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IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: "F", NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA Nos.5153 & 6327/Del/2014
Assessment Years: 2010-11 & 2011-12

M/s. Rural Electrification Corporation Ltd., Core-IV, Scope Complex, 7, Lodhi Road, New Delhi	**Vs.**	DCIT, Large Tax Payer Unit, New Delhi
PAN :AAACR4512R		
(Appellant)		**(Respondent)**

And

ITA Nos.5060 & 6335/Del/2014
Assessment Years: 2010-11 & 2011-12

DCIT, LTU, New Delhi	**Vs.**	M/s. Rural Electrification Corporation Ltd., Core-IV, Scope Complex, 7, Lodhi Road, New Delhi
		PAN :AAACR4512R
(Appellant)		**(Respondent)**

Assessee by	S/shri Nageshwar Rao & Purushottam Anand, Advocates
Respondent by	Smt. Sulekha Verma, CIT(DR)

Date of hearing	07.03.2019
Date of pronouncement	29.03.2019

ORDER

PER O.P. KANT, A.M.:

These cross appeals by the assessee and the Revenue are directed against two different orders dated 11/07/2014 and

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10/09/2014 passed by the Ld. Commissioner of Income-tax (Appeals)-LTU, New Delhi [in short 'the Ld. CIT(A)'] for assessment years 2010-11 and 2011-12 respectively. As Common Grounds are involved in these appeals, these were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

2. First, we take up the cross-appeals of the assessee (ITA No. 5153/Del/2014) and the Revenue (ITA No. 5060/Del/2014) for assessment year 2010-11. The grounds of the appeal are reproduced as under:

Grounds of appeal of the assessee

1. On the facts and in the circumstances of the case and in Law, the Ld. CIT (Appeals) has erred in upholding the disallowance of Rs. 20,89,469/- u/s 14A of the Income Tax Act read with Rule 8D of the Income Tax Rules 1962.

2. On the facts and in the circumstances of the case and in Law, the Ld. CIT . (Appeals) has erred in not appreciating that the assessee company is having | substantial interest free funds in the form of share capital and reserve & surplus for making investments to earn incomes which are exempt under Income Tax I Act, 1961.

3. On the facts and in the circumstances of the case and in Law, the Ld. CIT (Appeals) has erred in upholding the addition of Rs. l,29i25r650/- being done by the AO on account of treating the interest income earned by The Cooperative Electrical Society, Sircila, on special reserve fund created and maintained by it out of the interest forgone by the appellant company, as the income of the appellant company.

4. On the facts and in the circumstances of the case and in Law, the Ld. CIT (Appeals) has erred in upholding the addition of Rs. 79,74,627/- being done by the AO on account of treating the interest income earned by other various Cooperative Electrical Societies, on special reserve fund created and maintained by it out of the interest forgone by the appellant company, as the income of the appellant company.

The appellant craves to leave add, alter, amend, modify, delete, all or any of the grounds of appeal before or at the time of hearing.

Grounds of appeal of the Revenue.

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1. On the facts and circumstances of the case and in law Ld. CIT(A) has erred in deleting the addition of Rs. 4,97,27,224/- made by AO on account of disallowance of provision for post retirement medical expenses.
2. On the facts and circumstances of the case and in law Ld. CIT(A) has erred in deleting the addition of Rs. 42,01,977/- out of total addition of Rs. 62,91,445/- made by AO u/s 14A of the IT Act read with rule 8D of IT Rules 1962.
2.1 On the facts and circumstances of the case and in law Ld. CIT(A) has erred in deleting the addition of Rs.42,01,977/- out of total addition of Rs.62,91,445/- made by AO u/s 14A of the IT Act read with rule 8D of IT rules 1962 without affording an opportunity to the AO in this regard.
3. On the facts and circumstances of the case and in law Ld. CIT(A) has erred in deleting the addition of Rs. 2,34,25,620/- out of total addition of Rs.4,43,25,897/- made by AO on account of interest accrued to various cooperative societies but taxable in the hands of the assessee i.e. M/s REC Ltd.
3.1 On the facts and circumstances of the case and in law Ld. CIT(A) has erred in deleting the addition of Rs.23425620/- out of total addition of Rs.44325897/- without appreciating that notwithstanding offering of such income by some of the societies in their hands, the same is legally tax able in the hands of the assessee i.e. M/s REC Ltd. only.
3.2 On the facts and circumstances of the case and in law Ld. CIT(A) has erred in deleting the addition of RS.23425620/- out of total addition of Rs.44325897/- ignoring his own findings in the same appellate order, holding income of the same nature as taxable in the hands of the assessee i.e. M/s REC Ltd.
4. The appellant craves leave to add to, alter, amend or vary from the above grounds of appeal at or before the time of hearing.

3. Briefly stated facts of the case are that the assessee company was engaged in the business of providing finance for rural electrification including power generation, transmission and distribution project. The company raises fund by way of issue of priority and non-priority sector bonds, infrastructure bond, loan from LIC and other banks and those funds are then deployed for financing power projects. For the year under consideration ,the assessee filed return of income on 13/10/2010 declaring total income of Rs.2038,74,20,592/-, which was revised further on 30/03/2012 to Rs.2038,64,69,164/- after claiming deduction under section 36(1)(viia) and 36(1)(vii) of the Income-tax Act, 1961

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(in short 'the Act'). The case was selected for the scrutiny and notice under section 143(2) of the Act was issued and complied with. The assessment under section 143(3) of the Act was completed on 28/02/2013 after making certain additions/disallowances to the returned income. Aggrieved, the assessee filed appeal before the Ld. CIT(A), who partly allowed the appeal vide impugned order dated 11/07/2014. Aggrieved with the finding of the Ld. CIT(A), both the assessee as well as the Revenue are in appeal before the Tribunal raising the grounds as reproduced above.

4. The ground No. 1 of the appeal of the assessee relates to disallowances of provision for post-retirement medical expenses amounting to Rs.4,97,27,224/-.

4.1 The assessee debited a sum of Rs.4,97,27,224/- on account of provision for post-retirement medical benefit to its employees. According to the scheme, which was an optional scheme, available to an retired employee of REC against a one-time contribution of Rs.1500/-. According to the assessee, the scheme was approved by the Board of Directors and backed by actual valuation for meeting out ascertained liability and it was not a contingent liability. The submission of the assessee was rejected by the Assessing Officer on the ground that liability of assessee in future is contingent in nature and not being ascertained, was liable for disallowance as expenditure. According to the Assessing Officer, the scheme was not approved under the Income-tax laws. Before the Ld. CIT(A), the assessee reiterated its submissions which were made before the Assessing Officer and further submitted that deduction claimed is allowable in view of the

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decision of the Hon'ble Supreme Court in the case of **Bharat Earth Movers Vs. CIT (245 ITR 4)** and **Metal Box Company of India Limited Vs Their Workmen, (1969 AIR 612)**. The Ld. CIT(A) accepted the contention of the assessee and held the provision created for post-retirement medical benefit as an ascertained liability, allowable as expenditure.

4.2 Before us, the learned DR relied on the order of the Assessing Officer. According to the Ld. DR employee benefits like gratuity, leave encashment can be ascertained but medical benefit cannot be ascertained and no scientific method has been adopted by the assessee for estimating the liability.

4.3 On the contrary, the Ld. counsel of the assessee submitted that issue in dispute is covered in the favour of the assessee by the order of the Tribunal in the case of the assessee for assessment year 2009-10.

4.4 We have heard the rival submissions and perused the relevant material on record. The Tribunal in ITA No.3011/Del/2014 for assessment year 2009-10 in the case of the assessee has dismissed the appeal of the Revenue against the order of the Ld. CIT(A) deleting the disallowances. The relevant finding of the Tribunal is reproduced as under:

> *"39. We have carefully considered the rival contentions. The post retirement medical benefit provision has been created by the assessee in accordance with accounting standard 15 relating to employees benefit. The above provision was made on actuarial valuation in accordance with the post retirement medical scheme. The Id CIT(A) allowed the above claim holding that such provision is accrued liability and not contingent in nature. He relied upon the decision of the coordinate bench in Bokaro Power Supply Co. Ltd Vs. DCIT (4921/ Del/2010). Similar view has been taken by the Hon'ble Delhi High Court that where the provision has been created on the basis of actuarial calculation on a scientific basis the liability is not contingent but definite. We do not find any infirmity in the order of*

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the Id CIT(A) in deleting the above disallowance. In view of this ground No. 1 of the appeal is dismissed."

4.5 Thus, respectfully following the above finding of the Tribunal, the finding of the Ld. CIT(A) on the issue in dispute is upheld and the ground no. 1 of the appeal of the Revenue is dismissed.

5. The ground No. 1 and 2 of the appeal of the assessee are related to disallowances under section 14A of the Act of Rs.20,89,469/- sustained by the Ld. CIT(A) out of the addition of Rs.62,91,445 made by the Assessing Officer. The ground No. 2 and 2.1 of the appeal of the Revenue are related to deleting addition of Rs.42,01,977/- out of the addition of Rs.62,91,445/-.

5.1 Brief facts qua the issue in dispute are that the assessee shown dividend income of Rs.9,80,09,625/-from various investment in mutual funds and shares and claimed this income as exempt under the provision of section 10(33)/10(34) of the Act. The Assessing Officer invoking the provisions of section 14A read with Rule 8D of the Income Tax Rules, 1962, (in short 'the Rules') made disallowances of Rs.62,91,445 /- for the amount of expenditure incurred in relation to exempt income, but claimed in the profit and loss account as under:

Amount under rule 8D(2)(i)	*Management fee and trusteeship fees*	*Rs.42,01,977/-*
Amount under rule 8D(2)(ii)	*Indirect interest*	*Rs.14,64,536/-*
Amount under rule 8D(2)(iii)	*0.5 % of average investment*	*Rs.6,24,933/-*
Total		***Rs.62,91,445/-***

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5.2 On further appeal, the Ld. CIT(A) deleted the disallowance of Rs.42,01,977/- for direct expenses incurred on Management fee and trusteeship fee in relation to exempt income, holding that said amount was not claimed in the profit and loss account and thus, no disallowance could be made out of the profit and loss account. As far as remaining, two disallowances under section 8D(2)(ii) and 8D(2)(iii) of the 'Rules', he sustained the disallowance.

5.3 Before us, the Ld. counsel of the assessee submitted that issue in dispute in relation to disallowance made under Rule 8D(2)(ii) and 8D(2)(iii) is covered by the decision of the Tribunal in ITA No. 3079/Del/2014 for assessment year 2009-10. On the issue of disallowance under rule 8D(2)(i) the Ld. counsel submitted that said expenses were never claimed in the profit and loss account as expense and therefore has rightly deleted by the Ld. CIT(A).

5.3 The Ld. DR, on the other hand, relied on the order of the Ld. CIT(A) in respect of the disallowance under rule 8D(2)(ii) and 8D(2)(iii) of the Rules. The Ld. CIT(DR) also filed written submissions on the issue of disallowance under section 14A of the Act relying on the decision of the Hon'ble Supreme Court in the case of **Maxopp Investment Limited reported in (2018) 91 taxman.com 154**.

5.4 We have heard the rival submission and perused the relevant material on record. As far as disallowance of Rs.42,01,977/- under rule 8D(2)(i) of the Rules is concerned, the Ld. CIT(A) deleted the addition observing as under:

> *"6.5 Having held the above, I will now examine the computation u/r 8D challenged by the appellant.*

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(i) Regarding the disallowance u/r 8D(2)(i) of Management Fees (Rs 40,77,822/-) and Trusteeship Fee (Rs 1,24,155/-), held to be incurred in relation to the dividend income of Rs 5,89,451/- earned from the investment in SIB Venture Capital fund, I find that during the year no fresh investments were made in the said fund and the said dividend income has been earned on the opening investments in the said SIB fund. Further, I find that the said amount of Rs 40,77,822/- towards Management Fees & further amount of Rs.1,24,155/- towards Trusteeship fees have been charged by the investment broker, as annual charges towards maintaining the SIB fund. Out of this, total income of Rs 71,67,983/- consisting of Long Term Capital Gain of Rs 65,78,532/- and dividend income of Rs 5,89,451/- was earned during the year. The appellant, as per the detailed statement of the said investment broker, had received an amount of Rs 3,33,08,659/- as disinvestment proceeds, Rs 5,89,451/- as dividend income and income of subsequent years received in advance of Rs 8,64,615/- aggregating to Rs 3,47,62,725/-. After deducting the aforesaid expenses in the nature of Management Fee and Trusteeship Fee aggregating to Rs 42,01,977/- the balance amount of Rs 3,05,60,748/- was paid to the appellant.

For tax purposes, the appellant has computed LTCG as under:-

i)	*Disinvestment Proceeds*	*Rs.*	*3,33,08,659/-*
ii)	*Cost of investment*	*Rs.*	*2,23,63,202/-*
iii)	*Indexed cost*	*Rs.*	*2,67,30,126/-*

Other than this the dividend income of Rs 5,89,451/- has been shown as exempt income. In my view, the said M/s Anandhan & co. in the letter dated 01/04/2010 has only informed having made deduction of expenses of an amount of Rs 42.11 lakhs towards Management & Trusteeship fees, but the appellant did not nor could have claimed it against LTCG. The AO has not examined if the Management Fee and Trusteeship Fee were actually claimed in P&L account. The appellant furnished written confirmation that such expenses were not claimed in P&L account and furnished a copy of the same alongwith computation in support of the claim. In the absence of any claim made in the P&L account at the first place, no disallowance is called for such expenses u/r 8D(2)(i).

In view of this, I hold that no disallowance u/s 8D(2)(i) is called for."

5.5 Since the Ld. CIT(A) has given his decision based on factual finding that said expenses have not been claimed in the profit and loss account, and said finding has not been disputed by the

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learned DR, though in the ground it is submitted that disallowance has been deleted without affording an opportunity to the Assessing Officer. However, we find that before us no material has been brought on record to dispute this factual finding that those expenses were not claimed in the profit and loss account. In view of the above, we do not find any error in the order of the Ld. CIT(A) and accordingly we uphold the same. The ground No. 2 and 2.1 of the appeal of the Revenue are accordingly dismissed.

6. As far as the disallowance under rule 8D(2)(ii) of Rs.14,64,536/-and disallowance under rule 8D(2)(iii) of Rs.6,24,933/- is concerned, the Ld. CIT(A) upheld the disallowance observing as under:

> *"(ii) Regarding the plea that no disallowance under Rule 8D(2)(ii) ought to be made as the appellant had deployed only surplus fund for the purpose of making investment in mutual funds, I find that the appellant company has significant surplus and reserves out of which the main amount of Rs.21 Crores is out of the grant received from USAID, which is evidently without any interest liability. The appellant has also the share capital of Rs.ll Crores and has shown profit for the current year. At the same time, I find that the appellant is a finance company, which is engaged in financing Rural Electrical projects and has claimed interest expenses of a significant amount of Rs.697.80 crores. Evidently, in the own admission of appellant, no separate books of account for taxable and non-taxable streams of income have been maintained by the appellant. However, the mainstay of the plea of the appellant was that being a PSE, it was prohibited by the Central Government from making any investment out of the borrowed funds and in this regard, reliance was placed on DPE, O.M. dated 31.08.2007, which lifted the said prohibition only in case of Navratna and mini-Navratna companies.*
>
> *6.6 On careful consideration of the said O.M. dated 31.8.2007, I find that the only effect of the said O.M. was removal of prohibition on making investment out of surplus fund in public and private sector Mutual Funds, in respect of only Navratna and Miniratna CPSEs, which were allowed making investment in SEBi approved mutual fund, subject to ceiling of 30% of available surplus funds and for which the detailed procedure was laid down. Evidently, the effect of the said O.M. dated 31.08.2007 was to permit the Navratna and Miniratna CPSEs for making investment into the mutual funds, out of*

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surplus fund. However, for the remaining PSEs, the said OM did not lift prohibition on making investment in the Mutual Funds out of surplus Funds/Reserves, and the DOPE O.M. dated 1.11.1995 and 11.03.1996 continued to operate. Under the circumstances, evidently the appellant company, which is a Mini-Navratna CPSE, could have made investment out of its surplus funds. However, it does not imply that it was barred from using borrowed funds.

6.7 Keeping in view the above, I uphold the action of the Ld. AO in making disallowance under Rule 8D, which was the only method prescribed by u/s 14A. The Ld. AO has duly followed the prescribed method under Rule 8D and accorded due opportunity to the appellant in this regard and the note of lack of satisfaction with the claim of the appellant is held to be on cogent ground. However, I hold that no disallowance u/r 8D(2)(i) is called for, for Management Fee (Rs 40.7-7 lakh) and Trusteeship Fees (Rs 1.24 lakh). Accordingly, Ground No.2 of the appeal is partly allowed."

6.1 We further find that the Tribunal in ITA No.3079/Del/2014 in the case of the assessee itself for assessment year 2009-10 has adjudicated the issue in dispute as under:

"32. We have carefully considered the rival contentions. Admittedly, the assessee has availability of fund of Rs. 2128 crores which does not carry any interest. The amount of investment made by the assessee is only Rs. 462 crores. Therefore, apparently assessee has more interest free funds then the amount of investment. The Id CIT(A) though has considered the above issue however, has state that assessee was permitted to investment in mutual funds out of this interest free funds. However, he confirmed the addition on interest merely for the reason that assessee could have invested borrowed funds. In view of these facts relying on the decision of the Hon'ble Bombay High Court in HDFC Bank Ltd Vs. DCIT 383 ITR 529 and Hon'ble Gujarat High Court in case of Pr. Cit Vs. Sintex Industries Ltd 248 Taxmann 449 , the amount of interest disallowance made by the Id Assessing Officer of Rs. 21815273/- deserves to be deleted. With respect to 0.5% of average value of investment the Id AR did not submit any explanation. Therefore, the AO is directed to restrict the disallowance u/s 14A to the extent of 0.5% of the average value of the investment as provided under Rule 8D. Accordingly, ground No.1 of the appeal is partly allowed.

6.2 As the identical issue of investment out of interest-free funds available exist in the year under consideration, thus respectfully following the finding of the Tribunal, the disallowance

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for indirect interest expenses under rule 8D(2)(ii) amounting to Rs.14,64,536/- is deleted.

6.3 On the issue of 0.5% of average investment, the Tribunal (supra) has upheld the disallowance under rule 8D(2)(iii), thus respectfully, following the finding, the disallowance in the year under consideration of Rs.6,24,445/- is sustained.

6.4 Accordingly, the ground Nos.1 & 2 of the appeal of the assessee are partly allowed.

7. The ground No. 3, 3.1 and 3.2 of the appeal of the Revenue against deletion of addition of Rs.2,34,25,620/- out of total addition of Rs.4,43,25,896/- and ground No. 4 of the appeal of the assessee against upholding addition of Rs.79,74,627/- out of the total addition of Rs.4,43,25,896/-, relate to interest accrued on the Special Reserve Fund created and maintained by various cooperative electrical societies .

7.1 Facts in brief qua the issue in dispute are that the assessee company provided loans during the period starting from 1972 to various Rural Electrification(RE) co-operative societies established by the concerned state government. The purpose of granting such loan was to promote rural electrification co-operative societies in the country. As per the terms of the loan, the assessee (REC) foregone or waived the interest on such loans for first 5 years, with the condition that special reserve fund is to be created and maintained by the co-operative society and that said amount of the interest waived is to be deposited by way of the fixed deposits in banks. The assessee framed certain rules to maintain and utilization of the funds by the co-operative societies. The assessee company was having first charge over the said corpus fund and

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right to withdraw the waiver granted if the conditions of the loan given were not met. According to the assessee, the interest accrued on these fixed deposits out of special reserve fund to the respective co-operative societies, as those co-operative societies are the owner of the respective funds. It was also submitted by the assessee that interest accrued on those fixed deposit has been included by the respective societies in their return of income filed.

7.2 However, one of the society, namely, **Cooperative Electrical Supply Society Ltd., Sirecila** did not include the said interest in its return of income and questioned action of the Assessing Officer for making addition in Tribunal. The coordinate bench of the Tribunal, Hyderabad, in the case, held that ownership of the special reserve fund remained with REC i.e. the assessee , and the interest on the fixed deposit made out of the special funds also accrued to the REC .

7.3 In view of the decision of the Tribunal (supra), the Assessing Officer asked the assessee to provide detail of the such interest income on fixed deposits made out of the special reserve funds in respect of the all the societies, to whom the loans were advanced under the scheme. The Assessing Officer rejected the contention of the assessee with the reasons listed in para 7.4 of the assessment order:

> *"7.4 The assessee's above submissions have been carefully considered but are not found to be tenable for the following reasons as given in the Assessment:*
>
> 1. *The ITAT after discussing the various facts at length, had arrived at the conclusion that the ownership of the special funds remained with the petitioner and the interest income in respect of these funds as also the interest on the FDs made out of the special funds had also accrued to the petitioner and not to the co-operative society.*

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2. *The contention that the co-operatives are the legal and beneficial owners of the funds is not correct. The fact that for the first five years the amount required to be set apart as special fund was exactly equivalent to the interest at the prescribed rate payable to the petitioner corporation, coupled with the fact that the corporation exercised full control over the operation and utilization of the special fund, clearly shows that the creation of special funds is a just a mechanism for regulating the utilization of the amounts which are payable by way of interest to the petitioner corporation, without in any way passing on the ownership rights of the amount to the co-operatives from which the interest is due to the petitioner.*
3. *The assessee has merely procured confirmations from a few cooperative societies to the effect that these societies had shown the interest income from the Special Fund in their returns of income. If is seen that some of the societies after disclosing the interest income on such funds claimed the said income as exempt u/s 80P of the Act. Thus it becomes a case where neither the assessee nor those societies are paying tax on the interest from said deposits. Further, the income has to be taxed in hands of the persons to whom that belongs. Just because another entity has wrongly offered the said amount in its return does not absolve the assessee from its legal obligation.*
4. *The assessee's contention that the ownership of the special funds was with the respective cooperatives is not correct, as it is evident from the various rules governing the management and operation of these funds that the real ownership of these funds vested in the assessee corporation and the respective cooperatives only acted as custodians of these funds. The mere fact that the FDRs were in the names of the respective co-operatives is of no consequence when the co-operatives cannot exercise their rights as owners of these funds and the entire control over the management, operation and utilization of the funds is with the assessee company.*
5. *As per the regulations governing the special funds, these funds were of be utilized only for purposes specified by the assessee and no amount could be withdrawn from these funds without specific written permission of the petitioner. The special funds were also required to be assigned to the assessee who had a lien over these funds. Thus, the respective cooperatives did not have any independence in the matter of execution, operation, management or utilization of these funds.*
6. *The revision of rules further restricted the utilization of funds by the respective cooperatives and resulted in the petitioners gaining a greater degree of control over the management and utilization of these funds, which is evident from the fact that as per these rules, any amount lying in the savings account in excess of Rs. 1000 was to be automatically transferred to fixed*

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deposits account and the original fixed deposit receipts were required to be handed over to the Chief Project Manager of the assessee.

7.4 After holding the interest income on such deposits as income of the assessee, the Assessing Officer computed the addition of Rs.4,43,25,897/- with society wise details mentioned on the page 25 and 26 of the assessment order.

7.5 On further appeal, the Ld. CIT(A) considered the submission of the assessee and made a detailed discussion from para 6.8 to 6.12.4 of the impugned order. The Ld. CIT(A) concluded that ownership of the corpus fund created by the co-operative societies continue to lie with those societies and the assessee had only a supervisory capacity as far as utilization of the said corpus fund was concerned. The Ld. CIT(A) observed that these societies are free to take necessary decisions to use the funds within the objective laid down. He observed that the FDRs created out of the corpus funds were in the control of the said co-operative societies and that said amount was lying in their bank account, to be withdrawn by them only for the purposes specified in the rules. In view of the observation, the Ld. CIT(A) held that the interest in question on those FDRs accrued to those said co-operative societies, belong to those societies only and cannot be treated as interest income of the assessee company.

7.6 The assessee explained that except the Co-operative Society Siricilla, all the societies had accounted for this interest income in their respective income tax return. The Ld. CIT(A) observed that Siricilla Society also made investment in REC bonds out of the special fund in addition to making FDRs in banks. Thus, the Ld. CIT(A) was of the view that interest on special fund by other RE

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co-operative societies could not be taxed in the hands of the assessee, however, in case of Siricilla Society, he followed the finding of the Tribunal Hyderabad bench and held that the interest income of Rs.1,29,25,650/- from FDR's out of special fund of Siricilla society, as income of the assessee. In respect of the few other societies also the Ld. CIT(A) held the interest income as belonging to the assessee due to non-filing of documentary evidences observing as under:

> *"6.12.2 Since Mula Pravara Society has been merged with MSEDC, interest income on the FD created out of its special reserve fund, cannot be charged in the hands of the appellant. Besides the said society has been showing interest income in its hands on which deduction u/'s 80P has been claimed by it. Therefore there was no reason to treat interest earned by it as appellant's income.*
>
> *6.12.3 As Cheepurupalle society, Pandhana society and Amarpatan society have furnished copy of their Income tax Returns, substantiating the contention of the appellant, and the Hukeri and Manasa Societies have furnished written confirmations, supported by audited balance sheet, which shows that these societies have also shown interest income on FD's (out of SRF) as their income, no addition can be made in respect of such interest income in the hands of appellant.*
>
> *6.12.4 Flowever, in the absence of any confirmation or the copies of Income-tax Return from certain co-operative societies, namely Sidhi (Rs 5,00,883/-), Nowgong (Rs 35,41,724/-), Amarpatan (Rs 1,83,791/-) and Cheepurupalle (Rs 21,74,000/-), which have only furnished balance sheet, in the absence of sufficient evidence at this point of time, the addition of interest income earned by them on SRF in the hands of appellant is confirmed. In case of Laundi(MP) (Rs 83,229/-), no evidence was produced by the appellant. In view of this, the interest income on FDR received by them aggregating to Rs 79,74,627/- is held as income of appellant."*

7.7 Aggrieved with the finding, both the assessee and the Revenue are in appeal.

7.8 On the grounds of appeal of the Revenue, the Ld. DR supported the order of the Assessing Officer. According to Ld. DR,

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the coordinate bench of the Tribunal, Hyderabad in the case of Siricilla society has clearly held that interest income accrued on the fixed deposits made out of the special fund should be taxed in the hand of the assessee, however, the Ld. CIT(A) has ignored the said direction of the Tribunal while allowing the interest income in case of societies other than Siricilla Society. She further submitted that other than Sricilla societies have claimed the said interest income as deduction under section 80P of the Act and, thus, by way of the diversion of the income to societies, no tax is being paid on such interest income either by the society or by the assessee. The learned DR also filed copy of the decision of the Tribunal, Hyderabad bench in the case of Siricilla Society. The Ld. DR submitted that the question of law on this issue has also been admitted by the Hon'ble Delhi High Court in ITA 927/2018.

Whereas the Ld. Counsel of the assessee supported the order of the Ld. CIT(A) and submitted that issue in dispute in the grounds raised by the Revenue has been decided against the Revenue by the Tribunal in ITA No. 3010/Del/2014 for assessment year 2006-07.

7.9 We have heard the rival submissions and perused the relevant material on record including the order of the Tribunal in the case of the assessee itself. We find that the Tribunal while deciding the appeal of the Revenue in ITA No. 3010/Del/2014 for assessment year 2006-07 has adjudicated the issue in dispute as under:

> *"25. We have carefully considered the rival contentions and also perused the orders of the lower authorities. In the present case the Id CIT(A) has deleted the addition with respect to those societies whose confirmation of offering the interest income in the hands of those societies was finished by those societies. In absence of those*

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certificates the additions were confirmed. The Id Departmental Representative could not point out any infirmity in the order of Id CIT(A). We are also of the considered view when the income has been offered by those societies in their own hand it cannot be taxed in the hands of the assessee. In the result, we do not find any merit in the appeal of the revenue hence, we dismiss all the three grounds of appeal."

7.10 Thus, respectfully following the finding of the Tribunal (supra), we uphold the finding of the Ld. CIT(A) on the issue in dispute and dismiss the ground No. 3, 3.1 and 3.2 of the appeal of the Revenue.

8. As far as the ground No. 4 of the appeal of the assessee, challenging the addition of Rs.79,74,627/- sustained by the Ld. CIT(A) is concerned, we find that the Ld. CIT(A) sustain the addition in case of the interest related to co-operative societies namely Sidhi (Rs.5,00,883/-), Nowgong (Rs.35,41,724/-), Amarpatan (Rs.1,83,791/-) Cheepurupalle (Rs.21,74,000/-) and Laundi (Rs.83, 229/-) due to insufficient evidence or no evidence to substantiate that interest income was declared by them in their return of income. Since in principle, such income from fixed deposits out of the special reserve funds created by the societies has been held to be income of those societies, subject to the income declared in their return of income. Before us, the Ld. counsel of the assessee has requested to provide one more opportunity to furnish necessary evidence in support of claim that those societies have declared the relevant interest in their return of income. In view of the submission of the Ld. counsel and in the interest of Justice, we feel it appropriate to restore this issue to the file of the Ld. Assessing Officer with the direction to the assessee to produce all necessary evidence in support of its

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claim in respect of the societies concerned for verification of the Assessing Officer. It is needless to mention that the assessee shall be afforded adequate and reasonable opportunity of being heard.

8.1 The ground No. 4 of the appeal of the assessee is accordingly allowed for statistical purposes.

9. The ground No. 3 of the appeal of the assessee relates to addition of Rs.1,29,25,650/- sustained by the Ld. CIT(A) treating the interest income earned by the Cooperative Electric Society, Siricila on the special reserve fund as income of the assessee.

9.1 Before us, the Ld. counsel submitted that, though in principle the Ld. CIT(A) agreed that the interest on FDR made out of the special reserve fund maintained by the co-operative societies should be assessed in the hand of those respective societies and not in the hands of the assessee, however in the case of Siricila Society, the Ld. CIT(A) has followed the decision of the Tribunal, Hyderabad Bench, and decided the issue against the assessee. The Ld. counsel submitted that the assessee was not party before the Tribunal Hyderabad Bench and thus could not get occasion either to present its case or challenge the said decision before the Hon'ble High Court. He submitted that applying the said decision of the coordinate bench against the assessee is a clear violation of the principle of natural Justice. He further submitted that the coordinate bench, Hyderabad has incorrectly interpreted the special fund rules and incorrectly concluded that ownership of the special fund lies with the assessee. According to him, the assessee was not having any right to receive the income from such funds and, therefore, no income accrued to the assessee. The learned counsel referred to page 108

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of the Paper Book filed by assessee and also submitted that tax on the interest income was also deducted at source in the name of the Siricilla society. In view of the arguments, the Ld. counsel submitted that addition in respect of the interest pertaining to Siricilla society also deserve to be deleted as such income never crystallized in the hands of the REC i.e. the assessee.

9.2 The Ld. DR, on the other hand, relied on the order of the Ld. CIT(A) and submitted that issue in dispute has been decided against the assessee by the Tribunal in ITA No. 3078/Del/2014 for assessment year 2006-07. The Ld DR submitted that for ascertaining the true nature of the income making entry in the books of accounts is not relevant. She submitted that even after tax deduction at source from the societies, the income actually accrued to the assessee, as assessee was exercising control over the special funds and in case of violation of the terms and condition of the loans advanced to the societies, the assessee was having right to recall the waiver of interest and right to receive interest from fixed deposits made.

9.3 We have heard the rival submissions and perused the relevant material on record. We find that the identical question has been decided by the Tribunal in ITA No.3078/Del/2014 for assessment year 2006-07 observing as under:

> *"Ground No. 2 of the appeal is with respect to upholding the addition of Rs. 9070673/- by the Id CIT(A) on account of the interest income earned by the cooperative society Sirecila, Hyderabad on special reserve fund created and maintained by the society which has been forgone by the assessee as the income of the appellant. The above addition has been confirmed by the Id CIT(A) holding that decision of the coordinate bench binds him. Similar is the situation with us. If the assessee is agreed with the order of the ITAT Hyderabad Bench decision which has rendered certain findings, the assessee should have challenged the same before Hon'ble High Court. Apparently, it*

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was not done. In this circumstances, we do not have any authority to say anything on the correctness of that decision, it binds us judicially. Further, when on examination of the rules and the all other criteria related to the creation of special reserve fund and its control the coordinate bench has held that interest has accrued in the hands of the appellant. Before us except reiterating the same facts the Id AR has not produced any other evidence or any evidence of decision of the higher forum where the order of the coordinate bench is challenged by the assessee. In this circumstances we also respectfully following the decision of the coordinate bench based on which reopening has been initiated, we also confirm the addition of Rs. 9070673/-. Accordingly, ground no. 2 of the appeal is dismissed."

9.4 On perusal of the above decision of the Tribunal (supra) , we find that the Tribunal not only on the principle of the judicial discipline, but also relied on the finding of the coordinate bench that rules and other criteria related to creation of the special reserve fund and its control established that interest accrued in the hands of the assessee. Thus, respectfully following the above decision, the ground No. 3 of the appeal of the assessee is dismissed.

10. In result, the appeal of the Revenue is partly allowed, whereas the appeal of the assessee is partly allowed for statistical purposes.

11. Now, we take up the cross appeals of the assessee (ITA No. 6327/Del/2014) and Revenue (ITA No 6335/Del/2014) for assessment year 2011-12. The grounds of appeal are reproduced as under:

Grounds of appeal of the assessee.

1. On the facts and in the circumstances of the case and in Law, the Learned CIT(Appeal) has erred in upholding the disallowance of Rs.19,69,731/- u/s 14A of the Income Tax Act read with Rule 8D of the Income Tax Rules, 1962.

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2. On the facts and in the circumstances of the case and in Law, the Ld. CIT (Appeals) has erred in not appreciating that the assessee company is having substantial interest free funds in the form of share capital and reserve & surplus for making investments to earn incomes which are exempt under Income Tax Act, 1961.

3. On the facts and in the circumstances of the case and in Law, the Ld. CIT (Appeals) has erred in upholding the addition of Rs. 88,07,907/- being done by the AO on account of treating the interest income earned by the Cooperative Electrical Societies, on special reserve fund created and maintained by it out of the interest forgone by the appellant company, as the income of the appellant company only to follow the judicial discipline even though Ld. CIT (Appeal) hold the view that interest income could not be taxed in the hand of the appellant company.

The appellant craves to leave add, alter, amend, modify, delete, all or any of the grounds of appeal before or at the time of hearing.

Grounds of appeal of the Revenue.

1. On the facts and circumstances of the case and in law Ld. CIT(A) has erred in deleting the addition of Rs. 12,41,71,710/- made by AO on post retirement medical expenses
1.1 On the facts and circumstances of the case and in law Ld. CIT(A) has erred in deleting the addition of Rs. 2,43,17,621/- made by AO on actual payment towards post retirement medical expenses.
2 On the facts and circumstances of the case and in law Ld. CIT (A) has erred in deleting the addition of Rs. 43,58,712/- made by AO u/s14A of the IT Act read with Rule 8D of IT Rules 1962.
3. On the facts and circumstances of the case and in law Ld. CIT(A) has erred in deleting the addition of Rs. 3,13,05,370/- made by AO on account of interest accrued to various cooperative societies but taxable in the hands of the assessee i.e. M/s REC Ltd.
4. On the facts and circumstances of the case and in law Ld. CIT(A) has erred in allowing re computation of deduction u/s 36 (1) (viii) and 36 (1) (vii a) (c).
5. The appellant craves leave to, add to, alter, amend or vary from the above grounds of appeal at or before the time of hearing.

12. The issue involved in ground No. 1 and 1.1 of the present appeal of the Revenue, are identical to ground No. 1 of the appeal of the Revenue having ITA No. 5060/Del/2014 for assessment year 2010-11, which we have already dismissed. Thus, to have

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consistency in our decision, the grounds No. 1 and 1.1 of the present appeal are also dismissed.

13. The issue raised in ground No. 2 of the appeal of the Revenue and grounds No. 1 and 2 of the appeal of the assessee for the year under consideration are identical to ground No. 2 and 2.1 of the appeal of the Revenue and ground No. 1 and 2 of the appeal of the assessee for assessment year 2010-11 respectively, accordingly to have consistency in our decision, the ground no. 2 of the appeal of the Revenue and ground No. 1 and 2 of the appeal of the assessee are adjudicated mutatis mutandis.

14. The issue raised in ground No. 3 of the appeal of the Revenue and ground No. 3 of the appeal of the assessee for the year under consideration are identical to the issue adjudicated in ground No. 3, 3.1 and 3.2 of the appeal of the Revenue and ground No. 4 of the appeal of the assessee respectively, thus to have consistency in our decision, the ground No. 3 of the appeal of the Revenue and ground No. 3 of the appeal of the assessee are decided mutatis mutandis.

15. In ground No. 4, the Revenue has challenged the direction of the Ld. CIT(A) for the computation of the deduction under section 36(1)(viii) and 36(1)(viia)(c) of the Act.

15.1 The Ld. CIT(A) has adjudicated the issue in dispute as under:

> *"7. Regarding the Ground No.5 of the appeal relating to the plea of the appellant to revise the calculation of deduction u/s 36(l)(viii) and 36(l)(viia)(c) by taking into account the impugned addition to the income, it is held that deduction u/s 36(l)(viii) is available on income for "Long Term Finance". The Ld. AO is directed to verify, if the additions to income are in the nature of income from Long Term Finance and if so, allow the benefit. The ceiling for deduction u/s 36(l)(viia)(c) will accordingly be also revised."*

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15.2 In our opinion, the Ld. CIT(A) has only given direction to verify that additions to the income are in the nature of the income from long-term finance and then allow the benefit accordingly. Since the Ld. CIT(A) has directed to verify the quantum of deduction available on "long-term finance" in accordance with law, we do not find any error in the order of the Ld. CIT(A) on the issue in dispute, and we, accordingly, uphold the same. The ground of the appeal of the Revenue is accordingly dismissed.

15.3 In the result, the appeal of the Revenue is partly allowed, whereas the appeal of the assessees partly allowed for statistical purposes.

16. To sum up, both the appeals of the Revenue are allowed partly, whereas both the appeals of the assessee are allowed party for statistical purposes.

Order pronounced in the open court on 29th March, 2019.

Sd/-	**Sd/-**
[BHAVNESH SAINI]	**[O.P. KANT]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 29th March, 2019.
RK/-[d.t.d.s]
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi