

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO.5775/MUM/2011 (A.Y: 2007-08)

M/s. Trent Ltd., Bombay House, 2 nd Floor, 24 Homi Mody Street, Fort Mumbai – 400 001 PAN: AAACL1838J	v.	Add. CIT – 2(3) Aayakar Bhavan, M.K. Road Mumbai
(Appellant)		(Respondent)

ITA NO.6860/MUM/2011 (A.Y: 2007-08)

Addl. CIT – 2(3) Room No. 556, 5 th Floor Aayakar Bhavan, M.K. Road Mumbai - 400 020	v.	M/s. Trent Ltd., Bombay House, 2 nd Floor, 24 Homi Mody Street, Fort Mumbai – 400 001 PAN: AAACL1838J
(Appellant)		(Respondent)

ITA NO.1036/MUM/2012 (A.Y: 2008-09)

M/s. Trent Ltd., Bombay House, 2 nd Floor, 24 Homi Mody Street, Fort Mumbai – 400 001 PAN: AAACL1838J	v.	Dy. CIT – 2(3) Aayakar Bhavan, M.K. Road Mumbai
(Appellant)		(Respondent)

ITA NO.2509/MUM/2012 (A.Y: 2008-09)

Addl. CIT – 2(3) Room No. 552, 5 th Floor Aayakar Bhavan, M.K. Road Mumbai - 400 020	v.	M/s. Trent Ltd., Bombay House, 2 nd Floor, 24 Homi Mody Street, Fort Mumbai – 400 001 PAN: AAACL1838J
(Appellant)		(Respondent)

ITA NO.3423/MUM/2012 (A.Y: 2009-10)

M/s. Trent Ltd., Bombay House, 2 nd Floor, 24 Homi Mody Street, Fort Mumbai – 400 001 PAN: AAACL1838J	v.	ACIT (OSD) – 2(3) Aayakar Bhavan, M.K. Road Mumbai
(Appellant)		(Respondent)

ITA NO.4430/MUM/2012 (A.Y: 2009-10)

ACIT (OSD) – 2(3) Room No. 552, 5 th Floor Aayakar Bhavan, M.K. Road Mumbai - 400 020	v.	M/s. Trent Ltd., Bombay House, 2 nd Floor, 24 Homi Mody Street, Fort Mumbai – 400 001 PAN: AAACL1838J
(Appellant)		(Respondent)

ITA NO.2560/MUM/2015 (A.Y: 2010-11)

M/s. Trent Ltd., Bombay House, 2 nd Floor, 24 Homi Mody Street, Fort Mumbai – 400 001 PAN: AAACL1838J	v.	DCIT – 2(2) Aayakar Bhavan, M.K. Road Mumbai
(Appellant)		(Respondent)

ITA NO.433/MUM/2016 (A.Y: 2011-12)

M/s. Trent Ltd., Bombay House, 2 nd Floor, 24 Homi Mody Street, Fort Mumbai – 400 001 PAN: AAACL1838J	v.	DCIT – 2(2) Aayakar Bhavan, M.K. Road Mumbai
(Appellant)		(Respondent)

ITA NO.758/MUM/2016 (A.Y: 2011-12)

DCIT – 2(3)(1) Room No. 552, 5 th Floor Aayakar Bhavan, M.K. Road Mumbai - 400 020	v.	M/s. Trent Ltd., Bombay House, 2 nd Floor, 24 Homi Mody Street, Fort Mumbai – 400 001 PAN: AAACL1838J
(Appellant)		(Respondent)

ITA NO.371/MUM/2017 (A.Y: 2012-13)

M/s. Trent Ltd., Bombay House, 2 nd Floor, 24 Homi Mody Street, Fort Mumbai – 400 001 PAN: AAACL1838J	v.	Asst. CIT – Circle 2(2)(2) Aayakar Bhavan, M.K. Road Mumbai
(Appellant)		(Respondent)

ITA NO.364/MUM/2017 (A.Y: 2012-13)

ACIT – 2(3)(1) Room No. 552, 5 th Floor Aayakar Bhavan, M.K. Road Mumbai - 400 020	v.	M/s. Trent Ltd., Bombay House, 2 nd Floor, 24 Homi Mody Street, Fort Mumbai – 400 001 PAN: AAACL1838J
(Appellant)		(Respondent)

ITA NO.1500/MUM/2018 (A.Y: 2013-14)

M/s. Trent Ltd., Bombay House, 2 nd Floor, 24 Homi Mody Street, Fort Mumbai – 400 001 PAN: AAACL1838J	v.	Income Tax Officer – 2(3)(3) Room No. 556, 5 th Floor Aayakar Bhavan, M.K. Road Mumbai – 400 020
(Appellant)		(Respondent)

ITA NO.1993/MUM/2018 (A.Y: 2013-14)

ACIT – 2(3)(1) Room No. 552, 5 th Floor Aayakar Bhavan, M.K. Road Mumbai - 400 020	v.	M/s. Trent Ltd., Bombay House, 2 nd Floor, 24 Homi Mody Street, Fort Mumbai – 400 001 PAN: AAACL1838J
(Appellant)		(Respondent)

Assessee by : Shri Nitesh Joshi
Department by : Shri R. Manjunatha Swamy
Shri Amit Pratap Singh

Date of Hearing : 06.01.2020
Date of Pronouncement : 15.07.2020

ORDER

PER BENCH

1. These cross appeals are filed by the assessee and revenue against different orders of the Learned Commissioner of Income Tax (Appeals), Mumbai [hereinafter in short “Ld.CIT(A)”] for the A.Ys. 2007-08 to

2009-10 and A.Y. 2011-12 to 2013-14 and appeal by the assessee for the A.Y. 2010-11.

2. First we take up the appeal for the A.Y. 2007-08 in ITA.No. 5775/Mum/2011 (assessee's appeal) and ITA.No. 6860/Mum/2011 (revenue's appeal).

ITA.No. 5775/Mum/2011 (A.Y. 2007-08) (Assessee's Appeal)

3. Assessee in its appeal has raised following grounds in its appeal: -

"1) *The Commissioner of Income Tax (Appeals) [CIT(A)] erred in confirming the disallowance made by Assessing Officer (AO) for depreciation claim of ₹.375,000/- on intangible assets - non-compete fees of ₹.20,00,000 under the non-compete agreements.*

2) *The CIT(A) erred in restricting disallowance u/s 14A of the Act to 5% of exempt income (i.e. 5% of ₹.11,05,15,050/-) which works out to ₹.55,25,752/- lakhs and not accepting the disallowance offered by the appellant u/s 14A of ₹.37,66,085/- (being ₹.19,87,289/- towards administrative expenses and ₹.17,78,796/- towards interest expenditure).*

3) *The CIT(A) erred in confirming the disallowance of ₹.147,635/- (i.e. 1/5th of ₹.738,189/-) incurred towards preferential issue of shares and ₹.185,640/- (i.e. 1/5th of ₹.928,198/-) towards warrant issue u/s 35D of the Act.*

4) *The CIT(A) also erred in confirming the disallowance of ₹.738,189/- being expenditure of revenue nature towards preferential issue expense and ₹.928,198/- towards warrant issue expense u/s.37(1) of the Act, being capital expenditure.*

5) *The CIT(A) erred in confirming the disallowance made by AO towards the amount amortized in respect of the appellant's Employees' Stock Option Scheme (ESOP) of ₹.1,53,87,028/- under section 37(1) of the Act.*

6) A) *The CIT(A) erred in not deciding Annual Letting Value of the premises at Taj building as per municipal valuation u/s 23(1)(a).*

B) The CIT(A) erred in rejecting appellant's contention that fair market rent of the premises at Taj Building should be compared with the total sum received from letting of premises along with furniture hire charges.

7) The CIT(A) erred in confirming the interest received on loan given to subsidiaries (₹. 110.15 lakhs), interest on income tax refund (₹.74.25 lakhs) and interest on warrant conversion application money (₹. 21.32 lakhs) amounting to ₹.205.72 lakhs be taxed under the head income from other sources and not under head business income.”

4. Ground No.1 of grounds of appeal is relating to disallowance of depreciation on intangible assets i.e. non-compete fees.

5. Briefly stated the facts are that, the Assessing Officer while completing the assessment noticed that assessee claimed depreciation on the intangible assets i.e. non-compete fees @25%. The Assessing Officer observed that during the A.Y. 2006-07 assessee claimed depreciation on the non-compete fees paid to Shri Natraj Ramaiah and Smt Hemlata Ramaiah vide agreement dated 30.08.2005. Assessing Officer also observed that in the A.Y. 2006-07 the depreciation was denied to the assessee and assessee filed appeal before the Ld.CIT(A) and the same is pending and therefore to keep the issue alive the depreciation is disallowed for the detailed reasoning given in the assessment order for the A.Y. 2006-07.

6. Learned Counsel for the assessee submitted that the matter reached to the Tribunal and the Tribunal by its order for the A.Y. 2006-07 dated 27.08.2018 in ITA.No. 1163/Mum/2011 at Para No. 7 decided the issue in favour of the assessee by setting aside the order of the Ld.CIT(A) and directed the Assessing Officer to allow depreciation on intangible assets i.e. non-compete fees.

7. Ld. DR fairly submitted that the issue has been decided in favour of the assessee by this Tribunal for the A.Y. 2006-07.

8. We have heard the rival submissions, perused the orders of the authorities below and the order of the Coordinate Bench. The Tribunal while disposing off the appeal of the assessee for the A.Y. 2006-07 in ITA.No.1163/Mum/2011 dated 27.08.2018 allowed the claim for depreciation on intangible assets i.e. non-compete fees observing as under: -

"7. We have heard the rival submissions of both the parties and perused the material on record including the decisions cited by the Ld. A.R. We find that in the present case the assessee acquired 78% of the interest in a firm known as M/s. Landmark which was engaged in the business of retailing and publishing the books and magazines. The assessee paid Rs.10 lakh each to two partners vide two separate agreements dated 30.08.2005 as non compete fee for not carrying on or competing with the firm for 5 years from the date of agreement. The assessee claims that the said payment was made as non compete fee in order to protect 78% of the business interest in the firm M/s. Landmark and therefore the reasoning given by the AO that payment to the existing partners has been made with an

intent to avoid taxes is wrong, misleading and fallacious. After going through the non compete agreements dated 30.08.2005 and considering the facts that assessee acquired 78% of the interest in the partnership firm, we are of the firm view that any payment which is made for not competing with the firm for the period of five years is evidently falls within the ambit of non compete fee as the payment was made to protect the business interest of the assessee as the assessee's cost of investment in the said firm was Rs.91.51 crores which was made by way of capital contribution to the tune of Rs.3.9 crores and Rs.87.61 for acquiring the rights in the said partnership. In our opinion, the finding of the Ld. CIT(A) is fallacious and wrong and can not be sustained. In this case, the assessee has made payment of non compete fee and rightly treated and classified under intangible assets and claimed depreciation thereon @25%. The case of the assessee is supported by a series of decisions as referred to above. In the said decisions it has been held that the depreciation has to be allowed on the non compete fee. Accordingly, we set aside the order of Ld. CIT(A) and direct the AO to allow the depreciation. The ground raised by the assessee is allowed."

9. Facts being identical in the year under appeal, respectfully following the said decision we direct the Assessing Officer to allow depreciation on non-compete fees. This ground is allowed.

10. Ground No. 2 of grounds of appeal is relating to disallowance made u/s. 14A of the Act.

11. Briefly stated the facts are Assessing Officer while completing the assessment noticed that assessee has earned exempt income of ₹.11,05,15,050/- and in the computation of income assessee made suomoto disallowance of ₹.37,66,085/- only towards expenditure attributable for earning the said exempt income of ₹.11.05 Crores. The

Assessing Officer also observed that a detailed working in computing the expenses attributable for earning exempt income has been attached to the computation of income and it shows that assessee made proportionate disallowance u/s. 14A, administrative expenses at ₹.19,87,289/- and ₹17,78,796/- towards interest. The Assessing Officer asked the assessee to explain why proportionate expenditure should not be disallowed on exempt income as per Rule 8D r.w.s. 14A of the Act.

12. Assessee vide letter dated 06.10.2009 submitted its reply as under:

"1. As per Annexure X to the tax audit report and statement no. 16 to the return it had itself worked out the disallowance by a scientific method based on facts as follows:

a. The Investment Committee of Directors: The Committee meets from time to time to review the investments, decides the asset allocation and investments to be purchased and sold. The sitting fees paid to the Committee are included in expenses pertaining to investment activity.

b. The company has employed one investment manager to take day-to-day decisions regarding purchase and sale of investment as per the guidelines issued by the investment committee. The salary of investment manager is included in expenses pertaining to investment activity.

c. 10% of salary of head of accounts was allocated to investment activity.

d. All other administrative expenses consisting of office rent, electricity, telephone, travel, audit fees, etc. is apportioned to investment activity on proportionate basis.

e. The total expenses pertaining to investment activity are apportioned between taxable income and tax-free income proportionately.

2. *Its investments are mainly in mutual funds and considering the nature of its investment activity and other facts of the case the amount of Rs. 19.87 lakhs as administrative expenses has been correctly worked out.”*

13. Not convinced with the submissions made by the assessee the Assessing Officer rejected the working of the assessee and by invoking provisions of Rule 8D worked out disallowance at ₹.4,44,08,023/. Further, since the assessee himself disallowed expenses of ₹.37,66,085/- the disallowance was restricted to ₹.4,06,41,938/-.

14. On appeal Ld.CIT(A) held that in view of the decision of the Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd., [328 ITR 81 (Bom)] Rule 8D is applicable for the A.Y. 2008-09 onwards and a reasonable disallowance should be made u/s. 14A of the Act for earlier assessment years. Further referring to the decision of the Tribunal in the case of VIP Industries Ltd., in ITA.No. 1004/Mum/2008 he restricted the disallowance u/s. 14A of the Act to 5% of exempt income as reasonable expenses attributable for earning exempt income.

15. Ld. Counsel for the assessee Shri Nitesh Joshi, referring to Page Nos. 114 to 120 of the factual Paper Book submitted that the basis of disallowance u/s. 14A for the year under consideration has been given. Learned Counsel for the assessee submitted that assessee has made

suomoto disallowance of ₹.37,66,055/- and this comprises of interest expenses of ₹.17,78,796/- and administrative expenses of ₹.19,87,796/-.

Learned Counsel for the assessee referring to Page No. 115 of the Paper Book submitted that interest expense of ₹.17,78,796/- has been computed on a proportionate basis on an amount of ₹.34,50,86,345/- by considering the following: -

- *All investments that have yielded exempt income (other than those mutual funds referred below) are made out of the Appellant's own funds*
- *Investment in mutual funds*
- *The Appellant had issued partly convertible debentures on 1 July 2005 i.e. during FY 2005-06 (AY 2006-07)*
- *Of the total issue proceeds, 55.56% were attributable to debentures i.e. interest bearing funds*
- *Investments made in mutual funds after 1 July 2005 have been considered to have been made out of proceeds of the debenture issue.*
- *Mutual funds amounting ₹.62,11,05,732 have yielded exempt income during the year under consideration (these investments were acquired on or after 1 July 2005, and continued to be held during the year under consideration)*
- *55.56% of such mutual fund investments i.e. INR 34,50,86,345 have been considered as invested out of debenture issue proceeds*
- *Interest @ 2% (i.e. interest cost for the year as a percentage of the total debentures outstanding as at end of the year) has been computed on the amount of INR 34,50,86,345 for the proportionate number of days for which the amount remained invested in the mutual funds.*

16. Referring to Page No. 114 of the Paper Book Learned Counsel for the assessee submitted that Administrative expenses of ₹19,87,796/- considered for disallowance u/s. 14A have been computed based on a percentage of operating expenses. The detailed working showing the computation of administrative expense is submitted in the paper book. Referring to Page Nos. 121 and 122 of the Paper Book Learned Counsel for the assessee submitted that suomoto disallowance made in A.Y.2007-08 is on exactly similar basis as the suomoto disallowance made in A.Y.2006-07. Referring to Page Nos. 155 and 156 of the Paper Book, Ld. Counsel for the assessee submitted that in A.Y. 2006-07 the Assessing Officer had disregarded the disallowance offered by the assessee and computed disallowance as per Rule 8D of the I.T. Rules. On appeal, the Ld.CIT(A) had held that a reasonable amount be disallowed under section 14A of the Act, giving effect to which, the Assessing Officer disallowed 5% of the exempt income under section 14A of the Act. Referring to Page Nos. 165 and 166 of the Paper Book Ld. Counsel for the assessee submitted that an appeal was filed against the order giving effect by the Assessing Officer and thereafter the assessee's working was accepted by the Ld.CIT(A). No further appeal has been filed in this regard and therefore the order accepting the assessee's working has become final for A.Y. 2006-07. Thus, Ld.

Counsel for the assessee submits that since the working for A.Y. 2006-07 was accepted, the working of disallowance u/s. 14A for A.Y. 2007-08 made on exactly similar basis should be accepted.

17. Ld. Counsel for the assessee further placing reliance on the decision of the Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Company Ltd. v. DCIT [81 taxmann.com 111] submits that the Hon'ble Supreme Court has upheld the principle of consistency in the context of disallowance u/s. 14A of the Act. Therefore, the Ld. Counsel for the assessee submits that the working as submitted by the assessee may be accepted as the department has already accepted the working of the assessee for the A.Y. 2006-07 where the basis for these workings for both A.Y. 2006-07 and A.Y. 2007-08 are similar and identical.

18. In the first alternative, the Ld. Counsel for the assessee submits that disallowance of 1% of exempt income may be sufficient and reliance was placed on the decision of the Hon'ble Kolkata High Court in the case of R.R. Sen & Brothers (P) Ltd., v. CIT in ITAT no. 243 of 2012.

19. In the second alternative, Ld. Counsel for the assessee submits that assessee had sufficient own funds to make investments, therefore there shall not be any additional disallowance of interest over and above the

amount offered by the assessee should be made. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of Sintex Industries Ltd., [93 taxmann.com 24] and HDFC Bank Ltd., [67 taxmann.com 42 (Bom)].

20. Ld. DR vehemently supported the orders of the authorities below.

21. We have heard the rival submissions, perused the orders of the authorities below. We observe that the assessee made suomoto disallowance of ₹.37,66,085/- being the expenses attributable for earning exempt income and a detailed working was also furnished along with the computation of income which the Ld. Assessing Officer also accepted this position. However, rejecting the working of the assessee Ld. Assessing Officer invoking Rule 8D of I.T. Rules and computed the disallowance accordingly. Ld.CIT(A) however estimated the disallowance at 5% as a reasonable expense attributable for earning exempt income referring to the decision of the Mumbai Bench of the Tribunal and also noticed that provisions of Rule 8D have no application for the A.Y. 2007-08. On a perusal of the order of the Ld.CIT(A) for the A.Y. 2006-07 dated 19.04.2012 we find that the assessee made suomoto disallowance of ₹.37,29,108/- wherein a detailed working was also furnished showing the basis for making such disallowance and this was accepted by the

Ld.CIT(A). Further, Ld. Assessing Officer estimated the expenditure attributable for earning exempt income at 5% as reasonable expenditure. However, the Ld.CIT(A) after examining the detailed working of the assessee the basis for arriving at the expenses attributable for earning exempt income he came to the conclusion that the assessee's computation is more scientific than the Assessing Officer's estimation at 5% observing as under: -

*"4. The issue has been examined in the appeal order for AY 2008-09.at Para 3 to Para 3.2.1. **The Para 3.2.1 is quoted as under:***

*"3.2.1 The appellant has considered the entire salary of Investment Manager of 15.8 lacs, 10% of salary of General Manager at 3.89 lacs, entire sitting fee paid to Investment Committee at 55,000/-, 5% of MD Remuneration at ₹.7.68 lacs, 5% commission paid to none executive directors ₹.1.53 Lacs, 5% of directors fee at ₹.28,900/-, other administrative expense at ₹.3.25 lacs and interest expense at ₹.3.73 Lacs totaling ₹.35,90,326/-. As may be seen from Para 3.2 of the assessment order quoted above, the AO has not given any cogent reason for not being satisfied with the claim of appellant The AO had further erred in disallowing employees' cost and miscellaneous expense at ₹.1,86 Crores **over and above the disallowance computed as per Rule 8D, specially on account of the fact that Rule 8D (iii) itself provides for disallowance of administrative expense in form of 0.5% of the average value of investment **As the appellant's computation of disallowance u/s.14A is satisfactory, the disallowance u/s.14A is restricted to ₹.35,90,326/- and the balance disallowance by the AO is deleted,****"*

4.1 The facts of the present year are similar and it is found that the appellant's computation is more scientific than AO's estimation @5% of exempt income. The AO is directed to restrict the disallowance u/s 14A at ₹.37,29,108/-."

22. Learned Counsel for the assessee submitted that this decision has been accepted by the revenue and no further appeal has been preferred. Since the revenue accepted the decision of the Ld.CIT(A) that the working of the assessee is more scientific than the adhoc estimation made by the Assessing Officer and such working of the assessee since made on scientific basis we do not see any reason to reject the computation of disallowance made by the assessee for the year under appeal. Thus, we direct the Assessing Officer to accept the working made for disallowance u/s. 14A by the assessee and restrict the disallowance u/s. 14A to the amount as adopted by the assessee. However, since the assessee had already made suomoto disallowance we direct the Assessing Officer to delete the disallowance made u/s. 14A r.w. Rule 8D of I.T. Rules. This ground is allowed.

23. As the main plea of the assessee is accepted we are not going into the alternative pleas made by the assessee, as such the alternate pleas in grounds are dismissed.

24. Ground Nos. 3 and 4 of grounds of appeal relates to disallowance made U/s. 35D of the Act.

25. Briefly stated the facts are that, the Assessing Officer while completing the assessment noticed that the assessee in its computation

of income claimed deduction of ₹.33,31,710/- u/s. 35D of the Act. The Assessing Officer required the assessee to explain as to why claim made u/s. 35D of the Act shall not be disallowed as was made in earlier years.

26. The assessee submitted that during the A.Y. 2007-08 it had incurred expenses towards issue of shares to promoters and also for conversion of warrants and the expenses incurred for issue of shares/warrants are eligible for deduction u/s. 35D of the Act. However, the Assessing Officer denied the claim for deduction u/s. 35D observing as under: -

“The claim u/s 35D is not allowable as they do not fall under the mentioned expense of section 35D in the assessee's case. The assessee has claimed this deduction with the reasoning that they are in connection with establishment of new stores and such purposes. The reply submitted is however vague. Moreover the assessee is not an industrial undertaking which is under extension nor are these expenses incurred for setting up of a new industrial undertaking.

Against similar disallowance made in AY 2006-07, the assessee had taken a plea before the appellate authority that the A.O has totally ignored that fact that the Appellant is in the business of manufacture of garments which are sold by Appellant in retail and that the A.O. has wrongly concluded that Appellant is not an existing industrial undertaking.

Furthermore, vide letter dated 21 October 2009 (Q8), the assessee itself has stated that it does not have any manufacturing facility for its own and in some case it has to buy fabrics and get them stitched from other manufacturers on contract basis. Clearly the assessee is not an industrial undertaking and has been in existence since its incorporation since long. Hence the deduction u/s 35D are not allowable to the assessee.”

27. The Assessing Officer observed that assessee is a retailer having chain of various super markets and certainly cannot be treated to be an “industrial undertaking” for the purpose of deduction u/s. 35D of the Act

and reliance was placed on the decision of the Hon'ble Bombay High Court in the case of M/s. Vita Pvt. Ltd., v. CIT [211 ITR 557]. The Assessing Officer observed that the business like assessee on retailing and marketing the phrase industrial undertaking cannot be attributable. Therefore, he concluded that since the assessee has been carrying on business for many years the rights issue and other expenses claimed u/s.35D during the previous year cannot be treated as expenses incurred before commencement of the business or for setting up of a new industrial undertaking or extension of the new industrial undertaking within the meaning of the provisions of section 35D of the Act. The Assessing Officer further observed that these expenses are also not allowable u/s.37(1) of the Act as these expenses incurred on rights issue is a capital expenditure. On appeal the Ld.CIT(A) sustained the disallowance made by the Assessing Officer.

28. Ld. Counsel for the assessee submits that the assessee is engaged in the business of retailing of readymade garments, other accessories and household items through a chain of retail stores with a popular name as "Westside", departmental stores in the name of "Star Bazaar". Further, it is submitted that part of the garments sold are manufactured on job-work basis. Learned Counsel for the assessee submitted that the assessee issued equity shares and warrants to its promoters on preferential basis

during AY 2007-08. The proceeds of the share issue were to be utilized for setting up of new stores for its retailing business and other purposes of its business. The assessee claimed 1/5th of expenses incurred on such issue under section 35D of the Act. Learned Counsel for the assessee submitted that the Assessing Officer rejected the claim of the assessee on the grounds that the Assessee's business does not fall under the definition of "industrial undertaking" and therefore, deduction under section 35D of the Act cannot be claimed. Ld. Counsel for the assessee inviting our attention to the amendment to section 35D made w.e.f. 1 April 2009, wherein the word 'industrial' has been omitted and submitted that the said omission is merely clarificatory in nature and therefore, should be applied retrospectively.

29. Further reliance was placed on the following decisions for the proposition that any business is an Industrial undertaking:

- (i) *Tolani Bulk Carriers Ltd. [2008] ITA Appeal No. 1079 of 2008 dated 05.09.2008 (Bombay High Court).*
- (ii) *Tolani Bulk Carriers Ltd. vs JCIT [2005] ITA No. 5267/5268/Mum/2000 dated 30.08.2005 (Mumbai Tribunal).*
- (iii) *Dhanalakshmi Bank Ltd. Vs CIT [2019] 410 ITR 280 (Kerala)*
- (iv) *DCIT v. Mira Industries [2003] 87 ITD 475 (Ahmedabad)*

30. Ld. Counsel for the assessee further submitted that the Assessing Officer relied on the decision of the Bombay High Court in the case of Vita

(P.) Ltd. [1995] 211 ITR 557, where it was held that *"a company cannot be held to be an industrial company merely by virtue of its ownership of plant and machinery or factory premises. For that purpose, it must be mainly engaged in the manufacture or processing of goods, even if such manufacture of goods is for third party."*

31. Ld. Counsel for the assessee submits that the above ruling of the Bombay High Court is in the context of section 2(8)(c) of the Finance Act, 1975 where an industrial company is defined to mean *"a company which is mainly engaged in the business of generation of distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining"*.

32. Learned Counsel for the assessee submits that since there is no such definition of the term "industrial undertaking" for claiming deduction under section 35D of the Act, the aforesaid ruling relied upon by the Assessing Officer is distinguishable from the assessee's case and hence, not applicable.

33. Ld. DR strongly supported the orders of the Assessing Officer as well as the Ld.CIT(A). Ld. DR submits that the facts relied on by the assessee in the case of Tolani Bulk Carriers Ltd., (supra) is involved into shipping business and they are conducting shipping operations.

Therefore, facts are entirely different and therefore ratio of the said decision cannot be applied.

34. We have heard the rival submissions, perused the orders of the authorities below. In the case of Tolani Bulk Carriers Ltd v. JCIT in ITA.No. 5267 and 5268/Mum/2000 dated 30.08.2005 the Mumbai Bench of the Tribunal considered the issue as to whether the assessee which is engaged in the shipping business is eligible for deduction u/s. 35D of the Act and observed as under: -

“6. Briefly stated, the relevant facts are that the assessee company is engaged in the Business of operating ships. The assessee company filed return of income on 29.11.95 wherein there is a sum of ₹.12,93,626/- equivalent to 20% of the total expenditure of ₹.64,68,381/- incurred by the assessee-company in connection with the issue of shares to meet the requirement of funds for the acquisition of new ships was amortized. The return was processed u/s. 143(1). However, the Assessing Officer issued notice u/s. 148 for re-opening the assessment u/s 147 on the ground that amortization of shares issue expenses claimed & allowed to the assessee was not allowable because these expenses were of capital nature in view of the decision of Hon'ble Supreme Court in the case of M/s Brooke Bond India Ltd. as reported in 225 1TR 79 and hence income escaped assessment. The Assessing Officer, after obtaining necessary details of the expenses and considering the submissions made by the assessee, disallowed the claim of the assessee on the ground that the assessee- company was not an Industrial Undertaking and accordingly provisions of section 35D were not applicable. On appeal, the learned CIT(A) following the decision in assessee's own case for A.Y. 1996-97 confirmed the disallowance made by the Assessing Officer, Aggrieved by the decision of the learned CIT(A), the assessee is in appeal before the Tribunal.

7. During the course of hearing, the learned counsel for the assessee reiterated the submissions made before the Revenue authorities below and contended that the only issue involved was whether the assessee-company could be termed as Industrial Undertaking within the meaning of Provisions of Section 35 D as the term "Industrial Undertaking" was not defined in the section. The

learned counsel contended that if a term or word is not defined in a particular section, the definition of the said term in other sections of the Act or definition given in another Acts could be imported to find out the contextual meaning and for this proposition, he relied on the decision of the Hon'ble Madras High Court in the case of CIT vs. Express Newspapers as reported in 40 ITR 38. He further drew our attention to the provisions of section 10(15) of the Act wherein the expression "Industrial Undertaking" has been defined to include the operation of ships and also the provisions of Section 80-I wherein the shipping industry has been considered as Industrial Undertaking. The learned counsel also contended that in A.Y. 1999-2000, the learned CIT(A) has allowed the claim of the assessee.

8. *The learned Departmental Representative, on the other hand, contended that the term Industrial Undertaking has been defined in various sections in respect of those sections only and as such the definition cannot be extended to other sections. It was also contended by the learned D.R that the definition of the term "Industrial Undertaking" under the Industrial Disputes Act cannot be adopted for the purposes of income tax and for this proposition, he placed reliance on the decision of the Hon'ble jurisdictional High Court in the case of Insight Diagnostic and Cological-Research Institute Pvt. Ltd vs. DCIT as reported in 262 ITR 41.*

9. *We have considered the rival submissions, material placed on record, judicial decisions cited by them and other applicable legal provisions. It is not in dispute that the assessee incurred expenses for raising additional resources through public issue to acquire new ships-. It is also not in dispute that these expenses are in the nature of capital expenses in view of the decision of the Hon'ble Supreme Court in the case of Brooke Bond India Ltd. (supra). However, but section 35-B of the Act permits the amortization of such expenses if the conditions specified therein are fulfilled. It is also not in doubt the expenses incurred by the assessee fall with the category of expenses which are eligible for amortization. The only question which is required to be considered is whether the assessee-company is a Industrial undertaking or not within the meaning of provisions of Section 35 D of the Act. No doubt the definition of the term has not been given in the Section itself. The assessee has contended that in the absence of any specific definition, the definition of the term "Industrial Undertaking" can be imported from the definition of the term given in other sections or other Acts to arrive at the correct conclusion while the Revenue has contended that this term has been used with a specific meaning in respective provisions and, therefore, the same cannot be applied in other sections. In this background we have to look at the general meaning of the term "Industrial Undertaking". The term "Industrial Undertaking" is made of two terms i.e. "Industrial" and other "Undertaking". According to the*

dictionary meaning the word "Industry" means business which implies a systematic activity carried on in an organized or an arranged manner to earn profits. In the modern world, industrial operations have become complex and complicated and for the efficient successful functioning of any industry, several incidental operations are called in aid and the totality of these operations that ultimately constitute the industry as a whole. Shipping is a means of transportation of products and in the contexts of global scale of operations, the world economy cannot sustain, thus, essentially shipping operations are industrial activity. The term "Undertaking" denotes all the assets of the company, past, present and future. Alternatively, it can also be defined as any business or work or project which one engages in or attempts as an enterprise analogous business or trade. The term may also mean an enterprise engaged in production, sale, and control of goods or rendering of services with commercial objectives. Thus, if we go by the general meaning of the term "Industrial Undertaking" the assessee qualifies as and "Industrial Undertaking" and there appears no necessity to look into other section of the Act. Some provisions break operation of ships as Industrial Undertaking which further supports the cases of the assessee.

10. *The provisions of Section 35 D have not been given restricted meaning by the legislature itself, as much as sub-section (i) to the Section 35 D encompasses not only the commencement of production but also commencement of operation which means that Business Organization engaged in different fields of commercial activities would be qualified for the amortization of preliminary expenses. Further, the object of the section is for allowance of certain expenses by amortization over a period which are otherwise of capital nature. Therefore, a narrow meaning of the term Industrial Undertaking which prohibits amortization of otherwise eligible expenditure would defeat the very purpose of the provision. There is no dispute regarding the nature of expenses and satisfaction of other conditions of the sections by the assessee. In view of above discussion, we are of the considered opinion that the learned CIT(A) was not justified in confirming the disallowance made by the Assessing Officer in this regard and accordingly we reverse the order of the learned CIT(A) and direct the Assessing Officer to re-compute the income of the assessee after allowing amortization of share issue expenses @ 10% of the total expenses incurred by the assessee, Thus, this ground of the assessee is accepted."*

35. This decision of the Tribunal was appealed before the Hon'ble Bombay High Court by the Revenue in Income Tax Appeal No. 1079 of

2008 and the Hon'ble Bombay High Court by order dated 05.09.2008

dismissed the appeal of the Revenue observing as under: -

"1. Heard the learned Counsel for the parties. In this Appeal the Appellant has sought to raise the following substantial question of law: -

Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was right in law in holding that the shipping business is an Industrial Undertaking and in allowing deduction u/s.35D of the IT Act, 1961?

2. Perused the order passed by the Division Bench of this Court on 14th August, 2008 in Income Tax Appeal No.305 of 2008. For the same reasons as recorded in the aforesaid order dated 14th August, 2008 passed in Income Tax Appeal No.305 of 2008 we are not entertaining the present Appeal. Hence, the present Appeal also stands dismissed."

36. In the case of DCIT v. Mira Industries (supra) the Ahmadabad Bench of the Tribunal examined the term "Industrial Undertaking" and held as under: -

"21. The term "industrial undertaking" is not specifically defined in the Act though it appears in various other places including these two Sections, and various other enactments. Its general meaning is very wide. 'Industry' is ascribed a meaning in Chambers, 20th Century Dictionaries as: "The quality of being diligent; assiduity: steady application: habitual diligence: systemic economic activity: any branch of manufacture and trade." The word "industrial" means "relating to or consisting in industry"; and "Undertaking" is stated to mean "that which is undertaken; any business or project engaged in; a task one sets oneself; the business of conducting funerals." In Websters it is "the act of one who undertakes or engage in a project or a business". In a common parlance it may thus mean any and every 'enterprise' 'venture', 'engagement' whatsoever.

22. This term "industrial undertaking" came for consideration before various courts in various different contexts. These, as we find from the case law cited and referred to the issue, are discussed hereunder:

(a) The Kerala High Court in the case of P. Alikunju, M.A. Nazeer Cashew Industries v. CIT [1987] 166 ITR 804 : 34 Taxman 169 in

connection with the provisions of Section 54D and Their Lordships observed as under:

*What then is an 'industrial undertaking'? The Income-tax Act does not define what is 'an industrial undertaking' or what is an 'industrial undertaking'. It has, therefore, become necessary to construe these words. Words used in a statute dealing with matters relating to the general public are presumed to have been used in their popular rather than their narrow, legal or technical sense. Loquitur ut vulgus, that is, according to the common understanding and acceptance of the terms, is the doctrine that should be applied in construing the words used in statutes dealing with matters relating to the public in general. In short, if an 'Act is directed to dealings with matters affecting everybody generally, the words used have the meaning attached to them in the common and ordinary use of language' [Vide *Unwin v. Hanson* (189) 2 Q.B. 115 (CA), per Lord Esher M.R., at page 119]. That the Income-tax Act is of general application, is beyond dispute. It, therefore, follows that the meaning that should be given to these words 'industrial undertaking' must be the natural meaning. It is all the more so because the Income-tax Act is one consolidating and amending the law relating to income-tax and supertax. (See *Rao Bahadur Ravula Subha Rao v. CIT* [1956] 30 ITR 163 (SC) at p. 169).*

...Undertaking' in common parlance means an 'enterprise', 'venture', 'engagement'. It can as well mean 'the act of one who undertakes or engages in a project or business' (Webster). An undertaking mentioned in Section 54D must be one maintained by a person for the purpose of carrying on his business. 'Undertaking', for the purpose of this Section, however, must be an 'industrial undertaking'. The demonstrative adjective 'industrial undertaking' qualifying the word 'undertaking' unmistakably and with precision shows that the undertaking must be one which partakes of the character of a business.

*(b) The term, in the case of *CIT v. Bhageeratha Engg. Ltd.* [1992] 193 ITR 674 : 61 Taxman 248 (Ker.), again came up for consideration in connection with investment allowance under Section 32A of the Act. The court noticing that the words occur in other provisions of Sections 54D, 80HH, 80HHA, 80-I, 80J, etc. held that in the absence of a definition in the Act, the words "industrial undertaking" should be construed in its popular sense. In this case, the assessee was engaged in construction of dams. Referring to the decision of *Bangalore Water Supply & Sewerage Board v. A. Rajappa* AIR 1978 SC 548, wherein the word 'Industry' and "undertaking" have been construed in a very wide and liberal sense but restrictive characteristics is shown by the society of words before and after. It held that the words "industrial undertaking" occurring*

in Section 32A(2)(6)(i) of the Income-tax Act, should be construed in a liberal, wide and practical sense. Their Lordships observed that the statutory language is clear and should not import any limitation therein and that it cannot be stated that in all cases manufacturing or production is a condition precedent to call an activity, business, or trade an industrial undertaking. It was further held that the industrial undertaking may be any one of the categories, "business of construction", "business of manufacture", "business of production", of any article or thing not specified in the Eleventh Schedule. It was held that the assessee is carrying on business of construction - an integrated and complicated business - in a systematic manner and while engaged in business of construction, it is manufacturing and processing various materials to be used in the construction. It is using the plant or machinery in such feeding or ancillary activities to carry on the business more efficiently and economically. The feeding activity so carried on for "manufacturing or processing of goods" facilitates efficient and economic management and the effectuation of the purpose of construction. Their Lordships therefore, held that the assessee used new machinery or plant in an industrial undertaking for the purpose of construction or production of an article or thing and such article or thing is not specified in the Eleventh Schedule and so, the assessee is entitled to relief under Section 32A.

(c) The Supreme Court decision referred to above was concerned with the term "Industry" and the "Undertaking" as appearing in Industrial Disputes Act and in that context it held as under:

34. So, the long and short of it is, what is an industry? Section 2(;) defines it:

industry" means any business, trade undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

Let us put it plain. The canons of construction are trite that we must read the statute as a whole to get a hang of it and a holistic perspective of it. We must have regard to the historical background, objects and reasons, international thoughtways, popular understanding, contextual connotation and suggestive subject-matter. Equally important dictionaries, while not absolutely binding are aids to ascertain meaning. Nor are we writing on a tabula rasa. Since Banerjee, 1953 SCR 302: (AIR 1953 SC 58), decided a silver span of years ago, we have a heavy harvest of rulings on what is an 'industry' and we have to be guided by the variorum of criteria stated therein, as far as possible and not spring a creative surprise on the industrial community by a stroke of freak originality.

35. Another sobering sign. In a world of relativity where law and life interlace, a search for absolutes is a self-condemned exercise. Legal concepts, ergo, are relativist, and to miss this rule of change and developmental stage is to interpret oneself into error.

36. Yet a third signpost. The functional focus of this industrial legislation and the social perspective of Part IV of the Paramount Law drive us to hold that the dual goals of the Act are contentment of workers and peace in the industry and judicial interpretation should be geared to their fulfilment, not their frustration. A worker-oriented statute must receive construction where, conceptually, the keynote thought must be the worker and the community, as the Constitution has shown concern for them, inter alia, in Articles. 38, 39 and 43.

37. A look at the definition, dictionary in hand, decisions in head and Constitution at heart, leads to some sure characteristics of an 'industry', narrowing down the twilt zone of turbid controversy. An industry is a continuity, is an organized activity, is a purposeful pursuit - not any isolated adventure, desultory excursion or casual fleeting engagement motivelessly undertaken. Such is the common feature of a trade, business, calling, manufacture - mechanical or handicraft-based service, employment, industrial occupation or avocation. For those who know English and are not given to the luxury of splitting semantic hairs, this conclusion argues itself. The expression 'undertaking' cannot be torn off the words whose company it keeps. If birds of a flock together and noscitur a sociis is a commonsense guide to construction, 'undertaking' must be read down to conform to the restrictive characteristic shared by the society of words before and after. Nobody will torture 'undertaking' in Section 2(;) to mean meditation or musheria which are spiritual and aesthetic undertakings. Wide meanings must fall in line and discordance must be excluded from a sound system. From Banerjee (AIR 1953 SC 58) to Safdar Jung (AIR 1970 SC 1407) and beyond, this limited criterion has passed muster and we see no reason, after all the marathon of argument, to shift from this position.

38. Likewise, an 'industry' cannot exist without co-operative endeavour between employer and employee. No employer, no industry; - no as a dogmatic proposition in economics but as an articulate major premises of the definition and the scheme of the Act, and as a necessary postulate of industrial disputes and statutory resolution thereof.

39. An industry is not a utility but geared to utilities in which the community has concern. And in this mundane world where law lives now, economic utilities - material goods and services, not transcendental flights nor intangible achievements - are the functional focus of industry. Therefore, no temporal utilities, no

statutory industry, is axiomatic. If society, in its advance, experiences subtler realities and assigns values to them, jurisprudence may reach out to such collective good. Today, not tomorrow, is the first charge of pragmatic law of western heritage. So we are confined to material, not ethereal end products."

(d) The Karnataka High Court in the case of Shankar Construction Co. v. CIT [1991] 189 ITR 463 : 56 Taxman 98, held that the activities of a firm carrying on business in manufacturing and sale of tiles and specialising in construction of dams and canals to be those of an industrial undertaking. It was a claim of investment allowance which could be claimed by an industrial undertaking. In this regard the term "industrial undertaking" was explained to be as under:

The expression "industrial undertaking" has not been defined in the Income-tax Act, "Industry" is a term of wide import. Where there is (i) systematic activity; (ii) organised by co-operation between employer and employee; (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes, prima facie there is an industry. "Undertaking" is an actual effect an activity of man which, in commercial or business parlance, means an activity engaged in with a view to earn profit.

(e) In the case of CIT v. N.C. Budharaja & Co. [1980] 121 ITR 212, the Orissa High Court also dealt with the term as under:

Industrial undertaking' has no statutory definition. The law is fairly settled that where there is an absence of the statutory definition, it would be open to look for the meaning by referring to the definitions in sister legislations and failing that, to adopt the common parlance meaning. There can be no dispute that the business of a contractor who has undertaken the construction of an irrigation project would be an industrial undertaking for the purpose of the Industrial Disputes Act. The concept of industrial undertaking need not necessarily be confined to manufacture and production of articles. Even in the absence of either of them, in the strict sense, there could be an industrial undertaking. The Tribunal in the instant case has clearly recorded a finding of fact that the assessee had undertaken manufacture of certain materials which it ultimately utilised in the construction of the dam and it worked for the ultimate production of a dam.

37. The Hon'ble Kerala High Court in the case of Dhanalakshmi Bank Ltd v. CIT (supra) considered the term "Industrial Undertaking" and held as under: -

"7. The next question arising in the maximum number of appeals, i.e., for the years 1996-97 to 2005-06; 10 years, is the question of deduction under Section 35D of the Act. The question framed is as below:

"Whether the Tribunal was correct in having declined amortisation of expenses incurred in connection with the issue of public subscription of shares under Section 35D for reason of the assessee being not an 'industrial undertaking'?"

8. In this context, we have to first notice that by Finance Act, 2008 with effect from 01.04.2009 there was an amendment of Section 35D by Section 8 of the Finance Act, which reads as under:

"8. Amendment of Section 35-D.- In Section 35-D of the Income Tax Act, with effect from the 1st day of April, 2009,-

(a) for the words "industrial undertaking", wherever they occur, the word "undertaking" shall be substituted;

(b) for the words "industrial unit", wherever they occur, the word "unit" shall be substituted."

The learned Counsel appearing for the appellant would contend that there being a substitution, the amendment would have to be deemed to be retrospective. The judgment of a Division Bench of this Court in Commercial Tax Officer v. Najeem [2018 (3) KLT 877] is also put forth. It is argued that this Court had found that when there is a substitution, if it is not specifically expressed to be prospective, then "the Courts could always interpret it to be retrospective, looking at the scheme of the enactment, the purpose and object of the amendment, especially when the amendment by substitution, was intended at removing an obvious anomaly or correcting a blatant error or obliterating an absurdity or bringing it in consonance with any other law or the Constitution...". Hence, the intention definitely was to extend the benefit to all undertakings.

9. The learned Standing Counsel for Government of India (Taxes), however, takes us through the Notes on Clauses of Finance Bill, 2008 and the Memorandum Explaining the Provisions in the Finance Bill, 2008. Clause 6 in the Notes on Clauses seeking to amend Section 35D specifically says so:

"The proposed amendment seeks to substitute the words "industrial undertaking" with the word "undertaking" and the words "industrial unit" with the word "unit", wherever they occur in the said section. This is intended to provide benefit of amortisation of specified post commencement preliminary expenses to all sectors for the extension of an undertaking or the setting up of a new unit.

This amendment will take effect from 1st April, 2009 and will accordingly apply in relation to the assessment year 2009-10 and subsequent assessment years".

The Memorandum also indicates so:

"With a view to providing a level playing field to the services sector, it is necessary to extend to the service sector, the same benefit of amortization of specified post-commencement preliminary expenses as it available to the manufacturing sector for the extension of an undertaking or the setting up of a new unit. Therefore, it is proposed to amend section 35D accordingly.

The amendment will take effect from the 1 st day of April, 2009 and will accordingly apply in relation to assessment year 2009-10 and subsequent assessment years".

In the above circumstances, there cannot be any necessary intention found from the statute especially since what were covered under sub-clause (ii) of Section 35D(1) was only "industrial undertakings". We are of the opinion that without granting any retrospectivity to the said amendment, we can look at the manner in which the "industrial undertaking" has been dealt with by the various High Courts in the context of the IT Act; to find whether the assessee, a Bank extending financial services, would be entitled to amortisation of preliminary expenses in connection with the issue of shares for public subscription.

10. The learned Counsel for the appellant has relied on the decisions in Alikunju, M.A.Nazeer Cashew Industries v. C.I.T. [(1987) 166 ITR 804 (Ker)], Shankar Construction Co. v. C.I.T. [(1991) 189 ITR 463 (Kar.)], C.I.T. v. Emirates Commercial Bank Ltd. [(2003) 262 ITR 55 (Bom.)], C.I.T. v. Computerised Accounting and Management Service Pvt. Ltd. [(1999) 235 ITR 502 (Ker)] and C.I.T. v. Peerless Consultancy and Service (P.) Ltd. [(2001) 248 ITR 178]. The learned Standing Counsel for Government of India (Taxes) has relied on the decision in Ansal Housing and Construction Ltd. v. CIT [(2010) 320 ITR 420 (Delhi)].

11. In Alikunju, M.A.Nazeer Cashew Industries, this Court was concerned with the issue whether the construction of a lodging house would be considered as an "industrial undertaking". Therein the provision was one which granted exemption to gains arising on transfer of land and building forming part of industrial undertaking; when invested in setting up another industrial undertaking. The assessee had an ice factory; the land and buildings of which were acquired by the Government. The consideration was treated as long term capital gains as against which, the assessee claimed exemption

under Section 54D on the ground that he had invested the capital gains in the construction of a lodging house. This Court found that the running of a lodge would be an industrial undertaking within the meaning of Section 54D.

12. In Shankar Construction Co., the Karnataka High Court was considering the meaning of "industrial undertaking" under Section 32A. The Karnataka High Court reiterated the principle that when a taxing statute is construed and there are two views possible, the view that favours the assessee has to be adopted. It was also held that in construing words in the absence of a statutory definition, it would be open to look for the meaning by reference to definitions in sister legislation. The High Court, looking at the various definition clauses as also the definition under the Industrial Disputes Act, 1947, found the construction activities carried on by the assessee to be possible of being termed an "industrial undertaking".

13. In Computerised Accounting and Management Service Pvt. Ltd., the question came to be considered was as to whether "manufacture or production of an article or thing" would extend to a business in computerised accounting and management services. The assessee therein was engaged in preparing information, through mechanical process; with the aid of computers, to be supplied to various parties after processing the data furnished by their clients in raw form. The activity carried on by the assessee was found to come under the meaning of the term "manufacture or production" used under Section 32A of the IT Act.

14. In Peerless Consultancy and Service (P.) Ltd., the question again was as to whether the assessee was entitled to investment allowance claimed, with respect to the expenditure incurred for installation of a generator by a data processing company. The Tribunal's order allowing the claim under Section 32A was upheld, finding that 'the Revenue has been unable to show us any judgment of a court of this country or abroad which takes the view that the processing of data is not the processing of goods'.

15. Emirates Commercial Bank Ltd. again considered the issue of data processing and the allowance claimed under Section 32A in respect of the computers installed in the office premises, to find in favour of the assessee, which was held to be an industrial undertaking.

16. The High Court of Delhi, however, in Ansal Housing and Construction Ltd. took a contrary view with respect to the business of construction and sale of multi-storeyed residential buildings and complexes, promotion and development of residential colonies, etc. The said decision is in direct conflict with the decision of the

Karnataka High Court in Shankar Construction Co. We also notice that the decision in Alikunju, M.A.Nazeer Cashew Industries was distinguished, finding that the Division Bench of this Court had only dealt with the expression "undertaking" and not with the expression "industrial undertaking". We are unable to agree with the High Court of Delhi on that issue since the specific finding was that "the running of a lodge could be said to be an industrial undertaking within the meaning of Section 54D".

17. The Division Bench decisions of this Court in Alikunju, M.A.Nazeer Cashew Industries and Computerised Accounting and Management Service Pvt. Ltd., have a binding effect on us while the decision of the High Court of Delhi in Ansal Housing and Construction Ltd. can only be persuasive. We, hence, respectfully follow the Division Bench decisions of this Court and in doing so, we reiterate the principle as stated by the Karnataka High Court insofar as the assessee being favoured when two views are possible in construing a taxing statute. We also notice that the Division Bench of the High Court of Delhi had also construed the words "industrial undertaking" on the common parlance test. The Division Bench of this Court in Alikunju, M.A.Nazeer Cashew Industries also considered the issue on the very same principle, as can be seen from the following extracts:

"What then is an "industrial undertaking"? The Income-tax Act does not define what is "an undertaking" or what is an "industrial undertaking". It has, therefore, become necessary to construe these words. Words used in a statute dealing with matters relating to the general public are presumed to have been used in their popular rather than their narrow, legal or technical sense.

Loquitur ut vulgus, that is, according to the common understanding and acceptance of the terms, is the doctrine that should be applied in construing the words used in statutes dealing with matters relating to the public in general. In short, if an "Act is directed to dealings with matters affecting everybody generally, the words used have the meaning attached to them in the common and ordinary use of language." (Vide Unwin v. Hanson [1891] 2 QB 115 (CA), per Lord Esher M.R. at page 119). That the Income-tax Act is of general application, is beyond dispute. It, therefore, follows that the meaning that should be given to these words "industrial undertaking" must be the natural meaning. It is all the more so because the Income-tax Act is one consolidating and amending the law relating to income-tax and super tax. (See Rao Bahadur Ravulu Subba Rao v. CIT [1956] 30 ITR 163 (SC) at 169).

xxx xxx xxx

The words "industrial undertaking" therefore, should be understood to have been used in section 54D in a wide sense, taking in its fold any project or business a person may undertake. The "running of a lodge", by the assessee, therefore, can be said to be an "industrial undertaking" within the meaning of section 54D of the Income-tax Act". Hence, this Court would answer the question in favour of the assessee and against the Revenue, finding the appellant-assessee to be eligible for the claim under Section 35D. The actual expenditure, whether it comes within Section 35D(2)(c)(iv) would be left for consideration by the AO.

38. The Hon'ble Jurisdictional High Court in the case of CIT v. Tolani Bulk Carriers Ltd. in Income Tax Appeal No.305 of 2008 dated 14.08.2008 held as under:

"1. Heard learned Counsel appearing for both the sides. The interpretation placed on the term "industrial undertaking" occurring in the provision of Section 35D of the Income Tax Act, in our opinion, is proper. The grievance of the learned Counsel appearing for appellant-department that the decision of this Court in the Case of "Insight Diagnostic and Oncological Research Institute Pvt.Ltd. Vs. Deputy Commissioner of Income Tax, reported in (2003)262 ITR 0041W" was not considered by the Tribunal, in our opinion, is not proper because that judgment though interprets the term "industrial undertaking" it interprets the term "industrial undertaking" found in sub-section (1) of Section 32A of the Income Tax Act. For the purpose of section 35D of the Act that judgment is not relevant. In our opinion, in so far as interpretation of the term "industrial undertaking" found in section 35D of the Act is concerned, the tribunal has rightly considered the meaning of the term "industrial undertaking" common parlance. We see no question of law arising. The appeal is, therefore, rejected."

39. In the facts and circumstances of the assessee's case which is engaged in the business of retailing of readymade garments, other accessories and household items through a chain of retail stores across the country and part of the garments sold are manufactured on job-work basis indicates that the assessee is doing business through all these

departmental stores can be held to be an industry where a systematic economic activity is being carried on by the assessee, the ratio of the above decisions applies to the assessee. Thus, respectfully following the above decisions we direct the Assessing Officer to allow the claim for deduction u/s. 35D of the Act to the assessee. The decision relied by the Assessing Officer in the case of Vita (P.) Ltd. (supra) is not applicable to the facts of the assessee's case as the same is not dealing with the provisions of section 35D of the Act and distinguishable even on facts.

40. Ground No.5 of grounds of appeal of the assessee is relating to confirming the disallowance made by the Assessing Officer towards Employees Stock Option Scheme [ESOP] expenses u/s. 37(1) of the Act.

41. Learned Counsel for the assessee submitted that assessee formed an ESOP scheme under which stock options were granted to eligible employees with an objective of attracting and retaining key talent. Further, assessee being a listed company has adhered to the regulations set out by SEBI under the Securities and Exchange Board of India (Employees Stock Option Scheme/Employee Stock Purchase Scheme) Guidelines, 1999. Ld. Counsel for the assessee further submitted that in assessee's own case for the A.Y. 2006-07 the Tribunal by its order dated 27.08.2018

in ITA.No. 1163/Mum/2011 allowed similar claim in favour of the assessee.

42. Ld. Counsel for the assessee further placing reliance on the following decisions submits that in all these cases it has been held that the amount amortized with respect to Employees Stock Option Scheme [ESOP] issued as per the SEBI guidelines shall be allowable as deduction u/s. 37(1) of the Act and the following decisions have been followed in assessee's own case for the A.Y. 2006-07.

- (i) *PVP Ventures Ltd vs CIT [2012] 23 taxmann.com 286 (Madras High Court)*
- (ii) *New Delhi Television Ltd, vs CIT [2017] 398 ITR 57 (Delhi)*
- (iii) *Biocon Ltd. vs DCIT [2013] 35 taxmann.com 335 (Bangalore Tribunal) (Special Bench).*
- (iv) *M/s Accenture Services Pvt Ltd. vs DCIT [2010] ITA 4540/MUM/08 (Mumbai Tribunal).*

43. Ld. DR fairly submitted that the issue has been decided in favour of the assessee in assessee's own case for the A.Y. 2006-07.

44. We have heard the rival submissions, perused the orders of the authorities below and the decision of the Coordinate Bench. On a perusal of the order of the Coordinate Bench in ITA.No. 1163/Mum/2011 dated 27.08.2018 an identical issue has been decided in favour of the assessee by the Tribunal wherein it was held as under: -

"10. *The issue raised in third ground of appeal is against the confirmation of disallowance of Rs.64,75,000/- by Ld. CIT(A) as made by the AO towards*

amortization in respect of Company's Employee Stock Options Scheme (ECOS) under section 37(1) of the Act.

11. The facts in brief are that the AO during the course of scrutiny proceedings observed that assessee has amortized Rs.0.64 crore in the P & L Account out of the stock options of 45,850 granted under the Employee Stock Options Scheme (ECOS) to senior manager and selected officers of the company the total cost of which was Rs.3.96 crores. The assessee has appended note in the annual report to this extent that company has granted stock options under Employee Stock Options Scheme (ECOS), 2005 in accordance with the SEBI's guidelines and the accounting value of options is accounted as deferred employee compensation and is amortized on a straight line basis. The AO disallowed the claim of the assessee by holding that the expenditure in respect of ECOS is of capital in nature.

12. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee by observing and holding as under:

"8.3 I have considered the facts of the issue and the submissions made by the AR but do not find merit in them. The ESOP benefit is available to the employees since the value at which the shares are offered is much lower than the market price of those shares at that time. However, this does not involve any actual expenditure on the part of the company giving such benefit to the employees. In fact, such benefit only represents the opportunity cost to the company and not actual cost. Since there is no physical cost involved in allowing the employees the benefit of ESOP, there is no question of allowing any deduction to the appellant on that account. Hence, the disallowance made by the AO is confirmed albeit on a different footing. This ground is dismissed.

13. The Ld. A.R. vehemently submitted before us that any expenditure incurred by the assessee on granting of Employee Stock Options Scheme has been amortized as per the SEBI guidelines and the same is a revenue expenditure and was rightly claimed by the assessee. Therefore, the order of Ld. CIT(A) upholding said disallowance is fallacious and against the legal propositions as laid down by the various judicial forums. The Ld. A.R. relied on a series of decisions in defence of his arguments namely;

- "1. PVP Ventures Ltd v. CIT [2012] 23 taxmann.com 286 (Madras-High Court)
2. New Delhi Television Ltd. v. CIT [2017] 398 ITR 57 (Delhi High Court)
3. Biocon Ltd. v. DOT [2013] 35 taxmann.com 335 (Bangalore Tribunal) (SB)
4. M/s Accenture Services Pvt. Ltd. v. DCIT [2010] ITA/4540/MUM/08 (Mumbai Tribunal)

14. The Ld. D.R., on the other hand, relied on the order of authorities below.

15. *Having heard the rival submissions of both the parties and considering the facts on record, we find that in this case the assessee has amortized the expenses in connection with Employee Stock Options Scheme as per SEBI guidelines and claimed the same as revenue expenditure which according to the AO was not correct and he disallowed the same by holding that same is of capital in nature which was also affirmed by the CIT(A). We are not in agreement with the conclusion drawn by the Ld. CIT(A) on this issue that the amortization of expenditure claimed by the assessee is not admissible as revenue in nature and the issue is settled by the various judicial forums. The case of the assessee is supported by a series of decisions referred to above by the Ld. A.R. We have perused all these decisions and found that the case of the assessee is squarely covered by ratio laid down in these decisions. In view of these facts and ratio laid down by the various judicial forums, we set aside the order of Ld. CIT(A) and direct the AO to delete the disallowance.”*

45. Facts being identical respectfully following the said decision of the Tribunal for the immediately preceding Assessment Year i.e. A.Y.2006-07 we allow the claim of the assessee for the year under appeal. This ground is allowed.

46. Ground No. 6(a) of grounds of appeal of the assessee is relating to determination of Annual Letting Value (ALV) of the premises at Taj Building u/s. 23(1)(a) of the Act.

47. Ld. Counsel for the assessee at the outset submitted that this ground of appeal has not been decided by the Ld.CIT(A). Ld. Counsel for the assessee submits that the assessee is the owner of office premises admeasuring 4,104 square feet on 2nd Floor in Taj Building' situated at 210, Dr D N Road, Mumbai 400001. The assessee had entered into a Leave and License Agreement and Hire Agreement dated 14.08.2003

with M/s Freight Systems (I) Pvt Ltd ("Licensee") for letting out the said premises with the furniture and fixtures installed in it for a period of 33 months i.e. upto 18 July 2006. During the year under consideration, the assessee had let out the property for 109 days i.e. from 01.04.2006 to 18.07.2006 and received an amount of ₹.14,36,433/- as payments from the Licensee as follows:

- (a) ₹. 94,392/- per month for the premises for period of 01.04.2006 to 18.07.2006.
- (b) ₹.3,06,774/- per month for use of furniture, fixtures and other articles attached, installed /lying in the said premises for the period 01.04.2006 to 18.07.2006.

48. Learned Counsel for the assessee submitted that section 23(1)(c) of the Act provides that where a house property was "let out" but remained vacant during 'whole or any part" of the year owing to which the rent received or receivable is less than its lettable value (as provided in section 23(1)(a) of Act), then the actual sum received or receivable shall be deemed to be the annual value of the property. In view, thereof, it is submitted that since the premise in question is let out for only part of the year, the rent actually received should be accepted as the assessable annual value.

49. Ld. Counsel for the assessee without prejudice to the above submits that the annual value as per section 23(1)(b) of the Act of the Taj building is ₹.48,13,992. The annual value as per section 23(1)(a) of the Act should be municipal rateable value i.e. ₹.1,31,300. Since the annual value as per section 23(1)(b) of the Act is higher than the municipal rateable value as per section 23(1)(a) of the Act, the same may be accepted as the assessable annual value. In support of the above contentions Ld. Counsel for the assessee placed reliance on the decision of the assessee's own case in ITA.No. 1163/Mum/2011 dated 27.08.2018 for A.Y. 2006-07 and also the following decisions: -

- i) *M.V. Sonavala v. CIT [1989] 42 Taxman 123 (Bombay High Court)*
- ii) *Smt. Smitaben N. Ambani v. Commissioner of Wealth [2009] 323 ITR 104 (Bombay High Court)*
- iii) *Tip Top Typography vs CIT [2014] 48 taxmann.com 191 (Bombay High Court)*

50. Ld. DR vehemently supported the order of the Assessing Officer.

51. We have heard the rival submissions, perused the orders of the authorities below and the decision of the Coordinate Bench in assessee's own case for the A.Y. 2006-07. On a perusal of the order of the Tribunal we observed that identical issue has come up before the Tribunal for the A.Y. 2006-07 in ITA.No. 1163/Mum/2011 dated 27.08.2018 and the Tribunal held as under: -

“16. The issue raised in 4th ground of appeal is against the order of Ld. CIT(A) in deciding the annual letting value of the premises known as Taj Building as per section 23(1)(a) of the Act and also erred in rejecting the assessee's contention that fair market rent of the building should be compared with the total sum received from letting of premises along with furniture hire charges.

17. The facts in brief are that the assessee has entered into a Leave and License Agreement with M/s. Freight Systems (I) Pvt. Ltd. for a license fees amounting to Rs.94,392/- per month working out to Rs.11,32,704/- per annum. Simultaneously, the assessee also entered into a Hire Agreement of even date with the said company for monthly hire charges of Rs.3,06,774/- (i.e. Rs.36,81,288/- per annum) for use of furniture, fixture and other articles attached, installed/lying in the said premises. The assessee offered both the income under the head 'Income from house property'. However, the AO treated the lease rent as income from house property whereas the income from hire charges of furniture and fixtures was treated as income from other sources. While assessing the income from license fee, the AO rejected the ALV of Rs.11,32,704/- and determined the fair rent on the basis of comparable cases at Rs.35,50,000/-. The Ld. CIT(A) affirmed the order of AO so far as the estimation of ALV is concerned, however, allowed the hire charges of furniture and fixtures to be treated as part of the rental income of the assessee by observing and holding as under:

“9.4 However, there is no merit in the contention of the AR that the fairvalue placed by the AO in respect of the leased premises is incorrect. The provisions of section 23 clearly provide that the ALV of the property has to be considered to be the sum for which the property might reasonable be excepted to let from year to year or the actual rent received; whichever is higher. In the present case, the fair market value has been established by the AO to be much higher than the actual rent received. It is not the case of the appellant that the lease in question was subject to the rent control act and therefore the standard rent was to be considered. In such a scenario, as per the legal position obtaining, the AO was expected to arrive at reasonable rent expected from the said property. The contention of the AR that the AO was legally bound to consider the rateable value fixed by Municipal Authorities as the basis for working out the ALV is misplaced since the municipal valuation was only one of the criteria available with the AO to determine the reasonable rent expected from the said property. The AO has rightly placed reliance on a number of judicial pronouncements in his order to support that the adoption of municipal rateable value was not binding on him. Further, there is no merit in the AR's contention that the comparison by the AO with the benchmarked property was inappropriate. In fact, the AO has been very fair to have put a premium of only 20% on the residential property, with which the impugned property was compared, to evaluate the potential rental of the commercial property in question. The impugned commercial property, as rightly observed

by the AO is in a posh area and the AO has been very reasonable in estimating the sum for which the property might reasonably be expected to let from year to year. Hence, the action of the AO in estimating the ALV of this property at Rs.35,50,000/- is upheld. This limb of the ground is dismissed.”

18. The Ld. A.R. submitted before the bench that the AO has wrongly treated Taj Building as Taj Hotel by referring to the observations of AO in para 5.6 A4 at page No.4 of the assessment order. The Ld. A.R. further referred to para 5.6 A6 wherein the AO compared the Taj Building which is located at Fort, Mumbai with another building owned by the central government used for officer's residences known as Belvedere which is Breach Candy and thus pointed out that the whole exercise of the AO to find out the fair market rent was fallacious and full of anomalies as two buildings are at two different locations and therefore can not be compared. The Ld. A.R. further pointed out that the agreement for the leave and license fee as well as the hire charges of furniture and fixture though entered into vide two separate agreements but even dated and were rented to the same party M/s. Freight Systems (I) Pvt. Ltd. and therefore the composite rent should be considered. The Ld. A.R. contended that the composite rent of the property comes to Rs.94/- per sq. ft. whereas the ALV determined by the AO was Rs. 72/- per Sq. Ft. and therefore the annual letting value as determined by the AO at RS.35,50,000/- was totally wrong and fallacious. The Ld. A.R. submitted that the annual letting value as per the provision of section 23(1) should be taken as the sum for which the property might reasonably be accepted to let out from year to year u/s 23(1)(a) of the Act or annual rent received u/s 23(1)(b) of the Act. Therefore, the Ld. A.R. submitted that in the present case the rent received should be assessed as the ALV and not the rent which is fixed by the AO on the fallacious comparison with those properties which are not at all comparable with the building of the assessee. The Ld. A.R. in defence of his argument relied on the following decisions:

- “9. MV. Sonavala v. CIT [1989] 42 Taxman 123 (Bombay High Court)
10. Smt. Smitaben N. Ambani v. Commissioner of Wealth [2009] 323 ITR_104_ (Bombay High Court)
11. Tip Top Typography v. CIT [2014] 48 taxmann.com 191 (Bombay High Court)”

The Ld. Counsel submitted that the municipal valuation for Taj Building premises as shown in the property tax bill is Rs.1,31,300/- whereas the actual rent received for the premise is Rs.11,32,704/-. Therefore as against the municipal valuation of Rs.1,31,300/- the actual rent received for the leased premises of Rs.11,32,704/- should be taken as the actual rent is higher than the municipal valuation. The Ld. A.R. alternatively submitted that if the composite of rent and hire charges for the furniture and fixtures are taken together that could be taken the ALV and in defence of his proposition the Ld. A.R. relied on the following decisions:

- “1. Shambhu Investment (P.) Ltd. vs. CIT (2003) 129 Taxman 70 (Supreme Court)
2. CIT vs. Shambhu Investment (P.) Ltd. “(2001) 116 Taxman 795 (Calcutta High Court)
3. Dudhsagar Investments (P) Ltd. vs. ACIT (2014) 110 DTR 0225 (Bombay High Court)
4. Shibani S. Bhowjani v. DCIT (2017) 166 ITD 488 (Mumbai Tribunal)”

19. The Ld. D.R., on the other hand, relied on the order of authorities below and submitted before the Bench that the AO is free to determine the ALV of the premises let out by the assessee where the fair rent is enormously low as compared with the market rate. The Ld. D.R. relied on the decision of Hon'ble Bombay High Court in the case of CIT vs. Tip Top Typography v. CIT [2014] 48 taxmann.com 191 (Bombay High Court) and ACIT vs. Virendra Jain in ITA No.2116/M/2012 A.Y. 2009-10. The Ld. D.R. finally prayed before the Bench that the order passed by the AO is well reasoned based on the comparable instances of the fair rent in the vicinity and was rightly upheld by the Ld. CIT(A) and therefore deserves to be sustained.

20. We have heard the rival submissions of both the parties and perused the material on record including the decisions cited by both the parties. We find that in the present case the assessee has let out Taj Building which is located in D.N. Road, Fort, Mumbai to M/s. Freight Systems (I) Pvt. Ltd. The assessee entered into two agreements (i) for lease of premises dated 14.08.2003 at a monthly rent of Rs.94,392/- and (ii) even dated qua hire charges of furniture and fixtures on a monthly charges of Rs.3,06,774/-. The assessee showed both the incomes of rent as well as hire charges as income from house property on the premise that income received is towards the property and other embedded facilities though by way of two separate agreements. Therefore the sum is inseparable and has to be assessed together. Accordingly, the assessee showed Rs.11,32,704/- by way of rental and Rs.36,81,288/- towards hire charges of furniture and fixtures and other articles attached/insolvent lying in the said premises as income from house property. The AO does not agree to the treatment of the income by the assessee under the head income from house property and accordingly taken only the rentals under the head house property whereas hire charges from furniture and fixtures and other articles were treated as income from other sources. For the purpose of assessing the income from house property, the AO estimated the ALV at Rs.35,50,000/- by taking a comparable case of a government owned building meant for central government officers known as Belvedere nevertheless the building is located at a different location and after ascertaining the rent of the said property at @ Rs.60.50 per sq. ft. determined the market rate at Rs. 60.50 plus 30% of the said rate and thus ALV was fixed at Rs.72 per sq. ft. per month. The AO thus calculated the ALV at Rs.35,50,000/-. The Ld. Counsel has also pointed out during the course of hearing that the building leased out by the assessee known as Taj Building was erroneously misconstrued by the AO as Taj Hotel and the whole process of determination of ALV went with wrong parameters and presumptions. We find

merit in the submissions of the Ld. A.R. that the Belvedere, a government owned building at Breach Candy is not at all comparable as the two are located at different localities in Mumbai and thus we are in agreement with the arguments of the Ld. A.R. that the said estimation is fallacious and suffer from several infirmities. After perusal of provisions of section 23, we find that the annual value of any property has to be determined as per the provision of section 23(1)(a) or 23(1)(b). In the present case, the property is let out and therefore the rent received is Rs.11,32,704/- and the same has to be treated as ALV as the municipal valuation of the said premises is Rs.1,31,300/-. The case of the assessee is supported by the various decisions referred to and relied by the Ld. A.R. of the assessee during the course of hearing. In the case of M.V. Sonavala vs. CIT (supra) the Hon'ble Bombay High Court has upheld the order of the Tribunal wherein it has been held that annual value of the property is to be taken at an amount which is higher of the two i.e. rent received by the assessee in respect of different properties and not at their municipal rateable rate. In the present case, the municipal rate of valuation is below the actual rent received and therefore the actual rent has to be taken as ALV. In the case of CIT vs. Tip Top Typography (supra) the Hon'ble Bombay High Court has held that the market rate in the locality is an approved method of determining the fair rental value but it is only when the AO is convinced and satisfied that the case before him is suspicious and determination by the parties is doubtful that he can resort to enquire about the prevailing rate in the locality. So the Hon'ble High Court has held that only in the event of suspicion and some manipulation, the AO can resort to make enquiries or comprehensive cases and not otherwise. We are, therefore, not in agreement with the conclusion drawn by the Ld. CIT(A) holding that the ALV determined on the basis of so called comparable cases which are not at all comparable due to the fact that there is no comparability between the two buildings at all and the locations and also in view of the fact that annual let out value is much lower than the actual rate received. The order of Ld. CIT(A) is set aside and AO is directed to accept the rent as shown by the assessee from the said property. Ground is allowed."

52. Facts being identical respectfully following the said decision we direct the Assessing Officer to compute the ALV for the assessment year under appeal based on the observations and the decision of the Tribunal for the A.Y. 2006-07. This ground is allowed.

53. Coming to Ground No. 6(b) of grounds of appeal we find that the Tribunal observed as under: -

“21. Since we have decided the issue of final letting value of the property in favour of the assessee the issue raised in ground No.4B qua treating the total of ALV should be compared with the fair market renting requires no adjudication.”

54. We hold similar view for this assessment year also and this ground needs no adjudication.

55. Coming to Ground No. 7 of grounds of appeal relating to confirming the interest disallowance on the loans given to subsidiaries, interest on Income-tax refund and interest on warrants conversion application money taxed under the head “income from other sources” instead of “income from business”

56. Ld. Counsel for the assessee submitted that this ground is not pressed as there is no impact on the assessed income and hence academic. In view of the submissions of the Ld. Counsel for the assessee this ground is treated as not pressed. Further, we keep the issue open and the decision taken for this year shall not be treated as precedent for later years. This ground is dismissed as indicated above.

57. Assessee has raised additional grounds as under: -

“1. The Hon'ble Commissioner of Income-tax (Appeals) erred on facts and in law in making upward adjustment of disallowance computed under section 14A of the Act by disallowing 5% of the expenses as against the actual expenditure incurred, while computing “book profit” under section 115JB of the Act.

2. *On the facts and in the circumstances of the case and in law, considering that an adhoc disallowance computed under section 14A of the Act does not represent actual expenditure incurred for earning exempt income, the same should not be added back while computing 'book profit' under section 115JB of the Act."*

58. Ld. Counsel for the assessee submits that the assessee has disallowed an amount of ₹.35,07,020/- as expenditure incurred towards earning exempt income while computing its book profit taxable under section 115JB of the Act. The expenses disallowed pertain to those incomes which are exempted/ excluded while computing book profit under section 115JB of the Act. The Assessing Officer has applied Rule 8D of I.T. Rules to compute the disallowance u/s. 14A of the Act at ₹.3,71,34,919/- and added back the same to the assessee's income taxable under normal provisions of the Act, as well as to the book profit under section 115JB of the Act. Ld. Counsel for the assessee further submits that disallowance computed u/s. 14A of the Act r.w. Rule 8D of I.T. Rules is not the actual expenditure incurred by the assessee for earning exempt income, but is a notional amount, which has not actually been debited to the assessee's profit and loss account. Hence, the same cannot be added back while computing book profit under section 115JB of the Act. Ld. Counsel for the assessee submits that the amount to be added back to book profits should be restricted to actual expenditure

incurred to earn the exempt dividend income. In support of the above contentions Ld. Counsel for the assessee relied on following decisions: -

- i) *Vireet Investment (P.) Ltd [2017] 82 taxmann.com 415 (Delhi - Trib.) (Special Bench)*
- ii) *Bombay Dyeing & Mfg. Co. Ltd. [2017] 87 taxmann.com 213 (Mumbai Tribunal)*
- iii) *Piramal Enterprises Ltd. [2018] 97 taxmann.com 352 (Mumbai Tribunal)*
- iv) *Reliance Natural Resources Ltd. [2017] 85 taxmann.com 128 (Mumbai Tribunal)*

59. Heard rival submissions. As the additional ground being purely a legal ground the same is admitted. We further observe that this issue has been decided by the Hon'ble Special Bench of Delhi in the case of Vireet Investment Pvt. Ltd., (supra) wherein it has been held that computation under clause (f) of explanation 1 to section 115JB(2) is to be made without resorting to computation as contemplated u/s. 14A r.w. Rule 8D of the Act. Thus, in view of the decision of the Hon'ble Special Bench the claim of disallowance as computed under Rule 8D cannot be made while computing the book profits. We further find that the assessee himself disallowed an amount of ₹.37,07,020/- as expenditure incurred towards earning exempt income while computing its book profits u/s. 115JB(2) of the Act. Further, we observed that the assessee while computing the income under normal provisions of the Act had made suo moto disallowance u/s. 14A at ₹.37,66,085/-, as this computation of suo moto

disallowance was made on a scientific basis we feel it appropriated to adopt the same even while computing the book profits u/s. 115JB of the Act. Thus, we direct the Assessing Officer to restrict the disallowance u/s.14A to ₹.37,66,085/- while computing the book profits u/s. 115JB of the Act. This ground is partly allowed.

ITA.No. 6860/MUM/2011 (A.Y. 2007-08) (Revenue Appeal)

60. Coming to revenue's appeal, it is submitted that the tax effect in revenue's appeal is below ₹.50 Lacs and in view of the CBDT Circular No. 17/2019 dated 08.08.2019 in F.No.279/Misc.142/2007-ITJ (Pt), the appeal is not maintainable. In view of the submissions of both parties this appeal is dismissed as not maintainable as the tax effect is below ₹.50 Lacs.

ITA.No. 1036/Mum/2012 (A.Y: 2008-09) (Assessee's Appeal)

61. Assessee has raised following grounds in its appeal: -

"1) *The Commissioner of Income Tax (Appeals) [CIT(A)] erred in confirming the disallowance made by Assessing Officer (AO) for depreciation claim of ₹.281,250/-on intangible assets - non-compete fees.*

2) *The CIT(A) erred in confirming the disallowance of ₹.147,635/- (i.e. 1/5th of ₹.738,189/-) incurred towards preferential issue of shares and ₹.185,640/- (i.e. 1/5th of ₹.928,198/-) towards warrant issue claimed u/s 35D of the Act.*

3) *The CIT(A) erred in confirming the disallowance of ₹.20,95,679/- (i.e. 1/5th of ₹.10,478,393/-) incurred in AY 2008-09*

towards issue of equity shares on right basis claimed u/s 35D of the Act.

4) The CIT(A) erred in not dealing with alternate plea of the appellant to allow ₹.39,02,000/- claimed u/s 37(1) of the Act being expenses of revenue nature out of ₹.10,478,393/- incurred towards issue of equity shares on right basis in AY 2008-09.

5) The CIT(A) erred in confirming the disallowance of ₹.163,225/- (i.e. 1/5th of ₹.816,129/-) incurred in AY 2008-09 towards issue of equity shares to promoters claimed u/s 35D of the Act.

6) The CIT(A) erred in not dealing with alternate plea of the appellant to allow ₹.816,129/- claimed u/s 37(1) of the Act being expenses of revenue nature incurred towards issue of equity shares to promoters.

7) The CIT(A) erred in confirming the disallowance of ₹.71,000/- (i.e. 1/5th of ₹. 355,000/-) incurred in AY 2008-09 towards issue of warrants to promoters claimed u/s 35D of the Act.

8) The CIT(A) erred in not dealing with alternate plea of the appellant to allow ₹.355,000/- claimed u/s 37(1) of the Act being expenses of revenue nature incurred towards issue of warrants to promoters.

9) The CIT(A) erred in confirming the disallowance made by AO towards the amount amortized in respect of the appellant's Employees' Stock Option Scheme (ESOP) of ₹.94,24,000/- under section 37(1) of the Act.

10) The CIT(A) erred in not deleting the disallowance made by AO in respect of commission paid u/s 36(1)(ii) to the extent of ₹.9,000/- in case of Mr. K.N.Suntook, Director of the company and ₹.744,000/- in case of Mr. Noel Tata, Managing Director of the company on the ground that they hold equity shares of the company.

11) The CIT(A) erred in confirming the interest received on loan given to subsidiaries (₹.101.12 lakhs), interest on income tax refund (₹.56.17 lakhs), interest on warrant conversion application money (₹.30.30 lakhs) and others pertaining to letter of credit (₹.3.66 lakhs) would be taxed under the head income from other sources and not as business income as offered by the appellant.”

62. Ground No. 1 of grounds of appeal is relating to depreciation on intangible assets i.e. non-compete fees. This ground is similar to Ground

No. 1 of grounds of appeal raised for the A.Y. 2007-08 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y. 2008-09 also. We order accordingly.

63. Ground No. 2 to 8 of grounds of appeal are relating to disallowance towards warrant issue expenses claimed u/s 35D of the Act. This ground is similar to Ground No. 3 and 4 of grounds of appeal raised for the A.Y.2007-08 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y. 2008-09. We order accordingly.

64. Ground No. 9 of grounds of appeal is relating to disallowance towards Employees' Stock Option Scheme (ESOP) u/s. 37(1) of the Act. This ground is similar to Ground No. 5 of grounds of appeal raised for the A.Y. 2007-08 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y. 2008-09 also. We order accordingly.

65. Ground No. 10 of grounds of appeal relating to the disallowance made u/s. 36(1)(ii) of the Act by the Assessing Officer in respect of commission paid to the Directors on the ground that they hold equity shares of the company.

66. Briefly stated the facts are, the Assessing Officer while completing the assessment noticed that assessee has paid commission to its

Directors. The Assessing Officer required the assessee to furnish the commission paid to its Directors and their shareholding in the company. On going through the details furnished by the assessee the Assessing Officer noticed that Executive Director Shri K.M. Santuk was holding 360 shares in the company and was paid commission of ₹.5 lacs. Similarly, the Managing Director Shri Neol Tata was holding 43322 shares and was paid commission of ₹.53,25,000/-. Therefore, the Assessing Officer was of the view that since the Directors are holding shares and also paid commission, the commission paid to them according to the Assessing Officer is not allowable u/s. 36(1)(ii) of the Act. He placed reliance on the decision of the Hon'ble Bombay High Court in the case of Loyal Motor Service Co. Ltd., v. CIT [14 ITR 647]. On appeal Ld.CIT(A) sustained the disallowance made by the Assessing Officer.

67. Ld. Counsel for the assessee submits that the Assessee paid commission of ₹.5,00,000 to Mr. K.N. Suntook (non-executive director) and commission of ₹.53,25,000 to Mr. Neol Tata during the year under consideration for services rendered by them to the assessee company. Learned Counsel for the assessee submits that section 36(1)(ii) provides that any sum paid to the employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission. The assessee

has also declared dividend for the year under consideration, which was payable equally to all its shareholders including Mr. Suntook and Mr. Neol Tata. Ld. Counsel for the assessee submits that assessee has made similar payments of commission to other directors also, who do not hold any shares in the company. Ld. Counsel for the assessee further submits that that payments made to Mr. Neol Tata is included in his salary and applicable TDS has been deducted. TDS has also been deducted while making commission payments to Mr. Suntook. The assessee submits that it is a listed company and the commission paid is in accordance with the terms of the agreement entered into with the directors. The commission paid is within the ceiling limit for such payment allowed under the provisions of the Companies Act, 1956 and the same was decided by the board of directors on the recommendation of the remuneration committee. Further, such commission has been approved by the shareholders of the company.

68. Ld. Counsel for the assessee placed reliance on the following decisions in support of his contentions: -

- i) *New Silk Route Advisors P. Ltd. Income Tax Appeal No. 216 of 2016 (Bombay High Court)*
- ii) *Loyal Motor Service Co. Ltd. vs CIT [1946] 14 ITR 647 (Bombay High Court)*
- iii) *AMD Metplast (P.) Ltd. vs DCIT [2012] 20 taxmann.com 647 (Delhi High Court)*
- iv) *CIT vs Career Launcher India Ltd. [2012] 20 taxmann.com 637 (Delhi High Court)*

- v) *CIT vs Converttech Equipments (P.) Ltd. [2013] 36 taxmann.com 314 (Delhi High Court)*
- vi) *Colour Publications (P.) Ltd. vs Pr. CIT [2018] 97 taxmann.com 116 (Mumbai Tribunal)*
- vii) *Coil Company (P.) Ltd. vs Asst. CIT [2012] 22 taxmann.com 75 (Delhi Tribunal)*
- viii) *Mandovi Motors (P.) Ltd. [2010] 8 taxmann.com 225 (Bangalore Tribunal)*
- ix) *Arihantam Infraprojects (P.) Ltd. vs Joint CIT [2015] 64 taxmann.com 404 (Pune Tribunal)*

69. Ld. DR vehemently supported the orders of the authorities below.

70. We have heard the rival submissions, perused the orders of the authorities below and the decision relied on. In the case of New Silk Route Advisors Pvt. Ltd., (supra) the Hon'ble Bombay High Court held as under:

"2. The Revenue urges the following questions of law for our consideration:

"(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in holding that the payment of bonus to shareholder employees is allowable under Section 36(1)(ii) of the Act?"

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct by holding the M/s. ICSL is not a comparable to the assessee company under Section 10B(2)(i) and (ii)?"

(iii) Whether comparables can be rejected on the ground that the comparables have exceptionally high profit margin as compared to the assessee in transfer pricing analysis?"

3. *Regarding Question no.1: (a) In the previous order relevant to the subject Assessment Year, the respondent-assessee had paid bonus to its directors and employees claiming benefit of Section 36(1)(ii) of the Act. The respondent-assessee had paid bonus to the following shareholder-Director as under:*

SN	Name of the Director	Bonus paid (Rs.)	% of shareholding
1	Shri Vivek Sett	1,26,79,115	12,20%

SN	Name of the Director	Bonus paid (Rs.)	% of shareholding
2	Shri Anand Dorairaj	20,57,241	12.20%
3	Shri Darius Pandole	2,16,91,616	12.20%
4	Jacob Kurain	2,29,79,115	12,20%
		5,94,07,087/	

The Assessing Officer by Assessment Order dated 29th December, 2003 disallowed the claim for deduction of bonus paid to its shareholder Directors under Section 36(1)(ii) of the Act. This is on the ground that it was in the nature of dividend. However, as the assessment involved transfer pricing issues a final Assessment Order dated 24th January, 2014 was passed by the Assessing Officer under Section 143(3) read with Section 144(C) of the Act.

(b) Being aggrieved by the Assessment Order dated 24th January, 2014 the respondent-assessee filed an appeal to the Tribunal. The impugned order of the Tribunal allowed the respondent-assessee's appeal holding that the payment of bonus was part of the employment agreement and it was a performance based payment. The impugned order further notes the fact that the grievance of the revenue that the entire payment of bonus to the employee shareholders had resulted in payment of less taxes in comparison to tax payable on the same if distributed as dividend was found incorrect. Reliance was also placed upon the decision of the Supreme Court in the case of CIT v/s. Shahzada Nand and Sons (108 ITR 358) wherein almost identical circumstances an issue of commission paid to the employee shareholders was held to be allowable under Section 36(1)(ii) of the Act. In the above view, the appeal of the respondent was allowed by the impugned order dated 20th February, 2015.

(c) The grievance of the Revenue before us is that the bonus which was paid to the employee directors was much higher than the bonus which was to be paid to the other employees of the respondentassessee. It is on the above basis that it is contended by Mr. Suresh Kumar that the entire payment made of the employee directors of bonus was in lieu of dividend which would have been otherwise paid to the shareholders. Thus, on the above ground it is submitted that this question requires admission.

(d) As is evident from the chart hereinabove of the payment of bonus made to the employee directors, it is clear that all the four employee directors own identical number of shares i.e. 12.20% aggregating to 49% shares in respect of company. Nevertheless the bonus which has been paid to each of them is different. This is evidence of the fact that the payment of bonus was a performance based payment and entirely dependent on the performance of the

employee. This also explains the fact that employee directors were paid at a much higher rate than the other employees of the company as the payment of the bonus is performance based and not designation based. In the above view, it is clear that the payment made to the four employee directors of the company is not a payment made in lieu of dividend as in fact found on facts by the Tribunal.

(e) In the above view, we find that the question as proposed does not give rise to any substantial question of law, thus not entertained."

71. As could be seen from the above the Hon'ble Bombay High Court held that employees were paid bonus though the shareholding of all the employees was same and the bonus paid to them was varied. It was also observed by the Hon'ble Bombay High Court the bonus was paid as a performance based payment though the shareholding pattern was same. Ld. Counsel for the assessee submitted before us that the assessee paid dividend to Managing Director and Executive Director and also to other Directors and there is no relation between dividend paid and shares they hold. On a perusal of the assessment order we find that the assessee submitted before the Assessing Officer as under: -

"The affairs of the company are managed by the board of directors: Sec. 198 sec. 309 and other relevant sections of the companies act provide that commission upto 1% of the profits of the company can be paid to the non executive directors subject to the approval of the shareholders. For the f.y. 07-08 the profit as per sec 309 worked out to Rs. 3068.91 lakhs and a provision for commission to non executive directors at 1% of the profit amounting to Rs.30.60 lakhs was made in the accounts. You are requested to refer to note no. 3 on page 44 of the annual report copy attached. After the shareholders approved the payment of commission in the AGM held on 27.8.08, commission on was paid to the directors as under.

Particulars	₹.	No. of Shares held
F.K.Kavarana	600,000	Nil
N.A.Soonawala	550,000	Nil

Particulars	₹.	No. of Shares held
<i>B.S.Bhesania</i>	<i>550,000</i>	<i>Nil</i>
<i>A.D. Cooper</i>	<i>550,000</i>	<i>Nil</i>
<i>K.N.Suntook</i>	<i>500,000</i>	<i>360</i>
<i>Zubin Dubash</i>	<i>250,000</i>	<i>Nil</i>
<i>Total</i>	<i>3,000,000.00</i>	

Excess provision of RS.60000 has been written back in the accounts and offered for tax,

In the return the company claims the commission in the year of payment after approval by the shareholders. Accordingly, in the a.y. 08-09, the company has claimed actual commission paid to the directors RS. 3450000 for the f.y. 06-07 which was offered for disallowance in the return for a.y. 07-08. Similarly, in ay. 08-09 the company has offered for disallowance provision of commission RS.30.60 lakhs and has claimed it in ay. 09-10 on payment. Kindly refer to Items no, 2(1) and item no. 9(9) of Annexure A to Computation of income."

72. As could be seen from the above the assessee has paid commission not only to the Executive Director but to the other Directors and there is no much variation in commission paid except in the case of Zubin Dubash. Similarly, other than the Executive Director none of the Directors were holding any shares. The Managing Director was paid ₹.53,25,000/- though he was holding 43322 shares. Dividend was also declared which was payable equally to all its shareholders including the Executive Director and Managing Director. It is the submission of the Ld. Counsel for the assessee that the commission was paid is in accordance with the terms of the agreement entered into with the Directors and the commission is within the ceiling limit for which payment is allowed under the provisions under the company's Act and is decided by the Board of Directors on the recommendations of the remuneration committee. We

noticed that Assessing Officer completely ignoring and without going into the submissions of the assessee made disallowance simply relying on the decision in the case of Loyal Motor Service Co. Ltd. v. CIT (supra). The decision in the case of New Silk Route Advisors Pvt. Ltd., (supra) the Hon'ble Bombay High Court had also considered the decision in the case of CIT v. Shahzada Nand and Sons [108 ITR 358] held that the payment made in the form of bonus to the employee Directors of the company is not a payment made in view of the dividend. Thus, following the decision of the Hon'ble Bombay High Court we direct the Assessing Officer to delete the disallowance made u/s. 36(1)(ii) of the Act. This ground is allowed.

73. Coming to Ground No. 11 of grounds of appeal relating to confirming the interest disallowance on the loans given to subsidiaries, interest on Income-tax refund and interest on warrants conversion, application money, taxed under the income from other sources instead of business income. Ld. Counsel for the assessee submitted that this ground is not pressed as there is no impact on the assessed income and hence academic. In view of the submissions of the Ld. Counsel for the assessee this ground is treated as not pressed. Further, we keep the issue open and the decision taken for this assessment year shall not be treated as precedent for later years. This ground is dismissed as indicated above.

74. Assessee has raised following additional ground: -

1. *The Hon'ble Commissioner of Income-tax (Appeals) erred on facts and in law in upholding the action of the learned Assessing Officer in making upward adjustment of disallowance computed under section 14A of the Act r.w. Rule 8D of the rules while computing "book profit" under section 115JB of the Act.*

2. *On the facts and in the circumstances of the case and in law, considering that the disallowance computed under section 14A of the Act r.w. Rule 8D of the Rules does not represent actual expenditure incurred for earning exempt income, the same should not be added back while computing 'book profit' under section 115JB of the Act."*

75. These additional grounds are similar to additional grounds of appeal raised for the A.Y. 2007-08 regarding the disallowance u/s. 14A r.w. Rule 8D while computing the book profits u/s. 115JB of the Act and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y 2008-09 also. We order accordingly.

ITA.No. 2509/MUM/2012 (A.Y. 2008-09) (Revenue' Appeal)

76. The revenue has raised following grounds in its appeal: -

"1. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance u/s. 14A r.w.r. 8D ignoring the fact that Rule 8D is applicable from A.Y. 2007-08.*

2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in treating interest on margin money, interest on loans to employees, interest on day to day balance with bank in current account, interest on blocked amount and as business income without appreciating the fact that the same were not immediately linked to the business of the assessee."*

77. Briefly stated the facts are the Assessing Officer while completing the assessment applying Rule 8D computed the disallowance u/s. 14A at ₹.4,70,84,812/-. However, since the assessee has made suomoto disallowance of ₹.26,65,237/- the Assessing Officer restricted the disallowance to ₹.4,44,19,575/-. On appeal the Ld.CIT(A) held that assessee's computation of disallowance u/s. 14A is satisfactory and the disallowance made u/s. 14A is to be restricted to the suomoto disallowance of ₹.35,90,326/-.

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

79. Learned Counsel for the assessee submitted that the arguments as advanced for the A.Y. 2007-08 will apply with all force for the A.Y. 2008-09 and also for the subsequent assessment years.

80. We have heard the rival submissions, perused the orders of the authorities below. The Ld.CIT(A) restricted the disallowance to the suomoto disallowance made by the assessee observing as under: -

“3.2. I have gone through the order of the AO which contains detailed submission of the appellant and also detailed submission from pages 3 to 14 of the written submission filed vide letter dated 30.12.2011.

3.2.1. The appellant has considered the entire salary of Investment Manager of 15.8 lacs, 10% of salary of General Manager at 3.89 lacs, entire sitting fee paid to Investment Committee at 55,000/-, 5% of MD

Remuneration at ₹.7.68 lacs, 5% commission paid to none executive directors ₹.1.53 Lacs, 5% of directors' fee at ₹.28,900/-, other administrative expense at ₹.3.25 lacs and interest expense at ₹. 3.73 Lacs totaling ₹.35,90,326/-. As may be seen from Para 3.2 of the assessment order quoted above, the AO has not given any cogent reason for not being satisfied with the claim of the appellant. The AO had further erred in disallowing employees' cost and miscellaneous expense at ₹.1.86 Crores over and above the disallowance computed as per Rule 8D, specially on account of the fact that Rule 8D (iii) itself provides for disallowance of administrative expense in form of 0.5% of the average value of investment. As the appellant's computation of disallowance u/s.14A is satisfactory, the disallowance u/s,14A is restricted to ₹.35,90,326/- and the disallowance by the AO is deleted."

81. We also further noticed from the Assessment Order that, the assessee has made elaborate submissions and a detailed computation of the expenditure attributable for earning exempt income which is said to be consistent method of computation on a scientific basis made from the A.Y.2006-07. We further find that even though the Assessing Officer extracted the elaborate submissions and the computation of disallowance made by the assessee, there is no satisfaction recorded by the Assessing Officer as to why the suo moto computation of disallowance of expenses made by the assessee is not satisfactory having regard to the Books of Accounts of the assessee and the correctness of the claim of expenditure made by the assessee. The Ld.CIT(A) while disposing off the appeal for the A.Y. 2007-08 has examined the issue elaborately and accepted that the computation of disallowance made by the assessee (suo moto disallowance) is on a scientific basis. While dealing with the appeal for

the A.Y. 2007-08 we have accepted the computation of the assessee since it is more scientific than the adhoc disallowance made by the Assessing Officer. Even though the provisions of Rule 8D are applicable for the year under consideration i.e. A.Y.2008-09 in the absence of any satisfaction recorded by the Assessing Officer as to why the suomoto disallowance made by the assessee is not acceptable having regard to the Books of Accounts of the assessee and the correctness of the claim of expenditure made by the assessee, we accept the suomoto disallowance made by the assessee as the computation of disallowance made by the assessee is on a scientific basis and is in consistent with the same method as adopted consistently from the A.Y. 2006-07 onwards. In the circumstances, we sustain the order of the Ld.CIT(A) and direct the Assessing Officer to adopt the suomoto disallowance made by the assessee for computing the disallowance u/s. 14A of the Act. Grounds raised by the revenue are dismissed.

ITA.No. 3423/MUM/2012 (A.Y: 2009-10) (Assessee's Appeal)

82. Assessee has raised following grounds in its appeal: -

"1) The Commissioner of Income Tax (Appeals) [CIT(A)] erred in confirming the disallowance made by Assessing Officer (AO) for depreciation claim of Rs. 210,938/- on intangible assets - non-compete fees.

2) The CIT (A) erred in confirming the disallowance of Rs.147,635/- (i.e. 1/5th of Rs. 738,189/-) incurred towards preferential issue of shares claimed u/s 35D of the Act.

3) *The CIT(A) erred in confirming the disallowance of Rs.185,640/- (i.e. 1/5th of Rs. 928,198/-) towards warrant issue claimed u/s 35D of the Act.*

4) *The CIT(A) erred in confirming the disallowance of Rs. 20,95,679/- (i.e. 1/5th of Rs. 10,478,393/-) incurred in AY 2008-09 towards issue of equity shares on right basis claimed u/s 35D of the Act.*

5) *The CIT(A) erred in confirming the disallowance of Rs.163,225/- (i.e. 1/5th of Rs. 816,129/-) incurred in AY 2008-09 towards issue of equity shares to promoters claimed u/s 35D of the Act.*

6) *The CIT(A) erred in confirming the disallowance of Rs. 71,000/- (i.e. 1/5th of Rs. 355,000/-) incurred in AY 2008-09 towards issue of warrants to promoters claimed u/s 35D of the Act.*

7) *The CIT(A) erred in not deleting the disallowance made by AO in respect of commission paid u/s 36(l)(ii) to the extent of Rs.9,359/- in case of Mr. K.N.Suntook, Director of the company on the ground that they hold equity shares of the company.*

8) *The CIT(A) erred in confirming the interest income of Rs.8,63,99,000/- would be taxed under the head income from other sources and not as business income as offered by the appellant.”*

83. Ground No. 1 of grounds of appeal is relating to depreciation on intangible assets i.e. non-compete fees. This ground is similar to Ground No. 1 of grounds of appeal raised for the A.Y. 2007-08 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y.2009-10 also. We order accordingly.

84. Ground No. 2 to 6 of grounds of appeal are relating to disallowance towards warrant issue expenses claimed u/s 35D of the Act. This ground is similar to Ground No. 3 and 4 of grounds of appeal raised for the

A.Y.2007-08 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y. 2009-10. We order accordingly.

85. Ground No. 7 of grounds of appeal is relating to the disallowance made u/s. 36(1)(ii) of the Act by the Assessing Officer in respect of commission paid to the Directors on the ground that they hold equity shares of the company. This ground is similar to Ground No. 10 of grounds of appeal raised for the A.Y. 2008-09 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y. 2009-10 also. We order accordingly.

86. Ground No. 8 of grounds of appeal is relating to confirming the interest disallowance on the loans given to subsidiaries, interest on Income-tax refund and interest on warrants conversion, application money, taxed under the income from other sources instead of business income. Ld. Counsel for the assessee submitted that this ground is not pressed as there is no impact on the assessed income and hence academic. In view of the submissions of the Ld. Counsel for the assessee this ground is treated as not pressed. Further, we keep the issue open and the decision taken for this assessment year shall not be treated as precedent for later years. This ground is dismissed as indicated above.

ITA.No. 4490/MUM/2012 (A.Y: 2009-10) (Revenue's Appeal)

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

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in simply following the appellate order for A.Y. 2008-09, for computation of disallowance U/S.14A thereby overlooking the detailed discussion made by the A.O. in the order, in reaching the conclusions.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowances U/S.14A, ignoring the fact that working of disallowance under this section is governed by Rule 8D w.e.f. A.Y. 2008-09 and A.O's working was as per the Rule."

88. These grounds are identical to the grounds raised for the A.Y. 2008-09. Facts being identical the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y. 2009-10 also. We order accordingly.

ITA NO.2560/MUM/2015 (A.Y: 2010-11) (Assessee's Appeal)

89. Assessee has raised following grounds in its appeal: -

"1) The Commissioner of Income Tax (Appeals) [CIT(A)] erred in confirming the disallowance made by Assessing Officer (AO) for depreciation claim of Rs. 161,853/- on intangible assets - non-compete fees.

2) The CIT(A) erred in applying Rule 8D for purposes of disallowance u/s 14A of the Act.

3) The CIT(A) has further erred in considering the disallowance under section 14A of Rs. 4,38,60,777/- for the purposes of calculation of book profits under section 115JB of the Act.

4) The CIT (A) erred in confirming the disallowance of Rs.147,635/- (i.e. 1/5th of Rs. 738,189/-) incurred towards preferential issue of shares claimed u/s 35D of the Act.

5) *The CIT (A) erred in confirming the disallowance of Rs. 185,640/- (i.e. 1/5th of Rs. 928,198/-) towards warrant issue claimed u/s 35D of the Act.*

6) *The CIT (A) erred in confirming the disallowance of Rs. 20,95,679/- (i.e. 1/5th of Rs. 10,478,393/-) incurred in AY 2008-09 towards issue of equity shares on right basis claimed u/s.35D of the Act.*

7) *The CIT (A) erred in confirming the disallowance of Rs. 163,225/- (i.e. 1/5th of Rs. 816,129/-) incurred in AY 2008-09 towards issue of equity shares to promoters claimed u/s 35D of the Act.*

8) *The CIT (A) erred in confirming the disallowance of Rs. 71,000/- (i.e. 1/5th of Rs. 355,000/-) incurred in AY 2008-09 towards issue of warrants to promoters claimed u/s 35D of the Act.*

9) *The CIT (A) erred in confirming the disallowance made by AO in respect of commission paid u/s 36(l)(ii) to Mr. K.N.Suntook, Director of the company.*

10) *The CIT (A) erred in confirming the interest income of Rs.13,40,75,000/- being taxed under the head 'Income from other sources' and not as 'business income' as offered by the Appellant.*

90. Ground No. 1 of grounds of appeal is relating to depreciation on intangible assets i.e. non-compete fees. This ground is similar to Ground No. 1 of grounds of appeal raised for the A.Y. 2007-08 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y.2010-11 also. We order accordingly.

91. Ground No. 2 is relating to disallowance u/s. 14A r.w. Rule 8D of I.T.Rules and this issue has been dealt with elaborately by us in the appeals for the A.Y. 2008-09 and A.Y: 2009-10 in revenue's appeal and for the same elaborate reasons given therein we direct the Assessing

Officer to accept the claim of the assessee for disallowance as computed by the assessee in a scientific way and this is more so as there should be a consistent method of approach in making disallowance. We find that Ld.CIT(A) having accepted the claim of the assessee for the A.Y.2006-07 to A.Y. 2009-10 the scientific method of computing the disallowance u/s.14A of the Act, there is no reason as to why the same method cannot be applied for the Assessment Year under consideration. Thus, following the principle of consistency we direct the Assessing Officer to accept the assessee's computation of disallowance u/s. 14A while computing the income. This Ground is allowed.

92. Ground No.3 is relating to disallowance u/s. 14A while computing the book profits u/s. 115JB of the Act. This issue is covered by the Delhi Special Bench of the Tribunal in the case of ACIT v. Vireet Investments Private Limited [165 ITD 27] wherein it has been held that the computation under clause (f) of Explanation 1 to section 115JB(2) is to be made without resorting to the computation as contemplated u/s. 14A r.w. Rule 8D of the I.T Rules, 1962. Thus, the disallowance as computed under Rule 8D cannot be applied while computing the disallowance u/s. 115JB of the Act. Therefore, the suomoto disallowance as computed by the assessee shall be adopted even while computing the book profits u/s. 115JB of the Act

as the disallowance was computed on a scientific method. This ground is partly allowed.

93. Ground No. 4 to 8 of grounds of appeal are relating to disallowance towards warrant issue expenses claimed u/s 35D of the Act. This ground is similar to Ground No. 3 and 4 of grounds of appeal raised for the A.Y.2007-08 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y. 2010-11. We order accordingly.

94. Ground No. 9 of grounds of appeal is relating to the disallowance made u/s. 36(1)(ii) of the Act by the Assessing Officer in respect of commission paid to the Directors on the ground that they hold equity shares of the company. This ground is similar to Ground No. 10 of grounds of appeal raised for the A.Y. 2008-09 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y. 2010-11. We order accordingly.

95. Ground No. 10 of grounds of appeal is relating to confirming the interest disallowance on the loans given to subsidiaries, interest on Income-tax refund and interest on warrants conversion, application money, taxed under the income from other sources instead of business income. Ld. Counsel for the assessee submitted that this ground is not pressed as there is no impact on the assessed income and hence

academic. In view of the submissions of the Ld. Counsel for the assessee this ground is treated as not pressed. Further, we keep the issue open and the decision taken for this assessment year shall not be treated as precedent for later years. This ground is dismissed as indicated above.

ITA NO.433/MUM/2016 (A.Y: 2011-12) (Assessee's Appeal)

96. Assessee has raised following grounds in its appeal: -

"1) *The Commissioner of Income Tax (Appeals) [CIT(A)] erred in confirming the disallowance made by Assessing Officer (AO) for depreciation claim of Rs. 1,21,390/- on intangible assets - non-compete fees.*

2) a) *The CIT (A) erred in applying Rule 8D(2)(iii) for purposes of disallowance u/s 14A of the Act*

b) *The CIT(A) erred in disallowing administrative expenses of ₹.55,30,848/- u/s 14A of the Act by applying Rule 8D (2)(iii).*

3) *The CIT (A) erred in confirming the disallowance of Rs.20,95,679/- (i.e. 1/5th of Rs. 10,478,3937-) incurred in AY2008-09 towards issue of equity shares on right basis claimed u/s 35D of the Act.*

4) *The CIT (A) erred in confirming the disallowance of Rs.37,65,5767- (i.e. 1/5th of Rs. 18,827,878/-) incurred in A.Y. 2011 -12 towards issue of CCPS on right basis claimed u/s 35D of the Act.*

5) *The CIT (A) erred in confirming the disallowance made by AO in respect of commission paid u/s 36(1)(ii) to Mr. K.N.Suntook, Director of the company.*

6) *The CIT (A) erred in confirming the interest income of Rs.22,65,79,000/- being taxed under the head Income from other sources' and not as 'business income' as offered by the Appellant.*

97. Assessee has also raised following additional grounds: -

"1. *The Hon'ble Commissioner of Income-tax (Appeals) erred on facts and in law in upholding the action of the learned Assessing*

Officer in making upward adjustment of disallowance computed under section 14A of the Act, read with Rule 8D of the Rules, while computing 'book profit' under section 115JB of the Act.

2. On the facts and in the circumstances of the case and in law, considering that the disallowance computed under section 14A of the Act read with Rule 8D of the Rules does not represent actual expenditure incurred for earning exempt income, the same should not be added back while computing 'book profit' under section 115JB of the Act.”

98. The additional grounds are purely legal grounds, therefore the same are admitted on hearing both the parties.

99. Ground No. 1 of grounds of appeal is relating to depreciation on intangible assets i.e. non-compete fees. This ground is similar to Ground No. 1 of grounds of appeal raised for the A.Y. 2007-08 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y.2011-12 also. We order accordingly.

100. Ground No. 2 and additional grounds raised by the assessee are similar to Ground Nos. 2 and 3 of grounds of appeal raised for the A.Y.2010-11 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y.2011-12 also. We order accordingly.

101. Ground No. 3 and 4 of grounds of appeal are relating to disallowance towards warrant issue expenses claimed u/s 35D of the Act. This ground is similar to Ground No. 3 and 4 of grounds of appeal raised

for the A.Y. 2007-08 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y. 2011-12. We order accordingly.

102. Ground No. 5 of grounds of appeal is relating to the disallowance made u/s. 36(1)(ii) of the Act by the Assessing Officer in respect of commission paid to the Directors on the ground that they hold equity shares of the company. This ground is similar to Ground No. 10 of grounds of appeal raised for the A.Y. 2008-09 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y. 2011-12. We order accordingly.

103. Ground No. 6 of grounds of appeal is relating to confirming the interest disallowance on the loans given to subsidiaries, interest on Income-tax refund and interest on warrants conversion, application money, taxed under the "Income from other sources" instead of "business income". Ld. Counsel for the assessee submitted that this ground is not pressed as there is no impact on the assessed income and hence academic. In view of the submissions of the Ld. Counsel for the assessee this ground is treated as not pressed. Further, we keep the issue open and the decision taken for this assessment year shall not be treated as precedent for later years. This ground is dismissed as indicated above.

ITA.No. 758/MUM/2016 (A.Y. 2011-12) (Revenue Appeal)

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

“1. The order of the CIT(A) is opposed to law and facts of the case.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance made as per Rule 8D(2)(ii), thereby overlooking the crucial fact that this method of calculation has been prescribed by the statute and held as a reasonable method by the Hon'ble Bombay High Court in Godrej & Boyce Mfg. Co Ltd 328 ITR81(Bom).”

105. As we have already held that the computation of disallowance as made by the assessee is to be accepted applying the principle of consistency grounds raised by the revenue are dismissed.

ITA NO.371/MUM/2017 (A.Y: 2012-13) (Assessee Appeal)

106. Assessee has raised following grounds in its appeal: -

“1) The Appellant Company prays that assessment order passed u/s 143(3) be quashed as being void ab initio and/or illegal.

2) The Commissioner of Income Tax (Appeals) [CIT(A)] erred in confirming the disallowance made by Assessing Officer (AO) for depreciation claim of Rs. 91,042/- on intangible assets - non-compete fees.

3) The CIT(A) erred in applying Rule 8D(2)(iii) towards disallowance u/s 14A of the Act without giving any reasons for not accepting disallowance offered by Appellant towards 14A.

4) The CIT(A) erred in applying Rule 8D (2)(iii) towards disallowance u/s 14A of the Act for working out book profit u/s 115JB of the Act without giving any reasons for not accepting disallowance offered by Appellant towards 14A.

5) The CIT(A) erred in confirming disallowance of Rs.20,95,679/- (i.e. 1/5th of Rs. 10,478,393/-) incurred in AY 2008-09 towards issue of equity shares on right basis claimed u/s 35D of the Act.

6) *The CIT (A) erred in confirming disallowance of Rs.37,65,576/- (i.e. 1/5th of Rs. 18,827,878/-) incurred in AY 2011-12 towards issue of CCPS on right basis claimed u/s 35D of the Act.*

7) *The CIT (A) erred in confirming disallowance of Rs. 99,39,752/- (i.e. 1/5th of Rs. 4,96,98,760/-) incurred in AY 2012-13 towards issue of CCPS on right basis claimed u/s 35D of the Act.*

8) *The CIT(A) erred in not accepting alternate plea of the appellant to allow Rs.58,99,785/- being expenses of revenue nature incurred in AY 12-13 towards issue of Equity shares to QIB.*

9) *The CIT (A) erred in confirming the disallowance made by AO in respect of commission paid u/s 36(1)(ii) to Mr. K.N.Suntook, Director of the company.*

10) *The CIT (A) erred in confirming the interest income of Rs.50,34,78,000/- being taxed under the head 'Income from other sources' and not as 'business income' as offered by the Appellant."*

107. In respect of Ground No.1, no arguments have been advanced by both the parties and the same is accordingly dismissed.

108. Ground No. 2 of grounds of appeal is relating to depreciation on intangible assets i.e. non-compete fees. This ground is similar to Ground No. 1 of grounds of appeal raised for the A.Y. 2007-08 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y.2012-13 also. We order accordingly.

109. Ground No. 3 grounds of appeal is relating to disallowance u/s. 14A r.w. Rule 8D(2)(ii) of the I.T. Rules. This ground is similar to Ground No. 2 of grounds of appeal raised for the A.Y. 2010-11 and the decision taken

therein shall apply mutatis-mutandis to the appeal for the A.Y.2012-13 also. We order accordingly.

110. Ground No. 4 grounds of appeal is relating to disallowance u/s. 14A r.w. Rule 8D(2)(iii) of the I.T. Rules. This ground is similar to Ground No. 3 of grounds of appeal raised for the A.Y. 2010-11 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y.2012-13 also. We order accordingly.

111. Ground Nos. 5 to 8 of grounds of appeal are relating to disallowance towards warrant issue expenses claimed u/s 35D of the Act. This ground is similar to Ground No. 3 and 4 of grounds of appeal raised for the A.Y.2007-08 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y. 2012-13. We order accordingly.

112. Ground No. 9 of grounds of appeal is relating to the disallowance made u/s. 36(1)(ii) of the Act by the Assessing Officer in respect of commission paid to the Directors on the ground that they hold equity shares of the company. This ground is similar to Ground No. 10 of grounds of appeal raised for the A.Y. 2008-09 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y. 2012-13. We order accordingly.

113. Ground No. 10 of grounds of appeal is relating to confirming the interest disallowance on the loans given to subsidiaries, interest on Income-tax refund and interest on warrants conversion, application money, taxed under the "Income from other sources" instead of "business income". Ld. Counsel for the assessee submitted that this ground is not pressed as there is no impact on the assessed income and hence academic. In view of the submissions of the Ld. Counsel for the assessee this ground is treated as not pressed. Further, we keep the issue open and the decision taken for this assessment year shall not be treated as precedent for later years. This ground is dismissed as indicated above.

ITA NO.364/MUM/2017 (A.Y: 2012-13) (Revenue Appeal)

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

"1. Whether on the facts and circumstance of the case and in law, the Ld. CIT(A) erred in holding that disallowance made u/s 14A of the I T Act, as per Rule 8D(2)(ii) is not correct since the reserve & Surplus of the assessee company is more than investment relying on the decision in the case of HDFC Ltd.(366 ITR 505) without appreciating the fact that the decision of HDFC Ltd. is not applicable to the instant case since the same relate to A.Y. 2001-02 to 2005-06 which is prior to the insertion of Rule 8D of the I.T. Rules w.e.f. A.Y. 2008-09 which is mandatory if A.O is satisfied that the disallowance u/s. 14A is required to be made."

2. Whether on the facts and circumstance of the case and in law, the Ld. CIT(A) erred in holding that disallowance made u/s 14A of the I T Act, as per Rule 8D(2)(ii) is not correct since the reserve & Surplus of the assessee company is more than investment relying on the decision in the case of HDFC Ltd.(366 ITR 505) without appreciating the fact that the decision of the Hon'ble High Court in

this case of M/s. HDFC Ltd. is relying on the decision in the case of M/s. Reliance Utilities & Power Ltd. wherein the assessee had established the nexus of investment with own funds.

115. As we have already held that the computation of disallowance as made by the assessee is to be accepted applying the principle of consistency grounds raised by the revenue are dismissed.

ITA NO.1500/MUM/2018 (A.Y: 2013-14) (Assessee Appeal)

116. Assessee has raised following grounds in its appeal: -

“1) *The Commissioner of Income Tax (Appeals) [CIT(A)] erred in confirming the disallowance made by Assessing Officer (AO) for depreciation claim of Rs. 66,742/- on intangible assets - non-compete fees.*

2) *The CIT(A) erred in applying Rule 8D (2)(iii) towards disallowance of administrative expenses u/s 14A of the Act without giving any reasons for not accepting disallowance offered by Appellant towards 14A.*

3) *The CIT (A) erred in confirming disallowance of Rs. 37,65,576/- (i.e. 1/5th of Rs. 18,827,878/-) incurred in AY 2011-12 towards issue of CCPS on right basis claimed u/s 35D of the Act.*

4) *The CIT (A) erred in confirming disallowance of Rs.99,39,752/- (i.e. 1/5th of Rs. 4,96,98,760/-) incurred in AY 2012-13 towards issue of CCPS on right basis claimed u/s 35D of the Act.*

5) *The CIT (A) erred in confirming the interest income of Rs.23,17,37,000/- being taxed under the head Income from other sources' and not as 'business income' as offered by the Appellant.*

6) *The CIT(A) erred in disallowing u/s 36(I)(ii) commission of Rs.4,00,000/- paid to Mr.K.Suntook director of the company.”*

117. Ground No. 1 of grounds of appeal is relating to depreciation on intangible assets i.e. non-compete fees. This ground is similar to Ground No. 1 of grounds of appeal raised for the A.Y. 2007-08 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y.2013-14 also. We order accordingly.

118. Ground No. 2 grounds of appeal is relating to disallowance u/s. 14A r.w. Rule 8D(2)(iii) of the I.T. Rules. This ground is similar to Ground No. 3 of grounds of appeal raised for the A.Y. 2010-11 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y.2013-14 also. We order accordingly.

119. Ground Nos. 3 to 5 of grounds of appeal are relating to disallowance towards warrant issue expenses claimed u/s 35D of the Act. This ground is similar to Ground No. 3 and 4 of grounds of appeal raised for the A.Y.2007-08 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y. 2013-14 also. We order accordingly.

120. Ground No. 6 of grounds of appeal is relating to the disallowance made u/s. 36(1)(ii) of the Act by the Assessing Officer in respect of commission paid to the Directors on the ground that they hold equity shares of the company. This ground is similar to Ground No. 10 of

grounds of appeal raised for the A.Y. 2008-09 and the decision taken therein shall apply mutatis-mutandis to the appeal for the A.Y. 2013-14 also. We order accordingly.

ITA NO.1993/MUM/2018 (A.Y: 2013-14) (Revenue Appeal)

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

“1. *Whether on the facts and circumstance of the case and in law, the Ld. CIT(A) erred in holding that disallowance made u/s 14A of the I T Act, as per Rule 8D(2)(ii) is not correct since the reserve & Surplus of the assessee company is more than investment relying on the decision in the case of HDFC Ltd.(366 ITR 505) without appreciating the fact that the decision of HDFC Ltd. is not applicable to the instant case since the same relate to A.Y. 2001-02 to 2005-06 which is prior to the insertion of Rule 8D of the I.T. Rules w.e.f. A.Y. 2008-09 which is mandatory if A.O is satisfied that the disallowance u/s. 14A is required to be made.*”

2. *Whether on the facts and circumstance of the case and in law, the Ld. CIT(A) erred in holding that disallowance made u/s 14A of the I T Act, as per Rule 8D(2)(ii) is not correct since the reserve 86 Surplus of the assessee company is more than investment relying on the decision in the case of HDFC Ltd.(366 ITR 505) without appreciating the fact that the decision of the Hon'ble High Court in this case of M/s. HDFC Ltd. is relying on the decision in the case of M/s. Reliance Utilities & Power Ltd. wherein the assessee had established the nexus of investment with own funds.*

3. *Whether On the facts and the circumstances of the case and in law ,the Id.CIT(A) has erred in not appreciating the fact that as per clause (f) of explanation 1 of section 115JB(2) "the book profit means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2),as increased by the amount or amounts of expenditure relatable to any income to which (section 10(other than the provisions contained in clause (38) thereof)or section 11 or section 12 apply and all the relevant expenditure has to be added back to income for MAT computation."*

4. *On the facts & in the circumstances of case and in law the Ld.CIT(A) has erred in deleting the disallowance under Rule 8D(2)(ii) by relying on the decision of Hon'ble Bombay High Court in the case of HDFC Bank (2016)67 taxmann.cam42 where as the Hon'ble Supreme Court in its decision dated 12.02.2018 in Civil Appeal No.1423of 2015 in the case of M/s. Avon Cycles Ltd. affirmed that if the funds utilized by the assessee are mixed funds the interest paid by the assessee is also interest on the investment made"*

122. Ground Nos. 1 and 2 are relating to disallowance made u/s. 14A r.w. Rule 8D(2)(ii) of I.T. Rules. As we have already held that the computation of disallowance as made by the assessee is to be accepted applying the principle of consistency ground Nos. 1 and 2 are dismissed.

123. Ground Nos. 3 and 4 of grounds of appeal are relating to disallowance u/s. 14A while computing the book profits u/s. 115JB of the Act. This issue is covered by the Delhi Special Bench of the Tribunal in the case of ACIT v. Vireet Investments Private Limited [165 ITD 27] wherein it has been held that the computation under clause (f) of Explanation 1 to section 115JB(2) is to be made without resorting to the computation as contemplated u/s. 14A r.w. Rule 8D of the I.T Rules, 1962. Thus, the disallowance as computed under Rule 8D cannot be applied while computing the disallowance u/s. 115JB of the Act. Therefore, the suomoto disallowance as computed by the assessee shall be adopted even while computing the book profits u/s. 115JB of the Act as the

disallowance was computed on a scientific method. This ground is partly allowed.

124. Before parting we noticed that this appeal was heard on 06.01.2020 and the pronouncement is delayed due to lockdown in view of COVID-19 pandemic. The pronouncement is as per Rule 34(5) of Income Tax Appellate Tribunal Rules, 1963 and Hon'ble Bombay High Court decision vide orders dated 15.04.2020 and 15.06.2020 extending the time bound periods specified by Hon'ble High Court by removing the period under lockdown. This aspect was also dealt with in detail by the Mumbai Bench of the Tribunal in case of DCIT v. JSW Steel Vide order dated 15.05.2020.

Order pronounced on 15.07.2020 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Mumbai / Dated 15/07/2020
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