

THE INCOME TAX APPELLATE TRIBUNAL  
“E” Bench, Mumbai  
Before Shri Shamim Yahya (AM) & Shri Pawan Singh (JM)

I.T.A. No. 3569/Mum/2018 (Assessment Year 2011-12)  
I.T.A. No. 3570/Mum/2018 (Assessment Year 2012-13)  
I.T.A. No. 3571/Mum/2018 (Assessment Year 2013-14)

M/s. Export Credit Guarantee Corporation of India Ltd. 5 <sup>th</sup> Floor, Nirmal Building Nariman Point Mumbai-400 021. (Appellant)	Vs.	ACIT-3(1)(2) Room No. 607 Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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I.T.A. No. 4076/Mum/2018 (Assessment Year 2011-12)  
I.T.A. No. 4077/Mum/2018 (Assessment Year 2012-13)  
I.T.A. No. 4078/Mum/2018 (Assessment Year 2013-14)  
I.T.A. No. 4079/Mum/2018 (Assessment Year 2014-15)  
I.T.A. No. 4080/Mum/2018 (Assessment Year 2015-16)

ACIT-3(1)(2) Room No. 607 Aayakar Bhavan M.K. Road Mumbai-400 020. (Appellant)	Vs.	M/s. Export Credit Guarantee Corporation of India Ltd. 5 <sup>th</sup> Floor, Nirmal Building Nariman Point Mumbai-400 021. (Respondent)
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PAN : AAACE0296K

Assessee by	Shri S. Venkatraman & Shri Govind Taveri
Department by	Shri Amit Pratap Singh
Date of Hearing	03.10.2019
Date of Pronouncement	12.12.2019

ORDER

Per Bench :-

These are appeals by the assessee and Revenue arising out of respective orders of learned CIT(A) for concerned assessment years. Since issues are common and connected and appeals were heard together, these are being consolidated and disposed of for the sake of convenience.

Assessee's appeal :-

2. Common issue raised in the appeal by the assessee read as under :-

- (1) The Assessee, being an Insurance Company, its Income is to be computed under Sec. 44 of the Income Tax Act, 1961 r/w the First Schedule. Rule 5 of the First Schedule does not provide for any disallowance Under Sec. 14A of the Income Tax Act, 1961 and consequently the Ld. Commissioner of Income Tax (Appeals) erred in confirming the addition made by the Assessing Officer under Sec. 14A of the Income Tax Act, 1961.
- (2) The Assessee submits that the Learned Commissioner of Income Tax (Appeals) erred in not following the Orders of the Hon'ble ITAT in the Assessee's own case passed in A.Y. 2007-08, 2009-10 & 2010-11 where similar additions made by the A.O Under Section 14A of the Income Tax Act, 1961 were deleted by the Hon'ble ITAT.

3. The assessee has also filed common additional ground. We may refer the additional ground with figures from A.Y. 2011-12 :-

“The learned CIT (A) ought to have held that the suo moto disallowance U/S.14A of the Act of Rs. 2,00,26,511/- made by the assessee is not as per law and no disallowance U/S.14A of the Act is called for as held by the Hon'ble Tribunal in the assessee's own case in earlier assessment years”.

4. Reasons for addition additional ground are as under :-

- “1. The assessee is engaged in the business of the insurance and the income earned by the assessee is liable to be assessed as per the provisions of section 44 read with First Schedule of the Act.
2. The captioned appeal arises out of the order of the CIT(A) dated 23.03.2018 granting partial relief to the assessee against adjustments made to the returned income made by the Assessing Officer vide assessment order passed u/s. 143(3) of the Act dated 28.03.2014.
3. While completing the assessment, the Assessing Officer had made one of the additions of Rs.84,71,410/- to the income, being disallowance u/s. 14A of the Act after taking into account the suo moto disallowance made by the assessee of Rs. 2,00,26,511/-. The learned CIT(A) upheld the addition of Rs. 84,71,410/-(erroneously mentioned as Rs 97,83,650/- by CIT(A) in his order) for disallowance made U/S.14A of the Act read with Rule 8D(i).
4. It is submitted that the Hon'ble Tribunal has consistently held that no disallowance u/s.14A of the Act can be made in the case of an assessee carrying on business of insurance as its income has to be computed in

accordance with section 44 r.w. First Schedule and similar view had been taken in the assessee's own case for A.Ys. 2007-08, 2009-10 and 2010-11.

5. Although the above position had been brought to the kind attention of the CIT(A), he had upheld the disallowance u/s.14A of the Act.
6. Hence, the assessee had filed captioned appeal before Your Honours challenging the said disallowance made u/s.14A of the Act. However, the grounds of appeal filed before Your Honours did not spell out the suo moto disallowance u/s. 14A of the Act made by the assessee in its return of income and therefore, out of abundant precaution, the assessee would like to file the enclosed additional grounds of appeal with humble request to kindly consider and adjudicate on the same.
7. It is submitted that for the purpose of adjudication of the said additional ground all the facts are available on record and needs no further investigation.
8. It is humbly submitted that since the additional ground raises purely a question of law requiring no further investigation, the same may kindly be admitted by Your Honours. In this regard, reliance is placed upon the following decisions rendered by various Courts.
  - i. National Thermal Power Corporation v. CIT [229ITR 383(SC)
  - ii. Jute Corporation of India Ltd. v. CIT [187 ITR 688 (SC)
  - iii. Ahmadabad Electricity Co, Ltd. v. CIT [199 ITR 351 (Bom) (FB)

In view of the above, it is most humbly submitted that the enclosed additional grounds may kindly be admitted and adjudicated upon by Your Honours.”

5. Assessee-company is engaged in the business of export credit insurance for exporters, domestic credit insurance, full fledged factoring services and administrative services. Since facts and figures are common, we are referring to facts and figures from A.Y. 2011-12.

6. Brief facts on this issue are as under :-

During the year, the assessee has earned exempted income amounting to Rs. 19,41,11,830/- (Dividend from Mutual Funds of Rs. 4,64,00,473/- & Dividend on Equity Shares of Rs. 8,02,66,332/- and Long Term Capital Gain on sale of Equity Shares of Rs. 6,74,45,025/-) and claimed the same as exempt u/s.10 of the I.T. Act. The assessee suo moto has made a disallowance of Rs. 2,00,26,511/- u/s.14A on its own in the computation of the total

income of the assessee. Therefore, the Assessing Officer specifically requested the assessee to furnish working of the disallowance u/s.14A and why the disallowance u/s.14A should not be computed in accordance with the manner laid down in the Rule 8D.

7. In response to the same, the assessee vide its letter dated 21.03.2014 has filed submission on various issues including the issue in hand. The relevant extract of the assessee's submission is reproduced herein under:

“ .....

4. Disallowance under Sec. 14A of the Act

(a) As mentioned above, the Company being an insurance company, its income is to be computed under the First Schedule to the Act.

(b) Under Rule 5(a) to the First Schedule of the Income tax Act, 1961:-

"Any expenditure or allowance ----- which is not admissible under the provisions of Sections 30 to 43B in computing the profits and gains of a business, shall be added back" -

Since Section 14A of the Income tax Act, 1961 does not find a place in Rule 5(a) to the First Schedule, in computing the income under Section 44 of the Income Tax Act, 1961 r/w First Schedule, no disallowance under Section 14A is warranted since the said section is inapplicable.

(c) Without prejudice to the above claim, in the Tax Audit Report an amount of Rs.2,00,26,511/- has been disallowed under Rule 8D of the I. T. Rules. Your kind attention in this regard is invited to the computation of income attached in Annexure 2 wherein the sum of Rs.2,00,26,511/- has been disallowed by the Company under Sec.14A of the Act, working of which is available in the Tax Audit Report filed before you.”

8. However, the Assessing Officer was not satisfied. He referred to the provisions of section 14A of the Act and CBDT Circular No. 14 of 2001 dated 22.11.2001. He also placed reliance upon Hon'ble Bombay High Court decision in the case of Godrej Boyce Manufacturing Co. (328 ITR 81) and made disallowance on the basis of computation under Rule 8D amounting to Rs. 2,84,97,921/-. Since the assessee has already made a disallowance of Rs. 2,00,26,511/- in the computation of total income, net disallowance of Rs. 84,71,410/- is made on this account.

9. The Assessing Officer further mentioned that alternative submission of the assessee that disallowance u/s. 14A cannot be done as assessee is an insurance company was not accepted as the assessee itself has suo moto disallowed and if the assessee's claim was to be accepted then it would also mean that no exemption is available u/s. 10(33) and 10(34) in view of the non-obstante clause of section 44, and the same would be added to taxable income of the assessee

10. Against the above order, assessee is in appeals before learned CIT(A).

11. Learned CIT(A) noted assessee's submission that in assessee's own case the ITAT has consistently held that the provisions of section 14A are not attracted in the case of an insurance company. Learned CIT(A) noted the order of the ITAT in assessee's own case for A.Y. 2007-08, 2009-10 & 2010-11. He also noted following portion from the ITAT order for A.Y. 2007-08 :-

“We have heard the rival contentions and also the relevant finding given in the impugned orders. As stated earlier, the assessee company is engaged in the business of General Insurance and under the specific provisions given in the Income-tax Act, its income has to be computed strongly in accordance with section 44 r.w. First Schedule. It is a non obstante clause having overriding effect over the other provisions contained in the Act. For making a disallowance of any expenditure or allowance, which falls under the provisions of sections 30 to 43B. It should be firstly, be an expenditure or allowance and secondly, it should not be admissible under sections 30 to 43B. Otherwise no other disallowance can be made. For the purpose of the Income-tax, first of all the figures of the income of the assessee is to be drawn-up in accordance with the provisions of First Schedule to the Income-tax Act and satisfying the requirement of Insurance Act and such a Export Credit Guarantee Corporation of India Ltd ITA No.1971/ Mum/2011 CO No. 210/Mum/2013 determination of income is binding on the AO and there is no power to tinker with such an account. This proposition has been upheld by the Hon'ble Supreme Court in the case of General Insurance Corp. of India vs CIT, reported in [1990] 240 ITR 139. Thus, when the income of the assessee as well as the expenditure are governed by specific provision which have an overriding effect, then it is not open for the AO to invoke the other provisions of the Act for carrying out the disallowance or adjustment in the income. Thus, we hold that, no disallowance u/s 14A can be made in the case of the assessee and hence grounds raised in the Cross Objections are allowed”.

12. However, learned CIT(A) did not follow the above. He noted that there is an expenditure of Rs. 97,83,650/- debited to the profit and loss account on

account of expenses towards investments under the head 'Expenses other than those related to insurance business'. Thereafter, learned CIT(A) referred to Rule 5(a) of First schedule and Hon'ble Apex Court decision in the case of General Insurance Corporation of India Vs. CIT (240 ITR 139). Referring to the above he held that the expenses of Rs. 97,83,650/- cannot be a permissible expenses as per section 44 of the Act, where the 'the profit and gains of any business of insurance' are computed in accordance with the rules contained in the First Schedule and where Rule 5 of the First Schedule deals with the computation of profits and gains of other insurance business since the expenses are not related to insurance business. Hence, learned CIT(A) held that the expenditure of Rs. 97,83,650/- debited to the profit and loss account on account of expenses towards investments under the head 'expenses other than those related to insurance business' would not be admissible to the assessee company for computing 'the profits and gains of business of insurance' u/s. 37 of the Act or any other provisions of sections 30 to 43A of the Act and hence, the same is disallowed for the purpose of computing the profits and gains of any business of insurance. He further held that consequently this expenditure of Rs. 97,83,650/- is treated as disallowed and held as expenditure in relation to exempt income that would attract the provisions of section 14A of the Act. Hence, learned CIT(A) held that the disallowance of expenditure of Rs. 97,83,650/- debited to the profit and loss account in direct expenses on account of expenses towards investments under the head 'expenses other than those related to insurance business' by the Assessing Officer under Rule 8D(i) is upheld. Learned CIT(A) did not bother to mention anything about the suo moto disallowance of Rs. 2,00,26,511/- done by assessee and the net disallowance done by the Assessing Officer of Rs. 84,71,410/-.

13. Against this order the assessee and Revenue are in cross appeals before us.

14. We have heard both the counsel and perused the records. It transpires that the issue of disallowance u/s. 14A has been consistently decided by the ITAT in favour of the assessee. The ITAT's observations has already been reproduced by the learned CIT(A) as above. The ITAT had held that the when the income of the assessee as well as the expenditure are governed by specific provision which have an overriding effect, then it is not open for the AO to invoke the other provisions of the Act for carrying out the disallowance or adjustment in the income. It is not the case the above decision of the ITAT has been reversed by Hon'ble Bombay High Court.

15. Learned CIT(A) while not following the above ITAT decision has opined that expenditure of Rs. 97,83,650/-booked under 'expenses other than those related to insurance business' in the financial statement is not allowable under section 37 of the Act. Thereafter he has also held that provisions of section 14A are attracted in this regard. As already mentioned above learned CIT(A) was quite silent about the suo moto disallowance done by the assessee and the net disallowance of Rs. 84,71,410/- proposed by the Assessing Officer.

16. As regards disallowance u/s. 37 of the Act is concerned, we note that it was not at all the case of the Assessing Officer that this expenditure is disallowed under section 37 of the Act. Hence, this disallowance under section 37 of the Act by learned CIT(A) amounts to enhancement without any notice to the assessee and accordingly, the same is not at all sustainable. For this proposition we may refer to section 251(2) which reads as under :-

Section 251(2) : The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation- In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.

Hence, this action of learned CIT(A) is not sustainable in law.

17. Furthermore, we note that learned CIT(A) has also sustained the above amount to be disallowed under section 14A of the Act. As mentioned by us hereinabove the ITAT in assessee's own case has held that no disallowance under section 14A is permissible. Hence, following the above said decision the said disallowance is not sustainable.

18. As regards suo moto disallowance which the assessee now seeks to withdraw by way of additional ground, in our considered opinion this is a legal ground and the settled law is that there is no estoppel as to law, hence this additional ground is admitted. We note that the assessee has in fact claimed before the Assessing Officer as well before learned CIT(A) that no disallowance is to be done u/s. 14A in this regard. The Assessing Officer has rejected this contention on the ground that same disallowance has been done by the assessee itself. The Assessing Officer further observed that if this claim is to be accepted then it would also mean that no exemption is available u/s. 10(33) and 10(34). In our considered opinion these reasoning do not permit variance from ITAT order in assessee's own case wherein it was held that no disallowance u/s. 14A is permissible in the case of the assessee. Since the ITAT in assessee's own case has expounded that no disallowance under section 14A has to be done in our considered opinion additional ground deserves to be succeed. Hence, we allow the additional ground. The Assessing Officer shall examine the factual aspect of this claim and grant the necessary relief in accordance with our above observation.

Revenue's appeal :-

19. One common ground raised for A.Y. 2011-12 & 2012-13 is related to the disallowance of addition made by the Assessing Officer u/s. 36(1)(va) of the Act on account of lat payment of employees' contribution.

20. In this regard it is the contention of the Revenue that learned CIT(A) has not appreciated the fact that the contribution to PF, ESIC and other funds, is governed by section 36(1)(va) of the Act and hence section 43B does not apply to employees' contribution in the case of the assessee-company.
21. Upon hearing both the counsel and perusing the records, we find that the issue is covered in favour of the assessee by the decision of Hon'ble Apex Court in the case of Alto Extrusion Ltd. (319 ITR 306), decision of Hon'ble Jurisdictional High Court in the case of Ghatge Patil Transports Ltd. (368 ITR 749) and Hindustan Organics Chemicals Ltd. (366 ITR 1). Since learned CIT(A) has followed above said decisions, we do not find any infirmity in the order of learned CIT(A). Accordingly, we uphold the same.
22. Another common ground raised in all the appeals of the Revenue relates to deletion of addition made by the Assessing Officer on account of provision made for uncertain liability.
23. Since the facts are common, we are referring to facts and figures from A.Y. 2011-12.
24. During the course of assessment the Assessing Officer has disallowed a sum of Rs. 4,21,75,82,410/- debited to profit and loss account towards claims which was arrived at from Schedule 2 of the audited accounts. The Assessing Officer held that these were unascertained liability.
25. Upon assessee's appeal learned CIT(A) followed the order of the ITAT in assessee's own case for A.Y. 2010-11 and held as under :-

8.3.1 I have considered the submissions of the Appellant and find that this very issue was also subject matter of appeal before the Hon'ble ITAT in appellant's own case AY 2010-11. And, the Hon'ble ITAT in the order dated 25/07/2017 ITA No.7657/Mum/14 and CO No.105/Mum/2016 for A.T.2010-11 for A.Y.2010-11 in para 3.3 of the order upheld the deletion of the additions by predecessor in the following words:

3.3 We have heard the rival submissions and perused the material before us. We find that the Appellant is wholly owned by government of India, that it is required to draw its accounts as per the rules and regulations issued by IRDA, that C&AG appointed auditors audit its accounts, that in note 8 of Schedule 16 of the accounts gives details of liability on account of claims and accounting of estimated recoveries, that it would accept claims made during the year by the policy holders, that it has included IBNR and IBNER under the head claims received, that IBNR and IBNER were based on actuarial valuation, that the AO had held that the provisions made for insurance claim received during the year represented unascertained liability.

3.3.1. As an Insurance company, the Appellant has to follow rules and guidance issued by IRDA, that in pursuance of the directions of IRDA the Appellant had prepared its books of accounts, that Statutory Auditors had not raised any objections about IBNR and IBNER, that C&AG had not expressed any doubts about the accounts maintained by it, that it was following the notification issued by IRDA with regard to general insurance business, that Para 5 of Part I of the Schedule, as prescribed by IRDA, deals with claim made by the Appellant under the heads IBNR and IBNER (pg.172-73 of the PB), that both the items were based on actuary valuation report. In our opinion, provisions made on the basis of an actuarial valuation cannot be considered a contingent liability. The basic thing to be remembered is that unlike other businesses, life insurance business is being regulated by IRDA. Regulatory body issues instructions time to time. One of the instructions was about follow actuarial valuation while preparing the accounts. The actuarial method of valuation has been recognised an approved method for valuing liabilities by various courts. So, we hold that method followed by the Appellant for valuing its liabilities cannot be rejected. Besides Rule 5(a) of the First Schedule deals with provisions pertaining to expenditure or allowance or other prescribed liabilities and not in respect of income. In short the AO is not authorised to disturb any income reflected in the P&L account. Here we would like to reproduce the relevant portion of the judgment in the case of General Insurance Corporation of India (supra) and it reads as under:

"Section 44 of the Income-tax Act, 1961, is a special provision governing computation of taxable income earned from business of insurance. It opens with a non-obstante clause and thus has an overriding effect over other provisions contained in the Act. It mandates the assessing authorities to compute the taxable income for business of insurance in accordance with the provisions of the First Schedule. A plain reading of rule 5(a) of the First Schedule makes it clear that in order to attract the applicability of the said provision of the amount should firstly be an expenditure or allowance. Secondly, it should be one not admissible under the provisions of sections 30 to 43A. If the amount is not an expenditure or allowance, the question of testing its eligibility for adjustment by reference to rule 5(a) of the First Schedule would not arise at all.

There is another approach to the same issue. Section 44 of the Income-tax Act read with the Rules contained in the First Schedule to the Act lays down

an artificial mode of computing the profits and gains of insurance business. For the purpose of income-tax, the figures in the accounts of the Appellant drawn up in accordance with the provisions of the First Schedule to the Income-tax Act and satisfying the requirements of the Insurance Act are binding on the Assessing Officer under the Income-tax Act and he has no general power to correct the errors in the accounts of an insurance business and undo the entries made therein."

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In *Life Insurance Corporation of India v. CIT* (1964) 51 ITR 773 (SC), their Lordships were dealing the *pari materia* provisions contained in the Indian Income-tax Act, 1922. The court analysed the Scheme underlying the relevant provisions of the Insurance Act, 1938, and the Indian Income-tax Act, 1922, and held that where the accounts of an insurance company engaged in insurance business are required to be submitted and approved by the Controller of Insurance, the Income-tax Officer has no power to change the figures in the accounts of the Appellant. A.K. Sirkar J. recorded in his opinion (page 778):

"The assessment of the profits of an insurance business is completely governed by the rules in the Schedule and there is no power to do anything not contained in it. The reason may be that the accounts of an insurance business are fully controlled by the Controller of Insurance under the provisions of the Insurance Act. They are checked by him. He has the power to see that various provisions of the Insurance Act are complied with by an insurer so that the persons who have insured with it are not made to suffer by mismanagement. A tampering with the accounts of an insurer by an Income-tax Officer may seriously affect the working of insurance companies. But apart from this consideration, we feel no doubt that the language of section 10(7) and the Schedule to the Income-tax Act makes it perfectly certain that the Income-tax Officer could not make the adjustment that he did in these cases."

M. Hidayatullah J. (as His Lordship then was), observed (page 788):

"...Income-tax Act contemplates that the assessment of insurance companies should be carried out not according to the ordinary principles applicable to business concerns as laid down in section 10, but in quite a different manner."

The view so taken has been followed by this court in *Pandyan Insurance Company Ltd. v. CIT* [1965] 55 ITR 716 and *CIT v. Calcutta Hospital and Nursing Home Benefits Association Ltd.* [1965] 57 ITR 313 (SC). In the later case, their Lordships have also observed (page 320):

"..... the balance of profits as disclosed by the accounts submitted to the superintendent of insurance and accepted by him would be binding on the Income-tax Officer, except that the Income-tax Officer

would be entitled to exclude expenditure other than expenditure permissible under the provisions of section 10 of the Act. It is common ground in this case that the reserves which were added to the balance of profits were not expenditure."

3.3.2 One more aspect, to be considered here, is the rule of consistency. As per the taxation jurisprudence, if basic facts remain same, orders for the earlier would be followed. It is said that principles of *res judicata* do not apply to tax proceedings, but principles of consistency are very much applicable. The Hon'ble jurisdictional high court has, in the matter of *Gopal Purohit* (336 ITR 287), held as under:

".....the Tribunal has observed in paragraph 8.1 of its judgment that the Appellant has followed a consistent practice in regard to' the nature of the activities, the manner of keeping records and the presentation of shares as investment at the end of the year, in all the years. The Revenue submitted that a different view should be taken for the year under consideration, since the principle of *res judicata* is not applicable to assessment proceedings. The Tribunal corrected the position, that the principle of *res judicata* is not attracted since each assessment year is separate in itself. The Tribunal held that there ought to be uniformity in treatment and consistency when the facts and circumstances are identical, particularly in the case of the Appellant. This approach of the Tribunal cannot be faulted. The Revenue did not furnish any justification for adopting a divergent approach for the assessment year in question. Question (b), therefore, does not also raise any substantial question of law."

The Appellant was following the method of creating provisions based on actuarial valuation and the AO had accepted it while passing orders u/s. 143(3) of the Act. Without bringing changed circumstances, the AO should not have held that liabilities were contingent.

3.3.3 It was brought to our notice that the AO had observed that reinsurance ceded and recoveries were not considered while calculating the liabilities and that the observation were factually incorrect. We find that if the details of provisions for claim are analysed it becomes clear that the working of the Appellant is based on net of reinsurance (pg.63 of the PB) and thus the observation made by the AO is contrary to the facts.

3.3.4 We find that the AO had not raised any objection about non filing of bifurcation of data which was made available to the Actuary, therefore, in our opinion the DR cannot make a totally fresh case before us at this stage about non filing of bifurcation. Neither the AO nor the FAA had dealt-with the issue. The DR has a definite role in helping the bench to decide the matters. But, there are limitation of representation. In any case the Appellant had followed Rule 5 in respect of IBNR and IBNER, as mentioned earlier. Therefore, we do not find any force in the argument advanced by the DR in that regard.

Considering the above, we are of the opinion that the order of the FAA does not suffer from any legal or factual infirmity. So, upholding the same, we decide ground no.2 against the AO."

8.3.2 The facts for the year under appeal are identical to that in the preceding year. Respectfully following the decision of the Hon'ble ITAT in A.Y.2010-11 in the Appellant's own case, the addition of Rs.421,75,82,410/- made by the A.O. with regard to outstanding claims is deleted."

26. Since the issue is covered in favour of the assessee by the ITAT decision as above, which has not been reported to be reversed by Hon'ble Jurisdictional High Court, we do not find any infirmity in the order of learned CIT(A) and uphold the same.

27. One common issue raised in these appeals relates to deletion of adjustment made by the Assessing Officer while computing profit u/s. 115JB in respect of disallowance made u/s. 14A of the Act.

28. Since facts are common, we are referring to facts and figures from A.Y. 2011-12.

29. On this issue the Assessing Officer has held that the disallowance u/s. 14A is also to be done under section 115JB of the Act. Learned CIT(A) directed for deletion of the same by referring to Hon'ble Jurisdictional High Court decision in the case of Bengal Finance & Investments Pvt. Ltd. (ITA No. 337 of 2013) as well as ITAT Special Bench decision in the case of Vireet Investment Pvt. Ltd. and deleted the addition as under :-

"9.3.1 I have carefully considered the submissions of the appellant. The Hon'ble High Court of Bombay in the case of CIT vs. Bengal Finance & Investments Pvt. Ltd. in ITA No. 337 of 2013 has held that an amount disallowed under Section 14A of the Act cannot be added to arrive at book profit for purposes of Section 115JB of the Act in the following words:

"So far as Question (b) is concerned, the impugned order of the Tribunal followed its decision in M/s. Essar Teleholdings Ltd. v/s. DCIT in ITA No. 3850/Mum/2010 to held that an amount disallowed under Section 14A of the Act cannot be added to arrive at book profit for purposes of Section 115JB of the Act. The Revenue's Appeal against the order of the Tribunal in M/s. Essar Teleholdings (supra)

was dismissed by this Court in Income Tax Appeal No.438 of 2012 rendered on 7th August, 2014. In view of the above, question (b) does not raise any substantial question of law."

9.3.2 Further the Special Bench of the Delhi Tribunal in the case of ACIT vs. Vireet Investment (P.) Ltd. 82 taxmann.com 415 has held that the Assessing Officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation to Section 115JB and- that the amount of disallowance computed u/s. 14A cannot be added to the book profit in the absence of specific mention to that effect in the Explanation to Section 115JB.

9.3.3 As the ratio of the said decisions is squarely applicable to the facts of the appellant's case, the addition of Rs. 13,30,85,624/- to the book profit being the amount disallowed u/s. 14A, is hereby deleted."

30. Since the above deletion has been done by learned CIT(A) by the decision of following Hon'ble Jurisdictional High Court as well as Special Bench of ITAT decisions, we do not find any infirmity in the same and accordingly we uphold the same.

31. One issue raised in Revenue's appeal for A.Y. 2014-15 & 2015-16 is learned CIT(A) erred in deleting the addition made u/s. 14A read with Rule 8D(ii) of the I.T. Rules. We find that this ground raised by the Revenue is totally misconceived. In fact there is no disallowance done by the Assessing Officer under rule 8D(ii). As we have already held in the above assessee's appeal that no disallowance whatsoever under section 14A is permissible for the reasoning mentioned in assessee's appeal referred as above. Hence this ground is liable to be dismissed and the same is dismissed as such.

33. In the result, assessee's appeals are allowed and Revenue's appeals are dismissed.

Order has been pronounced in the Court on 12.12.2019.

Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 12/12/2019

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

PS