

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

**ITA.NOs. 7092 & 7091/MUM/2014
(A.Ys: 2010-11 & 2011-12)**

M/s. Infrastructure Leasing & Financial Services Ltd., The IL & FS Financial Centre Plot No. C-22, G Block Bandra Kurla Complex Bandra (E), Mumbai – 400 051 PAN: AAACI0989F	v.	Dy. Commissioner of Income Tax Range – 10(1) Room No. 455, 4 th Floor Aayakar Bhavan M.K. Road, Mumbai – 400 020
(Appellant)		(Respondent)

ITA.NO. 7284 /MUM/2014 (A.Y: 2010-11)

Dy. Commissioner of Income Tax Range – 14(2)(1) Room No. 453, 4 th Floor Aayakar Bhavan M.K. Road, Mumbai – 400 020	v.	M/s. Infrastructure Leasing & Financial Services Ltd., The IL & FS Financial Centre Plot No. C-22, G Block Bandra Kurla Complex Bandra (E), Mumbai – 400 051 PAN: AAACI0989F
(Appellant)		(Respondent)

ITA.NO. 6829/MUM/2014 (A.Y: 2011-12)

Dy. Commissioner of Income Tax Range – 10(1) Room No. 453, 4 th Floor Aayakar Bhavan M.K. Road, Mumbai – 400 020	v.	M/s. Infrastructure Leasing & Financial Services Ltd., The IL & FS Financial Centre Plot No. C-22, G Block Bandra Kurla Complex Bandra (E), Mumbai – 400 051 PAN: AAACI0989F
(Appellant)		(Respondent)

Assessee by : **Shri Sandeep Bhalla**
Department by : **Shri Awangshi Gimson**

Date of Hearing : **13.12.2019**
Date of Pronouncement : **30.12.2019**

ORDER

PER C.N. PRASAD (JM)

1. These cross appeals are filed by the assessee and revenue against different orders of the Learned Commissioner of Income Tax (Appeals) – 21, Mumbai [hereinafter in short “Ld.CIT(A)”] dated 25.09.2014 and 05.08.2014 for the A.Y. 2010-11 and A.Y. 2011-12 respectively.

2. First we take up the appeal of the assessee in ITA.No.7092/Mum/2014 for the A.Y. 2010-11.

3. The assessee in its appeal raised the following grounds: -

“1. On the facts & circumstances of the case the Learned Commr. of Income Tax (Appeals) has erred in confirming the disallowance of the claim of the depreciation of Rs. 13,70,093/- in respect of residential properties. On the facts and circumstances of the case the appellant prays that the disallowance of depreciation of Rs. 13,70,093/- is not justified and the said disallowance may be deleted.

2. The Learned Commr. of Income Tax (Appeals) has erred in disallowing the sum of Rs.22,32,084/- being the amortization of the premium paid on leasehold land on which the commercial complex has been constructed by the appellant. On the facts & circumstances of the case the appellant prays that the disallowance of the claim of amortization of land premium amounting to Rs.22,32,084/- is not justified.

3. The Learned Commr. of Income Tax (Appeals) has erred in confirming the disallowance of depreciation of Rs.2,28,820/- on toll road. Based on the facts & circumstances of the case the appellant prays that the claim of depreciation of Rs.2,28,820/- be allowed.

4. On the facts and circumstances of the case the appellant submits that they have not received any income in respect of the Toll Road and the matter is in dispute. The Learned Commr. of Income Tax (Appeals) has erred in directing the Learned Assessing Officer to estimate the interest income due from MPSIDC. The appellant prays that they are not entitled to and have not received any interest income from MPSIDC and hence the direction of the Learned Commr. of Income Tax (Appeals) to tax the estimated interest income may be set aside.

5. The Learned A.O. has erred in disallowing the sum of Rs 6.28 crores being the administrative / establishment expenses attributable to earning exempt income u/s 10 of Income Tax Act, 1961. On the facts & circumstances of the case the appellant submit that the disallowance of Rs. 6.28 crores being the administrative / establishment expenses is not justified and the said disallowance may be deleted.

6. On the facts & circumstances of the case the Learned Commr. of Income Tax (Appeals) has erred in confirming the disallowance of interest of Rs. 11,54,00, 000/-in respect of the loans given to IL&FS Employees Welfare Trust. The appellant prays that the addition made is not justified and the said addition may be deleted.

7. On the facts & circumstances of the case the appellant prays that the Learned Commr. of Income tax (Appeals) has erred in rejecting the claim of the appellant that the total income be reduced by Rs. 13.75 crores as there is double addition of the income to the extent of Rs. 13.75 crores. The learned Commr. of Income Tax has erred in concluding the appellant has not submitted any credible evidences to show that the appellant has offered the income twice. The conclusion reached by the Learned Commr. of Income Tax (Appeals) is contrary to the facts.

8. On the facts & circumstances of the case the Learned Commr. of Income tax (Appeals) has erred in rejecting the claim of the appellant of Rs. 2.09 crores for deduction u/s. 36(1)(vii) of Income Tax Act, 1961. The appellant prays that the claim of deduction of Rs. 2.09 crores may be accepted.

9. On the facts & circumstances of the case the appellant denies the liability of payment of interest u/s 234B. On the facts &

circumstances of the case the appellant submit that levy of interest u/s 234B is not justified and may be deleted.”

4. At the outset, Ld. Counsel for the assessee submits that ground No.1 of grounds of appeal relating to disallowance of depreciation on residential properties was held in favour of the assessee by the Tribunal for the A.Y. 2004-05 to A.Y. 2007-08. It is further submitted that consequential order was passed by the Assessing Officer for the A.Y. 2004-05 vide order dated 31.12.2018 allowing depreciation. It is also submitted that identical issue which arose for the A.Ys. 2008-09 and 2009-10 and the appeals were heard by the Tribunal on 19.11.2019.

5. On the other hand, Ld. DR strongly supported the orders of the authorities below.

6. We have perused the order of the Tribunal for the A.Y. 2004-05 in ITA No. 3203/Mum/2008 and ITA.No. 3156/Mum/2008 dated 28.06.2017 wherein the Tribunal decided this issue in favour of the assessee at page No. 4 Para No. 3.2 observing as under: -

“3.2 We have heard the rival contentions and perused the cited case laws. We find that Hon'ble Delhi High Court in the cited case laws has observed that under the new scheme of depreciation prescribed in amended Section 32, the depreciation is to be allowed on WDV of each 'block of assets' at such percentage as may be prescribed and therefore, with the introduction of concept of 'block of assets', an individual asset loses its identity and there was no requirement to compute depreciation for each and individual asset separately. Making these observations, the assessee was allowed depreciation on assets held by assessee with respect to his closed units. Similar view has been taken in the cited decision of Mumbai Tribunal. We also find that no mechanism has been provided in the statute to bifurcate the WDV in such a situation. Therefore, after perusal of statutory provisions and cited judgments, we also conclude that each asset has lost its identity, in the concept of block

of assets and therefore, no segregation thereof could be done the fact that the income from certain properties was offered under the head "Income from House property". Therefore, we allow this ground of assessee's appeal by deleting the impugned disallowance."

7. Similar view has been taken by the Tribunal for the A.Y. 2005-06 to A.Y. 2007-08 in ITA.Nos. 3339/Mum/2011, ITA.No. 3340/Mum/2011 and 3341/Mum/2011 dated 30.04.2019 at Para No. 9 which reads as under: -

"9. We have heard both the parties, perused materials available on record and gone through the orders of authorities below. We find that the Co-ordinate Bench of ITAT, 'I' Bench in assessee's own case for AY 2004-05 had considered an identical issue and after considering the relevant facts, held that with introduction of concept of block of assets, an individual assets losses its identity, therefore, no segregation thereof could be done notwithstanding the fact that the income from certain property was offered under the head 'income from house property'. However, when the Bench has posed specific question to the Ld. AR for the assessee to the effect that whether the assessee has claimed standard deduction as provided u/s 24(a) of the Act or not in respect of 'income from house property' in addition to depreciation and other maintenance expenses claimed, the Ld. AR for the assessee, fairly accepted that this aspect has not been examined by the authorities below and also there is no finding from the Tribunal in the earlier years. Therefore, the issue may be set-aside to the file of the AO for verification of facts with regard to standard deduction claimed u/s 24(a) of the Act and further if at all the assessee has claimed deduction u/s 24(a) of the Act, it amounts to double deduction and the same may be directed to be disallowed. Therefore, consistent with view taken by the Co-ordinate Bench for earlier years, we direct the AO to allow depreciation as claimed by the assessee on residential premises, but verify the fact with regard to deduction claimed u/s 24(a) in the light of our discussions given hereinabove. In case, the assessee claimed deduction u/s.24(a), then the same needs to be disallowed."

8. We have observed that the Tribunal while disposing off appeal for the A.Y. 2005-06 to A.Y. 2007-08 directed the Assessing Officer to allow the depreciation as claimed by the assessee on residential premises, however, it was also directed to verify the fact as to whether deduction

U/s.24(a) was claimed by the assessee or not and if it is claimed the same is to be disallowed. Similar view has been taken by the Tribunal in ITA.No. 3785 & 3786/Mum/2013 for the A.Y. 2008-09 and A.Y. 2009-10 by order dated 28.11.2019. As the facts being identical respectfully following the said decision, we direct the Assessing Officer to carry out similar exercise as directed by the Tribunal in the order dated 30.04.2019 passed for the A.Y.2005-06 to A.Y.2007-08 and decide accordingly. This ground is partly allowed.

9. Coming to Ground No. 2 of grounds of appeal the Ld. Counsel for the assessee fairly submitted that this ground relating to disallowance of amortization of premium paid on leasehold land has been decided in favour of the Revenue in ITA No. 3203/Mum/2008 and ITA.No. 3156/Mum/2008 dated 28.06.2017. It is submitted that similar view has been in taken by the Tribunal for the A.Y. 2005-06 to A.Y. 2007-08 in ITA.Nos. 3339/Mum/2011, ITA.No. 3340/Mum/2011 and 3341/Mum/2011 dated 30.04.2019.

10. Heard rival submissions and perused the order of the Tribunal in ITA.No. 3203/Mum/2008 and ITA.No. 3156/Mum/2008 dated 28.06.2017. We observed that Tribunal at Para No. 4.6 decided this issue in favour of the revenue observing as under: -

“4.6. The Ld. AR contended that the same was revenue in nature and no TDS was deducted there-from since the land was acquired long ago when there was no requirement to deduct the TDS against the said payment. However, we find that the issue before us is regarding the nature of the impugned expenditure and since we have already noted that the said expenditure was capital in nature, the same was not allowable to the assessee. Therefore, after considering the factual position and various judicial pronouncements, we are of the considered opinion that the

amortization of lease premium over the lease period was capital in nature and hence, not allowable to the assessee. The ground of assessee's appeal stands dismissed."

We also observe that the Tribunal has taken similar view in ITA.No. 3785 & 3786/Mum/2013 for the A.Y. 2008-09 and A.Y. 2009-10 by order dated 28.11.2019. Facts being identical following the said decision we dismiss the ground raised by the assessee.

11. Ground No. 3 of grounds of appeal is relating to disallowance of depreciation on toll road. The Ld. Counsel for the assessee submitted that this issue has been decided in favour of the assessee by the Tribunal for the A.Y. 2004-05 to A.Y. 2007-08. It is also submitted that the Assessing Officer while passing the consequential order allowed depreciation for the A.Y. 2004-05 vide order dated 31.12.2018. On a perusal of the order of the Tribunal we find that this issue has been decided in favour of the assessee by the Tribunal for the A.Y. 2004-05 at Para No. 11.22 observing as under:

"11.12. Since, we have already directed the Ld. Assessing Officer to tax the estimated income from the toll road, as a logical consequence, the assessee becomes entitled to claim the depreciation on the on the toll road. After considering the cited decisions relied upon by respective representative, we find that since the assessee is not the owner of the toll road, depreciation thereupon could not be allowed to him in terms of decision of Hon'ble Bombay High Court in North Karnataka Expressway Ltd. Vs. CIT [supra]. However, depreciation on the same as intangible assets being 'any other business or commercial rights of similar nature' as per Section 32 would be available to the assessee in terms of decision of Special Bench of the Tribunal, Hyderabad rendered in Progressive Constructions Ltd. Vs. ACIT [ITA No. 1845/Hyd/2014 order dated 14/02/2017]. Respectfully following the cited decision, we direct so. The Ld. AO is directed to re-compute the same and grant depreciation thereupon as intangible assets. The assessee is also

directed to substantiate his claim in this regard. The grounds of assessee's appeal stands allowed for statistical purposes.”

12. The Tribunal for the A.Y. 2005-06 to A.Y. 2007-08 in ITA.Nos. 3339/Mum/2011, ITA.No. 3340/Mum/2011 and 3341/Mum/2011 dated 30.04.2019 at Para Nos. 31 & 32 considered this issue observing as under:

“31. We have heard both the parties, perused materials available on record and gone through the orders of authorities below. The issue of depreciation on toll road as well as estimation of income from such road is subject matter of consideration by the Tribunal for AY 2004-05. The Tribunal after considering rival submissions of the assessee and also relied upon certain judicial precedence held that the depreciation on toll road is not allowed as plant and machinery because the assessee is neither owner of the asset nor said asset is in the nature of plant and machinery. However, the Tribunal allowed depreciation as intangible asset being right to collect the toll. Similarly, in respect of estimation of income from toll road, direct the AO to ascertain correct facts with regard to attainment of arbitration proceedings before estimation of income. The relevant findings of the Tribunal are as under:-

“11.10 We have heard the rival contentions. So far as the estimation of income from the toll road is concerned, we find that the issue in hand is related with estimation of income only and not with notional income since the claim of the assessee has already been crystallized by the Appellate Tribunal and the assessee has certain right to claim the same particularly when the payment is backed by the guarantee of the state government. There is no dispute as to the fact that the assessee has unfettered right to claim the same from the government agency and only the quantification thereof is in dispute. The contention of the Ld. AR is that since the government agency has agitated the same before higher authorities, the same has not yet attained finality. However, whatever the case may be, the assessee following mercantile system of accounting is obliged to offer the same to tax in view of crystallization thereof by Appellate Tribunal.

11.11 Therefore, on the facts and circumstances, we restore the matter back to the file of Ld. AO with a direction to estimate the income on the basis of latest decision of the

Appellate Tribunal or any higher authority, as the case may be. The assessee is directed to substantiate his claim in this regard forthwith failing which the Ld. AO shall be at liberty to decide the same on the basis of material available on record.

11.12 Since, we have already directed the Ld. AO to tax the estimated income from the toll road, as a logical consequence, the assessee becomes entitled to claim the depreciation on the toll road. After considering the cited decisions relied upon by respective representative, we find that since the assessee is not the owner of the toll road, depreciation thereupon could not be allowed to him in terms of decision of Hon'ble Bombay High Court in North Karnataka Expressway Ltd. Vs. CIT [supra]. However, depreciation on the same as intangible assets being 'any other business or commercial rights of similar nature' as per Section 32 would be available to the assessee in terms of decision of Special Bench of the Tribunal, Hyderabad rendered in Progressive Constructions Ltd. Vs. ACIT [ITA No. 1845/Hyd/2014 order dated 14/02/2017]. Respectfully following the cited decision, we direct so. The Ld. AO is directed to re-compute the same and grant depreciation thereupon as intangible assets. The assessee is also directed to substantiate his claim in this regard. The grounds of assessee's appeal stands allowed for statistical purposes."

32. In this view of the matter and consistent with view taken by the Co-ordinate Bench of the Tribunal in assessee's own case for earlier period, we restore this issue to the file of the AO and direct him to decide in accordance with direction given by the Tribunal for AY 2004-05.

13. Similar view has been taken by the Tribunal in ITA.No. 3785 & 3786/Mum/2013 for the A.Y. 2008-09 and A.Y. 2009-10 by order dated 28.11.2019. Following the said decision, we restore this matter to the file of the Assessing Officer with a direction to decide the issue following the directions of the Tribunal for the A.Y. 2005-06 to 2007-08. This ground is allowed for statistical purpose.

14. Ground No.4 of grounds of appeal of the assessee is relating to the addition made towards notional interest in respect of toll road from Madhya Pradesh State Industrial Development Corporation.

15. We observe that this issue has been decided by the Tribunal for the A.Y. 2008-09 and A.Y. 2009-10 in ITA.No. 3785 & 3786/Mum/2013 observing as under: -

“25. It is submitted that by the Ld. Counsel for the assessee that this issue was also decided by the Tribunal in Para No. 11.10 for the A.Y.2004-05 and Para Nos. 32 for the A.Y. 2005-06 to 2007-08 and the Assessing Officer passed consequential order dated 31.12.2018 for the A.Y. 2004-05 restricting addition only to the amount awarded by arbitrator of Arbitration Tribunal and granted relief for the balance amount.

26. On a perusal of the order of the Tribunal we find that this issue was also considered by the Tribunal in Para No. 11.11 for the A.Y. 2004-05 and for the A.Y. 2005-06 to A.Y. 2007-08 and restored to the file of the Assessing Officer as extracted above. Thus, respectfully following the said decision, we restore this issue to the file of the Assessing Officer with a direction to follow the order the Tribunal for the A.Y. 2004-05 and for the A.Y. 2005-06 to A.Y. 2007-08 and decide accordingly. This ground is allowed for statistical purpose.”

16. Following the said order, we restore this issue to the file of the Assessing Officer with a direction to decide the issue keeping in view the directions of the Tribunal for the A.Y. 2004-05 to A.Y. 2007-08 and decide accordingly. This ground is allowed for statistical purpose.

17. Ld. Counsel for the assessee submitted that Ground No.5 of grounds of appeal is relating to disallowance U/s. 14A r.w.s 8D(2)(iii) of I.T. Rules in respect of interest and the Tribunal for the A.Y. 2004-05 in ITA No. 3203/Mum/2008 and ITA.No. 3156/Mum/2008 dated 28.06.2017 set-aside the matter to the file of the Assessing Officer. It is also submitted

that for the A.Y. 2005-06 to A.Y. 2007-08 the Tribunal restored this matter to the file of the Assessing Officer.

18. On a perusal of the order of the Tribunal for the A.Y. 2008-09 and A.Y. 2009-10 we observe that the Tribunal restored this issue to the file of the Assessing Officer following its earlier order for the A.Y. 2004-05 and A.Y. 2005-06 to 2007-08 observing as under: -

“11. Ld. Counsel for the assessee submitted that Ground No.3 of grounds of appeal is relating to disallowance U/s. 14A r.w.s 8D(2)(iii) of I.T. Rules in respect of interest and the Tribunal for the A.Y. 2004-05 in ITA No. 3203/Mum/2008 and ITA.No. 3156/Mum/2008 dated 28.06.2017 set-aside the matter to the file of the Assessing Officer. It is also submitted that for the A.Y. 2005-06 to A.Y. 2007-08 the Tribunal restored this matter to the file of the Assessing Officer.

12 On the other hand, Ld. DR strongly supported the orders of the authorities below.

13. We have heard the rival submissions and perused the orders of the authorities below and the decision of the Tribunal in assessee's own cases. For the A.Y. 2004-05 the Tribunal at Para No. 6.2 held as under:

“6.2. We have heard the rival contentions. We find it is fairly settled legal position that strategic investments not capable of yielding exempt incomes and investments held as stock in trade are not to be considered for computation of Section 14A disallowance. Further, if the net-worth of the assessee is quite sufficient so as to cover the investments held by the assessee, a presumption has to be drawn that investments are out of own funds unless the nexus of borrowed funds with investments is established by the revenue. A perusal of Balance Sheet, at a glance, reveals that the assessee's Share Capital and Reserves & surplus stood at Rs.725.23 crores as against investment of Rs. 1394.44 crores, which prima-facie weakens the argument advanced by Ld. AR. However, the Ld. AR has contended that investment includes strategic investments, investment not capable of earning exempt incomes and investment held as stock in trade, which are not includible in the value of investments for the purpose of Section 14A disallowance. The Ld. AR has provided before us detailed working of adjusted investments in the light of his contentions. Also, we note that in the preceding paragraph, we have already restored the matter back to the file of AO to find out the closing stock valuation of the securities held as stock in trade and the income of which has been offered under the head business

income. Therefore, in the light of these facts / observations, we remit the matter back to the file of AO to re-compute the said disallowance qua interest and administrative expenses after properly appreciating the capital structure of the assessee. The assessee is also directed to substantiate its claim forthwith in the light of our observations before the lower authorities, falling which the authorities shall be at liberty to decide the same on the basis of available material on record. The assessee's grounds of appeals stand allowed for statistical purposes."

14. Similarly, the Tribunal for the A.Y. 2005-06 to A.Y. 2007-08 in ITA.Nos. 3339/Mum/2011, ITA.No. 3340/Mum/2011 and 3341/Mum/2011 dated 30.04.2019 at Para No. 19 held as under: -

"19. We have heard both the parties, perused materials available on record and gone through the orders of authorities below. The facts with regard to applicability of provisions of section 14A was not disputed by the assessee. The only dispute is with regard to quantification of average value of investment considering the investment made in group/associate concerns for strategic investment purpose and also the element of commercial expediency in making investment. We find that the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs CIT (supra) had considered the issue of disallowance of expenses incurred in relation to exempt income including interest in light of arguments of the assesseees that strategic investments made in group/associate concerns for the purpose of holding controlling interest cannot be considered for determination of average value of investments and held that even though investment are made in group/associate concerns for the purpose of holding strategic investment disallowances contemplated u/s 14A of the Act triggers the moment the assessee earned exempt income. However, the Hon'ble Court has not touched the concept of commercial expediency and consideration of disallowance on actual dividend yielding investment. Further, various Hon'ble Court including the High Court of Bombay in number of cases had held that only investment which yield exempt income needs to be included in average value of investment for the purpose of determination of interest expenditure and other expenditure. Therefore, we are of the considered view that the issue needs to be go back to the file of the AO for the purpose of determination of average value of investment and also quantum of disallowance of interest expenditure and other expenditure keeping in view that of the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. vs CIT (supra), hence, we set-aside the issue to the file of the AO and direct him to reconsider the issue in light of our discussion hereinabove."

15. Following the above said orders of the Tribunal we restore this issue to the file of the Assessing Officer to follow the directions of the Tribunal for the A.Y. 2004-05 to 2007-08 and recompute the disallowance in accordance with the directions therein. We also direct the Assessing Officer to recompute the

disallowance keeping in view the decision of the special bench of Delhi in the case of ACIT v. Vireet Investments Private Limited [165 ITD 27]. This ground is allowed for statistical purpose.”

19. Following the said order, we restore this issue to the file of the Assessing Officer who shall pass order keeping in view of above directions of the Tribunal for the A.Y. 2004-05 to 2007-08 and A.Y.2008-09 & A.Y. 2009-10.

20. Ground No.6 of grounds of appeal is relating to disallowance of interest on loan given to IL & FS employee welfare trust. We observe that this issue has been decided by the Tribunal for the A.Y. 2009-10 in ITA.No. 3786/Mum/2013 dated 28.11.2019 observing as under: -

“41. Ground No .6 of the grounds of appeal is relating to disallowance of interest on loan given to IL & FS Employees Welfare Trust. Briefly stated the facts are that, while completing the assessment Assessing Officer noticed that during the year under consideration assessee has given interest free loans to IL & FS Employees Welfare Trust. The Assessing Officer is of the view that the loan given is for non-business purposes and taking note of the fact that the assessee is having mixed funds i.e., borrowed as well as own funds, proportionate interest of ₹.30.01 Crores @ 5.63% was disallowed while computing the income of the assessee.

42. Before the Ld. CIT(A) the assessee has contended that the loan was given for IL & FS Employees Welfare Trust and it is for the welfare of the employees and for the business purpose only. Alternatively, it was submitted that there is error in calculation of the Assessing Officer and if the correct method of calculation is applied the proportionate interest works out to only ₹.11 Crores and not ₹.30.01 Crores and requested the Ld. CIT(A) that if entire addition is not deleted Assessing Officer may be directed to rectify and compute the disallowance at ₹.11 Crores as calculated by the assessee.

43. Before us, Ld. Counsel for the assessee submitted that the loan was given to employee's welfare trust for the benefit of employees and therefore the said loan is for the purpose of business of the assessee and hence no disallowance is warranted.

44. On the other hand, Ld. DR strongly supported the orders of the authorities below.

45. We have heard the rival submissions and perused the orders of the authorities below. This aspect of the matter has been considered by the Ld. CIT(A) and sustained the disallowance to the extent of ₹.11 Crores as requested by the assessee observing as under: -

“14.3. I have considered all the facts that appellant presented before me and I have examined evidences. The appellant had provided during appellate proceedings Trust Deed, activities of trust and stated that these activities are, however, for employees of the appellant but appellant could not produce any direct evidence which shows that this is providing benefit to the employees of the company and appellant has not shown any evidence before me that it is for the business purpose of the appellant. The appellant could not satisfy the condition of business purpose, the disallowance is recomputed the whole calculation based on the details provided by the appellant and disallowance is restricted to Rs.11,00,00,000/-, hence appellant's ground of appeal is partly allowed and the appellant will be obtaining relief for Rs. 19,00,00,000/.

46. It is the finding of the Ld. CIT(A) that the assessee has not proved that the loan is given for the purpose of business of the assessee. Even before us the assessee could not substantiate that the loan has been given for the purpose of business of the assessee. In the circumstances, we are not inclined to disturb the finding of the Ld. CIT(A) hence, the action of the Ld. CIT(A) is sustained. Ground raised by the assessee is rejected.”

21. Facts being identical following the order of the Tribunal, we sustain the order of the Ld. CIT(A) and reject the ground raised by the assessee.

22. Ground No. 7 of grounds of appeal of the assessee is in respect of double addition to income to the extent of ₹.13.75 Crores.

23. Learned Counsel for the assessee submitted that IL&FS the assessee is 100% beneficiary of few Trusts created under Indian Trust Act. For the purpose of Income Tax, all income earned by such trusts are offered for tax by the assessee in the same year in which such trust earns the income in the respective income head "Income from Pass Thru Trust/Share of Income as Beneficiary Trust". It is however submitted that

assessee has offered this income twice in the case of Two Pass thru Trusts. The reason for the same are stated to be as follows:

(a) Income of IL&FS Investment Trust I: Accumulated Income of previous years (amounting Rs 9.38 cr) are also being inadvertently offered for Tax instead of Income for FY 2010 only.

(b) Income of IL&FS Investment Trust V: Interest income was accounted in IL&FS books as Interest from investment (Trade) (Rs 4.37 cr) and the same income was again offered for tax based on Audited accounts of IIT-V on the basis of income earned by the Trust.

24. Ld. Counsel for the assessee further referring to page no. 84 of the Paper Book submitted that Income of IL&FS Investment Trust-I in F.Y.2010, had earned a Net Surplus of ₹.10.19 Crores. Further, it had an accumulated retained earning brought forward of earlier years of ₹.9.38 Crores, which pertains to income earned in earlier years. The accumulation of previous years' earnings and current year's net surplus was shown as "Earning available for Appropriation. (₹.19.56 Crores). Referring to Page 80 of the Paper book, Ld. Counsel for the assessee submitted that while computing taxable income of the Trust, earning available for Appropriation amounting ₹.19.56 Crores was inadvertently considered as Income for FY 2010 instead of Net Surplus of ₹.10.19 Crores. Hence there is an excess income offered for tax amounting ₹.9.38 Crores and requested to allow reduction from taxable income of ₹.9.38 Crores offered excess for IL&FS Investment Trust-I.

25. Ld. Counsel for the assessee referring to Page 93 of Paper book submitted that Income of IL&FS Investment Trust-V in FY 2010, had earned a Net Surplus of ₹.4.37 Crores. The same was pertaining to

Interest from Bond invested by the Trust. This Income was offered for Tax by IL&FS in the return of income under the head "Share of Income/(Loss) as beneficiary in Trusts". Referring to Page 50 of Paper Book Ld. Counsel for the assessee submitted that IL&FS in its books of accounts also accounted the same income as "Interest on Investment - Trade (₹.4.37 cr)", which is the income earned by IL&FS Investment Trust-V. Referring to Page 81 of the Paperbook Ld. Counsel for the assessee submitted that while computing taxable income of the Trust, both i.e. Income earned by the Trust as well as Interest on Investment - Trade, which is basically the same income, was offered for tax and hence there is an excess income offered for tax amounting ₹.4.37 Crores and requested to allow reduction from taxable income of ₹.4.37 Crores offered excess for IL&FS Investment Trust-V.

26. Ld. Counsel for the assessee further submitted that the Ld.CIT(A) failed to consider these submissions. Ld. Counsel for the assessee invited our attention to income and expenditure account for the year ended 31.03.2010 and submitted that net surplus for the year ended 31.03.2010 was only ₹.10.18 Crores whereas the assessee has considered earning available for appropriation at ₹.19.56 crores as income of the current assessment year which includes brought forward earning of ₹.9.37 crores for the year ended 31.03.2009. Therefore, it is submitted that there is double addition due to inadvertence of the assessee offering excess income to tax.

27. Ld. DR has no serious objection in sending matter for verification by the Assessing Officer.

28. On hearing both the sides and considering the submissions as well as the evidences produced before us, we are inclined to restore this issue to the file of the Assessing Officer with a direction to examine the submissions of the assessee with reference to Books of Accounts, Profit and Loss Account and balance sheet and decide the issue in accordance with law. We make it clear that if it is proved that assessee has offered excess income as claimed by the assessee the same shall not be brought to tax as it would amount double addition, though it is an inadvertent mistake of the assessee.

29. Ground No. 8 of grounds of appeal of the assessee is relating to rejection of claim for deduction u/s. 36(1)(vii) of ₹.2.09 Crores. At the outset, Learned Counsel for the assessee submitted that this ground has been dismissed by the Ld.CIT(A) observing that assessee has not pressed this issue in the course of the appellate proceedings. Ld. Counsel for assessee submitted that the instructions from the assessee are that assessee never made any submissions before the Ld.CIT(A) withdrawing its claim for deduction u/s. 36(1)(vii) of the Act.

30. Considering the submissions of the Ld. Counsel for assessee, we restore this issue to the file of the Ld.CIT(A) to examine the submissions of the assessee as to whether this ground was not pressed or not. If the assessee has not given in writing withdrawing this claim before the Ld.CIT(A), the Ld.CIT(A) may decide this issue on merits after providing adequate opportunity of being heard to the assessee. This ground is allowed for statistical purpose.

31. Ground No. 9 of grounds of appeal is relating to levy of interest u/s.234B of the Act and this ground is only consequential and need not be adjudicated.

32. Now we take up the appeal of the assessee in ITA.No. 7091/Mum/2014 for the A.Y. 2011-12.

33. The assessee has raised the following grounds in its appeal: -

“1. On the facts & circumstances of the case the Learned Commr. of Income Tax (Appeals) has erred in confirming the disallowance of the claim of the depreciation of Rs.10,65,396/- in respect of residential properties. On the facts and circumstances of the case the appellant prays that the disallowance of depreciation of Rs.10,65,396/- is not justified and the said disallowance may be deleted.

2. The Learned Commr. of Income Tax (Appeals) has erred in confirming the disallowance of depreciation of Rs.1,94,497/- on toll road. Based on the facts & circumstances of the case the appellant prays that the claim of depreciation of Rs.1,94,497/- be allowed.

3. On the facts and circumstances of the case the appellant submits that they have not received any income in respect of the Toll Road and the matter is in dispute. The Learned Commr. of Income Tax (Appeals) has erred in directing the Learned Assessing Officer to estimate the interest income due from MPSIDC. The appellant prays that they are not entitled to and have not received any interest income from MPSIDC and hence the direction of the Learned Commr. of Income Tax (Appeals) to tax the estimated interest income may be set aside.

4. The Learned A.O. has erred in disallowing the sum of Rs. 6.56 crores being the administrative / establishment expenses attributable to earning exempt income u/s 10 of Income Tax Act, 1961. On the facts & circumstances of the case the appellant submit that the disallowance of Rs. 6.56 crores being the administrative / establishment expenses is not justified and the said disallowance may be deleted.

5. On the facts & circumstances of the case the Learned Commr. of Income Tax (Appeals) has erred in confirming the disallowance of interest of Rs. 3,23,00,000/-in respect of the loans given to IL&FS

Employees Welfare Trust. The appellant prays that the addition made is not justified and the said addition may be deleted.

6. On the facts & circumstances of the case the appellant denies the liability of payment of interest u/s 234B. On the facts & circumstances of the case the appellant submit that levy of interest u/s 234B is not justified and may be deleted.”

34. Ground No. 1 of Grounds of appeal for the A.Y. 2011-12 is relating to disallowance of depreciation on residential properties. This ground is similar to Ground No.1 in the appeal for the A.Y. 2010-11 which has been decided while disposing off the appeal and the decision taken therein shall apply mutatis mutandis for this year also i.e. A.Y. 2011-12. We order accordingly.

35. Ground No. 2 of Grounds of appeal for the A.Y. 2011-12 is relating to depreciation on toll road. This ground is similar to Ground No.3 in the appeal for the A.Y. 2010-11 which has been decided while disposing off the appeal and the decision taken therein shall apply mutatis mutandis for this year also i.e. A.Y. 2011-12. We order accordingly.

36. Ground No. 3 of Grounds of appeal for the A.Y. 2011-12 is relating to notional interest income in respect of toll road from Madhya Pradesh State Industrial Development corporation. This ground is similar to Ground No.4 in the appeal for the A.Y. 2010-11 which has been decided while disposing off the appeal and the decision taken therein shall apply mutatis mutandis for this year also i.e. A.Y. 2011-12. We order accordingly.

37. Ground No. 4 of Grounds of appeal for the A.Y. 2011-12 is relating to disallowance of interest u/s. 14A of the Act. This ground is similar to

Ground No.5 in the appeal for the A.Y. 2010-11 which has been decided while disposing off the appeal and the decision taken therein shall apply mutatis mutandis for this year also i.e. A.Y. 2011-12. We order accordingly.

38. Ground No. 5 of Grounds of appeal for the A.Y. 2011-12 is relating to disallowance of interest on loan given to IL & FS employee welfare trust. This ground is similar to Ground No.6 in the appeal for the A.Y.2010-11 which has been decided while disposing off the appeal and the decision taken therein shall apply mutatis mutandis for this year also i.e. A.Y. 2011-12. We order accordingly.

39. Ground No. 6 of grounds of appeal is relating to levy of interest u/s.234B of the Act and this ground is only consequential and need not be adjudicated.

40. Now we take up the appeal of the revenue in ITA.No. 7284/Mum/2014 for the A.Y. 2010-11.

41. Revenue has raised following grounds in its appeal: -

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition to "Income from house property" Of Rs. 30,96,000/- without appreciating the fact that this is assessable as income from house property."

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance made u/s 14A r.w.r. 8D of the IT rules amounting to Rs. 140,71,97,021/- and in directing the AO to restrict the disallowance to 0.5% of average investment only without appreciating the fact that the formula of disallowance under rule 8D is an inalienable part of sec. 14A and once it is invoked the AO can not deviate from that formula and that the Rule 8D is applicable from AY 2008-09 & onwards.

2.1 "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing to recomputed the disallowance u/s 14A relying up on the judgment in the case of Reliance Utilities & Power Ltd. 313 ITR 340 (Bom) which is related to disallowance u/s. 36(1)(iii) without appreciating that the disallowance in the present case pertains to Section 14A.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in treating the capital expenditure on the computer software development expenses of Rs.49,02,820/- as revenue expenditure without appreciating the fact that this expenditure was incurred for acquisition of right to use software and upgradation bringing enduring benefit to the assessee and it is a depreciable asset.

4. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the accrued income of ₹.1,50,00,000/-from Toll Road without appreciating the fact that assessee having followed the mercantile system of accounting continues to hold the right to receive income from toll road.

5. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the club expenses of Rs. 18,48,238/-without appreciating the fact that the assessee has failed to prove that the expenses are incurred wholly and exclusively for the purpose of business."

6. "On the facts and in the circumstances of the case and in law, the LD. CIT(A) erred in deleting the disallowance of Rs.6,60,80,000/-claimed u/s 36(l)(viii) without appreciating the fact that there has been reorganization of the business of the assessee and the eligible business to claim the said deduction has changed rendering it disallowable.

7. "On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in directing the AO to verify the income of Rs.24,80,16,267/- accruing to the assesses as per AIR-ITS details which is erroneous and tantamount to the setting aside of the order and to this extent the order of the CIT(A) is perverse"

8. "On the facts and in the circumstances of the case, the Ld. CIT(A) erred in not appreciating the fact that the computer software & peripherals on which the assessee has claimed depreciation & 60% is in actuality an intangible asset & is eligible for depreciation @ 25% as per the decision of Hon'ble IT AT Delhi in the case of Sony India Pvt. LTd Vs. Addl CIT, 56 DTR 156."

42. Ground No. 2 of Grounds of appeal of the Revenue is relating to disallowance u/s. 14A r.w. Rule 8D of the Act. This ground which is similar to Ground No. 5 in the appeal of the assessee for the A.Y. 2010-11 has been decided while disposing off the appeal and the decision taken therein shall apply mutatis mutandis for this appeal also. Since we have decided this issue by restoring the ground to the file of the Assessing Officer this ground is also restored to the file of the Assessing Officer. We order accordingly.

43. Ground No.3 of grounds of appeal relates to disallowance of software development expenditure. Ld. Counsel for the assessee submits that this issue has been decided in favour of the assessee by the Tribunal at Para No. 20.2 for the A.Y. 2004-05. Similarly, Tribunal for the A.Ys.2005-06 to 2007-08 in ITA.Nos. 3165/Mum/2017, ITA.No. 3339/Mum/2011, ITA.No. 3340/Mum/2011 and ITA.No. 3341/Mum/2011 dated 30.04.2019 at Para Nos. 60 and 61 decided the issue in favour of the assessee.

44. On the other hand, Ld. DR strongly supported the orders of the authorities below.

45. We have heard the rival submissions and perused the orders of the authorities below and the decision of the Tribunal in assessee own case. We find that the Tribunal while disposing of the Revenue's appeal in ITA 3165/Mum/2017 for the A.Y. 2007-08 held as under: -

"60. We have heard both the parties and perused the material available on record. The Tribunal has considered an identical issue for AY 2004-05 where it was held that Software Development Expenses is debited under the head miscellaneous expenses are in the nature of AMC Charges, internet access charges, lease line

expenses, anti-virus expenses and other software expenses for accounting package, therefore, being revenue in nature and allowable as deduction. The relevant findings of the Tribunal are as under: -

“20. Facts qua Ground No. 1 are that the assessee claimed certain software development expenses of Rs. 1.16 crores, the details of which were not filed before the AO which led the AO to believe that the same expenditure, being capital in nature, was not allowable to the Assessee. The assessee provided the details thereof before Ld. CIT(A) who noted that the impugned expenses were in the nature of AMC Charges, internet access charges, lease line expenses, anti-virus expenses, charges for link facility, software charges for accounting package and therefore, being revenue in nature and hence allowable to the assessee.

20.1 The Ld. DR has contended that no details were filed by the assessee before Ld. AO and therefore, the assessee has rightly been saddled with impugned additions and Ld. CIT(A) erred in providing relief to the assessee. The Ld. AR placed reliance on the findings of Ld. CIT(A) and drew our attention to details of expenses as placed in Page No. 543 of the paper-book to support the contention that impugned expense, being revenue in nature, were allowable to the assessee and the Ld. CIT(A) provided relief to the assessee after due appreciation of the material facts.

20.2 We have considered the rival contentions and inclined to agree with the findings of Ld. CIT(A) who after appreciating the relevant material came to the right conclusion that the impugned expenditure being revenue in nature, were allowable to the assessee. A bare perusal of the said expenses reveals that the said expenditure are primarily revenue in nature and the Ld. AO disallowed the same on mere presumption. However, Ld. CIT(A) examined the same and provided relief to the assessee after appreciating the material and therefore, we find no reason to interfere with the same. The revenue's ground of appeal stands dismissed.”

61. In view of the matter and consistent with view taken by the Co-ordinate Bench, we do not find any infirmity in the findings of the Ld. CIT(A) and hence, we are inclined to uphold the findings of the Ld. CIT(A) and reject the ground taken by the Revenue.’

46. We observe that Tribunal has taken similar view for the A.Ys.2008-09 and 2009-10 in ITA.No. 3700 & 3699 /Mum/2013 dated

28.11.2019. No distinguishable facts have been brought to our notice. Thus respectfully following the said decision, we uphold the order of the Ld. CIT(A) and reject the ground raised by the revenue.

47. Ground No. 4 of Grounds of appeal of the revenue is relating to addition of notional interest income in respect of toll road from Madhya Pradesh State Industrial Development Corporation. This ground which is identical to Ground No. 4 in the appeal of the assessee for the A.Y.2010-11 has been decided while disposing off the appeal and the decision taken therein shall apply mutatis mutandis for this appeal also. Since we have decided this issue by restoring the ground to the file of the Assessing Officer this ground is also restored to the file of the Assessing Officer. We order accordingly.

48. Ground No.5 of grounds of appeal relates to disallowance of payments made to clubs. Ld. Counsel for the assessee submitted that this issue has been decided in favour of the assessee for the A.Y.2005-06 to A.Y.2007-08 at Para No. 70 of the Tribunal order.

49. On the other hand, Ld. DR strongly supported the orders of the authorities below.

50. We have heard the rival submissions and perused the orders of the authorities below. We find that the Tribunal while disposing off the appeal filed by the Revenue in ITA.No. 3165/Mum/2017 for the A.Y. 2007-08 held as under: -

“69. The next issue that came up for our consideration from ground. 6 of Revenue’s appeal is expenditure on club facilities. The Ld. AR for the assessee, at the time of hearing, submitted that this

issue is covered in favour of the assessee by the decision of Hon'ble Bombay High Court in assessee's own case for AY 1997-98 in Income Tax Appeal No.2402 of 2013 where under identical set of facts, the Hon'ble High Court by following its earlier decision in the case of Otis Elevator Co. (India) Ltd. vs CIT (1992) 195 ITR 682 (Bom.) held that Club membership fee paid to the club is in the nature of revenue expenditure, which is allowable as deduction.

70. Having heard both sides and considered the material available on record, we find that Hon'ble Bombay High Court has considered an identical question of law in assessee's own case for AY 1997-98 and by following its earlier order in case of Otis Elevator Co. (India) Ltd. vs CIT (1992) 195 ITR 682 (Bom.) held that expenditure incurred on club facilities is revenue in nature, which is allowable deduction. Therefore, respectfully following the decision of the Hon'ble Bombay High Court in assessee's own case, we direct the AO to delete the additions made towards disallowance of payments to Clubs."

51. We observe that Tribunal has taken similar view for the A.Y. 2008-09 and 2009-10 in ITA.No. 3700 & 3699/Mum/2013 by order dated 28.11.2019. Facts being identical, respectfully following the said decision of the Tribunal in assessee's own case we direct the Assessing Officer to delete the disallowance made towards payments to clubs. This ground is allowed.

52. Ground No.6 of grounds of appeal relates to disallowance of claim for deduction U/s. 36(1)(viii) of the Act. Learned Counsel for the assessee submitted that identical issue has been heard by the Tribunal for the A.Y.2008-09 to 2009-10 and the decision taken therein may be applied for the Assessment Years 2010-11 & 2011-12 as facts being identical.

53. Ld. DR vehemently supported the orders of the Assessing Officer.

54. We observe that the Tribunal had decided this identical issue while disposing of the appeal for the A.Ys. 2008-09 and 2009-10 in ITA.No. 3700 & 3699/Mum/2013 dated 28.11.2019 observing as under: -

“68. Briefly stated the facts are that, Assessing Officer while completing the assessment denied deduction claimed U/s. 36(1)(viii) observing as under:

“17.1 During the assessment proceedings, it was noticed that me assessing was claiming deduction u/s.36(1)(viii) of the Act of Rs.63000000/-. It was further noticed from the annual report, that there was the major reorganization of the business w.e.f. 01.04.2007 in which the assessee has transferred

- i) its financial services business to M/s. ILFS Ltd.,*
- ii) depository back office and capital market related services to M/s. ILFS Securities Services Ltd. and*
- iii) portfolio management and related services to M/s. ILFS Portfolio Managers Services Ltd.*

The assessee company, after this became a non-banking, non-financial company that primarily manages its investments in group entities and effects loans and advances to its subsidiaries and affiliate. It also owns and manages reality assets. As per sec.36(l)(viii) of the Act, the deduction is available only on the profits derived from eligible business and eligible business is defined as a business of providing long term finance for industrial or agricultural development or development of infrastructural facility in India or construction or purchase of houses in India for residential purposes.

17.2 After the reorganization of the business the assessee is only engaged in managing its investments in group entities. Assessee company became a non-financial and non-banking company, and thus is nowhere engaged in directly providing long term finance as specified for the- eligible business in section 36(l)(viii). Therefore, the deduction claimed by the assessee of Rs.63000000/- is disallowed and added to the income of the assessee. Penalty proceedings initiated separately for furnishing inaccurate particulars of income / concealment of income.

(Addition: Rs.63000000/-)”

69. On appeal the Ld. CIT(A) allowed the claim for deduction U/s.36(1)(vii) of the Act holding that the assessee fulfills the conditions of section 36(1)(viii) of the Act.

70. Before us the Ld. DR strongly placed his reliance on the order of the Assessing Officer and on the other hand Ld. Counsel for the assessee placed reliance on the order of the Ld. CIT(A).

71 We have heard the rival submissions and perused the orders of the authorities below. We observe from the order of the Ld.CIT(A) that considering the submission and evidences produced by the assessee the Ld.CIT(A) held that the assessee is entitled for deduction U/s.36(1)(vii) of the Act observing as under: -

"13.1. The facts of the case were that the A.O. has disallowed the claim of the appellant u/s.36(l)(viii) for Rs.6,30,00,000/- as the appellant is not advancing any loans for long term finance and appellant is not only managing its investment in group companies. As appellant is not providing long term finance for infrastructure projects, the A.O. had disallowed the claim of the appellant.

13.2. During appellate proceedings, the appellant submitted as under:

"Ground No. 6 deals with the rejection of the claim of the appellant of deduction u/s.36(l)(viii) (amounting to Rs.6,30,00,000/-) on the inference that "the company after the reorganization has become a non-banking non-finance company and after the reorganization, the assessee is only engaged in managing its investments in group entities". It is submitted that the inference of the Hon'ble AO is erroneous. Even after the reorganization, the company is engaged in the business of granting of loans to all its infrastructure and other group companies and it continues to be a Finance Company as stipulated by the RBI and continues to be under the direct supervision of the RBI even after the reorganization. The company has earned an interest income of Rs. 128.74 crores in FY 2008, breakup of which is as follows:

*Interest income on loans Rs. 110.02 crores
Interest income on securities Rs.18.72 crores
The copy of the audited "Notes to Accounts" evidencing the same has already been enclosed.*

Further, as of March, 2008 the company has granted loans amounting to Rs.1401.24 crores to its various group companies towards infrastructure projects.

The company has claimed deduction u/s.36(l)(viii) on only those net interest incomes which has been earned on long term financing.

As such the income from the long term loans given to the group companies are eligible for deduction u/s.36(l)(viii). It is submitted that the disallowance of Rs.6.3 crores made by the A.O. may be deleted."

.....

- (A) Industrial or agricultural development;
- (c) "banking company" means a company to which the Banking Regulation Act, 1949 applies and includes any bank or banking institution referred to in section 51 of that Act;
- (h) "long term finance" means any loan or advance where the terms under which moneys are loaned or advanced provide for re-payment alongwith interest thereof during a period of not less than five years."

As per sec.36(l)(viii) the appellant is eligible if it fulfills two conditions i.e. one is appellant should be specified entity and 2nd condition is extend loans for infrastructural facilities for a long term basis i.e. above 5 years. I had examined appellant's detailed submissions produced before me alongwith the loans extended by the appellant. The appellant had advanced loans for infrastructural facilities to group entities which are developing the infrastructural facilities in separate company. This separate company formed as group entity develops infrastructural facility and income from this accrues to this group entities. The appellant's extended loan for development of infrastructural facilities on long term basis which is the 2nd condition which appellant has to fulfill to claim sec.36(l)(viii). As appellant is fulfilling the condition of specified entity and extending the loan for infrastructural facilities though they are group companies which are themselves developing infrastructural facilities, the appellant is eligible for deduction u/s.36(l)(viii). Hence this ground of appeal is allowed."

72. On a careful perusal of the order of the Ld.CIT(A), we do not see any infirmity in the order of the Ld.CIT(A). The findings of the Ld.CIT(A) are on consideration of evidences produced by the assessee and therefore, no inference is called for especially when these finding of the Ld.CIT(A) were not rebutted with evidences. Thus, we sustained the order of the Ld.CIT(A) and reject the ground raised by the Revenue."

55. Respectfully following the above said decision of the Tribunal, we sustain the order of the Ld.CIT(A) and reject the ground raised by the revenue.

56. Ground No. 7 of grounds of appeal of the revenue relates to difference in AIR data.

57. Assessing Officer in the Assessment Order observed that assessee has not explained the transactions and accordingly made addition

u/s.69/69B/69C of the Act. On appeal the Ld.CIT(A) directed the Assessing Officer to issue notice u/s. 133(6) to the relevant parties whose transactions are reported in the AIR and if the party confirms that the payments were made to the assessee, in that case such amount be treated as income of the assessee. If the party confirms that the payment was not made to the assessee then it shall not be treated as income of the assessee. Subject to verification Ld.CIT(A) allowed the claim of the assessee.

58. The revenue in its appeal raised ground that it amounts to set-aside by the Ld.CIT(A) and is perverse.

59. On hearing both the sides, we do not see any infirmity in the order passed by the Ld.CIT(A). The Assessing Officer is directed to issue notice u/s. 133(6) of the Act to the parties mentioned in AIR and if the parties confirm that they have made payments to the assessee the same shall be treated as income of the assessee. However, the Assessing Officer shall provide complete details to the assessee to rebut the confirmations which the Assessing Officer receives from the parties. Adequate opportunity shall be given to the assessee to make its submissions; in case the Assessing Officer wants to treat any amount as income of the assessee due to the mis-match in AIR.

60. Ground No. 8 of grounds of appeal of the revenue relates to allowance of depreciation of computer software and peripherals @60% as against 15% / 25% allowed by the Assessing Officer.

61. Briefly stated the facts are that, the Assessing Officer while completing the assessment noticed that assessee claimed depreciation of computer software and peripherals @60%. However, the Assessing Officer restricted the depreciation on computer software to 25% and peripherals to 15%. On appeal the Ld.CIT(A) allowed the claim of the assessee.

62. Ld. DR vehemently supported the orders of the Assessing Officer. Ld. Counsel for the assessee placed reliance on the order of the Ld.CIT(A).

63. We have heard the rival submissions, perused the orders of the authorities below. On a perusal of the order of the Ld.CIT(A) we find that depreciation on computer and peripheral as claimed by the assessee was allowed by the Ld.CIT(A) considering the submissions of the assessee and following the decision of the Special Bench of Mumbai in the case of the DCIT v. Datacraft India Ltd [133 TTJ 337] observing as under: -

"15.3 I have considered the facts and circumstances of the case. The appellant had installed ERP accounting software for the business which is directly helpful for the appellant's conducting of the business. The appellant accounting purpose for the depreciation of the software as per Rule 5 Part D(i) w.r.t. 02.04.2005, 60% depreciation is provided for the software. Hence, A.O. is directed to allow depreciation @ 60%. These grounds of appeal are allowed.

I have considered the facts and circumstances of the case. Printers, scanners, card readers, finger scan readers are Peripherals which are used as part of computers. In Income-tax Act under Rule 5 Appendix 1 w.r.t. 02.04.2005 it has allowed {60% of depreciation for computer software. Further in the case of Dy. CIT V. Datacraft India Ltd 133 TTJ 377 (Mumbai Special Bench) it is held that "peripherals of computers are also part of computers and are eligible for depreciation @ 60%". Following the above decision and in view of the clear mention of the depreciation for computer software at

60%, the A.O. is directed to allow claim of the appellant. These grounds of appeal are allowed.”

64. We see no good reason to interfere in the findings of the Ld.CIT(A). Thus, we sustain the action of the Ld.CIT(A) in allowing depreciation on computer software @60%. This ground of the revenue is rejected.

65. Now we take up the appeal of the revenue in ITA.No. 6829/Mum/2014 for the A.Y. 2011-12.

66. Revenue has raised following grounds in its appeal: -

“1. "On the facts and in the circumstances of the case, the Ld. CIT(A) erred in directing the Assessing Officer to recomputed the disallowance u/s 14A by restricting the same to 0.5% of the Average Investments & also not appreciating the fact that the decision of the Hon'ble Bombay High Court pertains to disallowance u/s 36(l)(iii) & not 14A as held”

2. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in not appreciating the fact that the amount spend on license fees for acquiring right to use of software & software purchase are in nature of capital expenditure.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in not appreciating the fact that the income estimated by the Assessing Officer of Rs. 1,50,00,000/- is accrued to the assessee & the same should be taxed as the assessee is following mercantile system of accounting.

4. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in not appreciating the fact that the computer software on which the assessee has claimed depreciation @ 60% is in actuality an intangible asset & is eligible for depreciation @ 25% as per the decision of Hon'ble ITAT Mumbai in the case of Sony India Pvt Ltd Vs Addl. CIT.

5. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in not appreciating the fact that the printers, scanner readers etc. on which the assessee has claimed depreciation @ 60% are in actuality an electrical equipment & are eligible for depreciation @ 25% as per the decision of Hon'ble ITAT Mumbai in the case of Sony India Pvt Ltd Vs Addl. CIT.

6. *The appellant prays that the order of CIT(A) on the above ground be set aside and that of the assessing officer be restored.*

7. *The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal.”*

67. Ground No. 1 of Grounds of appeal of the revenue for the A.Y.2011-12 is relating to disallowance u/s. 14A of the Act. This ground is similar to Ground No. 2 in the appeal of the revenue for the A.Y.2010-11 and it has been decided while disposing off the appeal. The decision taken therein shall apply mutatis mutandis for this appeal also. We order accordingly.

68. Ground No. 2 of Grounds of appeal of the revenue for the A.Y.2011-12 is relating to disallowance of software development expenditure. This ground is similar to Ground No. 3 in the appeal of the revenue for the A.Y. 2010-11 and it has been decided while disposing off the appeal. The decision taken therein shall apply mutatis mutandis for this appeal also. We order accordingly.

69. Ground No. 3 of Grounds of appeal of the revenue for the A.Y.2011-12 is relating to addition of notional interest income in respect of toll road from Madhya Pradesh State Industrial Development corporation. This ground is similar to Ground No. 4 in the appeal of the revenue for the A.Y. 2010-11 and it has been decided while disposing off the appeal. The decision taken therein shall apply mutatis mutandis for this appeal also. We order accordingly.

70. Ground Nos. 4 & 5 of Grounds of appeal of the revenue for the A.Y.2011-12 is relating to depreciation on computer Software and

peripherals. This ground is similar to Ground No. 8 in the appeal of the revenue for the A.Y. 2010-11 and it has been decided while disposing off the appeal. The decision taken therein shall apply mutatis mutandis for this appeal also. We order accordingly.

71. In the result, appeals of the assessee as well as revenue are partly allowed as indicated above.

Order pronounced in the open court on the 30th December, 2019

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai / Dated 30/12/2019
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1.	The Appellant
2.	The Respondent.
3.	The CIT(A), Mumbai.
4.	CIT
5.	DR, ITAT, Mumbai
6.	Guard file.
	//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum