

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES, 'D', MUMBAI**

**BEFORE S/SHRI D.K.AGARWAL (JM) AND PRAMOD KUMAR(AM)**

**ITA No.6209/Mum/2010  
(Assessment Year: 2006-07)**

Remi Sales And Engineering Ltd., Plot No.11, Cama Industrial Estate, Goregaon (East), Mumbai-400063. PAN: AAACRO421M	V/s	Addl. Commissioner of Income Tax, Range 3(3), Room No.609, Aayakar Bhavan, M K Road, Mumbai-400020.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Date of Hearing	: 2.1.2012
Date of Pronouncement	: 2.1.2012

Appellant by : None  
Respondent by : Shri C.G.K.Nair

**ORDER**

**PER D.K.AGARWAL (JM)**

This appeal preferred by the assessee is directed against the order dated 5.4.2010 passed by the Id. CIT(A) for the Assessment Year 2006-07.

2. At the time of hearing, none attends on behalf of the assessee nor filed any application for adjournment of the case. In the absence thereof, it was decided to dispose of the appeal ex-parte, qua the assessee, on merits after hearing the learned D.R.

3. Briefly stated facts of the case are that the assessee company is engaged in the business of

Trading in Electric Motors, Fans, Laboratory equipments and generation of Wind Power filed return declaring total income at Rs.11,60,151/-. During the course of assessment proceedings, it was interalia observed by the AO that the assessee has claimed dividend income of Rs.12,840/- being exempt u/s 10(34) of the Income Tax Act, 1961(in short the Act). On being asked to give details of expenses incurred for earning exempt income and as to why the expenses incurred and claimed in respect of exempt income should not be disallowed, the assessee stated that no expenses were incurred to earn the dividend income. However, the AO did not accept the assessee's explanation. The AO after invoking the provisions of section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 added a sum of Rs.1,26,440/- to the total income of the assessee as per working given at page 3 of the assessment order and accordingly completed the assessment at a book profit u/s 115JB at Rs.1,37,31,103/- vide order dated 24.12.2008 passed u/s 143(3) of the Act. On appeal, the Id. CIT(A) while agreeing with the views of the AO and relying on the decision of the Special Bench of the

Tribunal in Daga Capital Management Pvt. Ltd. (117 ITD 169) (Mum)(SB) confirmed the disallowance made by the AO.

4. Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us challenging in all the grounds the sustenance of disallowance of Rs.1,26,440/- made by the AO u/s 14A of the Act read with Rule 8D of the Income Tax Rules.

5. At the time of hearing, the Id. DR submits that the issue stands covered by the judgment of the Hon'ble Jurisdictional High Court in Godrej & Boyce Mfg. Co. Ltd., therefore, the issue may be set aside to the file of the AO.

6. Having carefully heard the submissions of the Id.DR. and perusing the material available on record, we find merit in the plea of the Ld.DR that the issue stands covered by the recent judgment of the Hon'ble Jurisdictional High Court in Godrej & Boyce Mfg. Co. Ltd., V/s. DCIT in (2010) 328 ITR 81 (Bom.), wherein Their Lordships after considering the decision of the Tribunal in Daga Capital Management Pvt. Ltd. 117 ITD 169 (Mum)(SB), while holding that the provisions

of sub sections (2) and (3) of sec.14A of the Act are constitutionally valid have held vide placitum 88(vi) appearing at page 138 of the 328 ITR as under :

“ (vi) Even prior to Assessment Year 2008-09, when Rule 8D was not applicable, the Assessing Officer has to enforce the provisions of sub section (1) of section 14A. For that purpose, the Assessing Officer is duty bound to determine the expenditure which has been incurred in relation to income which does not form part of the total income under the Act. The Assessing Officer must adopt a reasonable basis or method consistent with all the relevant facts and circumstances after furnishing a reasonable opportunity to the assessee to place all germane material on the record;”

Respectfully following the above judgment, we set aside the orders passed by the revenue authorities on this account and send back the matter to the file of the Assessing Officer to decide the same afresh in the light of the directions of the Hon'ble Jurisdictional High Court in the above cited case after providing reasonable opportunity of being heard to the assessee and accordingly the grounds taken by the assessee are partly allowed for statistical purposes.

7. In the result, the assessee's appeal is partly allowed for statistical purposes.

Order pronounced in the open court on 2<sup>nd</sup> Jan.,2012.

Sd  
**(PRAMOD KUMAR)**  
**ACCOUNTANT MEMBER**

sd  
**(D.K.AGARWAL)**  
**JUDICIAL MEMBER**

Mumbai, Dated 2<sup>nd</sup> January,2012

SRL:

Copy to:

1. Appellant
2. Respondent
3. CIT Concerned
4. CIT(A) concerned
5. DR concerned Bench
6. Guard file.

True copy

BY ORDER

ASSTT. REGISTRAR,  
ITAT, MUMBAI