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

BEFORE SHRI S. RIFAUR RAHMAN, AM &
SHRI RAM LAL NEGI, JM

आयकरअपीलसं./ I.T.A. No. 6238/Mum/2016
(**निर्धारणवर्ष** / Assessment Year: 2011-12)

Ravi Mohan Gehi, B/6, Navkar Chambers, Andheri Kurla Road, Andheri (E), Mumbai-400 059	**बनाम**/ Vs.	DCIT Cen Cir 40, Piramal Chambers Mumbai Pin-
स्थायीलेखासं./जीआइआरसं./PAN No. AEPPG1674M		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थीकीओरसे/ **Appellant by**	:	Shri Pradip Kanasi, AR
प्रत्यर्थीकीओरसे/**Respondentby**	:	Shri Michael, DR
Virtual Date of Hearing	:	29.07.2020
Date of Pronouncement	:	16.09.2020

आदेश / O R D E R

Per S. Rifaur Rahman, Accountant Member:

The present appeal filed by the assessee is against the order of Ld. Commissioner of Income Tax (Appeals)-49, Mumbai in short 'Ld. CIT(A)' dated 12.08.2016 for AY 2011-12.

2. Brief facts of the case are, assessee filed his return of income for AY 2011 – 12 on 26.09.2011 declaring total income of ₹ 1,88,99,970/–. The return of income was processed under section 143(1) of the Income Tax Act 1961 (in short The Act). The case was selected for scrutiny and notices under section 143(2) and 142(1) of the Act were issued and served on the assessee.

3. Aggrieved with the order of Ld. CIT(A), assessee filed appeal before us for sustaining the 1). disallowance of interest expenses, 2). Addition under Section 14A, 3). addition of unaccounted sales consideration, 4). non-issue of notice under section 153A and 5). levy of interest under section 234B and 234C.

4. At the time of hearing Ld AR submitted that assessee prefers to press only ground Nos. 1,2 & 3 and not presses ground No. 4 and 5. We are extracting the facts only relating to ground No. 1, 2 and 3.

5. The AO observed that assessee has claimed interest expenses of ₹ 11,98,032/– against the interest income of ₹

49,50,210/– received from various parties under section 57(iii) of the Act. When the assessee was asked to prove the interest expenditure is out of or expended wholly and exclusively for the purpose of making or earning the income. In this connection assessee submitted as below:-

Name of the party	Amount of interest	Rate of interest
Samir N. Bhojani	230833	15.6%
Jewel Developers	303333	15%
Satellite Developers Ltd	3822329	12%
Pure Toners & Developers Pvt. Ltd.	43397	12%
Prakash Housing Pvt. Ltd.	341250	16.4%
Venus Wines	55068	12%
Sukhwani Associates	154000	13.2%
Total	4950210	

6. He observed that, assessee has paid interest as under:

Name of the party	Amount of interest	Rate of interest
Global Capital Markets Ltd.	75252	9%
Khoobsusrat Ltd.	1122780	9%
Total	1198032	

7. It was submitted before us that the above chart indicate that assessee was getting interest from the loans given to others at much higher rate than the interest paid for the loans received during the year. The aggregate amount of interest is higher than interest paid. It was also submitted that the loan given on interest is much higher than the loans accepted on which the assessee has paid the interest, the assessee has borrowed funds from the private parties to whom the interest is paid at the rate of 9% and earned the interest ranging from 12% to 16%.

8. The AO rejected the submissions of the assessee and observed that assessee has not proved the interest expenditure is laid out or expended wholly or exclusively for the purpose of making or earning interest income, there is no connection with or relation to the interest income earned and the expenditure claimed are not as per section 57 (iii) of the Act. In the instant case assessee has failed to fulfill the conditions that interest expenditure of ₹ 11,98,032/– is incurred by him for the purpose of earning the interest income. Accordingly he disallowed the interest expenditure.

9. AO observed that the assessee has shown an amount of ₹ 86,92,794/-as dividend income and claimed the same as exempt. The assessee has not shown any expenditure incurred for earning the exempt income. When the assessee was asked to furnish the details unexplained as to why expenditure should not be attributed for earning of this exempt income. In response vide letter dated 15.02.2014 stated that no expenses were incurred for earning of exempt income and relied on judicial pronouncements. AO rejected the submissions of the assessee and invoked the provisions of section 14A read with rule 8D (2) (iii) and disallowed ₹ 6,80,760/– by relying on **Citicorp Finance (India) Ltd 12 SOT 248** and the case of **Daga Capital Management Ltd**.

10. AO observed that during the course of search in the case of Bliss GVS Pharmaceutical Group, certain loose papers pertaining to M/s Growmore Investment and Developers Private Limited were found and seized being copies of undated Hundies of ₹ 25 lakhs each (pages 35 to 46 front and back) which were signed by the assessee Mr Ravi Gehi, director of M/s Growmore Investment and Developers Private Limited (GIDPL) and who

was also a co-owner of the property at Hyde Park from whom Bliss GVS Pharma Ltd (BGVSPL) had purchased the office premises as per agreement dated 07.07.2010. During the course of search, Mr. S. N. Kamath of BGVSPL was confronted on these documents, he stated that they have paid cash of ₹ 1.5 crore to GIDPL and offered the same as additional income for financial year 2010–11. AO observed that in view of the above statement, during the course of assessment proceedings in the case of GIDPL for assessment year 2011–12, when it was asked to explain the documents, GIDPL stated that a sum of ₹ 1.5 crore was received from BGVSPL by way of an RTGS transfer into the bank account and the same was refunded back. In that assessment, AO rejected the contention of GIDPL and observed as below:

> *"First stream of financial transactions is that M/s Bliss GVS Pharma Ltd has purchased office premises No. 102, Hyde Park, Andheri, Mumbai from Ravi Gehi, director of Growmore Investment & Developers Private Limited and other co-owner in the financial year 2010 – 11 and has paid a sum of ₹ 1.5 crore in cash. This and unaccounted cash consideration paid over and above the consideration paid by cheque which is reflected in the books of accounts.*

This amount will be added in the hands of M/s. Bliss GVS Pharma Ltd u/s 69B and the same shall be added in the hands of Shri Ravi Gehi and Smt. Priya Gehi, co-owner of the property as unaccounted cash consideration received for sale of property."

11. In view of the above facts and brief discussion made in the assessment order of GIDPL, AO observed that the amount of ₹ 1.5 crore is taxable in the hands of Shri Ravi Gehi and Smt Priya, owner of the property as unaccounted cash consideration received for sale of property. Accordingly, ₹ 75 lakhs is added to the total income of the assessee, being 50% shareholder as unaccounted cash consideration.

12. Aggrieved with the above order, assessee preferred an appeal before CIT(A). Before Ld CIT(A), assessee filed detailed submission and for the sake of brevity, it is reproduced below:-

6.2. During the appeal proceedings the appellant has submitted as under:
i. The Ld. A.O. falsely claimed that the appellant failed to establish that the interest paid of Rs. 11,98,032/- was incurred by him for the purpose of earning interest income.

ii. The fact of the matter was that the appellant had provided detailed explanation to Ld. A.O. vide his letter dt. 15.02.2014 (Ann 17) giving party wise details of interest paid and interest received as follows:

Interest Received:

Name of the party	*Amount of interest*	*Rate of interest*
Samir N. Bhojani	*230833*	*15.6%*
Jewel Developers	*303333*	*15%*
Satellite Developers Ltd	*3822329*	*12%*
Pure Toners & Developers Pvt. Ltd.	*43397*	*12%*
Prakash Housing Pvt. Ltd.	*341250*	*16.4%*
Venus Wines	*55068*	*12%*
Sukhwani Associates	*154000*	*13.2%*
Total	*4950210*	

Interest Paid:

Name of the party	*Amount of interest*	*Rate of interest*
Global Capital Markets Ltd.	*75252*	*9%*
Khoobsusrat Ltd.	*1122780*	*9%*
Total	*1198032*	

iii. During the year under consideration, your appellant got an opportunity to earn interest (15% from Supreme Mega Constructions LLP. Your appellant received a letter dt. 25.05.2010 (Ann 19) from MIs. Supreme Mega Constructions LLP stating that it was in requirement of Rs. 20 crores for one of its project in pipeline and it was willing to pay interest at 15% on the said loan.

iv. To grab such an opportunity, your appellant had two options of sourcing such funds which are as follows:

i. To accept new loans at a lower rate of interest of 9% and lend it to the said Supreme Mega Corporation LLP at the rate of 15% p.a. for investment in the project and in the process earn a differential of 6% p.a.,

ii. To recall the loans which were given @ 12% to 16% and lend it at the rate of 15% and loose about 1% p.a. or earn only 3% p.a. as a differential.

v. The condition for earning a higher rate of interest was that the amount of Rs. 20 crores should be provided in one tranche. With the said intention, appellant tried to raise funds from his known sources and approached the willing lenders to lend money to the extent possible and make up the rest of the funds from his own interest free sources. The appellant had own funds of about Rs. 12 crore and required about Rs. 8 crore from the lenders to make up for the required amount of Rs. 20 crores.

vi. With the intent of raising the funds to make up for the deficit, the appellant borrowed Rs. 60,00,000/-from Khoobsurat Ltd. on 29.06.2010 at the rate of interest of 9% p.a. By the said date 29.06.2010, the appellant gathered the funds of about of Rs. 13,80,00,000/- which included his own funds of about Rs. 13,20,00,000/- .equipped with the same, he sent a cheque of Rs. 11,80,00,000/- and 2,00,00,000/- to the said Supreme Mega Constructions LLP on 29.06.2010 against the overall requirement of Rs. 20 crores. Unfortunately, the LLP after accepting the said part amount returned the said amount with a request to approach them only when Rs. 20 crores were arranged. The appellant once again with the intention to raise required funds, borrowed Rs. 50,00,000/- from Global Capital Market Ltd. and Rs. 1,45,00,000/- from Khoobsurat Ltd. with the hope that by the required date he will be able to raise the required funds. During the period while he was building up the funds, he wisely chose to invest these available funds in the fixed deposits with bank and earn interest thereon at whatever available rate so as to minimise the cost of the funds. The interest earned during this period has been offered for taxation.

vii. The appellant in spite of his efforts, was unable to raise the required Rs. 20 crore and had to drop the idea of lending in a big way. At the same time, he was unable to refund the amounts borrowed form the said Khoobsurat and Global which were obtained for a fixed period and were returnable after the said period. In order to minimise the cost of funds borrowed from them the appellant ensured that the funds borrowed were employed in manner that produced some income for the appellant.

viii. Had the appellant not borrowed, he would have recalled the loan given at higher rate of interest which would have resulted in losing interest income altogether and in that event no tax would have been paid on that income. Therefore, as a prudent individual, your appellant chose to raise resources by borrowing from market at a lower rate of interest and in the process kept his interest income intact and paid tax on such income.

ix. Thus your appellant advanced a loan of Rs. 13,80,00,000/- to M/s. Supreme Mega Construction LLP on 29.06.2015. Please find attached herewith your appellant's bank ledgers to support the claim of your appellant. (Ann 20). For the purpose of advancing loan to M/s. Mega Supreme Construction LLP your appellant used his own excess capital and also borrowed money from Khoobsurat Ltd. and Global Capital Market at 9%. However, M/s. Mega Supreme Construction LLP returned the said loans advanced to it by your appellant vide letter dt. 30.06.2010 (Ann 21) stating that it did not want money in instalments. Thus, even after the returning of said cheques, your appellant kept borrowing money @ 9% with intention to have an aggregate amount of Rs. 20 crore and then advancing the same to M/s. Supreme Mega Constructions LLP

x. Thus, there was a possible source of income for which the appellant had incurred interest expenses and thus, the said interest of Rs. 11,98,032/- was eligible for deduction u/s. 57(iii)

xi. Also, after receiving loan @ 9% from Khoobsurat Ltd. the same was parked in Fixed deposits and then were given as loan to M/s. Supreme Mega Construction LLP. Without prejudice, it is submitted that the deduction of the said interest should at least be given against the interest income earned on fixed deposits.

The appellant relies on the following judgements:

i) Rajendra prasad NIody, 115 I'M 519(SC)

ii) Raj Kuinari Agarwal 47 taxmann.com 88 (Agra-Trib)

iii) CIT v M. Entburajan, 273 ITR 95 (Mad.)

xii. Without prejudice, it is submitted that only interest income is taxable and in computing the said income the interest paid should be allowed to be deducted against the interest received more so when the appellant has been maintaining the common account for Interest. Attention is invited to the Supreme Court judgement in the case of ACG Associated Capsules (P.) Ltd. 18 taxmann.com 137 has held that ninety per cent of not gross rent or gross interest but only net interest or net rent, which has been included in profits of business of assessee as computed under head 'Profits and Gains of Business or Profession', is to be deducted under clause (I) of Explanation (baa) to section 80111-1C for determining profits of business. Similarly, applying the theory of netting, only net interest is to be taxed under the same head of income. Thus, while computing the total income, interest paid has to be reduced from the amount of interest received

as both come under the same head of income "Income from Other Sources"

Your appellant prays that disallowance of interest of Rs. 11,98,032-/ u/s 57(iii) be deleted.

6.2.1. The appellant further submitted as under :

1. Explanation for utilization of borrowed funds (Ground no.2)

1. The following loans of Rs.2,50,00,000/- were received by your appellant :

Sr. No.	*Name*	*Amount*	*Date*
1.	*Khoobsurat Ltd*	*60,00,000*	*29/06/2010*
2.	*Khoobsurat Ltd*	*40.00.000*	*30/06/2010*
3.	*Khoobsurat Ltd*	*60,00,000*	*15/07/2010*
4.	*Global Capital*	*45,00,000*	*16/07/2010*
5.	*Khoobsurat Ltd*	*40,00,000*	*16/07/2010*
6.	*Khoobsurat Ltd*	*5,00,000*	*17/07/2010*

2. The said loans at sr.no. I 2 aggregating to Rs.1,00,00,000 from the above named persons was utilized for investment in FDR with IOB of Rs. 1,00,00,000/- on 30.06.2010, on which investments in FDR, an interest of Rs.9,54,661 was received from bank which interest was taxable and not exempt from taxation. The said interest was included in total taxable interest of FDR with JOB of Rs.9,54,661/- in filing return of income which is duly reflected in the computation of income (Ann5, pg. No.99 of paperbook). Accordingly the interest paid on the above loans was deductible against the receipt of interest of the said FDR with JOB as per provisions of section 57 of the Income Tax Act. Kindly see the decision of the Supreme Court in the case of Rajendra Prasad Moody (115 ITR 519).

3. The said loans of Sr. No.3 to 6 aggregating to Rs.1,50,00,000 from the above named persons was utilized for investment in FDR with IOB of Rs. 1,50,00,000/- on 13.07.2010, on which investments in FDR, an interest of Rs.9,54,661/- was received from bank which interest was taxable and not exempt from taxation. The said interest was included in total interest of FDR with JOB of Rs.9,54,661/- in filing return of income. Accordingly the interest paid on the above loans was deductible against the receipt of interest of the said FDR with IOB as per provisions . of section 57 of the Income tax Act. Kindly see the decision of the Supreme Court in the case of Rajendra Prasad Moody (115 ITR 519).

7.2. During the appeal proceedings the appellant submitted as under

No expenditure incurred to earn an exempt income

i. The Ld. A.O. disallowed an amount of Rs. 6,80,760/- by falsely resorting to Clause (iii) of Rule 8D(2) which provides for disallowance of 0.5% of average investment for indirect expenses.

ii. Your appellant had vide letter dt. 15.02.2C14 (Ann 17) informed the Ld. A.O. that no administrative expenditure whatsoever was incurred for the purposes of earning the exempt income.

iii. All the expenses that are debited to the Profit & Loss A/c (Ann 22)., have been incurred in the due course of business and none of it is directly or indirectly incurred for the purpose of earning dividend income.

iv. No expenditure could have been incurred by the appellant to earn the dividend income for the reason that the said dividend income was directly credited to the bank account through ECS. Also, all the investments have been made by the appellant through broker, who used to carry out all the operational work like filling the forms, etc. Thus, your appellant hardly spent any time or amount on the investment activities and thus no administrative expenses can be allocated to the earning of dividend income.

v. Your appellant submits that no expenditure has been incurred for earning the dividend income which is debited to the Profit & Loss. No disallowance can be made u/s. 14A when no claim of the expenditure has been made.

vi. The appellant submits that the Ld. AO did not provide any evidence for disallowance of the expenses u/s 14A r.w.r 8D of the Act. He cannot add the same only on the basis on the quantum of dividend received. The contention of the assessee is supported by the following case law

a) Pawan Kumar Parineshwarilal,1 95Taxmau97(DeL)

vii. The appellant is an individual where he takes all the decisions. The Ld. AO) relied upon following case laws which were not applicable to your appellant.

a) MIs Gherzi Eastern Limited (ITA no 6562/BOM/94)

b) Distributors (Baroda) Pvt. Ltd (SC) (155 ITR 120)

c) Magganlal Chagganlal Pvt. Ltd (Born.) (236 ITR 456)

d) M/s Citicorp Finance (India) Ltd (Mum- Trib.) (12 SOT 248)

e) Daga Capital Management Ltd (Mum- Trib.) (117 IT!) 169)

It is to be noted that all the cases referred by the A.O. were in relation to Limited companies where in all the decisions are taken unanimously by the Board of Directors which requires incurring of expenses. However your appellant is an individual and all the cases referred are not applicable to him.

1. Failure on part of the A.O. to identify the expenditure incurred

i. The Ld. A.O. has made disallowance under the presumption without providing any basis or finding to arrive at conclusion that expenditure has been incurred to earn exempt income. In the Assessment Order, the Ld. A.O. has stated that it cannot be ruled out that no administrative and other expenses were incurred that facilitated earning of dividend income.

ii. The Ld. A.O. has come to such conclusion without even pinpointing or identifying any particular activity or expense which would be considered to be directly attributable and instead chose to provide a routine and generic reason of resorting to Rule 8D.

iii. Your kind attention is invited to the provisions of s. 14A of the Income Tax Act.

It can be gathered that provisions of s. 14A are based on the principle of matching concept and based on same, the theory of nexus has evolved which implies that there should be direct or indirect link between the expenditure and the income which does not form part of the total income. Thus, only the expenditure which is incurred to earn exempt income has to be excluded as per s. 14A of the Act.

iv. There should be proximate relation between the expenditure and the exempt income and in absence thereof no disallowance can be made u/s14A. The said contention of the appellant is supported by the following decisions:

a) Priya Exhibitors (P.) Ltd 54 SOT 356 (Delhi-Trib) (2012)[A.Y.

2008-09]

b) Justice Sam P. Bharucha, 53 SOT 192 (Mumbai) [A.Y.2008-09]

c) Hero Cycles Ltd, 323 ITR 518 (P&H) [A.Y.2004-05]

d) Sun Investment Ltd. 8 ITR(Trib)33 (Del.) (2011) [A.Y.2005-06]

2. Failure on part of the A.O. to record satisfaction

i. The appellant has not incurred any expenditure in computing dividend income which is claimed exempt from tax and therefore no expenditure was claimed for earning an exempt income. This stand of the appellant was rejected by the AO without recording any reason as to why the same was found as not satisfactory.

ii. In appellant's case also the Ld AO has not recorded his satisfaction as to why the claim of the company that no expenditure has been incurred in relation to the exempt income cannot be accepted and found to be unsatisfactory.

iii. The appellant had furnished all the details and explanation to the Ld. AO vide lettered t. 15.02.2014 (Ann 17) which explanations and details were not disproved by the Ld. A.0

iv. The Ld AO has not rendered any opinion on correctness of assessee's claim of not spending any amount for earning exempt income.

v. When AO has not rendered any opinion on correctness of assessee's claim of not spending any amount for earning exempt income, he cannot propose to make disallowance by applying rule 8D of 1962 Rules as supported by the following decisions.

a) Auchtel Products Private Ltd., 52 SOT 39 (Mumbai)

b) Raj Shipping Agencies Ltd. 38 taxmann.com 345 (Mumbai)

c) Shriram Properties (P.) Ltd. 60 SOT 75 (Chennai) (TIRO)

d) Maxopp Inv.Ltd 347 1TR 272 (Delhi)

vi. Even where the satisfaction is recorded, the satisfaction should be with respect to the books of accounts. It is significant to note that the books of account maintained and the method of accounting employed are in accordance with the provisions of Sec 44AA and 145 of the Act and are in consonance with the Accounting Standards, policies and procedures prevailing in India and these books and the method enabled accurate determination of the profit of the appellant. The said method of accounting followed and the books of account maintained were verified and certified by the auditor as per the provisions of Sec 44AB of the Act. While calculating the disallowance u/s 14A the 1d. A.0 did not reject the books of accounts which is a must condition for addition or deletion u/s 145

3. Investment in capital of Partnership Firm to be excluded while calculating average investment as per rule 8D(2)(iii)

i. The Appellant has investment in the capital of Everest Developers, Everest Heights, Everest Realtors and Mainlines Realtors LLP, which aggregated to Rs. 44,57,251/- as on 31.03.2011 (Ann 18). While calculating the average investment for the purpose of disallowance u/s. 14A read with Rule 8D, the Ld. A.O. has included the said investment in capital of Partnership Firm and LLP.

ii. Such long term investment in capital of Partnership Firm and LLP being strategic in nature is made for furtherance and expansion of one's own business activities. Such passive investment, being trade investments are not made for earning any income per Se, let alone exempt income. The appellant has not incurred any administrative expenses during the year to maintain these investments in the Partnership Firms and LLP.

iii. Reliance is placed on the decision by the Hon'ble Mumbai ITAT in case of Garware Wall Ropes Limited (ITA No. 49571MJ2012), where it was held that no disallowance could be made uls. 14A read with Rule 8D if primary objective of investment is to hold controlling stake in group concern and not to earn tax-free income.

iv. Without prejudice, it is submitted that, investment amount, being long term strategic trade investment in Partnership Firm and LLP, be excluded while J computing disallowance under Rule 8D.

<u>4. Inaccurate calculation of average investment</u>

Without prejudice, it is submitted that the Id. AO while calculating the disallowance u/s 14A r,w.r 8D took the average of the investments at the beginning & end of the year. He added the

investments on which no dividend was earned while calculating the disallowance u/s 14A r.w.r 81). He also added investments which were held at the beginning of the year and sold during the year on which no dividend was earned. The id. AO while calculating the disallowance u/s 14A should have taken only the investments on which dividend was earned.

5. Investment made out of own funds.

i. The appellant's investment in shares and securities at the year end aggregated to an amount of Rs. 14.39 Crore(Op. Bal. of Rs. 13.62 Crores). (Ann 18) This investment was made from time to time over a period of many years including for the year under consideration, out of its own capital aggregating to Rs, 29.96 crores or thereabout.

ii. The investments in shares were made over a period of several years in the past out of own funds including additions made in previous year and continue to be so held.

iii. Under the circumstances, your kind attention Is invited to the provisions of Rule 8D of Income Tax Rules. From a plain reading of Rule 81), it is gathered that as per rule 8D(2)(ii) only the interest expenditure which is not directly attributable to any particular income has to be considered for disallowance. This issue, discussing scope of Rule 8D(2)(ii) has been fully dealt with by the Jurisdictional Bombay High Court in case of Godrej & Boyce Mfg. Co. Ltd. 323 ITR 81 whereby it clearly held that it is not only the interest directly attributable to tax exempt income, i.e. under rule 8D(2)(i), but also interest directly relatable to taxable income which also needs to be excluded from the definition of component 'A' in the prescribed formula as per rule 8D(2)(ii), and rightly so, because it is only then that common interest expenses, which are to be allocated as indirectly relatable to taxable income and tax exempt income, can be computed.

iv. The investment was made by the appellant from his own capital which stood at Rs. 29.96 crore as on 31.03.2011 which was almost twice of the investments made during the year.

v. No nexus was ever established by the learned A.O. between the borrowed funds and the investments. Instead he assumed that such investments were made wholly out of borrowed funds.

vi. The appellant was never asked to establish such nexus.

vii. Where appellant made investment in shares out of its own funds and had sufficient interest free funds to meet its tax free investments

yielding exempt income, it could be presumed that such investments were made from interest free funds and not loaned funds and, thus no disallowance under section 14A being can be made. The above contention of the appellant is supported by the following decisions;

a) Balaram Chini Mills Ltd., 140 TTJ 73 (Kol) [A.Y.2008-091 b; Mohan Exports, 138 ITD 108 (Delhi) [A.Y.2008-09]

Delite Enterp--ise, 135 'TTJ 663(Mum) [A.Y.2003-04]

d) BNP Paribas SA, 32 twunann.com 276 (Bombay) (2013)

e) GIDC Ltd (Gujarat) 37 taxmann.com 254 (2013) [A.Y.2004-05]

f) Reliance Utilities, 313 ITR 340 (Born.) [A.Y.1999-00]

g) UTI Bank Ltd. 32 taxrnann.com 370 (Gujarat) (2013) [A.Y.2003-04]

h) Jammu & Kashmir Bank Ltd. 33 ta.xmann.com 155 (Amritsar)

i) Bunge Agribusiness (India) (P.) Ltd. 142 'ITJ 817 (Mum).

j) Shoppers Stop Ltd No.1448 & 4475/Mum/2010 dt 30.08.2011.

6. Expenditure debited to Profit & Loss Account was wholly incurred for earning taxable income

Your appellant prays that disallowance of Rs. 6,80,760-/ u/s 14A be deleted.

8.2. The submissions made by the appellant during the appeal proceedings are summarised as under :

1. Complete failure on the part of the Ld. A.O. to observe the provisions of natural justice, equity and fairness —No inquiry — no opportunity to explain the facts and the case - sole reliance on the findings of the AO in third party's case.

a. From the above said findings of the Ld. A.O. it is clear that he had no basis whatsoever in facts for making an addition in the hands of your appellant of Rs. 75,00,000/- for the year under consideration.

He has simply relied upon the direction of another assessment order issued in the case of another assessee.

b. It is also clear that he had not made any inquiry whatsoever on his own in your appellant's case and importantly had not confronted your appellant for giving your appellant any opportunity of explaining the facts of the case.

c. The Ld. A.O. did not even provide the copy of the loose paper relied upon by him nor did he examine the said S. N. Karnath or the said Bliss GVS Pharma Pvt. Ltd. to ascertain the correctness of facts.

d. There was therefore a complete failure on the part of the Ld. A.O. to observe the provisions of natural justice, equity and fairness while making the addition of Rs. 75,00,000/-.

e. The atrocity of the action of the Id. A.O. had been so apparent when he taxed the same income in the hands of your appellant that had already been taxed in the hands of the said Growmore Investments and Developers Pvt. Ltd. by altogether ignoring that his act resulted in flagrant case of double taxation.

f. Your appellant relies on the following decision 'which have held that A.O. has to carry out independent inquiry and cannot just act on the direction of the other person:

i. Rainee Singh, 125 TTJ 816 (Del.)

ii. Atul Jain 212 CTR 42 (Del.)

iii. George Williamson Ltd. 258 1TR 126 (Gau.)

iv. Mahesh Gum & Oil Industries 292 ITR 397 (Raj.)

v. Chuggamal Rajpal 79 ITR 603 (SC)

vi. IBM World Trade Corp. 216 ITR 811 (Born.)

vii. Bawa Abhay Singh 253 ITR 83 (Del.)

viii. United Electrical Co.(P.) Ltd. 258 ITR 317 (Del.)

ix. Ganga Saran & Sons. (P.) Ltd. 130 IFR 1 (SC) X. Hindustan Lever Ltd. 268 ITR 322 (Bom.)

g. Your appellant very strongly submits that the entire addition made without any basis in the in the manner stated above in violation of

natural justice and without any findings of the facts deserves to be quashed.

2. Without prejudice to the aforesaid submission that the addition made by the Ld. A.O. in the manner aforesaid deserves to be quashed, your appellant hereafter in brief attempts to explain that how no addition even otherwise was sustainable either in your appellant's case or in any other case including in the case of the said Growmore Investments Developers and Pvt. Ltd. on the basis of the said Hundis in the limited facts of the case known to your appellant.

i. Addition based on loose per

The AO failed to establish any real connection between the seized documents and the appellant or Grownmore Investments Developers Pvt. Ltd (GIDPL) . It has simply assumed that the loose papers belong to the appellant or GIDPL. The paper were not even discovered at the appellant's or G1DPL's premises but were recovered from a third party's premises. The seized hundis-bills were not even dated. They were simply dumb documents with absurd noting on loose sheets. 'The Ld. A.O. has made additions simply on the basis of loose documents. He has no material record to prove that Rs. 1,50,00,000/- represents income of the appellant of GmPL. He has no material or corroborative evidence on record to prove that cash of Rs. 1,50,00,0001- was paid by the appellant or GIDPL to Bliss GVS Pharma Ltd.

ii. Loose papers found in search of third party premises.

No addition can be made on the basis of a loose, handwritten document recovered from a third party's premises. The fact that Bills of Exchange were recovered from a third party further creates doubts about the veracity of the bills in question. The Ld. A.O. did not discharge his burden of conclusively proving that the loose document belonged to the appellant or G1DPL. He has simply made an addition based on assumption.

iii. Addition made on the basis of Xerox copies- no oridnals were available were seized.

The bills of exchange seized from Bliss GVS Pharma Pvt. Ltd.'s premises were not original documents, but were Xerox Copies. The Ld. A.O. assumed for no apparent reason that the seized papers belonged to your appellant or GIDPL. He has simply for the sake of convenience made it look like the narration is part of the Bills of exchange. Given the fact that the Ld. A.O. did not even possess the Bills of Exchange in original, one wonders how the Ld. A.O. arrived

at his conclusion. Since original copies are not available, it cannot be said that the sides containing the narrations belong to the reverse of the Bills of Exchange. Such sides containing narrations are distinct pieces of documentation; there is no reason to assume otherwise. The appellant cannot be bound to an arbitrary statement written on a photocopied page recovered from a third party's premises. Also, under the provisions of Indian Evidence 1872 the photocopies are not valid pieces of evidence.

iv Year of taxation challenged

Where paper seized from third party, indicating payment to assessee but did not indicate year or years to which such payments are related, there is no basis to conclude that the amount had been received in the A.Y. 2011-12 and thus the amount cannot be taxed in the impugned assessment year.

iv. No third that payments were made or received form the appellant or G1DPL

No admission was made by the third party i.e. Shri S. N. Kamath, director of bliss GVS Pharma Pvt. Ltd. that payments were made or received from your appellant or GIDPL. Mr. Kamath vide his Affidavit dt. 18,02.2011 confirmed that the statements given by him under oath on 17.11.2010 were given under duress and confusion.

v. Explanation by third party that no transaction took place and explanation of the nature of transaction thereof Mr. Kamath vide his letter dt. 25.02.2011 to Addl. Director of Income Tax(Invt) furnishing the explanation of the seized material gave the following explanation: "These are the discharged hunch papers for an maount of Rs. 1.25 crore. The transaction of loan to Growmore Investments is reflected in the books of accounts of Bliss GVS Pharma Pvt. Ltd. The hand written figures mentioned on the reverse of these pages are cash transactions. We have issued a cheque to Growmore Investments and Developers Pvt. Ltd which is reflected in the regular books of account. Copy of account in books of Bliss GYS Pharma Ltd is enclosed". From the declaration it is clear that the transaction was a loan transaction and no income was involved, that there was only cheque transaction and no cash were involved and all the entries were reflected in the books of accounts.

vi. The nature of transaction was in the knowledge of the third party

M/s. Bliss GVS Pharma Ltd. vide its letter dt. 25.03.2013 stated that "We wish to state that we had no other financial transaction with M/s. Growmore Investments and Developers Pvt. Ltd This is the only

transaction between M/s. Bliss GVS Pharma Ltd and M/s. Growmore Investments and Developers Pvt. Ltd and there are no other banking/cash transaction." Thus, the third party was fully aware of the transactions entered into and had complete knowledge of the transactions entered into.

vii. Mis. Bliss GVS Pharma Ltd. (third party) had explained that the transactions, if any, represented payment by it to a fourth party i.e. Vipu! Thakkar and had paid tax thereof.

M/s. Bliss GVS Pharma Pvt. Ltd. advanced a sum of Rs. 1,50,00,000/- to Mr. Vipul Thakkar in cash on the basis of the hundies in the name of M/s. Growmore Investments and Developers Pvt. Ltd. presented by the said Mr. Thakkar to the said M/s. Bliss GVS Pharma Pvt. Ltd. Mr. Vipul Thakkar vide his affidavit dt. 23.04.2013, inter alia, stated as follows: "That, I was in need of cash finds for short time for my personal use and I used the said hundies to take cash from M/s. Bliss GVS Pharma Pvt. Ltd. in the name of M/s. Growmore Investments and Developers Pvt. Ltd. The cash money of Rs. 1,50,00,000/- was returned by me to M/s. Bliss GVSL Pharma Pvt. Ltd, showing the hundies to Mr. S. N. Kamath and explaining that cash money given to Growmore Investments and Developers Pvt. Ltd. is recived back. In fact the cash transaction of Rs. 1_50,00,000/- was in between Bliss GVS Pharma Pvt. Ltd. and myself Mr. Vipul Thakkar. Nowhere _Ws. Growmore Investments and Developers Pvt. Ltd. was involved in the cash transaction of Rs. 1,50,00,000/-. "Therefore, the transaction represented the payment by the said .M/s. Bliss GVS Pharma Pvt. Ltd. (third paty) to the said Mr. Vipul Thakkar (fourth party) and your appellant or GIDPL were nowhere involved in the cash transaction entered in to by them.

viii. The explanation of Mr. Vipul Thakkar (fourth party) that he had received money from M/s. Bliss GVS Pharma Pvt. Ltd. (third party) on the strength of loose papers and had returned it back was accepted by the Settlement Commission. Mr. Vipul Thakkar had admitted in his application to the Settlement Commission that Rs. 1,50,00,000/- was taken by him for his personal use, using the name of M/s. Growmore Investments and Developers Pvt. Ltd. and returned the same in cash to M/s. Bliss GVS Pharrna Pvt. Ltd. and therefore, the noting on the backside of the hundies "Received cash with thanks from M/s. Growmore Investmnts and Developers Pvt. Ltd. Rs. 25,00,000/-. The said fact was accepted by the Settlement Commission which was clearly brought out in it's order.

ix. The backside of the loose paper indicates refund of money

The photocopies seized from the premises of Bliss GVS Pharma Pvt. Ltd. contained a narration which read "Received cosh with thanks from M/s. Growmore Investmnts and Developers Pvt. Ltd. Rs. 25,00,000/-" Even if this narration is believed to be true and binding on the appellant or GIDPL, it speaks of money /advance being refunded to Bliss GVS Phanna Pvt. Ltd. An advance that is returned can never be considered to mean anybody's income. Consequently, no addition u/s. 69 can be made when the money paid and received represented an advance being returned.

x. GIDPL had explained the nature of transaction which it had with - M/s. Bliss GVS Pharma Pvt. Ltd, by explaining the facts with proofs that it had borrowed money by cheque on interest and had repaid the same with interest after deducting tax. GIDPL had entered into a normal business transaction with MIs. Bliss GVS Phanna Pvt. Ltd. This transaction was basically an intention to do real estate business jointly in future; involved the receipt of sum of Rs. 1,50,00,0001- by GIDPL from the said NI/s. Bliss GVS Pharma Pvt. Ltd.. The said amount was received from MJs. Bliss GVS Pharma Pvt. Ltd. by way of an RTGS transfer into bank account of GIIDPL with HDFC bank, Mahim Branch (Bombay Scottish School Branch). The case in point being that GIDPL did not receive or pay any cash to Bliss GVS Pharma Pvt. Ltd. All transfers took place on an electronic medium. Following the customary practice, as a security deposit towards the amount received of Rs. 1,50,00,000/-, six bills of exchange of Rs. 25,00,000/- each were signed and issued by GIDPL. The proposed business venture of Real Estate business between GIIDPL and Ms. Bliss GVS Pharma Pvt. Ltd. did not materialise. The aforesaid amount was repaid by GIDPL on 16.07.2010 vide cheque no. The interest of Rs. 93,698/- on the aforesaid amount was paid vide cheque no. 040502 dt. 17.07.2010. Thus the nature of the transaction between G1DPL and MIs. Bliss Pharma GVS Pvt. Ltd. was explained in detail to the L& A.0.

xi. The explanation of MIs. Bliss GVS Pharma Pvt. Ltd. and Shri Vipul Thakkar and its offer for taxation has been accepted by the Settlement Commission.

M/s. Bliss GVS Pharma Pvt. Ltd. wide its application to the Settlement Commission dt. 05.02.20 13 confirmed as under:

> *"During the course of search, 6 hundies worth Rs. 25 lakh each were seized in the name of the Grownore Investments and Developers Pvt. Ltd. and were inadvertently at the time of search were offered as additional income in the statement recorded u/s]32('4) by Mr. Vipul Thakkar (Finance Manager,) ofM/s. Bliss GVS Pharma Ltd."*

xii. M/s. Bliss, M/s. Bliss GYS Pharina Pvt. Ltd. had appeared before the Ld. A.O. of GIDPL and confirmed the facts in writing stated by your appellant.

> *Mr. Ka-math vide his letter dt. 25.02.20 11 to Addl. Director of Income Tax(Envt) furnishing the explanation of the seized material gave the following explanation: "These are the discharged hundi papers for an amount of Rs. 1.25 crore. The transaction of loan to Growmore Investments is reflected in the books of accounts of Bliss GVS Pharma Pvt. Ltd. The hand written figures mentioned on the reverse of these pages are cash transactions. We have 'issued a cheque to Growmore Investments and Developers Pvt. Ltd which is reflected in the regular books of account. Copy of account in books of Bliss GVS Pharma Ltd is enclosed. ". From the declaration it is clear that the transaction was a loan transaction and no income was involved, that there was only cheque transaction and no cash were involved and all the entries were reflected in the books of accounts.*

xiii. An affidavit and confirmation to this effect of the 114/se Bliss GVS Pharma Pvt. Ltd. was obtained and filed by GIDPL.

Mr. S.N. Kamath vide his affidavit dt. 28.01.2015 confirmed the following facts:

> • *"The said Mr. Vipul Thakkar, FINANCE MANAGER of the company Bliss GVS Pharma Ltd, was in need of money for his personal use and therefore, on the strength of the above promissory notes, he had taken a cash loan from the company Bliss GVS Pharma Ltd. by misrepresenting that it was Growmore Investments and Developers Pvt Ltd who had borrowed the money, this time in cash without disclosing the true fact that it was he who had borrowed cash and had misused the security offered by the said Growmore Investments and Developers Pvt Ltd against the advance given to it by cheque.*
>
> • *That the said cash loan taken by the said FINANCE MANAGER Mr. Vipul Thakkar was repaid by him in cash to Bliss GVS Pharma Ltd and the fact of refund of loan by the said Mr. Vipul Thakkar had been noted and acknowledged on the back side of the said promissory notes by him for and on behalf of the company. The loose papers no.35 to 46 being photocopies of the backsides of the said promissory notes represent the repayment of loan by Mr. Vipul Thakkar and*

have nothing to do with the said Growmore Investments and Developers Pvt Ltd.

That the facts stated in paragraphs' 8 and 9 have been communicated to inc and affirmed before me by the said Mr. Vipul Thakkar and have been confirmed by him in Paragraph IVo.5.1.1.8 and 5.1.1.9 of his statement of facts filed before the Settlement Commission in an application made by him being Settlement Application No. 14/111/MUC-15/002/2013-14/IT for Settlement of his income for A. Y.

That, I again re-iterate that, the transaction of loan by Bliss GVS Pharma Ltd to Growmore Investments and Developers Pvt. Ltd was a cashless transaction and that it was carried via banking channels. A sum of Rs.1.5 crore was given by M/s.Bliss GVS Pharma Ltd. by way of RTGS transfer into the Bank Account of Growmore Investments and Developers Pvt Ltd with HDFC Bank Ltd (Bombay Scottish School Branch). The RTGS transfer was made by M's. Bliss GVS Pharma Ltd, from their bank account with the Fedral Bank, Dombivali Branch on 29.06.2010."

Mr. S. N. Kamath vide his affidavit dt. 18.02.2011 also confirmed that statements recorded under oath were given under duress and confusion.

xiv. Without prejudice, the transaction, if any, could have represented receipt of loan and repayment thereof by the said GIDPL not in the nature of any income.

Mr. Kamath vide his letter dt. 25.02.2011 to Addl. Director of Income Tax(Invt) furnishing the explanation of the seized material gave the following explanation: "These are the discharged hundi papers for an amount of Rs. 1.25 crore. The transaction of loan to Growrnore Investments is reflected in the books of accounts of Bliss GVS Pharma Pvt. Ltd. The hand written figures mentioned on the reverse of these pages are cash transactions. We have issued a cheque to Growmore Investments and Developers Pvt. Ltd. which is reflected in the regular books of account. Copy of account in books of Bliss GVS Pharma Ltd. is enclosed.". From the declaration it is clear that the transaction was a loan transaction and no income was involved, that there was only cheque transaction and no cash were involved and all the entries were reflected in the books of accounts.

xv. None of the case law relied upon by the Ld. A.O. are relevant to the facts of the said GMPL's case or of your appellant's case.

Kindly note that none of the cases referred to and relied upon by the id. A.O. in his order are relevant to the facts of your appellant's case. Further, the said cases dealt with the assessment of persons who were searched and not with the cases of the third party assessment similar to the case of your appellant. In addition, the said cases dealt with the statements on oath made by the searched person concerning their income while in your appellant's case no such statement has been made by your appellant or GMPL. (in fact some of the cases directly support your appellant's contention that no addition could have been made on the basis of presumptions) All the details as stated above have been submitted by Growmore Investments and Developers Pvt. Ltd. before your honour in the appeal no. 49/IT-445/13-14 from time to time.

3. Once again without prejudice to the aforesaid submission that the addition made by the Ld. A.O. in the manner aforesaid deserves to be quashed, your appellant hereafter in brief attempts to explain that how no addition even otherwise was sustainable in your appellant's case in the limited facts of the case known to your appellant.

i. No material whatsoever has been found during the course of search in the case of the said Shri S. N. Kamath or Bliss GVS Pharma Pvt. Ltd. or any other case implicating even remotely that a payment of Rs.1,50,00,000/- was made to your appellant and his wife.

ii. No statement of any person including that of Shri. S.N. Kamath or Bliss GVS Pharma Pvt. Ltd. has been recorded to the effect that any such payment of Rs. 1,50,00,000/- was made to your appellant and his wife.

iii. Neither any material nor any statement as above indicate and confirm the receipt of such amount by your appellant nor there is any evidence about the day, date and year of such receipt by your appellant.

iv. Your appellant and his wife have not received any such amount in the year under consideration or in any other year and requests your honour to put the Ld. A.O. to the strictest proof of evidence in support of his action of addition of the said Rs. 75,00,000/- in your appellant's hands.

v. Your appellant jointly with his wife had under an agreement for sale dt. 07.07.2010 (Ann 23) sold his rights in premises at unit 102, Hyde Park to the said Bliss GVS Pharma for a consideration of Rs. 4,30,00,000/-. The said agreement was duly stamped and registered and the consideration of Rs. 4.30,00,000/- was much greater than the stamp duty value of Rs. 2,30,45,000/- then prevailing as on the date of the agreement. Please Ann 17 being 'Pavti' (first page of sale agreement) which refers to 'Bazar Mulya' i.e. Stamp Duty Value of Rs. 2,30,45,000/-

vi. The appellant had a carpet area of 294.34 sq metres of 102, Hyde Park which was sold at Rs. 146089.56 per sq.metres. It is to be noted that the rates prevailing in the same building on which units of the building were sold by the respective owners on 25.08.2011, 09.09.2011and 22.02.2012 were 94999.52, 91139.04 and 155038.76 respectively which were much lower than the rates sold by your appellant.

vii. Kindly note that even the alleged loose paper relating to the transaction of transfer of the said premises at 102, Hyde Park was not found or seized from the appellant's premises but was seized in the hands of the said Bliss GVS Pharma Ltd. In the circumstances, no addition could have been made on the basis of a loose paper that was seized from third party without examining the facts and without establishing that the said loose paper belonged to your appellant and importantly it represented your appellant's unaccounted income.

viii. Again the said loose paper was a Xerox copy when seized and was undated and unsigned and Was not in handwriting of your appellant and therefore no addition could have been made by the Ld. A.O. without discharging his onus of establishing that it belonged to your appellant and represented his unaccounted income.

ix. Not only the Ld. A.O. had convinced himself that the said loose paper belonged to your appellant but he had failed to record any satisfaction to the effect that such a loose paper belonged to him. Importantly, he was not even in possession of the alleged loose paper to have formed any opinion about it's belonging and for recording his satisfaction thereby.

x. The said Bliss GVS Pharma Ltd. had clearly explained and confirmed in writing vide letter and affidavit and also under the statement on oath recorded in assessment of the said

Growmore Investment and Developers Pvt. Ltd. that clearly confirmed that it had paid no consideration in cash to your appellant or to his wife. Under the circumstances the Ld. A.O. had made the addition of Rs. 75,00,000/- in your appellant's case without any basis. Accordingly, the statement made by Bliss GVS Pharma Ltd. who was in knowledge of the facts should have been believed and should not have been overlooked by the Ld. A. 0.

xi. It is very important to note that at no point of time during the search the said Bliss GVS Phai-ma Ltd. or it's director had ever stated that an unaccounted payment of Rs. 1,50,00,0001- was made to your appellant and his wife for transfer of 102, Hyde park. Your appellant requests your honour to put the Lii, A.O. to the strictest proof of evidence in support of his allegations that the said Bliss GVS Pharma Ltd. had alleged to be have made payment to your appellant which had remained to be accounted.

xii. The said Bliss Pharma GVS Pharma Ltd. had explained the contents and the facts of the transaction and therefore they should have been believed by Ld. A.O.

13. After considering the submissions of the assessee, Ld CIT(A) sustained the additions made by the AO by observing as under for the disallowance of interest expenditure, 14A disallowance and undisclosed sales consideration:

6.3. I have carefully examined the facts of the case, the stand taken by the A.O in the assessment order, the grounds of appeal, the written submissions filed by the appellant during the hearing proceedings and the remand report of the A.O.

6.4. I am inclined to agree with the A.O that as per provisions of section 57(iii) of the Act, interest expense can be allowed as a deduction against interest income only when it is shown by the appellant that the interest paid was laid out or expended wholly and exclusively for the purpose of making or earning such income. In this regard, I find that the appellant has made payment of interest of Rs.11,98,032/- to two parties i.e. MIs. Global markets Ltd and M/s. Khoobsurat Ltd. The borrowing from M/s. Khoobsurat Ltd has been

made on 29.6.2010, 30.6.2010,15.7.2010, 16.7.2010 & 17.7.2010 whereas the borrowing from M/s. Global Capital has been made on 16,7.2010. The plea of the appellant that the said amount was borrowed to earn interest @15% per annum by lending the same to M/s. Supreme Mega Constructions LLP and therefore should be allowed as an expense u!s.57(iii) is not found to be justified since the same is not supported by any agreement with M!s. Supreme Mega Constructions LLP in this regard. The only evidence submitted by the appellant is a letter dated 25.5.2010 from the said MIs. Supreme Mega Constructions LLP which states as under:

With reference to our discussion of the captioned subject , we request you to lend us or arrange for such lending an amount of Rs.20 crores on or befcre 30 June 2010 on which we will be pleased to pay an interest @15%. The said amount is required for the purpose of the proposed subject of development of land bearing CTS No.372, CTS No.372/1 to 4 and CTS No.425 situated at Mar 01, the acquisition of which is in progress. We shall refund the money by 31st March 2011.

6.5. I find that the payment of Rs.13.80 crores was made on 29.6.2010 to MIs. Supreme Mega Constructions LLP, which has been received back on 30.6.2010. In the submissions made it has been admitted by the appellant that the loan to M/s. Supreme Mega Constructions LLP was made by the appellant using his own excess capital and also borrowed money from Khoobsurat Ltd and Global Capital Market Ltd. The submission of the appellant is not found to be correct with respect to the brorrowing from Global Market Ltd which has been made on 16.7.2010.

Further, the amount advanced to M/s. Supreme Mega Constructions LLP on 29.6.2010 has been received back on 30.6.2010 and FDR with 10B of Rs.13.75 crores was made. Therefore, I do not find merit in the submission of the appellant that the entire interest expense of Rs.11,98,032/- should be allowed u/s.57(iii) of the Act, on the ground that the same was borrowed for the purpose of lending it to M/s. Supreme Mega Constructions LLP, for earning an interest income.

6.5.1 However, from the submissions made and the copy of HDFC bank book in the books of the appellant it is noted that the various borrowings made from M/s. Khoobsurat Ltd on 29.6.2010 and 30.6.2010 amounting to Rs 1 crore have a nexus with the investment in FDR of Rs.1 crore out of total FDR made of Rs.13.75 crores on 30.6.2010. The A.O. is directed to verify the interest received on this FDR of Rs 1 crore and allow the interest expense on the borrowings

made from M/s. Khoobsurat Ltd on 29/6/2010 and 30/6/2010 u/s.57(iii) of the Act.

7.3. I have carefully examined the facts of the case, the stand taken by the A.O in the assessment order, the grounds of appeal, the written submissions filed by the appellant during the hearing proceedings and the remand report of the A.O.

7.4 The appellant is an individual and has income from brokerage, commission and consultancy charges and from partnership firms namely, Everest Developers, Everest Heights and Everest Consultants. It has been admitted that the sale/ purchase of shares were made through brokers. I find that the A.O. has pointed out in the assessment order that some administrative expenditure was definitely attributable towards earning of the dividend income. After considering the claim of the appellant that no expense was incurred for earning of dividend income and the decisions with respect to applicability of section 14A to appellant's case, the A.0 has recorded his dissatisfaction with such claim. It is obvious that the A.0 has considered the accounts of the appellant, to come to such conclusion. I find that although the A.O. has not specifically mentioned the expenses which have been incurred towards earning of dividend income he has computed the disallowance. u/s 14A at Rs.680760/-, by taking 0.5% of average investment, under Rule 8D (2)(iii).

7.4.1 I find that the primary onus was on the appellant to show that no expense was incurred in relation to the exempt income. The same has not been discharged. The A.0 has made the assessment after considering the accounts and submissions of the assessee. The appellant has admitted that its investment in shares and securities at the year end aggregated to an amount of Rs. 14.39 Crore(Op. Bal. of Rs. 13.62 Crores). The appellant has also earned dividend income of Rs. Rs.86,92,794/- and claimed the same as exempt. Considering the sizeable portfolio of shares and the activities undertaken, I am of the considered opinion that expenses would have been incurred for managing the same by way of using the services of staff, office phones etc. Similarly, expenses would be involved in maintaining and keeping records, their audit and accounting etc. From the profit and loss account it is seen that the various administrative expenses as under could be said to be partly attributable to earning of dividend income out of investment in shares and securities which have been purchased and sold during the year through brokers.

Accounting charges 25,000

Audit fees	*10,000*
Postage courier	*19,750*
Legal & professional fees	*16,000*
Salaries & bonus	*6,28,300*
Telephone expenses	*1,64,645*

Therefore, the disallowance u/s 14A read with Rule 8D2(iii) is found to be justified. Reliance is placed on the decision of the ITAT Mumbai 'A' Bench in the case of Asha Lalit Kanodia vs AddLCIT Range 12(2) Mumbai dated 17.02.2016, reported at 71 taxmann.com 84 (101mbai-Trib) where in it was held that the onus was on the assessee to substantiate her claim that no expenditure was incurred in relation to exempt Income with her accounts. The appellant has submitted that the decisions cited by the A.O pertained to companies. However, l am of the considered opinion that considering the facts of this case as noted above, the same would apply to any organized business venture.

7.4.2 The appellant has submitted that the A.O should have excluded the investment in capital of partnership firm while considering the average investment to compute disallowance under Rule 802(111). I find that the Appellant has income from the partnership firms and the same are claimed as exempt. So, the A.O has rightly included the same while considering the average investment. Reliance in this regard is placed on the decision of the IAT Mumbai in the case of Dharamsingh M. Popat vs ACIT, 127 TTJ (Mum) 61wherein it was held that since income is charged in the hands of a partnership firm but it is exempt in the hands of a partner, therefore section 14A would be applicable in computing the total income of the such partner in respect of his share in the profits of such firm.

7.4.3 In view of above discussion, the addition made by the A.O under Rule 8D(2)(iii) of Rs.680,76011- is upheld. So far as the disallowance out of interest expenses is concerned, I am inclined to agree with the appellant that no such disallowance is required u/s.81D 2(u) since the own capital of the appellant is far in excess of the average investment in shares and securities, in view of the decision of the Bombay High Court in the case of CIT vs. HDFC Bank Ltd- ITA No.330 of 2012- Pronounced on 23-July-2014. However, the A.O. would work out the disallowance under Rule 8D (2)(i) with respect to interest expenditure on borrowings utilized in

purchase of Kotak Flexi Debit scheme, if applicable, as directed in pare 6.5 above. This ground is partly allowed.

8.3. I have carefully examined the facts of the case, the stand taken by the A.O in the assessment order, the grounds of appeal, the written submissions filed by the appellant during the hearing proceedings and the remand report of the A.O.

8.4. I find that the appellant and his wife Priya Gehi, being co-owners of the property at 101, Hyde Park and 112, Hyde Park have sold these properties during the F.Y.2010-11 relevant to A.Y.2011-12. The appellant is also director of M/s. Growrnore Investment & Developers Pvt Ltd (GIDPL). Following the search in the case of M/s. Bliss GVS Pharma Ltd and Shri S.N. Kamath, wherein certain documents i.e. pages 35 to 46 of Annexure A-i showing financial transactions, involving undisclosed income with appellant / GIDPL was found, the cases of appellant as well as of GIDPL was transferred u1s.127 (2) of the Act to the A.O. dealing with the assessment of the search cases in Bliss GVS Pharma group i.e. DCII CC40, Mumbai. The same A.O has passed the assessment order for A.Y. 2011-12 in both the cases, i.e. of Ravi Gehi the appellant and M/s GIDPL.

8.4.1. The A.O., who has made detailed enquiry with respect to the entries in the documents at pages 35 to 46 in the assessment proceedings in the case of M/s. GIDPL for A.Y.2011-12, has come to the conclusion that there were three streams of distinct, separate and independent transactions of the same amount of Rs.1.50 crores and the assessee i.e. M/s. GIDPL was trying to telescope the three streams of different transactions into each other to evade tax liability. The A.O. has identified the three streams of transactions as under :

i) Payment of Rs.1.50 crores by M/s. Bliss GVS Pharma Ltd in cash, over and above the consideration paid by cheque and reflected in the books of account, for purchase of office premise No.102, Hyde Park from Ravi Gehi and other co-owner in the F.Y.2010-11.

ii) Loan transactions of Rs.1.50 crores given by M/s. Bliss GVS Pharma Ltd by way of RTGS transfer to M/s.GIDPL on 29.6.2010 which has been repaid by cheque dated 16.7.2010. This transaction is duly recorded in the books of account.

iii) Cash loan of Rs.1.50 crores given by assessee M/s. GIDPL to M/s. Bliss GVS Pharma Ltd as evidenced from the notings made on

the back side of the hundi/ bilis of exchange seized as Annexure A-1 35 to 46.

The A.O. has made an addition of Rs.1.50 crores in the case of GIDPL on account of unexplained investment in view of (iii) above. Further the A.O. has made an addition of Rs.75 lacs (50% of Rs.1.50 crores) in the case of the appellant Shri Ravi Gehi in view of (i) above.

8.4.2 I find that the documents seized from the office premise of M/s. Bliss GVS Pharma Ltd at Page No.35 to 46 are photocopies of six bill of exchange containing following details on its front and backside. On the front it is noted as under:-

BILL OF EXCHANGE

Rs.25,00,000/- Mumbai

On demand Pay at Mum bai to Bliss GVS Pharma Ltd or order the sum of Rupees Twenty five lakhs only for value received this day.

Sd-
Growmore Invesment & Developers Pvt ltd

Address:-

Director
Notice of Dishonour

Waived

Signature of

Drawer

On the backside of the document it is noted as under:

Received cash with thanks from M/s. Growmore Investments & Developers Pvt Ltd. Rs.25,00,000/- (Rs. Twenty Five lacs only)

For BLISS GVS PHARMA LTD

Sd/-

Authorised Signatory

8.4.3. On a reading of both the sides of the said bill of exchange it prima-facie appears that cash loan of Rs.25 lacs has been received by Growmore Investment & Developers Pvt Ltd (GIDPL) from Bliss GVS Pharma Ltd and it has been subsequently repaid in cash to Bliss GVS Pharma Ltd, since there is no mention of any cheque or other bank transaction or date on the front side and there is a specific mention of cash received on the backside of the document. This shows that these are cash hundies and not promissory notes against a loan taken through banking channel, as claimed by the appellant.

8.4.4. In this regard following statements/ clarifications have been given by various persons.

> *(i)- In the statement on oath given by Mr. Vipul B Thakkar,Finance Manager, who has also signed for Bliss GVS Pharma Ltd on the backside of the said seized document, on 16.11.2010 it has been stated as under:*
>
> *" I confirm that these loose papers are found in this office premises. Documents No.35 to 46 are hundi 'given by us to M's. Growmore Investment Pvt Ltd (wrongly written as Glowmore). We have paid the cash of Rs. 1.25 crores to M/s. Growmore Investment and Developers Pvt Ltd as cash consideration (i.e. on money) for purchase of land. I am offering this amount of Rs. 1.25 crores as additional income for the F. Y. 2010-11."*
>
> *(ii) Cross examination of Vipul B Thakkar was aflowed to Shri S.N. Karnath, MD of Bliss GVS Pharma Ltd during the course of search u/s.132 on 16.11.2010 in which he stated as under:*
>
> *"I, S.N. Kamath, MD of Bliss Pharma Ltd and Proprietor of GVS Labs do not wish to ask anything or doubt*

anything as whatever slated by Vipul B Thakkar is correct and appropriate to the best of my know/edge. I have authorized him to state the facts on my behalf and on behalf of Bliss GVS Pharma L(d/G VS Labs (now taken over by BGVS PL since F.Y2OO6-07.

(iii) Further in the statement given on 17.11.2010 it has been stated by Shri S.N. Kamath that he voluntarily offered additional income of Rs.41.05 crores which include additional income of Rs.1.25 crores in the hands of Bliss GVS Pharma Ltd for the F.Y.2010-11 for the hundies/cash. Subsequently vide letter dated 25.2.2011 it was admitted by Bliss GVS Pharma Ltd that the total_amount Qf hundi was Rs.1.50 crores.

(iv) An affidavit dated 18.2.2011 was flied before the A.O. by Shri S.N. Kamath stating that on 17.11.2010 during the course of search and seizure action a statement of oath was recorded by DGIT (Inv) wherein the answers to questions No.2,3,& 5 were recorded under duress and confusion.

(v) in the course of assessment proceedings in the case of GDPL, Shri S.N. Karnath was cross-examined by the said company on 26.3.2013 in which he has confirmed that the said six bills of exchange seized from his office premises were photocopies and the same were obtained for the purpose of securing the loan of

.3 Rs.1.5 crores, given to GIDPL by M/s. Bliss GVS Pharma. He has also confirmed that whatever was stated in his affidavit dated 18.2.2011 was correct. He has also stated that the transaction with GIDPL was purely cheque transaction which was reflected in the regular books of ãCCOUflt. It was further stated by Shri Karnath regarding the nature of transaction of Rs.1.50 crcres paid to GIDPL, in reply to Q.No.27 as under:

In my personal capacity / had to buy a property at 101, Hyde Park. The related papers page No. 40 was found from my residence which was giving the estimation of total consideration and I was to pay Rs. 1.13 crores approximately in cash and to meet this obligation the cheque of Rs. 1.50 crore was given to Mis. Growmore. / completed my obligation in purchasing the property and the cheque was returned to MIs. Bliss GVS."

Another question (No.29) was put to Shri Kamath :

Q- " it is noticed that M/s. Bliss GVS Pharma has purchased a property 102, Hyde Park from Mr. Ravi Gehi. Why the inference cannot be drawn that this can be the same type of obligation as referred by you in the answer to Q.No.28 (correct question No. is 27). Ans. The same inference cannot be drawn as no other papers found during the course of the search. The relevant documents shall be furnished within a day or two."

(vi) In the statement of oath given by the appellant, Shri Ravi M. Gehl before ADIT(inv) Unit-V111(2), Mumbai on 2.3.2011 he has stated as under :

Q.9. Please state the purpose of the Loan transaction ?

Ms. We were negotiating to buy a property and requested Ms.BGVSPL for an advance of Rs. 1.50 crores. The transaction could not materialize and the said advance was returned to M/s. GVSPL alongwith interest.

Q.10. How was the Loan returned and state the mode of payment ?

Ans. The said advances were returned through proper banking channel and I shall be submitting the bank statement in support of the same on 03.03.2011.

Q.11. I am showing you page nos 35 to 46 of Annexure A-1 containing pages 1 to 61 seized from the office premises of M/s. BGVSPL during the course of search on 16.11.2010. Please go through these pages and explain the contents re-Corded therein? Ans. Page nos.36,38,40,42,44 and 46 are Bill of exchange for the amount mentioned therein i.e. Rs.25 lacs each. The same are signed by me in the capacity of Director of Ws. Growmore Investment and Developer Pvt. Ltd. Further, page n-os 35,37,39,41,43 and 45 are not written by me, neither I have any connections with these. It appears that these pages are signed by Mr. Vipul Thakkar of M/s. BGVSPL. I do not have any cash transactions as mentioned on these pages.

(vii) An affidavit dated 28.1.2015 was filed by Shri S.N. Kamath in which it has been stated that the said six promissory notes of Rs.25 lacs each issued b GIDPL as security for advance by Bliss GVS Pharma Ltd by way of RTGS transfer. The transaction of advance was executed at the hands of Mr. Vipul

Thakkar who is the finance manager of the company Bliss GVS Pharma Ltd and the said undated promissory notes were kept in his possession. Mr. Vipul

Thakkar, on the strength on the above promissory notes took a cash loan for his personal use from the company Bliss GVS Pharma Ltd by misrepresenting that it was GIDPL who had borrowed the money. The said cash loan, taken by Mr. Thakkar, was returned by him in cash to Bliss GVS Pharma Ltd and the fact of refund of loan by him had been noted and acknowledged on the backside of the said promissory notes by him for and on behalf of the company. The loose papers No.35 to 46, being photocopies of the backside of the promissory notes, represent the repayment of loan by Mr. Vipul Thakkar and have nothing to do with the said GIDPL. These facts have been confirmed by Shri Vipul Thakkar in the statement of facts filed before the settlement commission in application made by him for settlement of his income for A.Y.2011-12.

(viii) M/s GIDPL has submitted before the A.O. that a sum of Rs.1.5 crores was given by M/s. Bliss GVS Pharma Ltd by way of RTGS transfer into the bank account of M/s. GIDPL on 29.6.2010 which was returned on 16.7.2010 by cheque no.040501 dtd 16.7.2010. The same was cleared for payment in the bank account of GIDPL on 19.7.2010 and interest of Rs.93698/- was paid on this loan. It has been submitted that the transaction of receipt of amount of Rs.1.5 crore was supported by bills of exchange issued by GIDPL which was signed by Mr. Ravi Gehi, Director of the company and on repayment of the amount, the security provided i.e. all the six original bills of exchange were duly returned to M/s. GiDPL without any such noting on the backside of the bills of exchange.

8.5. It is further observed that the sale of two properties at Hyde Park has been made by the appellant, along with the co-ownwer, as under :

(i) sale of 101, Hyde Park to Shri S.N. Kamath and Shri Gautarn Ashra vide agreement dated 21.9.2010,

(ii) sale of 102, Hyde Park to M/s. Bliss GVS Pharma Ltd vide agreement dated 7.7.2010.

8.5.1. Another document was seized from the residence of Shri S.N. Kamath which reflect a working of total consideration for sale of

101, Hyde Park property at Rs.613,22,9401-, as against the sale consideration of Rs.500,00,000/-, on the basis of which an addition of Rs.56,61,470/- (50% of Rs.113,22,940/-) was made in the hands of the appellant and considered in Ground No.1 above. On the top of this document, two dates have been mentioned i.e. start date 23.7.2010 and payment due date 21.10.2010. These transactions, thus, pertain to sale agreement of 101, Hyde park, which was executed during this period of 23.7.2010 to 21.10.2010, i.e on 21.9.2010.

8.5.2. The sale of 102, Hyde Park has been made vide agreement dated 7.7.2010 and this lies between the period of advancing a sum of Rs.1.50 crores, by way of RIGS transaction on 29.6.2010 by M/s. Bliss GVS Pharma Ltd to M/s. GIDPL and its return on 16.7.2010. The appellant's submission that the six bills of exchange of Rs.25 lac each was given by M/s. GIDPL to M/s. Bliss GVS Pharma Ltd as a security is not found acceptable since there is no such mention on the seized document linking the same to the transaction of Rs.1 50 crores made through banking channel.

8.5.3. Further, in the statement given by Shri S.N. Kamath in the course of search it was clearly admitted that cash payment of Rs.1.5 crores (on money) was paid by M/s. Bliss GVS Pharma Ltd. In the cross examination Shri S.N. Kamath has admitted that there was an obligation to pay cash and the cheque of Rs.1.50 crores was given to M/s. Growmore to meet this obligation and when the said obligation of making the cash payment was completed, the loan amount was received back by cheque. Although Shri S.N. Kamath has claimed that this obligation was with reference to the purchase of the property 101, Hyde Park, but the same is not found to be correct since, as noted above, the 101 property was sold on 21.9.2010 and related to the cash transaction of Rs.113,22,940/-, whereas the period of transaction through banking channel of Rs. 1,50 crores matches with the sale transaction with respect to property at 102, Hyde park vide agreement dated 7.7.2010. It is also noted that there is no co-relation between the transaction amounting to Rs.113,22,9401- and the issue of hundies of Rs.1.50 crores. In fact, even before the settlement commission the payment of cash of Rs.1.5 crore has been treated by Bliss GVS Pharma Ltd as application of funds/cash outflow and it has been submitted as under :

> *" The applicant has purchased office premises at Hyde Park, Opp. Chandivali Crossing, Powai, Anciheri (East), Mumbai. In this deal, applicant was to pay cash towards part consideration but failed to meet the obligation as committed and a cheque was drawn in favour of Ws. Growmore Investment and Developers Pvt. Ltd. The bundles were drawn*

by Growmore Investment and Developers Pvt. Ltd and got it discharged so that the applicant cannot demand cash/cheque from Growmore Investment and Developers Pvt Ltd. The applicant has discharged the obligation in the deal of property by settling the dues and hundies were returned to the applicant. The source of this cash is an amount received against the cheques issued to the non-genuine purchases parties. This is an application of funds, hence this transaction is not offered to tax."

This clearly shows that there was a cash obligation towards purchase of the property 102, Hyde Park by M/s. Bliss GVS Pharma and the same have been duly settled. All these transactions have taken place during the F.Y.2010-11 relevant to AY.2011-12. Therefore, I am of the considered opinion that the said obligation was to the appellant Shri Ravi Gehi and not to M/s. GIDPL, who was merely a via media to carry out the necessary transactions.

8.5.4 As regards the submission made by Shri Vipul Thakkar before the Settlement Commission, I am of the considered opinion that the disclosure of additional income of Rs. 113,22,940/- is with respect to misappropriation of the amount relating to transaction of the property at 101, Hyde park. Further, the admission of taking Rs.1.50 crores against the hundies by Shri Thakkar for his personal use is only to explain the notings made on the back side of the hundi regarding receipt of cash by Bliss GVS Pharma Ltd. The fact remains that the hundi of Rs.1.50 crore came into existence only as an instrument to settle the cash payment by M1/s. Bliss GVS Pharma Ltd to the appellant with respect to the transaction of the property at 102, Hyde park.

8.5.5. The appellant has submitted that no addition could be made in the case of appellant on the basis of documents/ loose papers without establishing that the said documents belong to the appellant. I find that this contention of the appellant may be correct in cases where the A.O invokes section 153C to hold that the document seized from some other searched person belongs to the assessed and then makes the addition. This is not so in this case as the assessment has been made u/s 143(3) by considering the material and evidence available with the A.O in the course of assessment proceedings.

In view of above discussion, I am of the considered opinion that the cash payment of Rs.1.50 crore was made by MIs. Bliss GVS Pharma to the appellant towards the property purchased at 102, Hyde Park and the A.O. was correct in making addition of Rs.75 lacs in the

case of the appellant. Accordingly, this addition is upheld and Ground No.4 is dismissed.

14. Aggrieved with the above order, assessee is in appeal before us, raising 6 grounds of appeal and since assessee has not preferred to press ground No. 4 and 5, ground No. 6 being general. Accordingly, ground No. 4, 5 and 6 are **dismissed.**

15. At the time of hearing, Ld AR brought to our notice page 4 of paper book and brought to notice details of interest income and interest expenditure claimed by the assessee in the statement of total income. He brought to our notice page 11 of the paper book, which is submission of the assessee before assessing officer that assessee is earning interest income by lending the money on interest. He submitted that assessee is earning the interest income ranging from 12% to 16.4% and also takes loans from private parties to whom he pays interest @9% . The differential rate is the income of the assessee. He brought to our notice page 19 of the paper book which is letter of request/proposal for loan of ₹ 20 crores @ 15% from M/s Supreme Mega Constructions LLP required for the purpose of

proposed development of land. He also brought to notice bank statement of HDFC bank in which assessee has taken various loans from M/s Khoobsurat Ltd and M/s Satellite Developers Ltd on various dates and foreclosed the mutual funds with Birla Sun Life and Kotak flexi. Assessee made the payment to M/s Supreme Mega Constructions LLP of ₹ 13.8 crores on 29.06.2010. On 30 June 2010, M/s Supreme Mega Constructions LLP has returned the loan for the reason that their requirement is of ₹ 20 crores in one block payment and not in instalments. Copy of the letter placed at page 22 of the paper book. He brought to our notice page 9 of the assessment order and objected to the observation of the assessing officer that the interest expenditure is not wholly or exclusively for the purpose of earning interest income. He submitted that the bank statement is the proof that assessee has arranged loan from private parties and foreclosing own investment, made the payment to M/s Supreme Mega Constructions LLP. He submitted that the AO and Ld CIT(A) has not appreciated the direct link to the arranging of the funds for lending of funds to Supreme Mega Constructions and incurring interest expenditure. For the above proposition, he relied on the

case of **Rajendra Prasad Modi 115 ITR 519**. Further he submitted that Ld CIT(A) raised the question on primary objective, he submitted that assessee has a primary mandate to arrange funds for making loan to M/s Supreme Mega Constructions and it is evident from the letter issued by them. He prayed that there is no denial that assessee has incurred the interest expenditure by taking or arranging loan from private parties for the purpose of lending the money to M/s Supreme Mega Constructions and prayed for deletion of the disallowance of interest expenditure.

16. With regard to 14A disallowance under rule 8D (2) (iii) relating to administration expenses, he submitted that assessee is an individual and managed investment portfolio without incurring any expenditure and has not made any new investment during this year. He submitted that provisions of section 14A has no application and submitted that this is the first year of disallowance made by AO, no such disallowances was made in any earlier assessment year.

17. With regard to ground No. 3 he submitted that the search was conducted on 16.11.2010 on a third party and no material relating to assessee was found. The loose papers which was found during search is relating to M/s Growmore Investments & Developers Private Limited (GIDPL), there is no evidence or allegation for receipt of ₹ 1.5 crores by assessee or his wife. He brought to our notice the copies of Hundies, which are between GIDPL and BGVSPL. No doubt, the assessee has signed the document on behalf of GIDPL, as a director. Further he submitted that the income was already assessed to tax in the hands of GIDPL and the same income is assessed to tax in the hands of assessee. Further he brought to our note that no addition was made in the hands of assessee's wife. He prayed that the above addition may be deleted as there is no material found linking the assessee who has actually not received anything above the declared consideration in the return of income.

18. On the other hand learned DR submitted with regard to ground No. 1 that the letter produced from M/s Supreme Mega Constructions LLP is afterthought arrangement and there is no link of interest expenditure to the interest income earned by the

assessee during this assessment year, therefore the interest expenditure has no direct link to the interest income earned by the assessee. Therefore, as per the provisions of section 57, assessee can claim deduction only those expenditure which are incurred to earn the interest income.

19. With regard to ground No. 2, learned DR submitted that assessee has earned exempt income and assessing officer is justified in making the disallowance under section 14A.

20. With regard to ground No. 3, he supported the conclusions of the Ld CIT(A) and submitted that assessee has sold 2 properties during this assessment year and supported the conclusions of the Ld CIT(A) that assessee has received on money on the sale of property to BGVSPL.

21. Considered the rival submissions and material on record. With regard to ground no. 1, we notice that the assessee has earned the interest income by lending to various parties and claimed interest expenditure. The AO observed that the interest expenditure claimed by the assessee is not relating to interest income earned by the assessee and no link to the interest income

earned by the assessee. Whereas assessee has brought to our notice that assessee has received an offer for lending to a property developer for ₹ 20 crores. On the basis of bank statement submitted by the assessee, we notice that assessee has in fact made arrangement for an amount of ₹ 13.8 crores from internal source and also taken loan from other parties @ 9%. There is evidence that assessee has actually paid to M/s Supreme Mega Constructions LLP and there is evidence in the bank statement that assessee has borrowed funds from the parties i.e., M/s Khoobsurat and M/s Satellite Developers Ltd. The transaction with M/s Supreme Mega was not materialized due to the fact that the developer wanted one time payment and not in instalments. No doubt the interest expenditure incurred by the assessee has no link to the interest income earned by the assessee. However we notice that assessee is regularly into arranging funds for the lending business. Since as a continuous venture in earning the interest income, it is not necessary that all the expenditure like interest has to have direct link to earning of interest income. We notice that assessee has sufficient capital to make investment as well as lending the funds to earn interest

income. The object of the venture is relevant and the object of the assessee is to earn the interest income by arranging funds internally as well as arranging from outside. In the given case assessee received a proposal from the developer and however this transaction was not materialised due to failure on the part of the assessee to make arrangement of total requirement of the developer i.e. ₹ 20 crores. The intention of the assessee to arrange for the above requirement and managed to arrange only ₹ 13.8 crores, remitted the above said amount to the developer and the developer has returned the same next day. It clearly indicates that assessee made effort to complete the transaction. It is not necessary that you can earn in every transaction and in this case, instead of making interest income, assessee has incurred a loss. We do not agree with the tax authorities that only income is chargeable to tax under the head income from other sources and the loss is not chargeable under the head income from other sources. The intention of the legislature to allow the expenditure incurred by the assessee to earn the income from other sources, which is directly linked to the earning of such income. In the given case, the assessee has not incurred the expenditure directly

linking the interest income but incurred the loss by arranging the funds for earning the interest income. You cannot segregate the income alone without considering the object of the transaction or nature of the business of earning the interest income and the expenses includes loss vice versa. There is no doubt that assessee is into arranging funds and earns interest income by refinancing to the other parties and the difference in the rates in refinancing is the income of the assessee. It is the nature of the business and all the expenditure incurred in earning the income is allowable expenditure. It is only characterization whether it is relating to expenses incurred to earn income or loss incurred in the process of making the income. Therefore, in our considered view the interest expenditure incurred by the assessee will fall under the category of loss. Therefore, it is allowed as an expenditure. Accordingly, ground No. 1 raised by the assessee is **allowed**.

22. With regard to ground No. 2, we notice that assessee has earned dividend income of ₹ 86,92,794/– in the proprietary concern namely Growmore Estate Consultants. Before assessing officer, assessee has submitted that assessee has not incurred any expenditure in earning the above said exempt income. The

assessing officer rejected the submissions of the assessee and invoked provisions of section 14A read with rule 8D (2) (iii) to disallow administration of funds of 0.5% of the average total investments as per balance sheet. After considering the submissions of the parties, we notice from the Income and Expenditure Account submitted by the assessee, which is part of paper book at page 27, the assessee has claimed expenditure for the business of brokerage, commission and consultancy charges to the extent of ₹48,12,889/– (₹ 86,69,066 - ₹ 38,56,177). The above expenditure includes direct expenditure and administration expenditure. The direct expenditure like sub- brokerage, compensation paid, business promotion expense, advertisement expenses and depreciation. After reducing these expenditure, we found that the administration expenses are only ₹ 15,39,003/–.

23. We notice that assessee has submitted that it has not incurred any expenditure to earn the exempt income, we do not agree with the above submission and no income can be earned without efforts by the investor. The legislature has introduced the rule 8D in order to simplify the complex nature of earning the exempt income utilising the same resources available for earning

the taxable income. Even though the rules were introduced by the legislature to simplify the procedure for calculating the expenditure incurred for earning the exempt income, sometimes it ends up in absurd results. In the given case, we notice that the assessee has actually incurred administration expenses only ₹ 15,39,003/– whereas AO determined that the disallowance under rule 8D (2) (iii) of ₹ 6,80,760/-, which is equal to 44% of the total administration expenses. The assessee has incurred that the administration expenses to earn the total income which includes exempt income. The gross total taxable income of the assessee is ₹ 1,90,28,159/– and exempt income is ₹ 86,92,794/–. Therefore, the total gross income earned by the assessee is ₹ 2,77,20,953/–. The percentage of exempt income on total gross income is 31%.

24. We notice from the assessment order that the AO has considered average value of investment and applied the rule. We do not know whether the assessee has earned the exempt income from all the investments made by the assessee. As per the judicial precedents, the AO should have considered only those investments which has earned exempt income and eliminate those investment which has not earned exempt income.

Therefore, in our considered view, AO should calculate the disallowance under rule 8D (2) (iii) by eliminating the investments which has not earned the exempt income. By calculating the disallowance as per above direction and AO should compare the disallowances as above by simultaneously calculating 31% of the administration expenditure i.e., Rs. 4,77,091/- (31% of ₹ 15,39,003/-) and the revised disallowance under rule 8D (2) (iii). In case the revised disallowance under rule 8D(2) is less than 31% of the adminstration expenditure then AO should disallow as per rule 8D(2). Accordingly, we are remitting this issue back to the file of AO to determine the proper disallowance under section 14A. Therefore, ground No. 2 raised by the assessee is **allowed for statistical purpose**.

25. With regard to ground No. 3, we noticed that during search proceedings in Bliss GVS Pharmaceutical Group, certain loose papers pertaining to M/s Growmore Investments were found and seized being copies of undated 6 numbers of hundies value of Rs. 25 lakhs each. These were executed between Growmore Investments and Bliss GVS Pharmaceutical and were signed by assessee representing as director of Growmore Investments.

There is no dispute as far as the transaction between Growmore Investments and Bliss GVS Pharmaceuticals. When confronted with Shri S.N.Kamath representing M/s Bliss GVS, he confirmed that they have paid the cash of Rs. 1.5 crores to M/s Growmore Investments and offered the same as additional Income for the F.Y 2010-11.

26. When confronted with M/s Growmore Investment to explain the documents, it was stated that they received Rs. 1.5 crores thru RTGS transfer into their bank account and the same was refunded. The AO rejected the contention of the statement from M/s Growmore Investment and the AO, who is common officer for Growmore Investment and assessee, has observed in the assessment order passed u/s 143(3) in the case of Growmore Investment that first stream of financial transaction is that M/s Bliss GVS has purchased office premises No 102, Hyde Park from assessee and other co-owner in the financial year 2010-11 and paid a sum of Rs. 1.50 crores in cash. This is an unaccounted cash consideration paid over and above the consideration paid by cheque which is reflected in the books of accounts. This amount will be added in the hands of M/s Bliss GVS u/s 69B and the

same shall be added in the hands of assessee and co-owner of the property as unaccounted cash consideration received for sale of property. Because it is added in the assessment in the case of Bliss GVS, it was also added in the hands of assessee and the co-owner.

27. During assessment proceedings, the assessee obtained an affidavit and confirmation from Bliss GVS and as per which Mr. Vipul Thakkar who is the finance manager of Bliss GVS and was in need of funds for personal requirement has misused his capacity as finance manager and utilized the hundies to withdraw cash from the company. It was confirmed that he has refunded the funds to the company. The transaction recorded back side of the hundies represents the repayment of loan by Mr. Vipul. M/s Bliss GVS has confirmed in writing that there was no cash transaction with M/s Growmore Investments. This was also confirmed by Mr. Kamath vide letter dt 25.02.2011 before Addl Director of Income Tax (investigation) that the transaction of discharged hundi papers involving loan transaction with Growmore Investments.

28. We find that Ld CIT(A) confirmed that assessee and his wife co-owner sold two properties at 101 and 102 at Hyde Park, Andheri, Mumbai. There was allegation on sale of property at 101, Hyde Park of payment of on money and Ld CIT(A) has deleted the same. However, in the second sale transaction of 102, Hyde Park also, Ld CIT(A) observes from the findings of AO that there were three streams of distinct, separate and independent transactions of the same amount of Rs. 1.50 crores and the assessee i.e., GIDPL was trying to telescope the three streams of different transactions into each other to evade tax liabililty. Here, he is denoting about GIDPL and not the present assessee. He acknowledges the findings of AO that first Bliss GVS makes cash payment to assessee and co-owner, then second transaction Bliss GVS gives loan to Growmore Investments by RTGS of Rs. 1.50 crores on 29.06.2010 and it is refunded by cheque dt 16.7.2010. The third transaction Growmore Investments gives cash loan to Bliss GVS as per notings in the back side of the hundies.

29. From the above transactions we noticed that

a. Bliss GVS makes cash payment to assessee (an individual) for the on money consideration and there is no evidence whatsoever in the possession of the tax authorities. It is only a presumptions.
b. Again Bliss GVS gives loan thru banking channels to Growmore Investments and the loan was closed by repayment again thru banking channel. It does not involve exchange of consideration for both sides.
c. Growmore Investments makes cash payment to Bliss GVS. What for? Is there any transaction with Growmore Investment and Bliss GVS.

30. Why should Growmore Investments make cash loan to Bliss GVS? Is it resettlement of cash payment made to assessee on the capacity of individual. Even if it is so, what is that Bliss GVS would get. It purchased property and gives on money by cash and it is refunded back by Growmore Investment by cash. Where is the additional cost to the Bliss GVS on this purchase of property?

31. Come back to the case of assessee, even if accept the findings of revenue authorities that assessee has received on money over and above sale consideration in cash and why should the company, where assessee is a director to pay back in cash to

the purchaser. What is that assessee has achieved. As such there is no clear finding that the cash was actually received by assessee except that Mr Vipul who is the finance manager has confirmed in writing on the back side of the hundies. Other than that there is no other proof linking the assessee to have received the cash from Bliss GVS, moreover in this case, it was found that employee of the Bliss GVS has received the cash. From the hundi transaction and the contents of the hundi, clearly indicate that this transaction was between Growmore Investment and Bliss GVS. Any proceedings has to be taken with these companies and just because there is property transaction by the assessee, the revenue cannot presume itself linking assessee as the beneficiary of the transaction. We already indicated above that there is no benefit to Bliss GVS in the above transactions and neither to Growmore Investment. Whatever Bliss GVS has paid in cash presumably to assessee, was received back.

32. In our considered view, AO has linked hundi transaction between Growmore Investment and Bliss GVS with assessee. There is no proof coming out of the documents found during search linking the assessee as the beneficiary except presumption

and assumptions of the tax authorities. Since there is no cogent material in the possession of the revenue to indicate that the assessee has actually received cash from Bliss GVS, we are inclined to delete the addition made by AO. Accordingly ground no 3 raised by the assessee is **allowed**.

33. In the result, appeal filed by the assessee is **partly allowed.**

Order pronounced in the open court on 16.09.2020.

Sd/-	*Sd/-*
(Ram Lal Negi)	(S. Rifaur Rahman)
न्यायिकसदस्य / Judicial Member	लेखासदस्य / Accountant Member

मुंबई Mumbai;दिनांकDated : 16/09/2020
Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ **ITAT, Mumbai**