IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH "A", MUMBAI

BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 5216//Mum/2015 (Assessment Year-2011-12)

M/s Aptech Ltd. A-65, Aptech House, MIDC Marol, Andheri (E), Mumbai-400093. **PAN: AADCA0602L**	**Vs.**	DCIT 8(1), Room No.2010, 2nd Floor, Aayakar Bhavan, M.K. Road, Mumbai-20.
(Appellant)		(Respondent)

Assessee by	:	Shri S.C. Tiwari & Rutuja Pawar (AR
Revenue by	:	Shri Rajesh Kumar Yadav (DR)
Date of hearing	:	30.11.2017
Date of Pronouncement	:	13.02.2018

Order Under Section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee under section 253 of the Income-Tax Act ("The Act") is directed against the order ld. CIT(A)-16, Mumbai dated 15.09.2015 for Assessment Year (AY) 2011-12, which in turn arises from the assessment order dated 26.03.2014 passed under section 143(3) of the Act. The assessee has raised the following grounds of appeal:

> GROUNDS OF APPEAL AGAINST ORDER DATED 15-09-2015 OF THE CIT(A)- 16, V/S 250 OF THE ACT IN APPEAL AGAINST ORDER U/S 143(3) OF THE INCOME TAX ACT, 1961.
>
> 1. (a) Learned CIT (A) erred in raw and on facts and in. the circumstances of the case in confirming the disallowance U/S 14A of the Act read with Rule 8D(2) (iii) of Rs.19,40,805/-.

(b) Learned CIT (A) erred in law and on facts and in the circumstances of the case in confirming disallowance U/S 14A of the Act read with Rule 8D(2) (iii) ignoring that strategic investments have to be excluded for the purpose of arriving at disallowance under Rule 8D(iii).

2. Learned CIT (A) erred in law and on facts and in the circumstances of the case in confirming disallowance U/S 14A of the Act read with Rule 8D(2) (iii) of Rs.19,40,805/- which is more than dividend income earned of Rs.6,81,948/-.

3. Order of Commissioner (Appeals) being contrary to law, evidence and facts of the case should be set aside, amended or modified.

4. Each ground of appeal hereinabove is independent and without prejudice to each other.

2. Brief facts of the case are that the assessee is a Company engaged in imparting Education and Training in Information Technology. The assessee filed its return of income for relevant assessment year on 29.09.2011 declaring Nil income, after claiming carry forward of current year loss of Rs. 6,09,83,608/- and have shown income under section 115JB at Rs. 3,47,48,327/-. The assessment order was passed on 26.03.2014 under section 143(3). During the assessment the assessing officer noted that in the profit and loss account the assessee has shown exempt income of Rs.6,81,498/-. The assessee suo motu disallowed Rs. 6,320/- under section 14A. The Assessing Officer (AO) invoked the provisions of Rule 8D and made the disallowance of Rs.64,04,866/- under section 14A. by invoking the provisions of Rule 8D. On appeal before the ld. CIT(A), the disallowance under section 14A was restricted to Rs.19,40,805/-. The ld CIT(A) deleted the disallowance of Rs.44,57,743/- on his observation that the assessee has sufficient interest free funds available with it by following

the decision of jurisdictional High Court in CIT vs. Reliance Utility in ITA No. 198 of 2008 dated 09.01.2008 and CIT vs. HDFC in ITA No. 330/2012 dated 23.07.2014. Thus, further aggrieved, the assessee has filed the present appeal before us.

3. We have heard the ld. Authorized Representative (AR) of the assessee and ld. Departmental Representative (DR) for the Revenue and perused the material available on record. The ld. AR of the assessee submits that before invoking the provisions of Rule 8D. The AO has not given any reason about his non-satisfaction about the correctness of the claim for voluntary disallowance under section 14A offered by assessee. The AO must record the reasons for his satisfaction. The ld. AR of the assessee further submits that the assessee had earned dividend income of Rs. 6,81,948/- only during the relevant Financial Year. The disallowance under section 14A r.w. Rule 8D must not exceed the exempt income. In support of his submissions the ld AR for the assessee relied on the decisions of decision of Hon'ble Supreme Court in Godrej & Boyce Manufacturing Co. Ltd. vs. DCIT in Civil Appeal No. 7020 of 2011 dated 08.05.2017, Delhi High Court in case of Chem Investment Ltd. vs. DCIT (ITA No. 749 of 2014 dated 2nd September 2015), Karnataka High Court in Canara Bank vs. ACIT [2005] 228 Taxman 212 (Kar), and the decision of Mumbai Tribunal in Garware Wall Ropes Ltd. vs. ACIT (ITA No. 5408/Mum/12). On the other hand, the ld. DR for the Revenue supported the orders of authorities below.

4. We have considered the rival contentions of the ld. representatives of the parties and perused the material on record. The AO during the assessment proceeding, noted that assessee claimed the dividend income of Rs. 68,19,481/-. The assessee *suo motto* disallowed Rs. 6,320/- under section 14A. The AO issued show-cause notice as to why the provision of section 14A r.w. Rule 8D should not be applied. The assessee filed its reply dated 27.02.2014. In the reply the assessee contended that no specific expenditure has been incurred in connection with its investments for interest expenditure. The assessee contended that interest expenditure be netted for the purpose of taking the component of interest expenditure. The assessee furnished the working of *suo motto* disallowance under section 14A for Rs.6,320/-. The assessee also contended that the assessee earned dividend income of Rs. 6,81,498/- only and the disallowance under section cannot exceed to Rs. 6,81,948/-. The contention of assessee was not accepted by AO. The AO recorded his dissatisfaction about the correctness of claim of assessee and invoked the provisions of Rule 8D of Income Tax Rules, 1962. The AO made the disallowance under section 14A as per the provisions of Rule 8D. The assessing officer disallowed Rs. 6,320/- under clause-(i) of Rs. 44,57,743/- under clause (ii) and Rs. Rs. 19,40,805/- under Clause-(iii) of Rule 8D(2). Thus, the AO made the total disallowance of Rs. 64,04,868/-. On appeal before First Appellate authority the interest disallowance [under Rule 8D(2)(ii)] of Rs.44,57,743/- was deleted. The revenue has not

challenged the order of First Appellate Authority for deleting the interest disallowance. In narrow compass the dispute before us is only with regard to disallowance under Clause-(iii) of Rule 8D(2).We have noted that the assessing officer has not recoded any reasons while disregarding the voluntary disallowance offered by assessee under section 14A. The Hon'ble Delhi High Court in case of Joint Investment Pvt. Ltd. vs. CIT in ITA No. 117 of 2015 held that by no stretch of imagination under section 14A or Rule 8D be interpreted so as to mean the entire tax exempt income is to be disallowed. The portion of tax exempt income surely cannot swallow the entire amount as has been happened in that case, the window for disallowance as indicated in section 14A is only to the extent of disallowing the expenditure incurred by assessee only to earn exempt income.

5. Thus, considering the fact of the present case and the submission made by ld. AR of the assessee, we direct the AO to restrict the disallowance to the extent of exempt income earned by assessee during the Financial Year. In the result, grounds of appeal raised by assessee are allowed.

6. In the result, appeal filed by assessee is allowed.

Order pronounced in the open court on this 13th day of February, 2018.

Sd/-	Sd/-
(G.S. PANNU)	**(PAWAN SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 13/02/2018
S.K.PS

<u>Copy of the Order forwarded to</u> :

1. The Appellant

2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai

BY ORDER,

6. Guard file.

(Asstt.Registrar)
ITAT, Mumbai