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

BEFORE SHRI RAJENDRA SINGH, ACCOUNTANT MEMBER AND
SHRI VIJAY PAL RAO, JUDICIAL MEMBER

I.T.A. NO.7686/M/2010
ASSESSMENT YEAR: 2007-2008

M/s. Jayneer Capital Private Ltd., Continental Building, 135, Dr. A.B. Road, Worli, Mumbai – 400 018. **PAN: AAACJ1683J**	Vs.	The ACIT, Circle -6(1), Aayakar Bhavan, M.K. Road, Mumbai – 400 020.
(Appellant)		**(Respondent)**
Appellant by	**:**	**Shri Sanjiv M. Shah**
Respondent by	**:**	**Shri K.G. Kutty**

Date of Hearing: 04.09.2012 **Date of order: 7.09.2012**

O R D E R

Per VIJAY PAL RAO, JM:

This appeal by the assessee is directed against the order dated 26.8.2010 of CIT (A) for the assessment year 2007-2008.

2. The only effective ground raised in this appeal by the assessee is as under:

"The ld CIT (A) erred in law and facts in upholding the disallowance of Rs. 73,26,345/- u/s 14A out of interest. The reasons given by him for doing so are wrong and contrary to the facts of the case and provisions of law."

3. The assessee company filed its return of income on 31.10.2007 declaring total income being loss at Rs.18,00,189/-. Subsequently revised return of income was filed on 31.3.2009 declaring income at Rs. 55,26,156/- after disallowing Rs.

73,26,345/- u/s 14A of the Income Tax Act. During the assessment proceedings, the assessee withdrawn the disallowance of Rs. 73,26,345/- on the ground that there is no nexus between the interest bearing loan taken and investment made in the equity and shares. The Assessing Officer made an addition of Rs. 95,66,070/- by disallowing the interest as well as other expenses under section 14A by applying Rule 8D. The CIT (A) upheld the disallowance of interest of Rs. 73,26,345/- on the ground that borrowed funds have been used for investment.

4. We have heard the learned AR as well as the learned DR and considered the relevant material on record. At the outset we note that an identical issue has been considered and decided by the coordinate Bench of this Tribunal in assessee's own case for the assessment year 2006-2007 vide order dated 29.3.2011 in para 3 as under:

> "*We have considered the facts and the rival contentions. The contention of the assessee before us is that it has mixed funds which includes own funds as well as interest bearing funds and as held by the Hon'ble Bombay High Court in the case of CIT vs. Reliance Utilities and Power Ltd. (2009) 313 ITR 340 (Bom), a presumption should be drawn that the investments in shares which yielded tax free divided, came out of internal accruals and own funds and that the borrowed funds were used for earning taxable income. This contention of the assessee seems to have been accepted by the CIT (A) in paragraph 2.3 of his order, though ultimately he has not given the benefit of the presumption to the assessee. The CIT (A) has also refered to the amount of owned income and borrowed funds and the investments made by the assessee in the aforesaid paragraph. The owned sources*

amounted to Rs. 89.00 crores and borrowed funds amounted to Rs. 5.00 crores. The investment during the year was Rs. 97.00 crores. Even going by these figures and applying the presumption laid down in the aforesaid judgment, the investment to the extent of Rs. 89.00 crores should have been taken to have come out of the assessee's owned sources. In that case, there would have been a much lesser disallowance of the interest under section 14A of the Act. However, this exercise has not been done by the CIT (A) who, as we mentioned earlier, somehow did not extend the benefit of the presumption to the assessee. Be that as it may, the learned Counsel for the assessee himself fairly stated that it is for his client to prove before the Assessing Officer the existence of mixed funds and compensation thereof, including the quantum of the components, in order to claim the benefit of the presumption laid down by the Hon'ble Bombay High Court (supra). This is a factual exercise which needs to be carried out by the Assessing Officer. We therefore, deem it proper, in the interest of justice, to restore the matter to the file of the Assessing Officer, who shall take a fresh decision with regard to the applicability of section 14A of the Act in respect of the interest after giving adequate opportunity of being heard to the assessee. We also make it clear that the Assessing Officer shall not invoke Rule 8D of the Income Tax Rules which has been held to be applicable only from the assessment year 2008-2009 by the Hon'ble Bombay High Court in the case of Godrej Boyce Mfg. Co. Ltd. vs. DCIT (2010) 328 ITR 81 (Bom). We direct accordingly and allow the appeal of the assessee for statistical purposes. No costs."

5. The provisions of Rule 8D of Income Tax Rules are not applicable for the assessment year under consideration as held by the Hon'ble Jurisdictional High Court in the case of **Godrej Boyce Manufacturing Co. Ltd. vs. DCIT (2010) 328 ITR 81**. Accordingly, following the earlier decision of this Tribunal, we set

aside this issue to the record of the Assessing Officer to decide this issue afresh with regard to the disallowance under section 14A of the Act in respect of disallowance of interest in the light of Hon'ble Jurisdictional High Court in the case of Godrej Boyce and Mfg. (supra).

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 7th day of September, 2012.

Sd/-	Sd/-
(RAJENDRA SINGH)	(VIJAY PAL RAO)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Date : 07.09.2012
At :Mumbai

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Copy to :

1. M/s. Jayneer Capital Private Ltd., Mumbai.
2. *ACIT-6(1)(1), Mumbai.*
3. *The CIT (A), Concerned.*
4. *The CIT concerned.*
5. *The DR "I", Bench, ITAT, Mumbai.*
6. *Guard File.*

// True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai