IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "E",MUMBAI
BEFORE SHRI P.M. JAGTAP (AM) & SHRI VIVEK VARMA (JM)

I.T.A. No.4346/Mum/2011
(A.Y. 2007-08)

DCIT, CC-38, R.No.32(1), Gr.floor, Aaykar Bhavan, M.K.Road, Mumbai-400 020.	Vs.	Shri Shanti Sarup Reniwal, 302, Sylverton, 102, Wodehouse Rd., Colaba, Mumbai-400 005. PAN: ADMPR3332D
Appellant		Respondent

Appellant by		Shri B. Jaya Kumar.
Respondent by		Shri Reepal G. Tralshawala.

Date of hearing	02-04-2012
Date of pronouncement	09-04-2012

O R D E R

PER VIVEK VARMA , JM :

The appeal has been filed by the revenue against the order of the CIT(A) 41, Mumbai, dated 19/04/2011. The revenue has taken the ground whether CIT(A) is justified in changing the directions given by the predecessor CIT(A) in the effect giving order.

2. The facts are that against the assessment order, the assessee filed an appeal before the CIT(A), wherein CIT(A) in order bearing no. CIT(A)/41/DCCC-38/IT 257/09-10 dated 14/12/2009 gave directions to the AO, saying, " ......In view of the

fact, the AO is directed to work out the disallowance u/s 14A r.w. Rule 8D and add back to the income of the assessee after allowing opportunity to the assessee of being heard and income of the appellant may be enhanced accordingly as per law" (relevant portion only extracted from order giving effect, dated 05/04/2010).

3. The AO giving effect to the direction applied the formula as prescribed under Rule 8D and relying on the Special Bench decision in Daga Management (P) Ltd., which was available with the AO. At that point of time, the decision of Bombay High Court in Godrej & Boyce Manufacturing Co. Ltd. was not there.

4. The matter came up in appeal before ITAT in the assessee's own case and other cases in ITAs No. 453,454,456/M/2010 & 458 & 455/M/2010. During the continuance of these appeals, Hon'ble Bombay High Court came up with the decision in Godrej & Boyce Manufacturing Co. Ltd. V/s DCIT, reported in 328 ITR 81 (Bom), wherein the Hon'ble Bombay High Court held that the operation of Rule 8D shall only be from 2008-09 onwards, and not being retrospective.

5. Since the issue is now settled by the Hon'ble Bombay High Court, the CIT(A) has given new directions to the AO, based on the decision of Hon'ble Bombay High Court. At this moment we do not feel necessary to disturb the present findings and directions as given by the CIT(A) in the impugned order. We therefore, uphold the same.

6. The appeal filed by the revenue is dismissed.

Order pronounced on the 09th day of April, 2012.

Sd/-	**Sd/-**
(P.M. JAGTAP)	**(VIVEK VARMA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai: 09th April , 2012.

NG:

Copy to :
1. Department.
2.Assessee.
3 CIT(A)-41,Mumbai.
4 CIT,Central –III, Mumbai.
5.DR,"E" Bench,Mumbai.
6.Master file.
(TRUE COPY)

BY ORDER,

Asst.Registrar, ITAT, Mumbai.

	Details	Date	Initials	Designation
1.	Draft dictated on	02-04-2012		Sr.PS/
2.	Draft Placed before author	03-04-2012		Sr.PS/
3.	Draft proposed & placed before the Second Member			JM/AM
4.	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/
6.	Kept for pronouncement on			Sr.PS/
7.	File sent to the Bench Clerk			Sr.PS/
8.	Date on which the file goes to the Head clerk			
9.	Date on which file goes to the AR			
10.	Date of dispatch of order			