आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, जी,मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "G", MUMBAI**

श्री जोगिन्दर सिंह, न्यायिक सदस्य **एवं**

श्री राजेन्द्र, लेखा सदस्य**,** के समक्ष

**Before Shri Joginder Singh, Judicial Member, and
Shri Rajendra, Accountant Member**

**ITA NO.8489/Mum/2011
Assessment Years:2008-09**

M/s Godrej Agrovet Ltd., C/o- Kalyaniwalla & Mistry Army & Navy Building, 3rd Floor, 148. M.G. Road, Mumbai-400001	vs	DCIT-10(2), Aayakar Bhavan M.K.Road, Mumbai-400020
(निर्धारिती /Assessee)		(राजस्व /Revenue)
PAN. No.AACG0617Q		

**ITA NO.152/Mum/2012
Assessment Year: 2008-09**

DCIT-10(2), Aayakar Bhavan M.K.Road, Mumbai-400020	vs	M/s Godrej Agrovet Ltd., C/o- Kalyaniwalla & Mistry Army & Navy Building, 3rd Floor, 148. M.G. Road, Mumbai-400001
(राजस्व /Revenue)		(निर्धारिती /Assessee)
		PAN. No.AAACG0617Q

ITA NO.1278/Mum/2013
Assessment Years:2009-10

DCIT-10(2), Aayakar Bhavan M.K.Road, Mumbai-400020	vs	M/s Godrej Agrovet Ltd., C/o- Kalyaniwalla & Mistry Army & Navy Building, 3rd Floor, 148. M.G. Road, Mumbai-400001
(राजस्व /Revenue)		(निर्धारिती /Assessee)
		PAN. No.AAACG0617Q

निर्धारिती **की ओर से /** Assessee by	Shri Akram Khan, Jitendra Jain & Shri Raunak Vardhan
राजस्व **की ओर से** / Revenue by	Shri S.K. Bepari-DR

सुनवाई की तारीख / **Date of Hearing :**	**10/05/2016**
आदेश की तारीख /**Date of Order:**	**05/07/2016**

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

The assessee as well as the Revenue is in cross for Assessment year 2008-09, whereas, the Revenue has preferred appeal for Assessment year 2009-10 against the respective orders of the Ld. First Appellate Authority, Mumbai.

2. First, we shall take up the appeal of the assessee for Assessment year 2008-09 (ITA No.8489/Mum/2011),

wherein, ground numbers 1 to 8, raised in the grounds of appeal, are with respect to disallowance u/s 14A of the Income Tax Act, 1961 (hereinafter the Act), amounting to Rs.13,66,300/- and further in upholding disallowance of Rs.24,41,598/- under Rule-8D(2)(iii) of the Rules. The crux of argument advanced on behalf of the assessee by Shri Akram Khan & Raunak Vardhan, is that investment was made out of own funds and not from the borrowed funds. Our attention was invited to page-12 of the assessment order, wherein, working of average value of investment has been provided. It was pointed out that for Assessment year 2005-06 (vide order in ITA No.1629/Mum/2009), the issue of disallowance made out of interest expenditure (page-3, para-5 onwards of the order) was discussed and decided in favour of the assessee, by further explaining that item no. 2 & 3 were confirmed by Hon'ble Bombay High Court. Plea was also raised that there was strategic investment by the assessee for which certain case laws (available at pages 59 to 130 of the paper book) were relied upon. It was also pleaded that there are only three transactions during the year and

own business was demerged, where assessee got the shares out of non-cash transactions. The ld. counsel explained that with respect to one company, the Assessing Officer accepted the version of the assessee(Assessment year 2008-09) and in Assessment year 2007-08, the Ld. Commissioner of Income Tax (Appeal) himself allowed the claim of the assessee, against which no appeal was filed by the Department. This factual matrix was consented to be correct by the ld. DR, Shri S.K. Bepari.

2.1. We have considered the rival submissions and perused the material available on record. We find that for Assessment year 2005-06 (ITA No.1629/Mum/2009), the Tribunal vide order dated 17/09/2010, while adjudicating grounds number 5 to 7, relating the disallowance made out of interest expenditure by invoking the provisions of section 14A of the Act decided in favour of the assessee. The relevant portion from the aforesaid order is reproduced hereunder for ready reference and analysis:-

> "3. We have heard the arguments of both the sides and also perused the relevant material on record. It is observed that similar

issues involved in assessee's own case for the earlier years i.e. A.Y. 2003-04 & 2004-05 have been decided by the Tribunal in assessee's own case vide its common order dated 10.9.2009 passed in ITA No. 6807/M/06 and 6233/M/07. A copy of the said order is placed on record and a perusal of the same shows that similar issues have been decided by the Tribunal in favour of the assessee for the following reasons given in para No. 18 of the said order:

"We have considered the rival submissions. Reading of provisions of section 43(6) clause (c)(b) shows that WDV of block asset can be reduced only in the case of sale, discarding or demolition or destruction of an asset forming part of block assets. It is not in dispute that goodwill and non-compete fees already formed part of block of assets and depreciation had been allowed on the same in the past. During the previous year, there was no sale, discarding, demolition or destruction of the same. In such circumstances, it was not within the power of the Assessing Officer to make adjustment to the WDV of the block of assets. Even on the principle of consistency claim allowed to the assessee in the past should not be denied in the later year when the facts and circumstances or the law has not changed. Decisions in the case of Yamaha Motors India P. Ltd. (supra) and SRF Ltd. (supra) support the plea of the assessee in this regard. We, therefore, hold that the action of the revenue authorities in disallowing depreciation in respect of goodwill and non-compete fee was not proper."

4. At the time of hearing before us, the ld. D.R. has sought to support the Revenue's case on these issues by contending that the claim of the assessee for depreciation on goodwill and non-compete fees is not allowable on merit. However, as it is clearly evident from the relevant portion of the Tribunal's order dtd. 10.9.09(supra) reproduced hereinabove, the claim of the assessee for depreciation on goodwill and non-compete fees has been allowed by the Tribunal by applying the rule of consistency as well as relying on the concept of "block of assets". As the issues involved in the year under consideration as well as all the material

facts relevant thereto are admittedly similar in A.Y. 2003-04 and 2004-05, we respectfully follow the order of the Tribunal dtd. 10.9.09 (supra) and delete the disallowance made by the A.O. and confirmed by the ld. CIT(A) on account of assessee's claim for depreciation on goodwill and non-compete fees. Ground No. 1 to 3 of the assessee's appeal are accordingly allowed.

5. The issues relating to the disallowance made by the A.O. and confirmed by the ld. CIT(A) out of interest expenses and other expenses by invoking the provisions of section 14A are raised by the assessee in ground No. 4 to 8 of this appeal which read as under:-

"4) The learned Commissioner of Income Tax (Appeals) erred in holding that disallowance under section 14A was required to the computed as per Rule 8D. The learned Commissioner of Income Tax (Appeals) erred in holding that Rule 8D was retrospective in nature and applicable to the assessment year under consideration.

5) The learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance ofRs.33,20,000/- under section 14A read with Rule 8D(ii).

6) The learned Commissioner of Income Tax (Appeals) failed to consider that the Appellant had proved that investments had been made from its own funds and that no borrowings were utilized.

7) The learned Commissioner of Income Tax (Appeals) failed to consider that disallowance can be made only of expenditure which is incurred "in relation to" exempt income. Having regard to the facts and circumstances of the case and the provisions of law, the appellant submits that the Assessing Officer be directed to delete the disallowance under section 14A read with Rule 8D(2)(ii) amounting toRs.33,20,000/-.

8) The learned Commissioner of Income Tax (Appeals) erred in holding thatRs.13,77,000/- was required to be disallowed under section 14A read with Rule 8D(20(ii). The appellant submits that the disallowance is unjustified and is required to be deleted."

6. During the year under consideration, the assessee company had earned the dividend income ofRs. 3 crores which was claimed as exempt income u/s 10(34). According to the A.O., interest as

well as administrative expenses incurred by the assessee to the extent attributable to earning of the said exempt income were liable to be disallowed as per the provisions of section 14A. He, therefore, required the assessee to explain why such disallowance on account of the said expenses should not be made as per the provisions of section 14A. In reply, it was submitted on behalf of the assessee company that out of the total funds ofRs.96.18 crores, own funds were to the extent ofRs.64.20 crores which were utilized for making investment in shares ofRs.30.42 crores which fetched the dividend income. It was submitted that the borrowed funds ofRs.31.98 thus were not utilized for making investment in shares and there was thus no question of making disallowance u/s 14A on account of interest expenses incurred in respect of the said borrowed funds. It was submitted that out of the borrowed funds ofRs.31.98 crores, a sum ofRs.21.59 crores was availed in the earlier years and after verification of the relevant record, it was accepted by the A.O. himself while completing the assessment for the earlier years that the said amount was entirely utilised by the assessee for the purpose of its business and the same was not utlised for making any investment which fetched the dividend income. It was submitted that even the sum ofRs.10.39 crores borrowed by the assessee in the year under consideration was entirely utilized for the purpose of its business and only the own funds generated in that year were utilized for the purpose of making investment in shares. It was pointed out that a separate current account was opened and operated with IDBI Bank wherein surplus funds were deposited for making the investment in shares. It was contended that interest expenditure incurred by the assessee company thus was not at all attributable to earning of dividend

income and no disallowance out of the said expenditure u/s 14A was called for.

7. The A.O. did not find the submission of the assessee to be acceptable. According to him, although the assessee had enough surplus funds to make investment in shares, he could have utilized the said funds for repaying the borrowings instead of making the investment in shares. He held that it was thus an indirect case of diversion of borrowed funds by the assessee for making investment in shares so as to earn dividend income and since such dividend income was exempt from tax, interest attributable to the borrowed funds utilized for making investment in shares was liable to be disallowed u/s 14A. Since the investment in shares ofRs.30.42 crores made by the assessee was to the extent of 31.61% of the total funds ofRs.96.18 crores, he treated the borrowed funds ofRs.31.98 crores to the extent ofRs.10.10 crores as utilized for making investment in shares on pro-rata basis and proportionate interest attributable to the said amount worked out atRs.1,02,21,276/- was disallowed by him u/s 14A. He also identified the common administrative expenses incurred by the assessee company at Rs.1,63,05,007/- and applying the ratio of 17.39% between the dividend income and total income, he worked out the disallowance u/s 14A on account of the said expenses at Rs.28,35,404/-. Thus, a total disallowance ofRs.1,30,56,716/- was made by the A.O. on account of expenses attributable to the exempt income earned by the assessee company in the form of dividend on shares. On appeal, the ld. CIT(A) upheld the action of the A.O. in invoking the provisions of section 14A to make a disallowance out of interest and other administrative expenses.

He, however, restricted the quantum of such disallowance made by the A.O. to Rs.46,97,000/- by applying Rule 8D of the Income Tax Rules 1962 inserted w.e.f. 1.4.08.

8. We have heard the arguments of both the sides and also perused the relevant material on record. As held by the Hon'ble Bombay High Court in the case of Godrej Boyce Mfg. Co. Ltd. (ITA No. 626 of 2010 dtd. 12.08.2010), Rule 8D of the Income Tax Rules 1962 is applicable only prospectively i.e. from A.Y. 2008-09. Since the assessment year involved in the present case is 2005-06, respectfully following the said judgment of the Hon'ble Bombay High Court, we hold that the ld. CIT(A) was not justified in applying the said Rule to quantify the disallowance u/s 14A. Ground No. 4 of the assessee's appeal is accordingly allowed.

9. As regards the issue raised in ground No. 5 to 7 of the assessee's appeal relating to the disallowance made out of interest expenditure by invoking the provisions of section 14A, it is observed that elaborate submissions were made on behalf of the assessee before the A.O. as well as before the ld. CIT(A) to establish that the investment in shares was made out of its own funds and the borrowed funds ofRs.31.98 crores were entirely utilized for the purpose of its business. At the time of hearing before us, the ld. Counsel for the assessee has taken us through the copies of such submissions placed in his paper book to demonstrate that the entire amount of borrowed funds was utilized for the purpose of its business by the assessee company and the investment in shares was made by it out of its own funds. As pointed out by him, the said borrowed funds to the extent

ofRs.21.59 crores were availed by the assessee in the earlier year and in the assessment completed for A.Y. 2004-05, the A.O. had accepted after verification of the relevant record that the borrowed funds to that extent were utilized by the assessee company for the purpose of its business and the investment in shares was made by it out of its own funds. As further pointed out by him, even the investment in shares in the year under consideration was made by the assessee company from a separate current account maintained in IDBI where the surplus funds generated in that year were deposited. Sufficient evidence thus was brought on record by the assessee company to establish that investment in shares was made by it out of its own funds and the borrowed funds were entirely utlised for the purpose of its business. As a matter of fact, even the authorities below have not disputed this position. According to them, the assessee, however, could have utilized its surplus funds in repaying the borrowings instead of investing in shares and by not doing so, there was diversion of borrowed funds towards investment in shares to earn dividend income. In the case of CIT vs. Hero Cycles Ltd. 323 ITR 518 cited by the ld. Counsel for the assessee, a similar contention was raised in the context of disallowance of interest expenditure u/s 14A and reliance in support of this contention was placed on behalf of the Revenue on the decision in the case of CIT vs. Abhishek Industries Ltd. 286 ITR 1. The Hon'ble Punjab & Haryana High Court, however, did not accept this contention raised on behalf of the Revenue observing that the judgment of Abhishek Indiustries Ltd. (supra) was on the issue of allowability of interest paid on loans given to sister concerns without interest. It was held that the relevant observations recorded in the said judgment therefore have to be

> read in that context. In the case of Hero Cycles Ltd. (supra), a finding was recorded by the Tribunal that the investment in shares and funds was made by the assessee out of the dividend proceeds and not out of borrowed funds and in view of this finding of fact, it was held by the Hon'ble Punjab & Haryana High Court that the disallowance u/s 14A was not sustainable. Keeping in view the said decision of the Hon'ble Punjab & Haryana High Court in the case of Hero Cycles Ltd. (supra) and having regard to the facts of the case, we hold that the disallowance made by the A.O. out of interest expenses u/s 14A and confirmed by the ld. CIT(A) is not sustainable. The same is therefore deleted allowing ground No. 5 to 7 of the assessee's appeal."

3. So far as common administrative expenses u/s 14A of the Act are concerned, the Tribunal directed the Assessing Officer to verify this aspect from the assessment record of earlier assessment years and restricted the disallowance, out of common administrative expenses to 2% of the total exempt income and the ground was partly allowed. The relevant portion from the aforesaid order is reproduced hereunder:-

> "10. As regards the issue relating to the disallowance out of common administrative expenses u/s 14A raised in ground No. 8, it is observed that this disallowance made by the A.O. atRs.28,35,440/- on pro-rata basis was restricted by the ld. CIT(A) to `13,77,000/- by

applying Rule 8D of Income Tax Rules, 1962. As held by the Hon'ble Bombay High Court in the case of Godrej Boyce Mfg. Co. Ltd. (ITA No. 626 of 2010 dtd. 12.08.2010), Rule 8D of the Income Tax Rules 1962 is applicable only prospectively i.e. from A.Y. 2008-09. As further held by the Hon'ble Bombay High Court in the said case, the quantum of disallowance u/s 14A for the years earlier to A.Y. 2008-09 has to be worked out by adopting some reasonable method. In this context, the ld. Counsel for the assessee has submitted that in the earlier years, a similar disallowance made by the A.O. has been sustained by the ld. CIT(A) to the extent of 2% of the total exempt income earned by the assessee and the same being reasonable, the assessee has accepted it. We, therefore, direct the A.O. to verify this aspect from the assessment records of the earlier years and accordingly restrict the disallowance out of common administrative expenses to 2% of the total exempt income. Ground No. 8 of the assessee's appeal is thus partly allowed."

3.1. Thus, so far as, disallowance out of common administrative expenses u/s 14A of the Act is concerned, the ld. Assessing Officer is directed to follow the directions of the Tribunal as contained in the order for Assessment year 2005-06 (ITA No.1629/Mum/2009) order dated 17/09/2010.

3.2. So far as, investment out of own funds is concerned, the issue has been dealt with by the Tribunal in ITA No.4897/Mum/2012 (Assessment year 2006-07), wherein, the disallowance of interest claimed u/s 36(1)(iii)

was discussed and affirmed the stand of the Ld. Commissioner of Income Tax (Appeal), who deleted the disallowance of interest made by the Assessing Officer. The relevant portion of the order is reproduced hereunder:-

> *"8. In this appeal, the Revenue is aggrieved for deleting disallowance of interest of Rs.41,34,375/- claimed by the assessee u/s.36(1)(iii) of the Act.*
>
> *9. Rival contentions have been heard and record perused. The facts of the case were that the assessee had advanced an amount of Rs.3,30,75,000/-to Al Rahba International Trading LLC, Abu Dhabi as interest free loan. M/s. Al Rahba International was a company in which the assessee had acquired 675 equity shares for an amount of Rs.8,10,000/-. The AO noticed that appellant had paid interest on its borrowed funds but did not charge interest on its advances of Rs.3.31 crore made to M/s. AI Rahba International Trading LLC, Abu Dhabi. The AO held that the assessee has taken fresh loan of Rs.129. 96 crore during the year which were outstanding as on last day of the year. Therefore, the AO held that the amount of Rs.3.31 crore out of the borrowed funds had not been used for the purpose of business and the interest at the rate of 12.5% relatable to such interest free loan was disallowed at Rs.41,34,375/-. 10. By the impugned order, CIT(A) deleted the disallowance after having following observation :-*

"2.3 I have carefully considered the facts of the case. During the year, the appellant has given interest free loans/advance of Rs.3.30 crore to M/s. Al Rahba International Trading LLC, UAE. The appellant has purchased 675 equity share of M/s. Al Rabha International for an amount of Rs.8,10,000/-. The appellant's share holding in the said company is 45% only. Therefore, the appellant's share of profit and loss in the said company should have been only 45%. However, the appellant's share of profit/loss in the said company is 70%. The appellant has explained that as per laws/Rules of Abu Dhabi, Nonresident cannot have share capital of more than 45%. However, this restriction is not applicable in case of profit/loss sharing ratio. The appellant has explained that for getting more share of profit/loss i.e. 70%, it had invested / given an amount of Rs.3.30 crore to that company as interest free loan/advance. Thus, the appellant has satisfactorily explained that the interest free loan of Rs.3.30 crore has been given to the said company for the purpose of business only i.e. for getting more share of profit in that company. In the facts and circumstances, thedecision of Supreme Court in the case of S.A. Builders (supra) is applicable in appellant's case that the appellant has given interest free loan of Rs.3.30 crore to the said company considering the commercial expediency. In other words, the appellant has given interest free loans to the said company wholly and exclusively for the purposes of business i.e. for sharing profit in the said company in the ratio more than the percentage of share capital. The interest expenditure incurred on the said interest free loan given of Rs.3.30 crore was therefore, incurred for the purpose of business and more specifically for earning more share of profit from the said company. The disallowance of interest made by AO at Rs.41,34,375/- is therefore, deleted."

11. Against the above order of CIT(A), Revenue is in further appeal before us.

12. We have considered rival contentions and found from the record that advance of Rs.3.30 crores was made by the assessee to M/s Al Rahba International Trading LLC, Abu Dhabi, which is an entity operating in breeding and processing of poultry based in Abu Dhabi. Under Abu Dhabi law, any entity operating in Abu Dhabi needs to necessarily have a majority shareholding by a resident domiciled in Abu

Dhabi. This, however, does not prohibit the profit sharing ratio and funding ratio to be different. However, share of the assessee company in the capital of M/s Al Rahba International Trading LLC was restricted to 45% because of the shareholding restriction in Abu Dhabi. In respect of profit and loss, it was decided by the partners that share of assessee would be 70%. Accordingly, part of the funding was required to be attributed towards share capital in the ratio of shareholding while the balance funding was required to be structured as loan. Thus, the assessee had satisfactorily explained the business expediency of investment of Rs.3.30 crores in the said company for the purpose of business only i.e. for getting more share of profit in that company. The detailed finding recorded by the CIT(A) at para 2.3 with regard to application of funds for the purpose of business has not been controverted by the department by bringing any positive material on record. Accordingly, we do not find any reason to interfere in the findings of the CIT(A) for deleting the disallowance of interest made by the AO at Rs.41.34 lakhs

13. In the result, both appeals of the Revenue are dismissed."

3.3. So far as, the strategic investment is concerned, the issue is covered by the decision of the Tribunal in the case of M/s J. M. Financial Ltd. vs Addl. CIT (ITA No.4521/Mum/2012) for Assessment year 2009-10, order

dated 26/03/2014. The relevant portion of the same is reproduced hereunder for ready reference:-

> *"This appeal by the assessee is directed against the order dated 11.04.2012 of CIT(A) for A.Y. 2009-10. The assessee has raised following grounds in this appeal:-*
>
> *2. During the year under consideration the assessee earned dividend income of Rs. 14,14,000/- which is exempt u/s 10 (34). The assessee has disallowed a sum of Rs. 1,40,000/- u/s 14A. However the AO did notaccept the disallowance made by the assessee and proceeded to make the disallowance u/s 14A by applying Rule 8D. Accordingly, the AO made the disallowance of Rs. 7,61,37,727/- as per Rule 8D of Income Tax Rules.*
>
> *3. Assessee challenged the action of AO before CIT(A) and contended that Rule 8D cannot be applied without recording the satisfaction that the claim of the assessee was not proper. It was further contended that the investment made by the assessee was strategic investment and in the subsidiary companies. Accordingly no expenditure was required to be incurred for maintaining the portfolio. CIT(A) did not accept the contention of the assessee and confirmed the disallowance made by AO.*
>
> *4. Before us, the Ld. AR of the assessee has pointed out that though an identical issue was considered by the Tribunal for*

the A.Y. 2008-09 and it was held that Rule 8D is applicable for disallowance u/s 14A in respect of exempt income, however for the A.Y. 2008-09, the assessee was asked to furnish the computation of expenditure disallowed by him which was not explained and, therefore, the disallowance made by AO was confirmed. The Ld. AR has submitted that the AO was required to record the satisfaction that the claim of the assessee is not correct having regard to the accounts of the assessee and only if the AO is not satisfied with the explanation offered by the assessee with regard to the accounts, he could apply Rule 8D. In support of his contention he has relied upon the decisions of Hon'ble Jurisdictional High Court in the case of Godrej & Boyce Manufacturing Co. Ltd. Vs. DCIT (328 ITR 81) and submitted that the major investment of the assessee company i.e. Rs. 1490.86 crores out of Rs. 1524.08 crores which comes to 97.82% is strategic investment in unlisted subsidiary companies and joint venture companies and are long term investments. No expenses are incurred for maintaining the portfolio of these investments or for holding the same. Hence, no disallowance u/s 14A can be made with respect to these investments. The Ld. AR has relied upon the decision of this Tribunal in the case of Garware Wall Ropes Limited Vs. Addl. CIT, dated 15/01/2014 In ITA No. 5408/Mum/2012. He has also relied upon the decision dated 02/12/2011 of Delhi Bench of this Tribunal in the case of Oriental Structural Engineers (P) Ltd., Vs. ACIT, as well as the decision of Pune

Bench of This Tribunal in the case of Kalyani Steels Ltd. Vs. ACIT dated 30.01.2014 and submitted that the Tribunal has dealt with an identical issue in these decisions and held that when the assessee has brought on record the fact to show that no expenditure has been incurred on the investment made in the subsidiary companies then the AO has to record its satisfaction for not accepting the claim of the assessee and also give the finding that expenditure has been incurred by the assessee for earning the exempt income. The Ld. AR has also relied upon the decision of Hon'ble Delhi High Court, dated 15.01.2013 in the case of CIT Vs. Oriental Structural Engineers Pvt. Ltd, whereby the decision of Delhi Bench of this Tribunal has been confirmed by the Hon'ble High Court.

5. On the other hand, the Ld. CIT(DR) has vehemently contended that it is immaterial whether the investment is in subsidiary companies or in unrelated companies. The disallowance of expenditure u/s 14A has to be computed as per Rule 8D of the Income Tax Rules. The AO has calculatedthe amount of disallowance as per Rule 8D and, therefore, there is no question of accepting the disallowance made by the assessee which is not in accordance with the formula given in Rule 8D. The Ld. DR has submitted that for the purpose of disallowance under Rule 8D, the entire investment as well as the entire expenditure which is booked to the profit & loss account has to be taken into account. He has referred para 51 of the decision of Hon'ble Jurisdictional

High Court in the case of Godrej & Boyce Manufacturing Co. Ltd (supra) and submitted that once the proximate relationship between the expenditure and the exempt income is established the disallowance has to be made as per Rule 8D. He has relied upon the orders of authorities below.

6. In rebuttal, the Ld. AR has submitted that Hon'ble High Court in para 32 and 33 has clearly laid down the principles for disallowance u/s 14A and held that sub section 2 does not ifso facto enable the AO to apply the method prescribed by the Rule straightaway without considering whether the claim made by the assessee in respect of expenditure incurred in relation to income which does not form part of the total income is correct. Thus the Hon'ble High Court has held that where the accounts of the assessee furnish an objective basis for the AO to arrive at a satisfaction in regard to correctness of the claim of the assessee of the expenditure, there would be no warrant for taking recourse to the method prescribed by the Rules.

7. Having considered the rival submissions as well as relevant material on record, we note that so far as applicability of Rule 8D is concerned, there is no quarrel on this point that for the A.Y. under consideration Rule 8D is applicable. Further for the A.Y. 2008-09, the Tribunal held in para 15 as under:-

"We have considered the rival arguments made by both the sides, perused the orders of the AO and CIT(A) and the paper book filed on

behalf of the assessee. We have also considered the various decisions cited before us. In the instant case, the only dispute is regarding determination of disallowance of expenditure for earning tax free dividend income of Rs. 18,17,68,458/- the assessee disallowed on its own Rs. 16.50 lakhs u/s 14A. Despite being asked by the AO to furnish the disallowance under rule 8D, the assessee did not furnish the details. The provisions of rule 8D inserted by the IT (Fifth Amendment) Rules 2008 with effect from 24.3.2008 are applicable for A.Y. 2008-09 and onwards. Therefore, the revenue authorities are bound to follow the mandatory provisions for calculation of disallowance u/s 14A. Therefore, we do not find any infirmity in the order of the CIT(A) upholding the action of the AO for disallowing the deduction u/s 14A read with rule 8D. The contention of the assessee that the AO without satisfaction being reached invoked the provisions of Rule 8D, in our opinion, does not hold good especially in absence of non-furnishing of details for the purposes of calculation of disallowance at Rs. 16.50 lakhs by the assessee on its own. In this view of the matter and in absence of any distinguishable feature brought to our notice by the learned Counsel for the assessee against the order of the CIT(A), we do not find any infirmity in the same. Accordingly the same is upheld and the ground raised by the assessee is dismissed."

8. As it is clear from the finding of Tribunal that the assessee failed to furnish the details of disallowance under section 14A and, therefore, the disallowance made by the AO was found by the Tribunal without any infirmity. For the year under consideration the assessee has specifically raised a point before the AO that 97.82% of the investment is in the subsidiary companies and joint venture companies and, therefore, no expenditure was incurred for maintaining the portfolio on these investments or for holding the same. The assessee has also pointed out that these investments are long term investment and no decision is required in making the investment or disinvestment on regular basisbecause these investments are strategic in nature in the subsidiary companies on long term basis and, therefore, no direct or

indirect expenditure is incurred. We find that the department has not disputed this fact that out of the total investment about 98% of the investment are in subsidiary companies of the assessee and, therefore, the purpose of investment is not for earning the dividend income but having control and business purpose and consideration. Therefore, prima facie the assessee has made out a case to show that no expenditure has been incurred for maintaining these long term investment in subsidiary companies. The AO has not brought out any contrary fact or material to show that the assessee has incurred any expenditure for maintaining these investments or portfolio of these investments. In the case of Godrej & Boyce Mfg. Co. Ltd. (supra) Hon'ble Jurisdictional High Court while dealing with the issue of disallowance u/s 14A and application of Rule 8D has recorded the principles as laid down by the Hon'ble Supreme Court in the case of Walfort Share and Stock Brokers P. Ltd. [2010] (326 ITR 1,) in para 31 as under:-

(a) "The mandate of section 14A is to prevent claims for deduction of expenditure in relation to income which does not form part of the total income.

(b) Section 14A(1) is enacted to ensure that only expenses incurred in respect of earning taxable income are allowed;

(c) The principle of apportionment of expenses is widened by section 14A to include even the apportionment of expenditure between taxable and nontaxable income of an indivisible business;

(d) The basic principle of taxation is to tax net income. This principle applies even for the purpose of section 14A and expenses towards non-taxable income must be excluded;

(e) Once a proximate cause for disallowance is established – which is the relationship of the expenditure with income which does not form part of the total income – a disallowance has to be effected. All expenditure under the provisions of the Act has to be disallowed under section 14AIncome which does not form part of the total income is broadly adverted to as exempt income as an abbreviated appellation."

9. After considering these principles as emerged from the decision of Hon'ble Supreme Court in the case of Walfort Share and Stock Brokers P. Ltd. (supra), Hon'ble Jurisdictional High Court has held in para 32 and 33 as under:-

"32. Sub-section (2) and (3) to section 14A were inserted by an amendment brought about b y the Finance A c t o f 2006 with effect from April 1, 2007. Sub Sections (2) and (3) Provide as follows.

"14A.(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, 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 this Act. (3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act :

Provided that nothing contained in this section shall empower the Assessing Officer either to reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154 for any assessment year beginning on or before the 1st day of April, 2001."

(The proviso was inserted earlier by the Finance Act of 2002 with retrospective effect from May 11, 2001)

33. Under sub-section (2), the Assessing Officer is required to determine the amount of expenditure incurred by an assessee in relation to such income which does not form part of the total income under the Act in accordance with such method as may be prescribed. The method, having regard to the meaning of the expression "prescribed" in section 2(33), must be prescribed by rules made under the Act. What merits emphasis is that the jurisdiction of the Assessing Officer to determine the expenditure incurred in relation to such income which does not form part of the total income, in accordance with the prescribed method, arises if the Assessing Officer is not satisfied with the correctness of the claim of the assessee in respect of the expenditure which the assessee claims to have incurred in relation to income which does not part of the total income. Moreover, the satisfaction of the Assessing Officer has to be arrived at, having regard to the accounts of the assessee. Hence, sub-section (2) does not ipso facto enable the Assessing Officer to apply the method prescribed by the rules straightaway without considering whether the claim made by the assessee in respect of the expenditure incurred in relation to income which does not form part of the total income is correct. The Assessing Officer must, in the first instance, determine whether the claim of the assessee in that regard is correct and the determination must be made having regard to the accounts of the assessee. The satisfaction of the Assessing Officer must-be arrived at on an objective basis. It is only when the Assessing Officer is not satisfied with the claim of the assessee, that the Legislature directs him to follow the method that may be prescribed. In a situation where the accounts of the • assessee furnish an objective basis for the Assessing Officer to arrive at a

satisfaction in regard to the correctness of the claim of the assessee of the expenditure which has been incurred in relation to income which does not form part of the total income, there would be no warrant for taking recourse to the method prescribed by the rules. For, it is only in the event of the Assessing Officer not being so satisfied that recourse to the prescribed method is mandated by law. Sub-section (3) of section 14A provides for the application of sub-section (2) also to a situation where the assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under the Act. Under the proviso, it has been stipulated that nothing in the section will empower the Assessing Officer, for an assessment year beginning on or before April 1,2001, either to reassess under section 147 or pass an order enhancing the assessment or reducing the refund already made or otherwise increasing the liability of the assessee under section 154."

10. It has been made clear by the Hon'ble High Court that sub-section (2) does not ifso facto empower the AO to apply the method prescribed by Rules straightaway without considering whether the claim made by the assessee is correct.

11. The assessee has relied upon various decisions of this Tribunal wherein an identical issue has been considered. In the case of Garware Wall Ropes Limited Vs. Addl. CIT (supra), the Tribunal while deciding an identical issue has held in para 2.4 as under:-

"We have considered the rival submission and carefully perused the relevant records. So far as the issue regarding disallowance u/s 14A in the case where no dividend has been received, the same is covered against the assessee by the order of Tribunal in assessee's own case for the assessment year 2008-09, wherein the Tribunal has followed the decision of special bench of Tribunal while deciding the issue. Therefore, we do agree with the finding of the Tribunal on this point. Further since the assessee has raised the new plea in the year under consideration that no expenditure had been incurred by the assessee for earning the exempt income or for the investment in question. We find merit and substance in the contention of the assessee on this point because the investment has been made by the assessee in the group concern and not in the shares of any un-related party. Therefore, the primary object of investment is holding controlling stake in the group concern and not earning any income out of investment. Further the investment were made long back and not in the year under consideration. Therefore, in view of the fact that the investment are in the group concern we do not find any reason to believe that the assessee would have incurred any administrative expenses in holding these investments. The AO has not brought on record any material to show that the assessee has incurred any expenditure in relation to the income which does not form part of the total income. Section 14A has within it implicit the notion of apportionment in the cases where the expenditure is incurred for composite/indivisible activities in which taxable and non taxable income is received but when no expenditure has been incurred in relation to the exempt income then principle of apportionment embedded in section 14A has no application. The object of section 14A is not allowing to reduce tax payable on the non exempt income by deducting the expenditure incurred to earn the exempt income. In the case in hand it is not the case of the revenue that the assessee has incurred any direct expenditure or any interest expenditure for earning the exempt income or keeping the investment in question. If there is expenditure directly or indirectly incurred in relation to exempt income the same cannot be claimed against the income which is taxable. For

attracting the provisions of section 14A- "there should be proximate cause for disallowance which has relationship with the tax exempt income as held by the Hon'ble Supreme Court in case of CIT Vs. Walfort Share and Stock Brokers P. Ltd. (326 ITR 1). Therefore, there should be a proximate relationship between the expenditure and the income which does not form part of the total income. In the case in hand the assessee has claimed that no expenditure has been incurred for earning the exempt income, therefore, it was incumbent on the AO to find out as to whether the assessee has incurred any expenditure in relation to income which does not form part of the total income and if so to quantify the expenditure of disallowance. The AO has not brought on record any fact or material to show that any expenditure has been incurred on the activity which has resulted into both taxable and non taxable income. Therefore, in our view when the assessee has prima facie brought out a case that no expenditure has been incurred for earning the income which does not form part of the total income then in the absence of any finding that expenditure has been incurred for earning the exempt income the provisions of section 14A cannot be applied. Accordingly we delete the addition/disallowance made by AO u/s 14A r.w. Rule 8D."

12. A similar view was taken by the Delhi Bench of this Tribunal in the case of M/s Oriental Structural Engineers (P) Ltd (supra) which has been confirmed by the Hon'ble Delhi High Court vide decision dated 15.01.2013 in para 6.3 as under:-

"'6.3 We have carefully considered the submissions and perused the records. We find that Ld. Commissioner of Income Tax (Appeals) has given a finding that only interest of Rs 2,96,731/- was paid on funds utilized for making investments on which exempted income was receivable. Further, Ld. Commissioner of Income Tax (Appeals) has observed that in respect of investment of Rs 6,07,775,000/- made in subsidiary companies as per documents produced

before him, they are attributable to commercial expediency, because as per submission made by the assessee, it had to form Special Purpose Vehicles (SPY) in order to obtain contracts from the NHAI and the SPVs so formed engaged the assessee company as contract to execute the works awarded to them (i.e. SPVs) by the NHAI. In its profit and loss account for the year, the assessee has shown the turnover from execution of these contracts and therefore no expense and interest attributable to the investments made by the appellant in the PSVs can be disallowed u/s 14A LW. Rule 8D because it cannot be termed as expense/ interest incurred for earning exempted income. Under the circumstances, Ld. Commissioner of Income Tax (Appeals) is correct in holding that disallowance of a further sum Rs 40,556/- calculated@2%ofthedividend earned is sufficient. Under the circumstances, we do not find any infirmity in the order of the Ld. Commissioner of Income Tax (Appeals), hence we uphold the same."

13. In view of the above discussion and facts and circumstances of the case we agree with the view taken by this Tribunal in the above stated cases and accordingly hold that the assessee has brought out a case to show that no expenditure has been incurred for maintaining the 98% of the investment made in the subsidiary companies, therefore, in the absence of any finding that any expenditure has been incurred for earning the exempt income, the disallowance made by the AO is not justified, accordingly the same is deleted.

14. In the result appeal of the assessee is allowed."

Thus, considering the issue of strategic investment, we find merit in the contention of the assessee and the ld.

Assessing Officer is directed to follow the ratio laid down in the aforesaid order. The case laws relied upon by the assessee further supports the case of the assessee.

3.4. So far as, the issue of transactions with respect to own business demerger and consequent receipt of shares out of non-cash transactions is concerned, it was explained by the ld. counsel for the assessee that in respect of one company for Assessment year 2008-09, the Assessing Officer himself accepted the claim and in Assessment year 2007-08, the Ld. Commissioner of Income Tax (Appeal) allowed the claim of the assessee against which no appeal was filed by the Department. The ld. counsel invited our attention to pages 131 to 134 of the paper book. This factual matrix was not controverted by the Revenue. In the absence of any contrary facts/case laws, we find merit in the claim of the assessee. It was also explained that for Assessment year 2008-09 in computation of income (page-44 of the paper book), the assessee disallowed 24.60 lakhs and in the revised return (page-53 of the paper book) in the calculation Rs.13.66 was reduced and nothing was on account of

interest. Thus, it was pleaded that the same may be restricted to Rs.13.66 lakhs. To sum up grounds no. 1 to 8 with respect to u/s 14A of the Act read with rule 8D(2)(iii), we find that so far as golden feeds products Ltd. is concerned, the value of investment as on 01/04/2007 is Rs.5 lakh and as on 31/03/2008 is also Rs.5 lakh. The investment made prior to AY 2008-09 is Rs.5 lakh and no investment was made during the present assessment year, which is verified from the note given by the assessee. Even, in the case of the assessee, the Tribunal vide order dated 05/10/2012 for AY 2007-08, order dated 22/08/2014 for AY 2006-07 and order dated 17-09/2010 for AY 2005-06 found that sufficient evidence was brought on record by the assessee to establish that investment in shares was out of own funds and the borrowed funds were entirely utilized for business purposes, thus, no interest can be disallowed u/s 14A of the Act. The ratio laid down in Escorts Ltd. vs ACIT 104 ITD 427 (Del.) and Malwa Cotton Spining Mills vs ACIT 89 ITD 65 (Chd.)™ supports the case of the assessee. Likewise with respect to Plchem Hygiene Laboratories Pvt. Ltd. is concerned, for the

impugned assessment year, no additional investment was made. So far as, Godrej Oil Plantation Ltd. (formerly known as Godrej Aqua Feeds Ltd.) (subsequently knows as Godrej Oil Palm Ltd.), during the year, the assessee with the approval of the shareholders, u/s 391 & 394 of the Companies Act, 1956 and with the sanction from Hon'ble jurisdictional High Court transferred its oil palm business in the state of Andhra Pradesh, Gujarat, Mijoram and Orissa on Slump sale basis to this company for consideration of Rs.49.75 crores, which was paid to the assessee company by way of allotment of equity shares of Godrej Oil Plantation Ltd. (refer note no.10)(a) of Notes to accounts at page 24 of the compilation and the scheme of arrangements, Hon'ble High Court order, etc. are available at pages 57 to 77 of the paper book. Thus, the shares were acquired by virtue of transfer of business, which does not involve cash out flow. Identical is the situation with respect to Godrej Gokarna Oil Palm Ltd., wherein, the shares were acquired by virtue of transfer of business and does not involve cash out flow. In the case of Aadhar retailing Ltd., the assessee company transferred its

retail business to this company for a consideration of Rs.80 crores which was paid to the assessee company inter-alia by way of allotment of equity shares of Aadhar retailing Ltd (copy of business transfer agreement dated 10/03/2008 is available at page 94 to 177 of the paper book), meaning thereby, the shares were acquired by virtue of transfer of business which does not involve cash out flow. So far as, Castrol India Ltd. is concerne, initially share were given to the assessee as a security against outstanding payments, due from one party, Jay Traders, which purchase Poultry Feed Products from the assessee. Similar is the situation for Colgate Palmolive India Ltd. So far as Cauveri Oil Plantation is concerned, the investment was made out of own funds and the oil palm plantation business was started by the assessee company in early 90s, thus, it is a strategic investment. Considering the totality of facts and in the absence of any contrary material from the Revenue side, we find merit in the explanation of the assessee and accordingly direct the Assessing Officer to examine the claim of the assessee and

decide afresh in the light of our aforesaid observation. The assessee be given opportunity.

4. The next ground i.e. ground no.9 is with respect to making disallowance u/s 14A while computing minimum alternate tax u/s 115JB of the Act. The argument on behalf of the assessee is that the amount should be restricted to 13.66 lakhs or 2% of the dividend income for calculating income for the purposes of section 115 JB of the Act. The ld. Assessing Officer is directed to examine the claim of the assessee. Thus, this ground is allowed for statistical purposes.

5. Now, we shall take up the appeal of the Revenue (ITA No.152/Mum/2012) Assessment year 2008-09, wherein, the only ground raised pertains to direction to the Assessing Officer to compute the disallowance u/s 14A read with Rule-8D to rework the indirect interest expenditure as per clause (ii) of Rule-8D by considering the average of only new investment made during the year. The ld. DR advanced identical plea as has been raised in the grounds of appeal,

whereas, the ld. counsel for the assessee defended the conclusion/direction contained in the impugned order. Considering the totality of facts and the discussion made in earlier paras of this order, we find no infirmity in the direction of the Ld. Commissioner of Income Tax (Appeal), therefore, the appeal of the Revenue is dismissed.

6. Now, we shall take up the appeal of the Revenue (ITA No.1278/Mum/2013) Assessment year 2009-10, wherein, the first ground pertains to deleting the disallowance of Rs.2,56,26,588/-. The ld. DR advanced arguments, which is identical to the ground raised. On the other hand, the ld. counsel for the assessee explained that dividend received during the year was Rs.69.53 lakhs for which our attention was invited to page-20 of the paper book and suo-moto disallowance was made to the tune of Rs.6,00,375/-, whereas, the Assessing Officer made disallowance of Rs.2,56,26,588/-. The ld. counsel for the assessee defended the impugned order.

6.1. We have considered the rival submissions and perused the material available on record. The facts, in brief, are that the assessee claimed exemption u/s 10(34) of the Act for dividend of Rs.69,52,983/-. It is noticed that the amount of Rs.6,00,375/- was suo-moto disallowed by the assessee under section 14A of the Act, whereas, the ld. Assessing Officer computed the disallowance at Rs.2,88,78,311/- u/s 14A r.w.r 8D comprising interest disallowance under rule 8D(2)(ii) of Rs.2,56,26,588/- and interest expenses of Rs.32,51,732/-. The Ld. Commissioner of Income Tax (Appeal) with respect to interest disallowance followed the decision of the Tribunal for Assessment year 2007-08 (ITA No.5464/Mum/2011) (Para-7) order dated 05/10/2012 by holding that the own fund of the assessee were more than investment so no interest is disallowable in the year. No contrary facts/decision were brought to our notice, thus, we find no infirmity in the conclusion of the Ld. Commissioner of Income Tax (Appeal), consequently, the impugned ground is dismissed.

7. The next ground pertains to deleting the addition of Rs.2,56,26,588/- while computing book profit u/s 115JB of the Act. The crux of the argument is identical to the ground raises, whereas, the assessee contended that assessee was assessed at regular rate. Considering the totality of facts, we find no infirmity in the conclusion of the Ld. Commissioner of Income Tax (Appeal). The appeal of the Revenue is, therefore, dismissed.

Finally, the appeal of the assessee (ITA No.8489/Mum/2011) is allowed for stastical purposes and the appeals of the Revenue (ITA No.152/Mum/2012 and 1278/Mum/2013) are dismissed.

This order was pronounced in the open court on 05/07/2016.

Sd/-	Sd/-
(Rajendra)	(Joginder Singh)
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य** /JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 05/07/2016

Shekhar, P.S./नि.स.

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**