

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)  
"F" BENCH, MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO. 296/MUM/2019 (A.Y: 2015-16)**

M/s. JSW Cement Ltd., 5 <sup>th</sup> Floor, JSW Centre Bandra Kurla Complex, Bandra(E) Mumbai - 400051  <b>PAN: AABCJ6731B</b>	v.	DCIT – 5(2)(1) Room No. 571, 5 <sup>th</sup> Floor Aayakar Bhavan, M.K. Road Mumbai – 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	:	<b>Shri Gaurav Kabra</b>
<b>Department by</b>	:	<b>Shri Sanjeev Kashyap and Shri Vijay Kumar Menon</b>
<b>Date of Hearing</b>	:	<b>09.04.2021</b>
<b>Date of Pronouncement</b>	:	<b>25.06.2021</b>

**ORDER**

**PER C.N. PRASAD (JM)**

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals) – 10, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 03.10.2018 for the Assessment Year 2015-16.
2. The only issue in appeal of the assessee is with regard to confirming the disallowance of ₹.18,21,132 u/s. 14A r.w. Rule 8D(2)(ii) of I.T. Rules.
3. At the outset, Learned Counsel for the assessee submitted that the issue in appeal is decided in favour of the assessee on identical facts and

circumstances for the immediately preceding assessment years i.e. A.Y.2013-14 and A.Y.2014-15 by the Tribunal in ITA.No. 5387 & 5388/Mum/2018 dated 12.12.2019, wherein the Tribunal deleted the disallowance made Under Rule 8D(2)(ii) of I.T. Rules following the decisions of the Hon'ble Jurisdictional High Court in the case of CIT v. HDFC Bank Ltd., [366 ITR 505] and CIT v. Reliance Utilities & Power Pvt. Ltd., [313 ITR 340] held that no disallowance under Rule 8D(2)(ii) of I.T.Rules is warranted when the assessee has its own interest free funds more than the investments. The Tribunal also directed the Assessing Officer to verify this fact and if the reserves and surplus interest free funds of the assessee were more than the investments, then there shall not be any disallowance under Rule 8D(2)(ii) of I.T. Rules.

**4.** On the other hand, Ld. DR vehemently supported orders of the authorities below.

**5.** We have heard the rival submissions, perused the orders of the authorities below and the decision of the Tribunal in assessee's own case for the A.Y. 2013-14 and A.Y. 2014-15. Tribunal in the immediately preceding assessment years decided this issue in ITA.No. 5387 & 5388/Mum/2018 by order dated 12.12.2019 observing as under: -

*"6. We have considered the submission of both the parties and perused the material available on record. We have noted that there is very short point / issue for our adjudication. We have noted that*

*before the Ld.CIT(A), the assessee before the lower authorities demonstrated that the reserves and surplus fund of the assessee was more than the investment made in the shares of JSW Energy on which assessee earned exempt income. Despite the fact that the assessee relied upon the binding decision of CIT vs HDFC Bank Ltd (supra) and CIT Vs Reliance Utilities & Power Pvt Ltd (supra), the AO made disallowance u/ 8D(2)(ii). Considering the binding decision of Hon'ble jurisdictional High Court, we are in agreement with the submission of Ld.AR of the assessee that no disallowance u/r 8D(2)(ii) is warranted when the assessee has own interest free funds more than the investment. Accordingly, we direct the AO to verify the fact, and if the reserves and surplus interest free funds of the assessee were more than the investment then, no disallowance u/r 8D(2)(ii) be made."*

**6.** Following the above said decision, we restore this issue to the file of the Assessing Officer who shall verify the fact, if the assessee has sufficient reserves and surplus interest free funds more than the investments during the year and in such event there shall not be any disallowance u/s. 14A r.w. Rule 8D(2)(ii) of I.T. Rules in respect of interest expenditure.

**7.** In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced on 25.06.2021 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-  
**(S. RIFAUH RAHMAN)**  
**ACCOUNTANT MEMBER**

Mumbai / Dated 25/06/2021  
Giridhar, Sr.PS

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**