

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT
&
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 2126/Del/2010
(Assessment Year: 2006-07)**

M/s BLB Ltd. 4764/23A, Ansari Road, Darya Ganj, New Delhi. AAACB0184H	vs	ACIT Circle 3(1) C.R. Building, I.P. Estate, New Delhi.
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**ITA No. 2901/Del/2010
(Assessment Year: 2006-07)**

ACIT Circle 3(1) C.R. Building, I.P. Estate, New Delhi.	vs	M/s BLB Ltd. 4764/23A, Ansari Road, Darya Ganj, New Delhi. AAACB0184H
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Assessee by	Sh. C.S. Agarwal, Sr. Adv. Sh. R.P. Mall, Adv.
Revenue by	Sh. Sarabjeet Singh, DR

Date of Hearing	05.05.2016
Date of Pronouncement	05.08.2016

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER:

ITA No. 2126/Del/2010 has been preferred by the assessee against the

order dated 30/03/2010 passed by the Id. CIT(Appeals)-IV, New Delhi for AY 2006-07, whereas ITA No. 2901/Del/2010 is the cross appeal preferred by the Department for the same year. Since both these appeals were heard together they are being disposed of through this common order.

2. The assessee company had filed the return of income declaring a total income of Rs. 450,231,514/- as per the normal provisions of the Income Tax Act, 1961 (the Act in short) and Rs. 139,986,801/- as deemed income u/s 115JB of the Act. Subsequently the assessee filed a revised return of income declaring total income of Rs. 541,102,310/- under the normal provisions of the Act and Rs. 139,986,801/- as deemed income u/s 115JB of the Act. During the year under consideration, the assessee company was a member of National Stock Exchange and Bombay Stock Exchange and derived income from the sale and purchase of shares mostly on its own account. The assessment order was passed on 22/12/08 after making the following additions/disallowances:

1. Disallowance u/s 14A - Rs. 333,821/-;
2. Disallowance of loss u/s 94(7) - Rs. 1,295,487/-;
3. Addition on account of late payment of PF & ESI dues u/s 2(24)(x) - Rs. 6,255/-;
4. Addition on account of difference in valuation of closing stock - Rs.

200,099/-;

5. Disallowance of interest charges - Rs. 1,863,226/-;
6. Disallowance of excess claim of depreciation on computer peripherals/accessories - Rs. 863,806/-.

Apart from this the AO also disallowed the claim of rebate u/s 88E on Rs. 6,383,106/- being brokerage income, interest income, interest on income tax refund and miscellaneous income. Further the deemed income us/ 115JB of the Act was worked out at Rs. 140,584,867/-.

3. Aggrieved the assessee preferred an appeal before the first appellate authority in which the Id. CIT (A) adjudicated the issues as under:

1. The disallowance of Rs. 333,821/- u/s 14A of the Act was confirmed;
2. The addition of Rs. 200,099/- based on the difference of valuation of closing stock was confirmed;
3. Out of total disallowance of Rs. 1,863,226/- on account of interest paid only Rs. 1,781/- was confirmed;
4. Difference on account of depreciation rates on computer, peripherals and accessories was entirely deleted;
5. The ground for recalculation of rebate u/s 88E was set aside to the file of the AO for re-computation;
6. The assessee's contentions regarding the applicability of provisions of sec. 115JB was also accepted.

4. Being aggrieved, both the assessee as well as the department has filed cross appeals before us. The assessee has raised the following grounds of appeal:

Grounds of ITA No. 2126/D/2010:

1. *“The ld. CIT (Appeals) erred in confirming the addition of Rs. 3,33,821/- in terms of sec. 14A of the Act on the facts and circumstances of the case. As a matter of fact, the provisions of section 14A of the Act were not applicable to the facts of the case and as such the disallowance of interest of Rs. 3,33,821/- was not justified;*
2. *The ld. CIT (Appeals) erred in confirming the addition of Rs. 2,00,099/- on account of under valuation of closing stock on the facts and circumstances of the case. As a matter of fact, the ld. AO did not appreciate that the Appellant had valued the stock at cost or market price whichever was earlier on FIFO basis and as such the valuation of closing stock was correct on the facts and circumstances of the case and no addition was called for on the facts of the case;*
3. *The ld. CIT(Appeals) failed to appreciate that the Appellant was following the same method of valuation of closing stock year after year which was accepted by the department year after year and no defect whatsoever had been found either by the AO or by the CIT(Appeals) and in this view of the matter, the addition of Rs. 2,00,099/- on account of valuation of closing stock was not justified;*
4. *The appellant craves leave to add, alter or raise any ground of appeal at the time of hearing or any time before that.”*

5. In cross appeal the Revenue has raised the following grounds of appeal:

Grounds of ITA No. 2901/D/2010:

1. *“The ld. CIT (A) has erred on facts and in law in deleting the addition of Rs. 1861445/- out of total disallowance of Rs. 1863226/- made by the AO on account of disallowance of interest expenses, completely ignoring the fact that the said disallowances related to interest on borrowed funds used for “donations”, “investments” and “interest free loan to sister concern”.*
2. *The ld. CIT (A) has erred on facts and in law in deleting the addition of Rs. 863806/- made by the AO on account of extra depreciation claimed on computer peripheral/accessories ignoring the fact that as per IT Rules only the computers and computer software are eligible for depreciation @ 60% and the same cannot be extended to computer accessories.*
3. *The ld. CIT (A) has erred on facts and in law in directing the AO to allow rebate u/s 88E to the assessee with respect to tax payable on brokerage income, interest income, interest on IT Refund and Miscellaneous income.*
4. *The ld. CIT (A) has erred on facts and in law in holding that provisions of sec. 115JB are not applicable in the case of the assessee ignoring the fact that specific category of assessee as per provisions of sub-section 6 of section 115JB does not mention “stock broker”, therefore, assessee company cannot escape tax chargeable as per deeming provisions of the said section.*

5. *The Appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”*

6. The Id. AR submitted that the assessee in its appeal has challenged the disallowances of expenses u/s 14A of Rs. 333,821/-. It was submitted that in computing the total income of the assessee, the assessee company calculated an expenditure incurred at Rs.32,875/- towards earning the income (which income did not form part of total income of the assessee under the Act). For the instant assessment year it was stated that the assessee had earned an amount of Rs. 27,22,131/- as dividend & thus income did not form part of total income. The assessing officer, however, without finding any fault with the correctness of the claim proceeded to disallow the expenditure by purportedly invoking Rule 8D (2) Of the Income Tax Rules and calculated the disallowance at Rs.3,33,821/-. It was submitted that the AO has erred in invoking Rule 8D (2) without appreciating the provisions under rule 8D(1). The Ld. AR submitted that in absence of any finding, the said rule cannot be applied and unless he is not satisfied with the correctness of the disallowances made by the assessee. It was submitted that in the instant case, the AO has not recorded any such finding and that in fact the AO has admitted that the only expenditure in relation to income not forming part of

total income is of interest expenditure of an amount of Rs. 31,89,080/-. It was thus submitted that the AO has erred in making a disallowance in excess of Rs.32,875/-.

6.1 In respect of ground no 2 of the assessee's appeal, it was submitted that the learned AO has committed a gross error in adopting the average method of valuing closing stock as against the correct method adopted by the assessee in accordance with the guidelines issued by the Institute of Chartered Accountants of India and further such a method has constantly been adopted and followed by it year after year. It was submitted that the Assessing Officer, in enhancing the value of closing stock, has failed to adopt the rate on lot wise basis, in respect whereof lot wise details had been furnished (details at pages of the paper book 185- 197 of the Paper book). In view thereof, the enhancement by Rs. 2,00,099/- is entirely untenable. Without prejudice and in the alternative, it was submitted that the AO be directed to adopt such value of opening stock of the succeeding year.

6.2 In respect of ground no 4 of the departmental appeal, it was submitted that the Assessing officer has grossly erred in computing the tax payable on book profit at Rs. 1,18,30,217/-. In doing so he has erred and

failed to appreciate that there was no justification on his part, firstly in proceeding to compute the book profit for the purposes of section 115 JB of the Act, and secondly in not giving credit from such tax as had been determined, being the tax payable on deemed income u/s 115JB of the amount of Securities Transaction Tax (STT) paid by assessee company.

6.2.1 It was submitted that from the perusal of Page no. 19 of the order of assessment it would be seen that the AO has computed the total income of the assessee company at Rs. 54,66,59,030/-, whereas he has computed book profit at 14,05,84,869/-. It is thus evident that the tax payable on income computed under normal provisions of the Act is higher than the 7.5 % of book profit and thus the applicability of the provisions of section 115JB has been incorrectly applied.

6.2.2 It was further submitted that without prejudice to the above, the AO has erred in computing the tax payable u/s 115JB at Rs. 1,18,30,217/- without giving the credit of Securities Transactions Tax (STT). The assessee company has suffered STT of Rs.25,74,87,293/-. It was submitted that the AO ought to have granted rebate as provided U/s 88E of the Act. The Ld. AR submitted that from the reading of the order of the AO from

pages 11 to 17 it is seen that in his opinion after the assessee is granted a rebate U/s 88E of the Act, despite the tax payable by the assessee was Rs. 16,83,06,156/-and since the assessee was not paying any income tax, the provision of Minimum Alternate Tax can be invoked. It was submitted that in fact, the tax payable by the assessee under the normal provisions of the Income Tax Act was Rs.16,83,06,156/- which was far higher than that of 10% of book profit. It was submitted that the assessing officer has arbitrarily held that as the tax to be paid remains nil after it has suffered STT, it must be saddled with the liability u/s 115JB of the Act and that in any case, the calculation of tax payable on deemed income U/s 115JB has not been properly determined.

6.2.3 The learned AR further submitted that the AO has recorded a finding that the assessee is a stock broker and that the Ld. CIT (A) has erred in ignoring the said fact. It was submitted that as per the provision of sub section 6 of section 115JB, the provisions of the said section are inapplicable only in cases where an income accrues or arises from a business carried on or services rendered by an entrepreneur or a developer in a unit or special economic zone as the case may be. It was further submitted that the aforesaid issue is no longer *res- integra* as the Hon'ble High Court of Delhi

by its judgment in ITA no.1181/2011 dated 17/05/2013 has held that the provisions of section 87 & 88E of the Act apply to the total income computed under section 115JB of the Act and that the assessee would be entitled to a deduction to the extent of securities transaction tax borne by him during the course of business in the relevant previous year.

6.2.4 On ground No. 4 of the Department's appeal, it was further submitted by the Ld. AR that that in the instant case, the AO has held that the assessee is liable to pay tax on book profit u/s 115JB of the Act failing to appreciate that the 7.5% of the book profit is less than the tax payable under the normal provisions of the Act, as such, assessee is not liable for the MAT. It was submitted that in the instant case, AO has committed gross error while computing the tax payable under the normal provisions of the Act as the word 'tax payable', in respect of 'income tax payable on the total income', does not mean the ultimate or net amount which is payable under the Act. The Ld. AR further submitted that for the purpose of the applicability of provisions of section 115JB of the Act, the income tax payable on the total income computed under the normal provisions of the Income Tax Act and is to be compared with 7.5 per cent of the book profits, and if the tax payable on the normal provisions of the Act is less

than the 7.5% of the Book profits, then the assessee is liable to pay tax under section 115JB of the Act. The Ld. AR also submitted that the assessee seeks to place reliance on the following orders of the Tribunal wherein it has been held that tax payable under the normal provisions of the Act should be computed before reducing the rebate u/s 88E of the Act-

- ITO vs Advent Stock Broking Pvt. Ltd in ITA No. 1276/Kol/2010
- DCIT vs E.Com Internet Services Pvt. Ltd in ITA No. 1524/Mum/2012
- DCIT vs Ori Finance Ltd in ITA No. 387/Kol/2011

6.2.5 The Ld. AR submitted that the provisions of section 115JB of the Act are inapplicable to the facts of the instant case, as the tax payable under the normal provisions of the Act are more than the 10% of the Book profit, further, without prejudice to the aforesaid, if it be held that provisions of section 115JB of the Act are applicable, then the assessee is entitled to relief of rebate under section 88E of the Act from the tax payable under section 115 JB of the Act. It was submitted that in support of the aforesaid contention, assessee seeks to place reliance on the following judicial pronouncements wherein it has been held that rebate under section 88E of the Act has to be allowed from the tax payable under

section 88E of the Act:

- CIT vs MBL & Co. Ltd in ITA No. 1181/2011 (Delhi High Court)
- CIT vs Horizon Capital Ltd. 204 Taxman 59 (Kar)(Mag)

6.2.6 The Ld. AR also drew attention to a chart and submitted that on perusal of the chart it would be seen that the book profit is far less than the total income and thus, the provisions of section 115JB do not get triggered and as such, the tax on book profit levied is also untenable. It was submitted that the income tax payable on the total income as computed under the Act is not less than 7.5% of its book profit, and as such the provisions of section 115JB are not applicable as is the situation in the instant case. In fact, when income tax payable on the total income as computed under the Act is less than 7.5% of its book profit then only can an assessee be liable to be taxed u/s 115JB of the Act whereas the tax payable on total income in the instant case is far higher than 7.5% of Book Profit. The chart is reproduced under for a ready reference -

S.No.	Particulars	AY 2006-07	AY 2007-08	AY 2008-09
	As per AO			
1.	Total income	54,66,59,030/-	51,08,60,641/-	127,88,04,351/-
2.	Income from sources other than income on which securities transaction tax has been paid	63,83,106/-	2,00,88,565/-	3,99,76,353/-
3.	Tax on total income	16,83,06,156/-	15,32,58,192/-	38,29,48,300/-
4.	Tax on income from sources other than income on which securities transaction tax has been paid	21,48,553/-	67,61,810/-	1,34,31,734/-
5.	Book profit	14,05,84,869/-	7,29,27,487/-	44,29,53,774/-
6.	Tax on book profit	1,18,30,217/-	81,82,465/-	4,96,99,412/-

6.2.7 The Ld. AR submitted that in view of the aforesaid submissions, Ground no. 4 of the department's appeal ought to be dismissed.

6.3 With respect to ground no 3 of the departmental appeal, the Ld. AR submitted that in the aforesaid ground of appeal, grievance of the revenue is with regard to the allowance of rebate under section 88E of the Act in respect of tax payable on the brokerage income, interest income, interest on income tax refund and miscellaneous income. The Ld. AR submitted that the AO, in his order of assessment in para 9, has held that deduction under

section 88E of the Act is not allowable on the income arising other than from income from taxable securities transaction and hence tax payable on the brokerage income, interest income, interest on income tax refund and miscellaneous income was not considered for the allowance of deduction u/s 88E of the Act. The Ld. AR submitted a chart extracted from pages 18 and 19 of the assessment order to demonstrate the working by the AO. The chart is reproduced as under on the next page -

Asstt.Year 2006-07 (extracts from AO's order)					
1	Non speculative business income from securities transaction				243457170
2	Speculative business income from securities transaction				317563352
				"A"	<u>561020522</u>
	<u>Others</u>				
a.	Brokerage Income	2999419			
	Less: Expenses Retail	-			
	Less: Expenses DP	-414789	-984451		
b.	Interest on FDR		6530310		
c.	Misc. Income		654380	6200233	
4	Interest on Income Tax refund			182873	
				"B"	<u>6383106</u>
		<u>Gross total income</u>			<u>567403628</u>
	Less: Deduction u/s 80G				20750000
		<u>Total Income</u>			<u>546659028</u>

6.3.1 The Ld. AR submitted that it would thus be seen that the AO has computed the total income of assessee at Rs. 54, 66,59, 028/- i.e. A+B as above less Deduction U/s 80G. It was submitted that the AO has duly admitted that rebate u/s 88E (1) of the Act is 'allowable' in respect of tax payable on income of Rs. 56,10,20,522/- i.e. item 'A' but has held that no rebate is to be allowed on Rs. 63,83,106/- i.e. item 'B' since in his opinion deduction u/s 88E of the Act, is allowable on the income on which Securities Transaction Tax i.e. STT has been paid and as no STT has been paid on (a) brokerage income, (b) interest on FDR (c) miscellaneous income, (d) interest on refund, rebate u/s 88E of the Act i.e. of STT paid could not be allowed.

6.3.2 It was further submitted that the AO, for the purposes of computation of taxable income, has included the interest income for the purposes of computation of income tax but has held that the rebate under section 88 E of the Act is to be restricted only to the extent of income on which securities transaction tax has been paid. In other words, in his opinion the assessee was to pay tax on Rs. 63, 83, 106/-. But the same is not eligible for rebate under section 88E of the Act, as the same is the interest income from FDR's. The Ld. AR submitted that such FDRs on

which interest of a sum of Rs. 65, 30, 310/- has been earned represented margin money kept with stock exchanges in order to enable the assessee company to participate in the business of trading in shares.

6.3.3 It was submitted that it would be seen that there is no net income from (a) brokerage income, (b) miscellaneous income, (c) interest on refund (which is a negative sum) and thus, no such income has been included in the income of Rs. 56, 10, 20, 522/-. In fact, during the course of the assessment proceedings, assessee itself has conceded that rebate u/s 88E is not eligible for deduction in respect of tax payable on Brokerage Income, Misc. Income and Interest on Income Tax refund i.e. on Rs. 29,99,419/-, Rs. 6,54,380/-, Rs. 1,82,873/- aggregating to Rs. 38,36,672/- and, thus, the only question which remains is whether the assessee is entitled to claim a rebate of STT paid on the aforesaid income of Rs.63, 83, 106/- which is from interest on FDR's from banks. The Ld. AR submitted that the learned CIT (A) was legally & factually justified in so holding that on the aforesaid income of Rs. 63,83,106/-, the assessee was eligible for the claim of rebate of STT paid. In fact the aforesaid income has a direct nexus with the income, on which the assessee has paid the STT as there was no net income the and that there

was no dispute in respect thereof.

6.3.4 It was further submitted that the tax payable on interest income as submitted above is eligible for tax rebate, as the interest income has been earned on the margin money kept with Stock exchanges as per SEBI guidelines for dealing in shares in respect of which it has paid STT is to be allowed. It was submitted that under section 88E of the Act, it is clearly provided that where the total income of the assessee includes any income chargeable under the head Profits & Gains of Business or Profession arising from taxable Securities Transaction Tax, the assessee was entitled to a rebate from the amount of income tax on such income. It was submitted that the interest on FDRs kept as margin money with stock exchanges is thus, an income which arises from taxable securities transactions. It was submitted that since interest on margin money kept with the Stock exchanges as per SEBI guidelines is inextricably linked with taxable securities transaction, as such, tax payable on interest income is eligible for rebate u/s 88E of the Act.

6.3.5 The Ld. AR relied on the judgment of the Hon'ble High Court of Delhi in CIT vs Jaypee DSC Ventures Ltd 335 ITR 132 (Del) wherein it

has been held that where interest income is inextricably linked with the business income, the same cannot be taxed as income from other sources. The Ld. AR submitted that on perusal of the judgment of Hon'ble High Court of Delhi reported in 335 ITR 132, it would be seen that it has been held that where interest income has been earned on fixed deposits kept as margin money, the same has to be held as business income and not income from any other head. It was submitted that in arriving at such a conclusion, the Hon'ble High Court has kept in view the real distinction to decide whether the said income is income from business as income from other sources. The assessee submits that the ratio of the aforesaid judgment is fully applicable on the facts of the assessee - respondent. The Ld. AR submitted that in view of the aforesaid, finding of the learned CIT(A) deserves to be upheld as the interest earned on FD kept as margin money is "Income under the head Business" and ground of appeal raised by the revenue deserves to be dismissed.

7. The Ld. DR relied on the assessment order in the department's appeal and supported the order of the Ld. CIT (A) in the case of assessee's appeal.

8. We have heard the rival submissions and have perused the material on

record. As far as the issue of disallowance u/s 14A is concerned, it is true that the authorities below have erred in applying Rule 8D to the year under appeal i.e. AY 2006-07 whereas Rule 8D has been held by various judicial pronouncements to be applicable prospectively from AY 2008-09. Further, on a perusal of the orders of the authorities below, it is seen that the AO as well as the Ld. CIT (A) have not recorded any finding as to how the disallowance of Rs. 32,875/- made by the assessee was incorrect. The authorities below have also not pointed out the nexus between the investments and the expenditure incurred. The Assessing Officer has adopted the formula for estimating expenditure on the basis of investments but the justification for calculating the disallowance is missing. The Hon'ble Delhi High Court in the case of Maxopp Investment Ltd. vs CIT (I.T.A. 687/2009) has opined in para 29 of the order as under:-

“29. Sub-section (2) of Section 14 A of the said Act provides the manner in which the Assessing Officer is to determine the amount of expenditure incurred in relation to income which does not form part of the total income. However, if we examine the provision carefully, we would find that the Assessing Officer is required to determine the amount of such expenditure only if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under the said Act. In other words, the requirement of the Assessing Officer embarking upon a determination of the amount of expenditure incurred in

relation to exempt income would be triggered only if the Assessing Officer returns a finding that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. Therefore, the condition precedent for the Assessing Officer entering upon a determination of the amount of the expenditure incurred in relation to exempt income is that the Assessing Officer must record that he , is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. Sub-section (3) is nothing but an offshoot of sub-section (2) of Section 14A. Sub-section (3) applies to cases where the assessee claims that no expenditure has been incurred in relation to income which does not form part of the total income under the said Act. In other words, sub-section (2) deals with cases where the assessee specifies a positive amount of expenditure in relation to income which does not form part of the total income under the said Act and sub-section (3) applies to cases where the assessee asserts that no expenditure had been incurred in relation to exempt income. In both cases, the Assessing Officer, if satisfied with the correctness of the claim of the assessee in respect of such expenditure or no expenditure, as the case may be, cannot embark upon a determination of the amount of expenditure in accordance with any prescribed method, as mentioned in sub-section (2) of Section 14A of the said Act. It is only if the Assessing Officer is not satisfied with the correctness of the claim of the assessee, in both cases, that the Assessing Officer gets jurisdiction to determine the amount of expenditure incurred in relation to such income which does not form part of the total income under the said Act in accordance with the prescribed method. The prescribed method being the method stipulated in Rule 8D of the said Rules. While rejecting the claim of the assessee with regard to the expenditure or no expenditure, as the case may be, in relation to exempt income, the Assessing Officer would have to indicate cogent reasons for the same.”

8.01 Similarly, the Hon'ble High Court of Punjab & Haryana in the case of CIT-II vs Hero Cycles Ltd. in I.T.A. No. 331 of 2009 (O&M) has held in para 4 of the judgment that, *“the contention of the Revenue that directly or indirectly some expenditure is always incurred which must be disallowed u/s 14A and the impact of expenditure so incurred cannot be allowed to be set off against the business income which may nullify the mandate of section 14A, cannot be accepted. Disallowance u/s 14A requires finding of incurring of expenditure. Where it is found that for earning exempted income, no expenditure has been incurred disallowance u/s 14A cannot stand.”*

8.02 Mumbai 'J' Bench of the ITAT has held in the case of Justice Sam P. Bharucha vs ACIT in I.T.A. No. 3889/Mum/2011 that no disallowance u/s 14A of the Act is called for when the assessee has not incurred and claimed any expenditure for earning the exempt income.

8.03 Therefore, on an overall consideration of the facts of the case and respectfully following the ratio of the judgments as aforementioned, we hold that the disallowance u/s 14A was made without due deliberation and analysis by the Assessing Officer and the Ld. CIT (A) was also patently wrong in confirming the disallowance without testing the sustainability of

the disallowance. Hence, we set aside the findings of the Ld. CIT (A) on this issue and restore the matter to the file of the AO for fresh adjudication after due verification of the claim of the assessee. Hence this ground is allowed for statistical purposes.

8.1 As far as ground no. 2 of the assessee's appeal regarding addition on account of alleged difference in valuation of stock is concerned, it is seen that the assessee has been consistently valuing the stock of shares on FIFO basis and it is undisputed that the department has accepted this method of valuation in preceding as well as subsequent assessment years. The AO has not been able to justify the need for the change in valuation and the Ld. CIT (A) has also confirmed the action of the AO in this regard. However, even in the arguments before us, the Ld. DR could not give a cogent reason that warranted a change in the method of valuation especially when the method was accepted by the department in earlier as well as subsequent years. It is also seen that due credit for the difference in valuation of closing stock in the year under appeal has also not been incorporated by the department in the valuation of opening stock by the department in AY 07-08. Hence, we find that the stock valuation figure has been disturbed without any basis whatsoever and we find ourselves unable to agree with the stand of the department on this issue. We, accordingly, set aside the order of

the Ld. CIT (A) on this issue and direct the AO to delete this addition.

Ground no. 2 of the assessee's appeal stands allowed.

8.2 In the result, the appeal of the assessee stands allowed.

9. As far as ground no. 1 of the department's appeal is concerned, it is seen that the Id. CIT(A's) has discussed and adjudicated the issue at length on pages 11 & 12 of the impugned order. The relevant portions are being reproduced for a ready reference as under:

"I have examined the submission of the appellant and it is found that the Share Capital and Free Reserves amounted to Rs. 78 crores and the income of the company for the current year as for revised return was in excess of Rs. 54 crores. There is nothing wrong in the making one donation out of various donations from the overdraft account. For all other donations, there was enough balance in the bank account of the appellant. Further, the advancing of loans to subsidiaries and sister concerns is stated to be out of commercial expediency, and the interest has been charged from M/s BLB Commodities (P) Ltd. @ 6.50% as has been paid to the promoter/directors of the company during the year as also in all the earlier years. Since the appellant company had share capital and free reserves amounting to Rs. 78 crores and current income of the company was Rs. 54 crores, it could not be said that the donations/loans had been given out of borrowed fund. Section 36(1)(iii) of the Act simply lays down that, if a loan has been taken for the purpose of the business, the

deduction for payment of interest has to be allowed. No direct nexus has been established between the utilization of funds out of the borrowed amount on which interest has been paid.

After having gone through the facts of the case, submission of the appellant and the case laws relied upon, I am of the opinion that the disallowance has been made by the Assessing Officer without establishing any nexus between borrowed and diverted funds. Further the AO has ignored the free reserves and share capital of Rs. 78 crores available with the appellant. Accordingly, the disallowance made out of interest paid should be deleted except disallowance of Rs. 1781/- on donation made out of overdraft account. This ground is treated as partly allowed.”

9.01 In view of the specific findings of the Id. CIT(A) which the Id. DR could not controvert, we have no reason to interfere with the findings of the Id. CIT(A) on this issue and we uphold the same.

9.02 In the result, ground no. 1 of the Department’s appeal is dismissed.

9.1 As far as ground no. 1 relating to deletion of addition of Rs. 863806/- on account of extra depreciation claimed on computer peripherals and accessories are concerned. It is seen that this issue has been settled in favour of the assessee in a plethora of judicial pronouncements and the Id. CIT(A) has also followed the reasoning that the computer is of no use if it does not

have any support of printer/mouse/UPS etc. Hence, on this issue also we find no reason to interfere with the findings of the Id. CIT(A) and we uphold the same.

9.1.2 In the result, ground no. 2 of the Department's appeal is also dismissed.

9.2 As far as ground no. 3 of the Department's appeal regarding rebate u/s 88E is concerned, we find that the case of the assessee is squarely covered by the decision of the Hon'ble Jurisdictional High Court in CIT vs. Jaypee DSC Ventures Limited (supra), wherein the Hon'ble Delhi High Court held as under:

“As is noticeable from the stipulations in the agreement, the performance guarantee by way of bank guarantee was required for faithful performance of its obligations. The non submission of the guarantee would have entailed in termination of the agreement and NHAI would have been at liberty to appropriate bid security. That apart, the release of such performance security dependent upon certain conditions. Thus, it is clearly evincible that the bank guarantee was furnished as a condition precedent to entering the contract and further it was to be kept alive to fulfill the obligations. Quite apart from the above, the release of the same was dependent on the satisfaction of certain

conditions. Thus, the present case is not one where the assessee had made the deposit of surplus money lying idle with it in order to earn interest; On the contrary, the amount of interest was earned from fixed deposit which was kept in the Bank for furnishing the bank guarantee. It had an inextricable nexus with securing the contract. The view express by the Tribunal cannot be found fault with. The Tribunal was therefore, justified in holding that the interest earned by the assessee on the FDRs has intrinsic and insegregable nexus with the work undertaken and, therefore, the interest earned by the assessee is capital in nature and shall go towards adjustment against the project expenditure and the same cannot be assessed as income from other sources.”

9.2.1 Since the facts in the case of the assessee are identical, we are of the opinion that the Id. CIT has rightly adjudicated the issue by directing the AO to allow rebate u/s 88E of the Act and we find no reason to interfere with the same.

9.2.2 In the result, ground no. 3 of the Department’s appeal is dismissed.

9.3 As far as ground no. 4 of the Department’s appeal is concerned, it is seen that the Hon’ble Delhi High Court in the case of CIT vs. MBL & Company Limited (supra) has held as under:

10. *“We find that there is no reason why the remission in tax*

which is available u/s 88E of the Act to an assessee be not available on the tax as computed under the Minimum Alternate Tax Scheme as both section 115JB of the Act as well as the other provisions of the Act referred above have been enacted to provide the machinery for computing total income of an assessee which is exigible to Income Tax. The rebate u/s 88E of the Act provides for certain rebates available on the tax payable by an assessee. In our view, there would be no rationale to limit the plain words of sec. 88E of the Act to hold that the rebate in payment of the tax is only applicable to tax as determined under the normal provisions of the Act and not available with respect to Minimum Alternative Tax as computed u/s 115JB of the Act. The purpose of section 88E of the Act is to grant an assessee, to a limited extent, credit in tax on account of security transaction tax already borne by him in respect of the business carried out by him in dealing in securities. This rebate would be equally applicable to tax as computed under section 115JB of the Act as under the normal provisions of the Act. “

9.3.1 Respectfully following the ratio of the judgment laid down by the Hon’ble Delhi High Court in the case of MBL & Company Limited (supra), we find no reason to interfere with the findings of the Id. CIT(A) on this issue.

9.3.2 Ground no. 4 of the Department’s appeal is accordingly, dismissed.

10. In the final result, the appeal of the assessee is allowed and the appeal of the Department is dismissed.

Order is pronounced in the open court on 05/08/2016

Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT

Dated: 05.08.2016

**Kavita Arora*

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI