आयकर अपीलीय अधीकरण, न्यायपीठ – "सि" कोलकाता,

IN THE INCOME TAX APPELLATE TRIBUNAL
*KOLKATA BENCH "**C**" KOLKATA*

Before **Shri J.Sudhakar Reddy, Accountant Member** and
Shri S.S.Godara, Judicial Member

ITA No.1084/Kol/2018 Assessment Year: 2012-13

ACIT, Circle-15(1), 110, Shantipally, EM Bypass, Aayakar Bhawan, Poorva,6thFloor, Room No.615, Kolkata-107	बनाम / **V/s.**	M/s ABCI Infrastructures Pvt.Ltd. 6th Floor, Vasundhara, Sarat Bose Road, Kolkata-700 020 [**PAN No.AACCM 3317 R**]
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Shri Supriyo Pal, JCIT, SR-DR
प्रत्यर्थी की ओर से/By Respondent	Shri Miraj D Shah, Advocate
सुनवाई की तारीख/Date of Hearing	25-11-2019
घोषणा की तारीख/Date of Pronouncement	10-01-2020

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This Revenue's appeal for assessment year 2012-13 arises against the Commissioner of Income Tax (Appeals)-3, Kolkata's order dated 27.02.2018 passed in case No.140/CIT(A)-3/R.-8/15-16/Kol involving proceedings u/s 143(3)) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file(s) perused.

2. For the reasons stated Revenue's petition 21.05.2017 seeking condonation of thirteen days' delay and assessee's no objection thereto, we condone the impugned delay attributable to various procedural formalities and compilation of records. The case is now taken up for adjudication on merits.

3. The Revenue's first substantive grievance reads that the CIT(A) has erred in law and on facts in deleting depreciation disallowance of ₹84,86,809/- made by the Assessing Officer in assessment order dated 31.03.2015. The assessee's depreciation claim was on its commercial depreciation @ 30% on hire and other vehicles which stood restricted to 15% only during the course of assessment. The CIT(A)'s detailed discussion deleting the impugned depreciation disallowance reads as under:-

> *"**Ground No.3** is regarding disallowance of depreciation at the rate of 30% to the extent of Rs.8486809/- claimed by the appellant. The basic facts are that the assessee is carrying on the business of civil construction in the North Eastern region. The assessee is using vehicles like Tippers, Tractor etc. For construction work. The appellant has been using the tippers both for own work and for hire. On such vehicles the company has charged depreciation at the rate of 30%. However the Assessing Officer has allowed depreciation at the rate of 15% only. it has been argued that the issue is covered by the orders of my predecessors in AY 2007-08 and AY 2010-11. In the AY 2007-08 in **appeal No.754/CIT(A)-16/Kol/2014-15/C-15(1)/Kol** order dated 20/07/2016 it has been held as under:-*
>
> > 'I have gone through the submissions of the AR I find that the AO is not justified in not allowing excess depreciation, while the AR has made the case that the tipprs are used for the transportation of goods, although the hire charges are received directly. Reliance has been made by the AR on the decision of Bombay High Court in the case of CIT vs. S.C. Thakur 322 ITR 463. This case of Bombay High Court is identical to the case of the assessee. Reliance has been made on the CBDT's Circular No. 609 dt. 29/07/1991. This circular talks about the higher depreciation on motor lorries used in the assessee's business of transportation of goods on hire. The AR has made out the case that the decisions cited and CBDT's circular help the cases of the assessee in charging higher depreciation. I concur with the submission of the AR. Hence, the addition worth Rs.33,46,588/;- is **deleted**, and the ground of the assessee is ***allowed***.'
>
> *Similarly in AY 2010-11 in appeal No.319/CIT(A)-5/WWd-15(1)/16-17 dated 03/11/2017 it has been held as under:-*
>
> > 'The contention of the appellant that the explanation given by the appellant is an afterthought is not support by facts. The appellant as per assessment records have been claiming depreciation @ 30% on vehicles used in their business on the grounds of them been deployed in difficult areas including North East. The appellant had made the same claim in assessment year 2009-10 which was disallowed by the AO. The CIT(A)-16, Kolkata had deleted the addition and allowed depreciation at higher rat. This clearly show that the appellant in past assessment orders, have also been claimed depreciation at higher rate. The that explanation given is an afterthought, which is offered only after discovery of express depreciation by the department, is not correct, and not supported by the facts.
> >
> > Secondly, regarding hire charges, the A/R of the appellant has submitted that the AO had not asked for details of hire charges received against the tippers given on hire. Such details could have been provided if asked for. The A/R of the appellant also submitted that the vehicles were given on hiring to person against whom the appellant received services in the form of goods, labour supply etc. The hiring charges receivable are adjusted against payments to be made to these persons. These facts

have been submitted to the AO. This method of accounting has been followed by the AO in previous year and no doubt were raised by the AO even in scrutiny assessment. In this connection reference may be made to the decision of the Apex Court in CIT vs. Excel Industries 358 ITR 295, where the court reiterated that the principal of consistency should be followed.

The AO could not bring any material on record, to dispute the appellant's claim, that the vehicles and other equipments were deployed in difficult areas and therefore, entitle tougher rate of depreciation. The Assessing Officer's contention, that the explanation given by the A/R of the appellant, is an afterthought, and that no hiring charges have bee received, is not supported by facts. The tippers used by the appellant in its business are registered under the Motor Vehicles Act, 1988. They met the functional test as the basis for grant of 30% depreciation, and also on the ground that the higher depreciation is on account of rigorous and hard use of commercial vehicles, in comparison to the stationery and permanently installed machinery. These views find support in the decision of the Punjab and Haryana High Court in the case of CIT vs. Rakesh Jain (2013) 350 ITR 230.

After a careful consideration of the submission of the appellant and relevant assessment records, the addition of Rs.85,17,966/- on account of additional depreciation claim on higher rate is ***allowed***. This ground of appeal is succeeds, and therefore, **allowed**.'

*It is therefore seen that the issue has already been decided in favour of the assessee by my predecessors and additional depreciation claim in this case has been allowed. Accordingly the claim of the appellant company for depreciation of Rs.8486809/- in the impugned year is hereby **allowed**."*

5. Suffice to say, learned departmental representative fails to dispute that this first issue between the parties is no more *res integra* since the assessee has already succeeded in assessment years 2007-08 and 2010-11 (supra). The Revenue had also filed **ITA No.269/Kol/2018** in assessment year 2010-11 challenging correctness of the CIT(A)'s identical findings. Learned co-ordinate bench's order has rejected the same as under:-

"*3. Now we shall take issue no. 1 raised by the Revenue which relates to disallowance of depreciation of Rs.85,17,966/-.*

*5. The brief facts qua the issue are that the during the assessment proceedings, AO had disallowed Rs.85,17,966/- on account of additional depreciation claimed by the assessee. The AO in his assessment order had stated that the assessee being a civil contractor, had to deploy various kinds of plant and machinery which includes several machines like JCB, Excavator etc. and goods transport vehicles like tippers for carrying raw materials etc. to different sites across the country. Assessee also maintained various kinds of motor vehicles to carry workers to the sites and for the use of the officials/directors. In its return of income, the assessee is found to have shown 30% on the WDV of vehicles used for its own business in the relevant year under consideration and thereby claimed depreciation of Rs.l,70,28,233/- @ 30%. The allowable depreciation rate as per assessing officer was @ 15%. It is worthwhile to mention that on verification of '**Schedule DPM**' (Depreciation on Plant and Machinery) of the return filed by the assessee, wherein it is found that in column of 30% Block of Plant and*

Machinery that WDV as on 01.04.2009 is declared to be Rs.3,25,93,616/- with additions for a period of 180 days or more to the tune of Rs.32,78,346/- and deletion of Rs.2,50,000/-. Apart from this, an amount of Rs.4,22,77,628/- is declared as additions to the block for a period less than 180 days. In serial No. 12 and 13 of that Schedule, assessee clearly declared 'Additional depreciation', if any as Nil.

Therefore, AO was of the view that that the assessee willfully misled the department by over-claiming depreciation for the plant and machinery for which it is eligible to claim at the rate of 15%,depreciation only. In an exceptional nature of usage, it should mention the claim on the return itself by showing the amount of additional depreciation. The AO noted that in course of the assessment proceedings, the assessee came up with new claim of partial usage to show a part of its motor vehicles for hiring purpose to justify its claim of excess depreciation.

6. In response, the assessee submitted the written reply to the assessing officer as follows:

> "…….. the assessee company is carrying on business of civil construction and manufacturing of construction material. It is doing civil construction in various places in India particularly in North Eastern Region. The company has purchased various light and heavy vehicles for its civil construction work and other official work such as trucks, tippers, tractor, car motor cycle etc. The assessee company has claimed depreciation on such vehicles at 30%. All the heavy vehicles are not used by the assessee company for substantial part of the year and therefore, it gives such vehicles on hire to other contractors carrying construction work in nearby places to earn more income. Some of the heavy vehicles including tippers are exclusively given on hire."

However, the Assessing Officer rejected the contention of the assessee and made the addition to the tune of Rs. 85,17,966/- being the difference between 30% and 15% of depreciation rates.

7. Aggrieved by the stand so taken by the Assessing Officer, the assessee carried the matter in appeal before the ld. CIT(A) who has deleted the addition. Aggrieved, the Revenue is in appeal before us.

8. Before us, the ld. DR has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our earlier para and the same is not being repeated for the sake of brevity. On the other hand, the ld. Counsel for the assessee defended the order passed by the ld. CIT(A).

9. We have heard both the parties and perused the material available on record. We note that only the point of dispute is that whether the assessee is entitled to depreciation at higher rate of 30% for tippers against the normal rate of depreciation @ 15%. It is not disputed, that tippers are vehicles and are registered under the Motor Vehicle Act, 1988. The Assessing Officer had disallowed depreciation claimed @ 30% and restricted depreciation to 15% and disallowed Rs. 85,17,966/- as excess depreciation. The main reason given by the Assessing Officer in his assessment order u/s 143(3) of the Act, was that the explanation given by the assessee that his vehicles were deployed in difficult areas particularly in the North Eastern Region and therefore, entitled higher depreciation, is an afterthought, which is offered only after the discovery of excess depreciation by the department. Secondly, the claim of the assessee that some vehicles were given on hire cannot be accepted, as no specific income has been declared from hiring purchases.

10. We note that the assessee as per assessment records have been claiming depreciation @ 30% on vehicles used in their business on the grounds of them been deployed in difficult

areas including North East. The assessee had made the same claim in assessment year 2009-10, which was disallowed by the A.O. The CIT(A)-16, Kolkata had deleted the addition and allowed depreciation at higher rate in A.Y.2009-10. Thus, clearly shows that the assessee in past assessment orders, have also been claimed depreciation at higher rate. The contention of the A.O., that explanation given is an afterthought, which is offered only after discovery of excess depreciation by the department, is not correct, and not supported by the facts. Regarding hire charges, the Counsel for the assessee has submitted before us that the Assessing Officer had not asked for details of hire charges received against the tippers given on hire. Such details could have been provided if asked for. The Counsel of the assessee also submitted that the vehicles were given on hiring to person against whom the assessee received services in the form of goods, labour supply etc. The hiring charges receivable are adjusted against payments to be made to these persons. These facts have been submitted to the A.O. This method of accounting has been followed by the Assessing Officer in previous year and no doubt were raised by the A.O. even in scrutiny assessments. Therefore, a method followed by the Assessing Officer in previous year should not be changed unless there is a change in facts and law. We note that it is a well settled legal position that factual matters which permeate through more than one assessment year, if the Revenue has accepted a particular's view or proposition in the past, it is not open for the Revenue to take a entirely contrary or different stand in a later year on the same issue, involving identical facts unless and until a cogent case is made out by the Assessing Officer on the basis of change in facts. For that we rely on the order of the Hon'ble Supreme Court in RadhasoamiSatsang vs. CIT ***193 ITR 321*** *(SC), wherein it was held as follows:*

> "We are aware of the fact that, strictly speaking, res judicata does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. On these reasoning, in the absence of any material change justifying the Revenue to take a different view of the matter - and, if there was no change, it was in support of the assessee – we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income-tax in the earlier proceedings, a different and contradictory stand should have been taken."

We are of the view that the above cited precedents on principle of consistency are squarely applicable to the assessee under consideration.

11. We note that the A.O. could not bring any material on record, to dispute the assessee's claim, that the vehicles and other equipments were deployed in difficult areas and therefore, entitle to higher rate of depreciation. The A.O's contention, that the explanation given by the assessee, is an afterthought, and that no hiring charges have been received, is not supported by facts. The tippers used by the assessee in its business are registered under the Motor Vehicles Act, 1988. They met the functional test as the basis for grant of 30% depreciation, and also on the ground that the higher depreciation is on account of rigorous and hard use of commercial vehicles, in comparison to the stationery and permanently installed machinery. These views, find support in the decision of the Punjab & Haryana High Court in the case of CIT vs. Rakesh Jain [2013] ***350 ITR 230*** *(P&J). Therefore, taking into account the submission of the Counsel and relevant assessment records, the addition of Rs.85,17,966/-, made by AO, on account of additional depreciation claim on higher rate, should be deleted. That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid addition. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue is* ***dismissed****."*

We adopt the judicial consistency in this backdrop of facts to affirm the CIT(A)'s findings under challenge deleting the impugned depreciation disallowance. This first substantive grievance is rejected.

6. Next comes section 2(22)(e) deemed dividend addition of ₹1,22,47,571/- made in the course of assessment and deleted in lower appellate proceedings as under:-

> ***"Ground No. 7** is regarding addition of Rs.12247571/- made by the Assessing Officer as deemed dividend u/s.2(22)(e). The basic facts are that the appellant company has received the loan of Rs. 29977000/- from Capital Tours India Pvt. Ltd. The appellant company also holds more than 25% of the shares in Capital Tours India Pvt. Ltd.*
>
> *The Assessing Officer invoked the provisions of deemed dividend u/s. 2(22)(e). He restricted the disallowance on account of deemed dividend to the expenditure of accumulated profit of capital Tours India Pvt. Ltd. i.e. Rs.12247571/-. It has been submitted before me that the loan received from Capital Tours India Pvt. Ltd. is not a gratuitous loan so as to attract the provisions of section 2(22)(e). It has been submitted that the loan has been taken at an annual rate of interest of 9%. Therefore it was argued that the loan being a normal business transaction carrying interest at the rate of 9% would not be hit by the provisions of Section 2(22)(e). Reliance in this regard was placed on the decision of the jurisdictional High Court in the case of Pradip Kumar Malhotra **338 ITR 538** for the proposition that only gratuitous loan or advances give by the company would come within the purview of section 2(22(e) but not those cases where loans or advances are given in return for an advantage conferred upon the company by the shareholders. Reliance was also placed on the decision of the jurisdictional tribunal in the case of Zenon (India) Pvt. Ltd. **ITA No. I 124/Kol/2012** A.Y. 2006-07 order dated 29/06/2015. In the said case the Hon'ble Tribunal has held as under :-*
>
> > " We have heard the rival submissions and perused the material available on record The undisputed fact in (he present case is that the principal, business of M/s. Prasad Group Resource Pvt, Ltd was of granting loans and advances. Similarly in the case of M/s. Tolly Nirman Pvt, Ltd the assessee had also taken loan and given loan at a rate of interest of 9%. This is a fact on record Such loan has been taken as a consequence of any further consideration, which is beneficial to the company received from such a shareholder, in such a case, such advance or loan cannot be said to be a deemed dividend within the meaning of section 2(22)e of the Act. Our view finds support from the decision of the Hon'ble Jurisdictional High Court in the case, of Pradip Kumar Malhotrat (supra), which had been relied upon by the }d. CIT(A) in deleting the addition made by the At). The facts of such case [**in the case of Pradip Kumar Malhotra**] are reproduced herein below for die sake of convenience; - "
>
> 338 ITR 538(Cal) in the case o(Pradip Kumar Malhotra
>
> > "The assesses had substantial shareholding in a company. He had mortgaged his valuable immovable property with the hank as a security for the loan facility enjoyed by that company. Consequently, the company passed a resolution authorising the assessee to obtain interest fixe deposit up to Rrs.50 lakhs as and when required from it When the assessee required funds for his personal needs, he requested the said company to purchase the said property or to release the same so that he could sell it to some other person The company was unable to purchase the property or to release same from mortgage. It, therefore, gave a Sum of &.20,75,000 to the assessee as security deposit. While making assessment, the Assessing Officer added said sum to the assessee's income as deemed dividend On appeal, the Commissioner (Appeals)

deleted said addition However, on the revenue's appeal, the Tribunal upheld the Assessing Officer's order."

7.1 The Hon'ble Jurisdictional Calcutta High Court in the case of Pradip Kumar Malhotrat (supra) has held as under:-

"The phrase '**by way of advance or loan**' appearing to sub-clause (e) of section 2(22) must be construed to mean those advances or. bans which a shareholder enjoys for simply on account of being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than 10 per cent of the voting power; but if such loan or advance is given to such share holder as a consequence of any further consideration which is beneficial to the company received from stick a shareholder, in such case, such advance or loan cannot be said to a deemed dividend within the meaning of the Act. Thus, for gratuitous loan or advance given by a company to those classes of shareholders would come within the purview of section 2(22) but not to the cases where the loan or advance is giver in return to an advantage conferred upon the company by such shareholder. [Para 10]

In the Instant case, the assessee permitted his property 10 be mortgaged to the hank for enabling the company to take the benefit of loan and in spite of request of the assesses, the company was unable to release the property from the mortgage. In such a situation, for retaining the benefit of ban availed from the bank if decision was taken to give advance to the assesses such decision was not to give gratuitous advance to its shareholder but to protect the business interest of the company.
[Para 11]

Therefore, the authorities below erred in law in treating the advance given by the company to the assessee by way of compensation for keeping its property as mortgage on behalf of the company to reap the benefit of loan as deemed dividend within the meaning of section 2(21) e. [Para 13)]

Consequently, the order of the Tribunal below was to be set aside directing the Assessing Officer not to treat the advance in question as a deemed dividend. [Para 14)"

7.2 In view of the said decision of the Hon 'ble Calcutta High Court in the case of Pradip Kumar Malhotra (supra), we find no infirmity in the impugned order of the Ld. CIT(A), who has rightly deleted the addition made by the AO. We uphold the same. Ground nos. 1 & 2 s of revenue's appeal are **dismissed**. "

It is observed that in the case of Zenon India (Supra) the loan was given at the rate of 9%.The Hon'ble Tribunal has held that since the loan has been taken on the basis of a commercial consideration which is beneficial to the company therefore such advance cannot be treated as deemed dividend within the amendment of section 2(22)(e). In the impugned case also the facts are similar and the loan carries an interest @ 9% per annum. Therefore, section 2(22)(e) would not apply. Respectfully following the decision in Zenon India (Supra) the .addition made by the Assessing Officer of Rs.12247571/- is hereby **deleted**."

7. Learned departmental representative vehemently contends during the course of hearing that the CIT(A) has erred in law and on facts in deleting the impugned deemed dividend addition despite the fact that the assessee's case satisfies the

minimum shareholding benchmark in case of both the entities. He fails to rebut the clinching fact that the assessee has paid interest @ 9% to M/s Capital Tours India Pvt. Ltd., in commercial terms. This tribunal's co-ordinate bench's order in *Smt. Sangita Jain vs. Income Tax Officer Ward-36(3) Kolkata* in **ITA No. 1817/Kol/2009** decided on 11.03.2016 holds that such an instance of commercial loans does not attract sec. 2(22)(e) of the Act as under:-

> *"5. We have heard the arguments of both the sides and also perused the relevant material available on record. One of the main contentions raised by the Id. counsel for the assessee at the time of hearing before us is that the loan in question treated as deemed dividend under section 2(22)(e) by the authorities below was taken by the assessee from M/s. Surya Business Pvt. Limited on interest and since the said Company was compensated by way of interest paid by the assessee on loan, the assessee in real sense did not derive any benefit from the funds of the Company so as to attract the provisions of section 2(22)(e). Although the Id. D.R. has vehemently opposed this contention of the Id. counsel for the assessee by submitting that the payment of interest alone cannot be considered from the benefit angle as envisaged under section 2(22)(e), it is observed that the judicial pronouncements cited by the Id. counsel for the assessee clearly support the case of the assessee.*
>
> *6. In the case of Pradip Kumar Malhotra reported in **338 ITR 538** cited by the Id. counsel for the assessee, it was held by the Hon'ble Calcutta High Court that the phrase "**by way of advance or loan**" appearing in section 2(22)(e) must be construed to mean those advances or loans, which a shareholder enjoys for simply on account of being a partner, who is the beneficial owner of shares, but if such loan or advance is given to such shareholder as a consequence of any further consideration, which is beneficial to the Company, received from such shareholder, in such case, such advance or loan cannot be said to be deemed dividend within the meaning of the Act. It was held that gratuitous loan or advance given by a Company to those classes of shareholders thus would come within the purview of section 2(22)(e) but not the cases where the loan or advance is given in return to an advantage conferred upon the Company by such shareholder. In the case of ACIT -vs.- M/s. Zenon (India) Pvt. Limited, a loan taken by the assessee was treated by the Assessing Officer as deemed dividend under section 2(22)(e), but the Id. CIT(Appeals) did not approve the action of the Assessing Officer after having noticed that interest at the rate of 9% per annum was paid by the assessee on such loan, which, according to him, was a consideration received from her shareholders, which was beneficial to the Company and the order of the Id. CIT (Appeals) giving relief to the assessee was upheld by the Tribunal vide its order dated 29.06.2015 passed in **ITA No. 1124/KOL/2012** by relying on the decision of the Hon'ble Calcutta High Court in the case of Pradip Kumar Malhotra (supra). Keeping in view the said decision of the Hon'ble Calcutta High Court which has been followed by the Coordinate Bench of this Tribunal in the case of M/s. Zen on (India) Pvt. Limited (supra), we hold that the addition made by the Assessing Officer and sustained by the Id. CIT(Appeals) under section 2(22)(e) on account of loan received by the assessee from M/s. Surya Business Pvt. Limited on which consideration in the form of interest was paid by the assessee to the benefit of the Company is not sustainable. We, therefore, **delete** the same and allow Grounds No. 1 & 2 of the assessee's appeal."*

We adopt the foregoing detailed discussion mutatis mutandis to affirm the lower appellate findings deleting the impugned deemed dividend addition. The Revenue's second substantive grievance fails.

8. The Revenue's third substantive grievance seeks to revive sundry balances written off / puja expenses addition of ₹3,14,923/- made by the Assessing Officer and deleted in the lower appellate proceedings as under:-

> *"**Ground No.4** in appeal is regarding disallowance out of sundry balances written off amounting to Rs.314923/-. In this case it has been submitted that the Assessing Officer has wrongly treated Puja expenses of Rs.314923/- as sundry balances written off. Puja expenses are customary expenses incurred by the appellant for harmonious business environment and cordial staff relationship. Therefore Puja expenses of Rs.314923/- is hereby allowed. On perusal of the P&L account it is seen that the sundry balances written off is Rs.74164. As the Assessing Officer has referred to sundry balances written off this issue is also considered. It has been submitted that sundry balances represents nominal balances with respect to different parties which were written off during the year. It is submitted that the debt was incidental to the business of the assessee and was earlier taken into account for computing the taxable income. It is further argued that the debt was written off in the books of account of the assessee during the assessment year and the same is allowable. Reliance was placed on the decision of the Apex Court in the case of TRF Ltd.(**323 ITR 397**) for the proposition that after the amendment to Section36(1)(vii) with effect from 1st April, 1989 it is no longer necessary for the assessee to establish the debt has become irrecoverable. It was argued that the Apex Court has held that if the debt is written off as irrecoverable in the accounts of the assessee the same is allowable. In view of the decision of the Apex Court the claim of sundry balances written off of Rs.74164/- is hereby **allowed**."*

9. The above detailed discussion makes it sufficiently clear that the assessee had originally claimed puja expenses only which stood treated as sundry balances written off. Be that as it may, there can hardly be any dispute that puja expense as incurred wholly and exclusively for the purpose of business since they relate to assessee's business sites in civil construction business. We further notice that the CIT(A) has rightly placed reliance on hon'ble apex court's decision in *T.R.F. Ltd. vs. Commissioner of Income Tax* (2010) 323 ITR 397 (SC) to hold that it is no more necessary as per the amended statutory provision w.e.f 01.04.1989 to prove that the corresponding sums have become actually irrecoverable. We thus conclude that the CIT(A) has rightly reversed the assessment findings on these twin counts of puja as well as sundry balance. The Revenue fails in its third substantive grievance as well.

10. Lastly comes sec. 14A disallowance of ₹2,99,698/- qua exempt dividend income of ₹17,060/-. We notice that the Assessing Officer had invoked Rule 8D (2)(ii) disallowance of IT Rules, 1962 to disallow the impugned proportionate interest expenditure which stand restricted to the extent of dividend income only in lower appellate proceedings. Hon'ble Delhi high court's decision in Joint Investment Ltd. vs.

Commissioner of Income Tax 372 ITR 694 (Del) holds that such a disallowance cannot exceed the exempt income amount itself. We thus uphold the CIT(A)'a findings qua this last issue as well.

11. This Revenue's appeal is dismissed.

Order pronounced in open court on 10/01/2020

Sd/-	Sd/-
(लेखा सदस्य)	(न्यायिक सदस्य)
(J.Sudhakar Reddy)	(S.S.Godara)
Accountant Member	Judicial Member

*Dkp-Sr.PS

दिनांकः- 10/01/2020 कोलकाता / Kolkata

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-ACIT, Circle-15(1), 110, Shantipally, EM Bypass, Aayakar Bhawan, Poorva, 6th Floor, Room No.615, Kolkata-107
2. प्रत्यर्थी/Respondent-M/s ABCI Infrastructures Pvt. Ltd. 6th Floor, Vasundhara, Sarat Bose Road, Kolkata-20
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता/DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।