

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 2256/H/2017 Assessment Year: 2014-15		
Biological E Ltd., Hyderabad. PAN - AAACB 7873P (Appellant)	Vs.	Dy. Commissioner of Income-tax, Circle - 1(2), Hyderabad. (Respondent)
Assessee by:	Shri V. Siva Kumar	
Revenue by:	Shri Rohit Mujumdar	
Date of hearing:	10/05/2021	
Date of pronouncement:	09/09/2021	

ORDER

PER L.P. SAHU, A.M.:

This appeal filed by the Assessee is directed against CIT(A) - 1, Hyderabad's order dated 24/08/2017 for AY 2014-15 involving proceedings u/s 143(3) of the Income-Tax Act, 1961; in short "the Act" on the following grounds of appeal:

"1. The Order of the Commissioner of Income Tax (Appeals)-1, Hyderabad dated 24-08-2017 is erroneous, contrary to law and facts of the case.

2.1 Commissioner of Income Tax (Appeals) is not justified in sustaining the disallowance of Rs.1,08,22,000/- out of weighted deduction claimed u/s.35(2AB) stating that in absence of documentary evidence and proper explanation from the Appellant, the claim of the appellant does not hold strength and further stating that the appellant 'had not made any objection for excess deduction claimed.

2.2 The Commissioner of Income Tax (Appeals) is not justified in sustaining the disallowance of Rs.1,08,22,000/- made by the Assessing Officer out of weighted deduction claimed u/s.35(2AB) stating that professional charges of Rs.19,49,201/- and Rent & maintenance charges of Rs.25,81,848/- (17,33,712 + 8,48,136) were not forming part of Form3CL. The Commissioner of Income Tax (Appeals) ought to have seen that Rent and Maintenance charges of Rs.25,81,848/- was incurred on account of R&D activity and is therefore eligible for weighted deduction u/s.35(2AB) of IT Act.

2.3 The Commissioner of Income Tax (Appeals) also ought to have seen that Maintenance Charges of Rs.8,79,599/- though not eligible for weighted deduction u/s.35(2AB), the same is allowable as regular business expenditure. Hence the Commissioner of Income Tax (Appeals) ought to have allowed Rs.8,79,599/- as deduction though such expenditure is not eligible for weighted deduction u/s.35(2AB).

3. The Commissioner of Income Tax (Appeals) is not justified in sustaining the disallowance of expenditure of Rs.3,83,231/- (consisting of Rs.3,09,462/- of interest and Rs.73,769/- of other expenses) u/s.14A stating that the contention of the Appellant that there has not been any expenditure incurred l attributable for earning income of Rs.37,77,007/- which is exempt, is not accepted without assigning any reason as to why Appellant's contention is not acceptable.

4. For all of the above and such other grounds as may be urged at the time of hearing it is most respectfully prayed that this Hon'ble Tribunal may be pleased to allow the appeal and direct the Assessing Officer to delete disallowances in the Assessment Order in the interest of justice."

1.1 Ground Nos. 1 & 4 are general in nature, hence, need no adjudication.

2. Briefly the facts of the case are that the Assessee Company, engaged in manufacturing and sale of Bulk Drugs and Pharmaceutical Formulation Products, filed its return of income for the AY 2014-15 on 29.11.2014 admitting total income at Rs.2,81,94,85,660/-. The Assessee filed a revised return of income for the A.Y.2014-15 on 30.03.2016, admitting a total income of RS.2,78,30,12,260/- under normal provisions and Rs.3,30,70,75,013/- under the provisions of Section 115JB. The case was selected for scrutiny under CASS and notices were issued u/s.143(2) & u/s.142(1). The assessment was completed u/s. 143(3) on 13.12.2016 by determining total income at Rs.279,42,17,491/- by the AO by making following disallowances:

1. Disallowance of Rs. 1,08,22,000/- out of deduction claimed u/s 35(2)(AB).

2. Disallowance of Rs. 3,83,231/- u/s 14A rwr 8D.

3. When the assessee preferred an appeal before the CIT(A) against the order of AO, the CIT(A) confirmed the order of AO.

4. Still aggrieved the assessee is in appeal before the ITAT.

5. As regards ground Nos. 2.1 to 2.3 regarding disallowance of Rs. 1,08,22,000/- u/s 35(2AB), during the assessment proceedings, the Assessing Officer noticed that the assessee company had an in-house research and development facility for up-gradation & formulation of new molecules for which it is eligible for weight deduction u/s.35(2AB). The Assessing Officer noticed from Form 3CL, that the approved R&D expenditure was only Rs.3116.06 lakhs, on which eligible weighted deduction works out to Rs.6232.12 lakhs, as against Rs.6340.34 lakhs claimed by the assessee in its computation of income. The Assessing Officer asked the assessee to show cause as to why the excess claim of Rs. 1,08,22,000/- should not be disallowed. In response, the assessee before the Assessing Officer vide letter dated 12.12.2016 submitted that the excess claim of weighted average deduction of Rs.108.22 lakhs was due to the professional charges & rent payments which were not included in the expenses mentioned in form 3CL.

5.1 The Assessing Officer has not accepted the assessee's contention on the following grounds:

"1. Section 35(2AB) of the IT Act, 1961, clearly states that only that expenditure, as approved by the prescribed authority will be eligible for weighted deduction.

2. Secondly, the assessee has not been able to justify that such professional & rental expenditure has been incurred exclusively for R&D and that it has not been claimed separately in P&L under professional charges & rent.

Thus, the Assessing Officer concluded that the above facts do not entitle the assessee to excessive weighted discussion u/s.35(2AB). In view of the above, the Assessing Officer disallowed an amount of Rs.1,08,22,000/-

5.2 Before the CIT(A), the assessee submitted that Research and Development expenses of Rs.29,29,86,585/- includes expenses on 'Electricity and Maintenance' of Rs.34,61,447/- and 'Professional Charges' of Rs.19,49,201/- Further, it was submitted that professional and rental expenditure has been incurred exclusively for R&D unit and not been claimed separately in P&L account under the head 'professional charges and rent'.

5.3 The CIT(A) rejecting the submissions of the assessee confirmed the disallowance made by the AO for the following reasons:

“• The appellant has not submitted Form 3CM or Form 3CL.

• The appellant has not submitted any details regarding to whom the rent has paid. The appellant has not been able to justify or differentiate the said expenditure.

• The appellant has not submitted any documentary evidence with regard to Electricity & Maintenance charges in other units. The appellant has not given any information regarding the other units to differentiate expenditure incurred for scientific research and expenditure incurred for non-scientific purpose.

• Professional charges have been claimed by the appellant. The appellant also not submitted to whom the professional charges were paid and no breakup was submitted before me.

• No vouchers were submitted to show that the expenditure incurred was exclusively for R&D purposes. Appellant neither before the Assessing officer nor before me could differentiate the expenditure for availing exclusively use for R&D expenditure.

• The case law relied by the assessee, Hon'ble ITAT, 'I' Bench, Mumbai in the case of USV Ltd Vs. DCIT, Central Circle-32 in ITA No.4517jMumj2010 dated 04.07.2012, is not applicable to the appellant's case.

In absence of documentary evidence and proper explanation from the appellant's side, the claim of the appellant does not hold strength. The Assessing Officer has categorically pointed out that the expenditure claimed is in excess of the claim as per Form 3CL. The Appellant has not made any submissions regarding this issue raised by the Assessing Officer. Appellant has claimed for weighted deduction which has not been disallowed by Assessing Officer. Only excess claim has been disallowed. Since the assessee has not made any

objection for excess deduction claimed, I see no reason to intervene. The addition made by the AO is upheld.”

5.4 Before us, the ld. AR of the assessee filed written submissions, which are as under:

“1. Appellant is a company engaged in the business of manufacture and sale of formulations and bulk drugs. It filed return of income for AY 2014-15 on 29-11-2014 declaring total income of Rs.281,94,85,660/-. Later, a revised return was filed on 30-03-2016 declaring total income of Rs.278,30,12,260/- and Rs.330,70,75,013 u/s.115JB. Regular assessment was completed u/s.143(3) on 13-12-2016. Two disallowances were made while computing total income:

- a). Disallowance u/s.35(2AB) Rs.1,08,22,000/-*
- b(i). Disallowance made u/s.14A LW.S Rule 8D(2)(ii) Rs. 3,09,462/-*
- b)(ii).Disallowance made u/s.14A r.w.s Rule 8D(2)(iii): Rs. 73,769/-*

*2. The appellant claimed weighted deduction u/s.35(2AB) of the Act. On expenditure of Rs. 3,160.17 lakhs appellant claimed weighted deduction at 200% in an amount of Rs.6,340.34 lakhs.(200%*3160.17 lakhs) The AO found on verification of Form No.3CL that R&D expenditure of Rs.3,116.06 lakhs was approved as per Form 3CL. Based on this, the AO called upon the appellant, to explain why the difference of Rs.1 ,08,22,000(6340.44 lakhs - 6232.12 lakhs) should not be disallowed. The appellant replied stating that difference was on account of professional charges and rent payments. The details of these expenditure are as under:*

Professional charges Rs.19,49,201 (Details filed at page 28 of paper book)

Rent Rs.17,33,712.(Details filed at page 29 of paper book)

Electricity and maintenance Rs.17,27,724.(Details filed at page 30 of paper book)

Total Rs.54,1 0,637.

3. A.O was of the view that as per Sec.35(2AB) of the Act only so much of expenditure as has been approved by the prescribed authority will be eligible for weighted deduction and hence weighted deduction can be allowed only to that extent. Secondly, he stated that the appellant has not been able to justify that such professional & rental expenditure has been incurred exclusively for R&D and also that it has not been claimed separately in P&L under professional charges & rent. Thus, the Assessing Officer concluded that the above facts do not entitle the appellant to weighted discussion u/s.35(2AB) over and above the expenditure approved as per Form 3CL.. In view of the above, the Assessing Officer made disallowance of Rs.1,08,22,000/- from the claim made by appellant u/s.35(2AB).

4. Aggrieved by the disallowance made by the A.O, appellant filed appeal before the C.I.T (Appeals). Appellant submitted before C.I.T (Appeals) that R&D expenses of Rs.29,29,86,585/- includes expenditure of Rs.34,61,447/- on "Electricity and maintenance" and Rs.19,49,201/- on professional charge. It was also submitted that professional and rental expenditure was incurred exclusively for R&D unit and was not claimed separately in P & L account. The appellant also submitted that it was entitled to weighted deduction at 200% in respect of rent and electricity charges of Rs.25,81,848/- of IKP knowledge park in Shameerpet in which research activity of the appellant was undertaken. It was also submitted that electricity and maintenance charges incurred in other units amounting

to Rs.8,79,599/- and professional charges of Rs.19,49,201/-, though

not eligible for weighted deduction, were to be allowed since the said expenditure was incurred for purposes of appellant's business and the same ought to have been allowed as business expenditure. Thus the appellant submitted that A.O ought to have allowed deduction as under.

a). Weighted deduction at 200% of rent and electy. charges of Rs.25,81,848/-(25,81,848 200%) Rs.51,63,696.*

b). Business expenditure on electy. and maintenance charges incurred in other units: on actuals: Rs. 8,79,599.

c). Business expenditure on professional charges: on actuals Rs.19,49,201.

Total : Rs.79,92,496.

5. Learned CI.T(Appeals) declined to allow deduction as claimed by the appellant. She stated that the appellant did not submit Form 3CM or 3CL. Learned CI.T (Appeals) also stated that the appellant has not submitted documentary evidence as regards the incurring of the rent, electricity and maintenance charges. In this connection the appellant submits that the details submitted at pages 28 to 30 of the paper book are extracted from the accounts maintained by the appellant which were subjected to scrutiny. The appellant also submits that tax was deducted on the payments towards rent, electricity charges etc. made to IKP Knowledge park and Rational Labs Pvt.Ltd., vide pages 31 to 41 of the paper book. The appellant submits that the learned CI.T(A) is not justified confirming the disallowance made by the A.O without assigning any valid reasons.

6. *Aggrieved by the order of the learned C.I.T (Appeals), the appellant filed appeal before the Hon'ble IT AT.*

7. *As regards submission of Form 3CL before the Assessing Officer appellant submits that it filed Form 3CL as has been recorded by A.O in paragraph 4 of the assessment order.*

8. *The appellant submits that it has been held in several decided cases that once the R&D facility is approved, weighted deduction in respect of entire expenditure incurred has to be allowed without restricting the same to the amounts mentioned in Form 3CL.*

9. *In the case of Cummins India Ltd., vs DC IT (ITA No.556 & 574/PUN/2015 dated 25-09-2018) (pages 1 to 24 of paper book No.2) case law Hon'ble ITAT held that the Act did not prescribe any methodology of approval to be granted by the prescribed authority and the A.O was not right in curtailing the expenditure and consequent weighted deduction on the surmise that prescribed authority has only approved part of expenditure in form No.3CL. Relevant extract from the order of the Hon'ble ITAT is given hereunder: (pages 23 and 24 of paper book No.2)*

"45. The issue which is raised in the present Appeal is that whether where the facility has been recognized and necessary certification is issued by the prescribed authority, the assessee can avail the deduction in respect of expenditure incurred on in-house R&D facility, for which the adjudicating authority is the Assessing Officer and whether the prescribed authority is to approve expenditure in form No.3CL from year to year. Looking into the provisions of rules, it stipulates the filing of audit report before the prescribed authority by the persons availing the deduction under section 35(2AB) of the Act but the provisions of the Act do not prescribe any methodology of approval to be granted by the prescribed authority vis-a-vis

expenditure from year to year. The amendment brought in by the IT (Tenth Amendment) Rules w.e.f 01.07.2016, wherein separate part has been inserted for certifying the amount of expenditure from year to year and the amended form No.3CL thus, lays down the procedure to be followed by the prescribed authority. Prior to the aforesaid amendment in 2016, no such procedure / methodology was prescribed. In the absence of the same, there is no merit in the order of Assessing Officer in curtailing the expenditure and consequent weighted deduction claim under section 35(2AB) of the Act on the surmise that prescribed authority has only approved part of expenditure in form No.3CL. We find no merit in the said order of authorities below.

46. The Courts have held that for deduction under section 35(2AB) of the Act, first step was the recognition of facility by the prescribed authority and entering an agreement between the facility and the prescribed authority. Once such an agreement has been executed, under which recognition has been given to the facility, then thereafter the role of Assessing Officer is to look into and allow the expenditure incurred on in-house R&D facility as weighted deduction under section 35(2AB) of the Act. Accordingly, we hold so. Thus, we reverse the order of Assessing Officer in curtailing the deduction claimed under section 35(2AB) of the Act by ₹ 6,75,000/-. Thus, grounds of appeal No. 10.1, 10.2 and 10.3 are allowed."

10. In the case of CIT vs Cadila Healthcare Ltd 31 Taxmann.com 300 GUJ HC (pages 25 to 30 of paper book No.2)the High Court noted that the certificate issued by DSIR is only for the purpose of listing the total expenditure under the Rules and has no impact on the allowability of deduction under section 35(2AB). Therefore it can be contended that merely because certain expenses are shown separately in the DSIR certificate and/or not reflected in the certificate is not conclusive of such expenses being ineligible for

weighted deduction. Relevant extracts from the ruling are as follows: (page 30 of paper book No.2)

"18 Merely because the prescribed authority segregated the expenditure into two parts, namely, those incurred within the in-house facility and those can were incurred outside, in our opinion, by itself would not be sufficient to deny the benefit to the assessee under section 35(2AB) of the Act. It is not as if that the said authority was addressing the issue for deduction under section 35(2AB) of the Act in relation to the question on hand. The certificate issued was only for the purpose of listing the total expenditure under the Rules ... "

11. In the case of Torrent Pharmaceuticals ltd., vs ACIT (ITA Nos.970/ AHD/2007 & 1347/AHD/2007 dated 21-05-2010) (pages 31 to 43 of paper book No.2) Ahmedabad Bench of the Hon'ble ITAT directed allowance of the amounts which were disallowed by the AO on the ground that the prescribed authority has not considered the same to be eligible for weighted deduction .. The under mentioned extract from the order of the Hon'ble ITAT in the case of the same assessee for A.V 2001-02 are relevant:

(pages 36 to 37 of paper book No.2)

"10. In view of the above facts and circumstances, we are of the view that it is only the expenditure which will only be allowed, whereas the assessee vide the copy of the letter reproduced hereinabove has very clearly explained as to how the entire expenditure claimed by the assessee is allowable. Thus there was no justification in harping upon the figure contained in Form No.3CL as is done by the Assessing Officer. The provisions of the Act it does not contain any specific conditions for the allowance of expenditure to the effect that it will be restricted that contained in Form No.3CL. Needless to point out that such allowable expenditure

etc. is reported by the DSIR to DG (Income-tax Exemption), Kolkata without giving an opportunity of being heard to the assessee wherever he quantifies the expenditure which is less than that claimed by the assessee. We further find that the assessee has included a sum of Rs.51.26 lakhs as eligible expenditure being Revenue expenditure relating to building and another sum of Rs.133.92 lakhs being revenue expenditure other than building. which was considered as revenue by the assessing officer himself. These items clearly are within the purview of allowable u/s 35(2AB) of the Act as weighted deduction. The security expenses are also directly related to in-house research as proper security is required to avoid leakage and only in-house staff will have assessed to building. Accordingly, this expenditure is for preserving the research which is completed and its clinical trial is pending. As regards to the environmental issue, the assessee-company has set up an affluent plant and as is widely accepted the vegetation, i.e. trees have contained the pollution. This expenditure of gardening and plantation has been done for the perseverance of environment and this is directly related to R&D facilities. As regards to salary paid to Dr. C. Dutt amounting to RS.58.54 lakhs, he is in-charge of R&D Centre at Bhatt. He is the person through whom all coordination of technical scientists and other technical persons are carried out. The entire reporting of the research activity to the management has been taken to the Board of Directors through him only and for this the salary is paid. Accordingly, the assessee has rightly paid the entire expenditure of Rs.133.92 lakhs and building repairs Rs.37.55 lakhs on which weighted deduction u/s.35(2AB) of the Act is allowable. In view of the above discussion we allow the claim of the assessee and this issue of the Revenue's appeal is dismissed and that of the assessee's CO is allowed. N

12. In the case of Bharat Forge ltd., vs Addl.CIT (ITA No.13/PUN/2017 dated 14-112018) (pages 44 to 54 of paper book No.2)also, Hon'ble ITAT Pune Bench decided

the issue of disallowance of weighted deduction u/s.35 (2AB) in favour of the assessee, following the ITAT's decision in the case of Cummins India Ltd. Relevant finding of the Hon'ble ITAT (Paragraph 18 of the order) is reproduced hereunder: (pages 53 to 54 of paper book No.2)

"The issue arising before us is similar to the issue in Cummins India Ltd. Vs. DCIT (supra) and following the same parity of reasoning, we hold that where facility has been recognized by the prescribed authority and agreement has been entered into between facility and the prescribed authority and thereafter the role of Assessing Officer is to look into and allow the expenditure incurred on in-house R&D facility as weighted deduction under section 35(2AB) of the Act. Accordingly, we find no merit in the orders of authorities below in restricting weighted deduction claimed under section 35(2AB) of the Act by =f 18,42,000/- on the ground that DSIR had not approved the said expenditure. It may be pointed out here in itself that reasons for not approving expenditure have also not been made available to the assessee. Consequently, the same cannot be basis for curtailing deduction claimed under section 35(2AB) of the Act. The Assessing Officer is thus, directed to allow weighted deduction under section 35(2AB) of the Act at Rs. 18,42,000/-."

13. The appellant submits that in the light of the factual position submitted in the preceding paragraphs as regards the incurring of expenditure and also in the light of the ratio of decided cases a few of which have been cited above, the learned C.I.T (A) is not justified in confirming disallowance made erroneously by the A.O based on Frm 3CL. The appellant also submits that the learned C.I.T(A) ought to have considered the claim made by the appellant as explained in paragraph 4 above and ought to have directed allowance of deduction based on the expenditure factually incurred

by the appellant on R& D activities and for purposes of its business.”

5.5 The Id. DR, on the other hand, relied on the orders of revenue authorities. He vehemently argued the case and submitted that the A.O. has rightly disallowed the disputed amount which was not part of the approval granted as per section 35(2AB) of the Income Tax Act. 1961. These three expenses viz., Rent, Electricity & maintenance and professional charges were not directly related to the approved projects. The case law relied on by the Id. AR of the assessee are not applicable to the present case of the assessee as they are distinguishable in facts.

5.6. We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. A.O was of the view that as per Sec.35(2AB) of the Act only so much of expenditure as has been approved by the prescribed authority will be eligible for weighted deduction and hence weighted deduction can be allowed only to that extent. Secondly, he stated that the appellant has not been able to justify that such professional & rental expenditure has been incurred exclusively for R&D and also that it has not been claimed separately in P&L under professional charges & rent. Thus, the Assessing Officer concluded that the above facts do not entitle the appellant to weighted discussion u/s.35(2AB) over and above the expenditure approved as per Form 3CL.

In view of the above, the Assessing Officer made disallowance of Rs.1,08,22,000/- from the claim made by appellant u/s.35(2AB). We found substance on the findings recorded by the lower authorities. Even before us, the Id. Authorised Representative could not controvert the findings of the Lower authorities. On perusal of record, we find that the expenditure incurred by the assessee towards professional charges, rent and electricity and maintenance are expenditure incurred by the assessee which has not been disputed by the revenue authorities, therefore in the interest of the justice it can be allowed u/s 37(1) of the Act. Therefore, we remit the issue back to the file of AO with a direction to allow the expenditure incurred under the said heads u/s 37(1) in accordance with law after providing reasonable opportunity of being heard to the assessee in the matter. Thus, the grounds 2.1 to 2.3 raised by the assessee on this issue are treated as allowed for statistical purposes.

6. As regards the ground No. 3 regarding disallowance u/s 14A, during the assessment proceedings, the Assessing Officer noticed from the Balance Sheet that the assessee company has made investments to the tune of Rs.1,47,53,844/- in the equity of several domestic companies. Also, received dividend of Rs.37,77,007/- during the relevant financial year. Any income arising from this investment will be exempt u/s. 10(34) in the hands of

the assessee company. It was also noticed that the assessee company has taken huge interest bearing loan on which it has paid an interest of Rs.14,61,08,302/- during the year. The Assessing Officer asked the assessee to explain as to why the provisions of Section 14A should not be applicable. In response, the assessee vide letter dated 12.12.2016 submitted fresh statement of calculation with regard to the disallowance u/s.14A, hence the assessee prima facie agreed to the proposed disallowance. The Assessing Officer relied upon the Hon'ble Bombay High Court's decision in the case of CIT Vs. Abhishek Industries Ltd and on the basis of Board's Circular No.5/2014 dated as 11.02.2014. The Assessing Officer calculated expenditure incurred in relation to earning the exempt income by applying Rule 8D and worked out the total disallowance u/s.14A at Rs.3,83,231/- and the CIT(A) confirmed the same.

6.1 Before us, the ld. AR of the assessee filed written submissions wherein it was stated that apart from the facts submitted before the learned C.I.T(A), it may also kindly be seen from the balance sheet that its capital and reserved were Rs.166,75,43,738 as at 31-03-2013 and Rs.403,27,43,216/ - as at 31-03-2014. In this connection the appellant relies on the decision of the Hon'ble Bombay High Court in the case of Pr.CIT vs Shapoorji Pallonji & Co.Ltd., 117 Taxmann.com 625 BOM HC wherein it has been held that where interest-free funds were available with the

appellant, it was to be presumed that investments were made out of interest-free funds. Appellant prays that the disallowance made under rule 8D(2)(ii) may kindly be directed to be deleted.

6.2 Ld. DR, on the other hand, relied on the orders of revenue authorities.

6.3 We have considered the rival submissions and perused the material on record as well as gone through the orders of revenue authorities. The AR of the assessee submitted that the assessee has sufficient own funds as on the 1st day of FY and as on closing of the FY i.e. 31-03-2014 and no fresh borrowals were made during the year, but, the assessee could not establish on the date of making of investments that he had sufficient own funds from which the assessee has received exempt income. The AR of the assessee could not demonstrate the date of making of investments. Considering the submissions of the assessee and in the interest of justice, we deem it fit and proper to remit the issue back to the file of the AO with a direction to examine the details which will be filed by the assessee before him regarding establishing of having own funds on the particular date of making investments and decide the issue in accordance with law after providing reasonable opportunity of being heard to the assessee. The assessee is

directed to substantiate its case that he had sufficient own funds on the particular date of making of investments.

6.4 As regards the disallowance under rule 8D(2)(iii), the claim of the assessee is that the dividend earned by the assessee was directly credited to its bank account without any effort from it and hence, there was no administrative expenditure warranting disallowance. As per rule 8D(2)(iii), the disallowance is to be made only on the average value of the investment from which the assessee yielded exempt income. Therefore, the issue is remitted to the file of the AO to recalculate the average value of the investment from which the assessee has received exempt income and disallow as per rule 8D(2)(iii) of the Rules. The ground No. 3 is allowed for statistical purposes.

7. In the result, appeal of the assessee is allowed for statistical purposes in above terms.

8. We lastly acknowledge that although the instant appeals, except for the AY 2014-15, are being decided after a period of 90 days from the date of hearing as per Rule 34(5) of the IT(AT) Rules 1963, the same however, does not apply in the covid lockdown situation as per hon'ble apex court's recent directions dated 27-04-2021 in M.A.No.665/2021 in SM(W)C No.3/2020 'In Re Cognizance for extension of limitation' making it clear that in such

cases where the limitation period (including that prescribed for institution as well as termination) shall stand excluded from 14th of March, 2021 till further orders.

Pronounced in the open court on 9th September, 2021.

**Sd/-
(S.S. GODARA)
JUDICIAL MEMBER**

**Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER**

Hyderabad, Dated: 9th September, 2021.

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Copy to :

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2	<i>DCIT, Circle - 1(2), Hyderabad.</i>
3	<i>CIT(A) - 1, Hyderabad.</i>
4	<i>Pr. CIT - 1, Hyderabad.</i>
5	<i>ITAT, DR, Hyderabad.</i>
6	<i>Guard File.</i>