

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H" MUMBAI**

**BEFORE SHRI S.RIFAUR RAHMAN (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.5672/MUM/2017
(Assessment Year: 2012-13)**

M/s HDFC Bank Limited
HDFC Bank House
Senapati Bapat Marg,
Lower Parel,
Mumbai – 400 013

ACIT-2(3)(1)
Vs. Aayakar Bhavan,
Mumbai

PAN No. AAACH2702H

(Assessee)

(Revenue)

**ITA No.5660/MUM/2017
(Assessment Year: 2012-13)**

ACIT, Circle -2(3)(1)
R. No. 552, 5th Floor,
Aayakar Bhavan, M.K. Road
Mumbai – 400 020

M/s HDFC Bank Limited
Vs. HDFC Bank House
Senapati Bapat Marg,
Lower Parel,
Mumbai – 400 013

PAN No. AAACH2702H

(Revenue)

(Assessee)

Assessee by : Shri J.D. Mistry, A.R
Revenue by : Shri Manoj Mishra, D.R

Date of Hearing : 01/07/2021
Date of pronouncement : 16/07/2021

ORDER

PER RAVISH SOOD, J.M:

The present cross-appeals are directed against the order passed by the CIT(A)-6, Mumbai dated 09.06.2017, which in turn arises from the assessment order passed by the A.O u/s 143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 18.03.2015 for A.Y. 2012-13. We shall first take up the appeal of the assessee. The assessee has assailed the impugned order on the following grounds before us:

“Ground I: Disallowance u/s 14A of the Act read with Rule 8D of the Income-tax Rules, 1962 (“the Rules”)

1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in partly upholding the following actions of the AO in making disallowance u/s 14A r.w.r. 8D:
 - a. Rule 8D was validly invoked by the AO;
 - b. Directing the AO to verify the details as regards securities held as stock in trade despite the fact that it is already a matter of records that profit on sale of securities (including securities earning exempt income) and interest on such securities is offered for tax under the head profit and gains from business or profession;
 - c. In holding that disallowance u/s 14A of the Act cannot be less than suo moto disallowance made by the Appellant in the return of income.
2. The Appellant prays that the disallowance u/s 14A of the Act be deleted, without prejudice, be appropriately reduced.

Ground II: Allowance of provision for bad and doubtful debts u/s 36(1)(vii) of the Act

1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in requiring the appellant "to furnish full details" to the AO in respect of deduction u/s 36(1)(vii) despite the fact that all necessary details have been verified by the Ld. AO in the original assessment proceedings.
2. The Appellant prays that the provision for bad and doubtful debts u/s 36(1)(vii) of the Act be held as allowable without any further verification.

	not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year; C = the average of total assets as appearing in the balance sheet of the assessee on the first day and the last day of the previous year;	30,76,31,04,50,407	
iii.	An amount equal to one-half per cent of average of the value of investment income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year.	7,17,74,926	7,17,74,926
	Total Disallowance under Sec. 14A		14,17,20,791

As the assessee had voluntarily disallowed an amount of Rs.95,08,984/- u/s 14A, therefore, the A.O made a further addition/disallowance of Rs.13,22,11,807/- [Rs.14,17,20,795/- (-) Rs.95,08,984/-]. Apart from that, it was observed by the A.O that the assessee had debited an amount of Rs.1811,68,18,261/- as broken period interest in its profit and loss account. On a perusal of the details it was observed by the A.O that the aforesaid broken period interest comprised of viz. (i) Rs.21,31,56,830/- for AES category; (ii) Rs.1624,75,71,541/- for HFT category; and (iii) Rs.1,65,60,89,890/- for HTM category. It was the claim of the assessee that the broken period interest was allowable as a deduction for computing its income. On the contrary, the A.O was of the view that the broken period interest paid by the assessee was nothing but part of the price paid for acquiring the securities. In sum and substance, the A.O was of the view that the amount of broken period interest borne by the assessee to purchase the securities was in the nature of a capital outlay. Accordingly, the A.O held a conviction that no part of the broken period interest could have been set-off as an expenditure against interest accruing on the securities so acquired. It was further observed by the A.O that on the basis of a similar view the broken period interest was disallowed by his predecessor while framing the assessment in the assessee's case for A.Y. 2011-12. At the same time, it was observed by the A.O that a similar disallowance of broken period interest carried out by his predecessor while framing the assessment in the case of the assessee for A.Y.

2009-10 was vacated by the CIT(A). However, taking cognizance of the fact that the revenue had not accepted the aforesaid order of the CIT(A) and had preferred an appeal before the Tribunal, the A.O was of the view that in order to keep the matter alive the broken period interest of Rs.165,60,89,890/- for HTM category of securities was liable to be disallowed. The A.O while arriving at the aforesaid view had drawn support from the judgment of the Hon'ble Supreme Court in the case of Vijaya Bank Limited Vs. Additional CIT (1991) 187 ITR 541 (SC). After inter alia making the aforesaid additions/disallowances the income of the assessee company was assessed by the A.O vide his order passed u/s 143(3), dated 18.03.2015 at an amount of Rs.8579,82,33,350/-.

4. Aggrieved, the assessee assailed the impugned assessment order before the CIT(A). It was observed by the CIT(A) that a similar issue qua the disallowance made by the A.O u/s 14A r.w Rule 8D had been decided by his predecessor while disposing off the assessee's appeal for the immediately preceding year i.e A.Y. 2011-12 vide order no. CIT(A)-6/IT-08/2013-14, dated 29.07.2016. Observing that there was no shift in the factual or the legal position, the CIT(A) directed the A.O to disallow the higher of the disallowance of Rs.95,08,984/- or the sum calculated as per the directions that were issued by his predecessor while disposing off the assessee's appeal for A.Y. 2011-12, vide his order dated 29.07.2016. Insofar the disallowance of the assessee's claim for deduction of broken period interest on HTM securities of Rs.165,60,89,891/- was concerned, the CIT(A) observed that the said issue was also decided by his predecessor while disposing off the assessee's appeal for A.Y. 2011-12 vide his order no. CIT(A)-6/IT-08/2013-14, dated 29.07.2016. Accordingly, following the view taken by his predecessor for A.Y. 2011-12 the CIT(A) directed the A.O to delete the addition of Rs.165,60,89,890/-.

5. Both the assessee and revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Authorized

Representative (for short 'A.R') for the assessee at the very outset submitted that the CIT(A) had wrongly directed the A.O to work out the disallowance u/s 14A at higher of the suo motto disallowance of Rs.95,08,984/- that was offered by the assessee in its return of income or the sum calculated as per the directions issued by his predecessor vide his order dated 29.07.2016 passed while disposing off the assessee's appeal for A.Y. 2011-12. It was submitted by the Id. A.R that the CIT(A) was in error in concluding that the disallowance u/s 14A could not be allowed to go below the amount that was suo motto offered by the assessee in its return of income. In order to drive home his contention that the disallowance u/s 14A could go below the suo motto disallowance that was offered by the assessee u/s 14A of the Act, the Id. A.R had relied on a host of judicial pronouncements. Our attention was specifically drawn by the Id. A.R. to the judgment of the Hon'ble High Court of Gujarat in the case of PCIT Vs. UTI Bank Limited (2017) 398 ITR 514 (Guj). It was submitted by the Id. A.R that the Hon'ble High Court had upheld the order of the Tribunal that had vacated the entire disallowance made u/s 14A of the Act, despite the fact that the assessee before them had offered a suo motto disallowance of Rs.6.23 crores in its return of income. It was further submitted by the Id. A.R that involving identical facts the CIT(A) in the assessee's own case for the immediately preceding year i.e A.Y. 2011-12, vide his order no. CIT(A)-6/IT-08/2013-14, dated 29.07.2016 had after considering the availability of sufficient own funds and other non-interest bearing funds with the assessee which sufficiently explained the investments made in exempt income yielding securities had vacated the disallowance of the interest expenditure that was made by the A.O u/s 14A r.w Rule 8D(2)(ii). It was submitted by the Id. A.R that the revenue had accepted the order of the CIT(A) to the extent he had vacated the disallowance made by the A.O under Rule 8D(2)(ii) and no appeal on the said aspect was filed before the Tribunal. In order to drive home his aforesaid claim the Id. A.R had drawn our attention to Para 3.2 of the order passed by the Tribunal in the assessee's own case for the

immediately preceding year i.e A.Y. 2011-12, viz. HDFC Bank Limited Vs. ACIT 2(3), ITA No. 6123/Mum/2016, dated 08.07.2020. Further, it was submitted by the Id. A.R that the Tribunal in its aforesaid order had after drawing support from the judgment of the Hon'ble Supreme Court in the case of Maxopp Investments Ltd. vs. CIT (2018) 402 ITR 640 (SC), had held, that as the assessee was a bank, therefore, investments held by it as stock-in-trade were not to be considered for the purpose of working of disallowance u/s 14A of the Act, irrespective of the fact whether exempt income was derived from such investments or not. It was further submitted by the Id. A.R that the Tribunal in its aforesaid order had observed that only those strategic investments held by the assessee that had yielded exempt income were to be considered for the purpose of working out the disallowance u/s 14A r.w. Rule 8D(2)(iii).

6. Per contra, the Id. Departmental Representative (for short 'D.R') submitted that for the purpose of working out the disallowance u/s 14A r.w Rule 8D(2)(ii) the availability of own funds and interest free funds with the assessee was to be looked into with reference to the date on which the said respective investments in the exempt income yielding securities were made. In support of his aforesaid contention the Id. D.R had relied on the judgment of the Hon'ble Supreme Court in the case of Maxopp Investments Limited (supra). It was submitted by the Id. D.R that no appeal against the order of the CIT(A) for A.Y. 2011-12 against the deletion of the disallowance of interest expenditure u/s 14A r.w Rule 8D(2)(ii) was preferred before the Tribunal because the judgment of the Hon'ble Supreme Court in the case of Maxopp Investments Limited (supra) was not available at the relevant point of time. Rebutting the assessee's claim for exclusion of the exempt income yielding investments that were held by the assessee bank as stock-in-trade for the purpose of computing the disallowance u/s 14A of the Act, the Id. D.R had relied on the judgment of the Hon'ble Supreme Court in the case of Maxopp Investment Limited (supra). On the issue pertaining to disallowance of

broken period interest by the A.O which thereafter had been vacated by the CIT(A), it was submitted by the D.R that the order passed by the first appellate authority was palpably incorrect as the same was contrary to the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Vijaya Bank (1991) 187 ITR 541 (SC).

7. Rebutting the contentions advanced by the counsel for the revenue, it was submitted by the Id. A.R that if there were funds available i.e both interest free and overdraft and/or loan taken, then, a presumption arises that investments in exempt income yielding securities were made out of the interest free funds generated or available with the company provided such funds were sufficient to meet the investments. It was averred by the Id. A.R that the aforesaid issue was squarely covered by the judgments of the Hon'ble High Court of Bombay in the case of CIT Vs. Reliance Utility & Powers Limited (2009) 313 ITR 340 (Bom) and those passed in the assessee's own case i.e CIT Vs. HDFC Bank Limited (2014) 366 ITR 505 (Bom) and HDFC Bank Limited Vs. PCIT-2(3), Mumbai (2016) 383 ITR 529 (Bom). Adverting to the judgment of the Hon'ble High Court of Bombay in the case of Reliance Utility and Power Limited (supra), it was submitted by the Id. A.R that there was a clear mention that the availability of the own funds with the assessee company was to be looked into in context of the 'balance sheet'. As such, it was submitted by the Id. A.R that what was the relevant for arriving at the presumption of availability of sufficient own funds and interest free funds with the assessee was the date of the 'balance sheet' and not the date of investment. It was submitted by the Id. A.R that the Hon'ble High Court of Bombay in its order passed in the case of CIT-2, Mumbai Vs. HDFC Bank Limited (2014) 366 ITR 505 (Bom) had after drawing support from its earlier order passed in case of Reliance Utility and Power Limited (supra), had concluded, that where the assessee's own funds and other non-interest bearing funds were more than the investments made in tax free securities, then, there was no justification on the

part of the A.O to have disallowed any part of the interest payments while working out the disallowance u/s 14A of the Act. On the issue of deletion of the disallowance of broken period interest by the CIT(A), it was submitted by the Id. A.R that the Hon'ble High Court of Bombay in its order passed in the case of CIT-2, Mumbai Vs. HDFC Bank Limited (2014) 366 ITR 505 (Bom) had after considering the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Vijaya Bank (1991) 187 ITR 541 (SC) observed, that as the said issue was covered in the assessee's favour by the judgment of the court in the case of American Express International Banking Corporation Vs. CIT (2002) 268 ITR 601 (Bom), therefore, no infirmity did arise from the view taken by the Tribunal that broken period interest was allowable as a deduction. It was submitted by the Id. A.R that the counsel for the revenue had absolutely lost sight of the fact that the revenue in the 'Question of law' that was formulated before the Hon'ble High Court had specifically relied on the judgment of the Hon'ble Supreme Court in the case of Vijaya Bank (supra). It was further submitted by the Id. A.R that the Tribunal while disposing off the assessee's appeal for A.Y. 2011-12 in ITA No. 6173 & 6187/Mum/2016 had after drawing support from its earlier order that was passed in the assessee's own case for A.Y. 2008-09 to A.Y. 2010-11 in ITA Nos. 3750,722,3465,4367/Mum/2012 and ITA No. 1795/Mum/2010, dated 12.11.2014, had therein observed that consistently the broken period interest paid by the assessee was being held as an allowable deduction for the purpose of computing the total income of the assessee.

8. We have heard the Id. authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Insofar the validity of invoking of Rule 8D by the A.O is concerned, we are unable to persuade ourselves to subscribe to the claim of the assessee that the same suffers from an

infirmity. As the methodology for computing the disallowance u/s 14A was made available on the statute vide the IT (Fifth Amendment) Rules, 2008, w.e.f 24.03.2008, therefore, we are of the considered view that for the period falling subsequent thereto, the determining of the amount of expenditure in relation to income not includible in total income has to be as per the methodology contemplated in Rule 8D(2) of the Income Tax Rules, 1962. At the same time, we cannot also remain oblivious of the fact that the aforesaid mechanism for computing the disallowance would stand triggered only where the assessing officer, having regard to the accounts of the assessee of a previous year, is either not satisfied with, viz. (a) the correctness of the claim of expenditure made by the assessee ; or (b) the claim made by the assessee that no expenditure has been incurred, in relation to income which does not form part of the total income under the Act for such previous year. To sum up, as per the mandate of law the A.O shall determine the amount of expenditure in relation to income not includible in total income as per sub-rule (2) of Rule 8D only after satisfaction of either of the aforesaid two conditions contemplated in sub-rule (1) of Rule 8D. In our considered view, as the A.O in the present case had only after duly recording his dissatisfaction as regards the correctness of the claim of expenditure attributed by the assessee for earning of the exempt dividend income determined the amount of disallowance u/s 14A r.w Rule 8D(2), therefore, no infirmity does emerge therefrom. At the same time, we find substantial force in the claim of the Id. A.R that as the assessee is a bank, therefore, investments that are held as stock-in-trade cannot be subjected to disallowance u/s 14A of the Act. Our aforesaid view is fortified by the judgment of the Hon'ble Supreme Court in the case of Maxopp Investments Ltd. Vs. CIT (2018) 402 ITR 640 (SC). In its said order, it was observed by the Hon'ble Apex Court that in case of a bank the investments that are held as stock-in-trade cannot be a subject matter of disallowance u/s 14A of the Act. As pointed out by the Id. A.R, and rightly so, the Tribunal in the assessee's own case for A.Y. 2011-12 in ITA No.

6173/Mum/2016, dated 08.07.2020 after relying on the judgment of the Hon'ble Supreme Court in the case of Maxopp Investments Limited (supra), had observed that as the assessee was a bank, therefore, investments held as stock-in-trade were not to be considered for the purpose of working of disallowance u/s 14A of the Act, irrespective of the fact that any exempt income was derived from such investments or not. For the sake clarity the observations of the Tribunal are culled out as under:

“3.7 To sum up, we direct the Id. A.O as under:

- (a) Since, assessee being a bank, investments held as 'stock in trade' could not be considered for the purpose of working of disallowance u/s 14A of the Act irrespective of the fact whether exempt income was derived from such investments or not.”

Accordingly, on the same terms we herein direct that the investments that were held by the assessee bank as stock-in-trade shall not be considered by the A.O for the purpose of working of disallowance u/s 14A of the Act, irrespective of the fact whether exempt income was derived from such investments or not.

9. We shall now advert to the claim of the Id. A. R that the CIT(A) had erred in concluding that the disallowance u/s 14A cannot be less than the suo motto disallowance that was offered by the assessee in its return of income. As observed by us hereinabove, the assessee had claimed an exempt income of Rs.303,77,70,727/-. The assessee had on a suo motto basis offered for disallowance an amount of Rs.95,08,984/- u/s 14A of the Act in its computation of income. Observing, that the disallowance u/s 14A was not as per the mechanism contemplated in Rule 8D of the Income Tax Rules, 1962, the A.O reworked out the same at Rs.14,17,20,791/-. After taking cognizance of the suo motto disallowance of Rs.95,08,984/- that was offered by the assessee u/s 14A of the Act, the A.O restricted the additional disallowance to an amount of Rs.13,22,11,807/-. On appeal, the CIT(A) following the view that was taken by his predecessor while disposing off the assessee's appeal for A.Y. 2011-12 had directed the A.O to disallow higher of the suo motto disallowance of

Rs.95,08,984/- or the sum calculated as per directions that were issued by his predecessor vide his order passed while disposing off the assessee's appeal for A.Y. 2011-12. It is the capping of the disallowance at a minimal figure of Rs.95,08,984/- i.e as offered by the assessee on a suo motto basis in its return of income by the CIT(A) that has been assailed by the assessee before us. As observed by us hereinabove, the Hon'ble High Court of Gujarat in PCIT Vs. UTI Bank Ltd. (2017) 398 ITR 514 (Guj) had upheld the order passed by the Tribunal that had vacated the entire disallowance under Sec. 14A of the Act, despite the fact that the assessee had on a suo motto basis offered a disallowance of Rs.6.23 crores in its return of income. On a perusal of the aforesaid order, we find, that the revenue by way of a specific question of law had assailed before the Hon'ble High Court the order of the Tribunal, for the reason, that it had directed the A.O to delete the suo motto disallowance that was offered by the assessee u/s 14A in its return of income. The question of law that was formulated before the Hon'ble High Court read as under :

- “(B) Whether the Appellate Tribunal has substantially erred in directing the Assessing Officer to delete the suo motu disallowance of Rs.6.23 crores made by the assessee company in the return of income?”

Answering the aforesaid question, it was observed by the Hon'ble High Court as under:

- “3. Though three questions are framed, issue is common, viz., disallowance of a global sum of Rs. 38.68 made by the Assessing Officer under section 14A of the Income-tax Act, 1961 ("the Act" for short). From the record, it emerges that for the assessment year 2002-03, the respondent assessee itself in the return filed, had made suo motu disallowance of the sum of Rs. 6.33 crores under the said head. The Assessing Officer however, made a total disallowance of Rs. 38.66 crores. When the matter reached the Tribunal, the assessee raised an additional ground resiling from suo motu disallowance of Rs. 6.23 crores. In essence therefore the assessee questioned the entire disallowance made by the Assessing Officer.
4. After one round of remand, the Tribunal by the impugned order dated October 28, 2015, considered the issue on the merits. The Tribunal came to the conclusion that the assessee had sufficient interest-free funds in excess of interest-free investments. The Tribunal recorded that the surplus percentage of interest-free funds were at the rate of 373 per cent. Referring to the decision of

this court in the case of the assessee pertaining to the later Assessment years, the Tribunal ruled in favour of the assessee and deleted the entire disallowance made by the assessing Officer. The Tribunal rejected the Revenue's contention that the assessee itself having made suo motu disallowance in the return of the income, could not have changed its position and argued against such disallowance also. In this context, the Tribunal referred to and relied upon the decision of the Supreme Court in the case of *National Thermal Power Co. Ltd. v. CIT* [1998] 229 ITR 383. The Tribunal also referred to a decision of the Division Bench of this court in the case of *CIT v. Mitesh Impex* [2014] 46 taxmann.com 30/225 taxman 168.

5. Having heard learned counsel for the parties and having perused the documents on record, we do not see any in the view of the Tribunal. The question of disallowance under section 14A of the Act has been examined on the basis of materials on record. The Tribunal found that the assessee's interest-free funds far exceeded its interest free investments. The Tribunal relied on the decisions of this court in the case of this very assessee concerning similar issues in the later assessment years, against which we are informed that the special leave petition has been dismissed.
6. Regarding a claim contrary to the disclosures in the return, the Tribunal relied on the decision of the Supreme Court in the case of *National Thermal Power Co. Ltd. (supra)* to observe that the purpose of assessment is to tax real income. This court taking note of the decisions of the Supreme Court in the case of *Goetze (India) Ltd. v. CIT* [2006] 284 ITR 323/157 Taxman 1 and *National Thermal Power Co. Ltd. (supra)* in the case of *Mitesh Impex (supra)* had observed as under (page 103 of 367 ITR):

"It thus becomes clear that the decision of the Supreme Court in the case of *Goetze (India) Ltd. v. CIT (supra)* is confined to the powers of the Assessing Officer and accepting a claim without revised return. This is what the Supreme Court observed in the said judgment while distinguishing the judgment in the case of *National Thermal Power Co. Ltd. v. CIT (supra)* and that is how various High Courts have viewed the dictum of the decision in the case of *Goetze (India) Ltd. v. CIT (supra)*. When it comes to the power of the Appellate Commissioner or the Tribunal, the courts have recognized their jurisdiction to entertain a new ground or a legal contention. A ground would have a reference to an argument touching a question of fact or a question of law or mixed question of law or facts. A legal contention would ordinarily be a pure question of law without raising any dispute about the facts. Not only such additional ground or contention, the courts have also, as noted above, recognized the powers of the Appellate Commissioner and the Tribunal to entertain a new claim for the first time though not made before the Assessing Officer. Income-tax proceedings are not strictly speaking adversarial in nature and the intention of the Revenue would be to tax real income.

This is primarily on the premise that if a claim though available in law is not made either inadvertently or on account of erroneous belief of complex legal position, such claim cannot be shut out for all times to come, merely because it is raised for the first time before the appellate authority without resorting to revising the return before the Assessing Officer.

Therefore, any ground, legal contention or even a claim would be permissible to be raised for the first time before the appellate authority or the Tribunal when facts necessary to examine such ground, contention or claim are already on record. In such a case the situation would be akin to allowing a pure question of law to be raised at any stage of the proceedings. This is precisely what has happened in the present case. The Appellate Commissioner and the Tribunal did not need to nor did they travel beyond the materials already on record, in order to examine the claims of the assessee's for deductions under sections 80-IB and 80HHC of the Act.

In the result no question of law arises, All tax appeals are dismissed.”

Apart from the aforesaid, we find that a similar view had been taken by the Tribunal in the assessee's own case for A.Y 2006-07 and A.Y 2007-08 in ITA Nos. 5480 & 5481/Mum/2014, dated 24.08.2016. In the aforesaid case, the assessee had out of abundant caution offered a suo motto disallowance of Rs. 34,67,201/- and Rs.81,28,000/- towards interest expenditure u/s 14A of the Act. On appeal, the Tribunal relying on the order passed in the case of Tata Industries Limited Vs. ITO, ITA No. 4894/Mum/2018 directed the A.O to delete the disallowance of interest expenditure u/s 14A r.w Rule 8D(2)(ii), despite the fact that a suo motto disallowance for the said respective years was offered by the assessee in its returns of income. Also, we find that a similar view that the disallowance u/s 14A can go below the amount of suo motto disallowance that was offered by an assessee u/s 14A in its return of income had been arrived at by the various coordinate benches of the Tribunal, as under:

- i. Sajjan India Ltd. Vs. ACIT (89 taxmann.com 21) (Mum ITAT)
- ii. Nerka Chemicals Pvt. Ltd. Vs. DCIT (ITA No.3923/Mum/2017) (Mum ITAT)
- iii. DCIT vs. Ardor In – fin Pvt. Ltd. (ITA No. 2739/Ahd/2017) (Ahmd ITAT)
- iv. DCIT Vs. Greenland Infracon P. Ltd. (ITA No. 2039 & 2040/Ahd/2016 (Ahmd ITAT)
- v. Tata Industries Ltd. Vs. ITO (ITA No. 4894/Mum/2008) (Mum ITAT)
- vi. M/s Finquest Securities Pvt. Ltd. Vs. ACIT (ITA No. 2540/M/2017)(Mum ITAT)
- vii. Rupee Finance & Management Pvt. Ltd. Vs. DCIT (81 taxmann.com 249)(Mum ITAT)
- viii. K. Raheja Pvt. Ltd. V. DCIT (ITA No. 5350/M/2019, order dated 22.04.2021)(Mum)

In the backdrop of the aforesaid position of law, we herein set-aside the order of the CIT(A) to the extent he had directed the A.O to cap the disallowance u/s 14A

at a minimal amount of Rs.95,08,984/- i.e the amount that was suo motto offered for disallowance by the assessee in its return of income of income. As such, we herein direct the A.O to work out the disallowance u/s 14A r.w Rule 8D without being influenced in any way by the amount of disallowance that was offered by the assessee under Sec. 14A in its return of income. Accordingly, the **Ground of appeal No. I** raised by the assessee is partly allowed in terms of our aforesaid observations.

10. The Id. A.R submitted that as instructed the Ground of appeal no. II is not being pressed. Accordingly the **Ground of appeal no. II** is being dismissed as not pressed.

11. The **Ground of appeal No. III** being general is dismissed as not pressed.

12. The appeal filed by the assessee is partly allowed in terms of our aforesaid observations.

ITA No.5660/MUM/2017
(Assessment Year: 2012-13)

13. We shall now take up the appeal of the revenue. The revenue has assailed the impugned order on the following grounds before us:

- “1. On the facts and the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting disallowance U/S.14A r.w.r. 8D(2)(ii) of the I.T. Rules amounting to Rs.6,99,45,865/-following the case law in CIT vs. Reliance Utilities and Power Ltd., without realizing that this case law is different from the assessee's case as the same was dealt with expenses u/s.36(1)(iii) of the Act.
2. On the facts and the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs.6,99,45,865/- made U/S.14A by holding that no investment is carried out of interest bearing funds by relying on the decision of CIT vs.HDFC(366 ITR 505)(Bom HC).
3. On the facts and the circumstances of the case and in law, the Ld.CIT(A) has erred in holding that the disallowance u/s. 14A r.w.r. 8D can be made only after excluding tax-free investments which are strategic in nature ,without realizing the fact that assessee is also earning exempt income on the strategic investments and expenses incurred on the same should be disallowed U/S.14A r.w.r.80.

4. On the facts and the circumstances of the case and in law ,the Ld.CIT(A) has erred in deleting disallowance u/s. 14A,without considering the fact that the Hon'ble ITAT in the assessee's own case for the A.Y. 2008-09 to 2010-11 vide order dated 31.03.2015 in MA No. 18 to 20/Mum/2015 arising out of ITA No.375, 3465 &1795/Mum/2014 has set aside the matter to the A.O. for examination of availability of own funds &interest free funds for making investments on the date of making investments.
5. On the facts and the circumstances of the case and in law ,the Ld.CIT(A) has erred in holding that the broken period interest is allowable on matching principles ,without realizing that the same has not been incurred for realizing the interest on securities as enunciated by the Apex Court in Vijaya Bank Ltd.(57 Taxman 152(SC).”

14. It is the claim of the revenue that the CIT(A) has erred in deleting the disallowance of the interest expenditure made by the A.O u/s 14A r.w Rule 8D(2)(ii) of Rs.6,99,45,865/- by following the judgment of the Hon’ble High Court of Bombay in the case of CIT Vs. Reliance Utility & Power Limited (2009) 313 ITR 340 (Bom). It is the claim of the revenue that the aforesaid judgment was rendered in context of the disallowance of interest expenditure u/s 36(1)(iii) of the Act and not qua the disallowance under Sec. 14A of the Act. Also, the revenue is aggrieved with the order of the CIT(A), for the reason, that he had erred in vacating the disallowance of the interest expenditure u/s 14A r.w Rule 8D(2)(iii) by misconceiving the judgment of the Hon’ble High Court of Bombay in the case of CIT Vs. HDFC Bank Limited (2014) 366 ITR 505 (Bom).

15. We have given a thoughtful consideration to the aforesaid claim of the revenue and are unable to persuade ourselves to subscribe to the same. Admittedly, it is a matter of fact that the judgment of the Hon’ble High Court of Bombay in the case of Reliance Utility & Power Limited (supra) was rendered in context of the disallowance of interest expenditure u/s 36(1)(iii) of the Act. However, on a careful perusal of the aforesaid order, we find, that the Hon’ble High Court had therein observed that if there be interest free funds available to an assessee sufficient to meet its investments and at the same time, the assessee has raised a loan, then, it can be presumed that the investments so

made were from the interest free funds so available with the assessee. We find no reason as to why the aforesaid observation of the Hon'ble High Court cannot be read into for the purpose of computing the disallowance of the interest expenditure u/s 14A r.w Rule 8D(2)(ii). In fact, the Hon'ble High Court of Bombay in the assessee's own case i.e CIT Vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom) by drawing support from its aforesaid order passed in the case of Reliance Utility and Power Limited (supra), had observed, that where the assessee's own funds and other non-interest bearing funds were more than the investments in tax free securities, then, there was no justification for the A.O to have disallowed any part of interest payments u/s 14A of the Act. Again, the aforesaid view was taken by the Hon'ble High Court in the assessee's own case i.e HDFC Bank Limited Vs. PCIT-2(3), Mumbai (2006) 383 ITR 529 (Bom). In its aforesaid order, it was observed by the Hon'ble High Court that when there were sufficient own funds with the assessee, then, there was a presumption that investment in tax free securities was made out of own funds. As such, finding no force in the aforesaid grievance of the revenue we herein dismiss the same. The **Ground of appeal No. 1 & 2** raised by the revenue are dismissed.

16. We shall now take up the claim of the revenue that the CIT(A) by adopting an inconsistent approach had erred in out rightly vacating the disallowance of interest expenditure made by the A.O u/s 14A r.w Rule 8D(2)(ii). It is the claim of the revenue, that unlike as in A.Y. 2008-09 to A.Y. 2010-11, wherein the Tribunal vide its order dated 31.03.2015 in M.A. No. 18 to 20/Mum/2015 arising out of ITA No. 375, 3465 & 1795/Mum/2014 had set-aside the matter to the A.O for examination of availability of own funds and interest free funds with the assessee on the dates on which such investments were made, the CIT(A) in the present case had outrightly without making any verification as regards availability of such own funds and interest free funds had summarily vacated the disallowance of interest expenditure that was made by the A.O u/s 14A r.w Rule 8D(2)(ii).

Further, it is the claim of the revenue that the CIT(A) had erred in not appreciating that availability of own funds and interest free funds was to be looked into on the date of making of investments in exempt income yielding securities and not on the date of the 'balance sheet'. As observed by us hereinabove, the disallowance of interest expenditure made by the A.O u/s 14A r.w Rule 8D(2)(ii) by discarding the assessee's claim as regards drawing of a presumption qua the utilization of own funds and interest free funds for making of investments in the exempt income yielding securities was thereafter vacated by the CIT(A), vide his order passed in the assessee's own case for A.Y. 2011-12 in order No. CIT(A)-6/IT-08/2013-14, dated 29.07.2016. The CIT(A) while vacating the disallowance of the interest expenditure made by the A.O u/s 14A r.w Rule 8D(2)(ii) had categorically observed that own funds and interest free funds available with the assessee were much higher than the tax free investments made by it during the said year. As observed by us hereinabove, the deletion of the disallowance u/s 14A r.w Rule 8D(2)(ii) was accepted by the revenue and was not carried any further in appeal before the Tribunal. It was, thus, in the backdrop of the aforesaid facts that the CIT(A) finding that there was neither any factual nor legal change qua the issue in question during the year under consideration as against that for the immediately preceding year i.e A.Y. 2011-12, had thus, adopted the same approach as that of his predecessor and vacated the disallowance of the interest expenditure u/s 14A r.w. Rule 8D(2)(ii) of Rs.6,99,45,865/-, though subject to a rider as regards the minimal capping of the said disallowance. As the revenue has not assailed the deletion of the disallowance of the interest expenditure u/s 14A r.w Rule 8D(2)(ii) in the backdrop of the observation of the CIT(A) that the assessee had sufficient own funds and interest free funds to make investments in the tax free investments, therefore, we find no justification in seeking of adoption of an inconsistent approach by the revenue insofar the year under consideration is concerned. Apart from that, nothing has been brought to our notice which would reveal that

the assessee did not have sufficient own funds and interest free funds to make investments in the exempt income yielding securities during the year under consideration. On the contrary, we find that the focus of the revenue has through out been on the aspect that in case of availability of mixed funds i.e own funds/interest free funds and interest bearing funds, the presumption that the assessee had made the investment in the tax free securities out of its own funds and interest free funds did not merit acceptance. Nothing is discernible from the orders of the lower authorities nor is it the claim of the revenue either before us or before the lower authorities that the assessee did not have sufficient own funds and interest free funds to make investments in the exempt income yielding securities. As regards the point of time on which the availability of own funds and interest free funds with the assessee for making of investments in exempt income yielding securities was to be looked into, we concur with the claim of the Id. A.R that as observed by the Hon'ble High Court of Bombay in the case of CIT Vs. Reliance Utility & Power Ltd. (2009) 313 ITR 340 (Bom), the same has to be considered in context of the date of the 'balance sheet', and not otherwise. We, thus, finding no infirmity in the view taken by the CIT(A) who had after dislodging the claim of the revenue qua the drawing of presumption as regards utilization of the own funds and interest free funds out of the mixed funds available with the assessee for making of investments in exempt income yielding securities had rightly vacated the disallowance of the interest expenditure made by the A.O u/s 14A r.w Rule 8D(2)(ii), uphold the same. The **Ground of appeal No. 4** raised by the revenue is dismissed.

17. We shall now deal with the grievance of the revenue that the CIT(A) had erred in holding that the disallowance u/s 14A r.w.rule 8D can be made only after excluding the tax free investments which are strategic in nature. As regards the aforesaid claim of the revenue, we find substantial force in the same. As observed by the Hon'ble Supreme Court in the case of Maxopp Investment

Limited (supra) the purpose for which exempt income yielding securities are held by an assessee is irrelevant while working out the disallowance under Sec. 14A r.w Rule 8D. In its aforesaid order, it was observed by the Hon'ble Apex Court that the dominant purpose for which investment into shares is made by the assessee would not be relevant as Sec. 14A applies irrespective of the fact that the shares were held to gain control or otherwise. We, thus, in terms of our aforesaid observations set-aside the order of the CIT(A) to the extent he had held that the tax free investments which are strategic in nature are to be excluded for the purpose of computing the disallowance u/s 14A r.w Rule 8D. At the same time, we may herein observe that only those strategic investments held by the assessee that had yielded exempt income are to be considered for the purpose of working out the disallowance u/s 14A r.w Rule 8D(2)(iii). In fact, a similar view had been taken by the Tribunal while disposing off the assessee's appeal for A.Y. 2011-12 in ITA No. 6173/Mum/2016, dated 08.07.2020. Accordingly, in terms of our aforesaid deliberations we herein direct the A.O to include the strategic investments which had yielded exempt income during the year for the purpose of computing the disallowance u/s 14A r.w Rule 8D(2)(iii).

18. We shall now deal with the grievance of the revenue that the CIT(A) had erred in holding that the broken period interest is allowable on matching principles, without realizing that the same had not been incurred for realizing the interest on security as enunciated by the Hon'ble Apex Court in Vijaya Bank Limited (1991) 187 ITR 541 (SC). As observed by us hereinabove, the assessee's claim for deduction of broken period interest on HTM securities of Rs.165,60,89,890/- was disallowed by the A.O, for the reason, that the same as per him was nothing but part of the price that was paid for acquiring the securities in question. It was, thus, observed by the A.O that as the price paid by the assessee was in the nature of a capital outlay, therefore, no part of the same could have been set-off as an expenditure against interest accruing on these

securities. Although the CIT(A) in the assessee's own case for A.Y. 2009-10 had vacated the disallowance of its claim for deduction of broken period interest, however, the A.O was of the view that as the said order of the first appellate authority had been assailed before the Tribunal, therefore, in order to keep the matter alive during the year in question a similar approach was to be adopted and the aforesaid claim of the assessee was to be disallowed. On appeal, the CIT(A) observed that a similar claim of the assessee for deduction of broken period interest was allowed by his predecessor while disposing off the assessee's appeal for A.Y. 2011-12, vide his order no. CIT(A)-6/IT-08/2013-14, dated 29.07.2016. It was further observed by the CIT(A) that the aforesaid recurring issue had been decided in favour of the assessee both by the Hon'ble High Court of Bombay and the Tribunal in the assessee's own case for A.Y 2008-09 to A.Y 2009-10 and A.Y. 2010-11. Accordingly, the CIT(A) observed that as there was neither any factual nor any legal change qua the issue under consideration, therefore, respectfully following the view taken by his predecessor in the case of the assessee for A.Y. 2011-12 he vacated the disallowance of the broken period interest of Rs.165,60,89,890/-.

19. We have given a thoughtful consideration to the aforesaid issue, and find, that the Tribunal in the assessee's own case for the immediately preceding year i.e A.Y. 2011-12 in ITA No. 6187/Mum/2016 had decided the said issue in favour of the assessee and had dismissed the revenues appeal. It was observed by the Tribunal that the issue pertaining to allowability of broken period interest had been decided by the Hon'ble jurisdictional High Court and the Tribunal in the assessee's own case for A.Y. 2008-09, A.Y. 2009-10 and A.Y. 2010-11 in ITA No.s 375,722,3465,4367/Mum/2012 and ITA No. 1795/Mum/2010, dated 12.11.2014. It was observed by the Tribunal that in all the aforementioned decisions it was held that the broken period interest paid by the assessee was allowable as a deduction while computing its total income. Observing, that the

issue was covered in the assessee's own case by various decisions of the Tribunal and that of the Hon'ble jurisdictional High Court, the order of the CIT(A) vacating the disallowance of broken period interest was upheld by the Tribunal. For the sake clarity the relevant observations of the Tribunal are culled out as under:

- “7. The only issue to be decided is deletion of disallowance by the Id. CIT(A) in respect of broken period interest in the sum of Rs.1947,35,93,107/-.
- 7.1. We have heard rival submissions and perused the materials available on record. We find that assessee has debited an amount of Rs.1947,35,93,107/- in the profit and loss account as broken period interest. The assessee submitted that this broken period interest paid is nothing but part of the price paid for the securities at the time of its acquisition. The Id. AO observed that the said purchase price is in the nature of capital outlay and hence, the same cannot be allowed as deduction while computing business income of the assessee. The Id. AO observed that similar disallowance was made in assessee's own case for the A.Y.2009-10 and the revenue appeal was pending before this Tribunal at the time of completion of the assessment proceedings. Hence, in order to keep the issue alive, disallowance was made by the Id. AO. We find that the Id. CIT(A) had deleted this addition by following the decision of the Hon'ble Jurisdictional High Court in assessee's own case and the decision of this Tribunal in assessee's own case for A.Y.2008-09 and 2009-10 and 2010-11 in ITA Nos.375, 722, 3465, 4367/Mum/2012 and ITA No.1795/Mum/2010 dated 12/11/2014. In all these decisions, it was held that the broken period interest paid by the assessee is allowable as deduction while computing total income of the assessee. Since, this issue is already covered in assessee's own case by various decisions of this Tribunal and Hon'ble Jurisdictional High Court, which has been rightly followed by the Id. CIT(A), we do not find any infirmity in the order of the Id. CIT(A). Accordingly, the grounds raised by the revenue are dismissed.
8. In the result, appeal of the revenue is dismissed.”

As the facts and the issue involved in the present appeal remains the same as were there before the Tribunal in the assessee's own case for the immediately preceding year i.e A.Y. 2011-12 in ITA No. 6187/Mum/2016, as well as in the preceding years, therefore, we respectfully follow the same. We, thus, finding no infirmity in the view taken by the CIT(A) who had rightly vacated the disallowance of the broken period interest on HTM securities of Rs.165,60,89,890/-, uphold the same. The **Ground of appeal No. 5** raised by the revenue is dismissed.

20. The appeal of the revenue is partly allowed in terms of our aforesaid observations.

21. Resultantly, both the appeals filed by the assessee and the revenue are partly allowed in terms of our observations recorded hereinabove.

Order pronounced in the open court on 16.07.2021

Sd/-
(S. Rifaur Rahman)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai;

Dated: 16.07.2021

*PS: Rohit

Copy of the Order forwarded to :

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

BY ORDER,
//True Copy//

(Sr. Private Secretary)
ITAT, Mumbai