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

BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER

ITA Nos.26 & 27/M/2015
Assessment Years: 2010-11 & 2011-12

M/s. Centrum Capital Ltd., Bombay Mutual Building, 2nd Floor, Dr. D.N. Road, Fort, Mumbai – 400 001 **PAN: AAACC5099G**	Vs.	DCIT, Circle 2(1), Aayakar Bhavan, Mumbai
(Appellant)		(Respondent)

ITA Nos.18 & 19/M/2015
Assessment Years: 2010-11 & 2011-12

ACIT 2(1)(1), R.No.561, 5th Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400 020	Vs.	M/s. Centrum Capital Ltd., Bombay Mutual Building, 2nd Floor, Dr. D.N. Road, Fort, Mumbai – 400 001 **PAN: AAACC5099G**
(Appellant)		(Respondent)

Present for:
Assessee by : Shri Jehangir Mistri, A.R. with Surendra Nijsure, A.R.
Revenue by : Shri Sujit Bangar, D.R.

Date of Hearing : 26.07.2016
Date of Pronouncement : 19.08.2016

O R D E R

Per Bench:

The above captioned bunch of cross appeals two by the assessee and the two by the Revenue have been directed against the orders of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] of even date 28.10.2014 relevant to assessment year A.Y. 2010-11 and 2011-12 respectively.

2. The sole and common issue raised in all the appeals is regarding the disallowance under section 14A of the Income Tax Act, 1961 read with rule 8D of the Income Tax Rules, 1962.

3. First we take up the appeal of assessee bearing ITA No.26 and cross appeal of the Revenue bearing ITA No.18/M/2015 relevant to A.Y. 2010-11.

ITA No.26 & 18/M/2015 for A.Y. 2010-11

4. The brief facts of the case are that during the assessment proceedings the Assessing Officer (hereinafter referred to as the AO) noted that the assessee for the year under consideration had claimed tax exempt dividend income of Rs.6,75,076/- and tax exempt long term capital gains of Rs.19,62,821/-. When asked to explain as to why the disallowance under section 14A of the Act read with rule 8D of the Income Tax Rules should not be made in respect of tax exempt income, the assessee explained that it had not incurred any expenses to earn the said tax exempt income. The assessee, even, had suo-moto disallowed an amount of Rs.4,70,062/- in its computation of total income. However, the AO did not agree with the above submission of the assessee. He computed the disallowance as per the provisions of section 14A read with rule 8D of the Income Tax Rules, 1962 of Rs.2,65,36,592/-. However, since the assessee at its own had already disallowed a sum of Rs.4,70,062/-, the AO made the addition of the remaining amount of Rs.2,60,66,530/-. Being aggrieved by the above disallowance made by the AO, the assessee preferred appeal before the Ld. CIT(A).

5. It was pleaded before the Ld. CIT(A) that the investments were made by the assessee in its own subsidiaries and associates that certain investments were not capable of earning of exempt income as income there from was includable into the taxable total income of the assessee. Further that the own funds of the assessee were more than the investments made and therefore in the light of the law laid down by the Hon'ble Bombay High Court in the case of

"CIT vs. Reliance Utilities and Power Ltd." (2009) 313 ITR 340 there was a presumption that own funds of the assessee were used for investments and therefore no disallowance on account of interest expenditure was attracted. Further, a plea was also taken that the assessee during the year had also earned interest income and that for computation of interest expenditure, the netting of the interest income and interest expenditure should be done and net interest expenditure should be taken into consideration.

6. After considering the above submissions of the assessee, the Ld. CIT(A), while relying upon the decision of his predecessor in relation to earlier assessment year i.e. A.Y. 2009-10, held that only those investments income from which was exempt were to be taken for taking the average value of investment for computing disallowance as per rule 8D. He, therefore, directed the AO to exclude the investments, the income from which was not exempt, for the purpose of computation of disallowance under section 14A read with rule 8D. The Ld. CIT(A) further, while relying upon the various decisions of the Tribunal, held that the net interest expenditure is to be taken into consideration for the purpose of computing the disallowance of interest expenditure under section 14A.

7. Being aggrieved by the above decision of the Ld. CIT(A), the assessee has come in appeal contending that since the own funds of the assessee were more than the investments made, hence as per the law laid down by the Hon'ble Bombay High Court in the case of "CIT vs. Reliance Utilities and Power Ltd." (supra), the presumption would be that the assessee had used its own funds for the purpose of making investments; hence, no disallowance of interest expenditure under section 14A was attracted in the case of the assessee. It has been further pleaded that since the investments have been made in subsidiary and associate companies which were strategic investments and the same were not made for the purpose of earning of exempt income nor such investments had yielded any exempt income, hence, those investments

should have been excluded from the total investments while applying rule 8D. Certain other grounds have also been taken regarding the disallowance of interest incurred on bank fees taken for trading in bonds, income from which was chargeable to income tax and regarding the disallowance of bank charges etc.

8. The Revenue, on the other hand, has come in appeal agitating the action of the Ld. CIT(A) in directing the AO to exclude the investments made in foreign companies and to consider the net interest expenditure for the purpose of computation of disallowance under rule 8D(2)(ii).

9. We have considered the rival contentions. The undisputed facts are that most of the investments have been made by the assessee in the group and associate companies which were strategic investments and no dividend income has been received by the assessee on those investments. It is also undisputed that the own funds of the assessee were more than the investments made during the year. The Ld. Counsel for the assessee has brought our attention to page 7 of the impugned order wherein the submissions of the assessee have been recorded by the Ld. CIT(A) and it has been mentioned that the own funds of the assessee as on 31.03.09 were at Rs.1,99,30,02,119/- and as on 31.03.10 were at Rs.2,03,79,45,490/-. The investments as stood on 31.03.09 were at Rs.94,20,52,398/- and as on 31.03.10 were at Rs.93,23,07,397/-. A perusal of the above, reveals that the own funds of the assessee at the end of the financial year have increased, whereas the investments at the end of year have decreased to some extent. Moreover, the amount of investments is much lower than the own funds available to the assessee. The Hon'ble Bombay High Court in the case of "CIT vs. Reliance Utilities and Power Ltd." (2009) 313 ITR 340 (Bom) has held that if there are funds available, both interest free and over draft and/or loans taken, then a presumption would arise that investments would be out of the interest free fund generated or available with the company, if the interest free funds were sufficient to meet the investment. Similar view has

been taken in the case of "CIT vs. HDFC Bank Ltd." in ITA No.330 of 2012 decided on 23rd July 2014 by the Hon'ble Bombay High Court. In the light of the above cited decisions, even otherwise, no interest disallowance is attracted in relation to investments made by the assessee as the assessee had its own sufficient funds for the purpose of making investments.

10. Further, the Hon'ble Delhi High Court in the case of Joint Investment Private Limited (supra) has held that section 14 of the Act or rule 8D cannot be interpreted so as to mean that the entire tax exempt income of the assessee is to be disallowed. That the window for disallowance is indicated in Section 14A, and is only to the extent of disallowing expenditure incurred by the assessee in relation to the tax exempt income. This proportion or portion of the tax exempt income surely cannot swallow the entire amount of tax exempt income. The Hon'ble Delhi High Court in the case of "Chem Investments vs. CIT" (2015) 61 taxman.com 118 has held that section 14A will not apply if no exempt income is received or receivable during the relevant previous year and that the expression 'does not form part of the total income', in section 14A of the Act envisages that there should be an actual receipt of income which is not included in the total income during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. Almost identical issue has been taken by the Hon'ble Allahabad High Court in the case of "CIT Kanpur vs. M/s. Shivam Motors Pvt. Ltd." in ITA No.88 of 2014 vide order dated 05.05.2014; by the Hon'ble Gujarat High Court in the case of "CIT vs. Corrtecth Energy Pvt. Ltd." in ITA No.239 of 2014 vide order dated 24.03.2014 and by the Hon'ble Bombay High Court in the case of "CIT vs. M/s. Delite Enterprises" in ITA No.110 of 2009 vide order dated 26.02.09.

11. We find that in the case in hand, the assessee has claimed exempt dividend income of Rs.6,75,076/- and exempt long term capital gain of Rs.19,62,821/-. The AO, however, made a disallowance of Rs.2,65,36,592/- in

relation to expenditure incurred for earning of the above exempt income. The assessee itself has disallowed an amount of Rs.4,70,062/- in its computation of income. Considering the proposition of law laid down by the various High Courts as discussed above, the disallowance in this case is restricted to the extent that is suo-moto offered by the assessee at Rs.4,70,062/-.

12. In view of the above, the appeal of the assessee is treated as partly allowed whereas the appeal of the Revenue is treated as dismissed.

13. Now coming to the cross appeal of assessee bearing ITA No.27/M/2015 and Revenue's appeal bearing ITA No.19/M/2015 relevant to A.Y. 2011-12.

ITA No.27 & 19/M/2015 for A.Y. 2011-12

14. The assessee, during the year, had earned exempt dividend income of Rs.3,41,877/- and exempt long term capital gain of Rs.37,78,124/-. The AO, however, has made disallowance of Rs.2,76,43,070/- under section 14A on account of expenditure incurred for earning of the exempt income. The facts for the year under consideration and the nature of investments are identical as to that of A.Y. 2010-11. The major part of the investments were made in the group/associate companies of the assessee for strategic purposes and the own funds of the assessee were more than the investments made. The assessee has, suo-moto, disallowed an amount of Rs.16,71,322/- as expenditure in relation to earning of exempt income. In view of our findings given above and in the light of the various case laws as discussed above, the disallowance in this case is also restricted to that what has been suo-moto offered by the assessee at Rs.16,71,322/-.

15. In view of the above, this appeal of the assessee is treated as partly allowed whereas the appeal of the Revenue is treated as dismissed.

16. In the result, the appeals of the assessee are partly allowed and that of the Revenue are dismissed.

Order pronounced in the open court on 19.08.2016.

Sd/-	**Sd/-**
(D. Karunakara Rao)	**(Sanjay Garg)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated: 19.08.2016.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.