ld. DR vehemently relied on the order of the Ld. AO. We find that the Hon'ble Jurisdictional High Court in assessee's own case for the A.Y 2002-03 in Income Tax Appeal No. 277 of 2009 dated 01.07.2013, had considered this issue. The question raised before the Hon'ble High Court is as under:

> *"(a) Whether on the facts and circumstances of the case and in law, the ITAT is right in holding that the expenditure incurred by assessee on replacement of electricity meters is not a capital expenditure?"*

The Hon'ble High Court held as under:-

3.(i) So far as question (a) is concerned, the Tribunal allowed the claim of the respondent-assessee by following its order for the Assessment Years 1999-2000, 2000-01 and 2001-02. In response to our specific query whether revenue has challenged the order of the Tribunal for the Assessment Years 1999-00, 2000-01 and 2001-02 in respect of the issue raised in question (a), the learned Counsel for the revenue states that in spite of having sought information on the above aspect from the revenue by his letter dated 15 April 2013, he has received no response from the department.

(ii) In any view of the matter, the expenditure incurred on the replacement of the electricity meters was held to be capital expenditure by the Assessing Officer. This was on the ground that this electricity meters were installed at the premises of the customers after taking deposit from the consumers and it led to an enduring benefit to it. In appeal, the CITA(A) has allowed the appeal of the respondent-assessee holding that expenses incurred on replacement of electricity meters is of revenue nature while following the orders of his predecessors for the earlier Assessment Year. On further appeal by the revenue, the Tribunal held that these electricity meters have to be replaced periodically on account of obsolescence, meters burning out or becoming faulty etc. and these expenses are necessarily required to be incurred for the purposes of carrying out business operations. The expenditure is incurred for the purposes of enabling the Respondent-Assessee to carry out its business more efficiently and more profitably. The replacement of meters does not increase the generation and/or distribution capacity of electricity. Moreover, as held by the Supreme Court in the matter of ***Empire Jute Co. Ltd. v/s. CIT (124 ITR 1),*** *the test of enduring benefit is not a conclusive test to be applied mechanically without considering the facts of a given case. In the above facts, the expenses on replacement of electricity meters would be on revenue and not on capital account.*

(iii)The Counsel for the Respondent has not been able to point out that how the conclusion of the Tribunal in the earlier years will not be applicable to the present Assessment Year. The Counsel for the revenue has also not been able to show that the finding of fact arrived at by the Tribunal is perverse and/or erroneous. In the above view, we see no reason to entertain Question (a)".

2.4 Respectfully following the aforesaid decision, we do not find any infirmity in the order of the Ld. CIT(A). Accordingly the ground No.1, raised by the revenue is dismissed.

3. The next issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in deleting the proportionate apportionment and allocation of Head Office expenses amongst Goa and Windmill Units respectively while calculating profits eligible for deduction u/s 80IA of the Act in respect of the said units.

3.1 We have heard the rival submissions. We find that the Ld. AO had called for explanation from the assessee company as to why the head office expenses should not be allocated among the various units to arrive at the correct profits derived from the eligible undertakings for the purpose of computing deduction u/s 80IA of the Act. The assessee submitted that this issue has already been decided in its favour in earlier years. Since the department had not accepted the decision of appellate authorities and appeals preferred before the higher appellate forum were pending, the Ld. A.O in order to maintain judicial consistency and in order to keep the issue alive resorted to reduce the claim of deduction u/s 80IA of the Act in respect of these two eligible

units to the extent of allocation of head office expenses. At the outset, we find that there is no dispute that these units are eligible for claiming deduction u/s 80IA of the Act. We find that the Ld. CIT(A) had granted relief to the assessee in respect of impugned issue by placing reliance on various decisions of this Tribunal in assessee's own case passed up to A.Y 2010-11 and also on the decisions of Hon'ble Jurisdictional High Court in the assessee's own case passed up to A.Y 2008-09. We find that the Ld. CIT(A) had also relied on the order passed his predecessor for A.Y 2012-13 and granted relief to the assessee. We find that Hon'ble Jurisdictional High Court in assessee's own case for A.Y 2006-07 in Income Tax Appeal No. 2180 of 2011 dated 17.04.2014 had decided this issue in favour of the assessee, wherein it was held as under:

> *"5. In so far as the question (c) in relation to head office expenses is concerned, the findings of the facts by the ITAT for the prior assessment years have been referred to and if at all any reference needed, paragraphs 17 and 18 of the ITAT's order are complete answers". Therefore, the factual findings do not raise any substantial question of law in relation to disclaim as well.*

3.2 Respectfully following the said decision, we do not find any infirmity in the order of the Ld. CIT(A) in granting relief to the

assessee. Accordingly the ground No. 2 raised by the revenue is dismissed.

4. The ground Nos. 3 to 6 raised by the revenue are with regard to the deletion of disallowance u/s 14A of the Act r.w.r 8D(2) of the Rules under normal provisions of the Act.

4.1 We have heard the rival submissions and perused the materials available on record. At the outset, we find that during the year under consideration, the assessee had earned dividend income of Rs. 114,34,73,677/- and claimed the same as exempt u/s 10 of the Act. The assessee made suo-moto disallowance of Rs. 81,41,392/- u/s 14A of the Act r.w.r 8D of the Rules, by considering only those investments which had yielded exempt income during the year. We find that the assessee had also pleaded before the Ld. A.O that it had sufficient own funds in its kitty for making the investments and hence no disallowance of interest under second limb of Rules 8D(2) of the Rules is required in the facts of the instant case. The Ld. AO, however, disregarded the contentions of the assessee and proceeded to make disallowance under Rule 8D(2) of the Rules as under:

Under Rule 8D(2)(ii)	-	Rs. 48,64,63,885/-
Under Rule 8D(2)(iii)	-	Rs. 38,95,84,346/-
Total	-	Rs. 87,60,48,230/-
Less: Amount disallowed by the assessee	-	Rs. 81,47,392 /-
Total disallowance u/s 14A	-	Rs. 86,79,00,838/-

4.2 We find that the Ld. CIT(A) had given a categorical finding that assessee's share capital and reserves and surplus were Rs. 18650.43 crores and Rs. 20235.65 crores at the beginning and closing of the year respectively as against total investments of Rs. 12,785.06 crores and Rs. 13301.43 crores at the beginning and closing of the year respectively. We find that the Ld CIT(A) observed that the assessee's own interest free funds were in far excess of total investments made. Accordingly by placing reliance on the decisions of Hon'ble Jurisdictional High Court in the case of Reliance Utilities and Power Ltd., reported in 313 ITR 340 and in the case of HDFC bank, reported in 366 ITR 505, the Ld. CIT(A) deleted the interest disallowance made by the Ld. A.O under Rule 8D(2)(ii) of the Rules. We find that the factual findings given by the ld CITA on the availability of interest free funds with the

assessee company remain uncontroverted by the revenue before us and hence do not find any infirmity in the said finding of the ld CITA.

4.3 With regard to disallowance of indirect expenses under Rule 8D(2)(iii) of Rules is concerned, the ld. CIT(A) had directed the Ld. A.O to exclude investments made in subsidiaries, being strategic investments and to consider only those investments which had yielded exempt income during the year. We find that with regard to exclusion of investments made in subsidiaries and strategic investments made by the assessee, we find that this issue is recently settled by the Hon'ble Supreme Court in the case of Maxopp Investments, reported in 402 ITR 640, against the assessee. Accordingly, this aspect of the ground raised by the Revenue is allowed. We also find that the Special Bench of the Delhi Tribunal in the case of Vireet Investments, reported in 165 ITD 27, had held that only those investments which had yielded exempt income need to be considered for the purpose of working out the disallowance of indirect expenses under Rule 8D(2)(iii) of the Rules. Accordingly, the Ld. A.O is directed to re-compute the disallowance under Rule 8D(2)(iii) of Rules by considering only those investments which had actually yielded exempt income during the year under

consideration. Ground Nos. 3 to 6 raised by the Revenue are partly allowed.

5. The ground No. 7 raised by the revenue is with regard to disallowance made u/s 14A of the Act r.w.r. 8D of the Rules while computing the book profits u/s 115JB of the Act.

5.1 We have heard the rival submissions. The basic facts stated hereinabove with regard to the disallowance u/s 14A of the Act under normal provisions of the Act would apply for this ground also. We find that the Ld. AO had disallowed a sum of Rs. 86,79,00,838/- u/s 14A of the Act while computing the book profits u/s 115JB of the Act. We find that Ld. CIT(A) had deleted the said disallowance by following the decision of Hon'ble Special Bench of Delhi Tribunal in the case of Vireet Investments (supra). But we find that the Special Bench had only held that the computation mechanism provided in Rule 8D(2) of the Rules cannot be imputed in clause (f) of Explanation (1) to Sec. 115JB(2) of the Act. The special Bench also held that the actual expenses debited to profit and loss account which are incurred for the purpose of earning exempt income need to be disallowed u/s 14A of the Act for the purpose of 115JB of the Act. Since, in the instant case, the assessee

had already worked out the actual disallowance of Rs. 81,47,392/- as indirect expenses incurred for the purpose of earning exempt income, we direct the Ld. AO to adopt the same figure for the purpose of disallowance u/s 14A of the Act while computing the book profits u/s 115JB of the Act. Accordingly, the ground No. 7 raised by the Revenue is partly allowed.

6. In the result the appeal of the Revenue for the A.Y 2013-14 in ITA No. 1839/Mum/2018 is partly allowed.

CO No. 82/Mum/2019, A.Y: 2013-14 – Assessee CO

7. The only ground raised by the assessee in its CO is with regard to action of the Ld. CIT(A) directing the Ld. A.O to re-compute the disallowance u/s 14A of the Act by considering only those investments (excluding investments in subsidiaries) which have yielded tax free income during the year for computation of disallowance u/s 14A of the Act r.w.r 8D of the Rules. We find that this issue has already been addressed by us by adjudicating the revenue's ground nos. 3 to 6 above. The finding given therein would apply for cross objection also

preferred by the assessee. Hence the CO preferred by the assessee is disposed off accordingly.

8. Appeal preferred by the revenue for A.Y 2014-15 in ITA No. 1840/Mum/2018 and cross objection preferred by the assessee in CO No. 83/Mum/2019 for A.Y 2014-15 are exactly identical to A.Y 2013-14 except variance in figures. Hence, the decision rendered by us for the A.Y 2013-14 (supra) would apply mutatis-mutandis for A.Y 2014-15 also.

9. To sum up the appeals of the Revenue are partly allowed and COs of the assessee are partly allowed.

This Order pronounced in Open Court on 06/11/2019

Sd/-	Sd/-
(RAMLAL NEGI)	(M. BALAGANESH)
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Dated 06/11/2019
KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,सत्यापित प्रति //True Copy//

1.

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आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai

2. Other Member…
3. Date on which the approved draft comes to the Sr.P.S./P.S……..
4. Date on which the fair order is placed before the Dictating Member for pronouncement……
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7. Date on which the file goes to the Bench Clerk……le goes to the Head Clerk……