आयकर अपीलीय अधीकरण, न्यायपीठ – "A" कोलकाता,

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA

(समक्ष)Before **श्री के. के. गूप्ता,** लेखा सदस्य एवं/and श्री महावीर सिंह**,** न्यायीक सदस्य)

[Before Shri K. K. Gupta, AM & Shri Mahavir Singh, JM]

आयकर अपील संख्या / I.T.A No. 1809/Kol/2012

निर्धारण वर्ष/Assessment Year: 2009-10

Deputy Commissioner of Income-tax, Central Circle-XXVII, Kolkata.	Vs.	Ashish Jhunjhunwala (PAN:ACPPJ2618E)
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Date of hearing: 14.05.2013
Date of pronouncement: 14.05.2013

For the Appellant: Shri P. K. Chakraborty, Sr. DR
For the Respondent: Shri Ravi Tulsiyan, FCA

आदेश/ORDER

Per Shri Mahavir Singh, JM:

This appeal by revenue is arising out of order of CIT(A)-II, Kolkata in Appeal No. 296/CC-XXVII/CIT(A)C-II/11-12 dated 24.09.2012. Assessment was framed by ACIT, Central Circle-XXVII, Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") for Assessment Year 2009-10 vide his order dated 06.12.2011.

2. The only issue in this appeal of revenue is against the order of CIT(A) deleting the addition made by AO by invoking the provisions of section 14A read with Rule 8D(2)(iii) of the I. T. Rules, 1962. For this, revenue has raised following two grounds:

> *"1. That on the facts and in the circumstances of the case the CIT(A) has erred in law by deleting the addition of Rs.32,43,23/- by holding that the AO was not justified in making the disallowance whatever expenses claimed by the appellant are already disallowed by the AO separately.*
>
> *2. That on the facts in the circumstances of the case the CIT(A) has failed to appreciate the fact that before proceeding for inviting the provision of section 14A read with Rule 8D(2)(iii) the AO has conducted necessary examination and ground work, which are evident from the recordings of note-sheet."*

3. We have heard rival submissions and gone through facts and circumstances of the case. Brief facts leading to the above issue are that during the course of assessment proceedings AO noticed that assessee has earned dividend income of Rs.32,43,231/- and claimed the same as exempt u/s. 10(34) of the Act. The AO required the assessee to furnish the details of

expenditure incurred for earning this dividend income. The assessee in reply stated that no expenditure has been incurred to earn this dividend income because no new investment was made during the year and no interest at all is paid on the investments made for earning this dividend income. Further, it was clarified by the assessee that no loans were taken for making this investment for earning this dividend income. The AO was not convinced with the reply of the assessee and made disallowance simply by making calculation by applying Rule 8D of the I. T. Rules, 1962 as under:

"Disallowance as per Rule 8D is computed as under:

i) Direct Expenses : In the computation of income the assessee has debited Rs.906/- as D-mat charges. This has been identified as expenses which can be directly attributable to earning of such exempt income.

ii) Disallowance on account of interest Nil

iii) Disallowance of ½% of average value of investment

*Rs.648464912*0.5% = Rs.3242325/-*

Total disallowance u/s. 14A Rs.3243231/-"

4. Aggrieved, assessee challenged the disallowance made by invoking the provisions of section 14A read with Rule 8D of the I. T. Rules at Rs.3243231/- before CIT(A). CIT(A) after considering the submissions of the assessee deleted the disallowance vide para 5 of his appellate order as under:

"5. I have considered the submission of the appellant and perused the assessment order. I have also gone through the profit & loss account for the year ended 31.03.2009 as well as statement of total income filed by the appellant along with return of income. On careful consideration of facts and in law, I find force in the submission of the appellant that once 100% of expenses amounting to Rs.1,95,483/- claimed by him under the head Income from Other Sources has been disallowed separately by the AO, there is no reason to make any further disallowance of expenditure u/s. 14A of the Act. It is observed that the AO has mechanically applied the provisions of Rule 8D to compute the disallowance u/s. 14A without appreciating that he has already made the disallowance of entire expenses claimed by the appellant. The AO made the disallowance of Rs.906/- on account of demat charges but this expenditure was not claimed by the appellant as deduction in the computation of income. Under the circumstances, no such disallowance could be made. In view of above, it is held that the AO was not justified ìn makìng the disallowance of Rs.32,43,231/- u/s. 14A read with Rule 8D because whatever expenses claimed by the appellant are already disallowed by the AO separately in the assessment order. Therefore, he is directed to delete the disallowance made by him u/s. 14A of the Act. The ground no. 1 is allowed."

Aggrieved, revenue is in appeal before us.

5. Before us, Ld. Sr. DR only relied on the assessment order. We find that the AO has not brought on record anything which proves that there is any expenditure incurred towards earning of this dividend income. This issue is covered by the decision of Mumbai Tribunal in the case of J. K. Investors (Bombay) Ltd. Vs. ACIT in ITA No.7858/Mum/2011, AY 2008-09 dated 13.03.2013, wherein it has been held as under:

> *11. We have heard the arguments of the parties and have perused the material placed before us. The issue as carved out by the AR is with respect to Rs.10,000 only, but on the contrary, the issue before us is on the applicability of Rule 14A and computation of disallowance as per Rule 8D. The relevant portion read out by the AR from the decision in the case of Godrej & Boyce Mfg. Co. Ltd vs. DCIT (supra) in Para 70 of the order pertains to the correctness of computation of disallowance and giving valid reasons for such computation. The crux of argument of AR is with reference to Section 14(2) which is as under:*
>
> > *"The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if AO having regard to the accounts of assessee, is not satisfied with the correctness of the claim of assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act".*
>
> *The words that need reference in the section are "if AO having regard to the accounts of assessee, is not satisfied with the correctness of the claim…" means that before going to the computation, AO has to cross the barrier of the satisfaction with the correctness of the claim, then AO can be permitted to straightaway apply the computation under Rule 8D.*
>
> *12. Thus the issue in this appeal is with reference to invoking of provisions of section 14A(2) and Rule 8D. The Hon'ble Bombay High Court while upholding the constitutional validity of the section 14A and Rule 8D has this to observe with reference to sub section 2 & 3 of section 14A:*
>
> > *"Sub-sections (2) and (3) of section 14A were inserted by an amendment brought about by the Finance Act of 2006 with effect from April 1, 2007. Under sub-section (2), the Assessing Officer is required to determine the amount of expenditure incurred by an assessee in relation to such income which does not form part of the total income under the Act in accordance with such method as may be prescribed. Sub-section (2) was inserted so as to provide a uniform method applicable where the Assessing Officer is not satisfied with the correctness of the claim of the assessee. Parliament has provided an adequate safeguard to the invocation of the power to determine the expenditure incurred in relation to the earning of non-taxable income by adoption of the prescribed method. The invocation of the power is made conditional on the objective satisfaction of the Assessing Officer in regard to the correctness of the claim of the assessee, having regard to the accounts of the assessee. These safeguards which are implicit in the requirements of fairness and fair procedure under article 14 must be observed by the Assessing Officer when he arrives at his satisfaction under sub-section (2) of section 14A. Sub-rule (1) of rule 8D of the Income-tax Rules, 1962, has also incorporated the essential requirements of sub-*

section (2) of section 14A before the Assessing Officer proceeds to apply the method prescribed under sub-rule (2)" .. (emphasis supplied).

13. The same opinion was expressed by the Hon'ble Delhi High Court in the case of Maxopp Investment Ltd and Others v. CIT 247 CTR 162 wherein reliance was placed on the decision of the Hon'ble Supreme Court in the case of CIT vs. Walfort Share & Stock Brokers Pvt. Ltd 326 ITR 1 (SC) and the decision of the Hon'ble Bombay High Court in the case of Godrej and Boyce Company Ltd vs. DCIT (328 ITR 81). The relevant portions of the judgment of Hon'ble Delhi High Court are as under:

29. Sub-section (2) of Section 14 A of the said Act provides the manner in which the Assessing Officer is to determine the amount of expenditure incurred in relation to income which does not form part of the total income. However, if we examine the provision carefully, we would find that the Assessing Officer is required to determine the amount of such expenditure only if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under the said Act. In other words, the requirement of the Assessing Officer embarking upon a determination of the amount of expenditure incurred in relation to exempt income would be triggered only if the Assessing Officer returns a finding that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. Therefore, the condition precedent for the Assessing Officer entering upon a determination of the amount of the expenditure incurred in relation to exempt income is that the Assessing Officer must record that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. Sub-section (3) is nothing but an offshoot of sub-section (2) of Section 14A. Subsection (3) applies to cases where the assessee claims that no expenditure has been incurred in relation to income which does not form part of the total income under the said Act. In other words, sub-section (2) deals with cases where the assessee specifies a positive amount of expenditure in relation to income which does not form part of the total income under the said Act and sub-section (3) applies to cases where the assessee asserts that no expenditure had been incurred in relation to exempt income. In both cases, the Assessing Officer, if satisfied with the correctness of the claim of the assessee in respect of such expenditure or no expenditure, as the case may be, cannot embark upon a determination of the amount of expenditure in accordance with any prescribed method, as mentioned in sub-section (2) of Section 14A of the said Act. It is only if the Assessing Officer is not satisfied with the correctness of the claim of the assessee, in both cases, that the Assessing Officer gets jurisdiction to determine the amount of expenditure incurred in relation to such income which does not form part of the total income under the said Act in accordance with the prescribed method. The prescribed method being the method stipulated in Rule 8D of the said Rules. While rejecting the claim of the assessee with regard to the expenditure or no expenditure, as the case may be, in relation to exempt income, the Assessing Officer would have to indicate cogent reasons for the same.

Rule 8D.

30. As we have already noticed, sub-section (2) of Section 14A of the said Act refers to the method of determination of the amount of expenditure incurred in relation to exempt income. The expression used is – "such method as may be prescribed". We have already mentioned above that by virtue of

Notification No.45/2008 dated 24/03/2008, the Central Board of Direct Taxes introduced Rule 8D in the said Rules. The said Rule 8D also makes it clear that where the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with (a) the correctness of the claim of expenditure made by the assessee; or (b) the claim made by the assessee that no expenditure has been incurred in relation to income which does not form part of the total income under the said Act for such previous year, the Assessing Officer shall determine the amount of the expenditure in relation to such income in accordance with the provisions of sub-rule (2) of Rule 8D. We may observe that Rule 8D(1) places the provisions of Section 14A(2) and (3) in the correct perspective. As we have already seen, while discussing the provisions of Sub-sections (2) and (3) of Section 14A, the condition precedent for the Assessing Officer to himself determine the amount of expenditure is that he must record his dissatisfaction with the correctness of the claim of expenditure made by the assessee or with the correctness of the claim made by the assessee that no expenditure has been incurred. It is only when this condition precedent is satisfied that the Assessing Officer is required to determine the amount of expenditure in relation to income not includable in total income in the manner indicated in sub-rule (2) of Rule 8D of the said Rules.

31. It is, therefore, clear that determination of the amount of expenditure in relation to exempt income under Rule 8D would only come into play when the Assessing Officer rejects the claim of the assessee in this regard. If one examines sub-rule (2) of Rule 8D, we find that the method for determining the expenditure in relation to exempt income has three components. The first component being the amount of expenditure directly relating to income which does not form part of the total income. The second component being computed on the basis of the formula given therein in a case where the assessee incurs expenditure by way of interest which is not directly attributable to any particular income or receipt. The formula essentially apportions the amount of expenditure by way of interest [other than the amount of interest included in clause (i)] incurred during the previous year in the ratio of the average value of investment, income from which does not or shall not form part of the total income, to the average of the total assets of the assessee. The third component is an artificial figure - one half percent of the average value of the investment, income from which does not or shall not form part of the total income, as appearing in the balance sheets of assessee, on the first day and the last day of the previous year, It is the aggregate of these three components which would constitute the expenditure in relation to exempt income and it is this amount of expenditure which would be disallowed under section 14A of the said Act. It is, therefore, clear that in terms of the said Rule, the amount of expenditure in relation to exempt income has two aspects – (a) direct and (b) indirect. The direct expenditure is straightaway taken into account by virtue of clause (i) of sub-rule (2) of Rule 8D. The indirect expenditure, where it is by way of interest, is computed through the principle of apportionment, as indicated above, and, in cases where the indirect expenditure is not by way of interest, a rule of thumb figure of one half percent of the average value of the investment, income from which does not or shall not form part of the total income, is taken.

……

41. Sub-section (2) of section 14A, as we have seen, stipulates that the Assessing Officer shall determine the amount of expenditure incurred in relation to income which does not form part of the total income "in

accordance with such method as may be prescribed". of course, this determination can only be undertaken if the Assessing Officer is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. This part of section 14A(2) which explicitly requires the fulfillment of a condition precedent is also implicit in section 14A(1) [as it now stands] as also in its initial avatar as section 14A. It is only the prescription with regard to the method of determining such expenditure which is new and which will operate prospectively. In other words, section 14A, even prior to the introduction of sub-sections (2) and (3) would require the assessing officer to first reject the claim of the assessee with regard to the extent of such expenditure and such rejection must be for disclosed cogent reasons. It is then that the question of determination of such expenditure by the assessing officer would arise. The requirement of adopting a specific method of determining such expenditure has been introduced by virtue of sub-section (2) of section 14A. Prior to that, the assessing was free to adopt any reasonable and acceptable method.

14. The Hon'ble Punjab & Haryana High Court in the case of CIT vs. Hero Cycles Ltd 323 ITR 518 (P&H) has also held that disallowance under section 14A could not stand where it was found that for earning exempted income no expenditure has been incurred:

"Held - dismissing the appeal, that the expenditure on interest was set off against the income from interest and the investment in the shares and funds were out of the dividend proceeds. In view of this finding of fact, disallowance under section 14A was not sustainable. Whether, in a given situation, any expenditure was incurred which was to be disallowed, was a question of fact. The contention of the Revenue that directly or indirectly some expenditure was always incurred which must be disallowed under section 14A and the impact of expenditure so incurred could not be allowed to be set off against the business income which may nullify the mandate of section 14A, could not be accepted. Disallowance under section 14A required finding of incurring of expenditure and where it was found that for earning exempted income no expenditure had been incurred, disallowance under section 14A could not stand. Consequently, the disallowance was not permissible.

15. The Coordinate Bench in the case of Justice Sam P Bharucha vs. Addl. CIT in ITA No.3889/Mum/2011 dated 25.07.2012 has analyzed similar issue and came to the following conclusion:

"5 We have considered the rival submissions as well as relevant material on record. Section 14A has within it implicit notion of apportionment in the cases where the expenditure is incurred for the composite/indivisible activities in which taxable and non-taxable income is received. But when it is possible to determine the actual expenditure in relation to the exempt income or when no expenditure has been incurred in relation to the exempt income, then principle of apportionment embedded in section 14 A has no application. The objective of section 14 A is not allowing to reduce tax payable on the normal exempt income by debiting the expenditure incurred to earn the exempt income. Thus, the expenses incurred to earn exempt income cannot be allowed and the expenses shall be allowed only to the extent they are related to the earning of taxable income. If there is expenditure directly or indirectly incurred in relation to exempt income, the

same cannot be claimed against the income, which is taxable as it is held by the Hon'ble Supreme Court in case of Commissioner of Income-tax v. Walfort Share and Stock Brokers P. Ltd. reported in 326 ITR 1 that for attracting the provisions of section 14 A, there should be proximate cause for disallowance which as relationship with the tax exempt income.

5.1 The expenditure incurred in relation to the income which does not form part of total income has to be disallowed. However, it should be proximate relationship between the expenditure and the income, which does not form part of total income. Once such proximity relationships exist, the disallowance is to be effected. In case the assessee had claimed that no expenditure has been incurred for earning the exempt income, it was for the assessing officer to determine as to whether the assessee had incurred any expenditure in relation to income which did not form part of total income and if so to quantify the extent of disallowance. Thus, in order to disallow the expenditure under section 14A, there must be a live nexus between the expenditure incurred and the income not forming part of total income. No notional expenditure can be apportioned for the purpose of earning exempt income unless there is an actual expenditure in relation to earning the income not forming part of total income. If the expenditure is incurred with a view to earn taxable income and there is apparent dominant and immediate connection between the expenditure incurred and taxable income, then no disallowance can be made under section 14A merely because some tax exempt income is received by the assessee.

5.2 Averting to the facts of the case in hand, the assessee had made a claim that no expenditure has been incurred or claimed for earning the exempt income. From the details of the expenditure, it is clear that the expenditure incurred and claimed by the assessee has direct nexus with the professional income of the assessee. It is not the case of the revenue that the assessee has used his official machinery and Establishment for earning the exempt income. The Assessing Officer has not given any finding that any of the expenditure incurred and claimed by the assessee is attributable for earning the exempt income. In other words when the assessing officer has not pointed out that certain expenditure is not incurred for earning the professional income; but are incurred in relation to dividend income or such expenditure is incurred for inseparable and indivisible activities comprising professional as well as the activities on which is exempt income has been earned by the assessee, then in the absence of any such instance of expenditure, finding of Assessing Officer or any material to show that the expenditure incurred and claimed by the assessee against the taxable income has any relation for earning the exempt income, the provisions of section 14A cannot be applied.

5.3 In the case of Shri Pawan Kumar Parameshwar Lal vs. ACIT (supra) this tribunal has considered and decided an identical issue in Para 4 as under:

> *"4. After hearing the assessee in person and arguments of the learned D.R. we are of the opinion that no disallowance is called for under section 14A. Obviously the assessee is maintaining separate books of account for purpose of business and these investments are in his personal capacity. The A.O. also has not disallowed any expenditure of personal nature out of the income*

from business or profession in the computation of income in the assessment order. In view of this, we are of the opinion that the expenditure claimed in the business of share dealings cannot be correlated to the incomes earned in personal capacity that too on dividend, PPF interest and tax free interest on RBI bonds. In view of this, we are of the opinion that estimation of expenditure of `.20,000/- out of business expenditure claimed in business activity cannot be considered for being incurred for this earning of tax free income of above nature. In view of this disallowance so made under section 14A of `.2O,OOO/- is deleted. Not only that the CIT(A) directed the A.O. to consider the allowance invoking Rule 8D. The Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. vs. DCIT 328 ITR 81 has considered Rule 8D to be applicable prospective and since the assessment year involved is before the introduction of sub section (2) & (3) of section 14A, there is no question of disallowing the amounts invoking Rule8D. Therefore, the CIT(A)'s direction on this is set aside and the additions so made by the A.O. in the computation of business income is deleted. Ground is considered allowed."

5.4 Similarly in case of Auchtel Products Ltd (supra), it was held by this Tribunal in Para 15 has under:

"15. A bare perusal of the above provisions disallowable as per Rule 8D, if he, "is not satisfied with the correctness of the claim of the assessee" in respect of such expenditure in relation to exempt income. Even if the assessee claims that no expenditure was incurred in respect of exempt income, the AO is supposed to follow the mandate of Rule 8D if he is not satisfied with the correctness of the assessee's claim. To put it simply, the further disallowance u/s.14A is called for when the AO is not satisfied with the assessee's claim of having incurred no expenditure or some amount of expenditure in relation to exempt income. Satisfaction of the AO as to the incorrect claim made by the assessee in this regard is sine qua non for invoking the applicability of Rule 8D. Such satisfaction can be reached and recorded only when the claim of the assessee is verified. If the assessee proves before the AO that it incurred a particular expenditure in respect of earning the exempt income and the AO gets satisfied, then there is no requirement to still proceed with the computation of amount disallowable as per Rule 8D. From the assessment order, it is observed that the AO simply kept the assessee's submissions on record without appreciating as to whether these were correct or not. He proceeded on the premise as if the disallowance as per Rule 8D is automatic irrespective of the genuineness of the assessee's claim in respect of expenses incurred in relation to exempt income. It is an incorrect course adopted by the AO. The correct sequence, in our considered opinion, for making any disallowance u/s. 14A is to, firstly, examine the assessee's claim of having incurred some expenditure or no expenditure in relation to exempt income, If the AO gets satisfied with the same, then there is no need to compute

disallowance as per Rule 8D. It is only when the AO is not satisfied with the correctness of the claim of assessee in respect of such expenditure or no expenditure having been incurred in relation to exempt income, that the mandate of Rule 8D will operate. In the instant case, the authorities below have directly gone to the second stage of computing disallowance u/s. 14A as per Rule 8D without rendering any opinion on the correctness or otherwise of the assessee's claim in this regard. We, therefore, set aside the impugned order on this issue and restore the matter to the file of AO to re-compute disallowance, if any, in accordance with our above observations after duly examining the assessee's claim in this regard."

6. In view of the above discussion and facts and circumstances of the case, we are of the considered opinion that no disallowance under section 14A is called for when the assessee has not incurred and claimed any expenditure for earning the exempt income.

16. Similar views were also expressed by the Coordinate Benches in the case of Relaxo Footwears Ltd, vs. Addl. CIT (2012) 50 SOT 102 and Priya Exhibitors (P) Ltd vs. ACIT (2012) 54 SOT 356. In the case of Relaxo Footwears Ltd, it was held as under:

"*The Assessing Officer should have considered the claim of the assessee that no expenditure has been incurred in relation to earning the exempt income. If the claim was not found to be in consonance with the facts on record, it could have been rejected and disallowance could have been made as per rule 8D. However, it is found that the Assessing Officer has not considered the claim of the assessee at all and he has straightway embarked upon computing disallowance under rule 8D. The Commissioner (Appeals) made an assumption that whenever exempt income is earned there will be some expenditure incurred in relation thereto. Such presumption cannot form the basis for making disallowance under rule 8D."*

17. In the case of Priya Exhibitors (P) Ltd vs. ACIT (2012) 54 SOT 356 it was held as under:

"From the careful study of the observations made by the Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. (supra), it is apparent that first the Assessing Officer has to determine the claim of the assessee regarding expenses which neither the Assessing Officer nor the Commissioner (Appeals) has done in the instant case. In fact, the said decision goes against the department itself in so far as their Lordships has held that the Assessing Officer must in the first instance determine whether the claim of the assessee is correct and determination must be made having regard to the accounts of the assessee. The Legislature directs him to follow rule 8D only where the Assessing Officer is not satisfied with the claim of assessee. "

18. After considering the principles laid down by various judgments, it is imperative that the Assessing Officer can invoke Rule 8D only when he records satisfaction in regard to the correctness of the claim of the assessee, having regard to the accounts

of the assessee. The condition precedent for the Assessing Officer entering upon a determination of the amount of the expenditure incurred in relation to exempt income is that the Assessing Officer must record that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. While rejecting the claim of the assessee with regard to the expenditure or no expenditure, as the case may be, in relation to exempt income, the Assessing Officer would have to indicate cogent reasons for the same. Therefore, it is all the more necessary that AO has to examine the accounts of assessee first and then if he is not satisfied with the correctness of the claim, only he can invoke Rule 8D. No such examination was made or satisfaction was recorded by AO in this case. It was noticed that the Assessing Officer has not considered the claim of the assessee at all and he has straightway embarked upon computing disallowance under Rule 8D on the presumption that port folio management involves at least 2% of charges. Disallowance under section 14A required finding of incurring of expenditure and where it was found that for earning exempted income no expenditure had been incurred, disallowance under section 14A could not stand. We notice that assessee itself disallowed the interest which is directly applicable, Dmat charges and administrative exp on estimation totaling to Rs.1,55,44,610. Assessee is a hundred crore turnover company. AO has not examined any expenditure claimed in P& L account so as to relate to exempt income, nor gave a finding that assessee claim is not correct for any reason. Rule 8D cannot be invoked directly without satisfying about the claims or otherwise. Consequently, the disallowance was not permissible. We therefore, allow the ground of appeal."

6. We find from the facts of the above case that the AO has not examined the accounts of the assessee and there is no satisfaction recorded by the AO about the correctness of the claim of the assessee and without the same he invoked Rule 8D of the Rules. While rejecting the claim of the assessee with regard to expenditure or no expenditure, as the case may be, in relation to exempted income, the AO has to indicate cogent reasons for the same. From the facts of the present case it is noticed that the AO has not considered the claim of the assessee and straight away embarked upon computing disallowance under Rule 8D of the Rules on presuming the average value of investment at ½% of the total value. In view of the above and respectfully following the coordinate bench decision in the case of J. K. Investors (Bombay) Ltd., supra, we uphold the order of CIT(A). This appeal of revenue is dismissed.

7. In the result, the appeal of the revenue is dismissed.

8. Order pronounced in open court.

Sd/- **Sd/-**

के. के. गूप्ता, लेखा सदस्य **महावीर सिंह**, न्यायीक सदस्य

(K. K. Gupta) (Mahavir Singh)

Accountant Member Judicial Member

(तारीख) Dated : 14th May, 2013

वरिष्ठ निजि सचिव Jd.(Sr.P.S.)

आदेश की प्रतिलिपि अग्रेषितः- Copy of the order forwarded to:

1. अपीलार्थी/APPELLANT- DCIT, C.C. XXVII, Kolkata
2. प्रत्यर्थी/ Respondent – Shri Ashish Jhunjhunwala, 10/4, Alipore Park Place, Kolkata-700 027.
3. आयकर कमिशनर (अपील)/ The CIT(A), Kolkata
4. आयकर कमिशनर/ CIT Kolkata
5. विभागिय प्रतिनीधी / DR, Kolkata Benches, Kolkata

सत्यापित प्रति/True Copy, आदेशानुसार/ By order,

सहायक पंजीकार/Asstt. Registrar.