IN THE INCOME TAX APPELLATE TRIBUNAL,
"J" BENCH, MUMBAI.

Before Shri D.K.Agarwal, Judicial Member
and Shri Pramod Kumar, Accountant Member

I.T.A No.1071/ Mum/2010
Assessment year: 2006-07

NESCO Limited ..... ***Appellant***
NESCO Estate, Western Express Highway,
Goregaon (E),
Mumbai-63
PA No.AAACN 1222 E

Vs

Addl. CIT 9(2) ,.... ***Respondent***
Mumbai.

Appearances:

Haresh P Shah, for the appellant
C.P.Pathak, for the respondent

O R D E R

Per Pramod Kumar:

1. By way of this appeal, the assessee has called into question correctness of CIT(A)'s order dated 16th December, 2009, in the matter of assessment under section 143(3) of the Income tax Act, 1961, for the assessment year 2006-07.

2. The first grievance of the assessee relates to confirmation of addition of Rs.18,00,734 under section 14A read with Rule 8D of the Income tax Act, 1961.

3. Facts in brief are that during the course of assessment proceedings, the Assessing Officer noticed that the assessee has earned exempt dividend income of Rs.2,08,18,146 and on its own the assessee has added back a sum of Rs.1,87,577 on earning the dividend income. However, relying on the decision of the ITAT Mumbai in the case of Daga Capital

Management P Ltd., 117 ITD 169(Mum)(SB), the AO applied Rule 8D and disallowed Rs.18,00,734. The assessee carried the matter in appeal before the CIT (A) but without any success.

4. Learned Representatives agree that so far as the question of Rule 8D is concerned, the issue is now covered in favour of the assesee by the Hon'ble Jurisdictional High Court's judgement in the case of Godrej & Boyce Mfg Co Ltd Vs DCIT (328 ITR 81), wherein, it has been held that Rule 8D of the Income tax Rules, 1962 is applicable only prospectively i.e. from A.Y. 2008-09. The assessment year involved in the present case is 2007-08 and, therefore, Rule 8D is not applicable in the present case. The Hon'ble High Court has held that a reasonable disallowance for expenses incurred in earning dividend income is nevertheless to be computed by the AO. In view of the decision of the Hon'ble Jurisdictional High Court in the case of Godrej Boyce Mfg Co. Ltd (supra) and as agreed to by the parties, we remit the issue to the file of the AO to re-compute the disallowance u/s.14A in the light of the law laid down by the Hon'ble Jurisdictional High Court in the case of Godrej Boyce Mfg Co. Ltd (supra).

5. This issue is thus allowed for statistical purposes.

6. The next issue relates to confirmation of disallowance of miscellaneous expenditure of Rs.1,50,755.

7. Having heard both the sides, we find that the assessee had claimed Rs.30,15,041 as miscellaneous expenses. The Assessing Officer after examining the details furnished before him found that the some of the expenses are not amenable for verification and, accordingly, disallowed Rs.3,01,510 being 10% of the miscellaneous expenses. On appeal, the CIT (A),the CIT(A) restricted the disallowance to 50% of the amount disallowed and, accordingly, the assessee get relief of Rs.1,50,755. However, to meet the ends of justice and considering the entirety of the facts and circumstances of the case and with the consent of the parties, we direct the AO to restrict the disallowance to 20% of the disallowed amount. The assessee gets relief of Rs.60,302.

8. This issue is thus partly allowed.

9. In the result, appeal is partly allowed.

Pronounced in the open court on 31st March, 2011

Sd/-	Sd/-
(D.K.Agarwal)	(Pramod Kumar)
Judicial Member	(Accountant Member)

Mumbai, Dated 31st March, 2011
Parida

Copy to:
1. The appellant
2. The respondent
3. Commissioner of Income Tax (Appeals),20, Mumbai
4. Commissioner of Income Tax, 9 , Mumbai
5. Departmental Representative, Bench 'J, Mumbai

//TRUE COPY// BY ORDER

ASSTT. REGISTRAR, ITAT, MUMBAI