आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, F,मुंबई ।

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

श्री जोगिन्दर सिंह, न्यायिक सदस्य **एवं**

श्री रमित कोचर, लेखा सदस्य, के समक्ष

BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA NO 4439/Mum/2013

Assessment year: - 2008-09

DCIT,Central Circle-18 & 19 Mumbai	v.	Viraj Profiles Limited 10,Imperial Chamber,Wilson Road, Ballard Estate,Mumbai-400 038
PAN/GIR No. AABCV1740N		
Appellant		Respondent

Revenue By	Ms. Lata Sunder
Assessee By	Ms Bhumika Vora

Date of hearing	08.10.2015
Date of pronouncement	21.10.2015

ORDER

Per Ramit Kochar, Accountant Member

This appeal by the Revenue is directed against the order dated 15.03.2013 of the Commissioner of Income Tax (Appeals)-39,Mumbai(Hereinafter called "the CIT(A)") for the assessment year 2008-09.

The Revenue has raised following grounds of appeal in the memo of appeal filed :-

> *"1.0 On the facts and circumstances of the case and in law, the Ld. CIT(A)has erred in deleting the addition made under section 14A r.w. 115JB disregarding the provisions of section 115JB(2) r.w. Explanation-1 r.w. clause f of which requires any expenditure in relation to the exempt income also to be taken into consideration while computing the book profit under section 115JB."*

2. The brief facts of the case are that the assessee company is engaged in the business of manufacturing of S.S. Billets, Angles, Flat Bars, Channels, S.S.Wire Rods etc. . During the year under consideration , the assessee company derived income of Rs.28,19,03,964/- from Business & Profession after claiming deduction of Rs.1,20,36,43,184/- u/s 10B and Rs.67,03,000/- u/s 80G of the Income Tax Act,1961(Hereinafter called "the Act").

3. During the course of the assessment proceedings, the assessing officer (hereinafter called "the AO") noticed that the assessee company has investments in equity shares of various companies totaling to Rs.51,03,59,701/- as on 31-03-2008. The assessee company was asked to explain as to why disallowance u/s 14A of the Act read with Rule 8D of Income Tax Rules, 1962 should not be invoked in respect of the exempt income. In response , the assessee company submitted that the assessee company has not earned any exempt income during the relevant

assessment year and with prejudice to the above contentions, the assessee company submitted the working of disallowance u/s 14A of the Act. The AO rejected the contentions of the assessee company and held that since the assessee company has blocked its funds in investments not yielding any income or yielding exempt income , the invocation of Section 14A of the Act is proper. The AO relied upon the decision of Special Bench, ITAT, Mumbai in ITA NO 8057/Mum/03 dated 20.10.2008 in the case of M/s Daga Capital Management Private Limited and held that both direct and indirect expenses are disallowable u/s 14A of the Act which have any relation with the income not chargeable to tax under Act. The AO also relied upon the decision of Hon'ble Bombay High Court in Godrej & Boyce Manufacturing Company Limited v. DCIT (ITA No. 626 of 2010 & WP no. 758 of 2010(Bom.)) and made disallowance of Rs.73,07,018/- u/s 14A of the Act read with Rule 8D(2)(ii) (Rs.58,87,196/-) and 8D(2)(iii)(Rs.14,19,892/-) of Income Tax Rules, 1962.

Similarly for computing book profits u/s 115JB of the Act , the AO added Rs.73,07,018/-being disallowance u/s 14A of the Act read with Rule 8D of Income Tax Rules,1962 being expenditure in relation to the earning of exempt income to the book profit in accordance with clause (f) to explanation 1 to Section 115JB(2) of the Act.

4. Aggrieved by the assessment orders of the AO , the assessee company carried the matter in appeal before the CIT(A) and contended that no disallowance u/s 14A of the Act can be made by the AO as the assessee company has not earned any exempt income during the relevant assessment year. The assessee also submitted that only direct expenditure incurred for earning the exempt income will be hit by Section 14A of the Act and in the case of the assessee company, there are no specific borrowings for investment and therefore there are no identifiable costs that could be attributable for the investment. The CIT(A) upheld the disallowance of Rs.73,07,018/- made by the AO u/s 14A of the Act by holding that the phrase "income which does not form part of total income" used in Section 14A of the Act is not limited to the cases where some income has actually been received and it will also apply to cases, where income is not included in the total income , whether received or not by relying on the decision of Hon'ble Delhi Tribunal in Aquarius Travels Pvt. Ltd. v. ITO (2008) 21 (II) ITCL 521 (Del-Trib.) and also relying on the decision of Delhi Tribunal In Cheminvest Ltd. v. ITO (2009) 121 ITD 318 that whenever any expenditure is incurred in relation to income which does not form part of total income, it has to suffer disallowance irrespective whether any income is earned or not. The CIT(A) held that the assessee company has claimed interest expenditure and it has not been able to demonstrate that the investment has been made solely out of cash flows generated from operations by way of profit, it cannot claim that no interest on borrowings is disallowable. Thus, the CIT(A) confirmed the action of the AO in computing disallowance u/s 14A of the Act read with Rule 8D of Income Tax Rules , 1962 , as mandated by the statute from the assessment year 2008-09 and

onwards and hence, the CIT(A) upheld the disallowance of Rs.73,07,018/- u/s 14A of the Act read with Rule 8D of Income Tax Rules, 1962.

With Respect to the re-computation of the book profit u/s 115JB of the Act by the AO by adding the sum of Rs.73,07,018/- disallowed u/s 14A of the Act, the assessee company submitted before the CIT(A) that disallowance u/s 14A of the Act cannot be added while computing the book profit u/s 115JB of the Act as the provisions of Section14A of the Act are limited for the purpose of computation of income under Chapter IV of the Act and the same cannot be extended to the MAT provisions u/s 115JB of the Act which is a self contained code. The assessee company submitted that no exempt income has been earned during the assessment year. The assessee company also submitted that no expenditure has been incurred by the assessee company in relation to the exempt income. The assessee company submitted that since no amount has been debited to the Profit and Loss Account as referred to in clause (f) to Explanation (1) to Section 115JB(2) of the Act the disallowance made by the AO by invoking the provision of Section 14A of the Act read with Rule 8D of Income Tax Rules, 1962 amounting to Rs.73,07,018/- cannot be increased for the purpose of arriving at the book profit. The assessee company relied upon the following judgments :

a) Apollo Tyres Limited v. CIT 255 ITR 273(SC)
b) CIT v. HCL Connect Systems and Services Limited 305 ITR 409 (SC)
c) ACIT v. Spray Engineering devices Limited (2012) 53 SOT 70 (Chd. Trib.)

5. The CIT(A) allowed the appeal of the assessee company by holding that as observed in Apollo Tyres Limited v. CIT (supra) by Apex court that where Profit and Loss Account has been prepared in accordance with Part II and III of Schedule VI to the Companies Act,1956 and which has been scrutinized and certified by the statutory auditors and relevant authorities, the AO has no power to scrutinize the net profit and loss account except to the extent provided in the explanation to Section 115JB of the Act. The CIT(A) also held that the same view has been reiterated by Hon'ble Bombay High Court in Kinetic Motor Co. Ltd. v. DCIT wherein it has been held that there is no scope for the AO to make adjustment to Book Profits beyond what was authorized by the definition in Explanation1 to Section 115J of the Act. The term book profit has been defined as the net profit as per Profit and Loss Account as adjusted in accordance with the statutory additions and statutory deductions as provided. The CIT(A) held that the AO cannot go beyond the net profit as shown in the Profit and Loss Account except to the extent provided in the explanation to Section 115JB of the Act and hence the CIT(A) held that the AO while computing Book Profit u/s 115JB of the Act cannot make disallowance u/s 14A of the Act as such disallowances are not covered by the exceptions as provided in the explanation to Section115JB of the Act.

6. Aggrieved by the orders of the CIT(A), the Revenue is in appeal before us with respect to the orders of the CIT(A) deleting the additions of Rs.73,07,018/- made u/s 14A read with Section 115JB of the Act disregarding the provisions of Section 115JB(2) read with explanation 1 read with clause f of which requires

any expenditure in relation to the exempt income also to be taken into consideration while computing the book profit u/s 115JB(2) of the Act.

7. The Ld. DR relied upon the orders of the AO and submitted that the explanation 1(f) to Section 115JB(2) of the Act provides for disallowance of the expenditure relatable to any income to which Section10 (other than provisions contained in clause (38) thereof) or section11 or section 12 apply and submitted that AO has rightly added Rs.73,07,018/- u/s 14A read with Section 115JB of the Act with regard to the provisions of Section 115JB(2) read with explanation 1 read with clause f of which requires any expenditure in relation to the exempt income also to be taken into consideration while computing the book profit u/s 115JB(2) of the Act. The Ld DR submitted that for disallowance of expenditure under clause (f) to explanation1 to section 115JB(2) of the Act with respect to income which does not form part of income as provided u/s 10 (except Section 10(38) or Section11 or Section 12 of the Act , it is not necessary that there is any exempt income actually earned or received by the assessee company. The assessee company having made investment in shares to the tune of Rs. 51,03,59,701/- as on 31-03-2008 , the said investment is capable of producing exempt income by way of dividend which is exempt u/s 10(33) of the Act(not Section 10(38) as stipulated in clause (f) to explanation1 to section115JB(2) of the Act).The Ld DR also stated that the CIT(A) has confirmed the action of the AO in computing disallowance of Rs. 73,07,018- u/s 14A of the Act read with Rule 8D of Income Tax Rules , 1962 , as mandated by the statute from the assessment year 2008-09 and onwards while the same is not accepted by the CIT(A) to be

added while computing book profit u/s 115JB (2) of the Act. The Ld. DR relied upon the following decisions to contend that the disallowance made u/s 14A of the Act read with Rule 8D of Income Tax Rules, 1962 can be added to compute Book profits u/s 115JB(2) of the Act and relied upon following decisions:-

1. ITO v. RBK Share Broking Pvt. Ltd. (2013) 37 taxmann.com 128(Mum. Trib.)

2. CIT v. JSW Energy Ltd. (2015) 60 taxmann.com 303(Bom.HC)

3. Dabur India Ltd. v. ACIT (2013) 37 taxmann.com 289(Mum. Trib.)

4. Godrej Consumer Products Limited v. Addl. CIT (2014) 48 taxmann.com 293 (Mum.Trib.)

8. The assessee company on the other hand relied upon the orders of the CIT(A) granting relief to the assessee company. The assessee company relied upon the Mumbai Tribunal decision in the IAT No. 69 & 70/Mum/2009 in the case of Reliance Industrial Infrastructure Limited v. Addl. CIT to contend that no addition can be made to book profit computed u/s 115JB of the Act except as provided under explanation 1 to Section 115JB(2) of the Act. The assessee company reiterated its submissions as made before the authorities below and submitted that that disallowance u/s 14A of the Act cannot be added while computing the book profit u/s 115JB of the Act as the provisions of Section14A

of the Act are limited for the purpose of computation of income under Chapter IV of the Act and the same cannot be extended to the MAT provisions u/s 115JB of the Act which is a self contained code. The assessee company also submitted that no exempt income has been earned during the assessment year. The asssessee company submitted that no expenditure has been incurred by the assessee company in relation to exempt income. The assessee company submitted that since no amount has been debited to the Profit and Loss Account as referred to in clause (f) to Explanation (1) to Section 115JB(2) of the Act, the disallowance made by the AO by invoking the provision of Section 14A of the Act read with Rule 8D of Income Tax Rules, 1962 amounting to Rs.73,07,018/- , the profit as per profit and loss account cannot be increased for the purpose of arriving at the book profit. The assessee company relied upon the following judgments :

a) Apollo Tyres Limited v. CIT 255 ITR 273(SC)
b) CIT v. HCL Connect Systems and Services Limited 305 ITR 409 (SC)
c) ACIT v. Spray Engineering devices Limited (2012) 53 SOT 70 (Chd. Trib.)

9. We have considered the rival contentions, material on records and case laws relied upon by the parties. We have observed that Section 115JB starts with non obstante clause that 'Notwithstanding anything contained in any other provision of this Act….' Which means that this Section has an over-riding effect upon the other provisions of the Act and before we proceed it is important to see the relevant clauses of Section 115JB of the Act which reads as under :

*""[**Special provision for payment of tax by certain companies.**[8]*

[8a] ***115JB.*** *(1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, [9][2012], is less than [10][eighteen and one-half per cent] of its book profit, [11][such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of [10][eighteen and one-half per cent]].*

(2) [12][Every assessee,—

(a) being a company, other than a company referred to in clause (b), shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of [13]Part II of Schedule VI to the Companies Act, 1956 (1 of 1956); or

(b) being a company, to which the proviso to sub-section (2) of section 211 of the Companies Act, 1956 (1 of 1956)[14] is applicable, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of the Act governing such company:]

***Provided** that while preparing the annual accounts including profit and loss account,—*

(i) the accounting policies;

(ii) the accounting standards adopted for preparing such accounts including profit and loss account;

(iii) the method and rates adopted for calculating the depreciation,

shall be the same as have been adopted for the purpose of preparing such accounts including profit and loss account and laid before the company at its annual general meeting in accordance with the provisions of section 210[14] of the Companies Act, 1956 (1 of 1956) :

***Provided further** that where the company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956)[15], which is different from the previous year under this Act,—*

(i) the accounting policies;

(ii) the accounting standards adopted for preparing such accounts including profit and loss account;

(iii) the method and rates adopted for calculating the depreciation,

shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including profit and loss account for such financial year or part of such financial year falling within the relevant previous year.

Explanation [16][1].—For the purposes of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), as increased by—

(a) *.....*

(b) *.....*

(c) *.....*

(d) *.....*

(e) *.....*

(f) *the amount or amounts of expenditure relatable to any income to which [18][section 10 (other than the provisions contained in clause (38) thereof) or [19][***] section 11 or section 12 apply; or]*

.....

if any amount referred to in clauses (a) to (i) is debited to the profit and loss account or if any amount referred to in clause (j) is not credited to the profit and loss account, and as reduced by,—]]]

.....

.....”

We have observed that Section 115JB of the Act starts with non-obstante clause ‘Notwithstanding anything contained in any other provision in this act...” meaning thereby that the Section 115JB shall be applicable notwithstanding any

thing contained in any other provision of the Act and shall have over-riding effect upon other provisions of the Act. The Section 115JB stipulates payment of Minimum Alternate tax based upon the book profit computed as per provisions of Section 115JB(2) of the Act. Book Profit shall be computed as per Section 115JB(2) of the Act which stipulate that Book Profit means net profit as shown in Profit and Loss Account prepared for financial year in accordance with Part II and III of Schedule VI to the Companies Act,1956 , also complying with other conditions as stipulated in Section 115JB(2) of the Act . Such book profit has to be increased by item Nos. (a) to (k) of the said Explanation 1 to Section 115JB of the Act if they are debited to the Profit and Loss Account and from such profit item Nos. (i) to (viii) of the Explanation are to be reduced. The figure arrived at after the above exercise is the book profit of the assessee for the relevant previous years.

The explanation 1 clause (f) to Section 115JB(2) of the Act stipulate that amount of expenditure relatable to any exempt income, other than Section 10(38) of the Act, is liable to be added back to net profit shown in Profit and Loss Account if the amount referred to therein is debited to Profit and Loss Account.

Now, we refer to Section 14A of the Act which reads as under:

"Expenditure incurred in relation to income not includible in total income[87].

*[87a] **14A**. [88][(1)] For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred[89] by the*

assessee in relation to[89] income which does not form part of the total income[89] under this Act.]

[88][(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[90], 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 :]

*[91][**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.]"*

Perusal of Section 14A of the Act provides that it mandates disallowance of expenditure '**in relation'** to the income which does not form part of the total income under the Act while clause (f) in explanation1 to Section 115JB (2) of the Act mandates disallowance of expenditure **'relatable'** to the income to which Section 10 (other than Section 10(38) of the Act) or Section 11 or Section 12 of the Act applies . The close perusal of the both the above provisions reveals that

more or less similar language is used in both the afore-stated provisions. The dividend income is declared on the share investment which is exempt u/s 10(33) of the Act (not Section 10(38) of the Act) . We also note that the clause (f) to explanation 1 to Section 115JB(2) of the Act requires expenditure relatable to the exempt income to be disallowed provided the same is debited to Profit and Loss Account while Section14A(2) of the Act mandates that if the AO is not satisfied with the correctness of the claim of the assessee with regard to the expenditure incurred by the assessee in relation to the income which does not form part of the total income , then disallowance shall be computed in accordance with the prescribed method. Rule 8D of Income Tax Rules, 1962 prescribes the method for computing disallowance of expenditure in relation to earning of exempt income . The said Rule 8D of Income Tax Act,1961 is a machinery provision to compute disallowance of expenditure u/s 14 A of the Act in relation to the income which does not form part of the total income and is held to be applicable w.e.f. assessment year 2008-09 as held by Hon'ble Bombay High Court in Godrej and Boyce Manufacturing Limited(supra) decision . The impugned assessment year under appeal in present case is also assessment year 2008-09 and hence Section 14A of the Act read with Rule 8D of Income Tax Rules ,1962 is applicable. It is axiomatic to assume that the amount computed under Section 14A of the Act read with Rule 8D of Income Tax Rules, 1962 shall have no reference to the amount debited to the Profit and Loss Account and there can not be any disallowance u/s 14A of the Act unless the expenditure is debited to Profit and Loss Account and hence disallowance u/s 14A is always a part of expenditure debited to the Profit and Loss Account. In the instant case

under appeal, the AO has disallowed the expenditure of Rs.73,07,018 computed u/s 14A of the Act read with Rule 8D of Income Tax Rules , 1962 for computing normal taxable income which is upheld by the CIT(A) in the first appeal and the same amount of expenditure of Rs.73,07,018/- is added to compute book profit u/s 115JB of the Act which is computed u/s 14A of the Act read with Rule 8D of Income Tax Rules,1962.Our view is fortified by the following decisions :

1. ITO v. RBK Share Broking Pvt. Ltd. (2013) 37 taxmann.com 128(Mum. Trib.)

2. CIT v. JSW Energy Ltd. (2015) 60 taxmann.com 303(Bom.HC)

3. Dabur India Ltd. v. ACIT (2013) 37 taxmann.com 289(Mum. Trib.)

4. Godrej Consumer Products Limited v. Addl. CIT (2014) 48 taxmann.com 293 (Mum.Trib.)

The assessee company has relied upon on the decision of Mumbai Tribunal in Reliance Industrial Infrastructure Ltd. v. Addl. CIT in ITA No 69 & 70/ Mum/2009 whereby the Mumbai Tribunal held that reasonable disallowance it to be made u/s 14A of the Act and Section 14A of the Act cannot be imported into clause (f) of the explanation 1 to Section 115JB of the Act to make disallowance u/s 115JB of the Act as the said appeal pertains to the assessment year 2005-06 and 2006-07 which are prior to

assessment year 2008-09 , while the instant case under appeal pertains to assessment year 2008-09 from which assessment year onwards, Rule 8D of Income Tax Rules, 1962 is held to be applicable by Hon'ble Bombay High Court in the judgment in the case of Godrej and Boyce Manufacturing Company Limited(supra). We also note that decision in Reliance Industrial Infrastructure Limited (supra) is a prior decision than the decisions rendered by Mumbai Tribunal in ITO v. RBK Share Broking Pvt. Ltd(supra),Godrej Consumer Products Limited v. Addl. CIT (supra) and Dabur India Ltd v. ACIT(supra).

Similarly, the assessee company has relied upon the decision of Appolo Tyres Limited 255 ITR 273(SC) and in the above decision, the Apex Court has held as under:

*"**3.** The brief facts necessary for the disposal of first of the above questions are as follows :*

The assessee-company while determining its net profit for the relevant accounting year has provided for arrears of depreciation in its profit and loss account which according to the revenue is not in accordance with Parts II and III of Schedule VI to the Companies Act, 1956 (hereinafter referred to as the "Companies Act"). Hence, the assessing officer while considering the case of the assessee-company under section 115J of the Income Tax Act recomputed the said profit and loss account of the company so as to exclude the provision made for arrears of depreciation. The said action of the assessing officer in

questioning the correctness of the accounts maintained by the company was challenged by the company before the Income Tax Appellate Tribunal (hereinafter referred to as "the Tribunal") which among other things held that the assessing officer has no authority to reopen the accounts of a company which is certified by the auditors of the company as having been maintained in accordance with the provisions of the Companies Act and which account has been accepted in the general meeting of the company as well as by the Registrar of Companies. This view of the Tribunal was not accepted by the High Court which held that the assessing officer has the authority to examine whether the accounts of the company have been maintained in accordance with the requirement of sub-section (1A) of section 115J and in that process if he finds that the accounts of the company are not in accordance with the provisions of the Companies Act, he could make the necessary changes before proceeding to assess the company for tax under the Explanation to section 115J of the Income Tax Act.

The relevant part of section 115J of the Income Tax Act reads as follows :

"115J. (1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee being a company (other than a company engaged in the business of generation or distribution of electricity), the total income, as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1-4-1988 but before the 1-4-1991 (hereafter in this section referred to as the "relevant previous year"), is less than thirty per cent of its book profit, the total income of such assessee

chargeable to tax for the relevant previous year shall be deemed to be an amount equal to thirty per cent of such book profit.

(1A) Every assessee, being a company, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (1 of 1956).

Explanation.-For the purposes of this section, 'book profit' means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (1A), as increased by

(a) the amount of income-tax paid or payable, and the provision therefor ; or

(b) the amounts carried to any reserves (other than the reserves specified in section 80HHD or sub-section (1) of section 33AC), by whatever name called ; or

(c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities ; or

(d) the amount by way of provision for losses of subsidiary companies; or

(e) the amount or amounts of dividends paid or proposed ; or

(f) the amount or amounts of expenditure relatable to any income to which any of the provisions of Chapter III applies ; or

(g) the amount withdrawn from the reserve account under section 80HHD, where it has been utilised for any purpose other than those referred to in sub-section (4) of that section ; or

(h) the amount credited to the reserve account under section 80HHD, to the extent that amount has not been utilised within the period specified in sub-section (4) of that section;

(ha) the amount deemed to be the profits under sub-section (3) of section 33AC ;

If any amount referred to in clauses (a) to (f) is debited or, as the case may be, the amount referred to in clauses (g) and (h) is not credited to the profit and loss account, and as reduced by

(i) the amount withdrawn from reserves (other than the reserves specified in section 80HHD) or provisions, if any such amount is credited to the profit and loss account :

Provided that, where this section is applicable to an assessee in any previous year (including the relevant previous year), the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1-4-1988, shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this Explanation ; or

(i) the amount of income to which any of the provisions of Chapter III applies, if any such amount is credited to the profit and loss account ; or

(ii) the amounts (as arrived at after increasing the net profit by the amounts referred to in clauses (a) to (f) and reducing the net profit

by the amounts referred to in clauses (i) and (ii) attributable to the business, the profits from which are eligible for deduction under section 80HHC or section 80HHD ; so, however, that such amounts are computed in the manner specified in sub-section (3) or sub-section (3A) of section 80HHC or sub-section (3) of section 80HHD, as the case may be ; or

(iv) the amount of the loss or the amount of depreciation which would be required to be set off against the profit of the relevant previous year as if the provisions of clause (b) of the first proviso to sub-section (1) of section 205 of the Companies Act, 1956 (1 of 1956), are applicable.

(2) Nothing contained in sub-section (1) shall affect the determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or years under the provisions of sub-section (2) of section 32 or sub-section (3) of section 32A or clause (ii) of sub-section (1) of section 72 or section 73 or section 74 or sub-section (3) of section 74A or sub-section (3) of section 80J."

5. *For deciding this issue, it is necessary for us to examine the object of introducing section 115J in the Income Tax Act which can be easily deduced from the Budget Speech of the then Finance Minister of India made in Parliament while introducing the said section which is as follows CIT v. Appollo Tyres Ltd. (supra) :*

"It is only fair and proper that the prosperous should pay at least some tax. The phenomenon of so-called 'zero-tax' highly profitable companies deserves

attention. In 1983, a new section 80VVA was inserted in the Act so that all profitable companies pay some tax. This does not seem to have helped and is being withdrawn. I now propose to introduce a provision whereby every company will to have to pay a 'minimum corporate tax' on the profits declared by it in its own accounts. Under this new provision, a company will pay tax on at least 30 per cent of its book profit. In other words, a domestic widely held company will pay tax of at least 15 per cent of its book profit. This measure will yield a revenue gain of approximately Rs. 75 crores."

6. *The above speech shows that the income-tax authorities were unable to bring certain companies within the net of income-tax because these companies were adjusting their accounts in such a manner as to attract no tax or very little tax. It is with a view to bring such of these companies within the tax net that section 115J was introduced in the Income Tax Act with a deeming provision which makes the company liable to pay tax on at least 30 per cent of its book profits as shown in its own account. For the said purpose, section 115J makes the income reflected in the company's books of account the deemed income for the purpose of assessing the tax. If we examine the said provision in the above background, we notice that the use of the words "in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act" was made for the limited purpose of empowering the assessing authority to rely upon the authentic statement of accounts of the company. While so looking into the accounts of the company, an assessing officer under the Income Tax Act has to accept the authenticity of the accounts with reference to the provisions of the Companies Act which obligates the company to maintain its account in a manner provided by the Companies Act and the same to*

be scrutinised and certified by the statutory auditors and will have to be approved by the company in its general meeting and thereafter to be filed before the Registrar of Companies who has a statutory obligation also to examine and satisfy that the accounts of the company are maintained in accordance with the requirements of the Companies Act. In spite of all these procedures contemplated under the provisions of the Companies Act, we find it difficult to accept the argument of the revenue that it is still open to the assessing officer to rescrutinise this account and satisfy himself that these accounts have been maintained in accordance with the provisions of the Companies Act. In our opinion, reliance placed by the revenue on sub-section (1A) of section 115J of the Income Tax Act in support of the above contention is misplaced. Sub-section (1A) of section 115J does not empower the assessing officer to embark upon a fresh inquiry in regard to the entries made in the books of account of the company. The said sub-section, as a matter of fact, mandates the company to maintain its account in accordance with the requirements of the Companies Act which mandate, according to us, is bodily lifted from the Companies Act into the Income Tax Act for the limited purpose of making the said account so maintained as a basis for computing the company's income for levy of income-tax. Beyond that, we do not think that the said sub-section empowers the authority under the Income Tax Act to probe into the accounts accepted by the authorities under the Companies Act. If the statute mandates that income prepared in accordance with the Companies Act shall be deemed income for the purpose of section 115J of the Act, then it should be that income which is acceptable to the authorities under the Companies Act. There cannot be two incomes one for the purpose of the Companies Act and another for

the purpose of income-tax both maintained under the same Act. If the Legislature intended the assessing officer to reassess the company's income, then it would have stated in section 115J that "income of the company as accepted by the assessing officer". In the absence of the same and on the language of section 115J, it will have to held that view taken by the Tribunal is correct and the High Court has erred in reversing the said view of the Tribunal.

Therefore, we are of the opinion, the assessing officer while computing the income under section 115J has only the power of examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The assessing officer thereafter has the limited power of making increases and reductions as provided for in the Explanation to the said section. To put it differently, the assessing officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation to section 115J."

The Hon'ble Supreme Court in above decision has held that the AO cannot tinker with the profit and loss prepared by the assessee company in accordance with the Provisions of The Companies Act,1956 and which are certified by the statutory auditors and approved by the Company in Annual General Meeting and scrutinised by the Registrar of Companie to be so maintained in accordance with the Provisions of the Companies Act, 1956 . Perusal of Section 115JB of the Act will reveal that the tinkering with the Profit and Loss Account as prepared in accordance with the Provisions of The Companies Act , 1956 is permitted to the extent provided in explanation 1 to Section 115JB(2) of the Act. We also note

that clause (f) to explanation 1 to Section 115JB(2) of the Act permit the Book profit to be increased with the expenditure relatable to any income to which Section 10 (other than Section 10(38) of the Act), Section 11 or Section12 of the Act applies and hence the above decision in Apollo Tyres Limited in 255 ITR 273(SC) is not applicable to the facts of the case.

The assessee company has relied upon the decision of Hon'ble Supreme Court in HCL Connect Systems and Services Limited 305 ITR 409(SC). Infact this judgment of Hon'ble Supreme Court instead of advancing the case of the assessee company support the proposition adopted by us that adjustment to book profit as per explanation 1 to Section 115JB(2) of the Act is permitted . The relevant extracts of the judgment of Hon'ble Supreme Court in HCL Connect Systems and Services Limited (supra) is as under:

*"**5.** For deciding this issue, it is necessary for us to examine the object of introducing section 115J in the Income Tax Act which can be easily deduced from the Budget Speech of the then Finance Minister of India made in Parliament while introducing the said section which is as follows CIT v. Appollo Tyres Ltd. (supra) :*

"It is only fair and proper that the prosperous should pay at least some tax. The phenomenon of so-called 'zero-tax' highly profitable companies deserves attention. In 1983, a new section 80VVA was inserted in the Act so that all profitable companies pay some tax. This does not seem to have helped and is being withdrawn. I now propose to introduce a provision whereby every company will to have to pay a 'minimum corporate tax' on the profits declared

by it in its own accounts. Under this new provision, a company will pay tax on at least 30 per cent of its book profit. In other words, a domestic widely held company will pay tax of at least 15 per cent of its book profit. This measure will yield a revenue gain of approximately Rs. 75 crores."

6. *The above speech shows that the income-tax authorities were unable to bring certain companies within the net of income-tax because these companies were adjusting their accounts in such a manner as to attract no tax or very little tax. It is with a view to bring such of these companies within the tax net that section 115J was introduced in the Income Tax Act with a deeming provision which makes the company liable to pay tax on at least 30 per cent of its book profits as shown in its own account. For the said purpose, section 115J makes the income reflected in the company's books of account the deemed income for the purpose of assessing the tax. If we examine the said provision in the above background, we notice that the use of the words "in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act" was made for the limited purpose of empowering the assessing authority to rely upon the authentic statement of accounts of the company. While so looking into the accounts of the company, an assessing officer under the Income Tax Act has to accept the authenticity of the accounts with reference to the provisions of the Companies Act which obligates the company to maintain its account in a manner provided by the Companies Act and the same to be scrutinised and certified by the statutory auditors and will have to be approved by the company in its general meeting and thereafter to be filed before the Registrar of Companies who has a statutory obligation also to examine and satisfy that the accounts of the company are maintained in accordance with the*

requirements of the Companies Act. In spite of all these procedures contemplated under the provisions of the Companies Act, we find it difficult to accept the argument of the revenue that it is still open to the assessing officer to rescrutinise this account and satisfy himself that these accounts have been maintained in accordance with the provisions of the Companies Act. In our opinion, reliance placed by the revenue on sub-section (1A) of section 115J of the Income Tax Act in support of the above contention is misplaced. Sub-section (1A) of section 115J does not empower the assessing officer to embark upon a fresh inquiry in regard to the entries made in the books of account of the company. The said sub-section, as a matter of fact, mandates the company to maintain its account in accordance with the requirements of the Companies Act which mandate, according to us, is bodily lifted from the Companies Act into the Income Tax Act for the limited purpose of making the said account so maintained as a basis for computing the company's income for levy of income-tax. Beyond that, we do not think that the said sub-section empowers the authority under the Income Tax Act to probe into the accounts accepted by the authorities under the Companies Act. If the statute mandates that income prepared in accordance with the Companies Act shall be deemed income for the purpose of section 115J of the Act, then it should be that income which is acceptable to the authorities under the Companies Act. There cannot be two incomes one for the purpose of the Companies Act and another for the purpose of income-tax both maintained under the same Act. If the Legislature intended the assessing officer to reassess the company's income, then it would have stated in section 115J that "income of the company as accepted by the assessing officer". In the absence of the same and on the language of section 115J, it will have

to held that view taken by the Tribunal is correct and the High Court has erred in reversing the said view of the Tribunal.

Therefore, we are of the opinion, the assessing officer while computing the income under section 115J has only the power of examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The assessing officer thereafter has the limited power of making increases and reductions as provided for in the Explanation to the said section. To put it differently, the assessing officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation to section 115J."

The assessee company has also relied upon the decision of Chandigarh Tribunal in the case of ACIT v. Spray Engineering Devices Limited (2012) 53 SOT 70(Chd.) whereby it was held that the AO has limited power to tinker with the Profit and Loss prepared as per Companies Act,1956 to the extent of explanation to section 115JB of the Act , which does not advance the case of the assessee company in view of clause (f) to explanation 1 to Section 115JB of the Act.

The assessee company has raised the contention that it has not earned any exempt income during the assessment year and hence no disallowance can be made of expenditure relatable to earning of income to which section 10(other than Section 10(38) of the Act) or Section11 or Section 12 of the Act applies in the absence of receipt of any such exempt income. We find that this argument of the assessee company in view of the following reasons:

1. The Revenue has issued circular no 5/2014 dated 11-2-2014 that even in case of absence of exempt income , Section 14A disallowance shall be made in case the asssessee has made investments which are capable of yielding exempt income even though there might not be an actual receipt of exempt income . The afore-stated circular is reproduced here under:

"SECTION 14A OF THE INCOME-TAX ACT, 1961, READ WITH RULE 8D OF THE INCOME-TAX RULES, 1962 - EXPENDITURE INCURRED IN RELATION TO INCOME NOT INCLUDIBLE IN TOTAL INCOME - CLARIFICATION ON DISALLOWANCE OF EXPENSES UNDER SECTION 14A IN CASES WHERE CORRESPONDING EXEMPT INCOME HAS NOT BEEN EARNED DURING THE FINANCIAL YEAR

CIRCULAR NO.5/2014 [F.NO.225/182/2013-ITA.II], DATED 11-2-2014

Section 14A of the Income-tax Act, 1961 ['Act'] provides for disallowance of expenditure in relation to income not "includible" in total income.

2. *A controversy has arisen in certain cases as to whether disallowance can be made by invoking section 14A of the Act even in those cases where no income has been earned by an assessee which has been claimed as exempt during the financial year.*

3. *The matter has been examined in the Board. It is pertinent to mention that section 14A of the Act was introduced by the Finance Act, 2001 with retrospective effect from 01.04.1962. The purpose for introduction of section*

14A with retrospective effect since inception of the Act was clarified vide Circular No. 14 of 2001 as under:

"Certain incomes are not includible while computing the total income, as these are exempt under various provisions of the Act. There have been cases where deductions have been claimed in respect of such exempt income. This in effect means that the tax incentive given by way of exemptions to certain categories of income is being used to reduce also the tax payable on the non-exempt income by debiting the expenses incurred to earn the exempt income against taxable income. This is against the basic principles of taxation whereby only the net income, i.e., gross income minus the expenditure, is taxed. On the same analogy, the exemption is also in respect of the net income. Expenses incurred can be allowed only to the extent they are relatable to the earning of taxable income".

Thus, legislative intent is to allow only that expenditure which is relatable to earning of income and it therefore follows that the expenses which are relatable to earning of exempt income have to be considered for disallowance, irrespective 6f the fact whether any such income has been earned during the financial year or not.

***4.** The above position is further clarified by the usage of term 'includible' in the Heading to section 14A of the Act and also the Heading to Rule-8D of I.T. Rules, 1962 which indicates that it is not necessary that exempt income should necessarily be included in a particular year's income, for disallowance to be triggered. Also, section 14A of the Act does not use the*

word "income of the year" but "income under the Act". This also indicates that for invoking disallowance under section 14A, it is not material that assessee should have earned such exempt income during the financial year under consideration.

5. *The above position is further substantiated by a language used in Rule 8D(2)(ii) & 8D(2)(iii) of I.T. Rules which are extracted below:*

"(ii) in a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt of amount computed in accordance with the following formula, namely:—

*A*B/C*

Where .....

B=the average of value of investment, income from which does not or shall not form part of the total income as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;"

(iii) an amount equal to one-half percent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance-sheet of the assessee, on the first day and the last day of the previous year."

(Emphasis added)

6. *Thus, in light of above, Central Board of Direct Taxes, in exercise of its powers under section 119 of the Act hereby clarifies that Rule 8D read with*

section 14A of the Act provides for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income.

7. *This may be brought to the notice of all concerned."*

We are also guided by the decision of Special Bench , Delhi Tribunal in the case of Cheminvest Limited (2009) 121 ITD 318(SB) which has held as under:

*"**17.** We have heard the parties and considered the rival submissions. In the present case there is no dispute that interest expenditure incurred by the assessee is for borrowing used for the purposes of investment in shares, both held for trading as well as investment purposes. The interest in either case is allowable, in the former case under section 36(1)(iii) and in the later case under section 57 of the Act.*

18. *If any income were exempt from tax because it is not included in the total income by virtue of section 10, section 14A prohibits allowance of any expenditure incurred in relation thereto. Income from deployment of funds in shares earned by way of dividend is not included in total income by virtue of the provisions contained in section 10(34) of the Act, be the shares are held as stock-in-trade or held as investment. This section reads as under:*

"(34) any income by way of dividends referred to in section 115-O.

Explanation.—For the removal of doubts, it is hereby declared that the dividend referred to in section 115-O shall not be included in the total income of the assessee, being a Developer or entrepreneur;

19. *Section 115-O as is referred to in above section reads as under:*

'115-O.(1) Notwithstanding anything contained in any other provision of this Act and subject to the provisions of this section, in addition to the income-tax chargeable in respect of the total income of a domestic company for any assessment year, any amount declared, distributed or paid by such company by way of dividends (whether interim or otherwise) on or after the 1st day of April, 2003, whether out of current or accumulated profits shall be charged to additional income-tax (hereafter referred to as tax on distributed profits) at the rate of twelve and one-half per cent.

*(2) to (5) ******"*

20. *As the dividend income does not form part of total income under the Act the provisions of section 14A would come into play. This section reads as under:*

"14A. Expenditure incurred in relation to income not includible in total income.

(1) For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.

(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."

21. *The allowance of expenditure in relation to dividend income would thus be not admissible in computing the income of an assessee under this Act. It would again be so in both the situations i.e., whether the shares are held as investment as held in Harish Krishnakant Bhatt's case (supra) of Ahmedabad Bench of the Tribunal, as also not disputed by the assessee; or they are held on trading account as stock-in-trade, as held by the Special Bench of the Tribunal in Daga Capital Management's case (supra) wherein the assessee was an intervener. Therefore the contention of the assessee that interest is allowable as business deduction under section 36(1)(iii)/37 of the Act has already settled by the said Special Bench against it.*

22. *The controversy raised in this case is that the assessee had not earned or received any dividend in the year under consideration and, therefore, no disallowance can be made by invoking the provisions of section 14A of the Act. We do not find any force in this contention of the assessee. When the expenditure of interest is incurred in relation to income which does not form part of total income,*

it has to suffer the disallowance irrespective of the fact whether any income is earned by the assessee or not. Section 14A does not envisage any such exception. This is even if the interest paid on borrowings for the purchase of share were allowable under section 57 as an expenditure incurred for earning or making income as held by the Supreme Court in the case of Rajendra Prasad Moody (supra) or under section 36(1)(iii) as an expenditure incurred wholly and exclusively for the purposes of business as held by various decisions right from beginning of the Income-tax Act. When, prior to introduction of section 14A, an expenditure both under sections 36 and 57 was allowable to an assessee without such requirement of earning or receipt of income, we cannot import any such condition when it comes for disallowance of the same expenditure under section 14A of the Act. This is what is held by the Ahmedabad Bench of the Tribunal in the case of Harish Krishnakant Bhatt (supra) when it of observed that interest on monies borrowed for purchase of shares held as investment is not allowable whether or not there is any yield of dividend. It is so held by applying the decision of the Supreme Court in Rajendra Prasad Moody's case (supra) in the reverse case wherein it is that irrespective of dividend receipt, expenditure has to be allowed. Now since dividend is exempt, as a consequence thereof expenditure has to be disallowed.

23. *The contention of Shri Vohra that the decision of the Supreme Court in the case of Rajendra Prasad Moody (supra), dealt with issue of admissibility of deduction in section 57(iii) and the language of the said section is materially different from the language of section 14A of the Act and secondly, that the aforesaid decision was rendered in the context of purchase of shares held as 'investment', in which case*

deduction of expenses is claimed under section 57(iii), whereas in the present case the assessee is undisputedly entitled to deduction of expenses under section 36(1)(iii) of the Act and, therefore, section 14A cannot be applied in the case of a person engaged in the business of dealing in shares claiming deduction under section 36(1)(iii) of the Act, has no force. Though it is true that language of section 57 for allowance of expenditure and the language of section 14A for disallowance of such expenditure are different but it is not so material in deciding the issue. Whereas section 57 allows the expenditure incurred for making or earning the income, section 14A disallows the expenditure 'in relation to income which does not form part of total income'. The term 'expenditure in relation to' is wider in scope and provides for disallowance if it related to income not forming part of total income.

24. *The second aspect of the argument also has no force as the provisions of section 14A are controlling the computation of income and other provisions of the Act and has the supervening effect over other provisions. Therefore, even if the expenditure were allowable under any provision of the Act, it has to suffer the disallowance because of the overriding effect of section 14A of the Act, be that section 36(1)(iii) or section 57 of the Act.*

25. *While considering the said expression incurred for 'making or earning such income', the Supreme Court held that it does not mandate that any income should in fact have been earned as a condition precedent for claiming the expenditure. It observed :—*

"What section 57(iii) requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income. It is the purpose of the expenditure that is relevant in determining the applicability of section 57(iii) and that purpose must be making or earning of income, section 57(iii) does not require that this purpose must be fulfilled in order to qualify the expenditure for deduction. It does not say that the expenditure shall be deductible only if any income is made or earned. There is in fact nothing in the language of section 57(iii) to suggest that the purpose for which the expenditure is made should fructify into any benefit by way of return in the shape of income. The plain natural construction of the language of section 57(iii) irresistibly leads to the conclusion that to bring a case within the section, it is not necessary that any income should in fact have been earned as a result of the expenditure. It may be pointed out that an identical view was taken by this court in Eastern Investments Ltd. v. CIT [1951] 20 ITR 1 , 4 (SC), where interpreting the corresponding provision in section 12(2) of the Indian Income-tax Act, 1922, which was ipsissima verba in the same terms as section 57(iii). Bose J., speaking on behalf of the court, observed :—

"'It is not necessary to show that the expenditure was a profitable one or that in fact any profit was earned.'

It is indeed difficult to see how, after this observation of the court, there can be any scope for controversy in regard to the interpretation of section 57(iii)."

26. *It is true that the Court, while considering the expression 'for the purpose of making or earning such income', held that in order to claim deduction under the*

aforesaid section 57(iii) of the Act, it is not necessary that income should have actually been earned or made. The actual earning or receipt of income on parity of reasoning would also not be a condition for disallowance of such interest under the provisions of section 14A of the Act which employs the expression 'in relation to income which does not form part of the total income'. The ratio of the decision can be used in the converse situation also to hold that even if no income were received, expenditure incurred can be disallowed under section 14A of the Act. The expenditure incurred by way of interest on acquisition of shares is, in the case of the assessee, is allowable deduction in terms of section 36(1)(iii)/37(1) of the Act as the expenditure by way of interest incurred 'for purposes of business', a term wider than 'for making or earning income' as held by the Supreme Court in the case ofMalayalam Plantations Ltd. (supra). At page 150 it says :—

> *"The aforesaid discussion leads to the following result: The expression 'for the purpose of the business' is wider in scope than the expression 'for the purpose of earning profits'. Its range is wide: it may take in not only the day to day running of a business but also the rationalization of its administration and modernization of its machinery...."*

27. *The term 'expenditure incurred in relation to income' used in section 14A is still wider than the 'expenditure incurred for the purposes of business'. Irrespective of the fact that the expenditure incurred by way of interest is an allowable deduction in terms of the aforesaid sections of the Act which introduces a caveat of section 14A providing to disallow expenditure which is otherwise allowable in the circumstances mentioned in that section(s). The Legislature, using the expression 'expenditure in relation to income which does not form part of the total income' in*

section 14A of the Act, in no way indicates that it does not encompass the disallowance of expenditure incurred in relation to the income in absence of actual receipt of income during the relevant previous year. On the contrary, as stated above, the term 'in relation to' is wide enough to include in its sweep the expenditure both 'for making or earning income' and 'incurred wholly and exclusively for the purposes of business carried on by the assessee'.

28. *Let us see whether the words 'does not' appearing in the term 'income which does not form part of total income' in section 14A excludes a case of no earning or non receipt of income from its ambit. When there is no income, it cannot form part of anything and certainly it does not, in any case form part of total income. In a contrast, to put it differently, can one say 'does it form part of total income', the answer is No. The words "does not" of course, denotes the present situation, and not the future events as apprehended by the ld. Counsel to have been contemplated/ attempted by the revenue. In present tense also, 'no income or non receipt of income' does not exist in something and therefore cannot form part of assessee's total income under the Act of the year, not because of its exemption but because of its absence and it is a fact. In such a situation it cannot be said the no disallowance is to be made or that the disallowance is resorted to by the revenue in relation to future income. It is for the present current years' total income which does not include the income from dividend as specie because of its absence. A thing which is absent cannot exist in and consequently does not form part of anything.*

29. *We may refer to the object of introducing the provision of this inserted section 14A by the Finance Act, 2001, with retrospective effect from 1-4-1962 as clarified in the provisions as well as in the memorandum explaining the provisions, notes on*

clauses relating to the Finance Bill, 2001 and in the Board's Circular No. 14 of 2001, dated 22-11-2001 and Circular No. 8 of 2002, dated 27-8-2002 in the following way :—

> *"Certain incomes are not includible while computing the total income as these are exempt under various provisions of the Act. There have been cases where deductions have been claimed in respect of such exempt income. This in effect means that the tax incentive given by way of exemptions to certain categories of income is being used to reduce also the tax payable on the non-exempt income by debiting the expenses incurred to earn the exempt income against taxable income. This is against the basic principles of taxation whereby only the net income, i.e., gross income minus the expenditure, is taxed. On the same analogy, the exemption is also in respect of the net income. Expenses incurred can be allowed only to the extent they are relatable to the earning of taxable income.*
>
> *It is proposed to insert a new section 14A so as to clarify the intention of the Legislature since the inception of the Income-tax Act, 1961 that no deduction shall be made in respect of any expenditure incurred by the assessee in relation to income which does not form part of the total income under the Income-tax Act."*

30. *It is thus clear, that from whatever angle one may look at the transaction, result is the same, viz., when the dividend is not taxable at all the interest pertaining to that would also not be allowable because there is no taxable income of the assessee against which such interest can be allowed. The another way to consider the issue is that if interest is allowable, it would be allowable against*

dividend income and the net dividend income after allowing that, alone would be excluded from total income under section 10(4). Section 14A was inserted to clarify this intention of the Legislature to set the existing controversy on this issue at rest.

31. *In the present case, we find that the borrowed money has been utilized in purchase of shares held both as investment as well as stock-in-trade. As the monies borrowed have been utilized in purchase of shares held, the interest paid on so borrowed monies is allowable against the income from dividend income either as incurred for making or earning dividend income on such shares or as incurred wholly and exclusively for the purposes of business carried by the assessee, if he deals in such shares. It is in both the situations, irrespective of whether or not there is any yield of dividend on the shares purchased. In other words, the interest incurred is to be relatable to earning of dividend on the shares purchased. The dividend income is now exempted from tax by virtue of section 10(34) of the Act and, therefore, as a consequence thereof, the interest paid on borrowed capital utilized in purchase of shares, being the expenditure incurred in relation to dividend income not forming part of assessee's total income, cannot be allowed as a deduction. There is no chargeable income against which it can be allowed as a deduction. It cannot also be allowed against any other taxable income inasmuch as the interest so paid is not relatable to the earning of taxable income. This is what is provided by the Legislature in the scheme of the Income-tax Act even without the existence of section 14A of the Act with retrospective effect from 1-4-1962.*

32. *It is true that the Supreme Court held in Maharastra Sugar Mills Ltd.'s case (supra) that the fact that the income is exempt is not a relevant circumstance and in the case of Rajasthan State Warehousing Corpn.'scase (supra) that if there is*

one indivisible business, the entire expenditure is allowable under section 36(1)(iii) of the Act but these decisions were rendered prior to the introduction of section 14A by the Finance Act, 2001, with retrospective effect and, therefore, they would have no application after introduction of section 14A where the expenditure is not to be allowed if it related to income not included in the total income of the assessee. Similarly, the decisions in the cases of Malyalam Plantation (supra), Birla Cotton Spinning & Weaving Mills Ltd. (supra), Madhav Prasad Jatia (supra) and S.A. Builders Ltd. (supra) had no application in view of the introduction of section 14A in the statute in cases where the expenditure relates to the income which does not form part of the total income under the Act. In the decision of the Mumbai Bench of the Tribunal in the case of Delite Enterprises (P.) Ltd. (supra) the assessee company had made investment in a partnership firm, income from which was exempt from tax under section 10(2A) of the Act. Since investment in the partnership firm was made by the assessee out of borrowed funds, in the assessment orders for the assessment years 2001-02 and 2002-03, the Assessing Officer disallowed interest expenditure claimed by the assessee under section 14A holding that since income derived from the partnership firm would be exempt under section 10(2A) of the Act, the expenditure relatable to the earning of the income was to be disallowed in terms thereof. The appeal preferred by the assessee against the assessment orders was allowed by the CIT(A). In second appeal the Tribunal, after noting the facts that in one year no interest was received from the partnership firms, while in the second year, the interest income was offered for tax, held that since in both the years the assessee had not claimed any exemption under

section 10(2A), there was no question of application of provisions of section 14A of the Act. The observations of the Tribunal read as under :—

> *"For the assessment year 2001-02 the assessee had in fact earned interest of Rs. 99,01,000 and the Assessing Officer has brought it to tax. The first appellate authority has rightly held that this receipt is taxable under the head 'Profits and gains of business or profession' under section 28(v) of the Act. There is no exemption claimed under section 10(2A) of the Act by the assessee. Section 10(14) clearly states that expenditure incurred by the assessee in relation to income which does not form part of total income under the Act will not be allowed. In this case, for both the assessment years, there is no income earned by the assessee which does not form part of the total income under the Act. Under these circumstances we do not see any reason why the claim of the assessee is not allowable under section 36(1)(iii). Coming to the argument of the learned departmental representative that the judgment of the Hon'ble Apex Court in the case of Rajendra Prasad Moody (supra) is not applicable to this case, we find that the Hon'ble Madras High Court in the case of M. Ethurajan (supra) has held that the propositions laid down in Rajendra Prasad Moody's case (supra) for allowability under section 57(iii) are equally applicable for deductions claimed under section 36(1)(iii) or section 37. Thus this argument of the Revenue is without any merit."*

33. *In further appeal preferred by the revenue against the aforesaid order of the Tribunal, the High Court dismissed the question raised, by observing as under :—*

Revenue is in appeal on the following questions :—

"Whether on the facts and in the circumstances of the case and in Law the Hon'ble Tribunal was right in deleting the disallowance made by the Assessing Officer of interest paid by the assessee-company on borrowed funds amounting to Rs. 241.10 lakhs overlooking the fact that the borrowed funds were used by the assessee- company to invest in the capital of another partnership firm and since profits derived by the assessee-company from a partnership firm were exempt from tax under section 10(2A) of the Income-tax Act, the interest expense related to such tax free profits is to be disallowed under section 14A of the Income-tax Act?

.....

Insofar as question (A) is concerned, on facts we find that there is no profit for the relevant assessment year. Hence the question as framed would not arise.

.....

Consequently appeal dismissed."

34. *What the High Court has held is that the question framed does not arise. It does not hold that where no exemption is claimed there can be no question of application of provisions of section 14A of the Act. In any case the Tribunal held that interest income was taxable as business income under section 28(iv) of the Act and in that context the Tribunal held that "in this case, for both the assessment years, there is no income earned by the assessee which does not form part of the total income under the Act." Under these circumstances we do not see any reason why the claim of the assessee was not allowable under section 36(1)(iii). This case does not help the assessee at all as it was not a case of no income at all but a case*

income chargeable to tax under section 28(iv) of the Act and expenditure was in relation thereto.

35. *It has been similarly held by the Mumbai Bench of the Tribunal in the case of Asstt. CIT v. Lafarge India Holding (P.) Ltd. (supra). In that case, the Tribunal held that three conditions should be satisfied before invoking the provisions of section 14A, namely, (i) the assessee should have incurred expenditure; (ii) such expenditure should be in relation to income; and (iii) such income does not form part of the total income under this Act. It is only if these conditions are cumulatively satisfied, the provisions of section 14A are attracted. It then found that the assessee had incurred expenditure in relation to income which is exempt under section 10(33) of the Act as it then existed. The assessee has not earned any dividend income. The only income is interest on fixed deposits with the bank. As against this income, the assessee had claimed expenditure of Rs. 2,69,85,000. Thus, it is seen that in the year in question there is no income of the assessee which is exempt under section 10(33) of the Act. Relying on the decision by the Mumbai Bench of the Tribunal in the case of World Network Services (P.) Ltd. (supra) the Tribunal held that the provisions of section 14A cannot be applied. It held that section 14A is not applicable to the facts of the case and the assessee was carrying on the business. In these circumstances, the natural consequence that flows is that expenses claimed by the assessee are deductible in full under the head "profit and gains from business or profession" It has been similarly held in the cases of Shree Shyamkamal Finance & Leasing Co. (P.) Ltd. v. ITO [2008] 21 SOT 42 (Mum.) (SMC) and V.C. Nannapeni (supra). These are the cases before rendering of Special Bench decision in the Daga's case and the expenditure was held to be allowable under*

section 36(1)(iii) and not because of absence of exempt income. In any case that view is not in consonance with the clear language of section 14A as discussed above.

36. *Delhi Bench of the Tribunal in the case of Insaallah Investment Ltd. (supra) held that the receipt of dividend in the relevant year is irrelevant which is by following the decision of the Special Bench of the Tribunal in the case of Aquarius Travel (P.) Ltd. (supra). In this case of Aquarius Travel (P.) Ltd. (supra) the issue whether the provisions of section 14A can be invoked in the appellate proceedings for the first time or not was held in affirmative.*

37. *We are conscious of the decision of Sun Engg. (P.) Ltd. (supra), for the proposition that it is not permissible to pick a word or a sentence in a decision totally out of its context and the Supreme Court in the case ofPadmasundara Rao (Decd.) v. State of Tamil Nadu [2002] 255 ITR 147 at p. 153 observing that the Courts should not place reliance on the decision without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed.*

38.*It may not correct to state that the decision of the Aquarius Travels was decided on the basis of the concession of the counsel and the issue in the present case was neither considered nor argued before the Special Bench. A dispute was raised before the Special Bench as is evident from the following extract from the order :—*

"6.11 It was finally pointed out by the learned counsel Shri Mehta that the assessee was not having any tax-free income in this assessment year and. therefore, there was no question for making disallowance under section 14A."

39. *It finally restored this issue to the file of the Assessing Officer for quantification of interest for the period 1-6-1997 to 31-3-1998 in respect of borrowings utilized for investment in shares and held the same to be disallowed. It was however a case of investment in shares and not stock-in-trade but that as we have held earlier is not material for disallowing interest to borrowing utilized in purchase of shares.*

40. *To support his contention that there must be exempt income to invoke section 14A Mr. Vohra referred to the Special Bench of the Tribunal in assessee's own case for the assessment years 2001-02 and 2002-03 as bunched with appeals of other assessees in Daga Capital Management (P.) Ltd.'s case (supra) held (by a majority view) wherein it is held that in order to apply the provisions of said section, the exercise of making disallowance starts from tracing out the exempt income. Only once exempt income is traced, the process of working out the expenditure incurred in relation to the said exempt income gets initiated. These observations were because exempt income was there in consideration and that is why the Special Bench used this language. It should be read as a reference of the source of exempt income whether received or not.*

41. *The contention of the assessee before the Special Bench was that the Bench had to view the items of expenditure first and if these have resulted in exempt income, only then the disallowance is to be considered. In other words, the starting point for applying section 14A is to consider the amount of expenditure and then moving*

forward for examining if it had resulted in the exempt income or not. This is exactly what the assessee is contending in this case though in different phraseology that there must be exempted income earned to disallow the expenditure. It was rightly rejected, by stating: 'We are not convinced with the view point of the learned A.R. that section 14A speaks about making disallowance of expenditure which has resulted into exempt income. The language of sub-section (1) of section 14A clearly provides that no deduction shall be allowed "in respect of expenditure incurred by the assessee in relation to income which does not from part of the total income under this Act". On going through the simple and plain language, it is abundantly clear that the relation has to be seen "between the exempt income and the expenditure incurred in relation to it and not vice versa. What is relevant is to work out the expenditure in relation to the exempt income and not to examine whether the expenditure incurred by the assessee has resulted into exempt income or taxable income. If the view point of the learned AR is accepted then it would mean putting the cart in front of the horse and redrafting sub-section (1) of section 14A. On going through sub-section (1), it can be clearly noticed that the exercise of making disallowance starts with firstly tracing out the exempt income and then initiating the process of working out the expenditure incurred in relation to such exempt income. It is clearly borne out from, rule 8D as has been discussed infra that it has three clauses of sub-rule (2), being the expenditure directly relating to the exempt income as per clause (i); expenditure by way of interest which is not directly attributable to particular income as per-clause (ii) and; an amount equal to one half per cent of the average of the value of investment as per clause (iii). The sum total of these three amounts is the amount disallowable under section 14A.

From here it clearly emerges that stipulation of section is to compute the amount of expenditure which is not allowable under section 14A as is relatable to the exempt income and not in considering all the expenses one by one for ascertaining if either of them have resulted into exempt income and thereafter considering such amount as disallowable under section 14A. If this way of interpretation of section 14A as suggested by the ld. AR is accepted, then the method of computing the expenditure as relatable to the exempt income as provided in rule 8D, would become meaningless and the words 'in accordance with such method as may be prescribed' in sub-section (2) for determining the amount disallowable would require obliteration, which in our considered opinion is not possible'..... We have already repelled the contention raised on behalf of the assessee that the object of the expenditure is to be viewed as a determinative factor for making any disallowance under this section. It is simple and plain that the disallowable expenditure is to be worked out which has relation with the exempt income and not otherwise. We are, therefore, not inclined to accept the assessee's version that if the exempt income is incidental to the main business whose income is taxable, then the provisions of section 14A will be defeated."

42. *Reference to exempt income was made because it was a case of exempted income earned and received by the assessee and not a case of no income earned or received. In the context of later position it be read as 'exempted income/no income resulted' as the expenditure that is allowed or disallowed is for making or earning income or for the purposes of business or in relation to such income. If read in this way there would be no confusion in understanding the order of the Special Bench.*

43. *What one has to see is whether any expenditure were incurred by an assessee in relation to an income that does not form part of total income of the assessee under this Act, and if the answer is in affirmative then that expenditure cannot be allowed irrespective of the fact that it was allowable under different provisions of the Act where a different phraseology is used in allowing that expenditure as the focus has to on disallowance within parameters of section 14A, an overriding provision over allowance provisions. It would result in disallowance even of no income has resulted or made or earned by the assessee in the year under consideration. We also make it clear that the disallowance has to be of the entire, amount of the expenditure so related and, as claimed in revenue's appeal, cannot be reduced by the receipt of interest which has no relation to such expenditure.*

44. *An attempt was made by the assessee to show the overreaching effect of rule 8D and wanted to raise an additional ground but we did not allow him to address on these issues because of the limited scope of reference to this Special Bench which is to dispose and decide the appeal on the question referred to by the President of the Tribunal. The assessee may if so advised take up the issues before the Division Bench in accordance with law.*

45. *The intervener has exempted income and therefore would not be fall within the scope of the issue for which is constituted to dispose of the case of disallowance in cases where no exempted income is earned or received. We are therefore excluding this case from our consideration.*

46. *In the result, the question, whether disallowance under section 14A of the Income-tax Act can be made in a year in which no exempt income has been earned*

or received by the assessee, is answered affirmatively against the assessee and in favour of the revenue."

There is no contrary decision of jurisdictional Hon'ble High Court or the Hon'ble Apex court is pointed out by the assessee company before us to advance its proposition that no disallowance of expenditure is called for u/s 14A of the Act in case no exempt income is earned or received during the assessment year despite the assessee company making investments which are capable of yielding exempt income such as Dividend etc.(Ref. Hon'ble Bombay High Court in Thane Electricity Supply Limited in (1994) 206 ITR 727(Bom. HC)). This proposition of the assessee company also appears to be fallacious if we see it in the context of a small example say , if tax payer is engaged in the agriculture activity and also in the business of manufacturing and assuming that it has incurred expenditure of Rs 100/- towards its agricultural activity during the year while agriculture income received/earned during the year is NIL as there is a crop failure or destruction of crop due to natural calamity during the year, does it mean that the expenditure of Rs.100/- incurred by the tax payer shall not be disallowed and be allowed to be set off against the income earned from manufacturing business just because there is no agricultural income during the year or alternatively in case if there is meagre agricultural income of amount of Rs.10/- from the sale of the remains of the said destroyed crop, the entire expenditure of Rs 100/- towards agricultural activities shall stand dis-allowed u/s 14A of the Act because there is agriculture income of meagre sum of Rs 10/- while in the first case the agricultural income being NIL, the entire expenditure of Rs 100/-

towards agricultural activity stand allowed , this defies all logic because the rationale of Section 14A of the Act is specified by Hon'ble Apex Court In CIT v. Walfort Shares & Stock Brokers Private Limited (2010) 192 Taxman 211(SC) as under:-

"17. The insertion of section 14A with retrospective effect is the serious attempt on the part of the Parliament not to allow deduction in respect of any expenditure incurred by the assessee in relation to income, which does not form part of the total income under the Act against the taxable income (see Circular No. 14 of 2001, dated 22-11-2001). In other words, section 14A clarifies that expenses incurred can be allowed only to the extent they are relatable to the earning of taxable income. In many cases the nature of expenses incurred by the assessee may be relatable partly to the exempt income and partly to the taxable income. In the absence of section 14A, the expenditure incurred in respect of exempt income was being claimed against taxable income. The mandate of section 14A is clear. It desires to curb the practice to claim deduction of expenses incurred in relation to exempt income against taxable income and at the same time avail the tax incentive by way of exemption of exempt income without making any apportionment of expenses incurred in relation to exempt income. The basic reason for insertion of section 14A is that certain incomes are not includible while computing total income as these are exempt under certain provisions of the Act. In the past, there have been cases in which deduction has been sought in respect of such incomes which in effect would mean that tax incentives to certain incomes was being used to reduce the tax payable on the non-exempt income by debiting the expenses, incurred to earn the exempt income, against taxable income. The basic principle of

taxation is to tax the net income, i.e., gross income minus the expenditure. On the same analogy the exemption is also in respect of net income. Expenses allowed can only be in respect of earning of taxable income. This is the purport of section 14A. In section 14A, the first phrase is "for the purposes of computing the total income under this Chapter" which makes it clear that various heads of income as prescribed under Chapter IV would fall within section 14A. The next phrase is, "in relation to income which does not form part of total income under the Act". It means that if an income does not form part of total income, then the related expenditure is outside the ambit of the applicability of section 14A. Further, section 14 specifies five heads of income which are chargeable to tax. In order to be chargeable, an income has to be brought under one of the five heads. Sections 15 to 59 lay down the rules for computing income for the purpose of chargeability to tax under those heads. Sections 15 to 59 quantify the total income chargeable to tax. The permissible deductions enumerated in sections 15 to 59 are now to be allowed only with, reference to income which is brought under one of the above heads and is chargeable to tax. If an income like dividend income is not a part of the total income, the expenditure/deduction though of the nature specified in sections 15 to 59 but related to the income not forming part of total income could not be allowed against other income includible in the total income for the purpose of chargeability to tax. The theory of apportionment of expenditures between taxable and non-taxable has, in principle, been now widened under section 14A. Reading section 14 in juxtaposition with sections 15 to 59, it is clear that the words "expenditure incurred" in section 14A refers to expenditure on rent, taxes, salaries, interest, etc. in respect of which allowances are provided for (see sections 30 to

37). Every pay-out is not entitled to allowances for deduction. These allowances are admissible to qualified deductions. These deductions are for debits in the real sense. A pay-back does not constitute an "expenditure incurred" in terms of section 14A. Even applying the principles of accountancy, a pay-back in the strict sense does not constitute an "expenditure" as it does not impact the Profit and Loss Account. Pay-back or return of investment will impact the balance-sheet whereas return on investment will impact the Profit and Loss Account. Cost of acquisition of an asset impacts the balance sheet. Return of investment brings down the cost. It will not increase the expenditure. Hence, expenditure, return on investment, return of investment and cost of acquisition are distinct concepts. Therefore, one needs to read the words "expenditure incurred" in section 14A in the context of the scheme of the Act and, if so read, it is clear that it disallows certain expenditures incurred to earn exempt income from being deducted from other income which is includible in the "total income" for the purpose of chargeability to tax. As stated above, the scheme of sections 30 to 37 is that profits and gains must be computed subject to certain allowances for deductions/expenditure. The charge is not on gross receipts, it is on profits and gains. Profits have to be computed after deducting losses and expenses incurred for business. A deduction for expenditure or loss which is not within the prohibition must be allowed if it is on the facts of the case a proper Debit Item to be charged against the incomings of the business in ascertaining the true profits. A return of investment or a pay-back is not such a Debit Item as explained above, hence, it is not "expenditure incurred" in terms of section 14A. Expenditure is a pay-out. It relates to disbursement. A pay-back is not an expenditure in the scheme of section 14A. For attracting section 14A, there has to

be a proximate cause for disallowance, which is its relationship with the tax exempt income. Pay-back or return of investment is not such proximate cause, hence, section 14A is not applicable in the present case. Thus, in the absence of such proximate cause for disallowance, section 14A cannot be invoked. In our view, return of investment cannot be construed to mean "expenditure" and if it is construed to mean "expenditure" in the sense of physical spending still the expenditure was not such as could be claimed as an "allowance" against the profits of the relevant accounting year under sections 30 to 37 of the Act and, therefore, section 14A cannot be invoked. Hence, the two asset theory is not applicable in this case as there is no expenditure incurred in terms of section 14A."

Hon'ble Supreme Court in the case of CIT v. Rajendra Prasad Moody (1978) 115 ITR 519(SC) has discussed in detail about the allowability of expenditure in case the there is no receipt of income which clarifies to a greater extent the issue in dispute in this appeal , the extracts from the said judgment are as under:

"It is also interesting to note that, according to the revenue, the expenditure would disqualify for deduction only if no income results from such expenditure in a particular assessment year, but if there is some income, howsoever small or meagre, the expenditure would be eligible for deduction. This means that in a case where the expenditure is Rs. 1,000, if there is income of even Re. 1, the expenditure would be deductible and there would be resulting loss of Rs. 999 under the head "Income from other sources". But if there is no income, then, on the argument of the revenue, the expenditure would have to be ignored as it would not be liable to

be deducted. This would indeed be a strange and highly anomalous result and it is difficult to believe that the legislature could have ever intended to produce such illogicality. Moreover, it must be remembered that when a profit and loss account is cast in respect of any source of income, what is allowed by the statute as proper expenditure would be debited as an outgoing and income would be credited as a receipt and the resulting income or loss would be determined. It would make no difference to this process whether the expenditure is X or Y or nil, whatever is the proper expenditure allowed by the statute would be debited. Equally, it would make no difference whether there is any income and if so, what, since whatever it be, X or Y or nil, would be credited. And the ultimate income or loss would be found. We fail to appreciate how expenditure which is otherwise a proper expenditure can cease to be such merely because there is no receipt of income. Whatever is a proper outgoing by way of expenditure must be debited irrespective of whether there is receipt of income or not. That is the plain requirement of proper accounting and the interpretation of s. 57(iii) cannot be different. The deduction of the expenditure cannot, in the circumstances, be held to be conditional upon the making or earning of the income.

It is true that the language of s. 37(1) is a little wider than that of s. 57(iii), but we do not see how that can make any difference in the true interpretation of s. 57(iii). The language of s. 57(iii) is clear and unambiguous and it has to be construed according to its plain natural meaning and merely because a slightly wider phraseology is employed in another section which may take in something more, it does not mean that s. 57(iii) should be given a narrow and constricted meaning

not warranted by the language of the section and, in fact, contrary to such language.

This view which we are taking is clearly supported by the observations of Lord Thankerton in Hughes v. Bank of New Zealand [1938] 6 ITR 636, 644 (HL), where the learned Law Lord said:

> *"Expenditure in course of the trade which is unremunerative is none the less a proper deduction, if wholly and exclusively made for the purposes of the trade. It does not require the presence of a receipt on the credit | side to justify the deduction of an expense." "*

In view of our foregoing discussion , we find no infirmity with the orders of the AO and we hold that the AO has rightly disallowed the expenditure of Rs.73,07,018/- by invoking the provisions of Section 14A of the Act read with Rule 8D of Income Tax Rules, 1962 for computing book profit u/s 115JB(2) of the Act read with clause (f) to explanation 1 to clause 115JB(2) of the Act. We , therefore, set aside the orders of the CIT(A) and restore the orders of the AO. We order accordingly.

10.. In the result appeal of the Revenue is allowed.

Order pronounced in the open court on this 21st day of October 2015.

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

मुंबई Mumbai; दिनांक Dated : 21/10/2015

Pooja

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
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आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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