

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI  
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 5267/Del/2011  
(Assessment Year: 2008-09)

PTC India Ltd, 2 <sup>nd</sup> Floor, NBCC Tower, 15, Bhikaji Cama Place, New Delhi PAN: AABCP7947F	Vs.	ACIT, Circle-14(1), New Delhi
(Appellant)		(Respondent)

ITA No. 6223/Del/2012 & 876 /Del/2014  
(Assessment Year: 2009-10 & 10-11)

PTC India Ltd, 2 <sup>nd</sup> Floor, NBCC Tower, 15, Bhikaji Cama Place, New Delhi PAN: AABCP7947F	Vs.	DCIT, Circle-14(1), New Delhi
(Appellant)		(Respondent)

ITA No. 6502/Del/2016  
(Assessment Year: 2010-11)

DCIT, Circle-14(1), New Delhi	Vs.	PTC India Ltd, 2 <sup>nd</sup> Floor, NBCC Tower, 15, Bhikaji Cama Place, New Delhi PAN: AABCP7947F
(Appellant)		(Respondent)

Assessee by :	Shri Salil Kapoor, Adv Shri Sampat Kapoor, Adv Shri Shivansh Panaya, Adv
Revenue by:	Shri Surender Pal, Sr. DR
Date of Hearing	10/10/2018
Date of pronouncement	08/01/2019

O R D E R

PER BENCH

- These are the four appeals of the same assessee involving common solitary issue of disallowances u/s 14A of the Act for three years and levy of penalty

u/s 271(1) ( c) of the act on such disallowance in one year. Therefore, they are heard together and disposed of by this common order.

2. For Assessment Year 2008-09 in ITA No. 5267/Del/2011, the assessee has raised the following grounds of appeal:-

- “1. Whether on the facts and circumstances of the case, the ld. CIT (A) has erred in upholding the disallowance of Rs. 2,80,29,352/- made by the A.O. by applying rule 8D under section 14A?”*
- 2. Whether on the facts and circumstances of the case, the ld. CIT (A) has erred in upholding the rejection of the disallowable amount of Rs. 11,30,955/- offered by the assessee, without examining as to why the A.O. was not satisfied with the correctness of the claim of the assessee, having regard to the accounts of the previous year?”*
- 3. Whether on the facts and circumstances of the case, the ld. CIT (A) has erred in upholding that once having rejected the computation of disallowable amount offered by the assessee, the A.O. has no discretion but to apply rule 8D(2)(iii) as the words used in section 14(2) are “the A.O shall determine ” and the word “shall” does not leave any discretion, whatever be the result, of application of rule 8D(2)(iii)?”*

3. The brief facts of the case for AY 2008-09 are that the assessee is engaged in the business of trading of power and coal and generation of power. Assessee company filed its return of income on 30.09.2008 showing income of Rs. 174438856/-. The assessee earned dividend income of Rs. 253850000/- and has investment of Rs. 13263.35 million in shares and mutual funds. The ld AO noted that dividend income does not form part of the total income and assessee did not attribute any disallowance u/s 14A of the Act. The assessee was asked to give details of expenses disallowable u/s 14A of the Act. The assessee submitted that Rule 8D cannot be applied as exempt income is earned from mutual funds and share under the portfolio management scheme. It was further stated that their cost and charges are not debited in general expenditure but are already accounted in exempt income. It was further stated that no expenditure are incurred on income which are exempt. It was further stated that there are minimum managerial expenses of the assessee. However, assessee submits that on pro rata basis the disallowance is only Rs. 11,30,955/- on account of managerial and administrative expenses. The ld AO rejected the explanation of the assessee as there is huge dividend income and huge investment. He further stated that the assessee has only made an estimate of disallowance on pro

rata basis and has not stated that it has not incurred any expenses but contrary submitted that assessee has incurred managerial and administrative expenses. With respect to the satisfaction, the Id AO held that when the assessee itself has submitted the details on estimate basis and the assessee is also not sure about exact amount of expenditure but has stated that it has incurred managerial and administrative expenses, its stands is also changing because in the return of income the assessee has not offered any disallowance but during the assessment proceedings, on being questioned, assessee itself has proposed disallowance of Rs. 1130955/-, he is satisfied about the incorrectness of claim of assessee. Accordingly, he applied Rule 8D of the Income Tax Rules and computed the disallowances of Rs. 36274516/- u/s 14A of the Act in order us 143 (3) of the act.

4. The assessee preferred an appeal before the Id CIT(A) who deleted the disallowance on account of interest not attributable to any specific receipt or income of Rs. 8245164/- holding that interest payment is attributable to the income on sale of electricity. However, he upheld the disallowance @0.5% under Rule 8D (2)(iii). Therefore, the assessee is aggrieved with the same and has preferred an appeal before us.
5. The Id AR submitted no proper satisfaction is recorded by the Id AO as required u/s 14A of the Act. He further stated that investment is made in mutual fund and expenditure is debited to the mutual fund income account only. Therefore, there cannot be any disallowance u/s 14A of the Act. He stated that even otherwise the assessee has offered disallowance on proportionate basis. He further submitted an application of additional evidence to show that the disallowance is far less of only Rs. 4143014/-. In the form of additional evidence he submitted a certificate of the Chartered Accountant to show the amount of disallowance on proportionate basis. His other argument was that while working out the disallowance u/s 14A read with Rule 8D only that investment are required to be considered from which exempt income is earned. He also relied upon several judicial precedents on this aspect and lead decision is of the Honorable Delhi high court in case of ACB India Limited V ACIT dated 8/4/2015

6. The ld DR vehemently submitted that Rule 8D is mandatory from Assessment Year 2008-09 onwards and law does not provide any exclusion while making computation of disallowance. He further referred to the assessment order to show that proper satisfaction is recorded by AO. He therefore, supported the order of the lower authorities.
7. We have carefully considered the rival contentions and also perused the orders of the lower authorities. Admittedly, during the year the assessee has earned Rs. 25.38 crores as exempt dividend income and no disallowance u/s 14A of the Act was made. Therefore, on being questioned, assessee submitted that expenses have been incurred are debited to the mutual fund income. On careful reading of the balance sheet of the company (Schedule 10 (investment)) shows that the assessee has made long term investment in “non trade investment” shares as well as in mutual funds. It has also invested in short term investment of mutual funds on its own as well as under portfolio management services with HDFC (AMC) Ltd. As per “Schedule H” the assessee has earned dividend income of Rs. 253.85 million. On query by the ld AO the assessee himself stated that there are certain pro rata expenditure incurred by the assessee for earning exempt income. Such fact was also confirmed by the Chartered Accountant, who also certified ( submitted as additional evidence) that certain persons are working for investment activities and they are attributing their time for earning exempt income. In the certificate Chartered Accountant has specifically stated that there are direct expenses as well as indirect expenses. In view of this, the argument of the ld AR that the ld AO has failed to record any satisfaction is devoid of any merit. In the present case assessee himself when confronted has stated that it has incurred expenditure for earning exempt income but could only give a pro rate allocation. Based on the changing stand of assessee ld AO was satisfied that claim of the assessee originally that it has not incurred any expenditure for earning exempt income is correct. Accordingly, the ground No. 2 of the appeal of the assessee is dismissed holding that the ld Assessing Officer has correctly recorded the satisfaction with respect to the correctness of the claim of the assessee and invoking the provisions of Rule 8D of the Income Tax Rules, 1962 for working out disallowance u/s 14A of the Act.

8. The second argument of the ld AR is with respect to the fact that when the disallowance of expenditure can be estimated on a reasonable basis, the Rule 8D should not be applied. This argument was not before the ld AO and CIT (A) . The assessee has also submitted the certificate of the Chartered Accountant showing the disallowance for Assessment Year 2008-09 as under:-

**Date: 09.10.2018**

*TO WHOMSOEVER IT MAY CONCERN*

*We state that the Assessing Officer made a disallowance of Rs.3,62,74,506/- Under section 14A read with Rule 8D against the exempt income of Rs. 25,38,50,000/- earned by the assessee in AY 2008-09 for the Assessee "PTC India Limited" having PAN No. AABCP7947F.*

*We have analyzed and scrutinized the books of accounts of the assessee and specially the aspect of expenses incurred by the assessee with respect to the exempt income of Rs. 25,38,50,000/-. We state as under:-*

*-*

- 1. The exempt dividend income is mostly earned from mutual funds. The dividend is credited in the bank accounts of assessee when the assessee gets the redemption of the investment.*
- 2. The company has a strict and well defined investment policy which has been approved by the Board of Directors and there has been no deviation from the said investment policy.*
- 3. As per investment policy of the Company, the company invests surplus funds from time to time in Debt Mutual Funds and the dividend is earned from Debt Mutual Funds.*
- 4. From the records of the company, during FY 2007-08, Sh. Sanjay Kapoor working in capacity of Executive Assistant in the Finance Department of company was completely involved in day to day activity of managing investments in liquid funds. This involved making investments, taking redemption, preparing charts of inflow and outflow of funds and posting the entries in books of accounts.*
- 5. Sh Sanjay Kapoor was reporting for his day to day activities to Sh. Devesh Singh Assistant Manager (Finance). Sh. Devesh Singh used to brief Sh. Arun Kumar (SVP) (Finance) for about 10 minutes each day.*
- 6. At the request of assessee, we have undertaken the workings and calculations that how much amount could be considered under Section 14A for AY 2008-09. This is as under:-*

*Direct expenses Rs.3,80,741/-. Detailed break of direct expenses is given at Annexure-A.*

**Indirect expenses: -**

<b>Particulars</b>	<b>Amount (Rs.)</b>
Depreciation (Computer Software)	1809899
Water & electricity expenses	3155486
Security expenses	826867
Property tax	400400
Auditor's remuneration	155024
<b>Total Common Expenses</b>	<b>6347676</b>

*The assessee has earned exempt income of Rs. 25,38,50,000/- and the Assessee has filed a return of income of Rs.17,44,38,856/-. Exempted income is 59.27% of the sum of Returned Income and Exempt Income. Keeping in view the Section 14A provision, accompanied with various recent judicial pronouncements of ITAT and High Court, 59.27% expenses of the Total Indirect expenses could be considered which comes to Rs. 37,62,273/- While working the indirect expenses the undersigned has taken all those expenses which can be indirectly related to the earning of the exempt income as per his opinion.*

*Hence, the total expenditure to earn exempt income comes to Rs 41,43,014/- (Rs 3,80,741 (direct expenses) + 37,62,273/- (Indirect expenses)*

*For Pawan Shyam Jain & Co.*

*Chartered Accountants Firm*

*Registration No. 012082N"*

9. On careful perusal of the certificate of the Chartered Accountant, there is certain reference to the records of the company; however no such records were mentioned as to what was examined and how it was examined by the Chartered Accountant for working out the disallowance. It is also true that Hon'ble Delhi High Court in 374 ITR 108 has held that while working disallowance u/s 14A read with Rule 8D, only those investment which has resulted into exempt income during the year are required to be considered. With respect to ground No. 1 of the appeal, respectfully the decision of the Hon'ble Delhi High Court, it is further held that only those investments which has earned exempt income during the year are required to be considered for the purposes of working disallowance u/s 14A read with Rule 8D. In view of the above facts, respectfully following the decision of the Hon'ble Delhi High Court and submission of the additional evidence by the assessee, we set aside the whole issue back to the file of the 1d AO with a

direction to the assessee to substantiate before the ld AO about the actual expenditure incurred by it towards earning exempt income. The ld AO may verify it along with the certificate of the Chartered Accountant with various record examined by the CA. After examination, ld AO is directed to decide the issue of disallowance u/s 14A read with Rule 8D afresh in accordance with law. In view of above facts and decision of Honourable Delhi High court in ACB Investments P Ltd ( Supra), it is further held that the ld Assessing Officer is directed to examine the certificate issued by a Chartered Accountant working out disallowance u/s 14A of the Act. If the ld Assessing Officer finds the disallowance worked out by the assessee as per that certificate as correct then disallowance u/s 14A may be restricted to that extent. If the same is found to be incorrect the ld Assessing Officer may decide the issue of the disallowance afresh in accordance with the law. In view of this ground No. 1 and 3 of the appeal are partly allowed for statistical purposes.

10. In the result ITA No. 5267/Del/2011 for AY 2008-09 is partly allowed for statistical purposes.
11. Now we come to the appeal of the assessee for AY 2009-10 wherein, return of income was filed on 30.09.2009 showing total income of Rs. 174438856. The assessment under section 143 (3) of the act was passed on 28/12/2011 determining the total income of the assessee at Rs. 559708040. In the return of income assessee has shown exempt dividend income of Rs. 48,44,00,000 and also the average value of the investment from which exempt income may be derived is shown to be of INR 85 8,00,00,000 in shares and mutual funds. The learned assessing officer noted that the assessee in the computation of income has disallowed a sum of INR 170,000 under section 14 A of the act. The learned assessing officer asked the assessee to give the details of the expenses attributable to such income, which was replied by the assessee on 27/12/2011 stating that disallowance can be of Rs. 2211619/- as per the working of the assessee. However, as per rule 8D assessee submitted working of Rs. 22110772/-. The learned assessing officer noted that the assessee has average value of investment of INR 85 8,00,00,000 income from which is exempt from tax and assessee has earned dividend income of INR 484,400,000 during the year. Therefore, in

order to supervise, manage and properly account for such a huge investment and income there from and expenses of disallowance suggested by assessee is not a sufficient disallowance. Furthermore it was noted by him that the assessee in the computation of income has only disallowed INR 170,000, which is insufficient. He further noted that the explanation of the assessee of working the estimate of the disallowable expenditure is merely an afterthought and not based on evidences. Therefore, he is satisfied that the claim of the assessee is incorrect and he applied the provisions of rule 8D of the income tax act and worked out the disallowance of Rs. 55110363/- under section 14A of the income tax act. Therefore, he disallowed the net sum of INR 5 4940363 /- over and above the disallowance offered by the assessee of INR 170,000. Assessee preferred appeal before the learned CIT – A, who confirmed that the assessing officer has correctly recorded the satisfaction about the incorrectness of the claim of the assessee. However with respect to the disallowance under section 14 A of the act. He restricted it to INR 42974351/-. He held that assessee himself has stated that a sum of INR 241279/- relates to direct interest expenditure for earning tax-free dividend income and therefore, to that extent the disallowance of direct interest expenditure under rule 8D is to be disallowed. He further upheld the disallowance of INR 42 09/03/2007 to under rule 8D (2) (iii) of the act. Accordingly he upheld the disallowance of INR 42974351/-. The assessee being aggrieved with the order of the learned assessing officer making the disallowance which is partly confirmed by the learned CIT – A, has preferred an appeal before us.

12. The learned authorised representative has reiterated his submission which are made for the assessment year 2008 – 09 and also submitted additional evidence in the form of certificate of a CA working out the disallowance.
13. The learned departmental representative also vehemently supported the orders of the lower authorities and repeated his submissions as made before us for assessment year 2008 – 09.
14. We have carefully considered the rival contention and perused the orders of the lower authorities In the present case With respect to the recording of the satisfaction of the learned assessing officer It is apparent that the assessee has only offered the disallowance of INR 170,000 in the



computation of the total income. However, when questioned by the assessing officer assessee came out with the estimate of the disallowable expenditure. During the course of assessment proceedings the assessee also stated that the disallowance under rule 8D would be of different sum and also submitted the computation thereof. Therefore, even the assessee was not sure about the correctness of the claim about the disallowable sum under section 14 A of the income tax act. The learned assessing officer has specifically recorded that the assessee has not given a clear-cut amount disallowable under section 14 A of the income tax act and ultimately it has also submitted only the estimate of disallowable expenditure. The learned AO therefore invoked the provisions of rule 8D of the income tax rules. In the facts and circumstances of the case, it is apparent that the learned assessing officer has satisfied himself that the claim of the assessee which is changing frequently is incorrect. In view of this we find no infirmity in the order of the learned CIT – A, in upholding that the learned AO has correctly recorded his satisfaction about the incorrectness of the claim of the assessee. Therefore, this contention of the assessee is rejected. However, coming to the contention of the assessee that while working out disallowance under section 14 A of the income tax act only those investments which has resulted into earning tax-free income should only be considered is supported by the decision of the honourable Delhi High Court. Therefore respectfully following the same, we direct the learned assessing officer to consider only those investments which has resulted into tax-free income during the year. Further, similar to the facts for assessment year 2008 – 09, the assessee has also submitted a certificate of the chartered accountant working of disallowance under section 14 A of the income tax act wherein the assessee himself has stated that total expenditure in relation to exempt income comes to INR 3044955/-. The certificate of the chartered accountant also shows the direct expenditure of INR 320064 and indirect expenses of INR 2724891/-. In view of this we direct the learned assessing officer to examine the claim of the assessee based on the certificate of the chartered accountant. If the assessing officer is satisfied with the correctness of the claim the disallowance should be restricted to that extent. If the AO is not satisfied with the correctness of the claim of the

assessee then he may apply the rule 8D of the income tax rules 1962. However, while applying the rule 8D of the income tax rules. The learned AO must consider only those investments which have yielded exempt income. Accordingly, we set aside the whole issue back to the file of the learned assessing officer with a direction to the assessee to substantiate its claim that only INR 3044955/- is disallowable under section 14 A of the income tax act as certified by the chartered accountant. The learned assessing officer is directed to examine this claim of the assessee and then, decide the whole issue afresh. Accordingly, ground number 1 and 3 of the appeal of the assessee are partly allowed with above direction whereas ground number 2 of the appeal of the assessee is dismissed.

15. Accordingly ITA No. 6223/Del/2012 for assessment year 2009 – 10 is partly allowed for statistical purposes with above direction.

16. Now we come to the appeal of the assessee for assessment year 2010 – 11 in ITA number 876/Del/2014, wherein the assessee has challenged the disallowance confirmed by the learned CIT(A) restricting the disallowance made by the learned assessing officer of Rs. 44870700/- to Rs. 4,34,30,000/- . The assessee has raised following grounds of appeal:-

- “1. *The CIT(Appeals) has , in view of the facts and circumstances of the case, erred on facts and in law in upholding the order of the Assessing Officer passed u/s 143(3).*
2. *The CIT(Appeals) has, in view of the facts and circumstances of the case, erred on facts and in law in upholding the view of the AO that Sec 14A is applicable and that disallowance is to worked under Rule 8D.*
3. *The CIT (Appeals) has failed to appreciate the fact that on the given facts and circumstances of the case, Sec 14A cannot be invoked against the assessee.*
4. *The CIT (Appeals) has failed to appreciate the fact that on the given facts and circumstances of the case, Rule 8D cannot be invoked against the assessee.*
5. *The AO and CIT(Appeals) has failed to appreciate the fact that the disallowances made by the assessee of Rs 9.6 lakhs is on a scientific and a rational basis and the decision of AO to calculate disallowance under Rule 8D is against the well settled principles of law .*
6. *That in any case the disallowances of Rs 4,48,70,700/- worked out by the AO u/s 14A and upheld by the CIT(Appeals) is highly excessive .*
7. *That in any case, the AO and CIT(A) erred on facts and in law in including the value of investments that do not yield any exempt income while working out the disallowance under Rule 8D .*

8. *That the Ld CIT(Appeals) has erred on facts and in law in upholding disallowances of Rs 4,34,30,000/- even when the CIT(Appeals) has in the impugned appellate order given directions that the interest expenses of Rs 37,40,000/- cannot be disallowed under Rule 8D .*
  9. *That the Ld CIT(Appeals) has erred on facts and in law in following the previous year orders and the same were never confronted to the assessee.*
  10. *That in any case the view taken by the Ld CIT(A) in earlier years is not a correct view in law and appeals have been filed against the said orders in ITAT by the assessee.*
  11. *The AO and CIT(A) have erred on facts and in law in upholding the levy of interest u/s 234D against the assessee. The charging of interest is illegal, bad in law and without jurisdiction.”*
17. Though in appeal memo the assessee has raised 11 grounds of appeal, However, all the grounds are related to the disallowance under section 14 A of the income tax act confirmed by the learned CIT(A). Brief facts of the case shows that the assessee filed its return of income on 24/9/2010 declaring total income of INR 947670950/-. The assessee during the year earned dividend income of INR 235150000 on its investment and the total amount of investment in shares and mutual fund was INR 8,377,050,000. In the computation of the total income the assessee has disallowed INR 960,000 on account of expenses attributable to exempt income under section 14 A of the act on pro rata basis. The learned assessing officer questioned the amount disallowed by the assessee. The assessee submitted that the disallowance of 960,000/- has worked out as a pro rata expenses. The assessee also submitted the working of the same. However, the assessee also claimed that assessee has not incurred expenses for earning exempt dividend as all investments are either in mutual funds or through Portfolio management schemes which are managed by the fund managers and for which no charge is made to us. However, without prejudice, assessee also submitted that pro rata interest cannot be included in the calculation because there is no net payment of interest expenditure. The assessee Further relied on the order of the CIT Appeals for assessment year 2008 – 09 for the deletion of the interest expenditure disallowance under section 14 A of the income tax act. However, without admitting the disallowance under rule 8D, assessee submitted the figures of investments on which dividend or

other income received as exempt. The learned assessing officer noted that assessee has received the dividend income of INR 235150000 and assessee on its own has stated that to supervise, manage and properly account for such a huge investment and income there from, expenses of 960,000 has been incurred by the assessee and disallowed on pro rata basis. The learned AO noted that it is not sufficient and the assessee has only estimated expenditure but has not shown the amount of expenditure incurred therefore, he was satisfied that the claim made by the assessee is incorrect. Accordingly he applied rule 8D of the income tax rules and worked out the disallowance of Rs. 45,830,000 and reduced there from 960,000 already disallowed by the assessee and made the net disallowance of INR 44,870,000. Accordingly assessment under section 143 (3) was passed on 31/10/2012 where the total income of the assessee was determined at INR 9924 87 950/-. The assessee aggrieved, preferred the appeal before the learned CIT – A, who upheld the satisfaction recorded by the learned AO. However, he reduced the disallowance from Rs. 44870000/- to INR 434030000/-. The assessee aggrieved with the order of the learned CIT – A, has preferred an appeal before us.

18. The learned authorised representative reiterated the submissions made before the lower authorities and also reiterated the submissions made before us for assessment year 2008 – 09. The assessee also submitted in the form of additional evidence the working of the disallowance made by the chartered accountant of INR 1969940 where the direct expenditure of INR 508367 and indirect expenditure of INR 1461572 was worked out. As per the certificate of the chartered accountant, it was stated that the exempt income is only INR 23 5150 000 which is 24.81% of the returned income and therefore the total indirect expenses are required to be disallowed in that proportion which is worked out at INR 1461572/-. It was further stated that the chartered accountant has worked out the disallowance from the records of the company. He therefore submitted that the disallowance cannot exceed the above amount, which is actual expenditure incurred by the assessee.
19. The learned departmental representative reiterated the submissions made before us for assessment year 2008 – 09 and vehemently supported that the

learned assessing officer has correctly recorded the satisfaction that the claim made by the assessee of not incurring any expenditure is incorrect.

20. We have carefully considered the rival contention and perused the orders of the lower authorities. It is apparent that during the course of assessment proceedings the assessee has shown in the computation of total income INR 960,000 have been incurred as expenditure for earning exempt income on pro rata basis. The details of such expenses asked during the course of assessment proceedings. Assessee submitted that above disallowance is a proportionate expenditure worked out on the ratio of dividend income to the total income. As the expenditure disallowed by the assessee was also on the basis of an estimate therefore the learned assessing officer has correctly reached a satisfaction that the claim of the assessee is incorrect. In view of this we do not subscribe to the argument of the learned authorised representative that the learned AO has failed to record the satisfaction about correctness of the claim of assessee. During the course of hearing before us, assessee has also come out with altogether a different disallowable amount under section 14A of the income tax act, which is also supported by the certificate of the chartered accountant, wherein after verification from the records of the company, direct expenses of INR 508367 and indirect expenditure of INR 1461572/- has been worked out as disallowable under section 14 A of the income tax act. As the certificate was not part of the assessment records and AO did not have any opportunity to examine the claim of the assessee, and as per our decision for assessment year 2008 – 09 on similar facts and circumstances, we also set aside this ground of the appeal back to the file of the learned assessing officer with a direction to the assessee to substantiate its claim before the assessing officer of disallowance of INR 1969940/-. The learned AO is directed to verify the correctness of the claim of the assessee and thereafter work out the disallowance under section 14 A of the income tax act in accordance with the law. In the result the appeal of the assessee is partly allowed with above direction for statistical purposes.
21. Accordingly ITA number 876/Del/2014 for assessment year 2010 – 11 filed by the assessee is partly allowed for statistical purposes.

22. Now we come to the appeal of the revenue in ITA number 6502/Del/2016 for year 2010 – 11 wherein the learned assessing officer has levied the penalty under section 271 (1)(C) of the Income Tax Act of Rs. 14761857/- on account of disallowance under section 14 A of the Income Tax Act. The learned CIT (A) deleted the penalty holding that appellant has furnished an explanation which is satisfactory and facts are not doubted. He further stated that the issue of disallowance under section 14 A, being a debatable matter, the provisions of section 271 (1)(c) of the Act are not attracted in the case. He further stated that there is no deliberate furnishing of inaccurate particulars of or concealment of the income. He passed an order deleting the above penalty vide order dated 14/10/2016, which is under challenge by the revenue before us. The revenue has raised the solitary ground of appeal as under:-

*“1. In the facts and circumstances of the case, the ld CIT(A) erred in deleting the penalty levied by the AO u/s 271(1)(c) amounting to Rs. 1,46,56,380/- ignoring the fact that the assessee had made wrong claim for deduction under the provisions of Income Tax Act, 1961.”*

23. The learned authorised representative submitted that assessee has furnished the correct particulars of the income and disclosed all the material facts available before the learned assessing officer and therefore the penalty under section 271 (1)(c) of the Income Tax Act levied by the learned assessing officer is not sustainable. Even otherwise, he submitted that in the assessment order learned assessing officer has raised the charge of furnishing inaccurate particulars of income. However, while levying the penalty learned AO has held that assessee has concealed true particulars of income by furnishing inaccurate particulars of its income. He therefore submitted that as there is no specific charge in the order of the penalty, penalty levied by the learned assessing officer is not sustainable. He further relied upon the order of the learned Commissioner of income tax Appeals deleting the penalty and submitted that the issue is squarely covered by the decision of the Hon'ble Supreme Court in case of CIT vs Reliance Petro Products Limited.

24. The learned departmental representative vehemently supported the order of the learned assessing officer.

25. We have carefully considered the rival contention and perused the orders of the lower authorities. The fact shows that in assessee's own case for

assessment year 2011 – 12, the learned CIT(A) has held that no disallowance under section 14 A can be made. Further, the issue before us is squarely covered by the decision of the Hon'ble Delhi High Court in CIT vs. Liquid Investments dated 5/10/2010, where the Hon'ble High Court has held that issue of disallowance under section 14A of the Income Tax Act was a debatable issue. Even otherwise in the case of the assessee itself for the same assessment year we have held that the disallowance offered by the assessee is on estimated basis and the learned AO has merely applied the provisions of rule 8D of the Income Tax Rules 1962. In assessee's own case in AY 2011-12, CIT (A) has deleted the disallowance u/s 14A of the act. Thus, it shows that the assessee has not furnished any particulars of income, which are incorrect. The issue remains is merely computation of the disallowance. Therefore, we do not find any infirmity in the order of the learned CIT(A) in deleting the above penalty relying upon the decision of the Hon'ble Supreme Court. Accordingly, appeal of the revenue is dismissed.

26. Accordingly ITA No. 6502/Del/2016 filed by the learned assessing officer for assessment year 2010 – 11 is dismissed.
27. Accordingly all before appeals of the same assessee are disposed of by this common order.

Order pronounced in the open court on 08/01/2019.

-Sd/-

(AMIT SHUKLA)  
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated:08/01/2019  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi