आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "डी" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE S/SHRI B.R.BASKARAN (AM) AND SANJAY GARG, (JM)
सर्वश्री बी.आर.बास्करन, लेखा सदस्य एवं श्री संजय गर्ग, न्यायिक सदस्य के समक्ष

आयकर अपील सं./I.T.A. No.274/Mum/2013
(निर्धारण वर्ष / Assessment Year : 2008-09)

Income Tax -4(2)(1), Room No.644, 6th Floor, Aayakar Bhavan, M.K.Road, Mumbai-400020	**बनाम**/ Vs.	M/s Reliance Share and Stock Brokers (P) Ltd. 412, Raheja Chambers, Nariman Point, Mumbai-400021
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AAACR2801B

अपीलार्थी ओर से / Appellant by	Shri Durga Dutt
प्रत्यर्थी की ओर से/Respondent by	Shri Arvind Sonde

सुनवाई की तारीख / Date of Hearing : 12.9.2014
घोषणा की तारीख /Date of Pronouncement : 22.10.2014

आदेश / O R D E R

Per B.R.BASKARAN, Accountant Member:

The appeal filed by the revenue is directed against the order dated 02.11.2012 passed by Ld CIT(A)-8, Mumbai and it relates to the assessment year 2008-09.

2. The revenue is in appeal before us in respect of the following issues:-

(a) Disallowance made u/s 14A r.w. rule 8D
(b) Disallowance of consent fee paid to SEBI.

3. The facts relating to the above said issues are stated in brief. The assessee company is engaged in Share broking business. It filed its return of income for the year under consideration declaring loss of Rs.1,55,950/-. The said return of income came to be scrutinized by the assessing officer. On examination of the

same, the AO noticed that the assessee has disclosed dividend income of Rs.2,13,016/- and claimed the same as exempt from taxation. It appears that the assessee did not make any disallowance u/s 14A of the Act. Hence, the assessing officer asked the assessee to compute the disallowance to be made in terms of sec. 14A of the Income Tax Act, 1961 (the Act). The assessee furnished workings, wherein the interest disallowance was worked out at Rs.29,91,393/- and the expenses to be disallowed was worked out at Rs.15,58,023/-. The assessing officer accepted the working given for disallowing expenses, but did not agree with the assessee with regard to the interest disallowance. The AO took the view that the provisions of Rule 8D of the Income Tax Rules, 1962 (the Rules) have to be adopted in letter and spirit and accordingly took the view that the interest disallowance needs to be computed in terms of Rule 8D(2)(ii) of the Rules. Accordingly, the AO worked out the interest disallowance at Rs.2,50,84,476/-. Accordingly, the assessing officer disallowed a sum of Rs.2,66,42,967/- (Rs.2,50,84,476/- + Rs.15,58,203/-) u/s 14A of the Act. (There is a casting error, the addition should have been Rs.2,66,42,679/-).

4. The AO further noticed that the assessee has paid a sum of Rs.50.00 lakhs to SEBI as consent fee. On further examination, it was noticed that the SEBI has recommended for suspension of the Certificate of Registration as Stock broker for a period of nine months for violating the various regulations framed by SEBI. After hearing the assessee, the period of suspension was reduced to four months. The assessee had challenged the said order by filing before the Securities Appellate Tribunal. While the said appeal was pending, the SEBI issued a circular whereby it agreed to settle the disputes in consideration of 'Consent Application' furnished by the assessee on payment of consent fee. Accordingly, the assessee filed a Consent Application before SEBI, wherein it agreed to pay a sum of Rs.50.00 lakhs without admitting or denying the guilt alleged by SEBI. On its approval, the Security Appellate Tribunal also disposed of the appeal filed by the assessee in terms of Consent terms. The AO took the view that the above said amount of Rs.50.00 lakhs is a compounding fee paid by the assessee for offences committed under SEBI (Stock Brokers and sub-brokers) Regulations, 1992. Accordingly, the AO took the view that this was a penalty paid for infraction of law and hence, disallowed the said claim by invoking the Explanation to Sec. 37(1) of the Act.

5. In the appeal filed by the assessee, the Ld CIT(A) noticed from the workings furnished by the assessee for interest disallowance that the assessee could relate the borrowings with investments. Accordingly, the Ld CIT(A) held that the interest disallowance is required to be made under Rule 8D(2)(i) of the I.T Rules, since the assessee has established direct nexus between the borrowings and investments and accordingly allocated interest expenditure proportionately, the Ld CIT(A) directed the AO to restrict the interest disallowance to Rs.29,91,393/-, i.e., at the amount worked out by the assessee. With regard to the disallowance of Rs.50.00 lakhs, the Ld CIT(A) noticed that the consent fee was paid by the assessee without accepting or denying the guilt. Further the Ld CIT(A) held that the fact of acceptance of said consent application by SEBI would only show that the SEBI has also accepted that the charge or guilt may or may not be established. Accordingly, the Ld CIT(A) held that the consent fee paid by the assessee cannot be equated with "Penalty" for infraction of law. Accordingly, the Ld CIT(A) held that the consent fee should be allowable as business expenditure, since it was paid for the purpose of business, i.e., in order to enable the assessee to conduct the business without interruption. Before the Ld CIT(A), the assessee had placed reliance on hosts of case law and the first appellate authority held that all the decisions relied upon by the assessee also support the case of the assessee. Accordingly, he deleted the disallowance of Rs.50.00 lakhs made by the AO. Aggrieved by the decision of Ld CIT(A) rendered on both the issues referred above, the revenue has filed this appeal before us.

6. The first issue relates to the interest disallowance made u/s 14A of the Act. We heard the parties on this issue. We have already noticed that the assessing officer has computed the interest disallowance in accordance with Rule 8D(2)(ii) of I.T Rules. As rightly pointed out by Ld CIT(A), the requirement of making disallowance under Rule 8D(2)(ii) would arise only if the nexus between the borrowings and investments could not be clearly established. In the instant case, the ld CIT(A) has noticed that the assessee was able to prove the nexus between the borrowings and investments and accordingly it has computed the interest disallowance. The following table furnished by the assessee shows the purpose and utilization of borrowings made by the assessee, i.e., the nexus between the borrowings and its utilisation.

Received amount	Utilization	Interest paid			Interest amount on business loan	Interest amount on invest-ment
1,067,500,000	Opg-total					
867,500,000	Opg-business purpose	1.4.07	31.03.08	366	86,750,000	
13,400,000	ICD to meet regular expenses	25.3.08	31.03.08	7	25,628	
60,000,000	ICD to meet regular expenses	31.03.08	31.03.08	1	16,393	
(408,000,000)	Repaid	13.11.07	31.03.08	140	(15,606,557)	
(304,500,000)	Repaid	21.11.07	31.03.08	133	(11,065,164)	
500,000,000	ICD taken for capital adequacy deposit with BSE	19.5.07	31.03.08	318	43,442,623	
(355,500,000)	Repaid-business loan	1.4.07	23.5.07	314	(30,499,180)	
(7,500,000)	Repaid-business loan	1.4.07	31.05.07	306	(627,049)	
(5,000,000)	Repaid-business loan	1.4.07	12.07.07	264	(360,656)	
(4,000,000)	Repaid-business loan	1.4.07	27.07.07	249	(272,131)	
(47,500,000)	Repaid-business loan	1.4.07	08.08.07	237	(3,075,820)	
(5,000,000)	Repaid-business loan	1.4.07	14.08.07	231	(315,574)	
(3,500,000)	Repaid-business loan	1.4.07	1.09.07	213	(203,689)	
(22,000,000)	Repaid-business loan	1.4.07	13.11.07	140	(841,530)	
150,000,000	Opg-shares of Reliance Securities Ltd.-Shares	1.4.07	31.03.08	365		15,000,000
(3,000,000)	Repaid -Reliance Securities Ltd. –Shares	1.4.07	7.4.07	360		(295,082)
(10,000,000)	Repaid -Reliance Securities Ltd. –Shares	1.4.07	23.04.07	344		(939,891)
(15,000,000)	Repaid -Reliance Securities Ltd-shares.	1.4.07	24.4.07	343		(1,405,738)
(5,000,000)	Repaid -Reliance Securities Ltd.-shares	1.4.07	12.05.07	325		(443,989)
(12,500,000)	Repaid -Reliance Securities Ltd.-shares	1.4.07	14.05.07	323		(1,103,142)
(10,000,000)	Repaid -Reliance Securities Ltd-shares.	1.4.07	22.05.07	315		(860,656)
(94,500,000)	Repaid -Reliance Securities Ltd.-shares	1.4.07	23.05.07	314		(8,107,377)
50,000,000	Opt-Reliance Land Pvt.Ltd-shares	1.4.07	31.03.08	365		5,000,000
(50.000,000)	Repaid-Reliance Land Pvt.ltd-shares.	1.4.07	23.05.07	314		(4,289,617)
20,500,000	Shares of Menon and Menon Pvt.Ltd	14.1.08	31.03.08	78		436,885
298,900,000					67,367,295	2,991,393

The assessee had also submitted before Ld CIT(A) that the nexus between the borrowings and investments made prior to 31.3.2007 was also established in the like manner in the earlier years.

7. It is now settled principle that the assessing officer has to examine the disallowance made by the assessee by having regard to the accounts of the assessee and only thereafter the AO, if he is not satisfied with the correctness of the claim, shall determine the disallowance to be made u/s 14A of the Act in accordance Rule 8D. In this regard, a gainful reference may be made to the decision rendered by the Hon'ble jurisdictional High Court in the case of Godrej & Boyce Mfg. Co. Ltd (328 ITR 81). It is also pertinent to note the decision rendered by Hon'ble Delhi High Court in the case of Maxopp Investment Ltd Vs. CIT (347 ITR 272), wherein the Hon'ble Delhi High Court has expressed the view that the assessing officer has to first reject the claim of the assessee with regard to the extent of expenditure by having regard to the accounts of the assessee and such rejection must be for disclosed cogent reasons. It is only then that the question of determination of expenditure u/s 14A by the assessing officer would arise. In the instant case, we notice that the workings furnished by the assessee for interest disallowance was not examined at all by the AO, whereas he is required to reject the workings furnished by the assessee after having regard to the accounts of the assessee.

8. Further we notice that the revenue could not controvert the finding given by the Ld CIT(A) that the assessee was able to establish the nexus between the borrowings and the investments. We have also noticed that the finding so given by the first appellate authority was correct as per the workings furnished by the assessee in the table extracted above. It is also pertinent to note that the revenue did not find fault with the said workings. Under these circumstances, we are of the view that the ld CIT(A) was justified in holding that the interest disallowance was required to be made under Rule 8D(2)(i) of the I.T Rules and also in confirming the disallowance of interest to the extent of Rs.29,91,393/-, as worked out by the assessee. Accordingly, we uphold his order on this issue.

9. The next issue relates to the disallowance of Consent fee of Rs.50.00 lakhs paid by the assessee. The Ld D.R submitted that the assessee has penalty for violation of the provisions of SEBI Act, i.e., the assessee has not followed the various Rules prescribed under the Act. He further submitted that the Consent order passed by the SEBI shall not change the character of violation or penalty initially levied by the Board. On the contrary, the Ld Counsel appearing for the

assessee submitted that the SEBI had initiated the action against the assessee in connection with certain technical violations. Such action has been initiated by virtue of powers given to SEBI to take certain administrative or civil action. The Ld A.R invited our attention to paragraph 61 of the order dated 11-12-2006 passed by the Securities Appellate Tribunal (SAT) , wherein the SAT had observed that the violations are technical in nature. In this regard, the Ld A.R carried us through the Securities and Exchange Board of India Act, 1992, more particularly to section 11 of the Act, which elaborates the Powers and Functions of the Board. The Ld Counsel submitted that the Board has the power to regulate the working of stock brokers etc., levy fees or other charges from them and take the measures specified in sec. 11(4) of the above said Act in the interests of investors or securities market. The actions specified in sec. 11(4), inter alia, are that the Board may restrain persons from accessing the securities market; direct any intermediary or any person associated with the securities market in any manner not to dispose of or alineate an asset forming part of any transaction which is under investigation etc. The Ld Counsel submitted that the assessee herein was alleged to have committed certain irregularities and hence the officials recommended for suspension of the assessee for nine months, which was ultimately reduced to four months.

10. The Ld Counsel further submitted that the SEBI Act makes clear demarcation of penalties levied under administrative or civil action for technical defaults and the penalties levied for offences committed. The Ld A.R invited our attention to sections 15E, 15F, 15G and 15H and submitted that these sections provide only for monetary penalties for the failure to observe the rules and regulations, default, insider trading, non-disclosure etc. He then attempted to distinguish the penalties prescribed in the above sections by submitted that the provisions of section 24 of the Act provides for imprisonment or fine or both for the offences committed under the Act. He then invited our attention to section 24A of the Act which provides for composition of certain offences. He submitted that under section 24A of the Act, the offences punishable with imprisonment only or with imprisonment and also with fine shall not be compounded, but any other offences may be compounded. Accordingly, the ld A.R submitted that the penalties prescribed in sections 15E to 15H are related to technical violations

and they cannot be considered as infraction of law, as presumed by the assessing officer.

11. The Ld Counsel further submitted that section 15I prescribes the methodology to adjudge the technical violations prescribed in sections 15E to 15H of the Act, i.e., the Board shall appoint any officer not below the rank of Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner. The said officer shall determine the quntum of penalty by having regard to the amount of disproportionate gain or unfair advantage made as a result of the default etc. The Ld Counsel submitted that this section also clearly shows that the penalties prescribed in sections 15E to 15H are only technical defaults by which the person committing any irregularity might have made undue advantage or disproportionate gain. He submitted that the adjudicting officer appointed to make enquiries about the alleged irregularities committed by the assessee initially recommended for suspension of the assessee for nine months, but later it was reduced to four months.

12. The Ld Counsel, thereafter, invited our attention to Circular No. EFD/ED/Cir-1/2007 dated 20th April 2007 issued by the SEBI, wherein the Guidelines for Consent Orders and for considering requests for composition of offences are given. He submitted that the SEBI has made it clear in paragraph 3 of the above said circular that the Consent orders cannot be constued as waiver of statutory powers by the Board and the Board always has the right to proceed for appropriate action if it cannot achieve its objectives through consent order. The Ld Counsel, then, invited our attention to paragraph 5 of the Circular which reads as under:-

> "5 Therefore, it has been decided that all **appropriate administrative or civil actions,** eg. Proceedings under sections 11, 11B, 11D, 12(3) and 15I of SEBI Act……may be settled between SEBI and a person (party) **who may prima facie be found to have violated** the securities laws or against whom administrative or civil action has been commenced for such violation."

The ld Counsel submitted that the action was taken against the assessee under section 11 of the Act and the same is made clear that it was an "administrative or civil action". Further the consent order is permissible only if there was a prima

facie case, meaning thereby there was only a prima facie case against the assessee also.

13. The Ld Counsel then invited our attention to the Consent application filed by the assessee, which is placed at pages 13-32 of paper book, more particularly Paragraph 19 of the application which specifies "Terms of Consent Proposal". The Ld Counsel submitted that the assessee has clearly stated that the consent application shall not be construed, in any manner, as admission of the findings or the acceptance of the penalty stated in the order. The Ld Counsel submitted that the assessee has never admitted the irregularities alleged to have been committed by it. Accordingly, the Ld A.R submitted that the sole motive of the assessee in filing the Consent letter is to enable it to carry on its business activities without interruption, which decision has been taken on commercial expediency in the best interest of its business and clients. The Ld A.R, then, invited our attention to page 10 of the paper book, wherein the order passed by the SEBI against the Consent Application. The Ld A.R invited our attention to paragraph 2 of the Consent order which reads as under:-

> "2. You had vide consent application and letter dated 15th November, 2007 proposed, without admitting or denying the guilt, to offer Rs.50,00,000/- (Rupees Fifty lakhs only) as an aggregate amount towards settlement charges, legal expenses and administrative expenses in the matter."

The Ld A.R further submitted that the SEBI has accepted that the assessee has filed consent application without admitting or denying the guilt. Further it is clearly stated in the Consent Order that the amount of Rs.50.00 lakhs paid by the assessee was towards settlement charges, legal expenses and administrative expenses. Accordingly, the ld A.R contended that the assessing officer was not correct in presuming that the amount of Rs.50.00 lakhs paid by the assessee was a penalty for infraction of law as specified in the proviso to section 37(1) of the Act.

14. On consideration of rival submissions, we notice that the case of the Ld A.R was that the amount of Rs.50.00 lakhs was paid by the assessee by taking into consideration the business interest in order to settle the ongoing dispute and according to Ld A.R, the assessee never admitted or accepted the alleged

irregularities. Thus, according to Ld A.R, the assessee has not committed any of the allegation made by the SEBI. Hence the amount of Rs.50.00 lakhs paid by the assessee cannot be equated to penalty levied for infraction of law. In the alternative, the contention of the Ld A.R is that the penalties prescribed in sections 15E to 15H are related to technical violations and they cannot be considered as "infraction of law". On the other hand, we notice that the revenue was mainly carried away by the expression "penalty" used in sections 15E to 15H of the SEBI Act.

15. However, we find force in the contentions of the assessee. The Circular issued by SEBI for "Consent appliation" clearly specifies that the action taken under section 11 of the Act fall in the category of "administrative or civil action". Further, order passed by SAT also clearly states that the irregularities alleged against the assessee are "technical violations". Most of all, the amount of Rs.50.00 lakhs paid by the assessee are not related to the penalty, if any, imposed by the SEBI, rather it was a "Consent Fee" paid by the assessee for settlement of dispute, legal expenses and other administrative charges of SEBI. The said amount was paid clearly specifying that it was paid without admitting or denying the guilt. Hence, in our view, it cannot be said that the assessee has paid the amount of Rs.50.00 lakhs by duly accepting or upon proving the irregularities alleged against it. On the contrary, it is the case of the assessee that it has taken the decision to settle the dispute on commercial expediency and upon business interests.

16. We notice that the Ld CIT(A) has adjudicated this issue in favour of the assessee in another angle. For the sake of convenience, we extract below the relevant observations made by the Ld CIT(A).

> "6.3 The Appellant further submitted that it may be worthwhile to reproduce the relevant guidelines for Consent Order:
>
> > "Under the SEBI Act, 1992, Securities Contracts (Regulation) Act, 1956 (SCRA) and the Depositories Act, 1996, SEBI pursues two streams of enforcement actions i.e. Administrative/ Civil or Criminal. Administrative/civil actions include issuing directions such as remedial orders, cease and desist orders, suspension or cancellation of certificate of registration and imposition of monetary penalty under the respective statutes and action pursued or defended in a court of law/tribunal....."

It further provides that,

> "Consent Order may be passed at any stage after probable cause of violation has been found. However, in the event of a serious and intentional violation, the process should not be completed till the fact finding process is completed whether by way of investigation or otherwise."

6.4 The Appellant further submitted that most of the irregularities referred to in the Order are procedural or administrative non-compliances of the various provisions of SEBI Act. The SEBI has been given the power by the Parliament of India to pass consent orders under the SEBI Act and the Depositories Act. It has also been specified that in the event of a serious and intentional violation the process should not be completed till the fact finding process is completed. The Appellant's case was decided without waiting for the final fact findings, suggesting that the case was one of routine abnormality.

6.5 The appellant also submitted that the SEBI while accepting the consent proposal of the Appellant has inter alia stated as under:

> "You had vide consent application and letter dated 15th November, 2007 proposed, without admitting or denying the guilt, to offer 50,00,000/-(Rupees Fifty Lakhs only) as an aggregate amount towards settlement charges, legal expenses and administrative expenses a in the matter.
>
> In this regards, we inform you, that the terms proposed by you were examined by the Independent High Powered Advisory Committee (HPAC) and having considered the facts and circumstances of the case, HPAC has recommended that the case may be settled on payment of Rs. 50,00,000,/- (Rupees Fifty Lakhs only). In view of the recommendation of HPAC, SEBI has in principle agreed to the clause' Undertakings(Waivers vide your afore-mentioned consent application."

6.6 The Appellant further relied upon the following judgements to substantiate the same:

- Fine and penalties are collected by a stock exchange from its members for various reasons. Where such payments were collected for alleged unfair trading practice or non- business like conduct, it is not a payment for violation of the regulations of-the stock exchange. It -was held, that such amounts cannot be disallowed in Gold Crest Capital Markets Limited v ITO (2010) 2 ITR (Trib) 355 (Mumbai). In coming to the conclusion, the Tribunal discussed the provisions of the Constitution of National Stock Exchange and the regulations applicable to brokers and sub-brokers stipulated by the Securities and Exchange Board of India with reference to which penalties are levied by Disciplinary Action Bench of National Stock Exchange.

- The Hon'ble Murnbai Tribunal in the case of VRM Share Broking (P) Ltd, 27 SOT 469 it was held that:

"From the perusal of various notifications issued by SEBI, it was apparent that they were issued mainly in the context of the risk management, rather than as a penal provision for punishing the defaulters or deeming the transactions illegal. In view of the same, it was opined that with or without the provisions of margin money the loss could not be held as illegal loss denying the benefit of set off of same against the income or allowing the same to carry forward to the later years. The order of the Commissioner(Appeals') therefore did not call for any interference. [Pare 6]

"The amount paid was a penalty levied for violation of the margins imposed by the SEBI on the share brokers. Front the notifications issued by the SEBI, it was found that such margins were imposed in order to reduce the risk components and, therefore, those were basically risk management oriented penalties, which were routine in nature. It was also found that those violations were offered by payment of penalty as in the instant case. Therefore, impugned order of the Commissioner (Appeals) did not call for any interference. [Para 10] CASES REEFERED TO CIT v. Gwalior Rayon Silk Manufacturing (Wvg.) Co.Ltd [1999] 237 ITR 253/102 Taxman 433 (Born.) (para 5) and consolidated Coffee Ltd. v. Agricultural Income-tax Officer [2001] 248 ITR 417 (SC)" -

- The Hon'bie ITAT in the case of Kaira Can Company Ltd. (32 DTR 485) has held that Payment, made under SEBI Regulation scheme, 2002 for failure to make disclosure as required under SEBI (Substantial Acquisition of shares and Takeovers) Regulations 1997 could not be treated as penalty as it is a payment for regularizing the default committed hence such payment can not be disallowed by invoking explanation to s. 37(1).,

- The Hon'ble Apex Court in the case of CIT Ahmedabad Cotton Mfg. Co. Ltd. [1993] 205 ITR 163 has held that,

"Penalty paid under option conferred on assessee under the concerned law or scheme itself is deductible – What needs to be done by an assessing authority under the Income-tax Act in examining the claim of an assessee that the payment made by such 'assessee was a deductible expenditure under section 37, although called penalty, is to see whether the law or scheme under which the amount was paid requires such payment to be made, as penalty or as something akin to penalty, that is imposed by way of punishment for breach or infraction of the law or the statutory scheme. If the amount so paid is found to be not a penalty or something akin to penalty due to the fact that the amount paid by the assessee was in exercise of the option conferred upon him under the very law or scheme concerned, then one has to regard such payment as business expenditure of the assessee, allowable

under section 37, as an incident of business laid out and expended wholly and exclusively for the purposes of the business. If such payment by the assessee is that which is made in exercise of the option given to such assessee by the law or the statutory scheme, there arises no need for assessing authority to go into the question whether the payment could be regarded as that made as a measure of business expediency, for it cannot ignore the fact that the law or the statutory scheme enables incurring of such expenditure in the course of assessee's business - CIT v. Ahmedabad Cotton Mfg. Co. Ltd. 71 Taxman 56/[1994] 205 [ER 163 (SC).

- The Hon'ble Apex Court in the case of Prakash Cotton Mills (P) Ltd V/s CIT (1993) 201 ITR 684 has been held that,

"whenever any statutory impost paid by an Assessee by way of damages or penalty or interest is claimed as a allowable expenditure under section 37(1) of the Act, the assessing authority is required to examine the scheme of the provisions of the relevant stature providing for payment of such impost notwithstanding the nomenclature of impost as given by the statute, to find whether it is compensatory or penal in nature. The authority has to allow deduction under section 37(1) wherever such examination reveals the concerned impost to be purely compensatory in nature."

- The Hon'ble Bombay High Court (ITA NO.4117 OF 2010) in the case of M/s. The Stock and Bond Trading Company, has held that,

"As regards the second question is concerned, the finding of fact recorded by the CIT (A) and upheld by the ITAT is that payment made by the Assessee to the Stock Exchange for violation of their regulation are not an account of an offence or which is prohibited by law. Hence, the invocation of explanation to section 37 of the Income Tax Act, 1961 is not justified. In our opinion, in the facts and circumstances of the present case, no fault can be found with the decision of the [TAT. Accordingly, the second question cannot be entertained."

6.7 The Appellant submitted that in case of CIT v. Sales Magnesite (P.) Ltd. [1199-51214 ITR 1/81 Taxman 334 (Born.), it was held that,

"Commercial expediency must be decided from businessman's point of view. Even expenditure incurred voluntarily on the ground of commercial expediency and in order indirectly to facilitate the carrying on of the business would be deductible under this section. The question whether it was necessary or commercial expediency or not is a question that has to be decided from the point of view of the businessman and not by the

subjective standard of reasonableness of the revenue."

6.8 In view of the above facts and judicial decisions, the Appellant submitted that fees paid to SEBI is allowable as business expense and not a penalty for infraction of law.

6.9 I have gone through the A.O.'s order as well as the appellant's submissions. It is very apparent from the Circular of SEBI as mentioned above that in cases of administrative/civil actions which includes, inter-alia, orders of suspension from trading are different from criminal actions. From the order of SEBI it is quite apparent that the appellant had been suspended from doing trading activity for a period of four months and had not been awarded any monetary fines. It has been mentioned in the said order that the consent application of the appellant was without admitting or denying the guilt. SEBI has also accepted the application on this basis. Thus, SEBI has accepted the position that guilt may or may not be established at the end of the appellate proceedings. The fee paid cannot therefore, be equated to a "penalty" which must necessarily be a punishment for infraction of a law or a regulation having statutory force. The fee is claimed to have been paid for the purposes of business, to settle a dispute with the regulator SEBI and to be able to conduct its business without interruption. It is also worth noting that various decisions have held that an examination of the nature of expenses, reveals that if the concerned impost is purely compensatory in nature, the same is an allowable expense u/s. 37 of the Act. In the circumstances, the fee cannot be equated with a penalty and is a payment to enable the assessee to carry on its business in the normal course. Hence, the disallowance made by the AO of Rs. 50,00,000/- be deleted. Accordingly, this ground is allowed."

17. In view of the foregoing discussions, we are of the view that the Ld CIT(A) was justified in deleting the disallowance of Rs.50.00 lakhs made by the assesing officer.

18. In the result, the appeal filed by the revenue is dismissed.

The above order was pronounced in the open court on 22nd Oct, 2014.

घोषणा खुले न्यायालय में दिनांकः 22nd Oct, 2014 को की गई ।

Sd	sd
(संजय गर्ग /SANJAY GARG)	(बी.आर.बास्करन / B.R. BASKARAN)
न्यायिक सदस्य / JUDICIAL MEMBER	लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai: 22nd Oct,2014.

व.नि.स./ SRL , Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True copy

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai