आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH 'A', CHANDIGARH

श्री संजय गर्ग, न्यायकि सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SHRI SANJAY GARG, JM & SMT. ANNAPURNA GUPTA, AM

आयकर अपील सं./ ITA No. **470/Chd/2018**
निर्धारण वर्ष / Assessment Year : 2014-15

The A.C.I.T., Panchkula Circle, Panchkula.	बनाम	M/s Janak Global Resources Pvt. Ltd., Plot No.315, Indl-Area, PH-1, Panchkula.
स्थायी लेखा सं./PAN NO:		AACCJ4466C
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Manoj Kumar ,Ms.Chanderkanta Sr.DR
राजस्व की ओर से/ Revenue by : Shri Parikshit Aggarwal, CA

सुनवाई की तारीख/Date of Hearing : 06.07.2018/16.10.18
उदघोषणा की तारीख/Date of Pronouncement : 16 .10.2018

आदेश/Order

PER ANNAPURNA GUPTA, AM:

This appeal has been preferred by the Revenue against the order of learned Commissioner of Income Tax (Appeals), Panchkula (hereinafter referred to as CIT(Appeals) dated 21.2.2018 relating to assessment year 2014-15.

2. Ground No.1 raised by the Revenue reads as under:

> *"1. Whether on the facts and circumstances of the case the Ld. CIT(A) has erred in allowing the appeal of the assessee and deleting the disallowance of Rs.18,44,482/-u/s 36(l)(iii) which is not correct because the assessee has given interest free advances of Rs.3,55,00,000/- to Shivaks Impex Limited, sister concern which is for non business purposes."*

3. Brief facts relevant to the issue are that during assessment proceedings, the Assessing Officer noted that the assessee had given interest free advance of Rs.3,55,00,000/- to Shivaks Impex Ltd., a sister concern. On the other hand, the assessee had paid interest of Rs.33,40,780/- on loan raised from banks but had not charged any interest on the loans advanced to M/s Shivaks Impex Ltd. The Assessing Officer asked the assessee as to why interest expenses should not be disallowed u/s 36(l)(iii) of the Income Tax Act, 1961 (in short 'the Act') and added to the taxable income. The assessee filed its reply, which is reproduced in para 2 of the assessment order. Briefly put the assessee contended that the impugned advances were business advances and therefore no disallowance, of interest paid on funds utilized if any for making the advances, was warranted. The assessee also contended alternately that it had utilized its own interest free funds for making the advances and therefore also no disallowance of interest u/s.36(1)(iii) was warranted. After considering the reply filed by the assessee, the AO rejected the same and on the basis of reasons recorded in para 2.1 of the assessment order interest amounting to Rs.18,44,482/- was disallowed and added to the income of the assessee. The AO held that the assessee had failed to prove business exigency for making the advances, and therefore, as per the decision of the Jurisdictional High Court in the case of Abhishek Industries Ltd., reported in 286 ITR 1 and of the Apex court in the case of S.A. Builders,

reported in 288 ITR 1, the disallowance of interest was warranted .

4. During appellate proceedings the assessee contended that it had sufficient own funds for making the investment and, therefore, no disallowance u/s.36(1)(iii) of the Act warranted. Reliance was placed on a number of decisions of the Hon'ble Jurisdictional High Court in this regard and also on decisions of the ITAT Chandigarh Bench. The Ld.CIT(Appeals) on appreciating the contention of the assessee deleted the disallowance made following the decision of the Hon'ble Jurisdictional in the case of CIT Vs. Max India Ltd. in ITA No.210/Chd/2013 and CIT vs. Stock Kapsons Associates, 381 ITR 204 (P&H). The relevant findings of the CIT(A) at para 5.2 of the order is as under:

> **"***5.2 I have gone through the facts of the case and written submission filed by the appellant. It is noted from the balance sheet from A.Y.2013-14 & A.Y.2014-15 respectively that appellant's share capital, free* reserves *and interest free current liabilities far exceeded the advance of Rs.3.55 Crores given to the sister concern Shivaks Impex Ltd. during Assessment Year 2013-14. The average free funds available in the A.Y.2013-14 are Rs.1560 lacs and in A.Y.2014-15 are Rs.1491 lacs. Thus the appellant has demonstrated the availability of enough surplus funds for making interest free advance to the sister concern. The Hon'ble jurisdictional High Court has held in the case of CIT vs Max India Ltd. ITA No.210/Chd/2013 dated 08.03.2017 that if an assessee establishes that its interest free funds were equal to or more than the interest bearing funds it would be open to it to contend that presumption arises that investments have been made out of the same. Similarly reliance placed by the appellant on CIT vs. Kapsons Associates, 381 ITR 204(P&H) is also found to be supporting the*

facts of its case. Therefore, no portion of the interest paid on borrowed funds is required to be disallowed in the case of the appellant and addition made on this account for both the years under appeal are ordered to be deleted. This ground of appeal is allowed."

5. Aggrieved by the same the Revenue has come up in appeal before us.

6. During the course of hearing before us, the Ld. DR contended that the proposition laid down by the Hon'ble Jurisdictional High Court in the decision relied upon by he CIT(Appeals) while deleting the disallowance was no longer good law. It was pointed out that the Hon'ble Jurisdictional High Court in various decisions had laid down that where the assessee could demonstrate sufficiency of own funds, the presumption that would arise was that it had used its own funds for the purpose of making interest free non business advances, calling for no disallowance of interest u/s. 36(1)(iii) of the Act. The Ld. DR pointed out that this presumption theory had now been overruled by the Hon'ble Apex Court in its decision in group of cases with the lead case being Maxopp Investment Ltd. Vs. CIT (2018) 402 ITR 640 (SC), wherein in the context of section 14A the decision of the Hon'ble Jurisdictional High Court in the case of Avon Cycles Ltd. Vs. CIT in ITA No.277 of 2013 was also under consideration. The Ld. DR pointed out from the order of the Hon'ble Apex Court that in the said case the Hon'ble Jurisdictional High Court had upheld the disallowance of interest u/s 14A where mixed funds were deployed by the assessee, and this proposition was affirmed by the Hon'ble

Apex Court also in the aforementioned appeal before it. Our attention was drawn to para 42 of the order of the Hon'ble Apex Court in this regard as under:

> *40. Civil Appeal No. 1423 of 2015 is filed by M/s. Avon Cycles Limited, Ludhiana, wherein the AO had invoked section 14A of the Act read with Rule 8D of the Rules and apportioned the expenditure. The CIT(A) had set aside the disallowance, which view was upturned by the ITAT in the following words:*
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> > *"...Admittedly the assessee had paid total interest of Rs.2.92 crores out of which interest paid on term loan raised for specific purpose totals to Rs.1.70 crores and balance interest paid by the assessee is Rs.1.21 crores. The funds utilized by the assessee being mixed funds and in view of the provisions of Rule 8D(2)(ii) of the Income Tax Rules the disallowance is confirmed at Rs.10,49,851/-, we find no merit in the ad hoc disallowance made by the CIT (Appeals) Rs.5,00,000/-. Consequently, ground of appeal raised by the Revenue is partly allowed and ground raised by the assessee in cross-objection is allowed..."-*
>
> *Taking note of the aforesaid finding of fact, the High Court has dismissed the appeal of the assessee observing as under:*
>
> > *"In the present case, after examining the balance-sheet of the assessee, a finding of fact has been recorded that the funds utilized by the assessee being mixed funds, therefore, the interest paid by the assessee is also an interest on the investments_made. Such being a finding of fact, we do not find that any substantial question of law arises for consideration of this Court.*
>
> *After going through the records and applying the principle of apportionment, which is held to be applicable in such cases, we do not find any merit in Civil Appeal No. 1423 of 2015, which is accordingly dismissed."*

The Ld. DR stated that it was clearly evident from the above order of the Hon'ble Apex Court that the presumption

theory laid down by the Hon'ble Jurisdictional High Court in various decisions, now stood overruled and where mixed funds were deployed by the assessee, disallowance of interest on proportionate basis was to be made to the extent of interest free non business advances made by the assessee. In sum and substance, the Ld. DR contended that the mixed funds theory had been confirmed to be the Law of the Land as opposed to the presumption theory laid down by the Hon'ble Jurisdictional High Court.

7. The Ld. counsel for assessee, on the other hand, vehemently opposed this contention of the Ld. DR. The Ld. counsel for assessee pointed out that the decision rendered in the case of Avon Cycles Ltd. (supra) was on a different set of facts and the proposition laid down therein was to be read in the context of the facts relating to it. It was contended that before the Hon'ble Supreme Court the only fact before the Hon'ble Court was that there were mixed funds available with the assessee and in the light of this limited fact, the Hon'ble Supreme Court upheld the disallowance of interest u/s 14A of the Act after holding in the lead case i.e. Maxopp Investment Ltd. (supra) that the apportionment rule was to be applied for the purpose of making disallowance of expenses incurred in relation to earning exempt income,as per section 14A of the Act. The contention of the Ld. counsel for assessee was that it was neither submitted to the court that sufficient own interest free funds were available, nor were any arguments made raising the presumption that

would arise in such case. It was pointed out that even the question before the Hon’ble Court was not relating to the correctness of the presumption theory and therefore, also the disallowance u/s 14A was not dealt with by the Hon'ble Supreme Court in this context. It was contended therefore, that the decision rendered in the case of Avon Cycles Ltd. (supra) had to be read in the restricted sense, of meaning that where the fact situation revealed the limited fact of mixed funds available with the assessee, disallowance u/s 14A was warranted. The Ld. counsel for assessee thereafter contended that in fact the Hon'ble Apex Court, in the case of Hero Cycles Pvt. Ltd. Vs. CIT, 379 ITR 347(SC), had upheld the presumption theory of utilization of own interest free funds for making non business advances where sufficiency of such funds is adequately demonstrated. It was pointed out that the Hon’ble Supreme Court in the said case ,on the issue of disallowance of interest u/s 36(1)(iii) on advances made to directors had held that where the assessee had sufficient surpluses it could have utilized those funds for giving advances to its directors.

8. The Ld. counsel for assessee stated that it is clearly evident from the above that the Hon'ble Apex Court had upheld the proposition that where sufficient own interest free funds are available no disallowance of interest u/s 36(1)(iii) of the Act was warranted. Our attention was also drawn to various decisions of the Hon'ble Jurisdictional High

Court which had also upheld the presumption theory as under:

> *"1. Bright Enterprises P. Ltd. vs. CIT, (2016) 381 ITR 107 (P&H)*
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> *2. CIT vs. Kapsons Associates, (2015) 381 ITR 204 (P&H)*
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> *3. Gurdas Garg vs. CIT, ITA No.413/2014 dated 16.7.2015 (P&H),*
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> *4. Pr.CIT vs. M/s. Malhotra Book Depot, ITA No.31 of 2017 dated 23.02.2017 (P&H)*
>
> *5. Pr.CIT vs. M/s. Holy Faith International Pvt. Ltd., ITA No.87 of 2017 dated 24.07.2017 (P&H)*
>
> *6. Trident Infotech Corporation Ltd. vs. CIT & Anr, (2016) 385 ITR 335 (P&H)*
>
> *7. CIT vs. Max India Ltd., (2017) 398 ITR 209 (P&H) "*

9. We have carefully considered the contentions of both the parties and have also gone through various case laws referred to before us. The issue to be adjudicated,as narrowed down from the arguments made before us by both the parties, is whether in relation to disallowance of interest made u/s.36(1)(iii) of the Act, the proposition laid down by the Hon'ble Jurisdictional High Court in a number of decisions, that where the assessee had sufficient own interest free funds along with interest bearing funds and had made or advanced sums for non business purposes without charging any interest, the presumption that would arise is that the investment had been made out of interest free funds generated or available with the assessee, is still a good law in the light of the decision of the Hon'ble Apex Court in the case of Hero Cycles Ltd. (supra).

10. We are in agreement with the contention of the Ld. counsel for assessee. Undoubtedly, proposition of law laid down by courts have to be read in the context of the facts before them and the issue dealt with by them. Reliance should not be placed on a decision without discussing how the factual situation fits in with the factual situation of the decision on which reliance is placed. The Hon'ble High Court of Bombay in the case of CIT vs Sudhir, 214 ITR 154 (Bom) has observed that a case is an authority for what it actually decides and not what may come to follow from some observation which may find place therein. The Hon'ble High court observed as under:

> *"It is well-settled that the ratio of a decision alone is binding, because a case is only an authority for what it actually decides and not what may come to follow from some observations which find place therein. The ratio of the decision has to be distinguished from propositions assumed by the Court to be correct for the purpose of disposing of the particular case, because it is the ratio and not the propositions which are relevant and binding. It is, therefore, not proper to regard every word, clause or sentence occurring in a judgment of the Court as containing a full exposition of the law. Judgments of the Courts should not be construed as statutes. They must be read as a whole and observations made therein should be considered in the light of the facts and circumstances of that case and the questions before the Court. A decision of the Court takes its colour from the questions involved in the case in which it is rendered."*

In the case of CIT vs Sun Engineering Works Pvt. Ltd. 198 ITR 297(SC), the Hon'ble Supreme Court observed that Judgements must be read as a whole and observations in judgements should be considered in the context in which

they are made and in the light of the question that were before the court:

> *"It is neither desirable nor permissible to pick out a word or a sentence from the judgement of the Supreme Court divorced from the context of the question under consideration and treat it to be the complete law declared by the court. The judgement must be read as a whole and the observation from the judgement have to be considered in the light of the questions which were before the court.A decision of the Supreme Court takes its colour from the question involved in the case in which it is rendered and while applying the decision to a later case,courts must carefully try to ascertain the true principle laid down by the decision."*

11. The Hon'ble apex court in the case of Goodyear India Ltd & Ors vs State of Haryana & Another and State of Maharashtra & Another reported in 188 ITR 402(1991) have held that a decision on a question that has not been argued cannot be treated as a precedent. The Hon'ble Kerala High Court in the case of CIT vs K. Ramakrishnan (1993) 202 ITR 997 held that a precedent is an authority only for what it actually decides and not for what may remotely or even logically follow from it.

Having said so we find that in the case of Avon Cycles Ltd. (supra) the issue was relating to disallowance of expenditure u/s 14A of the Act. The Hon'ble Apex Court dealing with the bunch of cases relating to said issue, took up the case of Maxopp Investment Ltd. (supra) as the lead case and proceeded to answer the question which arose under various circumstances before them that whether the

investment made in shares and stocks for the purpose of retaining the control over the company or as stock-in-trade and from which exempt income by way of dividend was generated would attract the provisions of section 14A of the Act, calling for disallowance of expenditure incurred in relation to earning the said dividend income and the question arose for the reason that it was the contention of the assessee, which had been upheld by various High Courts, that the dominant purpose for making the investment in the shares not being earning of dividend income, it called for no disallowance of expenditure u/s 14A of the Act. Answering this question the Hon'ble Supreme Court held that the dominant purpose test was irrelevant and the fact remaining that the exempt income had been earned which was attributable to the dividend income had to be disallowed and could not be treated as business expenditure. The Hon'ble Apex Court reaffirmed the theory of apportionment of expenditure between taxable and non taxable income laid down by it in the case of CIT Vs. Walfort Share & Stock Brokers Pvt. Ltd., 326 ITR 1. After holding so, the Hon'ble Apex Court dealt with the appeal filed in the case of Avon Cycles Ltd. (supra) and taking note that the fact in that case was that the funds utilized by the assessee were mixed funds, the Hon'ble Apex Court held that the principle of apportionment was to be applied and, therefore, dismissed the appeal of the assessee. The same is evident from a bare reading in the case of Maxopp Investment Ltd. (supra) and more specifically para 42 of the said order

wherein the case of Avon Cycles Ltd. (supra) has been dealt with and which is reproduced again hereunder:

41. Civil Appeal No. 1423 of 2015 is filed by M/s. Avon Cycles Limited, Ludhiana, wherein the AO had invoked section 14A of the Act read with Rule 8D of the Rules and apportioned the expenditure. The CIT(A) had set aside the disallowance, which view was upturned by the ITAT in the following words:

"...Admittedly the assessee had paid total interest of Rs.2.92 crores out of which interest paid on term loan raised for specific purpose totals to Rs.1.70 crores and balance interest paid by the assessee is Rs.1.21 crores. The funds utilized by the assessee being mixed funds and in view of the provisions of Rule 8D(2)(ii) of the Income Tax Rules the disallowance is confirmed at Rs.10,49,851/-, we find no merit in the ad hoc disallowance made by the CIT (Appeals) Rs.5,00,000/-. Consequently, ground of appeal raised by the Revenue is partly allowed and ground raised by the assessee in cross-objection is allowed..."

Taking note of the aforesaid finding of fact, the High Court has dismissed the appeal of the assessee observing as under:

"In the present case, after examining the balance-sheet of the assessee, a finding of fact has been recorded that the funds utilized by the assessee being mixed funds, therefore, the interest paid by the assessee is also an interest on the investments_made. Such being a finding of fact, we do not find that any substantial question of law arises for consideration of this Court.

After going through the records and applying the principle of apportionment, which is held to be applicable in such cases, we do not find any merit in Civil Appeal No. 1423 of 2015, which is accordingly dismissed."

12. It is evident from the above that the issue before the Hon'ble Apex Court was not whether the presumption theory would apply or not where there are mixed funds and the assessee had demonstrated availability of sufficient own

funds for making the investments . No discussion on this aspect has also been done by the Hon'ble Apex Court and merely noting that the assessee had utilized mixed funds, the Hon'ble Apex Court held that the principle of apportionment would apply. Without any discussion or deliberation on the presumption theory, the proposition laid down in the case of Avon Cycles Ltd. (supra) by the Hon'ble Apex Court has to be restricted to the extent of the issue before the Hon'ble Apex Court and facts before it and not beyond that. And on that basis the decision of the Hon'ble Supreme Court in the case of Avon Cycles Ltd. (supra) can be read only to the extent of upholding the principle of apportionment of expenses incurred in the context of the limited fact of mixed funds available with assessee and no further. The proposition laid down cannot be stretched even logically to address the fact situation where sufficient own interest free funds are available with assessee, which fact was not there before the Hon'ble Apex court in the case of Avon Cycles (supra), and to negate the presumption that the own funds were used for making the investment, which was neither the question raised before the apex court and therefore not addressed by it also.

13. Going further from here we find that the presumption theoory was upheld by the Hon'ble Supreme Court in the case of Hero Cycles Pvt. Ltd. (supra) wherein on the issue of disallowance of expenditure u/s.36(1)(iii) of the Act on interest free advance made to Directors, the Hon'ble Apex

Court held that in view of the findings of fact that the assessee had sufficient credit balance in its bank account for making the impugned advances and had sufficient own interest free funds, the assessee company could in any case utilize those funds for giving advances to its Directors. The findings of the Hon'ble Apex Court at para 16 of this order to this effect are as under:

> *"16. Insofar as the loans to directors are concerned, it could not be disputed by the Revenue that the assessee had a credit balance in the bank account when the said advance of Rs.34 lakhs was given. Remarkably, as observed by the CIT(A) in his order, the company had reserve/surplus to the tune of almost Rs.15 crores and, therefore, the assessee company could in any case, utilise those funds for giving advance to its directors."*

14. It is evident from the above that the Hon'ble Apex Court had in very clear terms held that where sufficient own interest free funds are available with the assessee, the presumption arises that the assessee had utilised those funds for the purpose of making interest free non business advances. Thus in very clear terms the Hon'ble Apex Court in the case of Hero Cycles Pvt. Ltd. (supra) have upheld he presumption theory.

15. Considering both the judgments of the Hon'ble Apex Court and reading and interpreting them in the light of facts and the issue before the Hon'ble Apex Court we find that the judgments compliment each other. In the case of Avon Cycles Ltd. (supra) the Hon'ble Apex Court held that in the

fact situation where mixed funds are utilized by the assessee, the disallowance of interest to the extent the funds are utilized for the purpose of non business advance is warranted. Going forward from there, the presumption theory would come into operation if in the case of mixed funds, the assessee is able to demonstrate/ establish availability of interest free funds equal to or more than interest free non business advances/investments thus raising the presumption that the same have been made out of the interest free funds of the assessee.

16. In view of the above, we hold that the decision of the Hon'ble Apex Court in the case of Avon Cycles Ltd. (supra) does not displace the presumption theory which has been upheld by the Hon'ble Apex Court in the case of Hero Cycles Pvt. Ltd. (supra) and the same still holds. In view of the above, since the Ld.CIT(Appeals), we find, has allowed the assessee's appeal deleting the disallowance of interest made on finding that it had sufficient own interest free funds for making the investment, which fact has not been controverted by the Revenue, we see no reason to interfere in the order of the Ld.CIT(Appeals) and the ground raised by the Revenue, therefore, is dismissed.

17. The Ld. counsel for assessee had also raised the contention before us that the advance made was for business purpose. In this regard, the Ld. counsel for assessee contended that the advance was made to Shivaks Impex Ltd. which was a step down subsidiary of the assessee company.

The Ld. counsel for assessee stated that the assessee had invested in a wholly owned subsidiary which in turn was the holding company of Shivaks Impex Ltd. and which made Shivaks Impex Ltd. a step down subsidiary of the assessee company, meaning thereby that the assessee had a indirect interest and control over the Shivaks Impex Ltd.. The Ld. counsel for assessee further stated that the advances made to Shivaks Impex Ltd., who was in the same line of business as was the assessee, was utilized for the purpose purchasing raw material.In this regard our attention was drawn to the copy of bank account of Shivaks Impex Ltd. reflecting the deposit of advance made by the assessee of Rs.3.55 crores in the same and the utilization of the same for the purpose of releasing a letter of credit issued in the regular course of its business. The Ld. counsel for assessee, therefore, stated that the advance had been made for the purpose business of Shivaks Impex Ltd. which being a step down subsidiary of the assessee, it was contended that the assessee company would have been severely impacted if the said advance would not have been made. Our attention was drawn to the following documents placed in the paper book filed on 06-07-18, to substantiate its aforesaid contention:

(i) copy of ledger account of Shivaks Impex Ltd. in the books of appellant for Assessment Year 2013-14.

(ii) Copy of Ledger account of Shivaks Impex Ltd. in the books of appellant for Assessment Year 2014-15.

(iii) Copy of relevant Bank statements of Shivaks Impex Ltd.

(iv) Shareholder list of various Group Companies."

18. The Ld. DR, on the other hand, relied upon the order of the Assessing Officer rejecting this contention of the assessee and stated that no business exigency for making the advance had been established by the assessee.

19. After considering the rival submissions we hold that commercial expediency of the said advance had been adequately established by the assessee. The facts relating to the impugned transaction have not been controverted by the Revenue. That Shivaks Impex Ltd. was a step down subsidiary of the assessee company, has not been disputed by the Revenue. The fact that the assessee, its subsidiary and Shivaks Impex Ltd. were all in the same line of business has also not been disputed by the Revenue. It is also not disputed that the advance made has been utilized for the purpose of making purchases. It is evident that had the said advance not been made it would have seriously affected the business of Shivaks Impex Ltd., which in turn would have affected the assessee also since the value of its investment in its subsidiary would have been affected on account of the poor results shown by Shivaks Impex Ltd.. Therefore, the

commercial expediency of the advance has been established and for this reason also, no disallowance u/s 36(1)(iii) of the Act could have been made.

20. In view of the above we hold that on account of the availability of sufficient own funds and on account of the advances having been made for business purpose ,no disallowance of interest pertaining to funds utilized for making the same was warranted. We therefore uphold the order of the CIT(A) deleting the disallowance of interest u/s 36(1)(iii) of the Act, amounting to Rs.18,44,482/-.

21. Ground of appeal No.1 raised by the Revenue is therefore dismissed.

22. Ground No.2 raised by the Revenue reads as under:

"1. Whether on the facts and circumstances of the case the Ld. CIT(A) has erred in allowing the appeal of the assessee and deleting the disallowance of Rs. 25,43,299/- u/s 14A which is not correct because the assessee had made investments, to the tune of Rs. 5,23,00,000/- and on the other side, assessee has shown outstanding secured loan from Banks on which the assessee has claimed interest expenses of Rs. 1,13,06,258/-."

23. The above ground relates to disallowance made of expenses relating to exempt income earned by the assessee as per the provisions of Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962.

24. Briefly stated the impugned disallowance was made by the Assessing Officer in relation to the investments made by the assessee in the shares of sister concern M/s. KVS International Pvt. Ltd. of Rs.5,23,00,000/-. The Assessing Officer relying upon various judgments made a disallowance of Rs.25,43,299/- u/s.14A of the Act.

25. Ld. CIT(A) deleted the disallowance made on finding that no exempt income had been earned by the assessee from the impugned investments made. Relevant findings of the Ld. CIT(A) at paragraph 6.2 of our order deleting the said disallowance is as under:

> *"**6.2** I have gone through the facts of the case and written submission filed by the appellant. As no exempt income has been earned during the year on the impugned investments made in shares of sister concern in the earlier year and there is no claim of any other exempt income in the computation of income, therefore placing reliance on the ratio of CIT vs. M/s Lakhani Marketing Inc. [2014] 272 CTR 265 (P&H) and jurisdictional ITAT Chandigarh decision in the case of Swami Automobiles (P) Ltd. ITA No.74/Chd/2015 dated 10.02.2016, it is held that no disallowance u/s 40A read with rule 8D of the Income tax Rules was warranted in this case . Therefore addition of Rs.25,43,299/- made by the AO on this account for A.Y.2014-15 is ordered to be deleted. This ground of appeal is allowed."*

26. During the course of hearing before us, Ld. DR, though relied upon the order of the Assessing Officer, was unable to controvert the factual and the legal findings of the Ld. CIT(A), we therefore see no reason to differ with the Ld. CIT(A) deleing the disallowance made u/s.14A in the light of the admitted fact that no exempt income was earned by the assessee during the impugned year from the impugned investments made.

Our decision is forfeited by the order of the Hon'ble Apex Court in the case of Commissioner of Income Tax,(Central),1 vs Chettinad Logistics (P) Ltd dated 2nd July 2018,.reported in 257 Taxman 2, in which the Hon'ble apex court has, we find, dismissed on merits the SLP filed by the Revenue against order of the Hon'ble Madras High Court holding that where no exempt income was earned no disallowance u/s 14A was warranted. The Hon'ble High Court had in its order, reported in 248 Taxman 55, held as under:

"6.The record shows that during the course of arguments before the Tribunal, the Assessee advanced a submission, to the effect, that in cases, where, investments are made in sister concern(s), out of interest free funds, for strategic purposes, the provisions of Section 14 A of the Act, could not be invoked. In support of this submission, the Assessee relied upon the judgment of the Tribunal in the case of: Rane Holdings Ltd., Vs. ACIT, passed in ITA No.115/Mds/2015, dated 06.01.2016.

7. It is, in this background, that the Tribunal remanded the matter to the Assessing Officer, so as to reach a conclusion as to whether investments had been actually made, in sister concerns of the Assessee, out of interest free funds, albeit, for strategic purposes.

8. According to us, this exercise, in the given facts which emerge from the record, was clearly unnecessary, as the CIT(A) had returned the finding of fact that no dividend had been earned in the relevant assessment year, with which, we are concerned, in the present appeal.

9. In our opinion Section 14 A of the Act, can only be triggered, if, the Assessee seeks to square off expenditure against income which does not form part of the total income under the Act.

9.1. The legislature, in order to do away with the pernicious practice adopted by the Assessees', to claim expenditure, against income exempt from tax, introduced the said provision.

10. In the instant case, there is no dispute that no income i.e., dividend, which did not form part of total income of the Assessee was earned in the relevant assessment year.

10.1. Therefore, to our minds, the addition made by the Assessing Officer by relying upon Section 14 A of the Act, was completely contrary to the provisions of the said Section.

10.2. Mr.Senthil Kumar, who appears for the Revenue, submitted that the Revenue could disallow the expenditure even in such a circumstance by taking recourse to Rule 8D.

10.3. According to us, Rule 8D, only provides for a method to determine the amount of expenditure incurred in relation to income, which does not form part of the total income of the Assessee.

10.4. Rule 8 D, in our view, cannot go beyond what is provided in Section 14 A of the Act.

11. Furthermore, we may note that a similar argument was sought to be advanced by the Revenue in the matter concerning, M/s.Redington (India) Limited Vs. The Additional Commissioner of Income Tax, which was, subject matter of T.C.A.No.520 of 2016.

11.1. A Co-ordinate Bench of this Court, vide judgment dated 23.12.2016, rejected the plea of the Revenue advanced in that behalf.

11.2. As a matter of fact, a perusal of the judgment would show that the Revenue had sought to argue that because exempt income could be earned in future years, therefore, recourse could be taken to the provisions of Section 14A of the Act, to disallow expenditure. In other words the stand taken by the Revenue was irrespective of the fact whether or not income was earned in the concerned assessment year expenditure under Section 14A could be disallowed against anticipated income.

11.3. Pertinently, the Division Bench in M/s.Redington (India) Limited case has repelled this precise argument.

12. The Division Bench, in our view, quiet correctly held that, the computation of total income, in terms of Section 5 of the Act, is made qua real income and not, vis-a-vis, notional income.

12.1. The Division Bench went on to hold that Section 4 of the Act brings to tax, that income, which is relatable to the assessment year in issue. The Division Bench, thus, held that where no exempt income is earned in the previous year, relevant to the assessment year in issue, provisions of Section 14 A of the Act, read with Rule 8 D could not be invoked.

12.2. While coming to this conclusion, the Division Bench also took note of the aforementioned Circular, issued by the Board.

12.3. The reasoning of the Division Bench is contained in the following part of the judgment:
"4. The admitted position is that no exempt income has been earned by the assessee in the financial year relevant to the assessment year in issue. The order of assessment records a finding of fact to that effect. The issue to be decided thus lies within the short compass of whether a disallowance in terms of s.14A of the Act read with Rule 8D of the Rules

can be contemplated even in a situation where no exempt income has admittedly been earned by the assessee in the relevant financial year.

7. Per contra, Sri T. Ravi kumar appearing on behalf of the revenue drew our attention to the marginal notes of s.14 A pointing out that the provision would apply not only where exempted income is 'included' in the total income, but also where exempt income is 'includable' in total income.

8. He relied upon a Circular issued by the Central Board of Direct taxes in Circular No.5 of 2014 dated 11.2.2014 to the effect that s.14A was intended to cover even those situations whether there is a possibility of exempt income being earned in future. The Circular, at paragraph 4, states that it is not necessary for exempt income to have been included in the income of a particular year for the disallowance to be triggered. According to the Learned Standing Counsel, the provisions of s.14A are made applicable, in terms of sub section (1) thereof to income 'under the act' and not 'of the year' and a disallowance under s.14A r.w. Rule 8D can thus be effected even in a situation where a tax payer has not earned any taxable income in a particular year.

9. We are unable to subscribe to the aforesaid view. The provisions of section 14A were inserted as a response to the judgments of the Supreme Court in Commissioner of Income Tax Vs. Maharashtra Sugar Mills Limited (1971) (82 ITR 452) and Rajasthan State Ware Housing Corporation Vs. Commissioner of Income Tax ((2002) 242 ITR 450) in terms of which, expenditure incurred by an assessee carrying on a composite business giving rise to both taxable as well as non-taxable income, was allowable in entirety without apportionment. It was thus that s.14A was inserted providing that no deduction shall be allowable in respect of expenditure incurred in relation to the earning of income exempt from taxation. As observed by the Supreme Court in the judgment in the case of Commissioner of Income Tax vs. Walfort Share and Stock Brokers (P) Ltd (2010) 326 ITR 1

'.... The mandate of s.14A is clear. It desires to curb the practice to claim deduction of expenses incurred in relation to exempt income against taxable income and at the same time avail of the tax incentive by way of an exemption of exempt income without making any apportionment of expenses incurred in relation to exempt income.'

10. The provision this is clearly relatable to the earning of actual income and not notional or anticipated income. The submission of the Department to the effect that s.14A would be attracted even to exempt income 'includable' in total income would entail the assessment of notional income, assumed to be exempt in the future, in the present assessment

year. The computation of total income in terms of s.5 of the Act is on real income and there is no sanction in law for the assessment of admittedly notional income, particularly in the context of effecting a disallowance in connection therewith.

11.The computation of disallowance in terms of Rule 8D is by way of a determination involving direct as well as indirect attribution. Thus, accepting the submission of the Revenue would result in the imposition of an artificial method of computation on notional and assumed income. We believe this would be carrying the artifice too far.

(emphasis is ours)"

13. Mr. Senthil Kumar, seeks to distinguish the judgment in M/s. Redington (India) Limited case based on the fact that Rule 8D had not kicked-in by AY 2007-08, which was the AY being considered in the said case.

14. According to us, this was not the argument, put forth, before the Division Bench. As a matter of fact, the Revenue relied heavily on Rule 8D.

14.1. Mr. Ravi kumar, who appeared for the Revenue, in that matter and who is present in this Court, informs us that he had in fact argued that the Rule was clarificatory in nature and would apply retrospectively, and that, the Division Bench, therefore, discussed the impact of Rule 8D of the Rules.

15. However, it is, our view, as indicated above, independent of the reasoning given in M/s. Redington (India) Limited case that Rule 8D cannot be read in a manner, which takes it beyond the scope and content of the main provision, which is, Section 14 A of the Act.

15.1. Therefore, as adverted to above, Rule 8D, cannot come to the rescue of the Revenue."

SLP filed against the said judgment was dismissed by the apex court both on merits as well as on the ground of delay.

27. In view of the above, we uphold the order of the CIT(A) deleting the disallowance made u/s. 14A of the Act.

28. Ground no.2 raised by the Revenue is dismissed.

29. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court.

संजय गर्ग	**अन्नपूर्णा गुप्ता**
(SANJAY GARG)	**(ANNAPURNA GUPTA)**
न्यायकि सदस्य/ Judicial Member	**लेखा सदस्य/ Accountant Member**

रती./Pkk

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar