

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA Nos. 2397 & 2398/Del/2014
Assessment Years: 2009-10 & 2010-11

M/s. Power Grid Corporation of India Ltd., B-9, Qutab Institutional Area, Katwaria Sarai, New Delhi	Vs.	DCIT, OSD CCIT-V, New Delhi
PAN : AAACP0252G		
(Appellant)		(Respondent)

Appellant by	Sh. S.C. Malhotra, CA
Respondent by	Sh. Kartar Singh, CIT(DR)

Date of hearing	10.08.2016
Date of pronouncement	06.10.2016

ORDER

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

These two appeals by the assessee are directed against separate orders of learned Commissioner of Income Tax (Appeals)-XVII, Delhi, dated 22.01.2014 and 18.02.2014 for the assessment years 2009-10 and 2010-11 respectively. Since the facts and circumstances as well as the grounds raised in the both the appeals are common, except difference in amount, they are being heard and disposed of by this consolidated order.

2. Grounds of appeal raised in ITA No. 2397/Del/2014 for the assessment year 2009-10, are as under:

- i. That the order of the learned Commissioner of Income Tax (Appeals) is against facts and law.*
- ii. That the learned Commissioner of Income Tax (Appeals) is not justified in confirming the addition of Rs.8,72,79,000/- being alleged*

expenses incurred in earning exempt income under section 14A of the Income-tax Act, 1961 as against the disallowance of Rs.38,00,216/- made by the appellant in computing the normal income.

- iii. That the learned Commissioner of Income Tax (Appeals) is not justified in confirming the addition of Rs.8,72,79,000/- being alleged expenses incurred in earning exempt income under Section 14A of the Income-tax Act, 1961 as against the disallowance of Rs.38,00,216/- made by the Appellant in computing the Book Profit under Section 115JB of the Income-tax Act, 1961.*
- iv. That further grounds shall be submitted at the time of hearing.*

3. Grounds of appeal raised in ITA No. 2398/Del/2014 for assessment year 2010-11 are as under:

- i. That the order of the learned Commissioner of Income Tax (Appeals) is against the facts and law.*
- ii. That the learned Commissioner of Income Tax (Appeals) is not justified in confirming the addition of Rs.15,63,49,582/-(including Rs.8,80,64,287/- being out of interest paid) as alleged expenses incurred in earning exempt income under Section 14A of the Income-tax Act, 1961 as against the disallowance of Rs.57,71,705/- made by the appellant in computing the normal income.*
- iii. That the learned Commissioner of Income Tax (Appeals) is not justified in confirming the addition of Rs.15,63,49,582/-(including Rs.8,80,64,287/- being out of interest paid) as alleged expenses incurred in earning exempt income under Section 14A of the Income-tax Act, 1961 as against the disallowance of Rs. 57,71,705/- made by the appellant in computing the Book Profit under Section 115JB of the Income-tax Act, 1961.*
- iv. That the further grounds shall be submitted at the time of hearing.*

4. The facts in brief are that the assessee company is engaged in the business of transmission of power (including short term open access), telecom and consultancy. The assessee company filed its return of income on 22.09.2009 showing nil income. MAT was paid on book profit of Rs.2738,46,82,141/- under Section 115JB of the Income-tax Act, 1961 (for short %~~the Act~~). The return was revised on 31.03.2011 to claim credit of TDS which was not claimed in the original return which was processed

under Section 143(1) of the Act. The case was selected for scrutiny under CASS and accordingly notice under Section 143(2) of the Act was issued. During the course of assessment proceedings, the Assessing Officer noticed that the assessee had made investment of Rs.1708.52 crores in shares, securities and advances, income from which does not form part of total income and has received dividend income of Rs.19.54 crores as well as interest on tax free bonds/advances of Rs.129.13 crores. Assessee was asked to give details of dividend received and expenses attributable to earning such income. After considering the submissions of the assessee, the Assessing Officer held as under:

“4.1. Thus, It is clear that expense attributable to income forming part of total income has to be disallowed as per provisions of section 14A of the Act after making apportionment of the expenses claimed by the assessee as it has not maintained separate accounts respect of such income. The disallowance made by the assessee is not sufficient and not based on any proper and acceptable computation as no detail was furnished in this regard. In view of the above, expenses attributable to income not forming part of total income is computed as under as per envisions of Rule 3D of the Income Tax Act,

(a)	<i>Direct expenses</i>	<i>Nil</i>
(b)	<i>Interest expenses not attributable to any Specific income or receipt</i>	<i>Nil</i>
(c)	<i>0.5% of average investment income from which Does not or shall not form part of total income.</i>	
	<i>Rs.1663.56 + 1827.59 = 3491.15</i>	
	<i>Rs.(1745.58*0.5%)</i>	
	<i>Rs.8,72,79,000/-</i>	

4.2 Thus, disallowance u/s 14A of the Act is worked out at Rs.8,72,79,000/-. However, since assessee itself has disallowed an amount of Rs.38,00,216/- in its computation, the net disallowance of Rs.8,34,78,784/- i.e. (Rs.8,72,79,000 – 38,00,216) is being made and added to the assessee’s total income as well as book profit computed u/s 115JB of the Income Tax Act, 1961.”

4.1 Being aggrieved from the assessment order, the assessee filed an appeal before the learned Commissioner of Income Tax (Appeals), who confirmed the additions made by the Assessing Officer. Hence, the present appeals before the ITAT.

5. Ground nos. 1 & 2 are general in nature and do not require to adjudicate upon.

6. Ground no. 2 is regarding the addition of Rs.8,72,79,000/- for earning exempt income under Section 14A of the Act read with Rule 8D(2)(iii) of the Income Tax Rules, 1962 (in short ~~the~~ Rules)

6.1 Learned Authorized Representative submitted that the identical issue has been adjudicated by the ITAT, Delhi Bench in the assessee's own case in ITA No. 5577/Del/2011 for assessment year 2008-09, dated 30.09.2015, wherein the Tribunal directed the Assessing Officer to delete the addition for expenses incurred in earning exempt income under Section 14A of the Act read with Rule 8D(2)(iii) of the Rules. He further submitted that against the aforesaid order of the ITAT, Revenue filed an appeal before the Hon'ble Jurisdictional High Court who also confirmed the order of ITAT vide order dated 30.03.2016 passed in ITA 218/2016. In support of the contention, learned counsel filed his submission, which is reproduced as under:

"1. Power Grid Corporation of India Ltd. (PGCIL) is a Transmission Utility of Government of India.

2. The Return of Income was filed including disallowance of Rs.38,00,216/- under Rule 8D (2)(iii) of Income-tax Rules 1962. The same was based on certification by the Auditors' as per para 17 (I) of Tax Audit Report for assessment year 2009-10 under section 44 AB of the Income tax 1961 which was as under:

"In our opinion and in accordance to the information and explanation given to us direct & indirect expenses of Rs. 38,00,216/- has been incurred in relation to income being exempted u/s 10(15)(i) and 10(34) of the Income Tax Act, 1961 (i.e. interest on tax free Securitized Bond / Loan and Dividend)".

3. The basis for above calculation was that during the financial year 2008-09 there were only four employees working in the Bonds section who were looking after the loan portfolio of bonds and interest servicing etc in addition to the affairs of tax free bonds. They devote hardly a day for passing entries in the books for the year as all the investments are in de-mat format and interest/dividend is credited electronically. Out of four employees expenses of two employees along with allocated overheads have been identified and disallowed as a part of earning tax free income. This amount works out to Rs. 38,00,216/- which is reflected in the Tax Audit Report. The working of the same was filed

during the course of assessment proceedings and is mentioned in Para (13.1) of assessee's submissions which is duly recorded on page 12 & again in Para (4) on page 20 of the assessment order which is as under:-

Name	EMP No.	Salary	PF	Total	Other Benefits	Grand Total
R K Gupta	15075	1080085	70226	1150311	230062	1380373
Anil Dudeja	00052	575227	33616	608843	121769	730612
Total		1656312	103842	1759154	351831	2110985

	Crs.
Total CC Expenses	186.15
Employee cost - CC	125.76
O & M Expenses - CC	60.39
No. of Employees- CC	715
% of O & M Expenses of 14A	0.168923077
O & M Expenses	1689230
Actual Salary	2110985
Total Expenses - 14A	3,800,216

4. The Assessing Officer has stated in Para 4.4 (Page 21) of the assessment order that disallowance has been made by the assessee by apportionment of expenses which is not sufficient and is not based on any proper and acceptable computation. In view of the same computation is made as per Rule 8D.

5. It has not been mentioned in the assessment order as to how the Assessing Officer is not satisfied with the working of the assessee. There is no clear finding as to why the disallowance made by the assessee and duly certified by the auditors cannot be accepted and no cogent reason about his dissatisfaction vis-a-vis the expenditure worked out by the assessee relating to exempt income has brought on record.

6. The detail of Investments is as under: -

Particulars	Cr.s.	
	31.03.2009	31.03.2008
Tax Free Bonds	1256.53	1436.98
Taxable Bonds	44.96	47.45
Equity Shares - strategic	12.00	12.00
Subsidiary Companies/ Joint Ventures	279.34	239.79
	1592.83	1736.22

The investments have fallen as above. Tax Free Bonds were issued by Government in 2001 on conversion of Sundry Debtors. Tax Auditors have certified the figures of disallowance. There is not much activity and there is no change in investments. The facts are similar to the earlier years.

6. Past History

i) Similar addition was made in assessment year 2008-09 and the Hon'ble ITAT vide its order dated 30th September, 2015 in ITA No. 5577/Del/ 2011 considered the above facts and recorded finding in Para (10.6) and (11) as undergo.

10.6 In view of the above facts and the position of the law we are of the view that the disallowance made by the AO and as confirmed by the CIT (A) by invoking the provisions of Rule 8D is not sustainable and accordingly the addition made by the AO on this account is directed to be deleted. Ground No. 2 is allowed.

11. Ground No. 3 & 4 are regarding addition of Rs. made by the AO while computing book profit under section 115JB of the Income-tax Act. In view of our decision regarding no. 2 whereby we have upheld the disallowance under section 14A of Rs.20,81,729/- made by the assessee as against Rs. 9,74,22,250/- computed by the AO by invoking Rule 8D these grounds become consequential in nature. The AO is directed to restrict the disallowance while computing book profit under section 115JB to Rs. 20,81,729/- as computed by the assessee. These grounds of appeal are accordingly disposed of.

Copy of the order is enclosed herewith.

ii) Against the above order of ITAT Revenue filed an appeal in the High Court of Delhi as ITA 218/2016 which was dismissed vide order dated 30.03.2016 and Para (5) is reproduced hereunder: -

5. Considering that it is not case where regular activities were undertaken by the Assessee in respect of the investments to earn income there from, there was no basis for the AO to hold that the expenditure as disclosed by

the Assessee towards earning exempt income was insufficient. The court finds no legal infirmity in the impugned order of ITAT. No substantial question arises for consideration.

iii) In the above said order of the Hon'ble ITAT the past history has been tabulated on page 11 and disallowance so made from assessment years 2002-03 to 2007-08 have stood deleted.

In view of the above facts and circumstances, it is prayed that the disallowance made in computation of Normal Income as well as Book Profit under section 115JB of the Income-tax Act, 1961 be deleted."

6.2 On the other hand, learned CIT(DR) relied on the orders of the lower authorities.

6.3 We have heard the rival submission and perused the material on record. We find that the issue in question has been adjudicated in the assessee's own case in ITA No. 5577/Del/2011 (supra), where in the addition made by the Assessing Officer on account of alleged expenses incurred in earning exempt income under Section 14A of the Act was directed to be deleted. The relevant findings of the Tribunal are as under:

"10. We have considered the submission of the learned Authorized Representative as well as learned Departmental Representative. We have also perused the assessment order and the order passed by the learned CIT(A). The issue as rightly pointed out by both the parties is disallowance under section 14A. It is an admitted position by both that no disallowance has been made on account of interest as owned funds of the assessee company are much more than the amount invested in the tax free - investments. The dispute is limited to disallowance of the administrative expenses. The assessee has computed a disallowance of Rs.20,81,729/-. This disallowance has been computed on the basis of the salary of the 2 employees and other office and maintenance expenses allocated to the Bonds Section. As against this, the AO has invoked provisions of Rule 8D and in terms of clause 8(2)(iii) has - computed 0.5% of the average investments, an amount of Rs.9,74,22,250/- and after giving credit of the amount disallowance by the assessee Rs.20,81,729/- further made a disallowance of Rs.9,53,90,521/-.

10.1 Now the issue is as to whether the AO was justified in invoking the provisions of Rule 8D. On going through the facts of the case we note that the assessee has computed an amount of Rs.20,81,729/-. This figure has also been certified by the tax auditor in its tax audit report which reads as under:-

"In our opinion and in accordance to the information and explanation given to us direct and indirect expenses of Rs. 20,81,729/- has been incurred in

relation to income being exempted u/s and 10(34) of the Income Tax Act, 1961 (i.e. interest on tax free Securitized Bond/Loan and Dividend).”

10.2 *The AO has rejected the same on the ground that there would have been certain expenditure towards administrative establishment for proper accounting of these investments and income there on. There cannot be any quarrel with this proposition but the moot question is whether the amount computed by the assessee is not sufficient enough and if so the reasons for insufficiency. On going through the assessment order we note that the AO has simply made a general remark that the assessee is required to incur certain expenses to supervise and account these income and it is not acceptable that investment has been made and no expenditure- could be attributable. It is not a case of no expenditure. From the facts it is clear that the assessee has itself added back a sum of Rs.20,81,729/. In case the AO was not satisfied with this amount then he is required to demonstrate that why this expenditure is insufficient. From the assessment order and from the order passed by the CIT(A), we note that there is no whisper whatsoever about the insufficiency of such expenditure. The AO has nowhere even commended upon the activities in relation to investments and the income from such investments which would have required expenditure and such expenditure would have been much more than the expenditure disallowed by the assessee voluntarily.*

From the order of the CIT(A) also we observe that the CIT(A) having posed the question whether disallowance made by the appellant in its computation statement is to be accepted or 14A disallowance is to be made as per Rule 8D(2)((iii) has not given any justification regarding the insufficiency of the expenditure suo-motto added back by the assessee. The CIT(A) simply has observed that the appellant was not able to satisfactorily explain that they have correctly disallowed the expenditure in relation to the income. The CIT(A) has not referred to any facts of the case nor accounts of the assessee so as to reach its satisfaction that the expenditure has not been correctly disallowed by the assessee itself.

On going through the facts of the assessee's case we note that assessee has received tax free interest in respect of the investments in bonds. It is an admitted fact that these bonds were issued way back in the year 2001 on conversion of the debts by the Government of India. The assessee company thereafter has been receiving interest on these bonds. These bonds' are getting also matured and a part of the redemption amount is being received. Thus during the year only activity relating to bonds is receipt of the interest and the redemption amount.

As regards dividend income though the assessee has received dividend of Rs.5.39 Crores but this dividend amount has been received from two companies, namely Powerlink Transmission Ltd. Rs.4.19Crores and Rs.1.20 Crores from PTC India Ltd. From the annual accounts of the assessee company we note that there is no change in the investments in these two companies during the year, investments in the Powerlink Transmission Ltd. in the preceding year were Rs.229.32 Crores which continued at Rs.229.32 Crores during the year. Similarly in PTC India Ltd.

the investment in the preceding year was Rs.12 Crores which continued at Rs.12 Crores during the year under consideration. The dividend received from these two companies has been credited to the bank account.

Thus the exempt income received by the assessee company during the year is by way of tax free interest on the bonds and dividend from these two companies. As regards the investments we note from the Annual accounts that there is a small addition by way of further contribution to existing trade investments. It is not a case where there are regular activities in respect of investments or income which is tax free. Assessee Company is not engaged in investment activity by way of frequent purchase and sale of such investments. Can on the basis of these activities it be said, that the expenditure of Rs.20,81,729/- added back by the assessee company is insufficient. The AO and the CIT(A) has not brought any material to even demonstrate that this expenditure is insufficient. The learned DR also during the course of his argument could not point out or give any reason why this expenditure of Rs.20,81,729/- is insufficient considering the above facts of the assessee's case. It may also be relevant to refer to the past history of the assessee's case whereby following disallowances were made in the preceding assessment years by the AO:-

AY.	Expenses disallowed by AO	CIT(A)	ITAT order
2002-03	2,00,00,000/-	Deleted by CIT(A)	Deletion confirmed by ITAT
2003-04	2,31,57,500/-	Deleted by CIT(A)	Deletion confirmed by ITAT
2004-05	2,83,00,000/-	Deleted by CIT(A)	Deletion confirmed by ITAT
2005-06	2,58,00,000/-	Deleted by CIT(A)	Appeal of revenue was dismissed
2006-07	9,00,00,000/-	Deleted by CIT(A)	Deletion confirmed by ITAT
2007-08	9,67,49,250/-	Deleted by CIT(A)	Deletion confirmed by ITAT

The disallowances made in each of the above years were deleted by the CIT(A) and such deletion were upheld by the ITAT as well. The addition made by the AO in the assessment year 2007-08 was Rs.9,67,49,250/- which is almost similar to the addition made in the year under consideration.

We also note from the annual accounts that the facts of this year are not much different than that of earlier years.

10.3 Though the learned DR is correct in its contention that Rule 8D was not applicable in A.Y. 2007-08 but that does not mean that simply Rule 8D is applicable for the year under consideration, the disallowance can be made by applying Rule 8D. The learned DR could not point out how the facts of this year are different than of earlier years where addition made on this account have been deleted. As rightly contended by the learned AR, Rule 8D is not automatic. The AO has to give a cogent reason taking into account the accounts of the assessee for rejecting the explanation of the assessee and thereafter only he can apply Rule 8D. In the present case, from the facts stated hereinabove, it is quite clear that firstly the AO has not given any reason nor he has considered the accounts of the assessee for recording its satisfaction and secondly the AO has not been able to point out the insufficiency in the disallowance computed by the assessee. The assessee having computed the disallowance, it was incumbent on the AO to bring material to discredit the computation done by the assessee so as to demonstrate that the administrative expenses incurred for earning the exempt income are far more than the amount computed by the assessee. It is a settled position of law that for invoking Rule 8D the AO has to give cogent reasons. It is not by simply stating that he is not satisfied by the explanation given by the assessee that the AO can invoke Rule 8D.

10.4 The Hon'ble jurisdictional Delhi High Court had occasion to consider this issue in the case of CIT vs. Taikisha Engineering India Ltd. (2015) 370 ITR 338 (Del) and has held that under section 14A(2), the AO is required to examine the accounts of the assessee and only when he is not satisfied with the correctness of the claim of the assessee, the AO can determine the amount of expenditure which should be disallowed in accordance with Rule 8D. The AO itself at the first instance must examine the disallowance made by the assessee or the claim of the assessee that no expenditure was incurred to earn the exempt income. If the AO is not satisfied on this count after making reference to the accounts the AO is entitled to adopt and apply Rule 8D. Thus the requirement of the law is that the AO is required to examine the accounts of the assessee and if he not satisfied after making reference to the account only then he could make disallowance applying Rule 8D. The relevant observation of the Court is as under:-

"Section 14A of the Act postulates and states that no deduction shall be allowed in respect of expenditure incurred by an assessee in relation to income which does not form part of the total income under the Act. Under sub Section (2) to Section 14A of the Act, the Assessing Officer is required to examine the accounts of the assessee and only when he is not satisfied with the correctness of the claim of the assessee in respect of expenditure in relation to exempt income, the Assessing Officer can determine the amount of expenditure which should be disallowed in accordance with such method as prescribed, i.e. Rule 8D of the Rules (quoted and elucidated below). Therefore, the Assessing Officer at the first instance must examine the disallowance made by the assessee or the claim of the assessee that

no expenditure was incurred to earn the exempt income. If and only if the Assessing Officer is not satisfied on this count after making reference to the accounts, that he is entitled to adopt the method as prescribed i.e. Rule 8D of the Rules. Thus, Rule 8D is not attracted and applicable to all assessee who have exempt income and it is not compulsory and necessary that an assessee must voluntarily compute disallowance as per Rule 8D of the Rules. Where the disallowance or "nil" disallowance made by the assessee is found to be unsatisfactory on examination of accounts, the assessing officer is entitled and authorized to compute the deduction under Rule 8D of the Rules."

In the case of Kalyani Steel Ltd. vs. ACIT, ITA No. 1733/PN/2012, dt. 30.01.2014 a similar issue has come up whereby the ITAT, Pune Bench has held as under-

"10. In the aforesaid background, now, we may examine the facts of the present case. In this case, assessee has earned by way of dividends a sum of Rs. 5,45,58,685/-, which is exempt u/s 10(38) of the Act and thus the same does not form part of the total income under the Act. In the computation of income, assessee having regard to section 14A of the Act, determined the amount of expenditure incurred in relation to such income at Rs.5,00,000/-. The Assessing Officer has not found it acceptable and has instead determined the amount of expenditure in relation to such income by applying rule 8D of the Rules. Ostensibly, the action of the Assessing Officer cannot be upheld unless he has complied with the pre-requisite of invoking rule 8D of the Rules, namely, recording of an objective satisfaction with regard to the claim of the assessee that an expenditure of Rs. 5,00,000/- has been incurred in relation to the exempt income, is incorrect. In order to examine the aforesaid compliance with the pre-condition, we have perused the para 4 to 4.2 of the assessment order and find that no reasons have been advanced as to why the disallowance determined by the assessee was found to be incorrect, having regard to the accounts of the assessee. The only point made by the Assessing Officer is to the effect that "the said disallowance was not acceptable". In-fact, we find that the assessee made detailed submissions to the Assessing Officer, which have been reproduced by the CIT(A) in para 3.2.1 of his order. As per the assessee, the determination of disallowance u/s 14A of the Act of Rs.5,00,000/- was based on the employee costs and other costs involved in carrying out this activity. Further assessee also explained that the shares which have yielded exempt income were acquired long back out of own funds and no borrowings were utilized. The mutual fund investments were claimed to be also made out of surplus funds. It was specifically claimed that no fresh investments have been made during the year under consideration in shares. yie exempt income. All the aforesaid points raised by the assessee have not been addressed by the Assessing Officer and the same have been brushed aside by making a bland statement that the disallowance is "not acceptable". Therefore, in our view, in the present case, the Assessing Officer has not recorded any objective satisfaction in regard to the correctness of the claim of the assessee, which is mandatorily required in terms of section 14A(2) of the Act and therefore his action of

invoking rule 8D of the Rules to compute the impugned disallowance is untenable. Accordingly, the orders of the authorities below are set-aside on this aspect and, the Assessing Officer is directed to retain the disallowance u/s 14A of the Act to the extent of Rs. 5,00,000/-, as returned by the assessee."

The Coordinate Delhi Bench of the ITAT had also occasion to consider this issue in the case of M/s Minda Capital Ltd. vs DCIT, ITA No. 568/Del/2013 dated 25.03.2015 and has held as under: -

"In the present case also, the A.O. vide questionnaire dated 22.10.2010 had asked the assessee to explain as to why disallowance in accordance with the provisions of Section 14A should not be made and thereafter holding that reply of the assessee was not satisfactory he proceeded to disallow the amount as calculated as per provisions of Rule 8D. The A.O. did not record as to how the explanation submitted by assessee was not satisfactory. The A.O. should have examined the claim of assessee and then he should have recorded his satisfaction as to why the reply of assessee was unsatisfactory. Therefore, respectfully following the order of Hon'ble High Court in the se of Taikisha Engineering India Ltd. (supra), we delete the disallowance confirmed by Ld. CIT(A)."

10.5 *The Bangalore Bench of the ITAT in the case of Chaitanya Properties Pvt. Ltd. vs. JCIT (OSD) ITA No. 52/Bang/2013, S.P. NO. 148/Bang/2014, ITA No. 125/Bang/2013 dated 27.03.2015 had occasion to consider a similar issue with reference to judgment of the jurisdictional Delhi High Court in the case of Maxopp Investments Ltd. vs. CIT [2011 (11) TMI 267 - Delhi High Court] and has held as under:-*

"The Hon'ble Delhi High Court in the case of Maxopp Investments Ltd. V. CIT [2011 (11) TMI 267 - Delhi High Court] has held that by virtue of the provisions of sub-section (2) and (3) of Section 14A of the Act, if the Assessing Officer is not satisfied by the correctness of the claim of the assessee in respect of such expenditure or no expenditure, as the case may be, cannot embark upon the determination of the amount of expenditure in accordance with Rule 8D. While rejecting the claim of the assessee, the Assessing Officer has to render cogent reasons for the same. In a case where the assessee states that no expenditure has been incurred by it to earn exempt income, the Assessing Officer has verify the correctness of the assessee's claim having regard to the accounts of the assessee. In the case on hand, we find that the Assessing Officer has not given any cogent reason in the order of assessment for disbelieving the contention of the assessee that it has incurred no expenditure to earn the exempt income of Rs.18,400 but has proceeded to apply the provisions of Rule 8D to arrive at the disallowance of Rs.1,93,730 as the expenditure deemed to be incurred for earning exempt income. Further as contented by the learned Authorized Representative, the judicial pronouncements relied on by the assessee i.e. J.M. Financial Ltd (2014 (4) TMI 752 - ITAT MUMBAI), apply to the factual matrix of the case on hand and in this view of

the matter, it cannot be said that the assessee was incurring expenditure to maintain and / or monitor its long term investments of Rs.3,87,00,000 in its sister / associate concern M/s. Trichy Steel Rolling Mills P. Ltd. and Rs.46,000 invested in the shares of Andhra Bank. Thus we delete the disallowance of Rs.1,93,730 made by the Assessing Officer under Section 14A r.w. Rule 8D."

10.6 *In view of the above facts and the position of the law we are of the view that the disallowance made by the AO and as confirmed by the CIT(A) by invoking the provisions of Rule 8D is not sustainable and accordingly the addition made by the AO on this account is directed to be deleted. Ground No.2 is allowed."*

6.4 Further, the aforesaid finding of the Tribunal has also been upheld by the Hon^{ble} Jurisdictional High Court in the assessee's own case in ITA No. 218/2016 (supra). The relevant part of the order of Hon^{ble} High Court is reproduced as under:

4. Having perused the impugned order of the ITAT the Court notes that a thorough analysis of the factual situation has been made by the ITAT. It is in particular noted as under:

"As regards dividend income though the assessee has received dividend of Rs.5.39 Crores but this dividend amount has been received from two companies, namely Powerlink Transmission Ltd. Rs.4.19Crores and Rs.1,20 Crores from PTC India Ltd. From the annual accounts of the assessee company we note that there is no change in the investments in these two companies during the year. Investments in the Powerlink Transmission Ltd. in the preceding year were Rs.229.32 Crores which continued at Rs.229.32 Crores during the year. Similarly in PTC India Ltd. the investment in the preceding year was RS.12 Crores which continued at RS.12 Crores during the year under consideration. The dividend received from these two companies has been credited to the bank account."

5. *Considering that it is not case where regular activities were undertaken by the Assessee in respect of the investments to earn income therefrom, there was no basis for the AO to hold that the expenditure as disclosed by the Assessee towards earning exempt income was insufficient. The Court finds no legal infirmity in the impugned order of the ITAT. No substantial question of law arises for consideration.*

6. *Accordingly, the appeal is dismissed."*

6.5 Hence, respectfully following the above findings of ITAT and the Hon'ble Jurisdictional High Court in the assessee's case (supra), we allow ground no. 2 of appeal of the assessee.

7. Ground no. 3 is regarding the addition made by the Assessing Officer while computing book profit under Section 115JB of the Act.

7.1 Learned Authorized Representative submitted that this issue has also been adjudicated by ITAT and confirmed by the Hon'ble Jurisdictional High Court.

7.2 On the other hand, the learned CIT(DR) placed reliance on the orders of the lower authorities.

7.3 We have heard both the parties and perused the material on record. We find that the issue in question has been decided by ITAT in ITA No. 5577/Del/2011(supra) which was later confirmed by the Hon'ble Jurisdictional High Court. The relevant findings of the Tribunal are as under:

"11. Ground no. 3 and 4 are regarding addition of Rs.9,74,22,250/- made by the AO while computing book profit under section 115JB of the Income Tax Act. In view of our decision regarding ground no.2 whereby we have upheld the disallowance under section 14A of Rs.20,81,729/- made by the assessee as against Rs.9,74,22,250/- computed by the AO by invoking Rule 8D these grounds become consequential in nature. The AO is directed to restrict the disallowance while computing book profit under section 115JB to Rs 20,81,729/- as computed by the assessee. These grounds of appeal are accordingly disposed of."

7.5 Thus, respectfully following the above findings of the Tribunal in ITA No. 5577/Del/2011(supra), we allow this ground of appeal.

8. In the result, the appeal is allowed.

9. Further, in ITA No. 2398/Del/2014 for assessment year 2010-11, identical issues are involved as were in ITA No. 2397/Del/2014 for assessment year 2009-10, therefore, our findings given in the former part

of this order shall apply *mutatis mutandis* in ITA No. 2398/Del/2014 for the assessment year 2010-11 also.

10. In the result, both the appeals of the assessee are allowed.

The decision is pronounced in the open court on 6th Oct, 2016.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER
Dated: 6th October, 2016.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi