IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH 'F' BENCH

BEFORE SHRI I.P. BANSAL, (JUDICIAL MEMBER)
AND
SHRI B.RAMAKOTAIAH (ACCOUNTANT MEMBER)

ITA No.6870/Mum/2011
Assessment Year: 2008-09

ACIT 1(1) R.No. 579, Aaykar Bhavan, Mumbai – 400 020	Vs.	M/s. Frigerio Conserva Allana Ltd. Allan House, J.A. Allana Marg, Colaba, Mumbai – 400 001 **PAN No. AAACF 0522 B**
(Appellant)		(Respondent)

Appellant by	:	Dr. Manjunath Karhihalli
Respondent by	:	Mr. Jitendra Jain
Date of hearing	:	10.09.2012
Date of pronouncement	:	21.09.2012

ORDER

Per B.Ramakotaiah, AM :

This is an appeal by Revenue against the order of the CIT(A)-1 Mumbai dated 13.07.2011. The issue in this appeal is with reference to disallowance u/s 14A.

2 The Assessing Officer disallowed an amount of Rs.9,27,652/- u/s 14A r/w Rule 8D(2) on noticing that assessee has shown investments of Rs.18,54,18,155/- in the Balance Sheet which earns dividend income.

2.1 The Ld.CIT(A) following decision of the I.T.A.T., Chennai in the case of M/s. Siva Industries and Holding Ltd. in ITA No. 2148/Mds/2010 dated 20.05.2011 deleted the disallowances on the reason that assessee has not shown any dividend income, which is exempt. Revenue has raised following grounds.

> *"Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is correct in deleting the disallowance made by the Assessing Officer of Rs.9,27,652/- u/s. 14A relying on the decision of ITAT, Chennai in the case of M/s. Siva Industries & Holdings Ltd. Reported in ITA No. 2148/Mds/2010 without considering the decision of Special Bench of ITAT, Delhi in the case of Cheminvest Ltd. Reported in ITA No. 87/Del/2008 and without considering the fact that Rule 8D is mandatory w.e.f. AY 2008-09."*

3 At the outset, the Ld. Counsel for the assessee submitted that the Ld.CIT(A) did not consider the detailed submission made before him and the issue was not decided on merits; whereas the Ld.DR referred the decision of the Special Bench to support the disallowance made by the Assessing Officer.

4 After considering the rival submissions, we are of the opinion that the issue requires re-examination by the Assessing Officer for considering the facts of the case and law on the issue. The assessee is directed to submit the necessary details before the Assessing Officer. We restore the issue to the file of Assessing Officer.

5 In the result, the appeal is allowed for statistical purpose.

Pronounced in the open court on 21st September, 2012

Sd/-	**Sd/-**
(SHRI I.P. BANSAL)	**(B.RAMAKOTAIAH)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Dated 21st September, 2012

Rasika

Copy to:
1. The appellant
2. The respondent
3. The Commissioner of Income Tax 1, Mumbai
4. The Commissioner of Income Tax, Mumbai
5. The Departmental Representative, Bench 'F' Mumbai

//TRUE COPY// BY ORDER

ASSTT. REGISTRAR, ITAT, MUMBAI