IN THE INCOME TAX APPELLATE TRIBUNAL,
AHMEDABAD BENCH, AHMEDABAD
BEFORE HON'BLE JUSTICE P.P.BHATT, PRESIDENT
AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER

ITA No 643/Ahd/2014 & ITA No 2717/Ahd/2014
Assessment Years 2010-11 & 2011-12
PAN : AAACK6128Q

KIFS Securities Ltd, **B-81, Parisheema Complex,** **C.G. Road, Ahmedabad**	**V/s**	**JCIT, Range-3,** **Ahmedabad**
(Appellant)		**(Respondent)**

ITA No 932/Ahd/2014
Assessment Year 2010-11
PAN AAACK6128Q

DCIT, Circle-3, **Ahmedabad**	**V/s**	**Khandwala Integrated** **Financial Services P.Ltd** **B-81, Parisheema Complex** **C.G. Road, Ahmedabad**
(Revenue)		**(Respondent)**

ITA No. 2882/Ahd/2014
Assessment Year 2011-12

ACIT, Circle-3, **Ahmedabad**	**V/s**	**KIFS Securities Ltd,** **B-81, Parisheema Complex** **C.G. Road, Ahmedabad**
(Revenue)		**(Respondent)**

ITA No 786/Ahd/2016
Assessment Year 2012-13

KIFS Securities Ltd, **B-81, Parisheema Complex,** **C.G. Road, Ahmedabad**	**V/s**	**ACIT, Circle, 1(3),** **Ahmedabad**
(Appellant)		**(Respondent)**

ITA No 914/Ahd/2016
Assessment Year 2012-13

DCIT, Circle,1(3), **Ahmedabad**	**V/s**	**KIFS Securities Ltd,** **B-81, Parisheema Complex** **C.G. Road, Ahmedabad**
(Revenue)		**(Respondent)**

ITA No 63 & 1885/Ahd/2017
Assessment Year 2013-14 & 2014-15

KIFS Securities Ltd, **B-81, Parisheema Complex,** **C.G. Road, Ahmedabad**	**V/s**	**ACIT, Circle, 1(3),** **Ahmedabad**
(Appellant)		**(Respondent)**

Revenue by	Shri T. Shankar, Sr. DR
Assessee by	Shri M.K. Patel, AR
Date of Hearing	03.10.2019
Date of Pronouncement	29.11.2019

O R D E R

PER MANISH BORAD.

The above captioned appeals filed at the instance of assessee pertaining to Assessment Years 2010-11, 2011-12 & 2012-13, 2013-14 & 2014-15 and the Cross appeals filed by the revenue pertaining to Assessment Years 2010-11,2011-12 & 2012-13 are directed against the orders of Ld. Commissioner of Income Tax (Appeals)-VI & CIT(Appeals)-10 (in short 'Ld.CIT(A)'], Ahmedabad dated 28.1.2014, 13.08,2014, 1.02.2016, 26.10.2016 & 30.06.2017 respectively which are arising out of the order u/s 143(3) dated 31.03.2013, 26.02.2014,25.03.2015, 01.03.2016, 28.12.2016 28.03.2013 respectively framed by JCIT, Range-3, ACIT, Circle-3, ACIT Circle 1(3), DCIT, Circle 1(3) & JCIT Circle-3, Ahmedabad.

2. The grounds raised by the assessee are as under;

ITA No 643/Ahd/2014

Assessment Year 2010-11

1.The Ld. CIT(A) has erred in law and in fact in confirming disallowance made by the AO of Rs. 69,777 being unpaid employees contribution to PF and Rs. 35,413/- being unpaid employees contribution to ESI on the alleged

ground that the provisions of section 43B are not attracted. It is therefore prayed that the additions so made may kindly be deleted.

2.The Ld. CIT(A) has erred in law and in fact in confirming disallowance made u/s. 14A r.w.r. 8D by AO to the extent of Rs.35,12,759/- out of total disallowance of Rs. 45,91,759/- on the alleged ground of expenses in the nature of administrative expenses for the earning of exempt income. It is therefore prayed that the additions so made may kindly be deleted.

3.The Ld. CIT(A) has erred in law and in fact in restricting depreciation on software @ 25% as against 60% claimed by the appellant. It is therefore prayed that AO may kindly be directed to allow depreciation @ 60% on computer software and disallowance so made may kindly be deleted.

4.The Ld. CIT(A) has erred in law and in fact in directing to treat the transaction in shares and securities as business transactions if the shares are sold within 30 days of purchase even-though the such transactions are relates to the investment portfolios of the appellants. It is therefore prayed that the AO. May be directed to treat the gain on shares as short-term capital gain and to tax at the rate prescribed u/s. 111A of the Act.

Your appellant craves liberty to add, to alter, to modify, to amend or delete any of the grounds of appeal at the time of on or before the hearing of appeal.

ITA. No 2717/Ahd/2014

Assessment Year 2011-12

1.The Ld. CIT(A) has erred in law and in fact in confirming disallowance made by the AO of Rs. 132,396/- being unpaid employees contribution to ESI as per Hon'ble Gujarat High Court in the case of CIT vs. Gujarat State Transport Corporation in Tax Appeal No.637 of 2013. Whereas, the said issue is decided by Gujarat High Court and other High Courts that if the

payment is made within the provisions of section 43B, the same is allowable. It is therefore prayed that the additions so made may kindly be deleted.

2.The Ld. CIT(A) has erred in law and in fact in confirming disallowance made u/s. 14A r.w.r. 8D(2)(iii) by AO to the extent of Rs.35,19,740/- (Rs.45,62,870/- Less: Rs.10,43,130/- offered by appellant) out of total disallowance of Rs. 35,19,740/- on the alleged ground of expenses in the nature of administrative expenses for the earning of exempt income. Whereas, the appellant furnished that investment in subsidiary companies and partnership firms are in the nature of business arrangement/strategies and for the purpose of commercial expediency. It is therefore prayed that the additions so made may kindly be deleted.

3.The Ld. CIT(A) has erred in law and in fact in restricting depreciation on software @ 25% as against 60% claimed by the appellant. It is therefore prayed that AO may kindly be directed to allow depreciation @ 60% on computer software and disallowance so made may kindly be deleted.

4.The Ld. CIT(A) has erred in law and in fact in directing to treat the transaction in shares and securities as business transactions if the shares are sold within 30 days of purchase even-though the such transactions are relates to the investment portfolios of the appellants. It is therefore prayed that the AO. may be directed to treat the gain on shares as short-term capital gain and to tax at the rate prescribed u/s. 111A of the Act.

Your appellant craves liberty to add, to alter, to modify, to amend or delete any of the grounds of appeal at the time of on or before the hearing of appeal.

3. Revenue has raised following grounds of appeal;

ITA No.932/Ahd/2014

Assessment Year 2010-11

1.The CIT(A) has erred in law and on facts by allowing depreciation of Rs. 12.72 lacs *and Insurance expenses of Rs.1.50 lacs pertaining to cars which were not owned by the assessee and no evidence of exclusive usage for the purpose of business was produced. The provisions of sections* 32(1) *and 36(1)(i) were thus not satisfied. '*

2.The CIT(A) has overlooked the findings/reasoning in the assessment order and deleted the addition mainly on the ground that funds for the purchase of cars were provided by the assessee. The CIT(A) has failed to appreciate the fact that dominion over the cars was not with the assessee and payment of legitimate RTO taxes was avoided.

3.The CIT(A) has erred in law and on facts by deleting the disallowance of Rs.10.78 !lacs u/s 14A r. w.r 8D(2)(ii) despite the fact that the assessee had made substantial investments which earned exempt income and had also claimed interest expenses of Rs.3. 79 *Crores during the year. The AO had only disallowed proportionate interest expenses under Rule 8D(2)(ii).*

4.The CIT(A) has erred in law and on facts by considering the outstanding payment towards purchase of shares on behalf of clients as Bad debt U/S 36(1)(vii). The CIT(A) has not appreciated the fact that the provisions of section 36(2) *are not satisfied since the said amount of Rs.42.20 lacs was never accounted for as income by the assessee.*

5.The CIT(A) has erred in law and on facts by deleting the addition to the extent of Rs. 7.89 *lacs u/s 40(a)(ia) despite the fact that the assessee had not deducted TDS as per section 194Ion V-Sat/Lease line charges which were in the nature of Rent.*

6.The CIT(A) has erred in law and on facts by deleting the addition of

Rs.52.16 lacs u/s 40(a)(ia) despite the fact that the assessee had not deducted TDS as per section 194H on payment in the nature of Sub brokerage/Commission.

7.The CIT(A) has erred in law and, on facts by directing to treat profit from sale of shares held only up to 30 days as business income and the balance as Capital gains disregarding the findings in the assessment order which reveals that the profit was earned from systematic business activity with substantial turnover.

8.The CIT(A) has erred in law and on facts by deleting the addition of Rs.45.91 lacs u/s 14A to Book profit despite the fact that the same is required to be added to Book profit as per Explanation 1, *clause (f) to section 115JB(2) of the Act.*

9.The CIT(A) has erred in law and on facts by deleting the addition of Rs.1.11 crores to Book Profit despite the fact that the same represented omitted income which was not included in the P&L Account and considered as Business income.

On the fact and in the circumstances of the case and in law, the CIT(A) ought to have upheld the order of the Assessing Officer to the extent mentioned above since the assessee has failed to disclose his true income/book profit.

The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored to the above extent. The appellant craves, to leave, to amend or alter any ground or add a new ground which may be necessary.

ITANo.2882/Ahd/2014
Assessment Year 2011-12

1. The CIT(A) has erred in law and on facts by allowing depreciation of Rs. 13.18 lacs and Insurance expenses of Rs.0.70 lacs pertaining to cars which

were not owned by the assessee and no evidence of exclusive usage for the purpose of business was produced. The provisions of sections 32(1) and 36(1)(i) were thus not satisfied. The CIT(A) has overlooked the findings/reasoning in the assessment order and deleted the addition mainly on the ground that funds for the purchase of cars were provided by the assessee. The CIT(A) has failed to appreciate the fact that dominion over the cars was not with the assessee and payment of legitimate RTO taxes was avoided.

2.The CIT(A) has erred in law and on facts by deleting the disallowance of Rs.10.96 Iacs u/s 14A r.w.r 8D(2)(ii) despite the fact that the assessee had made substantial investments which earned exempt income and had also claimed interest expenses of Rs.5.11 crores during the year. The AO had only disallowed proportionate interest expenses under Rule 8D(2)(ii).

3.The CIT(A) has erred in law and on facts by considering the outstanding payment towards purchase of shares on behalf of clients as Bad debt u/s 36(1) (vii). The CIT(A) has not appreciated the fact that the provisions of section 36(2) are not satisfied since the said amount of Rs. 1. 58 crores was never accounted for as income by the assessee.

4.The CIT(A) has erred in law and on facts by deleting the addition to the extent of Rs.2.68 lacs u/s 40(a)(ia) despite the fact that the assessee had not deducted TDS as per section 1941 on Lease line charges which were in the nature of Rent.

5.The CIT(A) has erred in law and on facts by deleting the addition of Rs.B2.11 lacs u/s 40(a)(ia) despite the fact that the assessee had not deducted TDS as per section 194H on payment in the nature of Sub-brokerage for IPO.

6.The CIT(A) has erred in law and on facts by directing to treat profit from

sale of shares held only up to 30 days as business income and the balance as Capital gains disregarding the findings in the assessment order which reveals that the profit was earned from systematic business activity with substantial turnover.

7.The CIT(A) has erred in law and on facts by deleting the addition of Rs.45.59 lacs uls 14A to Book profit despite the fact that the same is required to be added to Book profit as per Explanation 1, clause (f) to section 115JB(2) of the Act.

On the fact and in the circumstances of the case and in law, the CIT(A) ought to have upheld the order of the Assessing Officer to the extent mentioned above since the assessee has failed to disclose his true income/book profit.

The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored to the above extent. The appellant craves, to leave, to amend or alter any ground or add a new ground which may be necessary.

4. Assessee has raised following grounds of appeal;

ITA. No 786/Ahd/2016
Assessment Year 2012-13

1.The Ld. CIT(A) has erred in law and in fact in confirming disallowance made by the AO of Rs. 26,323/- being unpaid employees contribution to ESI as per Hon'ble Gujarat High Court in the case of CIT vs. Gujarat State Transport Corporation in Tax Appeal No.637 of 2013. Whereas, the said issue is decided by Gujarat High Court and other High Courts that if the payment is made within the provisions of section 43B, the same is allowable. It is therefore prayed that the additions so made may kindly be deleted.

2.The Ld. CIT(A) has erred in law and in fact in confirming disallowance made u/s. 14A r.w.r. 8D(2)(iii) by AO to the extent of Rs.55,40,921/- (Rs.65,40,921/- Less: Rs.12,00,000/- offered by appellant) out of total disallowance of Rs. 90,60,923/- on the alleged ground of expenses in the nature of administrative expenses for the earning of exempt income. Whereas, the appellant furnished that investment in subsidiary companies and partnership firms are in the nature of business arrangement/strategies and for the purpose of commercial expediency. It is therefore prayed that the additions so made may kindly be deleted.

3.The Ld. CIT(A) has erred in law and in fact in restricting depreciation on software @ 25% as against 60% claimed by the appellant. It is therefore prayed that AO may kindly be directed to allow depreciation @ 60% on computer software and disallowance so made may kindly be deleted.

Your appellant craves liberty to add, to alter, to modify, to amend or delete any of the grounds of appeal at the time of on or before the hearing of appeal.

ITA. No 63/Ahd/2017

Assessment Year 2013-14

1.The Ld. CIT(A) has erred in law and in fact in confirming disallowance made by the AO of Rs. 18,497/- being unpaid employees contribution to ESI as per Hon'ble Gujarat High Court in the case of CIT vs. Gujarat State Transport Corporation in Tax Appeal No.637 of 2013. Whereas, the said issue is decided by Gujarat High Court and other High Courts that if the payment is made within the provisions of section 43B, the same is allowable. It is therefore prayed that the additions so made may kindly be deleted.

2.The Ld. CIT(A) has erred in law and in fact in restricting depreciation on

software @ 25% as against 60% claimed by the appellant. It is therefore prayed that AO may kindly be directed to allow depreciation @ 60% on computer software and disallowance so made may kindly be deleted.

Your appellant craves liberty to add, to alter, to modify, to amend or delete any of the grounds of appeal at the time of on or before the hearing of appeal.

ITA. No 1885/Ahd/2017
Assessment Year 2014-15

1.The Ld. CIT(A) has erred in law and in fact in confirming disallowance made by the AO on account of late payment to employees contribution to ESI u/s 36(1)(VA) OF Rs.10,785/- as per Hon'ble Gujarat High Court in the case of CIT vs. Gujarat State Transport Corporation in Tax Appeal No.637 of 2013. Whereas, the said issue is decided by Gujarat High Court and other High Courts that if the payment is made within the provisions of section 43B, the same is allowable. It is therefore prayed that the additions so made may kindly be deleted.

2.The Ld. CIT(A) has erred in law and in fact in restricting depreciation on software @ 25% as against 60% claimed by the appellant. It is therefore prayed that AO may kindly be directed to allow depreciation @ 60% on computer software and disallowance so made may kindly be deleted.

Your appellant craves liberty to add, to alter, to modify, to amend or delete any of the grounds of appeal at the time of on or before the hearing of appeal.

5. Revenue has raised following grounds of appeal;

ITA No.914/Ahd/2016
Assessment Year 2012-13

1. The CIT(A) has erred in law and on facts in deleting the addition of

Rs.14,52,432/- made by AO on account of depreciation on motor car of Rs.13,23,317/- and insurance on motor car of Rs.1,29,115/- as the assessee has violated the condition laid down u/s 32 of the Act, the AO has rightly disallowed the claim of depreciation as the purpose of allowance of depreciation under section 32 of the Act, the twin condition of ownership and the assets used for the purpose of assessee's business must be satisfied.

2.The CIT(A) has erred in law and on facts by deleting the addition of Rs.35,20,002/- made by AO u/s 14A r.w.r 8D(of the Act, on account of interest expense, as the appellant is having huge interest income and borrowed funds are used for broking business.

3.The CIT(A) has erred in law and on fact in deleting the addition of Rs.1,19,85,613/- made by AO, on account of bad debts. The AO has rightly disallowed Rs.1,19,85,613/-, since the condition laid down in section 36(2) of the I.T. Act, 1961 is not satisfied by the assessee. .

4.The CIT(A) has erred in law and on facts in deleting the addition of Rs.5,41,251/- made by A.O u/s 40(a)(ia) of the Act, on account of Lease Line charges of Rs.5,41,251/- paid to BSNL. The AO has rightly disallowed Rs.5,41,251/-, since the assessee has violated the condition laid down in section 194I r.w.s. 40(a)(ia) of the I.T. Act,1961.

5.The CIT(A) has erred in law and on facts by deleting the addition of Rs.66,24,640/- made by AO on account of STCG of Rs.56,86,282/- on shares as business income and LTCG of Rs.9,38,358/- on shares as business income without appreciating the decision of Hon'ble Supreme Court in the case of Karam Chand Thapar and Brothrs P Ltd. Vs CIT, 83 ITR 899, as the transaction does not fulfil the conditions of Short Term or Long Term Capital gains.

On the fact and in the circumstances of the case and in law, the CIT(A) ought to have upheld the order of the Assessing Officer to the extent mentioned above since the assessee has failed to disclose his true income/book profit.

The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored to the above extent. The appellant craves, to leave, to amend or alter any ground or add a new ground which may be necessary.

6. As the issues raised in these appeals are common these were heard together and being disposed off by this common order for the sake of convenience and brevity. The assessee and revenue are in cross appeal for Assessment Years 2010-11, 2011-12, 2012-13 and assessee is also in appeal for Assessment Years 2013-14 and 2014-15 raising respective grounds mentioned in the earlier paras.

7. Brief facts of the case are that the assessee is a company derives income from brokerage business of shares and securities with NSE of India, income from depository services (NSDL) and income from arbitrage in shares & securities and F&O. The appellant company has filed its return of income au/s 139(1) of the Act. Assessments completed u/s 143(3) of the Act by Ld. A.O after making various additions/disallowances to the total income declared

by the appellant. Aggrieved assessee preferred appeal before Ld. CIT(A) and partly succeeded.

8. First common issue raised solely by the assessee relates to disallowance u/s 43B of the Act for delay in depositing the employees contribution to PF and ESI at Rs.1,05,190/-, Rs.1,32,396/-, Rs.26,323/-, Rs.18,497/- and Rs.10,785/- respectively. Ld. CIT(A) confirmed the disallowance following the judgment of jurisdictional High Court in the case of *CIT V/s Gujarat State Road Transport Corporation 366 ITR 170 (Guj.).* Assessee has challenged the disallowance for all the five assessment years before us.

9. At the outset Ld. Counsel for the assessee fairly conceded that the common issue relating to disallowance u/s 43B for delay in depositing employee's provident fund is squarely covered against the assessee by the judgment of Hon'ble jurisdictional High Court in the case of *CIT V/s Gujarat State Road Transport Corporation (supra).*

10. Per contra Ld. Departmental Representative vehemently argued supporting the orders of both the lower authorities.

11. We have heard rival contentions and perused the records placed before us. Assessee's first common grievance raising Ground No.1 of the appeal for Assessment Year 2010-11 to 2014-15 challenges the finding of Ld. CIT(A) confirming the disallowance u/s 43B of the Act for delay in deposit of employees provident fund. Ld. Counsel for the assessee fairly accepted that this issue stands squarely covered against the assessee by the judgment of Hon'ble jurisdictional High Court in the case of *CIT V/s Gujarat State Road Transport Corporation (supra) w*herein Hon'ble court held as under; .

> *"8.00. ln view of the above and for the reasons stated above, and considering section 36(1)(va) of the Income Tax Act,* 1961 *read with sub-clause (x) of clause* 24 *of section* 2, *it is held that with respect to the sum received by the assessee from any of his employees to which provisions of sub-clause (x) of clause* (24) *of section* (2) *applies, the assessee shall be entitled to deduction in computing the income referred to in section* 28 *with respect to such sum credited by the assessee to the employees' account in the relevant fund or funds on or before the "due date" mentioned in explanation to section 36(J) (va). Consequently, it is held that the learned tribunal has erred in deleting respective disallowances being employees' contribution to P F Account/ESI Account made by the AO as, as such, such sums were not credited by the respective assessee to the employees' accounts in the relevant fund or funds*

(in the present case Provident Fund and/or ESI Fund on or before the due date as per the explanation to section 36(1)(va) of the Act i.e. date by which the concerned assessee was required as an employer to credit employees' contribution to the employees' account in the Provident Fund under the Provident Fund Act and/or in the ESI Fund under the ESI Act.

Consequently, all these appeals are allowed and the impugned judgment and orders passed by the tribunal in deleting the disallowances made by the AO are hereby quashed and set aside and the disallowances of the respective sums with respect to the Provident Fund/ESI and made by the AO is hereby restored. The question raised in present appeal are answered in favour of the revenue. With this, all these appeals are allowed. "

12. We, therefore, in the given facts and circumstances of the case and respectfully following the judgment of jurisdictional High Court in the case of *CIT Vs. Gujarat State Road Transport Corporation (supra)* confirm the finding of Ld. CIT(A). In the result the GroundNo.1 of the assessee's appeal commonly raised for Assessment Years 2010-11 to 2014-15 is dismissed.

13. Now we take up next common issue relating to disallowance made u/s 14A of the Act for Assessment Years 2010-11 to 2012-13 For all these three assessment years Ld. A.O applied the method

provided in Rule 8D of Income Tax rules and computed the disallowance u/s 14A of the Act on two counts namely disallowance of interest under Rule 8D(2)(ii) and disallowance towards administrative expenses under Rule 8D(2)(ii). Assessee challenged the disallowance u/s 14A before Ld. CIT(A) and partly succeeded. Ld. CIT(A) deleted the interest disallowance made under Rule 8D(2)(ii) of I.T. rules observing that the assessee had earned net interest income during the year and also had sufficient interest free funds to make investments. Ld. CIT(A) placed reliance on various judgments to delete the disallowance u/s 14A of the Act for the interest component. However Ld. CIT(A) confirmed the disallowance u/s 14A for the administrative expenses calculated @0.5% of average investments.

14. Now both the assessee and revenue are in appeal against the finding of the Ld. CIT(A) relating to disallowance u/s 14A of the Act.

15. As regards disallowance of proportionate interest under Rule 8D(2)(ii) of the I.T. rules deleted by Ld. CIT(A) at Rs.10.78 lacs, Rs.10.96 lacs and Rs. 35.20 lacs for Assessment Year 2010-11 to 2012-13 respectively, Ld. Departmental Representative vehemently

argued supporting the orders of both the lower authorities.

16. Per contra Ld. Counsel for the assessee relied on the finding of Ld. CIT(A) and also referred paper book to explain that during all the three years gross interest income is more than the interest expenditure and the interest free funds available with the assessee comprising of capital and reserve and surplus are sufficient to cover the investments made for fetching exempt income. Reliance placed on following judgments;

(i) ITO V/s Karnavati Petrochem ITA No.2228/Ahd/2012

(ii) CIT V/s Hero Cycles Ltd. ITA No.331/2009 (P&H)

(iii) DCIT V/s Maharashtra Seamless Ltd ITA No.4063/Del/2006.

(iv) DCIT V/s Amigo Securities ITA No.1448/Ahd/2010

17. We have heard rival contentions and perused the records placed before us. The issue for adjudication before us relates to disallowance u/s 14A for the proportionate interest computed under Rule 8D(2)(ii) of the I.T. Rules. Interest disallowance of Rs.10.78 lacs, Rs.10.96 lacs and Rs.35.20 lacs for Assessment Years 2010-11 to 2012-13 respectively, Ld. CIT(A) deleted the addition on finding that the appellant had Net interest income during the year. The facts

and figures for Assessment Years 2010-11 to 2012-13 are similar. The interest income received during the year is more than the interest paid by the assessee for all the three assessment years. Further from perusal of the audited financial statements it emerges that the interest free funds available with the assessee in the form of share capital and accumulated reserve and surplus is much more than the alleged investments. In these given facts we observe that Ld. CIT(A) has rightly deleted the impugned disallowance for interest under Rule 8(2)(ii) of the I.T Rules following the decision of Coordinate Bench, Ahmedabad in the case of *ITO V/s Karnavati Petrochem Pvt. Ltd* observing as follows;

> *6.4. I have considered the facts of the matter. In the immediately preceding A.Y. 2009-10, the disallowance u/s.14A was upheld by my predecessor. However, during the course of the present appellate proceedings regarding the disallowance made under Rule-8D(2)(ii), the Id. A.R. relied on the Ahmedabad Tribunal decision dtd. 05.07.2013 in the case of ITO Vs. Karnavati Petrochem Pvt. Ltd. in ITA No.2228/Ahd/2012. In the said decision, it was held as under:-*
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> *"7. We have heard the rival submissions and perused the material on record. We find that CIT(A) while granting relief to the Assessee has given a finding that no nexus has been established by the A. O. with the amount incurred by the Assessee for earning the tax free income. He has further noted that in the Assessee's case the interest income was more than interest*

expense and thus the Assessee was having net positive interest income and therefore the same cannot be considered for disallowance and for which he placed reliance on the decision of Kolkatta Tribunal in the case of Trading Apartment Limited and the decision of Tribunal in the case Morgan Stanley India Securities Private Limited. He however considered the administrative expenses to be 0.5 of the average investments and disallowed the same.

8. Before us the Revenue could not bring any material on record to controvert the findings of CIT(A). We therefore find no reason to interfere the order of CIT(A). Thus this ground of the Revenue is dismissed. "

In the instant case, the total interest expenditure claimed was Rs.3,79,05,391/-. Out of the said amount, A.O. considered interest of Rs.56,12,695/- for working out the disallowance under Rule-8D(2)(ii). Out of the said amount, Rs.29,70,835/- was paid to banks against O.D. and Rs.26,41,860/- was paid on unsecured loans. As against this appellant earned interest income of Rs.14,45,40,211/- from banks on FDRs and margin money. In other words, appellant had net interest income of over Rs.IO.66 crores. Keeping in view this facts and in the light of the above quoted decision, I am of the view that disallowance of interest under 8D(2)(ii) is not sustainable. It is deleted."

18. Further Hon'ble Punjab & Haryana High Court in the case of *CIT V/s Hero Cycles Ltd ITA No.331/2009 order dated 4.11.2009* after considering the facts that the assessee had earned net interest income during the year held that the disallowance u/s 14A of the Act is uncalled for observing as follows;

"4. In view of finding reproduced above, it is clear that the expenditure on income from interest and the investment in the share and funds were out of the dividend proceeds. In view of this finding of fact, disallowance under Section 14A was not sustainable. Whether, in a given situation, any expenditure was incurred which was to be disallowed, is a question of fact. The contention of the revenue that directly or indirectly some expenditure is always incurred which must be disallowed under Section 14A and the impact of expenditure so incurred cannot be allowed to be set off against the business income which may nullify the mandate of Section 14A, cannot be accepted. Disallowance under Section 14A requires finding of incurring of expenditure where it is found that for earning exempted income no expenditure has been incurred, disallowance under Section 14A cannot stand. In the present case finding on this aspect, against the revenue, is not shown to be perverse. Consequently, disallowance is not permissible. We have taken this view earlier also in ITA No. 504 of 2008 (Commissioner of Income Tax Chandigarh II vs. M/s Winsome Textile Industries Limited, Chandigarh), decided on 25.8.2009, wherein it was observed as under:-

> *"6. Contention raised on behalf of the revenue is that even if the assessee had made investment in shares out of its own funds, the assessee had taken loans on which interest was paid and all the money available with the assessee was in common kitty, as held by this Court in CIT v. Abhishek Industries Limited, (2006) 286 ITR 1 and therefore, disallowance under section 14A was justified.*
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> *7. We do not find any merit in this submission. Judgment of this Court in Abhishek Industries (supra) was on the issue of allowability of interest paid on loans given to sister concerns, without interest. It was held that deduction for interest was permissible when loan was taken for business purpose and not for diverting the same to sister concern without having nexus with the business. Observations made therein*

have to be read in that context. In the present case, admittedly, the assessee did not make any claim for exemption. In such a situation, Section 14A could have no application."

5. In view of the above, we are of the opinion that no substantial question of law arise.

6. The appeal is dismissed".

19. The Co-ordinate Bench in the case of DCIT vs. Amigo Securities Pvt. Ltd ITA Nos.1532 & 1533/Ahd/2009 also held in favour of the assessee that disallowance u/s 14A of the Act is not for the interest expenditure if the assessee has sufficient interest free funds to cover up the alleged investments. Relevant extract of the decision of the Tribunal is reproduced below;

"6. In the light of the above discussion, we are of the view that since the assessee has demonstrated that there was sufficient reserves, share capital and interest-free advances stated to be to the tune of Rs.1988.26 lacs in A.Y. 2005-06 and Rs.1827.39 lacs for A. Y. 2006-07, then the decision of the CIT vs. Reliance Utilities and power Ltd. 313 *ITR 340 (Bom.)* is *to be applied on these facts. Resultantly, we hereby confirm the findings of the ld.CIT(A) and dismiss these grounds of the Revenue [or both the years. "*

20. We therefore respectfully following the above judgments and in the given facts and circumstances of the case are of the considered view that since the assessee had earned net interest income during

the year and also possess sufficient interest free funds to cover up the alleged investments, Ld. CIT(A) has rightly deleted the proportionate interest disallowance made by the Ld. A.O applying Rule 8D(2)(ii) of the I.T. rules. Accordingly this common issue raised by the revenue in Ground No.2 for Assessment Years 2010-11 to 2012-13 stands dismissed.

21. Now we take up the issue relating to administrative expense disallowance raised by the assessee challenging the finding of Ld. CIT(A) confirming the administrative expenses disallowed u/s 14A of the Act which was computed by Ld. A.O @0.5% of the average investments. Ld. Counsel for the assessee submitted that the alleged disallowance is on higher side since the amount of investment on which 0.5% administrative expenses has been disallowed also includes investments made in the partnership firm and the income from such partnership firms have also been subjected to tax. He also submitted that the investment in shares are towards quoted and unquoted shares. Unquoted shares are investment in subsidiary/group companies. Investment in equity shares also includes the old investments which has been brought forwarded and

no administrative expenses is incurred on such investments.

22. Per contra Ld. Departmental Representative vehemently argued supporting the orders of lower authorities.

23. We have heard rival contentions and perused the records placed before us. Assessee's common grievance in Ground No.2 for Assessment Year 2010-11 & 2012-13 challenges the finding of Ld. CIT(A) confirming the addition for administrative expenses disallowed u/s 14A of the Act computed @0.5% of average investments.

24. We observe that for Assessment Year 2010-11 assessee has not offered any amount *suo moto* as disallowance for administrative expenses u/s 14A of the Act. However for Assessment Years 2011-12 and 2012-13 assessee has *suo moto* disallowed for Rs.11,00,000/- and Rs.12,00,000/- respectively towards administrative expenses disallowance under Rule 8D(2)(ii) of the I.T rules.

25. It was contended before us that the investment on which 0.5% administrative expenses disallowance has been computed majorly includes the investment in the partnership firm by the assessee, investment in unquoted shares and also brought forwarded

investments in quoted shares. Perusal of the balance sheet also shows that assessee has not carried out major reshuffle in its investment portfolio and most of the investments are brought forwarded. Assessee is also engaged in the business of brokerage from shares and securities trading through National Stock Exchange and other depository services. Ld. A.O has also not pointed out any specific instance about any particular administrative expenses incurred specifically for managing the investment portfolio.

26. We are also aware the fact that Rule 8D(2)(iii) of the I.T. Rules has been specially enacted to compute the administrative disallowance since it is practically not possible to bifurcate the administrative expenses specifically incurred for managing the investment portfolios. But certainly assessee should not be burdened with abnormal disallowance of administrative expenses just because of application of Rule 8D and should be considered with reference to the investment portfolio of the assessee unless until Ld. A.O makes proper satisfaction with evidence and factual finding.

27. We therefore in the given facts and circumstances of the case and considering the investment portfolio of the assessee and being

fair to both the parties sustained the disallowance of administrative expenses under Rule 8D(2)(iii) of I.T. Rules to extent of Rs.15,00,000/-, Rs.17,00,000/- and Rs.20,00,000/- for Assessment Years 2010-11, 2011-12 and 2012-13 respectively. These respective grounds No.2 of the assessee's appeal are partly allowed.

28. Now we take up Ground No.3 of the assessee's appeal for Assessment Years 2010-11 to 2014-15 challenging the finding of Ld. CIT(A) confirming the action of Ld. A.O restricting depreciation on software license to 25% as against 60% charged by the assessee thereby disallowing claim of Rs.3,93,758/-, Rs.5,23,586/-, Rs.5,81,571/-, Rs.16,08,014/- and Rs.27,22,702/- respectively.

29. Brief facts of this ground is that during the assessment proceedings Ld. A.O allowed depreciation on computer software claimed @25% as against 60% claimed by the assessee. Aggrieved assessee preferred appeal before Ld. CIT(A) but could not succeed. Now the assessee is in appeal before the Tribunal.

30. Ld. Counsel for the assessee stated that the assessee has claimed depreciation on computer software @60% since software is

an integral part of computer system and used in the broking business. Trading activity is done through software provided by stock exchange. He further stated that the issue stands squarely covered by the decision of the Co-ordinate Bench in favour of the assessee in the case of *ACIT V/s Zydus Infrastructure Pvt. Ltd ITA No.1464/Ahd/2012 order dated 21.7.2016.*

31. Per contra Ld. Departmental Representative vehemently argued supported the orders of both the lower authorities.

32. We have heard rival contentions and perused the records placed before us. Through common Ground No.3 in respective appeals for the Assessment Years 2010-11 to 2014-15 assessee has challenges the orders of lower authorities restricting the depreciation on software license @25% as against 60% allowable to the assessee.

33. We find that similar type of case was adjudicated by Hon'ble I.T.A.T., Ahmedabad in the case of *ACIT V/s Zydus Infrastructure Pvt. Ltd,* ITA No.1464/Ahd/2012 order dated 21.7.2016 wherein it was held as under;

"14. We have heard the rival contentions and perused the material on record. The issue raised in this ground by Revenue is against the action of ld. CIT(A) for disallowing depreciation on software @ 60% in place of 25% which are applicable for intangible asset. We observe that ld. Assessing Officer has treated the expenditure of Rs.91,999/- towards purchase of software license as capital asset under the block of intangible assets eligible for depreciation @ 25% whereas ld. CIT(A) has also treated the expenditure of Rs.91,999/- as capital expenditure but has categorized it along with computers and directed the Assessing Officer to allow depreciation @ 60% by observing as under :-

4.3 Decision:

I have carefully perused the assessment order and the submissions given by the appellant. The appellant has submitted that since the software involves rapid obsolescence, the claim of revenue expenditure-should be allowed. I am not inclined to agree with the submission of the appellant. The appellant has bought software licenses which are valid for long term and the expenditure incurred thereon is, therefore, not in the nature of Asst. Year 2009-10 revenue. Therefore; the plea of the appellant that expenditure is in the nature of revenue is dismissed.

However, the treatment of the software by the A. O. as intangible asset and allowing interest @ 25% is not justified as the computer software has been grouped as eligible to rate of depreciation @ 60% and, therefore, A. O. should have allowed the depreciation @ 60% in place of 25% at/owed by him. The appellant has also disputed the finding of the A, O. that the software were used for less than 180 days. The A. O. is directed to verify the claim from the facts available on record and allow the depreciation accordingly as per the provisions of the Act, The grounds of appeal are accordingly partly allowed".

34. In the given facts and circumstances of the case and respectfully following the decision of I.T.A.T., Ahemdabad in the case *ACIT V/s Zydus Infrastructure Pvt. Ltd (supra), we* delete the disallowance of Rs.3,93,758/-, Rs.5,23,586/-, Rs.5,81,571/-, Rs.16,08,014/- and Rs.27,22,702/- for Assessment Years 2010-11 to 2014-15 respectively. In the result the ground No.3 raised by the assessee for Assessment Year 2010-11 to 2014-15 stands allowed.

35. Now we take up issue relating to gain/ loss from transactions of sale of shares and securities. This issue relates to Assessment Year 2010-11, 2011-12 and 2012-13. Assessee who is a share broking house is also engaged in share trading of equity shares and future options and derivatives also makes investment in equity shares with an object to hold for a long period. The gain/loss from sale of the equity shares held under the head 'investments' has been shown by the assessee as Long Term Capital Gain/Short Term Capital Gain as per the period of holding.

36. Ld. A.O on observing the alleged transactions relates to huge quantity of shares transacted many times during the year and also looking to the facts that assessee is itself engaged in trading of

shares consistently held that such gain should be taxed as business income and not as Long Term/Short Term Capital Gain claimed by the assessee. Against the action of the Ld. A.O treating the gain from sale of equity shares as business income, assessee preferred appeal before Ld. CIT(A). For Assessment Year 2010-11 and 2011-12 Ld. CIT(A) partly allowed assessee's claim allowing the benefit of exemption for Long Term Capital Gain but as regards the Short Term Capital Gain direction was given to bifurcate the Short Term Capital Gain into two categories so as to calculate the capital gain as per the period of holding. In these cases where the period of holding was more than 30 days but less than one year claim of Short Term Capital Gain to be allowed and for remaining, where the period of holding was less than 30 days, the gain/loss was directed to be treated as business gain/loss. However for Assessment Year 2012-13 Ld. CIT(A) following the decision of Co-ordinate Bench in the case of *Kalpesh Shah V/s ACIT ITA No. 2818/Ahd/2011 dated 31.10.12* give away the procedure of calculating the gain considering the period of 30 days thus allowing the appeal of the assessee and accepting the claim of Long Term and Short Term Capital Gain shown by the assessee from sale of shares held under the "Investment head".

37. Now the assessee and Revenue are in cross appeal for Assessment Year 2010-11 & 2011-12 and Revenue is in appeal for Assessment Year 2012-13.

38. Ld. Counsel for the assessee vehemently argued for all the three years since the facts remain the same and submitted that the appellant company is in the business of share broking far clients. The company has also invested in equity shares on long term basis and earned long-term capital gain/loss and short-term capital gain/loss. It is submitted that the appellant is a broker of shares &- securities, where tilt: the company provides platform to clients / investors to purchase and sale shares online but the decision of purchase and sale is taken by the clients. Whereas, the capital gain is part of its investments, which is purely different from broking activity. It is submitted that the appellant is a broker of shares & securities, where the company provides platform to clients /investors to purchase and sale shares on-line but the decision of purchase and sale is taken by the clients. Whereas; the capital gain is part of its investments, which is purely different from broking activity. It

is further submitted that the company has treated shares as investment, the funds are company's own funds, the investment are in the nature of long term investment, deliveries are taken for all such investments. Thus, the shares are investment of the company. In this regard, the appellant company relies on following cases, where the Hon'ble Courts and Tribunals decided that the gain from investment in shares is to be treated as capital gain and not as business income.

(i) CIT vs Gopal Purohit (SC) SLP NO. CC *1680212010 dated 15-11-2010.*

(ii) J M Share & *Stock Brokers Ltd v. Jt. CIT, Special Range-22, Mumbai in ITA No. 2801/Mum/2000*

(iii) Himenshu J Shah & *Others* v *ACIT,* CC 2(3), *Ahmedabad in ITA No. 2875.* 2878, 2879, *2800/Ahd /2008*

(iv) *Nagindas P. Sheth (HUF) Vs. ACIT ITA No. 961/!Mum/2010* (IT*AT Mumbai Bench "G")*

(v) *CIT* vs *Niraj Amidhar Surti* 347 *ITR* 149 *(GU) HC)*

(vi) ClT-11 vs. Vaibhav J Shah HUF - Tax Appeal no 77 & 78 of

2010 order dated 27-06-2012 *(Guj HC)*

In View of the above facts. submissions. Explanations and decisions of Hon'ble Courts and Tribunals, it is prayed that the appellant company has made investment and the activity may kindly be treated as investment and not business. Surplus/Deficit on shares investment may kindly be treated as long-term/short term capital gain/loss and the decision of AO to treat the same as business income may kindly be cancelled.

39. Ld. Counsel for the assessee also referred to the Circular No.6/2016 dated 29.02.2016 issued by Central Board of Direct Taxes which relates to the issue of taxability of surplus on sale of shares and securities – Capital Gains or Business Income – Instructions in order to reduce litigation. Referring to the Circular it was submitted that the assessee has been consistently showing the Short Term and Long Term Capital Gain from sale of shares hold for long term purposes.

40. Per contra Ld. Departmental Representative vehemently argued supporting the orders of Ld. A.O for respective years wherein the Ld.

A.O has referred to various judgments in order to prove that the alleged gain of Long Term and Short Term Capital Gain is actually the business income of the assessee since they were entered as an adventure to trade.

41. We have heard rival contentions and perused the records placed before us and also carefully gone through the judgments relied and referred by both the parties. The issue relates to treatment of Gain/Loss from sale of shares. The assessee company derives income from brokerage business of shares and securities. It also provides depository services. Trading of shares is also carried out in equity shares, derivatives and future options. Assessee has duly disclosed the income from trading of shares with specific details of opening stock purchase, sales and closing stock. Inventory of equity shares i.e. stock in trade is valued at "cost or market price whichever is less". There is no dispute to such disclosed income. Bone of contention relates to capital gain. Assessee has shown Short Term Capital and Long Term Capital Gain on sale of equity shares and has claimed the benefit of exemption for Long Term Capital Gain and special tax rate of 15% for Short Term Capital Gain. Ld. A.O has

treated the alleged gain claimed by the assessee as Long Term Capital Gain and Short Term Capital Gain as business income. Reference has been made by the Ld.A.O to various judgments and similarly assessee has also taken shelter of various judgments. Central Board of Direct Taxes have also issued various circulars in this regard, Firstly on 31.8.89 and thereafter on 15.6.2007 & Vide Circular No.6/2016 dated29.2.2016, in order to deal with the taxability of surplus on sale of shares and securities;

> *Sub: Issue of taxability of surplus on sale of shares and securities - Capital Gains or Business Income - Instructions in order to reduce litigation - reg.-*
>
> *Sub-section (14) of Section 2 of the Income-tax Act, 1961 ('Act') defines the term "capital asset" to include property of any kind held by an assessee, whether or not connected with his business or profession, but does not include any stock-in-trade or personal assets subject to certain exceptions. As regards shares and other securities, the same can be held either as capital assets or stock-in-trade/ trading assets or both. Determination of the character of a particular investment in shares or other securities, whether the same is in the nature of a capital asset or stock-in-trade, is essentially a fact-specific determination and has led to a lot ot uncertainty and litigation in the past.*
>
> *2. Over the years, the courts have laid down different parameters to distinguish the shares held as investments from the shares held as stock-in-trade. The Central Board of Direct Taxes ('CBDT) has also, through Instruction No. 1827, dated August 31, 1989 and Circular No.4 of 2007*

dated June 15, 2007, summarized the said principles for guidance of the field formations .

3. Disputes, however, continue to exist on the application of these principles to the facts of an individual case since the taxpayers find it difficult to prove the intention in acquiring such shares/securities. In this background, while recognizing that no universal principal in absolute terms can be laid down to decide the character of income from sale of shares and securities (i.e. whether the same is in the nature of capital gain or business income), CBDT realizing that major part of shares/securities transactions takes place in respect of the listed ones and with a view to reduce litigation and uncertainty in the matter, in partial modification to the aforesaid Circulars, further instructs that the Assessing Officers in holding whether the surplus generated from sale of listed shares or other securities would be treated as Capital Gain or Business Income, shall take into account the following –

a) Where the assessee itself, irrespective of the period of holding the listed shares and securities, opts to treat them as stock-in-trade, the income arising from transfer of such shares/securities would be treated as its business income, b) In respect of listed shares and securities held for a period of more than 12 months immediately preceding the date of its transfer, if the assessee desires to treat the income arising from the transfer thereof as Capital Gain, the same shall not be put to dispute by the Assessing Officer. However, this stand, once taken by the assessee in a particular Assessment Year, shall remain applicable in subsequent Assessment Years also and the taxpayers shall not be allowed to adopt a different/contrary stand in this regard in subsequent years;

c) In all other cases, the nature of transaction (i.e. whether the same is in the nature of capital gain or business income) shall continue to be

decided keeping in view the aforesaid Circulars issued by the CBDT.

4. It is, however, clarified that the above shall not apply in respect of such transactions in shares/securities where the genuineness of the transaction itself is questionable, such as bogus claims of Long Term Capital Gain / Short Term Capital Loss or any other sham transactions.

5. It is reiterated that the above principles have been formulated with t he sale objective of reducing litigation and maintaining consistency in approach on the issue of treatment of income derived from transfer of shares and securities. All the relevant provisions of the Act shall continue to apply on the transactions involving transfer of shares and securities".

42. The above circular has been prepared keeping in mind various judgments relating to this issue both favouring the assessee as well as revenue. Further we observe that Ld. CIT(A) allowed the assessee's claim except for treating the Gain/Loss from its equity shares/securities held for 30 days or loss as business income. This finding was also reversed in Assessment Year 2012-13 when Ld. CIT(A) accepted the entire claim of Long Term Capital Gain and Short Term Capital Gain offered by the assessee in view of the fact that no such provisions in the Act is available for computing the gain for shares held for 30 days or less as business income. Ld. CIT(A) allowed the assessee's claim for Assessment Year2012-13 observed

as follows;

"10.3. The contentions of the learned A.R are that the appellant company is a broker of shares and securities on behalf of clients, apart from the said business, it made its own investment our of own funds in shares/securities during the year the long term capital gain of' Rs. 938,358/- was earned on the shares and the short term capita! gain of Rs. 56,86,282/- was earned on the shares and therefore in the light of the decisions relied upon treating the capital gains as business income was not warranted.

10.4. I have considered the facts of the matter. Apart from the stock braking business, appellant earned income on the purchase and sale of shares/securities as investment and interest income.

10.5 Appellant is having interest income of Rs. 14.69 crores as against interest expenditure of Rs. 8.06 crores, which shows that borrowed funds were not utilized for purchase of shares/securities. Also, Appellant has shown investment activity separately in the books of accounts.

10.6 During the hearing, the appellant was asked to show how the assessee has treated similar transaction in subsequent Fear, the appellant held copies of computation of total income for subsequent year, which shows that in these Fears also appellant has shown short term capital gain from sale of shares held for less than 12 months.

10.7 Further, loss of sale of shares in earlier year as short term capita/loss and same was carried forward to the next Fear instead of treating the same as business loss. Thus intension of appellant is clear that shares acquired for investment are shown In books as 'investment ' and shares acquired for trade are shown as trade.

10.8 In appellant's own case for AY 2011-12 dated 13-08-2014in appeal No.CIT(/!)- VI/jt.CIT/R.3/214/ 2013-14, .My predecessor directed A.O to assess the gain on shares held up to 30 days as business income and to assess the balance gain as short term capital gain] long term capital gain, keeping view decision of Ahmedabad Tribunal in case of Shri Sughamhand C.Shah Vs. ACIT, Circle-3, Surat in ITA Nos. 3554/Ahd/2008 for A. Y 2005-06 and 1932/Ahd/2009 for .-4. Y 2006-0.7

10.9 Whereas, jurisdictional tribunal in case of Kaplesh C Shah Vs. ACIT in ITA No. 2818/Ahd/2011 for AY 2008-09 vide order dated 31-10.-2012, has taken contrary view and distinguished own order in case of S/Shri Sughamchand C Shah (Supra) and held that:

> *'.. the intension of tile assessee is' clear that he has treated investment in shares as "investment" and not for the purpose of trade. The revenue brought any material to show that assessee has invested is share for "trade". We further find that revenue has not tiled any appeal against the order of ld. CIT(A) treating the investment of assessee In shares for more than 30 days and less than 12 months as investment of assessee In shares for more than 30 days and less that 12 months as investment In short-term assets. <u>There is no provision under the Act to indicate that the holding period of 30 days is relevant to decide whether any transaction made for investment or for trade</u>. Therefore, we have no hesitation In holding that Ld. CIT(A) was not justified in treating the surplus arising out of sale of shares held for the period of less than 30 days as business income instead of short term capital gain shown by assessee".*

> *10.9 Under the above fact, circumstances and jurisdictional tribunal decision In case of Shri Kalpesh C Shah (Supra), it is held that there is no provision under the Act to indicate that the holding period of shares less than 30 days is relevant to decide transaction made' in nature of trade and not as investment activity. Therefore, I am inclined to accept the contention of Appellant and direct the AO to treat short term capital gain and long term capital gain on shares / security as investment activity. I also direct AO to allow set off of brought forward Short term capital loss of AY 201'1-12 from short term capital gain of current year These grounds of appeal are allowed"*

43. We find that the issue relating to taxability of surplus on shares and securities depends on various facts and circumstances. In the instant case the assessee is itself into the share trading business, broking house, depository services etc. From perusal of the balance sheets we find that the equity shares held by the assessee are categorized into two parts. Under the head "Investments" the equity shares for various companies are shown at "cost price" whereas under the head Inventories the equity shares held by the assessee as "stock in trade" valued at cost or market price whichever is less. So the treatment of shares held by the assessee has been clearly differentiated in the books of accounts.

44. On test check basis we verified the transactions of Long Term Capital Gain and found that the equity shares sold by the assessee

were appearing in the list of "investment" attached with the audited financial statements of preceding years. We also find that the Short Term Capital Gain of few scrip were also brought forwarded from last year. So for the purpose of verifying that whether the equity shares is hold for investment purpose it is not so difficult for the "Long Term Capital Gain" since the names can easily be verified from the list of Investments of preceding financial year.

45. As far as the Short Term Capital Gain, it may be difficult at some point of time because the equity shares if purchased during the year then they will not appear in the last year balance sheet. Revenue authorities can easily question the taxability of such transaction because the assessee may be dealing in the similar scrip for trading purpose and simultaneously for investment purposes. So there remains thin line but then such thin line has to be checked by the revenue authorities from necessary details including contract note, separate demat account statements. From perusal of the record we find that no such effort has been made by the revenue authorities and only general remark has been given that "since the assessee in the business of share trading and frequent transactions

have taken place it should be treated as business income". Certainly this could not be a bench mark to bifurcate the transaction being held for long term purposes as investor or as a trader.

46. In the case of assessee this claim has been consistently made for so many years. Transactions have been separately accounted for in the books. Equity shares purchased for Long Term purposes are held as Investment valued at "cost price" and equity shares held as stock in trade are shown under the head Inventories valued at "cost or market price whichever is less". Gain/Loss as it is incurred has been disclosed in the financial statements and computation of income. Since no adverse material is brought on record by the revenue authorities in any of the years under dispute, we are of the considered view that the claim of the assessee of showing the gain from sale of equity shares under the head Long Term and Short Term Capital Gain needs to be accepted. We accordingly order so and allow the respective Ground No.4 of the assessee's appeal for Assessment Years 2010-11and 2011-12 and dismiss Ground No.7 & 5 of Revenue for Assessment Years 2010-11 , 2011-12 and 2012-13 respectively.

47. Now we take up the issue raised in revenue's appeal for Assessment Year 2010-1, 2011-12 and 2012-13 relating to disallowance of depreciation and insurance of motor cars in the name of Directors.

48. Brief facts relating to this are that depreciation and Insurance on motor car is claimed in the books of accounts. Motor cars were in the name of Directors. Funds were provided by the company. Motor cars were used for assessee's business purposes. Ld. A.O disallowed the depreciation since the car were in the name of the company. Ld. CIT(A) allowed the claim. Now revenue is in appeal before the Tribunal.

49. Ld. Departmental Representative vehemently argued supported the order of Ld. A.O.

50. Per contra Ld. Counsel for the assessee relying on the finding of Ld. CIT(A) also submitted that the funds were provided by the company and the issue is squarely covered in favour of the assessee by the judgment of Hon'ble Supreme Court in the case of *Mysore Minerals Ltd. V/s CIT 239 ITR 775* as well as the judgment of

jurisdictional High Court in the case of *CIT V/s Aravali Finlease Ltd. (2012) 341 ITR 282 (Guj).*

51. We have heard rival contentions and perused the records placed before us. Revenue's grievance is against the finding of Ld. CIT(A) allowing the depreciation and insurance on the motor cars registered in the name of the Directors. It is not in dispute that the cars on which the depreciation has been claimed and insurance expenses are in the name of Directors. It is also not disputed that the funds to purchase the car have been provided by the assessee company and the cars have been used for the business purposes of the company. Whether in the given facts the assessee is eligible to claim the depreciation?. We find that Ld. CIT(A) allowed the assessee's claim observing as follows;

> *"3.3. Having considered the facts of the case I am inclined to accept the contentions of the Ld. A.R. As admitted by the A.O himself the funds for purchase of the cars were provided by the appellant. The Hon'ble Supreme Court in the case of Mysore Minerals Ltd. Vs. C.LT. 239 ITR 775 (SC) has held that the section 32 of the LT. Act, 1961, confers a benefit of the assessee. The provision should be so interpreted and the words used therein should be assigned such meaning as would enable the assessee to secure the benefit intended to be given by the Legislature to the assessee. It was further held by the Hon 'ble Supreme Court that the term owned as*

occurring in section 32(1) of the Income-tax Act must be assigned a wider meaning. The Hon'ble Supreme Court has held as under:

> *"It is well-settled that there cannot be two owners of the property simultaneously and in the same sense of the term. The intention of the Legislature in enacting section 32 of the Act would be best fulfilled by allowing deduction in respect of depreciation to the person in whom for the time being vests the dominion over the building and who is entitled to use it in his own right and is using the same for the purposes of his business or profession. Assigning any different meaning would not subserve the legislative intent. "*

Further, the Ahmedabad LT.A.T in the case of Ambuja Synthetics Mills Pvt.Ltd. Vs. The Dy. C.LT., Range-l , Ahmedabad, on similar facts, decided the issue in favour of the assessee, by holding

> *"It is not disputed that funds for purchases of the car were provided by the assessee company which is also reflected in the accounts of the assessee company. In our opinion, when the car is actually used for the purpose of business of the company depreciation thereon cannot be denied. "*

As regards the A.O's observation that the appellant failed to establish that the vehicles were used by the company, it is seen that there are various judicial pronouncements to the effect that use means kept ready for use and not actually use. The case laws cited at 123 ITR 404 (Delhi), 170 Taxman 407 (MP), 187 Taxman 442 (Mad), 201 Taxman 666 (P & H), 198 Taxman 470 & 199 Taxman 273 are in favour of the appellant.

Moreover, no material has been brought on record to show that the vehicle expenses claimed were not genuine. Having considered the facts of the matter and the case laws on the issue impugned disallowance of

depreciation on car and the insurance premium is deleted. This ground of appeal is allowed".

52. We further observed that the Co-ordinate Bench, Ahmedabad in the case of Swagat Infrastructure Ltd vs. JCIT (2013) 37 taxmann.com 83 (Ahd. Trib.) also took similar view favouring the assessee by following the judgment of Apex Court in the case of *Mysore Minerals Ltd vs. CIT 239 ITR* (supra) observed as under;

"8. We have heard the rival submissions and perused the materials available on record. Before Ld. CIT(A) the contention of assessee was also that such expenditure was allowed in earlier year: The factum that such expenditure was allowed in earlier year is not contradicted by the Revenue. As per the Section 32(1) *of the Act depreciation is allowable* if *the machinery is owned wholly and partly by the assessee, however, the Hon'ble Supreme Court has further enlarged this scope of word "own" in its judgment rendered in the case of Mysore Minerals Ltd. (supra), wherein the Hon'ble Apex court has held that the provisions should be* so *interpreted and the words used therein should be assigned such meaning as would enable the assessee to secure the benefit intended to be given by the Legislature to the assessee. It has been held that the terms "owned" "ownership" and "own" are generic terms. They have wide and also narrow connotation. The meaning would depend on the context in which the term are used. In the present case, the assessee has made submission that the cars were purchased in the*

name of the Director and such cars are utilized for the purposes of its business. Therefore the assessee is entitled for depreciation and the interest expenditure. We are of the considered opinion that the assessee would be entitled for the allowance depreciation as well as interest expenditure if the assessee is able to prove that the vehicles were under the dominion control of the assessee-company and were utilized for its business purpose. The contention of the assessee is that the vehicles were utilized for business purpose and the assessee-company has shown it in block of assets. We find that this contention of the assessee is not considered by the authorities below in the light of the ratio laid by Hon'ble Supreme Court rendered in the case of Mysore Minerals Ltd. (supra). Respectfully following the ratio laid by the Hon'ble Supreme Court in the case of Mysore Minerals Ltd. (supra) we allow this ground of assessee's appeal and direct the Assessing Officer to delete the addition. This ground of assessee's appeal is allowed. "

53. We therefore in the given facts and circumstances of the case and respectfully following the judgments referred find no inconsistency in the finding of Ld. CIT(A) allowing the claim of depreciation and insurance expenses on motor cars held in the name of Directors. Accordingly Ground No.1 raised by the revenue in appeals for Assessment Year 2010-11, 2011-12 and 2012-13 stands dismissed.

54. Now we take up the issue raised in revenue's appeal challenges the Ld. CIT(A) finding deleting the disallowance of bad debt (trading loss) at Rs.42.20 lacs, Rs.1.58 lacs and Rs.1,19,85,613/- for Assessment Years 2010-11 to 2012-13 respectively.

55. Brief facts relating to this issue are that during the course of assessment proceedings for Assessment Years 2010-11 to 2012-13 Ld. A.O observed that the assessee has claimed bad debts representing the principle amount of cost of shares/stock transaction on each defaulting clients. It was contended by the assessee that the alleged bad debtor if not allowable as bad debts u/s 36(2)(vii) of the Act, the said amount may be allowed as trading loss. However Ld. A.O was not satisfied and denied the benefit u/s 36(2) and also did not allowed it as a business loss. Aggrieved assessee preferred appeal before Ld. CIT(A) and succeeded. Now the revenue is in appeal before the Tribunal.

56. Ld. Departmental Representative vehemently argued supporting the order of Ld. A.O.

57. Per contra Ld. Counsel for the assessee relying on the finding of Ld. CIT(A) also submitted that the issue is squarely covered against the revenue by the decision of Co-ordinate bench in assessee's own case vide ITA No.1577/Ahd/2012 order dated 22.01.2016.

58. We have heard rival contentions and perused the records placed before us. Revenue is aggrieved with the finding of Ld. CIT(A) deleting the disallowance of bad debts claimed by the assessee allowing it as trading loss. We observe that Ld. CIT(A) allowed the assessee's claim relying on the decision of Co-ordinate Bench rendered in assessee's own case for Assessment Year 2009-10 vide ITA No.1577/Ahd/2012 order dated 22.01.2016 observing as follows;

> *"Ground no. 2 relates to the deletion of the addition of Rs. 2,09,83,221/- on account of Bad Debts. Assessee was asked to justify its claim. Assessee filed necessary details. The details/explanation filed by the assessee did not find favour with the A.O who was of the firm t belief that condition laid down u/s 36(2) of the Act has not been specified.*
>
> *9. Assessee carried the matter before the Id. CIT(A) and reiterated its claim of bad debt. After considering the facts and the submissions and drawing support from the decision of Hon'ble Delhi High Court in the case of Bonanza portfolio Ltd. 320 ITR 178 and also relying upon the decision of the Tribunal, Ahmedabad Bench in the case*

Rameshchandra D. Chokshi in ITA No. 1015/Ahd/08, the Id. CIT(A) deleted the additions.

10. Aggrieved by this the revenue is before us. The D.R. could not bring any distinguishing decision in favour of the Revenue. We find that an identical issue was considered by the Tribunal in assessee's own case in A.Y. 2008-09. In ITA Nos. 2754 & 2884/Ahd/2011, the relevant findings of the Tribunal are given on Para 4 of its order.

11. Respectfully, following the decision of the co-ordinate Bench, we confirmed the findings of the Id. CIT(A). This ground is also dismissed".

59. We therefore in the given facts and circumstances of the case and respectfully following the decision of the Co-ordinate Bench and also observing that facts are similar to those for Assessment Years 2010-11,2011-12 and 2012-13, find no reason to interfere in the finding of Ld. CIT(A) deleting the disallowance of bad debts (treating loss) at Rs. Rs.42.20 lacs, Rs.1.58 lacs and Rs.1,19,85,613/-. Ground No.3 of the revenue's appeal for Assessment Years 2010-11 to 2012-13 stands dismissed.

60. Now we take up Revenue's next grievance raised for Assessment Years 2010-11, 2011-12 and 2012-13 challenging the finding of Ld. CIT(A) deleting the addition made u/s 40(a)(ia) of the Act made on payment of V-Sat charges/ lease line charges/NSDL charges at Rs.

7.89, Rs.2.68 lacs and Rs.5.41 lacs respectively.

61. At the outset Ld. Counsel for the assessee submitted that the issue stands covered in favour of the assessee by the decision of the Co-ordinate Tribunal in assessee's own case for Assessment Year 2009-10 vide ITA No.1577/Ahd/2012 order dated 22.01.2016.

62. Per contra Ld. Departmental Representative vehemently argued supporting the order of Ld. A.O but could not controvert the submission made by the Ld. Counsel for the assessee.

63. We have heard rival contentions and perused the records placed before us. Revenue has challenged the deletion of disallowance made u/s 40(a)(ia) of the Act for non deduction/short deduction of tax at source on the payment of V-Sat charges/ lease line charges/NSDL charges. We find that similar issue was adjudicated by the Co-ordinate Bench in assessee's own case for Assessment Year 2009-10 and has been decided in favour of the assessee by the Tribunal observing as follows:-

> *"5.The first ground relates to the deletion of the addition made on proportionate basis u/s, 40(a)(ia) of the Act. A perusal of the*

assessment order show that this addition has been made on account of VSAT expenses and lease line charges incurred by the assessee during the year on which TDS was made as per the provisions of Section 194C and 194J of the Act. The A.O was of the firm belief that the relevant provision applicable on the payments made by the assessee attract section 1941 of the Act. The A.O accordingly disallowed Rs. 7,49,455/- being VSAT charges and Rs. 72,500/- being lease line expenses. Assesse-e carried the matter before the Id. CIT(A) and the Id. CIT(A) gave partial relief to the assessee. Directing the A.O to give proportionate benefit of the TDS already deducted and paid in time and disallowed the balance amount.

6.Revenue is before us against this direction of the Id. CIT(A) and the assessee is also in appeal vide ITA No. 1569/Ahd/2012. We find that an identical issue was considered by the Tribunal in assessee's own case in A.Y. 2008-09 vide order dated 04.09.2015 in ITA No. 2754 & 2884/Ahd/2011. The findings of the Tribunal can be found at Para 3 of its order. Wherein it has followed the decision of the Hon'ble jurisdictional High Court in the case of Prayas Engineering Ltd. in Tax Appeal No. 1237 of 2014 dated 17.11.2014 and also relied upon the decision of the Hon'ble High Court of Calcutta in the case of S.K. Tekriwal 361 ITR 432.

7.Respectfully, following the decision of the co-ordinate Bench, we set aside the findings of the Id. CIT(A) and direct the AO to delete the impugned disallowance. First ground of revenue's appeal is dismissed and that of assessee's appeal is allowed.

64. In the given facts and circumstances of the case and respectfully following the decision of the Co-ordinate bench we confirm the findings of Ld. CIT(A). In the result the grounds No. 5 & 4 raised by the revenue for Assessment Years 2010-11, 2011-12 and 2012-13 is dismissed.

65. Now we take up common issue raised in revenue's appeal challenging the deletion of disallowance u/s 40(a)(ia) of the Act on sub-brokerage/commission at Rs.52.16 lacs, Rs.82.11 lacs for Assessment Years 2010-11 & 2011-12 respectively.

66. Brief facts of the case are that sub-brokerage/commission for IPO was paid by the assessee without deduction of tax at source u/s 194H of the Act. Ld. A.O. was of the view that Initial Public Offer (IPO) cannot be regarded as transaction in securities and the application made for IPO cannot be regarded as securities within the meaning of Section 2(h) of Securities Contract (Regulation) Act 1956 till the shares are allotted and delivered to the person and accordingly made disallowance u/s 40(a)(ia) at Rs.52.16 lacs and Rs.82.11 lacs for Assessment Year 2010-11 and2012-13respectively. Assessee succeeded in appeal before Ld. CIT(A). Now revenue is in

appeal before the Tribunal.

67. Ld. Departmental Representative vehemently argued supporting the orders of Ld. A.O.

68. Per contra Ld. Counsel for the assessee placed reliance on the decision of Co-ordinate Bench Delhi in the case of *ITO V/s Mittal Investment & Co (2013)33 Taxmann.com 52 (Del.Trib.)* and also on the finding of Ld. CIT(A).

69. We have heard rival contentions and perused the records placed before us. Revenue is aggrieved with the finding of Ld. CIT(A) deleting the disallowance made u/s 40(a)(ai) of the Act for non deduction of tax at source u/s 194H on the payment of sub-brokerage/commission on the IPO. We observe that Ld. CIT(A) deleted the disallowance giving following findings:-

> *"10.4. I have considered the facts of the matter. Section 194H deals with deduction of tax on commission or brokerage. Clause (i) of the Explanation below the section defines commission or brokerage. According to the said clause any payment in relation to any transaction relating to securities is excluded for the purposes of the said section. Clause (iii) of the Explanation states that the expression 'securities' shall have the meaning assigned to it in clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956. In accordance with the said Act shares are also securities. Even accepting*

the observation of the A.O. that the shares become securities only on allotment and not at the time of making application, it cannot be said that the sub-brokerage paid was not in relation to the shares. The receipt as well as payment of brokerage in connection with the IPO takes place only after the allotment of the shares. The quantification of the brokerage is also with reference to the actual allotment of shares and takes place after the allocation of shares. As seen from the chart submitted by the A.R., it is seen that brokerage was received by the appellant from three weeks to 9 months after the IPO allotment date and the brokerage received was ranging between 0.075 and 0.60. Therefore, I am not in agreement with the finding of the A.O. that the payment of sub-brokerage was not in connection with the securities. I am of the view that appellant was not liable to deduct tax on the impugned sum and therefore the provisions of Section 40(a)(ia) are not attracted. Impugned disallowance is deleted. This ground of appeal is allowed".

70. We also find that similar issue came up before the Co-ordinate Bench, Delhi in the case of *ITO V/s Mittal Investment & Co Appeal No.1951 (Delhi) of 2012 order dated 7.12.2012 (2013) 33 taxmann.com 52 (Delhi-Trib.)* wherein the Tribunal observed as under:-

12. Ld. Counsel reiterated the submissions made before ld. CIT(A) and submitted that in view of the provisions of Explanation (i) to section 194H read with section 2(h) of the Securities Contracts (Regulation) Act, 1956, no TDS was required to be made on services related to security transaction. In this regard, ld. Counsel also referred to page 106 of paper book to demonstrate that HDFC was also not deducting TDS in respect of

commission paid relating to mutual funds. In the alternative ld. Counsel relied on the decision of Spl. Bench in the case of Merilyn Shipping & Transporters vs. Addl. CIT, 136 ITD 23 (SB) and submitted that in view of the majority view of Spl. Bench, since nothing was payable at the year end, therefore, no TDS was required to be made.

13. We have considered the submissions of both the parties and have perused the record of the case.

14. The only point on which ld. CIT(A)'s order has been assailed is that the TDS was not made in terms of section 194H. Section 194H deals with provisions relating to TDS on commission or brokerage. Commission or brokerage has been defined in Explanation (i) as under: -
"Explanation (i) "commission or brokerage" includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuation article or thing, not being securities;"

15. A bare perusal of the above Explanation clearly shows that if the commission or brokerage has been paid by a person acting on behalf of another person for services rendered in connection with securities then the said commission or brokerage is outside the purview of section 194H. Clause (h) of sub-section (2) of the Securities Contract Act reads as under: -
"Clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) defines securities as under:
(h) "securities" include -
(i) shares, scripts, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ia) derivative;

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;

(ic) security receipt as defined in clause (zg) of section 2 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(id) units or any other such instrument issued to the investors under any mutual fund scheme;

(ie) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be;

(ii) Government securities;

(iia) such other instruments as may be declared by the Central Government to be securities; and

(iii) rights or interest in securities;"

16. Thus, it is evident that mutual funds are outside the ambit of the term 'securities'. In the present case, admittedly the assessee was agent of post office schemes, PPF, RBI Bonds, LIC, Mutual Funds etc. and, therefore, the commission paid by it to other persons whose services were taken for earning commission was also outside the purview of provisions of section 194H. The definition uses the term "in relation to" which clearly implies that whenever any commission or brokerage is paid in relation to securities then it would be outside the ambit of section 194H. Admittedly, the assessee had paid sub-brokerage in relation to securities (mutual fund) and, therefore, it was outside the ambit of section 194H. We, therefore, do not find any reason with the order of ld. CIT(A).

17. In the result, the Department's appeal is dismissed.

71. We find that the issue is squarely covered in assessee's favour by the decision of the Co-ordinate Bench referred herein above. Ld. Departmental Representative failed to bring any contrary judgment in favour of the revenue. We therefore respectfully following the decision of Co-ordinate Bench in the case of *ITO V/s Mittal Investment & Co (supra)* find no infirmity in the finding of Ld. CIT(A). Accordingly Ground No. 6& 5 of revenue's appeal for Assessment Year 2010-11 & 2011-12 respectively stands dismissed.

72. Now we take up next common issue for Assessment Year 2010-11 & 2011-12 raised at the instance of the revenue challenging the finding of Ld. CIT(A) deleting the addition to Book profit u/s 115JB of the Act at Rs.45.91 lacs, & Rs.45.59 lacs respectively.

73. Brief facts relating to this ground are that the Ld. A.O added disallowance made u/s 14A of the Act to the book profit for the purpose of computing tax u/s 115JB of the Act. It was contended by the assessee that disallowance u/s 14A of the Act cannot be added to book profits since Clause(f) of explanation (1) of Section 115JB has no application. When the matter came up before Ld. CIT(A) assessee succeeded. Now revenue is in appeal before the Tribunal raising

common issue for Assessment Year 2010-11 and 2011-12.

74. At the outset Ld. Counsel for the assessee submitted that the issue stands squarely covered in favour of assessee by the decision of Co-ordinate Bench, Ahmedabad in the case of DCIT V/s Torrent Cable Limited ITA No.2584/Ahd/2012 order dated 11.6.2018. Reliance was also placed on the decision of Special Bench, Delhi Tribunal in the case of ACIT V/s Vineet Investment Pvt. Ltd & Anr. 165 ITD 27 (Delhi).

75. Per contra Ld. Departmental Representative vehemently argued supporting the order of Ld. A.O.

76. We have heard rival contentions and perused the records placed before us. Revenue has challenged the finding of Ld. CIT(A) deleting of disallowance made u/s 14A to book profit u/s 115JB of the Act for Assessment Year 2010-11 and 2011-12 at Rs.45.91 lacs and Rs.45.59 lacs. We observe that the issued raised before us is squarely covered against the revenue and in favour of the assessee by the decision of the Ahmedabad Bench in the case of DCIT V/s Torrent Cable Limited (supra) which has followed judgment of Special

Bench in the case of ACIT V/s Vineet Investment (P) Ltd as well as Arvind Ltd V/s DCIT, ITA No.1816/Ahd/2011 observing as follows;

3. When the matter was called for hearing, the learned AR for the assessee pointed out in the Revenue's appeal that ground no.1 relates to adjustment on account of disallowances made u/s 14A (under the normal provisions of the Act) for the purpose of special provisions of Section 115JB of the Act concerning taxability on the basis of book profits. The learned AR pointed out that the issue is no longer res integra and is covered in favour of the assessee by the decision of the Special Bench in the case of ACIT & Anr. Vs. Vineet Investment Pvt. Ltd & Anr. 165 ITD 27 (Delhi)(SB).

3.1 We find that the issue is squarely covered in favour of the assessee. Our view is supported by the decision of the co-ordinate bench of Tribunal in case of Arvind Ltd. vs. DCIT in ITA No.1816/Ahd/2011 where the decisions of the hon'ble Gujarat High Court and Delhi High Court were also referred for deciding the issue in favour of the assessee. The relevant operative para of the decision of the co-ordinate bench in Arvind Ltd. (supra) is reproduced hereunder:

> *"6. We notice that issue is evolved and developed by certain judicial precedents. We find at the first instance that the identical issue came up for consideration before the Hon'ble Gujarat High Court in the case of Alembic Ltd. (supra) where the substantial question of law on the point as to whether adjustment made on account of disallowance under S.14A of the can be similarly made for the purposes of computation of 'book profit' under S.115JB of the Act was answered against the Revenue and in favour of the assessee. We also take note of decision of the Special Bench rendered in ACIT vs. Vireet Investment Pvt.Ltd. & Anr. 165 ITD 27 (Delhi)[SB] where it was held that the AO was not entitled to tinker with book profits contemplated*

under S.115JB towards disallowance made under s.14A of the Act. We similarly find that judgement of Hon'ble Bombay High Court in CIT vs. Bengal Finance and Investments Pvt. Ltd. in ITA No.337 of 2013 order dated 10/02/2015 also complements the issue. Thus, seen on the anvil of the judicial fiat available squarely on the issue, we are disposed to assign merits to the contentions on behalf of the assessee. At this juncture, we pause to note the concern of revenue seeking to plead possible redundancy of clause(f) to Explanation to s.115JB in the event of disagreement with the action of AO. We are alive to such concerns. However, as noted, we are governed by the superior wisdom available in this regard. Hence, remedy to revenue, if any, perhaps lies elsewhere. Accordingly, respectfully following the decisions governing the field, we direct the AO to delete the adjustments made on account of estimated disallowance determined under s.14A of the Act while computing 'book profit' under s.115JB of the Act."

3.2 In view of the aforesaid discussion, ground no.1 of the Revenue's appeal is dismissed.

77. We observe that Ld. Departmental Representative could not bring on record any contrary judgment to the judgments referred and relied by Ld. Counsel for the assessee which in our considered view are squarely applicable in favour of the assessee and thus are inclined to make no interference in the finding of Ld. CIT(A) and the same stands confirmed. Ground No.8 & 7 raised in revenue's appeal for Assessment Year 2010-11 & 2011-12 stands dismissed.

78. Now we take up Ground No.9 of revenue's appeal challenging the on deletion of the addition to book profit at Rs.1.11 Crores for Assessment Year 2010-11.

79. Brief facts relating to this issue are that the assessee while preparing the computation of income did not include Short Term Capital Gain and Long Term Capital Gain from sale of shares of Adani Enterprises, however the same were duly incorporated in the income shown in the Profit & Loss Account. Ld. A.O was of the view that the alleged amount of capital gain needs to be added to the book profit whereas the assessee's contention was that the amounts already stands included in the book profit. When the matter came up before Ld. CIT(A), directions were given to the Ld.A.O to verify the claim of the assessee. Now the revenue is in appeal before the Tribunal.

80. We have heard rival contentions and perused the records placed before us. The issue relates to the deletion of addition of Rs.1.11 crores to the book profit of the Short Term and Long Term Capital Gains earned from sale of shares of Adani Enterprises. Assessee has claimed that the impugned amount of capital gain forms part of the

income shown in the Profit & Loss Account prepared as per the Companies Acts. Ld. CIT(A) has directed the Ld. A.O to verify the claim. We fail to find any error in the finding of Ld. CIT(A) since the assessee's claim needs to be verified before making any addition to the book profit. We accordingly restore this issue to the file of Ld. A.O who shall verify the contentions of the assessee that the alleged gain of Rs. 1.11 crores forms part of the income shown in the Profit & Loss Account. Assessee is directed to make necessary submission before the Ld. A.O with the ledger account of the capital gain account for sale of shares in order to satisfy the Ld. A.O. Needless to mention that proper opportunity of being heard should be given to the assessee. In the result Ground No.9 of the revenue is allowed for statistical purpose.

81. In the result appeal of the assessee's appeal for Assessment Years 2010-11 to 2014-15 are partly allowed and that of the revenue for Assessment Year 2010-11 is partly allowed for statistical purpose and for Assessment Years 2010-11, 2011-12, 2012-13 and 2013-14 are dismissed.

The order pronounced in the open Court on 29.11.2019.

Sd/-	Sd/-
(P.P. BHATT)	**(MANISH BORAD)**
PRESIDENT	**ACCOUNTANT MEMBER**

दिनांक /Dated : 29th November, 2019

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Ahmedabad/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Ahmedabad