

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'B', BANGALORE**

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

**ITA No.1261 (Bang) 2016
(Assessment year : 2011 – 12)**

M/s. Deccan Mining syndicate Pvt. Ltd.,
S – 7, 2nd Floor, Esteem Arcade,
No. 26, Race Course Road,
Bangalore – 560001.
PAN. AAACD7081R

Appellant

Vs

The DCIT, Central circle – 11 (1),
Bangalore.

Respondent

**Assessee by : Shri H. N. Khincha, C. A.
Revenue by : Ms Neera Malhotra, CIT DR**

**Date of hearing : 01 – 06 – 2018
Date of pronouncement : 21 – 08 – 2018**

ORDER

PER A. K. GARODIA, A.M.:

This appeal is filed by the assessee which is directed against the order of CIT (A) – 2 Bangalore dated 26.05.2016 for A. Y. 2011 – 12.

2. The grounds raised by the assessee are as under:-

“1. The learned Assessing Officer has erred in passing the order in the manner passed by him and the learned Commissioner of Income tax (Appeals) has erred in confirming the same.

2. In any case, the learned Assessing Officer has erred in making various additions to the income returned by the appellant and the learned Commissioner of Income tax (Appeals) has erred in partially confirming the same. On proper appreciation of the facts of the case and the law applicable the additions as made/ sustained are to be deleted.

3.1 The assessing officer had erred in holding by relying on extraneous matters that the appellant is not entitled to any deduction U/s. 10B of I.T. Act, 1961 and the learned Commissioner of Income

tax (Appeals) has erred in confirming the same. On proper appreciation of the facts and circumstances of the case and the law applicable, it would be clear that the appellant being an eligible 100% EOU and having complied with all the conditions required for claiming deduction U/s. 10B of the Act, is entitled to claim deduction U/s. 10B of the Act and deduction as claimed is to be allowed to the appellant.

3.2 In any case, and without prejudice, the disallowance as made/sustained is excessive.

4.1 The learned Assessing Officer has erred in calculating notional interest and in making addition of Rs. 97,50,069/- and the learned Commissioner of Income tax (Appeals) has erred in confirming the same on the ground that commercial expediency and business purpose of advancing loans to sister concerns has not been proved by the appellant. The addition as made/ sustained is totally on erroneous premise is to be deleted.

4.2 In any case and without prejudice, the own funds of the appellant being sufficient to cover interest free advances given, the addition as made/ sustained being totally erroneous both on facts and law are to be deleted.

5. The learned assessing officer had erred in further disallowing a sum of Rs. 57,93,432/-U/s. 14A of the I.T. Act, 1961 and the learned Commissioner of Income tax (Appeals) has erred in confirming the same. On the facts of the case, the further disallowance U/s. 14A of the Act is bad in law and is liable to be deleted.

6.1 The lower authorities have erred in not properly appreciating the facts of the case and law applicable while disallowing the foreign exchange loss of Rs.6,03,770/-. The loss having correctly been claimed as deduction is to be allowed as such.

6.2 The learned Commissioner of Income tax (Appeals) has erred in confirming the disallowance of foreign exchange loss holding that the loss incurred on account of forward contract constitutes speculation loss and same is not allowable u/s 37 of the Act. The conclusion drawn by the Commissioner of Income tax (Appeals) being totally erroneous both on facts and law are to be disregarded.

7. The learned authorities have erred in disallowing a sum of Rs. 392,867/- holding that same is not allowable either u/s 36(1)(vii) or u/s 37 of the Act on the grounds that:

i) the appellant has not explained the nature of the transaction.

ii) the appellant has written off the trade debts without substantiating the allowability thereof.

The action of authorities below being contrary to available facts and the law applicable is to be ignored and the suitable relief in accordance with law is to be given.

9. The appellant denies the liability to pay interest. The interest having been levied erroneously is to be deleted.

10. In view of the above and on other grounds to be adduced at the time of hearing it is requested that the impugned order be quashed and allow the appellant request.”

3. Learned AR of the assessee submitted that Grounds No. 1, 2 & 10 are general and Grounds No. 9 about interest is consequential. Regarding Ground Nos. 6.1, 6.2 & 7, he submitted that these grounds are not pressed. Accordingly, these grounds are rejected as not pressed.

4. Regarding Ground No. 3.1 & 3.2, he submitted that the assessee company is fulfilling all the requirements of section 10B and therefore, the assessee is eligible for full deduction as claimed by the assessee u/s 10B. Thereafter he submitted that it is noted by learned CIT (A) in Para 2.2 of his order that in earlier years being A. ys. 2007 – 08 to 2010 – 11 also, the assessee claimed deduction u/s 10B and the same was partly allowed by the AO. He pointed out that the extent of disallowance in these years is maximum 28.71 % because in A. Y. 2007 – 08, disallowance is of Rs. 936.96 Lacs out of claim of Rs. 3408.70 Lacs being 27.09%. Similarly in A. Y. 2008 – 09, disallowance is of Rs. 5132.77 Lacs out of claim of Rs. 19145.97 Lacs being 26.81%, in A. Y. 2009 – 10, disallowance is of Rs. 2967.07 Lacs out of claim of Rs. 10336.23 Lacs being 28.71% and in A. Y. 2010 – 11, disallowance is of Rs. 2125.93 Lacs out of claim of Rs. 8258.72 Lacs being 25.74%. He submitted that since in the immediate preceding year i.e. A. Y. 2010 – 11 which is the year of search also as the search was conducted on 03.03.2010, the disallowance made by the A. O. is only 25.74%, in the present year also, maximum 25% disallowance may be made if it is held that some disallowance has to be made but the claim of the assessee is this that after the search was conducted on 03.03.2010, it came to the knowledge of the assessee that there are some objections of the department in respect of allowing of the assessee's claim in full for deduction u/s 10B being absence of boundary demarcating EOU and non – EOU units,

existence of a common control room for operation of CSP, VSP1 and VSP2, simultaneous operation of Plant & machinery in EOU and non – EOU area and non segregation of capital goods between the two units and therefore, the assessee has taken corrective measures in the present year starting from 01.04.2010 and hence, in the present year, full deduction should be allowed. He submitted that the copy of assessment orders for earlier years is available in paper book on pages 100 to 185 of the paper book. As against this, learned DR of the revenue supported the orders of the authorities below. She also submitted that as per clause (i) of sub section (2) of section 10B, the assessee is required to manufacture or produce an article or thing but the present assessee is not satisfying this requirement and hence, not eligible for deduction u/s 10B. She also drawn our attention to pages 5 and 6 of the assessment order and pointed out that the A. O. has reproduced the auditors' report in Form 56G and noted that as per this report, the assessee is maintaining accounts and records relating to EOU unit and in course of assessment proceedings, the A.O. asked the assessee to produce the accounts/records pertaining to 10A unit but the assessee did not produce the same and the A.O. held that in absence of the same, the assessee's claim cannot be entertained. She also pointed out that it is also seen from this report of auditors in Form 56G that the auditors has certified that the findings of the search and the effect thereof have not been considered while issuing this certificate and for this reason also, the claim of the assessee was not accepted by the A.O.

5. In the rejoinder, learned AR of the assessee submitted that neither as per provisions of I. T. Act and nor as per the certificate of the auditors in Form 56G, it is stated that separate records and accounts for EOU and non – EOU units are maintained or required to be maintained. He also submitted that on page 1 of the assessment order in Para 2, the A.O. has stated that the assessment is completed after carefully examining the books of accounts and other details and therefore, it is not proper to say that books of accounts were not produced before the A.O. He also submitted that all the assessment orders for A. Y. 2007 – 08 to 2010 – 11 are dated 30.09.2011 i.e. after the search and in all these years, only part claim is disallowed and the disallowance in A. Y. 2010 – 11

was only 25.74% and hence, even if some disallowance is to be made in the present year, it may be 25% maximum.

6. We have considered the rival submissions. We find that a search was carried out in the case of the assessee on 03.03.2010 and the assessment for A. ys. 2007 – 08 to 2009 – 10 were completed u/s 143 (3) r.w.s.153A on 30.09.2011 and the assessment for the search year i.e. A. Y. 2010 – 11 was completed u/s 143 (3) also on the same date i.e. 30.09.2011 and in these years, the claim of the assessee for deduction u/s 10B was allowed by the A.O. in part and the assessee accepted such part disallowance and no appeal was filed against such part disallowance. Therefore, in our considered opinion, neither the case of the A.O. for 100% disallowance nor the case of the assessee for allowing the claim u/s 10B in full gets supported by the orders of earlier years which have attained finality. In this view of the matter, this objection of the A.O. is not valid that in the present year, 100% disallowance is to be made for this reason that the auditors has certified that the findings of the search and the effect thereof have not been considered while issuing this certificate. This objection is rejected.
7. The second objection of the A.O. is also not valid that in the present year, the assessee is maintaining accounts and records relating to EOU unit and in course of assessment proceedings, the A.O. asked the assessee to produce the accounts/records pertaining to 10A unit but the assessee did not produce the same and the A.O. held that in absence of the same, the assessee's claim cannot be entertained. This objection is not valid because in our understanding, when the statute does not require maintaining of separate records for 10A units and non – 10A units and the auditors also does not say so specifically that the assessee is maintaining separate records for 10A units and non – 10A units, it cannot be so inferred from this observation of the auditors in Form 56G that they ***“have examined the accounts and records of the assessee relating to the business of their undertaking named Deccan Mining Syndicate (P) Ltd. – EOU unit engaged in the exports of article or things _____”***. In our considered opinion, from these observations of the auditors in Form 56G, only this much emerges that the auditors have examined the records and

accounts of the assessee and since, the certificate issued by the auditors in the present case is in prescribed Form No. 56G and admittedly there is no requirement of the statute that separate books are to be maintained, such inference drawn by the AO is not proper. In fact, in Para 3.4 of the assessment order, the A.O. says that the assessee was nowhere asked to produce the separate books pertaining to the 10A unit and non – 10A units. The A.O. has also noted about various judicial pronouncements cited by the assessee before him in support of this contention that the assessee is not required to maintain separate books. These judgments are 109 TTJ 440, 89 TTJ 439, 191 ITR 70 (Pat), 241 ITR 262 (AP) and 177 ITR 111 (Bom) and the AO says that these judgments are not relevant because he has not asked the assessee to produce separate books. Having said so, the A.O. makes a U turn on this basis that as per the Auditors report in Form 56G, the assessee has maintained separate books but did not produce it even after asking by the A.O. but we find that the report of auditors is in the prescribed Form 56G and hence, from that report, it cannot be inferred that the assessee is maintaining separate books for 10A units and non – 10A units. Therefore, this objection of the A.O. is also rejected.

8. As per above discussion, we have rejected both the objections of the A.O. for making 100% disallowance of the claim of the assessee u/s 10B. Now we examine the main claim of the assessee that the claim of the assessee for deduction u/s 10B should be allowed in full. We find that similar claim was partly disallowed by the A.O. in earlier years and the assessee has accepted such disallowance and no appeal was filed by the assessee. In the present year which started on 01.04.2010 after search on 03.03.2010, it is a submission of the learned AR of the assessee that in the present year, after search, the assessee removed all defects for which part disallowance was made in earlier years and the assessee accepted the same in those years but no evidence is brought on record in this regard. In A. Y. 2010 – 11, on page no. 9 of the assessment order available on page 109 to 113 of the paper book, the A.O. has stated as under:-

“Analysis of the submission made by the assessee:

From the above submissions, it is observed that the assessee, though, not accepted the evidences, has stated that with a view to have the

matter closed, avoid the hassles and to buy peace from the department, and to cover all plausible acts of omissions or commissions from all angles in computing the income of the EOU has accepted the proposed disallowances in the show cause notice. Basically, on being pointed out, the assessee does not want to admit its defaults in connection to the violations regarding the claim of deduction u/s 10B of the I.T. Act. But, the assessee's claim can not be admitted for the following reasons:

a. the assessee claims that the returns for assessment year 2007-2008 was taken up for scrutiny in the regular course of assessment and after detailed examination and investigation, the deduction / exemption was allowed as claimed. Just because of the reason that this has been allowed during the course of scrutiny proceedings, there is no reason to allow the claim entirely in the search assessment proceedings where there are lot many evidences collected against the assessee in connection to the violations.

b. The assessee further has stated that the department, after detailed enquiry, has accepted eligibility for the deduction / exemption u/s 10B of the Act. Accepting the eligibility during the course of regular assessment proceedings is not the reason/ground for allowing the claim of the assessee where there are certain valid evidences against the assessee in connection to the violation of certain conditions regarding the claim of deduction u/s 10B of the I.T. Act.

c. The assessee has strongly relied on the fact that Mr. Suddhodan whose statement is sought to be strongly relied upon was only the manager for mines operation whose main responsibility was to oversee the extraction and production of ore at the pit head level and to see that the work is carried on at the pit level. The assessee mainly place emphasis on the fact that the statement relied on has been.

12. The statements on which reliance is sought to be placed by the department are not relevant at all, not germane to the issue are in violation of principles of natural justice and are taken from persons, who had no role to play on the matter at hand. Accordingly, the observations at page 12 of the show cause notice regarding so called defects of non maintenance of separate inventory and records etc., do not have any value and are to be discarded. After the setting up of the EOU Unit, we have only run and exported ores from EOU Unit only and no other Unit was operational. The observations which in any case are not relevant for deduction U/s. 10B of I.T. Act, are only on assumptions and not based on evidence.

13. In fact, since the time we are claiming 100% deduction u/s. 10B, we never used any machinery which was not related to EOU. We ourselves had, in the initial years of deduction claimed only proportionate deduction u/s. 10B. The interpretation that the VSP plant is an old plant has no basis and reasoning. Even the so called

statement by Chartered Engineer Mr. Vasudev Rao does not justify such a conclusion. He has given only his technical knowledge on machinery. He is not aware of nor in the export in 100% EOU matter. Correspondingly the production data of VSP and non VSP machines does not give any conclusive evidence regarding the operation of so called non-EOU unit.

14. Mr. Rajesh of Hiregange Associates, who is supposed to have given a confidential report, did not even once have any interaction with top management people of the appellant before framing the report. Mr. Rajesh did not have any briefing from either the management or start of the appellant. He was not aware of the type and location of plant. Infact, he admits in the statement recorded in April 2010 that he had prepared a report, not on personal inspection but on the feedback given to him by his staff. The itself shows the quality of the report. Further, the contents of the so called report do not in any way go against the status of claim of EOU and of the claim U/s. 10B.

15. We have correctly claimed the deduction u/s. 10B of the Act by complying with the provisions of law. There is no violation of any of the condition laid down under Income tax Act, 1961. The undertaking has been approved by another Central Government Authority i.e., CSEZ, as 100% EOU and this recognition continues even till today.

recorded from the person who was even authorized to give any statement regarding the working and operation of the plant. Eligibility of the person to give a statement should not be decided by the assessee. Basically, statement has been recorded from a person who is an employee and who can provide complete details regarding the ground realities of the assessee company. From the statement recorded, it is observed that facts collected from the person clearly provides a complete picture regarding the violations made by the assessee in connection to the claim made u/s 10B of the I.T.Act.

d. The assessee has further stated that M/s. Hiregange and Associates were never appointed or given any assignment by them and in fact it may be stated here that the copy of the so called correspondence/report which is sought to be relied upon was given by Mr. Rajesh to CA Mr. Ravindranath. But, the assessee has completely ignored the fact that facts found in service tax matters have implication on income tax matters also and there are certain observations made after detailed analysis regarding the violations which cannot be ignored. Whoever has given the same, the content of the correspondences are forming part of the seized materials and they have implication on the issue of deduction u/s 10B of the I.T.Act. Evidentiary value of the same cannot be ignored.

e. Facts and circumstances before search cannot be considered as a basis when proper evidences were collected after conducting the physical search in the premises of the assessee. Evidences collected during the course of search and their ramification, the evidentiary value of the same needs to be appreciated rather than pondering on the situation and certification from the governmental organization and agencies before the search action. Critical appraisal of the search materials and the evidentiary value needs to be considered and the same needs to be relied on for finalizing the assessments done in the case of the assessee.

f. The assessee further states that there are certain factually a wrong answers. Minor factual error does not dilute the entire contents of the statements recorded.. The information collected from Sri Sudhodhan in connection to the existence of EOU and Non-EOU and in connection to the transfer of goods from non EOU to EOU has been utilized for making assessment in the case of the assessee company. The assessee should not rely on the exports and the related factual details prevailing before the search.. Facts emanated after conducting the search and after critical appraisal of the facts collected from in the course of search only need to be relied on for making assessment u/s.153A in addition to the available facts. Taking shelter of the facts before the search is not appropriate and the assessee should appreciate the evidences collected during the search and the contents therein.

g. the assessee has further stated that the statement as recorded from Mr. Suddhodan was not correct to his own knowledge, immediately on the next day he having decided to retract the statement, made an affidavit on oath in this regard and this affidavit which was sought to be filed in the department was not accepted. By leveling such claim, the assessee is trying to justify its action and its claim by adducing some improper evidences and by alleging that the affidavit which was sought to be filed in the department was not accepted. The assessee has not shown the proof that the affidavit was filed before the department and the same vies not accepted. Such frivolous, baseless and fake claims does not support the assessee and it does not help the assessee to get complete relief in the matter of claim of deduction u/s.10B,

h. Once again the assessee has contended the qualification of Mr. Sudhodhan for giving statement under oath. It is once again explained that the department is free to collect evidences from any source, it deems fit. In this connection, a statement was recorded from Mr. Sudhodhan to ascertain the ground realities regarding the day to day activities of the assessee and facts emanated from the statement are strongly relied on for making the assessment. Qualification of the person from whom the statement is recorded is decided by the Department and no authorization is required from the assessee.

i. The assessee has raised questions regarding the statements recorded from the logistics person Shri .Ritesh Jain also. Mr. Ritesh Jain, being the logistics person, is expected to raise the bills for transportation and is expected to make necessary entries regarding the day to day operations and source and destinations of iron ore transported. Being a person of some vital role, more facts were collected from him in connection to the activities of the EOU and non EOU. Though he was not aware of the facts regarding the production, sales, purchases etc. he was having the knowledge about the existence of EOU and non EOU. From the statements recorded from him, the facts collected were against the interest of the assessee because of which the assessee is alleging that he is not eligible to give any statements regarding the EOU and non EOU. From the evidences collected, it has been observed clearly that there are certain violations regarding the claim of deduction u/s. 10B of the I.T.Act.

j. The assessee has questioned the relevancy of the statements recorded from the employees in the maintenance and repairs of machinery. Just because of the reason that somebody is looking after only the maintenance and repairs of the machines, there is no bar from collecting information from them and also utilizing the facts emerged from such statements for the assessments. To tell the facts prevailing in this case, there is no technical competency required as long as the deposer gives clear facts about the business of the assessee. Recording a statements from such persons is for the purpose of finding the prevailing facts at the grass root level and the main purpose of this exercise is to find out whether there are any violations in connection to the claim of deductions u/s 10B of the I.T.Act.

k. Further the assessee claims that the statements on which reliance is sought to be placed by the department are not relevant at all, not germane to the issue are in violation of principles of natural. justice and are taken from persons, who had no role to play on the matter at hand. But the assessee has conveniently omitted the fact that though the persons are not having any role in deciding the matter of allowance of claim of deduction u/s 10B of the I.T.Act, facts collected from them has adequate and important relevancy to the facts of the case to decide on the matter of allowability of claim of deduction u/s 10B of the I.T.Act.

l. In view of the above facts, the declaration made by the assessee is not considered a voluntary declaration and the assessee has disclosed the excessive and unreasonable claim of deduction under section 10 B of the income tax act only because of the reason that so many irregularities have been observed and evidences were collected in connection to such irregularities. The assessee has declared this income only consequent to the strong evidences found by the Department and this cannot be treated as voluntary disclosure made by the assessee.”

9. From this, it comes out that in earlier years, the proposed part disallowance as per Show cause notice of the A.O. was accepted by the assessee to buy peace and to cover all plausible acts of omissions and commissions from all angles in computing the income of EOU. In the present year, the facts are similar and it is not established by bringing evidence on record that the reasons for which part disallowance was accepted in earlier years are not present in the present year. Hence, in our considered opinion, in the present year also, part disallowance is to be made as was made in A. Y. 2010 – 11. In that year, out of initial claim of deduction u/s 10B of Rs. 82,58,71,855/-, a disallowance of Rs. 635,13,588/- was made because it was found that actual eligible deduction was only Rs. 76,23,58,267/- after considering correct amount of Export Turnover and Total Turnover after excluding Shortage & Loss on Foreign Exchange Fluctuation and Ocean Freight in case of CIF Export Sales. Such reduction was made from Export turnover only but not from total turnover but in view of the judgment of Hon'ble Karnataka High court rendered in the case of Tata Elxsi Ltd. as reported in 349 ITR 98, the amounts reduced from export turnover shall be reduced from total turnover also because total turnover is sum total of Export Turnover and domestic turnover as per this judgment and therefore, if an amount is reduced from export turnover, then total turnover also gets reduced by the same amount automatically. Hence, in the present year, the actual eligible deduction u/s 10B shall be worked out in this manner i.e. after reducing the export turnover and total turnover both by the amounts of Shortage & Loss on Foreign Exchange Fluctuation and Ocean Freight in case of CIF Export Sales.
10. From such amount of the actual eligible deduction u/s 10B as will be worked out in this manner, disallowance should be made of 27% in the present year also as was made in the earlier years. Accordingly, Ground No. 3.1 is partly allowed.
11. Regarding Ground No. 4.1 & 4.2 in respect of addition of Rs. 97,50,069/- as notional interest on interest free advances of Rs. 35,13,85,068/- to sister concerns, it was submitted by the learned AR of the assessee that the balance

Sheet for the present year is available on page 51 of the paper book and he pointed out that as per the same, the assessee has interest free own funds much in excess of the interest free advances given by the assessee to sister concerns. He pointed out that share capital is of Rs. 40 Lacs and Reserve & Surplus is of Rs. 72,993 Lacs total Rs. 73,033 Lacs. He placed reliance on the judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. Brindavan Beverages (P) Ltd. as reported in 393 ITR 261. Learned DR of the revenue supported the order of CIT (A).

12. We have considered the rival submissions. We find that as per the judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. Brindavan Beverages (P) Ltd. (Supra), if the assessee has sufficient own funds covering interest free advances to sister concerns, disallowance out of interest expenditure is not justified. We also find that it is noted by Hon'ble Karnataka High court that the judgment of Hon'ble P & H High Court rendered in the case of Abhishek Industries Ltd. vs. CIT as reported in 152 ITR 512 is already reversed by Hon'ble apex court in the case of Munjal sales Corpn. Vs. CIT as reported in 298 ITR 298. Hon'ble Karnataka High Court also noted the judgment of Hon'ble Bombay High Court rendered in the case of CIT vs. Reliance Utilities & Power Ltd. as reported in 313 ITR 340 as per which, this issue is decided in favour of the assessee and in this view of the matter, it was held that there is no substantial question of law arises and the tribunal order was approved. In the present case also, own funds of Rs. 73,033 Lacs is much in excess of interest free advances to sister concerns of Rs. 3513.85 Lacs and therefore, respectfully following the judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. Brindavan Beverages (P) Ltd. (Supra), we delete the addition of Rs. 97,50,069/- made by the AO as notional interest on interest free advances of Rs. 35,13,85,068/- to sister concerns. These grounds are allowed.
13. Regarding Ground No. 5 in respect of disallowance of Rs. 57,93,432/- u/s 14A, it was submitted by the learned AR of the assessee that as per Para 41 of the judgment of Hon'ble apex court rendered in the case of Maxopp Investment Ltd. vs. CIT as reported in 91 taxman.com 154, copy on pages 279 to 299 of the compilation of case laws, it was held that before applying the theory of

apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance u/s 14A was not correct if the assessee in the return has himself apportioned but the AO was not accepting the said apportionment. He submitted that in the present case, no such satisfaction was recorded by the AO and hence, the disallowance made by him is not as per law and it should be deleted. Learned DR of the revenue supported the orders of the authorities below. Regarding the judgment of Hon'ble apex court rendered in the case of Maxopp Investment Ltd. vs. CIT (Supra), she submitted that in the present case, it is noted by the AO on page 9 of the assessment order that the assessee has not made any suo moto disallowance u/s 14A. She further pointed out that this was the claim of the assessee before the AO that the assessee has not incurred any expenditure to earn exempt dividend income and the AO has specifically rejected this claim by giving reasons that as per the balance Sheet of the assessee, the assessee had actively made certain investment decisions and this was not possible without the efforts of managerial staff and directors. She submitted that in fact, this judgment supports the case of the revenue in the facts of the present case.

14. We have considered the rival submissions. We find force in the submissions of the learned DR of the revenue that in the facts of the present case, this judgment of Hon'ble apex court rendered in the case of Maxopp Investment Ltd. vs. CIT (Supra) supports the case of the revenue because we find that a categorical finding is given by the AO that the assessee had actively made certain investment decisions and this was not possible without the efforts of managerial staff and directors and the assessee has not made any suo moto disallowance u/s 14A r.w.r. 8D. This is also noted by the AO that the assessee is having mixed funds and in spite of query, the assessee could not establish direct nexus of borrowed funds with taxable income or interest free funds with dividend income. Hence, on this issue, we find no reason to interfere in the order of CIT (A). This ground is rejected.
15. Ground No. 6.1, 6.2 and 7 are rejected as not pressed.

16. In the result, the appeal of the assessee is partly allowed in the terms indicated above.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(LALIET KUMAR)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 21st August, 2018.
/MS/

Copy to:

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|---------------|------------------------|
| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.