IN THE INCOME TAX APPELLATE TRIBUNAL
"C" Bench, Mumbai

Before Shri R.C. Sharma (AM)
&
Shri Pawan Singh (JM)

I.T.A. No. 46/Mum/2015
(Assessment Year 2004-05)

I.T.A. No. 47/Mum/2015
(Assessment Year 2005-06)

I.T.A. No. 48/Mum/2015
(Assessment Year 2006-07)

I.T.A. No. 49/Mum/2015
(Assessment Year 2007-08)

I.T.A. No. 50/Mum/2015
(Assessment Year 2008-09)

I.T.A. No. 51/Mum/2015
(Assessment Year 2009-10)

I.T.A. No. 52/Mum/2015
(Assessment Year 2010-11)

M/s. The Phoenix Mills Ltd. 462, Senapati Bapat Marg Lower Parel Mumbai-400 013.	Vs.	DCIT/ACIT-CC-47 Mumbai
(Appellant)		(Respondent)

I.T.A. No. 241/Mum/2015
(Assessment Year 2009-10)

I.T.A. No. 242/Mum/2015
(Assessment Year 2010-11)

DCIT/ACIT-CC-47 Mumbai	Vs.	M/s. The Phoenix Mills Ltd. 462, Senapati Bapat Marg Lower Parel Mumbai-400 013.
(Appellant)		(Respondent)

PAN No.AAACP3325J

Assessee by	Shri Vijay Mehta & Shri Anuj Kisnadwala
Department by	Shri Pradeep K. Singh
Date of Hearing	10.8.2016
Date of Pronouncement	06.10.2016

O R D E R

Per R.C. Sharma (AM) :-

These are the cross appeals filed by the assessee and the Revenue against the order of learned CIT(A) for A.Y. 2004-05 to 2010-11, in the matter of order passed u/s. 143(3)/143(3) read with section 147 and 271(1)(c) of the Income Tax Act.

ITA No. 46 & 47/Mum/2015

2. These are the appeals filed by the assessee against the order of learned CIT(A) for A.Y. 2004-05 & 2005-06, in the matter of imposition of penalty u/s. 271(1)(c) of the Act.

3. Rival contentions have been heard and record perused. During the course of scrutiny assessment, the Assessing Officer made disallowance on account of personal expenses amounting to Rs. 75,98,514/- in A.Y. 2004-05 and Rs. 20,45,249/- in A.Y. 2005-06. In the quantum appeal, learned CIT(A) upheld the disallowance of Rs. 37,01,714/- in A.Y. 2004-05 and Rs. 2,58,525/- in A.Y. 2005-06.

4. In further appeal filed by the assessee before the Tribunal, the Tribunal have upheld the addition of Rs. 6,17,594/- in A.Y. 2004-05 and Rs. 2,04,525/- in A.Y. 2005-06. It appears that learned CIT(A) has confirmed the penalty vide order dated 30.9.2014 prior to the quantum appeal being decided by the Tribunal vide order dated 17.6.2015. Thus, here we are only concerned with the penalty which pertains to quantum addition upheld by the Tribunal. Details of various additions made by the Assessing Officer and upheld by learned CIT(A)/Tribunal are as under :-

Particulars	Expense Disallowed by A.O.	Expense Disallowed by CIT(A)	Expenses Disallowed by ITAT
Personal Expenses of A.R.Ruia Group	19,68,335	1,96,834	1,96,834
Personal Expenses of B.R.Ruia Group	23,61,443	2,36,144	2,36,144
Expenses for Mogra Shop	14,22,571	14,22,571	-
Expenses for Penthouse	18,46,165	18,46,165	1,84,617
Total	**75,98,514**	**37,01,714**	**6,17,594**

Particulars	Expense Disallowed by A.O.	Expense Disallowed by CIT(A)	Expenses Disallowed by ITAT
Personal Expenses of A.R.Ruia Group	2,03,879	20,388	20,388
Personal Expenses of B.R.Ruia Group	17,81,370	1,78,137	1,78,137
Expenses for Penthouse	60,000	60,000	6,000
Total	**20,45,249**	**2,58,525**	**2,04,525**

5. On the basis of details available on record, only a small portion was found to be personal in nature and therefore disallowance was restricted by the Tribunal even less than 10% of the alleged expenses. As addition and disallowance has been made on estimated basis both by learned CIT(A) and the Tribunal, there is no justification for levy of penalty u/s. 271(1))(c) of the Act with regard to such disallowance on estimate basis. There are so many judicial pronouncements on the issue. Mere disallowance of claim of expenses, penalty for concealment of income or furnishing of inaccurate particulars of income cannot be levied. The ratio and principles laid down by the Hon'ble Supreme Court in CIT vis Reliance Petroproducts Pvt. Ltd., [2010] 322 ITR 158 (SC) squarely applies to the facts of the present case. Where Their Lordships observed and held as follows:-

> *"A glance at the provisions of section 271 (1)(c) of the Income-tax Act. 1961, suggests that an order to be covered by it, there*

has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The meaning of the word "particulars" used in section 271 (1)(c) would embrace the details of the claim made. Where no information given in the return is found to be incorrect or inaccurate the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. There can be no dispute that everything would depend upon the return filed by the assessee. because that is the only document where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate. the liability would arise. To attract penalty, the details supplied in the return must not be accurate not exact or correct, not according to the truth or erroneous.

Where there is no finding that any details supplied by the assessee in its return are found to be incorrect or erroneous or false there is no question of inviting the penalty under section 271 (1) (c). A mere making of a claim. which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars.

Thus, on the facts of the present case, penalty under section 271(1)(c) imposed by the Assessing Officer and confirmed by learned Commissioner (Appeals) is hereby deleted. Accordingly, we do not find any justification for imposition of penalty u/s. 271(1)(c) of the Act with regard to the addition

upheld by the Tribunal for less than 10% of the alleged expenses, on estimate basis.

6. In the result, both the appeals of the assessee are allowed.

ITA No. 48, 49,50,51,52,241 &242/Mum/2015

7. These are appeals of the assessee against the order of learned CIT(A) for A.Y. 2006-07 to 2010-11, in the matter of order passed u/s. 143(3)/143(3) read with section 147 of the I.T. Act.

8. Common grounds have been taken in all the years under consideration. Therefore all the appeals are heard together and now decided by this common order for the sake of convenience and brevity. Grounds raised by the assessee in A.Y. 2006-07 read as under :-

Ground No. 1

On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in sustaining the reopening the assessment u/s. 147 of the Income Tax Act, 1961. The reopening of the assessment is bad in law, illegal and otherwise void.

Ground No. 2:

Without prejudice to the generality of Ground No. 1, on the facts and in the circumstances of the case and in law, the learned A.O. is not justified in assuming jurisdiction for reopening the assessment u/s 147 of the Act on the issue of "allocation of expenses" towards the house property income, when the said issue is already a subject matter of an appeal at the time of issue the notice u/s 148 of the Act. Accordingly, it is prayed that said reopening is in violation of express third proviso to section 147. Thus, the reassessment order is consequently bad in law, illegal and otherwise void.

Ground No. 3

Without prejudice to Ground 1& 2 above, on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the allocation done by AO an amount of Rs.73,27,164

out of salaries/ wages to the income disallowance on account of allocation of salaries/ wages to the income from house property of Rs.73,27,164 may kindly be deleted.

Ground No. 4:

Without prejudice to Ground 1& 2 above, on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the allocation done by AO an amount of Rs. 14,76,777 out of advertisement and sales promotion expenses to the income from house property, ignoring the facts of this issue. The assessee prays that disallowance on account of allocation of advertisement and sales promotion expenses to the income from house property of Rs. 14,76,777 may kindly be deleted.

Ground No. 5

Without prejudice to Ground 1& 2 above, on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the allocation done by AO an amount of Rs. 14,42,894 out of Security Charges to the income from house property, ignoring the facts of this issue. The assessee prays that disallowance on account of allocation of security charges to the income from house property of Rs. 14,42,894 may kindly be deleted.

Ground No. 6:

Without prejudice to Ground 1& 2 above, on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the allocation done by AO an amount of Rs. 2 1,36,366 out of Other Miscellaneous Expenses to the income from house property, ignoring the facts of this issue. The assessee prays that disallowance on account of allocation of sum out of Other miscellaneous Expenses to the income from house property of Rs. 21,36,366 may kindly be deleted.

Without prejudice to Ground 18& 2 above, on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the allocation done by AO of additional sum of Rs. 86,03,116 out of repairs and maintenance expenditure to the income from house property, ignoring the facts of this issue. The assessee prays that disallowance on account of allocation of Repairs and Maintenance expenses to the income from house property of Rs. 86,03,116 may kindly be deleted.

Ground No. 8:

Without prejudice to Ground 1& 2 above, on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the addition done by AO an amount of Rs. 2,25,741 u/s. 69C on account of commission paid. The assessee prays that the same may kindly be deleted.

9. First we shall take up legality of the reopening of the assessment challenged by the assessee.

10. Facts in brief are that the assessee is in the business of manufacturing of yarn, trading in clothes, rental, warehousing activities. Apart from trading in cloth, the assessee received rental income for letting out of the premises and also service charges for rendering related amenities to the tenants and others. The assessee company was searched u/s. 132 of the Income Tax Act, 1961 on 20.02.2008 at the office premises along with the Ruia Family and other group concerns. During the assessment year under consideration i.e. A.Y.2006-07, the assessee has earned rental income of Rs.20,09,99,756/-. The assessee has debited Rs.2,73,30,896/- as Municipal taxes in the profit and loss account. However, during the proceedings u/s 153A read with section 143(3) the Ld. AO raised a query as to why no municipal taxes were reduced from the Annual Letting Value (ALV). The assessee claimed that these taxes were recovered from tenants and the said recoveries have been considered as business income and accordingly the claim of municipal taxes against business income is correct. However, the learned Assessing Officer did not agree to the assessee 's contention and treated 80% of the municipal taxes of Rs. 2,73,30,896/- at Rs. 2,18,64,717/- as related to earning of rental income during the relevant previous year and thereby reduced the annual letting value (ALV). The Assessing Officer disallowed the aforesaid expenses in the computation of business income and allowed the same while computing the ALV, Hence the ALV was revised from 20,09,99,756/- to Rs. 17,91,35,039/-.

11. From the record we found that similar disallowance was made by the Assessing Officer in the A.Y.2001-02, A.Y.2003-04, A.Y.2004-05 and A.Y.2005-06. The said disallowance was partly deleted and partly upheld by the Hon'ble CIT(A) in all the impugned years and the Tribunal vide its order dated 27-04-2012 confirmed the action of CIT(A).

12. It is clear from the order of AO dated 29.12.2010 framed u/s 153A read with section 143(3) that AO after considering all the aspects disallowed expenditure by observing that expenses were incurred for earning income from house property.

13. Assessment completed u/s 153A r.w.s.143(3) on 29.12.2010 determining total income at Rs.20,85,10,410/- as against the returned income of Rs.18,51,02,165/-. Subsequently, the assessment was reopened by issue of notice u/s 148 of the Act dated 29.03.2012 on the ground that out of the total revenue receipts of Rs.57,12,39,378/- the revenue receipt from rental income is Rs.20,09,99,756/-. Thus the rental income to the total revenue works out to 35.18%. The AO observed that during the course of regular assessment for A.Y. 2009-10 came to light that assessee has shown the rental income separately in the computation under the head income from house property by which the assessee becomes eligible for deduction u/s 24 @ 30% of the A.L.V. and simultaneously in the P & L A/c the assessee debited expenses which are relatable to income from house property and allocation of such expenses has not been made resulting into income escaping assessment.

14. It is clear from the record that assessment was reopened beyond the period of 4 years since notice u/s 148 was issued on 29-3-2012. If the assessment has to be reopened beyond four years, then there must be a failure on the part of the assessee to fully and truly disclose all material facts necessary for assessment. The material facts relevant for the assessment were already available with the A.O in the

assessment made u/s 153A which was sought to be reopened. Moreover, the change of opinion cannot be a ground for reopening of the assessment.

15. There is no whisper of any failure on the part of the assessee to furnish fully and truly all material facts necessary for assessment, in the notice issued u/s. 148. Even during the course of scrutiny assessment framed u/s.143(3) r.s.s.153A, we find that the Assessing Officer has dealt with in great detail various additions proposed on account of Municipal taxes, legal and professional charges, foreign travel expenses, brokerage and commission etc. and arrived at the conclusion that total assessed income at Rs. 20,85,10,410/- as against returned income of Rs. 18,51,02,135/-. All material facts were available even during the course of scrutiny assessment on which after proper application of mind, the Assessing Officer has upheld various additions. Thus, we do not find any justification for reopening of assessment after expiry of four years from the end of relevant assessment year, on the plea of change of opinion on the same set of facts.

16. In the instant case, notice u/s. 148 dated 29.03.2012 has been issued more than four years after the end of the relevant assessment year i.e. A.Y. 2006-07. In respect to the same, in terms of the proviso to Section 147 of the Act, the jurisdictional A.O. can exercise the power bestowed on him to reopen assessments already completed, after the period of four years from the end of the relevant assessment year only on the cumulative satisfaction of two conditions precedent as under :

(a) there must be a reasonable belief on the part of the officer that income has escaped assessment; and

(b) that there must be a failure on the part of the assessee to fully and truly 'disclose all material facts necessary for assessment.

The said proviso of section 147 has been reproduced below for ready reference:

> *"Provided that where* an *assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no* action *shall be taken* under this *section after* the *expiry of four years from the end of* the *relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the* part *of the assessee to make a* return under *section 139 or in response to a notice issued under sub-section (1) of section* 142 or *section 148 or to disclose fully and* truly *all material facts necessary for his assessment, for* that *assessment year:"*

17. In view of the present facts and circumstances and on perusal of the reasons recorded for reopening the assessment as provided to the assessee on 06.02.2013, it is clear that the grounds/reasons for reopening do not indicate any failure on the part at the assessee to disclose fully and truly all material facts necessary for assessment nor do they indicate the presence of any "tangible material" to come to the conclusion that there is any escapement of income from assessment. Thus, no reopening of the assessment can be made in the assessee's case since there is no new material found

18. Furthermore merely on the basis of change of opinion with respect to same set of facts, assessment cannot be reopened. Our view is supported by the decisions of Hon'ble Jurisdictional High Court in the case of G.N. Shaw (Wine) Pvt. Ltd. Vs. ITO (260 ITR 513), and Hon'ble Andhra Pradesh High Court in the case of Sirpur Paper Mills Ltd. Vs. ITO (114 ITR 404), wherein the court held that the Income-tax department cannot be permitted to bring fresh litigations because of new views they entertain on facts or new versions which they present as to what should be the inference or proper inference either of the facts disclosed or the weight of the circumstances. In the latest decision of the Supreme Court in the case of- CIT v. Keivinator (India) Ltd. dated January 18, 2010 reported In

[2010], 320 ITR 561, the Hon'ble Supreme Court has affirmed the two decisions of the Delhi High Courts - CIT v. Kelvinator of India Ltd. (2002) 256 ITR 1 (Delhi) and CIT Vs. Eicher Ltd. (2007) 294 ITR 310 (Delhi) and held that the Assessing Officer can reopen an assessment only on the basis of some tangible material to form reasons to believe that income had escaped assessment. A mere change of opinion could not be a valid ground for issuing a notice u/s. 148 of the Act.

19. The Supreme Court in the case of CIT v/s. Foramer France (264 ITR 666) held that mere change of opinion does not confer upon the Assessing Officer power to initiate reassessment proceedings u/s. 147 of the Act. The Supreme court in the case of ITO v/s. Nawab Mir Barkat All Khan Bhaadur(97 ITR 239) held that having second thoughts on the same material, an omission to draw the correct legal presumption during original assessment do not warrant the initiation of a proceeding under section 147 of the Act.

20. On careful consideration of the proposition laid down in the above said judicial pronouncements and applying to the facts of the instant case, we note that an assessment completed u/s. 153A r.w.s 143(3) of the Act cannot be reopened merely on the basis of change of opinion. In the assessee's case, as already observed, all the material facts were disclosed at the time of assessment proceedings u/s.143(3) r.w.s.153A, and the A.O. after considering the material and after giving due thought, accepted the assessee's claim. The reopening of the assessment u/s.147 r.w.s. 148 of the Act, in our view, is incorrect and against the various court decisions discussed above.

21. From the order of the Assessing Officer framed u/s 153A read with section 143(3) we find that the A.O. vide assessment order dated 29.12.2010 had already allocated certain expenses as being attributable to rental Income. With respect to the test whether a particular expenditure

pertains to business activity or rental activity, all the expenses had already been examined by the AO and thereafter an opinion was formed by him. In the original assessment proceeding the AO had disallowed the following expenditure considered as incurred for the House Property Income:

i) Legal Professional Charges
ii) Foreign Travel
iii) Brokerage & Commission.

Hence, the Assessing Officer had passed the said assessment order after considering the materials on record and after due application of mind. In view of the same, the A.O. is now of the different opinion that certain additional expenses need to be allocated to rental Income. Accordingly, the contention of the A.O. to reopen the assessment is merely based on the change of opinion over the same facts and figures which were already available before the A.O. at the time of completion of the assessment u/s. 153A r.w.s 143(3) of the Act. No new materials or facts have come to the notice of the A.O. Thus, on the same set of facts and material, now there is a change in the A.O.'s opinion and this change of opinion has been taken as reason to believe that there is an escapement of income which is legally and judiciously incorrect.

22. In view of the above, we do not find any justification for reopening of completed assessment after expiry of four years from the end of relevant assessment year without any failure on the part of assessee to disclose fully and truly all the material facts necessary for the assessment. Furthermore it is clear that the AO has reopened the assessee's case merely on change of opinion regarding allocation of expenses which is not a legitimate reason to reopen assessment. Reliance is placed on the decision of Hon'ble Bombay High Court in the case of Asian Paints Ltd., 308 ITR 195. Accordingly there is no justification in the order of AO reopening the completed assessment.

23. In the result appeal of the assessee for A.Y. 2006-07 is allowed.

A.Y. 2007-08 & 2008-09

24. In these years the assessment has been reopened within the period of four years on the very same issue of allocation of expenses towards house property income, when the said issue has already been considered by AO while framing assessment u/s 153A read with section 143(3) and no tangible material was put on record by the AO to form a basis / foundation to his belief.

25. From the record we find that the assessee filed its return of income on 30.10.2007 for A.Y. 2007-08 and on 30.9.2008 for A.Y. 2008-09 declaring total income at Rs.59,83,19,758 and Rs.42,83,76,469/- respectively. Assessment was completed u/s 153A r.w.s.143(3) on 29.12.2010 determining total income at Rs.67,4087,230/- for A.Y. 2007-08 and assessment u/s 143(3) was completed on 29.12.2010 determining total income at Rs.50,39,46,610/-. Subsequently, the assessment was reopened by issue of notice u/s 148 of the Act dated 29.03.2012 on the ground that out of the total revenue receipts of Rs.2,35,99,69,567/- for A.Y. 2007-08 and Rs.2,23,91,81,914 for A.Y. 2008-09 the revenue receipt from rental income is Rs.28,44,69,390/- for A.Y. 2007-08 and Rs.50,47,05,878/- for A.Y. 2008-09 respectively. Thus the rental income to the total revenue works out to 12.05% for AY 2007-08 and 22.54% for A.Y. 2008-09 respectively. During the course of regular assessment for A.Y. 2009-10 it came to light of the Assessing Officer that assessee has shown the rental income separately in the computation under the head income from house property by which the assessee becomes eligible for deduction u/s 24 @ 30% of the A.L.V. and simultaneously in the P & L A/c the assessee debited expenses which are relatable to income from house property and allocation of such expenses has not been made.

26. Assessing Officer held that during the year under consideration thus the ratio of 12.05% for A.Y. 2007-08 22.54% for A.Y. 2008-09 to the revenue is applicable and the proportionate expenditure is

disallowable from the P & L A/c on account of salary/wages advertisement & sales promotion, security charges, miscellaneous expenses and maintenance to the extent of Rs. 1,78,54,493/- for the A.Y.2007-08 and 6,30,143/- for the A.Y.2008-09 respectively. The assessments u/s.143(3) r.w.s. 147 of the Act was completed on 25.03.2013 determining total income Rs.65,70,03,3601- for A.Y 2007-08 and Rs.46,06,80,500/- for A.Y. 2008-09 respectively.

27. It was contended by learned AR that the formation of reason to belief by the A.0 for reopening of assessment cannot be based on change of opinion. It was further submitted that the material facts relevant for the assessment have been already available with the AO in the assessment made u/s 153A r.w.s.143(3) which was sought to be reopened. The assessing officer who passed the assessment order u/s 153A considered all the materials on record and after due application of mind passed the order with the approval of the higher authority. It was also contended that no reopening is permissible for any change of opinion over the same set of facts and figures.

28. It was further contended by learned A.R. that reopening is void *ab initio* since the reason recorded by the AO has already been considered by him at the time of completion of first assessment. No new tangible material put on record by the AO to form a base / foundation to his belief. It is clear that the AO has reopened the assessee's case merely on change of opinion. Reliance was placed by learned AR on the decision in the case of Sirpur Paper Mills Ltd. (supra) in support of the proposition that no new material between original assessment and reopening was brought on record by the Assessing Officer.

29. We have considered rival contentions and deliberated on the judicial pronouncements cited by the AR and DR during course of hearing before

us and referred by lower authorities in their orders in the context of factual matrix of the case.

30. Addition/disallowance in A.Y. 2007-08 relate to allocation of expenses on proportionate basis in the nature of salaries and wages, advertisement and sales promotion, security charges, miscellaneous expenses and repairs and maintenance expenditure respectively. Ground Nos. 2, 3, 4, and 5 for the A.Y 2008-09 relate to allocation of expenses on proportionate basis in the nature of salaries and wages, advertisement and sales promotion, security charges and repairs and maintenance expenditure respectively. The ratio adopted by AO for the allocation of expenses attributable to House Property is 12.05% for the A.Y 2007-08 and 22.54% for the A.Y 2008-09. The percentage has been arrived by working out the House Property Income as against the total revenues. The total expenses in the above mentioned ratios were allocated on proportionate basis to the house property income and were accordingly disallowed under each of the above heads except the disallowance under the head repairs and maintenance where in the A.O allocated only 10% of the expenses as relatable to business on the ground that the office space is only 10%of the total area and accordingly 90% of the expenses is disallowed being attributable to property income. The issues in these grounds are similar to ground taken in A.Y. 2009-10 in assessee's own case. The proportionate disallowance was confirmed by learned CIT(A) under these heads. Since the facts and circumstances are the same and for the reasons given in the appellant's own case in A.Y. 2009-10 upholding the proportionate disallowance, the disallowance made for A.Y. 2007-08 and A.Y. 2008-09 were confirmed by learned CIT(A). Assessee is in further appeal before us.

31. From the record we found that the return of income was filed by the assessee for the assessment year 2007-08 on 30.10.2007, declaring total income of Rs.59,83,19,758/-. Subsequently, the case was selected for scrutiny and notice u/s.143(2) was served on the assessee. However,

pursuant to the search proceedings in the assessee's premises in the month of February 2008, the assessee's case was centralized and notice u/s. 153A dated 03.10.2008 was served on the assessee. In response to the above notice, the Return of income was filed by assessee on 28.11.2008. The case was selected for scrutiny vide Notice u/s.143(2) dated 03.12.2008. Consequently, assessment order u/s. 153A r.w.s 143(3) dated 29.12.2010 was passed wherein certain disallowances were made by the Ld. A.O. The assessee filed an appeal against the said order before the CIT(A). Thereafter, Order u/s. 250 dated 28.09.2012 was passed by the CIT(A) granting part relief to the assessee.

32. From the record we also found that the A.O. vide the assessment order dated 29.12.2010 had already allocated certain expenses as being attributable to rental income. Hence, the A.O. had passed the said assessment order after considering the materials on record and after due application of mind. In view of the same, the A.O. is now of the different opinion that certain additional expenses need to be allocated to rental income. In view of the facts, the contention of the A.O. to reopen the assessment is merely based on the change of opinion over the same facts and figures which were already available before the A.O. at the time of completion of the assessment 143(3) read with Section 153A of the Act. No new materials or facts have come to the notice of the A.O. Thus, on the same facts and material, now there is a change in the A.O.'s opinion and this change of opinion has been taken as reason to believe that there is an escapement of income which is legally and judiciously incorrect. It is pertinent to observe that in the case of the block assessment pursuant to the search, all the materials recovered in the course of search were available with the A.O. and hence there is no case of non - disclosure of material facts. Accordingly, no reassessment can be made in the assessee's case since the assessee has already been assessed under block assessment for the A.Y's. under consideration.

33. We also found that the Assessing Officer in the reasons recorded has held that while completing the assessment for A.Y. 2009-10 in the assessee's own case, it came to light that assessee has shown the rental income separately in the computation under the head 'Income from House Property' by which the assessee becomes eligible for deduction u/s.24 @ 30% of the Annual Lettable Value. Simultaneously in the Profit and Loss Account the assessee has debited expenses which are relatable to income from house property and as such allocation of such expenses has not been made resulting into Income escaping assessment. Thus, the conclusion of the A.O. for A.Y. 2009-10 cannot be made a base for reopening of the assessment of the earlier assessment years where the A.O. after due consideration of facts has consciously allowed such expenditure. Thus, the conclusion of the A. 0. for A.Y. 2009-10 is nothing but a change in the A.O.'s stand taken in earlier assessment years.

34. In the latest decision of the Supreme Court in the case of CIT v. Kelvinator (India) Ltd. dated January 18, 2010 reported in [2010], 320 ITR 561 affirming the two decisions of the Delhi High Courts - CIT v. Kelvinator of India Ltd. [2002] 256 ITR 1 (Delhi) and CIT v. Eicher Ltd. [2007] 294 ITR 310 (Delhi), it was held that the A.O. can reopen an assessment only on the basis of some tangible material to form reasons to believe that income had escaped assessment. A mere change of opinion could not be a valid ground for issuing a notice u/s.148 of the Act.

35. The ITAT Mumbai in the case of Audco India Ltd. v/s ITO (39 SOT 481) held that where it was clear from the original assessment orders as well as order made by the appellate authority that the Assessing Officer was well aware about the primary facts, viz., the claim made by the assessee, the circumstances under which the claim was made and the provisions of law which could be applied while granting the benefits, and the Assessing Officer consciously considered the facts and arrived at a decision, the

assessment cannot be reopened merely because subsequently the Assessing Officer changes his opinion or some other officer takes a different view. The Supreme Court In the case of CIT v/s. FORAMER, FRANCE (264 ITR *566)* held that mere change of opinion does not confer upon the Assessing Officer to initiate reassessment proceedings u/s. 147 of the Act.

36. The Supreme court In the case of ITO v/s. Nawab Mir Barkat Alt Khan Bahadur (97 ITR 239) held that having second thoughts on the same material, and omission to draw the correct legal presumption during original assessment do not warrant the initiation of a proceeding under section 147 of the Act.

37. Applying the proposition of law discussed hereinabove, we are of the view that an assessment completed u/s. 143(3) read with section 153A of the Act cannot be reopened merely on the basis of change of opinion. In the assessee's case, all the material facts' were disclosed at the time of assessment proceedings and the A.O. after considering the material and after giving due thought, accepted the assessee's claim. The reopening of the assessment for the assessment year 2007-2008 and 2008-2009 u/s. 147 r.w.s. 148 of the Act, in our view, is incorrect and against the various court decisions, as discussed above. As we have already decided the legal ground of reopening in favour of assessee, we are not going into the merits of additions made by AO, part of which was deleted by CIT(A) and part was upheld. However, in respect of relief given by CIT(A) revenue is not in appeal before us.

38. In the result, the appeals for A.Y. 2006-2007, 2007-08 and 2008-09 are allowed, in terms indicated hereinabove.

I.T.A. No. 51/Mum/2015 and 241/M/2015 (A.Y. 2009-10)

39. These are cross appeals filed by the assessee and revenue against the order of CIT(A) dated 12.9.2014 for A.Y. 2009-10 in the matter of order passed by AO u/s. 143(3) of the Act.

40. With regard to addition of deemed rent under Section 23(1)(c), the facts in brief are that the assessee is the owner of the commercial premises situated at Lower Parel (phoenix Mills Compound) which is a combined complex / structure of various buildings which are separately identified for the business purposes. The areas are further divided into separate units which are provided on lease to various tenants. During the year certain properties of the assessee were vacant. The AO during the assessment proceedings required the assessee to provide details of the vacant premises if any. The assessee provided the details of the vacant property. As per the details provided the properties which were vacant during the entire year were as under:

Sr.No.	**Property**	**Area (Built up Sq.ft)**	**Reason for vacancy**
1	Boulevard	2,020 sq.ft	The property was being used as a godown by the assessee during the year
2	Grand Galleria	817 sq.ft	The property could not be let out as the same was under repairs during the year
3	Sky Zone 1	1,531 sq.ft	This property could not be let out as the assessee could not find a competitive customer for renting out the same. The same was subsequently let out.
	Total	**4,368 sq.ft.**	

41. The AO proceeded to compute the annual letting value of the above 4,368 square feet by applying an ad hoc rental value of Rs. 119 thereby

adding Rs. 62,37,504 to the total income of the assessee. A.O. ignored the appellant's submissions, and by invoking the provisions of section 23(l)(c) of the Act computed the annual letting value of the above 4,368 square feet of the vacant premises at Rs.62,37,504 by applying rate per sq.ft. at Rs.119 as per the rental agreement dated 02.07.2008 pertaining to property given on rent. Thus the AO vide its Assessment order dated 27.12.2011 added Rs.62,37,504 as ALV u/s.23(l)(c) in the total annual rent received as per the return filed.

42. By the impugned order CIT(A) confirmed the action of AO by observint that there was no indication that properties were intended to be let out. Assessee is in further appeal before us.

43. We have considered rival contentions and gone through the orders of the authorities below. With respect to the first property, Boulevard we found that this premise was used by the assessee for its own business purpose as a godown for storing records. Charging section 22 leaves out the property which assessee occupies for the purposes of any business out of the ambit for chargeability purposes and therefore, no additions can be made on account of the fact that the properties were used by the assessee for its own business purposes. Two of the above mentioned properties i.e. Grand Galleria and Sky Zone 1 could not be put on rent for genuine reasons such as unavailability of customers and some repair work was also going on in these properties. Considering the fact that the appellant is into the business of running commercial premises i.e. a mall, units of which are provided on lease to various tenants, it is obvious that the

appellant would have taken sufficient efforts to let out the property. No reasonable business person would not want to let out his premises at the loss of revenue if any opportunity exists. Hence, AO's assumption that the properties were not intended to be let out is an erroneous one.

44. From the record, we also found that two vacant premises in question were let out in the subsequent financial year 2009-10 as soon as the same were suitable for let out and competitive customers were available. It is therefore clear that such premises were intended to let out.

45. The provision of section 23(l)(c) of the Act clearly lays down that in case where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (a), the ALV would be actual rent received or receivable by the owner in respect thereof. In this case, since the two properties were vacant for the whole year, in light of the said provisions, the appellant will be entitled to vacancy allowance. Accordingly, we do not find any merit in action of AO for making addition under Section 23(1)(c) of the Act.

46. Similar addition has also been made by the AO in the assessment year 2010-11 amounting to Rs.28,84,560/-. Following the reasoning given by us for assessment year 2009-2010 hereinabove we do not find any justification for the addition so made on account of deemed rent. Accordingly AO is directed to delete the same.

47. Rival contentions have been heard and record perused. Facts in brief are that the Assessing Officer had bifurcated and disallowed certain expenses claimed by the assessee as being incurred in respect of the business Income by treating the same as having being incurred towards the earning of rental Income. The additions have been made under the heads legal and professional charges, Salary and Director's remuneration, security charges, advertisement and sales promotion, repairs and maintenance as well as miscellaneous expenditure. The moot issue herein is the rationality for allocating the expenses between two heads of income - Business income vis-à-vis Income from house property.

48. From the record, we found that the assessee began operations as a textile manufacturing company in 1905, on 17.3 acres of land In Lower Parel, Mumbai. During late 80's, the assessee ventured into real estate market through development of "High Street Phoenix" (HSP) mall. The assessee had developed a mall with around 5 million square feet of retail space currently leased at its projects. The construction of the "immovable property" which houses the retail space to be let out is done by the assessee himself. All the direct and ancillary costs related to the construction were capitalized. However, no portion of the said cost was claimed as depreciation by the assessee in current year as well as in subsequent years. The said aspect is important to note in view of the aspect of allocation of the expenses. The assessee has not claimed depreciation on the mall by not claiming depreciation on the immoveable property that it had constructed and subsequently lets out, the assessee clearly signifies its intention of not claiming any expenses under the head of Income from House property. This also signifies one important

contention that the once an immovable property is ready and leased out, no further expenses are incurred by it towards the same except for municipal taxes and routine repairs. The income structure of the assessee for the year under consideration was under :-

Sr.No.	Particulars	Amount (Rs)
1	Sales (Cloth – Business Income)	83,50,855
2	Service Charges(Business Income)	31,21,98,241
3	Sublease income (Business income)	4,20,57,660
4	Income from Events (Business Income)	83,57,858
5	License Fees and rental income (income from House Property)	53,05,30,216

49. As evident from the above table, the assessee had earned the income from business and profession amounting to Rs. 37,09,64,614/-. The same includes Rs. 83,50,855/- pertaining to Cloths business and Rs. 31,21,93,241 pertaining to other service charges as well as income from events. The aforesaid presence of income from cloth sales itself is evident of the fact that the action of AO in arbitrarily allocation of expenses is bad in law. The cloths business of the assessee was the main business of the assessee in the earlier years. It is also to be noted that assessee has incurred the various expenditure in relation to the cloth business also. Trading activities of garments which required specific employees, the assessee has suffered the huge losses in the said business in the past and' also incurred substantial expenditure on the same in the present.

50. From the record we also found that the assessee has offered service charges income of Rs. 31,21,98,241/- under the head "business and profession". The said service charges are earned by the assessee in form of Common Maintenance Charges (CAM). The break up of the same would reflect the nature of the business activities of the assessee -

Service Charges Break up

Particulars	**Amount (Rs.)**
Common Area Maintenance, Marketing Promotion, other amenities viz., water drainage, supervision etc.,	25,11,99,479
Electricity Charges	3,65,73,471
Prop Tax received	2,25,33,242
Parking	15,51,806
Other	3,40,243
Service Charges	**31,21,98,241**

51. It is clear from the above that the act of leasing out the premises is only one aspect of the assessee's business. Once the premises have been let out, the assessee proceeds to provide another aspect of its services which is more important to the lessee and is of significant nature. As per the facts of assessee's case we found that the lessee of the assessee's premises doesn't expect mere commercial space but also expects a full bouquet of services in the space which forms crux of today's mall culture. To elaborate the importance of composite service it is pertinent to mention that today's mall have become one stop destination for all age groups for leisure, entertainment & shopping as well as food. Accordingly, the company building a mall cannot restrict its activity to build and lease the mall. In fact it has to continually strive to find ways to increase footfalls and ensure that all the lessees harmoniously co-exist and expand the business. Further, the lessee expects that the lessor suitably assists him in doing business smoothly and growing the same.

52. From the record we find that in addition to the rental activity, the assessee further provides bouquet of additional services and amenities like -

1. Mall maintenance - Assessee takes care of the common area of mall including its cleanliness and attractiveness
2. Electricity for common areas
3. Various promotions and advertising - To increase the overall footfall in the malls
4. Security - for the entire mall and smooth functioning of the

same.

5. Parking for the entire mall

53. The provisions of the aforesaid activities are crucial for a complete service package to the lessee. Further, the assessee being the developer of the commercial space and having relations with all the lessesees is in unique position to offer these entire bouquets of services. Accordingly, the assessee agrees to provide a full basket of various services to its tenants under the contractual obligation. These services are integral part of assessee's business and accordingly the same are rendered on a cost plus-basis i.e. the assessee clearly earns profit in undertaking the said activity. The income from the said activity is termed as "Service charges" and is offered by assessee under the head "Income from Business"

54. From the record, we also found that the assessee incurs expenditure for all the services mentioned above and recovers the same from the tenants based on an agreed rate so as to recover its costs and earn profit on the same; the activities as stated above are treated as business of the assessee and the service charges net of the actual costs is offered as "Income from Business & Profession". Moreover, during the year under consideration, the assessee has organized various promotional events in its premises for which it receives income from events and the same is offered as "Business income". The relevant clauses of service charges Agreement which was submitted **before lower authorities reads as under :**

> *"3) It is agreed and understood by the LICENSEE that in addition to the Minimum Guaranteed License Fees or License Revenue Share as the case may be, the following amounts shall be payable to the UCENSOR on or before the* 7th *day of... each and every month.*
>
> *i) Common Area Maintenance ("CAM") charge for the entire period of 36(thirty six) months commencing from June 1, 2008 to May 31, 2011 @ Rs. 15/- (Rupees Fifteen only) per sq. ft. on built up area, amounting to. Rs. 35,595/- (Rupees Thirty Five Thousand Five Hundred and Ninety Five only) per month in advance subject to deduction of tax at source. CAM charges shall be payable from June 1, 2008, and shall become due-for*

payment on or before the 7th day of each month.

Common Area Maintenance includes:

a. Regular cleaning of the common areas of Courtyard, including the said Mall and elevation of the building outside the Licensed Premises.

b. Security Services for the common areas of Courtyard, including the said Mall (not for the Licensed Premises)

c. Lighting of common areas.

d. Provision of chill water supply into the air-handling unit upto the Licensed Premises, charged under 1113 vi

e. Regular repairs and maintenance of the said Mall.

f. Expenses towards utilities as diesel and other consumables that are required for operating the said Mall.

g. Cost of the mall management staff expressly working for the said Mall.

It is agreed by the Parties that for any reason the maintenance charges increases above the rate contemplated herein (including the escalation in CAM charges as mentioned hereinabove), during the entire tenure of this License, then the same shall be paid by the LICENSEE without any demur or protest after details for the same submitted by the LICENSOR.

ii. Electricity charges, water charges and other utilities if any payable within 3 working days of presentation of the invoice at costs.

iii. Recovery ***of Electric Installation*** **and** ***Electricity supply*** *costs - The LICENSOR has informed the LICENSEE that the LICENSOR receives High-*

_____Tension electric supply from TATA Power and LICENSOR has installed its own *equipment machinery _____ at considerable cost to convert this electricity from High-Tension to Low-Tension for use by the LICENSEE. For costs incurred towards capital equipment,* running and *manpower cost, return on investment for the transformers, distribution panels for the* supply of *electricity, provision of cables from the transformer house to the Licensed Premises, maintaining sub-station and engineers, staff and workforce for the same, transmission losses, stepping down costs from HT to LT, insurance for unforeseen circumstances and all recurring expenses for the above services and* any *service tax* and duties *thereon, the LICENSOR shall recover from the LICENSEE costs* at the following rates:

Power consumed in Units (KW)	**Amount in Rs.**
0-25	Rs. 1.25 per unit
25-50	Rs. 1.50 per unit

50-100	Rs. 1.75 per unit
Anything above 100	Rs. 2.00 per unit

iv. ***Marketing and Promotion expenses*** *per square foot of the Licensed Premises shall be paid by the LICENSEE as its* contribution towards costs *incurred by the LICENSOR towards promoting the Mall for the period commencing from June 1, 2008 to May 31, 2011 Rs.5/- (Rupees Five only) per sq. ft on bunt up area, amounting to Rs. 11,865/- (Rupees Eleven Thousand Eight Hundred and Sixty Flue only) per* month *in advance subject to deduction of tax at source. Marketing* and *Promotional charges shall be payable from June 1, 2008 and shall become due for payment on or before the 7th day of each month.*

This money shall be used for the joint promotion of the LICENSEE and *the other occupants* at *the said Mall by the LICENSOR, at ..its sole discretion. It is clarified that this will be for the overall promotion of the said Mall, generating incremental traffic/ business* to *all occupants. The said Mall's marketing program would be intimated to all occupants in advance,* on a *periodic basis.*

v. **Parking *charges:*** *The LICENSOR* is *evolving a suitable system of parking for said Mall. The details of the scheme will vary and the relevant charges will be modified. Presently the LICENSOR levies a. fee of Rs.4/ - (Rupees Four only) per square foot* per month, on *the built up area and* this *shall be payable by the LICENSEE with effect from June 1, 2008.*

vi *Recovery of Air Conditioning Usage* and *equipment Costs:*

- *The cost* under *of* running *and maintaining the system by the LICENSOR in operating condition namely:*
- *Electricity cost of the AC system*
- *Maintenance and repair charges*
- *Consumables*
- *Annual Maintenance Contract charges*
- *Replacement area air conditioning (on the basis of area).*

Vii. Service Tax and other taxes: It is agreed by and between the LICENSOR and the LICENSEE that any *Service tax or other tax that may be levied relating to* or *arising out of the Licensed Premises being given on leave and license and/ or receipt of compensation or charges as set out in this license and borne and payable by the LICENSOR shall be added to the* Minimum *Guaranteed License Fees/ License Revenue Share payable by the LICENSEE and other fees/ charges/ costs payable in accordance with this License* and *the LICENSEE shall be liable to pay the same to the LICENSOR.*

viii. Property Taxes as leviable by the BMC or any other statutory authority amounting collectively to over Rs.5/- (Rupees Five only) per square foot.

ix Late Payment, it is agreed that if the Minimum Guaranteed License Fees/ License Fees/ License Revenue Share and/ or *any other charges payable under this agreement remain outstanding for* a *period of 10 days from the* due date,*

the LICENSEE shall be liable to pay such arrears together with interest thereon @ 18% p. a. till the date of payment and if such arrears remain outstanding beyond 30 days, then the LICENSEE shall be liable to pay such arrears together with interest thereon Q24% p.a. till the date of payment The computation shall be on the basis of 360 day year comprising twelve 30 day months.

It is *further agreed, if such arrears remain but standing beyond 60 days, then such non-payment shall constitute a Material Breach as defined in Clause VIII (i) below. It is also agreed that in case such arrears remain outstanding beyond 60 days, then the LICENSOR shall be at liberty to disconnect all services, including electricity and water supply to the Licensed Premises."*

55. We have carefully gone through the relevant clauses of agreement. It is clear from the above clauses that as per the contractual obligation the assessee is required to incur lot many expenses which would be significantly higher than the expenses that would have been incurred if the assessee would stop its activities and be just a mere lessor. Thus the work of the assessee not gets over once building constructed and given on leases. The business of the assessee is managing and maintaining the mall so the footfall of the customer will always increase. The one of the phase of building called "Palladium" was developed for international luxury brands. Palladium is a one of a kind mall in India which houses more than 90 premium brands from world's leading fashion houses. Hence, to retain the said brands the assessee had to have incurred the expenditure in relation to maintain the mall as per the requirements of the international brands.

56. We had also carefully gone through the order of the AO and found that the AO firstly picked certain heads of expenses from the P&L account and allocated it to the income from house property thereby disallowing the claim of the said expenses against the business income. The majority of the allocation was done on revenue basis i.e. the revenue of the company during the year under consideration is Rs. 140.65 crores (As modified to the extent of deemed rental amounting to Rs 62,37,504). The revenue comprised two components namely "Rental Income" & others. The revenue from the rentals had been considered under the income from house property. The income offered under the House

property was at Rs 53.67 crores and the balance revenue of Rs. 86.98 crores from the other than rental. Thus the ratio of the 'Rental Income' to the 'income other than rentals' is 38.16%.

57. It was contended by learned AR that the accounting and management system of the assessee was developed to segregate each expenditure at its origin and only expenditure pertaining to business is claimed. Thus, there is no incurrence of specific expenses by the assessee for its rental activity and hence no additional disallowance can be made. In furtherance to the above and based on the disallowances made in the previous years, the assessee had voluntarily, disallowed expenses related to rental Income In Its computation of Income. The assessee has on its own disallowed the following:

- Building Repairs of Rs. 9,95,951 disallowed based on the proportions accepted by the department in the previous years
- General Charges of Rs. 9 1,60,028 disallowed proportionately
- The assessee has not claimed depreciation on Buildings which has been rented out amounting to Rs 14,24,89,208.

58. It was also contended that since the assessee has on its own had not claimed expenses/deduction that are relatable to rental activity, there is no requirement to disallow the further expenses as made by AO. Thus the entire allocation of expenses as contemplated by the learned AO on the basis of revenue was argued to be completely devoid of any merit and accordingly needs to be set aside. Revenue of the assessee may undergo change due to numerous internal as well as external factors but that will not and should not impact the allowability of its legitimately claimed expenses. For eg. on the basis of facts stated above, how the AO can proceed to allocate security expenses which are completely recovered by the assessee in its CAM charges and offered as income under business head. Accordingly, the moot issue is that the assessee's business is a consolidated and interlinked one and hence disallowances made by allocating from one head to another would be completely devoid of merit.

59. Reliance was placed on the following judicial pronouncements in support of the contentions that no allocation can be made in case of a consolidated business:-

- **56 ITR 77- CIT v/s Indian Bank (SC)**
- **242 ITR 250 – Rajasthan Warehousing Corpn Ltd v/s. CIT(SC)**
- **55 ITR 17 – CIT v/s Chugandas & Co. (SC)**
- **32 ITR 688 – United Commercial Bank v/s CIT(SC)**
- **82 ITR 452-CIT vs/ Maharashtra Sugar Mills (SC)**

60. As per learned A.R under the provisions of section 37 of the Act, the entire expenditure be held to be allowable as a deduction since the assessee had even offered service charges to tax under the head 'Income from Business. In 'case the deduction for expenses is not allowed then there will be a case, wherein the assessee won't be given the deduction for the expenses incurred by 'the assessee for the purpose of its business, which is not the intention of the Income Tax Provisions.

61. Our attention was also invited to the Tribunal order in assessee's own case for A.Y. 2000-01, wherein the Tribunal has given a finding to the effect that the assessee's business is one consolidated business and the allocation of expenses based on the revenues cannot be made. Precise observation of the Tribunal was as under :-

> "Contention raised before the lower authorities were reiterated here before the Tribunal. It was _further submitted that the business of the assessee is a consolidated business and the expenditure incurred by the assessee is incurred only for consolidating the business, therefore, the same is allowable. Attention of the Bench was drawn on pages 225 to 227 of the paper book where copies of invoices are placed. On the other hand, the ld DR placed reliance on the orders of the authorities below."
>
> "After considering the submissions and perusing the material on record, we find that the claim of the assessee raised in ground no. 2 is allowable. We have seen the invoices placed in the paper book and found that the amount paid towards professional fee for

> identifying and securing client for commercial premises, fee for consultancy for marketing and technical services and professional fee rendered for planet was for business purposes and the same is consolidated business, therefore, the same cannot be segregated. Therefore, in our view, the disallowance made by the lower authorities was not justified. Accordingly, we direct the A.O. to allow the claim of the assessee in full."

62. In view of above it was argued by learned A.R that in the assessee's own case it has been held that the disallowance cannot be made when the assessee is undertaking one consolidated business since the expenses cannot be bifurcated into the various heads. Hence, it was requested that the Assessing Officer be directed to grant allowance for the expenses incurred u/s 37(1) of the Income Tax Act.

63. On the other hand learned D.R relied on the orders of the lower authorities and justified the view taken by AO for proportionately disallowing the expenses based on respective revenue receipt by assessee.

64.We have considered the rival contentions and found that disallowance of legal and professional expenses of Rs. 2,36,30,828/-, was made by AO out of a sum of Rs. 4,28,91,270/- claimed by assessee as Legal and Professional fees being incurred for business purposes.

65. The Assessing Officer disallowed out of total claim the payment made to M/s. Jones Lang Lasalle Meghraj Property Consultants Pvt. Ltd. amounting to Rs. 1,17,45,666/. Out of the other expenses of Rs. 3,11,45,604/-, Assessing Officer proportionately disallowed in the ration of 38.16%, which works out to Rs. 1,18,85,162/-. Thus out of total claim of expenses of Rs. 4,28,91,270/-, the Assessing Officer had disallowed a sum of Rs. 2,36,30,828/-. By the impugned order CIT(A) confirmed disallowance

of Rs.1,63,67,309 and deleted disallowance of Rs.44,82,147/-. Against this order of CIT(A) both assessee and revenue are in appeal before us.

66. After going through the nature of service rendered by this professional, we found that the expenditure of Rs. 3,11,45,504/- was related to the business activities of the assessee. There are no direct nexus between those expenditure and rental Income of the assessee. Further, there would have been no change in the legal expenditure if the assessee company did not earn the Income from house property. Accordingly the legal expense of Rs. 3,11,45,604/- was allowable as business expenditure.

67. We have carefully gone through the detailed breakup of the said expenditure of Rs. 3,11,45,604 which had clearly revea1ed the exact nature of the said expenditure and also substantiate as to why the action of treating the same as incurred for the purposes of earning House property Income is incorrect.

Sr.No.	**Particulars**	**Amount (Rs.)**	**Nature**
1.	Axis Integrated Systems Ltd.,	9,97,898	Consultant for getting EPCG License for exports
2.	Green Circle Consultants India Pvt. Ltd.,	75,000	Environmental, safety standards audit fees
3.	ICRA Limited	3,25,000	Rating fees for Bank Loan
4.	Imrb International	2,42,800	Market Research – Customer Satisfaction
5.	Mukesh Nariandas Chhatpar – H.U.F.	75,000	Charges for sewage, pest control
6.	Rajiv Saini & Associates	8,00,000	Design Consultancy charges
7.	Jennifier Iyer	7,50,000	Professional Fees
8.	Sujit Shetty	5,50,000	Professional Fees
9.	Empress Estates	7,47,938	Professional Fees
10.	I & S Enterprises	55,000	Professional Fees
11.	Rahul Balaji	4,69,000	Fees for title Report

12.	Crisil Limited	4,00,000	Syndication fees for rating
13.	Paradigm Esop Consultants (P) Ltd.,	60,000	ESOP Consultant
14.	Digital Radio (Mumbai) Broadcasting Ltd.,	8,40,800	Advertisements services of Mall
15.	Sunil S. Shah and Associates	75,000	Professional Fees for reviewing the construction
16.	Collins Steward Inga Pvt. Ltd.,	10,00,000	Advisory Services for QIP
17.	Shashank Mehendale	2,22,965	Design Professional
18.	Mozaic	1,00,000	Designing Charges
19.	Farzana Mojgani	35,31,500	Retainer fees
20.	Citigate Dewe Rogerson	10,50,000	Financial advisor
	Recruitment Charges		
1	Access Jobs India.com	7,75,877	Fees for Tie up with the job portal
2.	Catalyst consulting	3,36,494	Consultancy fees for Recruitment consultants
3.	Rite Choice Consultants Pvt. Ltd.,	1,50,000	Consultancy fees for Recruitment consultants
4.	S & S Manpower Consultants	1,80,200	Consultancy fees for Recruitment consultants
	Total (B)	**1,38,10,472**	
	Other small items below 50,000 (C)	**16,30,951**	
	Total (A+B+C)	**3,11,45,604**	

68. As per the breakup available on record we find that the amount has been paid on ground of tax consultancy charges, company law matters, internal audit fees, advisory matters, consultancy in relation to indirect tax matters, legal fees for appearing and conducting filing vakalatnama suit No. 59/68 of 2008, legal fees for appearances on various law matters, legal fees for attending court matter, professional fee paid for appearing before the Commissioner of Central Excise, legal charges for various conference, professional charges for attending to clients representatives for various legal issues, payment made to Chartered Accountants, professional fees in connection with attending to stamp duty adjudication matters, which are

essentially in the nature of services rendered for earning income offered under the head business income.

69. We found that the headings for the bifurcation i.e. the expenses specifically no related to rental Income as well as Income mandatory for running of business clearly reflects the rationale for not allocating the expenses to earning of income from the house property. The nature of expenses clearly establishes the purpose for the incurrence of the expense and it is self evident that the same doesn't relate to *the* earning of income from house property. Only on the basis of the rationale that the income of the assessee is taxed in two heads of income, there is no justification in the AO's stand to apportion the expenses between income from house property and income from business and profession. *T*here was no tangible evidence before the Assessing Officer to show that the above expenses were specifically incurred for earning income from house property. However, expenses in relation to the property consultant - M/s Jones Lang Lasalle Meghraj Pro Consultants Pvt Ltd may be considered as related to the renting as well as the business income of the assessee as being held by the CIT(A) Mumbai in the case of assessee for AY 2008-09 It is to be noted that the said expense has been completely disallowed by the AO in the order. Thus in the ratio of income receipts, we allocate expenses paid Jones Lang LasalleMeghraj Property Consultants Pvt. Ltd., as attributable for earning income from house property.

70. From the record, we found that during the year under consideration, the Ld AO had disallowed the 38.16% of expenditure treating the same incurred towards House Property Income. Accordingly, we direct the Assessing Officer to allocate the professional expenses relating to M/s Jones Lang LasalleMeghrj Pro Consultants Pvt. Ltd in the same ratio. Accordingly, we direct the Assessing Officer to disallow an amount of Ps. 44,82,146/- (38.16% of Rs. 1,17,45,666) out of said expenses relating to Jones Lang Lasalle. Thus we allow balance expenditure of Rs. 72,63,520 out of the total

expenditure of Rs. 1,17,45,666 paid to M/s Jones Lang. The same is as per the consistent view followed by the Mumbai ITAT & CIT(A) in the appellants own case for the previous years.

71. The Assessing Officer has also disallowed salary and directors remuneration by allocating the same to the income from house property amounting to Rs. 1,80,04,502/-.

72. Rival contentions have been heard and record perused. From the record we found that the assessee in its Profit and Loss Account debited Rs.5,48,98,019 as aggregate of staff cost and remuneration to directors. Out of the same, a sum of Rs. 77,16,410 was already disallowed by the assessee as unpaid gratuity and leave encashment. Out of the balance amount of Rs. 4,71,81,609, Ld.AO applied the proportion of 38.16% and accordingly disallowed a sum of Rs. 1,80,04,502 as being proportionately related to income from house property.

73. We have already observed hereinabove the basic structure as well as the income components of the appellant's business. The assessee receives rental income from these stores / shops and offers the same under the head "Income from House Property" and also service charges which is offered under the head of “business income”. In regards to the employee cost of Rs. 5,48,98,019 we found that the said expenses consists of salaries paid to administration staff, operational staff, staff cost related to garment business etc. The detailed function wise breakup of the said expenses is as under :-

Particulars	**Amount**
ACCOUNTS & FINANCE	13,758,739
ADMINISTRATION	685,077
PURCHASE & STORES, RETAIL SHOP AND SALES	1,534,079
LEGAL	2,648,132
MARKETING	2,225,717
OPERATIONS VIZ SUPERVISION, WATCH, WARDS &	9,174,601
PEONS ETC.	

74. With regard to the salary of the operational staff of Rs. 91,74,601 out of the total salary expense, we found that the said staff is engaged for the upkeep and maintenance of the mall. The liability to maintain mall arises out of the contractual obligations. In respect of the same, the assessee clearly earns CAM charges which are offered under the business head. Accordingly, how the same can be considered for the purposes of house property. The entire mall management exercise starts after the activity of leasing has ended. However, the AO had allocated the same to income from house property without cogent reasoning**.**

75. We have carefully perused the record with regard to balance of expenses and found that salaries related to Accounts and Finance Team, Legal Staff, marketing staff etc are indivisible cost which cannot be linked to any particular activity of the assessee company. The assessee has to incur such expenses irrespective of nature of income earned by the assessee company. The said expenses cannot be said to be incurred for any particular activity of the assessee company. As regards, salaries paid to staff concerning to garments, the same is clearly linked to business activity concerning garments business. As regards, other expenses viz salaries incurred on the staff related to Marketing and Supervision, we found that assessee is in business of providing amenities to its tenants as well. The assessee has to ensure that the entire complex is marketed so that the people are attracted to visit the same. The assessee has deployed marketing staff who cater to the marketing and promotional activities of clients. Further salary paid to director and their sitting fees is paid under the limits prescribed by the provisions of the Companies act. The same cannot be allocated as per the income of two different heads. On perusal of the assessment order, it is observed that the Ld. AO is of the view that the directors of the company have allocated their time to the earning of house property income., which is not correct.

76. In view of the above discussion, we found that the assessee has proved the entire gamut of the appellants business activities which is a composite one. Expenses on account of director remuneration are indivisible cost which cannot be linked to any particular activity of the assessee company. Directors of the company are managers who form the strategic vision of the company and they are responsible for the overall growth of the company. Their remuneration is incurred irrespective of nature of income earned by the assessee company. The said expenses cannot be said to be incurred for any particular activity of the assessee company.

77. We also found that the assessee has a combined financial and admin team. The major focus of the staffs was upon the actual recovery of common facility as per facility provided to the tenants. Practically what is required for the house property income is to recover the rent and account the same. For working the same, there is no requirement of highly qualified person the same can be done by the any lay man. Keeping in view these peculiar facts and circumstances of the case, we direct the AO to restrict the disallowance of staff cost to the extent of Rs.12.00 lacs being incurred for earning rental income. Accordingly, disallowance under the head staff cost is restricted to Rs. 12.00 lacs.

78. The Assessing Officer has also disallowed repairs and maintenance expenses by reallocating Rs. 1,52,76,903/-to income from house property.

79. We have considered the rival contentions and found that during the captioned assessment year assessee had debited a total sum of Rs. 1,80,80,948 as repair expenses in its P&L account. The break of the repair and maintenance is as under:-

Particular	**Amount**
Repair to Buildings	14,22,787
Repair to Machinery & Vehicles	57,71,550
Other repairs	1,08,86,611
Total	**1,80,80,948**

80. The treatment of the above expenses by the assessee himself and the subsequent disallowance made by the Assessing Officer in the assessment order is as follows :-

Particulars	**Disallowance**	**Basis**
Considered by assessee himself as pertaining to House property –Suo-motu disallowed by assessee	9,95,951	70% of the repair to buildings
Additional disallowance	**1,52,76,903**	
Considered by AO as pertaining to House property	1,62,72,854	90% of total repairs. Balance 10% is allowed under Business holding the same to be for the assessees own office

81. Out of the total building repair expenses of Rs. 14,22,787/-the assessee suo moto had disallowed 70% which works out to be Rs. 9,95,951/-. However, the Assessing Officer had made additional disallowance of Rs. 1,52,76,903/-. Out of which the Assessing Officer considered 90% of the total repairs which works out to be Rs. 1,62,72,854/-as pertaining to house property. Thus, only 10% was allowed under business holding the same to be for the assessee 's own office.

82. It is clear from the expenditure so allocated by the Assessing Officer that the Assessing Officer himself had holding varying contentions on the issue of allocation. From the record we found that for the allocation of other expenses, the AO had considered base of proportionate revenue received under house property vis-à-vis business. However, while making the additions for repairs and maintenance the AO had considered 100% repairs as being incurred for income from house property. Only allowance given was for

10% stating it to be incurred for assessee's own office. On the one hand the AO considers salary expense as 38.16% allocable to Income from house property and on the other hand the learned AO considers entire 100% expense of repairs to building/machinery/others all allocable to income from house property. So the AO is of the view that no repairs are required for the earning service charges. How can the same even be contemplated? Just a cursory glance at the above reproduced portion of the lease agreement will reveal that the repair expense is absolutely essential to earn CAM charges.

83. We have carefully gone through the Lease agreement so placed in paperbook which clearly provides for common area maintenance to include regular cleaning of the common areas of Courtyard, including the said Mall and elevation of the building outside the Licensed Premises. Regular repairs and maintenance of the said mall. Thus, it is clear from various clauses of lease agreement that the assessee is responsible for-regular upkeep of the common areas of the mall. However, the assessee is not responsible for the repairs inside the leased premises i.e. the shop in the mall. It is the portion other than leased portion which is the responsibility of the assessee. And the assessee earns CAM charges for the same. Accordingly, no portion of the repairs is allocable to income from house property as the repairs to the lease house property is no way responsibility of the appellant. Eg. if M/s Pantallons (lessee) carries out expenditure for repairing of lights in its rented premises than M/s Pantallons (lessee) will pay for the same and not the assessee. So the question of assessee incurring repair expenses for the rental income doesn't arise at all.

84. As per our considered view disallowance of any expense under business and profession can only be made if such expense is carried out for earning income from any other head or earning exempt income. However in the assessee's case the same does not hold true. The assessee has incurred repairs and maintenance in order to keep its mall in an arrangement which will attract customers and for general maintenance of

common area. Further the said expenses are carried out for maintenance of common area which is part of the mall and not of shops/premises from which rental income is earned. The breakup of other repairs amounting to Rs. 1,08,86,611/- which clearly shows that the expenditure incurred for the purpose of common area maintenance are as under :

Particular	**Amount**
AMC on office Equipments	16,49,407
Repairs & Maintenance of furniture & Fixture	33,63,060
Repairs & Maintenance – Sundry	58,74,154

85. The breakup of sundry repairs are as under:-

Date	**Party**	**Debit(Rs.)**	**Remarks**
31/03/2009	Otis Elevator Company (India) Ltd.,	3,50,000	General service and replacement of parts of 2 nos of elevators at Grand Gallerisa
10/11/2008	Otis Elevator Company (India) Ltd.,	3,30,000	Purchase of parts of lifts and general service
09/02/2009	Image Decorators	3,10,000	Sales light, rope light, running patta, tree pipe light with wiring at Pml Diwali event
30/03/2009	Image Decorators	1,91,010	Acrylic exterior paint and towards service charge for applying on life style wall
04/03/2009	Laxmi Enterprises	1,37,747	General maintenance of Mall compound Alley between Mcdonalds & Pantaloons

86. All the items in the said ledger reflect the items of similar nature and the entire ledger was also submitted before the learned AO in the assessment proceedings. It is evident from the narration of the above entries that the said expenses have direct link between the assessee's business activity of Common Area maintenance. In no way the same can be linked to the earning of income from house property.

87. Before parting with the matter it is also pertinent to note that while computing the total income, the assessee has suo-moto disallowed 70% of total repairs pertaining to the building repairs. Hence, the assessee disallowed the proportions of building repairs amounting to Rs. 9,95,951 being related to let out portions out of the total building repairs of Rs. 14,22,787. It is important to note that the same ratio is already accepted by the department in the earlier years and there was no addition made by the department on accounts of repair and maintenance. Even on the principle of the consistency, how can the assessing officer take a new view to disallow the repair and maintenance at 90%. In view of the above facts and circumstances, we direct the AO to restrict the disallowance of repairs of building to the extent of Rs.9,95,951/- as offered by assessee.

88. Next grievance of the assessee, relates to disallowance of expenses under head advertisement/sales promotion, by reallocating the same from house property amounting to Rs. 1,71,53,581/-.

89. Rival contentions have been heard and record perused. From the record we found that during the year under consideration, the assessee had debited in the profit & loss account a sum of Rs. 4,49,51,731 towards advertisement and sales promotion.During the course of the assessment proceedings the assessee submitted the details before the Ld. AO. In the assessment order, the Ld. A0 applied the proportion of 38.16% and accordingly disallowed a sum of Rs.1,71,53,581 as being proportionately. By the impugned order the CIT(A) had confirmed the action of AO. It was argued by learned A.R that there is no justification in allocating this expenditure between the service income and rental Income since the promotional expenditure related to the mall is recovered by the assessee and offered for tax under the head of the business income. However, the A.O. ignored the assessee's submissions and bifurcated the said expenses in ratio of the income earned. The A.O.'s action in bifurcating this

expenditure between the business income and rental income is without merit. The bifurcation has been done by the A.O. mechanically without appreciating the facts. The assessee is running a composite business, advertisement and promotional activities needs to be taken for advertising its cloth products. The A.O. could not disallow the expenditure on presumption.

90. We found that the assessee promotes its mall as a lifestyle destination to attract footfalls. The entire expenditure is to promote the mall/ as a whole. Further, the expenses debited under the head advertisement and sale promotion also include expenses related to the events and signages put up at various places, the income from which has been booked as income from events and offered to tax under the head "Business Income". The said head also includes various expenses incurred towards various promotional activity undertaken in the common premises of the mall.

91. Learned AR invited our attention to the chart indicating the nature of expenses incurred on account of advertisement/sales promotion which reads as under

Party Name	**Amount**	**Nature**
Ajit Enterprises	24,52,393	Electronic fabrication in the foyer
INX Media Pvt. Ltd.,	42,19,070	Formulaitng videos for common foyer
Maitri Signages	11,22,961	Signs in the foyer
Marc Robinson	1,50,000	Model coordinator for events
Media Fusions	13,70,704	Movable hoardings
Paprika Media Pvt. Ltd.,	14,43,000	Advertisement provided in magazines
RMG Connect	25,70,291	Relationship management with brand
Tbwa Anthem Pvt. Ltd.,	22,35,575	Advertising agency
Tea Promotions & Events Pvt. Ltd.,	16,30,975	Event Organiser

92. The above list is evidence of the fact that the entire expenses is incurred for promoting the business activity of the assessee. It can never be

allocated to a particular revenue stream as done by the AO at the assessment stage.

93. From the record we also found that the expenditure incurred for the advertisements and promotional activities were recovered from the tenants and such recoveries were included under the head Service Charges. Clauses for recovery of such expenses from the tenants are evident from terms of lease agreement.

94. Thus as per clause of lease agreement, the assessee is responsible for advertising its mall as over and above of rental charges, Rs. 5 per sq feet is collected from the licensee. Further the recovery of such charges are offered for tax under the head business and profession in form of security charges. Therefore if an income is earned under one head, than how can expenses relate to such income be disallowed and allowed under any other head. Accordingly we do not find any justification for the disallowance of advertisement and sales promotion expenses. However, keeping in view the fact that such advertisement also helps the A.O. in getting regular tenants, we direct the AO to restrict the disallowance to the extent of Rs.12 lacs. We direct accordingly.

95. The Assessing Officer has also disallowed expenditure under the head of other miscellaneous expenses by reallocating Rs. 31,38,876/- to the income from house property.

96. We have considered rival contentions and found that assessee had already disallowed a sum of Rs. 53,90,682 as Miscellaneous Expenditure directly related to earning of house property income; however disregarding ,the submission of the assessee disallowing Rs.53,90,682/- the .Ld. AO had further disallowed an additional sum of Rs. 31,38,876 in the ratio of income earned from business and house property.

97. We have considered the rival contentions and found that during the year under consideration, the assessee has debited a sum of Rs.2,23,52,092 in the profit and loss account towards Miscellaneous Expenditure. The treatment of the above expenses by the assessee himself and the subsequent disallowance made by the Ld.A0 in the assessment order is as follows :-

Particulars	Disallowance	Basis
Considered by assessee himself as pertaining to House Property – Suo motu disallowed by assessee	53,90,682	As discussed below
Additional disallowance	**31,38,876**	
Considered by AO as pertaining to House property	85,29,558	38.16% of the total expense

98. In reply to the Assessing Officer's query for making disallowance in the ratio of income earned from business vis-à-vis house property, the assessee filed its submission stating that it had already disallowed a sum of Rs. 53,90,682 as Miscellaneous- Expenditure directly related to earning of house property income; however disregarding the submission of the assessee the Ld. AO disallowed an additional sum of Rs. 31,38,876 in the ratio of income earned from business and house property.

99. From the record we found that the assessee has suo moto disallowed Rs. 53,90,682/-. The assessee has taken the following expenditure to disallow in the proportion of income from total revenues operations (Rs. 90,14,94,940) vis-à-vis income offered for the House property (Rs. 53,05,30,316).

Particulars	**Amount**
General and miscellaneous Expenditure	37,62,613
Office Expenditure	53,97,415
Total	**91,60,028**

100. After verifying the details of expenses, we found that the said miscellaneous expenditure is the combination of various nominal expenditure incurred by the assessee during the year under consideration. However, the Assessee has suo motu disallowed Rs. 53,90,682. Further, looking at the nature

of miscellaneous expenditure it can be inferred that these expenses arc incurred to carry out day to day business activities and have no nexus with, earning of rental income.

101. On perusal of the details of expenses so incurred we found that the assessee has debited expenses for Books, subscription & periodicals, conveyance, vehicle, secretarial expenses which are solely for business purpose. Moreover these expenses cannot be said to have anything to do with earning of rental income. Further the assessee has already suo-moto disallowed office expenses and general expenses in the ratio of Income earned and therefore no further disallowance is called for.

102. In view of the above discussion, we do not find any justification for further disallowance of miscellaneous expenses by the Assessing Officer amounting to Rs.31,38,876/-.

103. The Assessing Officer has also disallowed security charges by reallocating the same to income from house property amounting to Rs. 62,87,352/-. By the impugned order the CIT(A) had confirmed the action of AO.

104. We have considered the rival contentions and found that during the year under consideration, the assessee had debited in the profit & loss account a sum of Rs. 1,64,76,289 as Security charges. In the course of the assessment proceeding the assessee submitted the detailed submission before the Ld. AO. And the Ld.A0 applied the proportion of 38.16% and accordingly disallowed a sum of Rs.62,87,352 as being proportionately related to income from house property.

105. We found that the said expenditures were recovered from the tenants and such recoveries were included under the CAM Charges. Thus, the expenditure is an allowable deduction and no part thereof could be apportioned against house property income.

106. Furthermore, the said expenditure has been incurred for services rendered and all the more, the expenditure has been recovered in the form of common area maintenance from the tenants. The relevant para of lease deed is reproduced as under:

> *i "Common Area Maintenance ("CAM") charge for the entire period of 36 (thirty-six) months commencing from June 1, 2008 to* May 31, 201·1 *@ Rs. 15/- (Rupees Fifteen only) per sq. ft. on built* up *area, amounting to Rs.35,595/- (Rupees Thirty Five Thousaluid Floe Hundred and Ninety Five only) per* month in *advance subject to deduction of tax at source. CAM charges shall be payable from June 1, 2008, and shall become due for payment on or before the 7th day of each month.*
>
> *Common Area Maintenance includes:*
>
> ***a.*** *Regular cleaning of the common areas of Courtyard; inch:Laing the said Mall and elevation of the building outside the Licensed Premises.*
>
> ***b. Security Services for the common areas of Courtyard; including the said Mall (not for the Licensed Premises)***
>
> ***c.*** Lighting *of common areas.*
>
> ***d.*** *Provision of chill water supply into the air-handling* unit *upto the Licensed Premises, charged* under *HI* 3 vi.
>
> ***e.*** *Regular repairs and maintenance of the said Mall.*
>
> ***f.*** *Expenses towards utilities as diesel* and *other consumables that are required for operating the said Mall.*
>
> ***g.*** *Cost of the mall management staff expressly working for the said* Mall"

107. The highlighted portion clearly establishes that the assessee is responsible for providing security in the common areas of the mall i.e. providing overall general security to the mall as a whole. It is to be noted that the assessee is not responsible for providing security inside the leased premises i.e. the shop in the mall. It is the portion other than leased portion which is the responsibility of the assessee. And the assessee earns CAM charges for the same. Accordingly, no amount of the security charges is allocable to income from house property as the same to the lease house property is no way responsibility of the assessee. Eg. if M/s Pantallons (tenant) keeps a security guard or inserts CCTV cameras inside the leased premise than M/s Pantallons will pay for the same and not the assessee. So the question of

assessee incurring security expenses for the rental Income doesn't arise.

108. From the record we also found that the said expenses are required to be incurred in order to ensure that the proper amenities are extended to the tenants of the assessee. The security is common activity for the protection of the entire business of the assessee and accordingly the Assessing Officer has wrongly linked the same to income from house property. Even as per the contract the assessee used to recovers the same as well from all its tenants as Amenities charges, which-is offered to tax under the head Service Charges and accordingly such expenses can also not be allocated to earning of rental income.

109. In addition to the above, after going through the entire terms and conditions of the lease agreement, we found that the assessee has received the income in addition to the rental activity in respect to providing the additional services and amenities like common area maintenance, electricity for common areas, promotions and advertising, furniture fixtures, security on a cost plus basis. The assessee incurs expenditure and recovers the same from the tenants based on an agreed rate so as to recover its costs; the ancillary activities as stated above are treated as business of the assessee and the service charges net of the actual costs is offered as income from Business & Profession". The assessee undertakes manufacturing and trading of garments and undertakes various promotional events in its premises for which it receives income which is offered as Business Income". The accounting system of the assessee has segregated each expenditure at its origin and only expenditure pertaining to business is claimed. Thus, it is evident that, there is no incurrence of specific expenses by the assessee for its rental activity and hence no disallowance can be made. Moreover, the disallowance cannot be made wherein the appellant's business is a consolidated business and hence the allocation cannot be made based on the sources of incomes. There were no provisions under the Act which correspond to Sections like Section 14A, 10A, and similar such sections which prescribe the

specific bifurcation of expenses/separate accounts workings to be done. Even on the principles of the consistency the Assessing Officer was not justified in giving different treatment, other than to treatment of various expenses as given by him in earlier years. For this proposition, we rely on the judgement of Apex Court in the ease of Radhasoami Satsang *v.* CIT. 193 ITR 321 (SC) wherein it has been held as under :

> *"We are aware of the fact that, strictly speaking, res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where-a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. On these reasoning, in the absence of any material change justifying the Revenue to take a different view of the matter and, if there was no change, it was in support of the assessee. We do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income-tax in the earlier proceedings, a different and contradictory stand should have been taken. We are, therefore, of the view that these appeals should be allowed and the question should be answered in the affirmative, namely, that the Tribunal was justified in holding that the income derived by the Radhosoanii Satsang was entitled to exemption under sections 11 and 12 of the Income-tax Act of 1961."*

110. Furthermore, reliance can be placed on the judgment of Orissa High Court In the case of CIT v. Belpahar Refractories Ltd., 128 ITR 610, wherein Court has been held as under:

> "*Precedent keeps the law predictable and so more or less ascertainable- A lawyer cannot always say with confidence exactly how ajudge will decide a point of law. But he can put the decision between fairly narrow limits. In any matter of novelty he will know that the boldest judge will not move more than a small distance beyond that which has already been decided."*
>
> We think it unwise to deviate from the earlier conclusions and would, therefore, answer the two questions referred to us against the assessee by saying."

111. In view of the above facts and circumstances, the Assessing Officer has not justified in disallowing the security charges by reallocating the same to income from house property.

112. AO has also made disallowance under Section 14A read with Section Rule 8D on the plea that assessee has earned dividend income which is exempt from tax. By the impugned order CIT(A) deleted disallowance of interest by observing that assessee is having own funds as per the balance sheet amounting to Rs.14,99,79,91,752/- which is more than the investment made of Rs. 5,32,99,93,558/-. After applying the judicial pronouncements laid down by jurisdiction of High Court in case of Reliance Utilities Power Limited 313 ITR 340, the CIT(A) had deleted the disallowance of interest, however, disallowance made under Rule 8D2(iii) was confirmed. Against this Order of CIT(A) both assessee and revenue are in appeal before us.

113. At the outset, learned AR placed on record of the Tribunal in assessee's own case for the Assessment Year 2008-2009, wherein issue of disallowance has been dealt with. We had carefully gone through the order of the lower authorities as well as the order of the tribunal and found that investment so made by assessee are strategic in nature and assessee has huge own funds. Considering the availability of owned funds and free resources which is more than the investment made by the assessee, the CIT(A) has deleted the disallowance of interest as per the decision incase of Reliance Utilities (supra). The finding recorded by CIT(A) with regard to availability of interest free funds *vis a vis* investment made by assessee are as per material on record which has not been controverted by learned DR by bringing any positive material on record, accordingly we do not find any infirmity in the order of CIT(A) for deleting disallowance of interest under Rule 8D2(ii).

114. Now coming to the disallowance sustained by CIT(A) under Rule 8D2 (iii), we found that assessee has offered disallowance of Rs. 6,25,294/- and

given detailed working, however without recording any satisfaction to the effect that working given by the assessee is not correct as per Books of Accounts, the AO has made disallowance by invoking Rule 8D. As per our considered view, while making disallowance under Rule 8D, Assessing Officer is required to record his satisfaction regarding the correctness of the claim of the assessee made before him.

115. For these purposes, reliance can be placed upon following decisions.

- M/s Graviss hospitality Ltd v DCIT in ITA 3542/M/2013 (AY 09-10)

- 3DPLM Software Solutions Ltd. v ITO in ITA 5736/M/2012 (AY 08-09)

116. We also found that major investments have been made in the subsidiary/group company for controlling interest and therefore same was for business purpose and hence no disallowance u/s 14A can be made to that extent. In support, reliance can be placed on the following decisions:

(a) M/s Garuiare Wall Ropes Ltd vs Addl. CITinITA 5408/M/2012 (AY 09-10)
(b) CIT v Oriental Structural Engineers Put Ltd in ITA 605/2012 (Delhi High Court);
(c) M/s JM Financial Ltd vs AddL CIT in ITA 4521/Mum/2012(09-10)

117. Learned AR also contended that the disallowance if at all under clause (iii) of Rule 8D is to be made, then only those investments are to be considered on which, dividend has been received during the year. In support, he relied upon following decisions:

ACB India Ltd v ACIT reported in 374 ITR 108
ACIT u M Baskaran.inITA 1717/M/2013(AY 09-10)
CIT u Corrtech Energy (P) Ltd. reported in 272 CTR 262 (Guj)
CIT v Holcim India (PJ Ltd. reported in 272 CTR 282 (Del)
CIT v Lakhani Marketing Incl. reported in 272 CTR 265 (P&H)

118. From the record, we found that in response to show-cause notice issued by the AO, the assessee has contended that no disallowance on account of interest can be made as the assessee has huge surplus funds for making investment and there is no direct expenditure relating to earning of the exempt income and whatever indirect expenditure has been incurred, detailed break-up of expenses which are in the nature of administrative expenses was given to the AO. It was contended that no disallowance over and above these expenses can be made. However, without giving any reasoning or pointing out any fault in the working given by the assessee, the AO has proceeded to make disallowance on account of indirect expenditure by applying the formula given in Clause-iii of Rule 8D2. However before resorting to Rule 82 (iii) nowhere AO has recorded the satisfaction or expressed in any terms that he is not satisfied with the correctness of the claim of the assessee in respect of expenditure incurred in relation to exempt income having regard to the accounts of the assessee.

119. As per our considered view, the disallowance u/s.14A(1) can be made only when the assessee while computing the total income, claims any expenditure which is or can be said to be attributable for earning of the exempt income i.e. income which do not form part of the total income. Such a disallowance can be made/quantified in accordance with the provisions of sub-section (2) of section 14A. In other words, disallowance u/s 14A(l) can only be triggered, once the conditions laid down under sub-section (2) are satisfied. To work out the disallowance under Rule 8D(2)

and for its. quantification, the Assessing Officer has to first examine the accounts of the assessee and also correctness of the claim and thereafter, if having regard to such accounts and claim of the assessee, the Assessing Officer is not satisfied either with the. correctness of the claim made by the assessee or by the claim that no expenditure at all has been incurred, then only he can resort to Rule 8D. Thus, the 'satisfaction' of the Assessing Officer is a mandatory requirement to trigger the computation mechanism of Rule 8 D.

120. However, in the instant case before us assessee has given complete break-up and detailed of the expenditure, details of its account, nature of expenditure so incurred so as to indicate that expenses were incurred had direct relation with earning of business income and given reasoning as to why such expenditure cannot be held to be attributable for earning of exempt income. Under these circumstances, the AO is required under law to examine the correctness of the claim and record his satisfaction to the effect that he is not satisfied with such claim by setting out reasons in the assessment order. Making disallowance without adhering to the mandatory requirement as contained in subsection 2 of Section 14A and Rule 8D(1) will not empower the AO to make any disallowance. Under these circumstances AO is not empowered to enhance the disallowance under Section 14A over and above the amount offered by assessee. We accordingly direct the AO to restrict the disallowance to the tune of Rs. 6,25,294/-. We also found that issue is also covered by the decision of the

Tribunal in assessee's own case for the assessment year 2008-2009 vide order dated 19/8/2015.

121. The AO has also disallowed a sum of Rs.1,08,600/- as expenditure incurred for increase in share capital. As per judicial pronouncements laid down by Hon'ble Supreme Court in case of Punjab Industrial Corporation, Brook Bond India, expenses incurred for increase in share capital cannot be allowed as revenue expenditure. Accordingly, we uphold the disallowance so made by the AO and confirmed by CIT(A).

122. In the revenue's appeal, revenue is aggrieved for addition on account of Municipal Tax which was deleted by CIT(A) after recording detailed finding and basing on his decision on the order of ITAT in assesse's own case for the assessment year 2001-2002, 2004-2004, 2005-2006 to 2008-2009. The facts and circumstances during the year under consideration are same respectfully following the decision of the Tribunal in assessee's own case, we do not find any infirmity in the order of CIT(A) for directing the AO not to reduce municipal taxes paid in so far as same was recovered by the assessee from tenants and was not the responsibility of the assessee.

123. The disallowance made under Section 36(1)(iii) of Rs.3,53,12,937/- was deleted by the CIT(A) after having the following observation.

"14.0. The facts of the case, the grounds of appeal, the stand taken by the A.O in the assessment orders and the written submissions filed by the appellant have been carefully considered. In the above submissions the appellant has given the reasons for borrowing funds though it possessed substantial own funds. In the assessment order the A.O. has not given any reasons for making the disallowance except stating that the appellant company has substantial funds in its own position and therefore, there is no

need for borrowing funds. There is nothing brought on record to hold that the funds borrowed have been invested for the purposes other than business. The A.O cannot step into the shoes of the businessman and decide on the merits of the borrowed capital vis-à-vis own capital. In view of the above the addition made by the A.O is hereby deleted.

124. We have considered rival contentions, the finding recorded by CIT(A) to the effect that funds were borrowed for the purpose of business and also invested for the purpose of business have not been controverted by DR by bringing any positive materials on record. Under these circumstances merely because assessee was having substantial own funds, will not disentitle him from claiming deduction of interest on the funds borrowed and invested for the purposes of his business. From the record, we also found that interest was paid on overdraft facility utilities by the company to maintain liquidity and there is no provision in the Act which prohibits borrowing of the funds for the purpose of business and paying interest on the same. Accordingly we uphold CIT(A)'s order deleting disallowance of interest.

125. Next grievance of revenue relate to disallowance made on account of foreign travel expenses amounting to Rs.21,31,750/-. The disallowance so made by AO was deleted by CITA after observing as under:-

> *16.0 The facts of the case, the grounds of appeal, the stand taken by the A.O in the assessment orders and the written submissions filed by the appellant have been carefully considered. This issue also came up in the grounds of appeal filed by the appellant in respect of assessment years 2003-04, 2004-05 and 2005-06. The Ld. Predecessor CIT(A), vide orders No.CIT(A)-XIXIIT-297/05-06 dated 29.05.2006 for assessment year 2003-04, o.CIT(A)-XI IT-25/06-07 dated 08.08.2006 for assessment year 2004-05 and No.CIT(A)-XIXlIT-63/07 -08 dated 04.01.2008 for assessment year 2005-06 has held that the expenses incurred by the appellant on foreign travel are*

allowable expenses. On a further appeal by the department, the Hon'ble ITAT, Mumbai Bench vide order ITA No.375 & 571/Mum/2006, 374 & 572/Mum/2006, 373 & 573/Mum/2006, 3541 & 4773/Mum/2005, 4144 & 4578/Mum/2006, 4889 & 5409/Mum/2006 and 1097 & 1947/Mum/2008 for A.Yrs.1997-98, 1998-99, 1999-2000, 2001-02, 2003-04, 2004-05 and 2005-06 dated 27.04.2012 has confirmed the findings given by the Ld. Predecessor CIT(A). Therefore, the expenses incurred by the appellant on account of foreign travel are hereby allowed.

126. We have considered rival contentions and found that expenses were genuinely incurred by the assessee on account of foreign travels for enhancing its business. The issue under consideration is also covered by the decision of the Tribunal as considered by CIT(A) in its order. Accordingly, we do not find any reason to interfere in the order of CIT(A) deleting disallowance on account of foreign travelling expenses.

127. Ground taken by revenue with regard to deleting disallowance of legal and professional charges as well as disallowance made under Section 14A has already been considered while deciding assessee's ground with regard to the very same expenditure.

In the result, appeal of the revenue is dismissed.

ITA No.52/M/2015 & 242/M/2015 (A.Y.2010-11)

128. First grievance of assessee relate to addition made on account of deemed rent under Section 23(1)(c). We have already decided the issue in the assessment year 2009-2010. Following the same reasoning, we delete the addition made by AO under Section 23(1) (c) amounting to Rs.28,84,560/-.

129. Assessee has taken ground for disallowance of legal and professional charges by allocating the same under the head Income from House property.

130. We have considered rival contentions and found that during the year assessee incurred an expenditure of Rs.6,17,48,026 on account of legal and professional expenses. During the assessment proceedings, the A.O. sought details of these expenses which were furnished to the A.O. The A.O. noted that out of the said expenditure, a sum of Rs.1,83,27,392 has been paid to a party known as M/s. Jones Lang Lasalle Meghraj Property Consultants Pvt.Ltd. The A.O. after going through the expenses concluded that this expenditure has been incurred on development of property to be given on rent or for property already given on rent. The A.O. further observed in the assessment order that the nature of the expenses shows that the expenditure is not incurred for the purpose of business of the assessee. Accordingly, the A.O. effected the disallowance of Rs.1,83,27,392/- and added the same to the appellant's income. Out of the legal and professional expenses of Rs.6,17,48,026, the A.O. further held that out of remaining expenditure on this account of Rs.4,34,20,634 (Rs.6,17,48,026 - Rs.1,83,27,392) is also required to be apportioned as per the revenue of the house property and other than house property. The rental income is 56.04% of the total revenues therefore 56.04% of the balance expenditure of Rs4,34,20,634 which amounts to Rs.2,43,32,923 is required to be disallowed. Accordingly, the A.O. computed the disallowance

at Rs.4,26,60,315 (directly attributable to house property at Rs.l,83,27,392 + attributable to house property in revenue proportion at RS.2,43,32,923).

125. By the impugned order CIT(A) confirmed disallowance of Rs.3,46,03,594/- both assessee and revenue are in appeal against the above order of CIT(A).

131. We have considered rival contention and found that legal and professional expenses have been incurred for whole composite business of the assessee and not for properties given on rent or being developed for giving on rent. Premises in Phoenix Mill Compound were partly let out and assessee used balance portion for its own use. The assessee receives service charges from its tenants in addition to the rent for additional services and amenities provided to the tenants along with letting out of the property. The income arising therefrom is offered as business income. The assessee has incurred the above expenses in connection with the earning of business income. The services are segregated and offered to tax under the head 'Income from Business or Profession'. The segregation of income between income from business or profession and rental income has been accepted by the Department. As discussed in assessment year 2009-2010 only expenses is directly attributable to the house property should be allocated and balance expenses is to be allowed as business expenses as the same is pertaining to the business carried on by the assessee. Similar issue has been decided by the tribunal in assessee's own case for the assessment year 2001-2002, 2003-2004, 2004-2005 and 2005-2006 to 2008-2009. Based on the reasoning given in the assessment year 2009-

2010 we do not find any justification for the disallowance of Rs.3,46,03,594/- upheld by CIT(A) out of total disallowance of Rs.4,26,60,315/-. Thus out of total disallowance of Rs.4,26,60,315/- made by AO and Rs.3,46,03,594 upheld by CIT(A). We further reduce the disallowance to Rs.2,43,32,923/-. Thus we further reduce the disallowance by Rs.1,02,70,671/- as per the detailed reasoning given by us hereinabove while dealing with A.Y. 2009-2010. We further allow legal expenses of Rs.1,02,70,671/- as having been incurred for the purpose of business income. We direct accordingly.

132. The assessee is also aggrieved for disallowance made under Section 14A read with Rule 8D. As the facts and circumstances during the year under consideration are same, wherein assessee was having sufficient interest free funds available as per the audited balance sheets, which is more than the investment so made, following the decision of jurisdictional High Court in the case of Reliance Utilities Power Limited, we do not find any merit for disallowance of interest. So far as disallowance of other expenditure under Rule 8D2(iii) is concerned, following the reasoning given hereinabove, we direct the AO to restrict the disallowance to the extent of Rs.6,25,294/- in view of the fact that no satisfaction has been recorded by AO to the effect that disallowance offered by assessee is not correct as per its Books of Accounts. Accordingly following the reasoning given hereinabove in the assessment year 2009-2010 i.e., disallowance is restricted to Rs.6,25,294/-.

133. Assessee is also aggrieved for disallowance of Rs.1,08,600/- in respect of expenditure incurred for increase in share capital. Following the reasoning given in the assessment year 2009-2010, we confirm the disallowance of expenses so made by the lower authorities.

134. Assessee is also aggrieved for allocation of staff cost and Director's remuneration. Following reasoning given in the assessment year 2009-2010, we restrict the disallowance to the extent of Rs.12 lacs, keeping in view the services rendered by the staff for collecting the income from house property etc.,

135. The AO has also made disallowance of Rs.3,59,29,851 on account of repairs and maintenance expenditure by observing that these are relating to income from house property. We have considered rival contention and found that assessee himself has suo-moto disallowed 70% on repairs of building. In respect of other repair charges, assessee has made specific recovery for the balance repairs i.e., repairs on machinery, furniture and other sundry repairs from all its tenants as service charges and offered as Business income which cannot be disallowed. The detailed reasoning and justification has been given by us in the assessment year 2009-2010, following the same, we direct the AO to disallowance of repairs and maintenance to @ 70% on the building repairs as offered by the assessee in its return.

136. The AO has also allocated advertisement and sales promotion of Rs.2,40,17,478/-. In view of the detailed reasoning given by us in the assessment year 2009-2010 wherein, we have observed that assessee has

made specific recovery for these expenses from all its tenants as service charges and the same was offered as Business income. The expenditure so incurred is required to be reduced only out of the business income and no separate disallowance under the head income from house property is warranted. Accordingly we direct the AO to delete the disallowance so made.

137. The AO has also disallowed miscellaneous expenses of Rs.1,74,22,197/- by observing that these are pertaining to income from house property. We found that assessee has already allocated expenses pertaining to income from house property. The department has also accepted consistently the expenditure allocated for house property from assessment year 2006-2007, 2008-2009. Following principle of consistency, we do not find any merit for making a separate disallowance of these expenses with regard to allocation of miscellaneous expenses of Rs.1,74,22,197/-. Based on the reasoning given in A.Y. 2009-2010, we direct the AO to delete the disallowance of Rs.1,74,22,197/-.

138. AO has also made a disallowance of service charges by reallocating Rs.1,73,10,577 to income from house property. We found that assessee has made a specific recovery for the same from all its tenants as service charges and offered the same as business income, the expenditure if any incurred on account of service charges is required to be reduced out of such business income and no separate disallowance under the head income from house property is warranted. Following the reasoning given by

us in the A.Y. 2009-10, we direct the AO to delete disallowance of Rs.1,73,10,577/-.

138. In the appeal filed by revenue for the assessment year 2010-2011, revenue is aggrieved for deleting disallowance of interest of Rs.3,98,89,224/-.

139. We have considered rival contention and found that disallowance of interest was deleted by CIT(A) by following his order for assessment year 2009-2010.

140. The precise observation for CIT(A) was as under:

> *"[15.0 The facts of the case, the grounds of appeal, the stand taken by the A.O in the assessment order and the written submissions filed by the appellant have been carefully considered. In the above submissions, the appellant explained that though it possessed its own funds, they are not always available with it for use. In the assessment order the Assessing Officer has not given any reasons for making the disallowance except stating that the appellant company has substantial funds in its own position and therefore there is no need for borrowing funds. The Assessing Officer cannot step into the shoes of the businessman and direct him to use the own funds as against the borrowed fund for construction purposes. In view of the above addition made by the Assessing Officer is hereby deleted."*

141. We have considered rival contention. As per the fund flow statement filed by the assessee before the lower authorities, investments as well as ICDs have been deployed from the interest free surplus funds available with the company and bank O.D. had been utulised for meeting the immediate fund requirements which arose during the course of construction of the premises which had been let out during the year under consideration. The finding recorded by CIT(A) in the assessment year

2009-2010 has not been controverted by DR by bringing any positive material on record, wherein CIT(A) has observed that bank borrowing has been utilized for the purpose of business. Following the reasoning given by us in assessment year 2009-10, we do not find any infirmity in the order of CIT(A) deleting the disallowance of interest.

142. The AO has also disallowed Rs.6,16,626/- on account of 1/5th of capitalized interest expenditure, which was deleted by CIT(A) after observing as under:-

> *"18.0 The facts of the case, the grounds of appeal, the stand taken by the A.O in the assessment order and the written submissions filed by the appellant have been carefully considered.*
> *18.1 The issue under consideration was already decided in the appellant's own case for the Assessment Years 2006-07, 2007-08 and 2008-09 vide appellate no. CIT(A)- 38/1T-228/2013-14 dated 19.09.2014 for the A.Y. 2006-07, and vide appellate nos. CIT(A)-38/IT-229 & 230/2013-14 dated 22.09.2014 for the assessment years 2007-08 and 2008-09. It was mentioned in those orders that since interest free funds available with the appellant company was sufficient to care of the bogus purchases, no presumption could be made on the ground that the interest bearing funds have been used for such purposes. Therefore, the issue was decided in favour of the appellant. Following my own decision in the earlier years, the disallowance of Rs. 6,16,626/- made by the Assessing Officer is hereby deleted."*

143. We have considered rival contention. The finding recorded by CIT(A) to the effect that interest free funds available with the assessee company was sufficient to take care of purchases, no presumption could be made on the ground of interest bearing funds have been used for such purchases. This finding of CIT(A) has not been controverted, accordingly, we do not

find any infirmity in the order of CIT(A) for deleting the disallowance of interest of Rs.6,16,626/-.

144. Issue with regard to deletion of allocation of legal and professional charges to the extent of Rs.80,56,721/- by CIT(A) has already been dealt by us while dealing with the ground taken by assessee for deleting the disallowance of claim of legal and professional charges in ITA No.52/M/2015. Following the reasoning discussed in ITA No.52/M/2015 we do not find any infirmity in the order of CIT(A) deleting allocation of legal and professional charges of Rs.80,56,721/-.

145. AO has also made disallowance of Rs.2,30,11,224/- under Section 14A. By the impugned order CIT(A) deleted disallowance of Rs. 1,02,18,714/- by following his order for the assessment year 2009-2010 wherein CIT(A) has observed that assessee was having sufficient interest free funds from the investment so made, therefore, no disallowance of interest was warranted. We have already dealt with the issue while deciding assessee's appeal for the assessment year 2009-2010. Following the same reasoning, we don't find any infirmity in the order of the CIT(A) for deleting the disallowance of interest of Rs.1,02,18,714/-.

146. The AO has also made disallowance of interest under Section 36 (1)(iii) amounting to Rs.2,96,70,510/- which was deleted by CIT(A) after following the order for the assessment year 2009-2010.

147. We have considered rival contention and found that out of total interest expenditure of Rs.3,98,89,224/-, the AO has disallowed a sum of Rs.1,02,18,714 under Section 14A and balance interest expenditure of

Rs.2,96,70,510/- was disallowed under Section 36. We found that assessee has not claimed interest expenditure under Section 36(1)(iii), it has claimed against income from house property. Purpose of loan was to meet the immediate fund requirement of funds which arose during the course of construction of the premises which had been let out during the year under consideration. In order to substantiate the same, the assessee also submitted the Fund Flow Statement wherein it was clearly evident that the investments as well as ICDs had been deployed from the interest free surplus funds available with the assessee company and that the Bank O.D. had been utilized for meeting the immediate fund requirements which arose during the course of construction of the premises which had been let out during the year under consideration. Accordingly, we do not find any infirmity in the order of CIT(A) for deleting the disallowance of interest.

148. Assessee is also aggrieved for confirming disallowance of expenditure incurred for increase in share capital amounting to Rs.1,08,600/- for the assessment year 2009-10 and similar amount in the assessment year 2010-11.

149. We have considered rival contentions, as per our considered view expenditure incurred for increase in share capital is capital in nature and the same cannot be allowed as a revenue expenditure.

150. Hon'ble Supreme Court in the case of Punjab Industrial Corporation and Brook Bond India had clearly held that expenditure for increase in share capital cannot be allowed as revenue expenses. Accordingly, we do

not find any infirmity in the orders of the lower authorities for decline of claim of expenses incurred for increase in share capital.

152. In the result, ground No.4 taken by assessee in assessment year 2009-2010 and 2011-2012 with regard to claim of expenses incurred for increase in share capital is dismissed.

153. In the result, appeals of revenue are dismissed wherein appeals of assessee are allowed in part.

Order has been pronounced in the Court on 06.10.2016

Sd/-	sd/-
(PAWAN SINGH)	**(R.C. SHARMA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai; Dated : 06/10/2016
Karuna/Sr.P.S

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai