

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'B', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. KUL BHARAT, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No. 7392/Del/2018
(Assessment Year : 2014-15)

ExLServices.com (India) Pvt. Ltd., 414, 4 th Floor, Plot No.10 & 11, DLP Jasola Tower-B, DDA District Centre, New Delhi - 110025 PAN No. AAACE 5174 C (APPELLANT)	Vs.	ACIT Large Taxpayer Unit, Circle – 1, NBCC Plaza, Pushp Vihar, Saket, New Delhi (RESPONDENT)
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Assessee by	Shri Ajay Vohra, Sr. Adv. Shri Neeraj Jain, Adv. Shri Saksham Singhal, Adv.
Revenue by	Ms. Rinku Singh, Sr. D.R.

Date of hearing:	31.08.2021
Date of Pronouncement:	06.09.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 31.08.2018 passed by the Commissioner of Income Tax (Appeals)-22, New Delhi relating to Assessment Year 2014-15.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company stated to be engaged in the business of rendering transaction processing services and internet and voice based customer care service for its worldwide clients. Assessee electronically filed its return of income for A.Y. 2014-15 on 29.11.2014 declaring total income of Rs.71,70,53,304/- and book profit of Rs.85,08,21,997/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 21.12.2017 and the total income was determined at Rs.79,13,26,782/- and book profit u/s 155JB of the Act at Rs.85,40,55,343/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 31.08.2018 (Appeal No.322/17-18/CIT(A)-22, New Delhi) granted partial relief to the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal before us and has raised the following grounds:

1. *“That on the facts and circumstances of the case and in law, the Assessing Officer [“AO”] erred in assessing income of the appellant at Rs. 79,13,26,782 as against returned income of Rs. 71,70,53,304 and the Commissioner of Income Tax (Appeals) [“CIT(A)”] erred in confirming the said action of the AO.*
2. *That on the facts and circumstances of the case and in law the CIT(A) has erred in disallowing depreciation on goodwill amounting to Rs. 7,10,40,132, merely following the appellate order for the assessment year 2013-14 and further erred in not following the order of the Hon'ble Income Tax Appellate Tribunal [“Hon'ble*

ITAT"j for A.Y. 2010-11, especially when there was no change in facts.

- 2.1 That on the facts and circumstances of the case and in law the CIT(A) has erred by not taking cognizance of the asset purchase agreement and its amendment submitted by the Appellant submitted (wherein description of intangible assets that would be transferred to the Appellant as part of acquisition has been mentioned) and thereby, erred in stating that goodwill does not result in acquisition of any knowhow, patent, copyright, trademarks, etc.*
- 2.2 That on the facts and circumstances of the case and in law the CIT(A) has erred in not appreciating that the goodwill was acquired pursuant to Asset Purchase Agreement and its amendment entered during the previous year relevant to assessment year 2010-11 and depreciation on the same was allowed in that year, thus it was not permissible to alter the written down value of the block of asset of goodwill, so as to disallow depreciation during the subject year.*
- 2.3 That on the facts and circumstances of the case and in law the CIT(A) has erred in disregarding the decision of the Dispute Resolution Panel for assessment year (s) 2010-11 and 2011-12.*
- 3. That on the facts and circumstances of the case and in law the CIT(A) has erred in upholding the action of the AO in disallowing an amount of Rs.32,33,346/- under section 14A of the Act read with Rule 8D of the Income tax Rules, 1962 ("the Rules") without appreciating the fact that no expenditure was actually incurred in earning the exempt dividend income as investments during the year were mere automatic reinvestments of units issued as dividend to the Appellant on the mutual funds held by it.*

 - 3.1 That on the facts and circumstances of the case and in law the CIT(A) has erred in upholding the action of the AO in computing the said disallowance of Rs.32,33,346/- as per Rule 8D of the Rules read with*

Section 14A of the Act, being 0.5% of the average of opening and closing investment in mutual funds pertaining to the financial year 2013-14.

4. *That on the facts and circumstances of the case and in law the CIT(A) has erred in not adjudicating the erroneous action of the AO in initiating penalty proceedings under section 271(1)(c) of the Act mechanically and without recording any satisfaction for its initiation.*

The above grounds of appeal are mutually exclusive and without prejudice to each other.

The Appellant craves leave to add to, alter, amend or vary from the above grounds of appeal before or at the time of hearing.”

4. Assessee has made a request for admission of additional grounds of appeal under Rule 11 of the I.T. Rules and the same reads as under:

“That on the facts and circumstances of the case and in law, the assessing officer education cess paid by the appellant should be directed to be allowed as deduction, in terms of the law clarified by the Hon’ble Bombay High Court in the case of Sesa Goa Ltd. vs. JCIT: 117 taxmann.com 96 and other decisions.”

5. Before us, at the outset, Learned AR submitted that Ground No.1 is general in nature and therefore requires no adjudication and the Ground No.4 is with respect to penalty which is premature and requires no adjudication at present. In view of the submissions, the aforesaid grounds are dismissed.

6. He thereafter submitted that Ground No.2 and the sub grounds relates to the issue of disallowance of depreciation on

Goodwill and the Ground No.3 and its sub grounds relates to disallowance u/s 14A r.w.r 8D of the Act.

7. We first take up Ground No.2 and sub grounds relating to disallowance of depreciation on Goodwill.

8. During the course of assessment proceedings, AO noticed that assessee had claimed depreciation of Rs.7,10,40,132/- on Goodwill. Assessee was asked to justify the claim. Assessee *inter alia* submitted that during the F. Y. 2009-10, the assessee had acquired the operations of the American Express Global Travel Service Centre, a business unit of American Express located at Gurgaon which provides the travel related business process outsourcing services to American Express, USA. As a result of the acquisition, assessee recognized the Goodwill amounting to Rs.769,789,365/- in its books of accounts. It was further submitted that assessee had claimed depreciation amounting to Rs.71,040,132/- u/s 32 of the Act and it was the fifth year of claim of depreciation on Goodwill. Assessee also filed detailed submissions. The submissions of the assessee was not found acceptable to AO. AO noted that though for A.Y. 2010-11 being aggrieved by the order of DRP, the Department had filed an appeal before the Hon'ble Tribunal wherein the claim of depreciation was allowed in favour of the assessee but following the order for A.Y. 2013-14 wherein depreciation on Goodwill was disallowed and the order was also upheld by the CIT(A), the claim

of depreciation on the Goodwill was rejected and thus Rs.71,040,132/- was added to the returned income.

9. Aggrieved by the order of AO, assessee carried the matter before the CIT(A). CIT(A) noted that the issue in the year under consideration is identical to that of A.Y. 2012-13 & 2013-14. He thereafter following the order of his predecessor for A.Y. 2012-13 & 2013-14, upheld the order of AO. Aggrieved by the order of CIT(A), assessee is now in appeal before us.

10. Before us, Learned AR reiterated the submissions made before the lower authorities and further submitted that during the A.Y. 2010-11, assessee had entered into an Asset Purchase Agreement (“APA”) dated 04.11.2009 and subsequent amendment thereto dated 01.03.2010 with American Express India Pvt. Ltd. to acquire the Global Travel Service Centre (“GTSC”) as a going concern for lump sum consideration (on slump sale basis) of Rs. 1,350 million. The aforesaid purchase consideration was allocated to identifiable assets and liabilities based on their book value and the difference between the purchase price (after working capital adjustments) and net value of acquired assets was recognized as ‘goodwill’, amounting to Rs. 76,97,89,365/- in the books of the assessee. He submitted that the depreciation on goodwill was disallowed by the AO in the draft assessment order for A.Y. 2010-11 but when the matter was carried before the DRP, the same was deleted. He further submitted that the Hon’ble Tribunal in

assessee's own case for A.Y. 2010-11 in ITA No. 302/Del/2015 and after relying on the decision of the Hon'ble Supreme Court in the case of CIT vs. Smifs Securities Ltd. (2012) 348 ITR 302 and Hon'ble Delhi High Court in the case of Areva T & D India Ltd. vs. DCIT (2012) 345 ITR 421 held that depreciation was admissible on 'goodwill' and thereby dismissed the Revenue's appeal. He submitted that the aforesaid order of Tribunal was followed in subsequent year i.e. A.Y. 2012-13, 2013-14 and 2015-16 by the Co-ordinate Bench of Tribunal. He pointed to the copies of the relevant order placed in the paper book. He thereafter submitted that CIT(A) had confirmed the addition made by the AO by following the order of his predecessor for A.Y. 2012-13 & 2013-14. He submitted that since in A.Y. 2012-13, the issue has already been decided in favour of the assessee by the Co-ordinate Bench of Tribunal, the allowance of depreciation cannot be disputed by the AO in subsequent years. He further submitted that Hon'ble ITAT while deciding the issue in favour of the assessee in A.Y. 2011-12 has noted that the issue is not new as the claim of the depreciation on the goodwill has already been allowed in A.Y. 2010-11 by the coordinate Bench of Tribunal. He therefore submitted that the issue being identical to that of earlier years, the claim of the assessee on depreciation be allowed.

11. Learned DR on the other hand supported the order of lower authorities.

12. We have heard the rival submissions and perused the materials available on record. The issue in the present grounds is with respect to disallowance of depreciation on Goodwill. The claim of depreciation was denied by the AO by following the order of his predecessor for A.Y. 2013-14. We find that the Co-ordinate Bench of Tribunal while deciding the issue in favour of the assessee on identical facts in A.Y. 2012-13 & 2013-14 & 2015-16 (ITA No.5435/Del/2017 and others) by relying on the order of the Co-ordinate Bench of Tribunal vide order dated 08.03.2021 has noted as under:

“13. Before us, the ld. counsel for the assessee vehemently stated that the disallowance of depreciation on good will made by the Assessing Officer in draft assessment order for A.Y 2010-11 was deleted by the DRP which was upheld by the Tribunal in ITA No. 302/DEL/2015. It is the say of the ld. counsel for the assessee that the ld. CIT(A) failed to give credence to the fact that the business was acquired on slump sale basis for Rs. 1334.15 million and out of the said total consideration, Rs. 476 million was to be received by the assessee from its parent company.

14. The ld. counsel for the assessee drew our attention to the relevant part of the financial statements of the assessee and pointed out that under Schedule IX of the financial statement for the year ending on 31.03.2010, an amount of Rs. 476 million has been shown under “Other Current Assets” to be read alongwith Note 4 to Schedule 18 to the financial statement. The ld. counsel for the assessee stated that this amount has been received by the assessee in the next F.Y.

15. Per contra, the ld. DR strongly supported the findings of the ld. CIT(A) and read the relevant observations of the first appellate authority.

16. We have given thoughtful consideration to the orders of the authorities below. At the very outset, we have to state that this is not the initial year of claim of depreciation. In our considered opinion, unless the claim is disturbed in the initial year of claim, subsequent years cannot be disturbed.

17. Most importantly, in earlier A.Ys, claim of depreciation has been allowed by the Tribunal in ITA Nos. 1482/DEL/2016 and 1708/DEL/2016. The relevant findings of the co-ordinate bench read as under:

“ 38. Ground number 2 of the appeal of the AO is against the disallowance of depreciation on goodwill amounting to 168,391,424 which resulted into on account of an asset purchase agreement dated 4/11/2009 and its subsequent amendment with American Express India private limited to acquire the global travel service centre as a going concern for a lump sum consideration. The fact shows that during the assessment year 2000 – 11 the assessee entered into an asset purchase agreement with American Express India private limited to acquire the global travel service centre as a going concern for a lump sum consideration of 1 350 million. The aforesaid consideration was allocated to an identifiable asset and liability based on the book value, and the difference between the purchase price and the net asset value of acquired asset was recognized as a goodwill amounting to 769,789,365 in the books of the assessee. It is required to be noted that this is not the first year of the claim of depreciation on goodwill. In fact, this is the second year of depreciation claimed by the assessee on the goodwill. The learned assessing officer disallowed the depreciation, which was deleted by the learned dispute resolution panel. It is apparent that in assessee's own case for assessment year 2010 – 11 in ITA number 302/del/2015 the coordinate bench relying on the decision of the honourable Supreme Court in CIT versus Smif securities Ltd (2012) 348 ITR 302 and the decision of the honourable Delhi High Court in case of Areva T & D India Ltd versus

Deputy Commissioner Of Income Tax (2012) 345 ITR 421 held that depreciation was admissible on goodwill amounting to 769,789,365 and dismissed the appeal of the revenue. The learned dispute resolution panel deleted the disallowance following its own direction issued in assessment year 2010 – 11. Therefore, the learned assessing officer is in appeal before us.

39. The learned departmental representative payment please submitted that for the purpose of the claim of the depreciation merely an accounting entry could not suffice. He submitted that there has to be an asset available with the assessee, which should be owned by the assessee. He submitted that it is merely an accounting entry which does not result into an asset automatically. He relied upon the order of the learned assessing officer.

40. The learned authorised representative submitted that the issue squarely covered in favour of the assessee by the decision of the coordinate bench for assessment year 2000 – 11 in ITA number 302/del/2015 at para number 74 of the order.

41. We have carefully considered the rival contention and perused the orders of the lower authorities. As stated by us earlier that this issue is not a new as the claim of the depreciation on the goodwill has already been allowed to the assessee in assessment year 2010 – 11 by the coordinate bench vide para”

18. It can be seen from the findings of the co-ordinate bench that it has respectfully followed the findings given in A.Y 2010-11. In A.Y 2010-11, in ITA Nos. 302/DEL/2015 and 615/DEL/2015, this issue was considered by the co-ordinate bench at para 65 and onwards of its order and the relevant findings of the Tribunal read as under:

“71. We have considered the submissions of both the parties and perused the material available on the record. In the present case, it is noticed that the ld.

DRP directed the AO to allow the depreciation on the goodwill by following the decision of the ITAT wherein the judgment of the Hon'ble Apex Court in the case of CIT Vs Smifs Securities Ltd. reported at 348 ITR 302 and the decision of the Hon'ble Jurisdictional High Court in the case of Areva T&D India Ltd. Vs DCIT reported at 345 ITR 421 has been followed. We, therefore, by considering the totality of the facts, do not see any valid ground to interfere with the findings given by the ld. DRP on this issue. As such do not see any merit in this appeal of the department on this issue."

19. Coming to the facts which have been considered by the Assessing Officer/ld. CIT(A), we find that in the balance sheet as on 31.03.2010, goodwill has been shown at Rs. 769 millions and under Schedule IX under the head "Other Current Assets" Rs. 476 million has been shown as asset held for sale at net book value or estimated net realisable value whichever is lower and in Notes to Account, the following has been mentioned:

"4. During the year, the Company acquired the operations of the American Express Global Travel Service Center, a business unit of American Express located in Gurgaon, India, that provides the travel-related business process outsourcing services to American Express, US, The effective date of acquisition was March 1, 2010.

The purchase price of the transaction was approximately Rs. 1,350 million. The purchase consideration was allocated to identifiable assets and liabilities based on their book value and the difference between the purchase consideration and the value of net identifiable assets acquired have been recognized as Goodwill for Rs. 769 million.

The purchase consideration includes Rs. 476 million in respect of customer relationships has been held for sale to ExlService Holdings. Inc. the ultimate parent company, which has been disclosed under other current assets.

The company also recognized deferred tax assets on account of timing differences on liabilities assumed on acquisition.”

20. From the above facts, it can be seen that Rs. 476 million was never considered for claim of depreciation on good will. Considering the facts in the light of judicial decisions and most importantly, keeping in mind that this is not the initial year of claim of depreciation, we do not find any merit in the disallowance made by the Assessing Officer and upheld by the ld. CIT(A). We, accordingly, direct the Assessing Officer to delete the disallowance in the captioned A.Ys. The common grievance is allowed in the captioned appeals.

13. Before us, Revenue has not pointed to any distinguishing feature in the facts of the case in the year under consideration and that of the earlier years. Revenue has also not placed any material on record to demonstrate that the ITAT orders in assessee's own case for earlier years has been stayed/ set aside/ overruled by higher judicial forum. We therefore, following the order of the Tribunal in assessee's own case for earlier years and for similar reasons hold that the AO was not justified in disallowing the claim of depreciation. We therefore direct the AO to delete the disallowance of depreciation. **Thus the ground of assessee is allowed.**

14. Ground No.3 and its sub grounds are with respect to disallowance u/s 14A of the Act.

15. During the course of assessment proceedings, AO on perusing the details furnished by the assessee noted that

assessee had earned dividend income of Rs.6,02,33,907/- which was claimed as exempt income. The assessee was asked to explain as to why the disallowance u/s 14A r.w.r 8D of the Act should not be made to which assessee *inter alia* submitted that it had made investment in the mutual funds, namely ICICI Prudential Plan and Birla Sunlife Mutual Fund and had earned dividend on daily basis from such investment. It was further submitted that since the daily dividend was reinvested in the same mutual funds on a daily basis automatically, it did not incur any direct expenses for making and maintaining the investments and earning exempt dividend income. It was further submitted that no indirect expenses have been incurred by the assessee for earning the exempt income. Assessee further submitted that it had not incurred any expenditure by way of interest for the purpose of earning exempt income. The submissions of the assessee was not found acceptable to AO. AO was of the view that it was unbelievable that for earning an income of Rs.6,02,33,907/-, no expenditure was incurred by the assessee. He also noted that assessee had not maintained separate books of account for such investment and expenses related to the income therefrom. He thereafter by applying the methodology prescribed under Rule 8D worked out the disallowance u/s 14A of the Act at Rs.32,33,346/- and disallowed the same. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who upheld the order of AO. Aggrieved by the order of CIT(A), assessee is now in appeal before us.

16. Before us, at the outset, Learned AR submitted that identical issue arose in assessee's own case for A.Y. 2011-12, 2012-13, 2013-14 & 2014-15 and the disallowance was deleted by Tribunal. He thereafter reiterated the submissions made before the lower authorities and further submitted that the AO without pointing out any specific expenses having nexus with the investment in shares/ mutual funds or earning of exempt income therefrom had mechanically invoking the provisions of Rules 8D r.w.s 14A of the Act. He submitted that the provisions of Section 14A of the Act are not applicable as no satisfaction was recorded by the AO having regard to the accounts of the assessee, which is mandatory and for the aforesaid proposition he relied on the decision rendered by the Hon'ble Apex Court in the case of Godrej & Boyce Manufacturing Company Ltd. v. DCIT 394 ITR 449 (SC), Maxopp Investment Ltd. vs. CIT 347 ITR 272 - affirmed by Supreme Court in 402 ITR 640 and HT Media Ltd. vs. Pr. CIT 399 ITR 576 (Del). He thereafter submitted that on identical facts in A.Y. 2011-12, the Co-ordinate Bench of Tribunal deleted the disallowance by holding that in the absence of any satisfaction recorded by the AO with respect to the examination of the books of account of the assessee to verify the correctness of the claim of the assessee, the disallowance u/s 14A cannot be sustained. He pointed to the relevant observations of the Tribunal, the copy of which placed in the paper book. He therefore submitted that the facts being identical to that of earlier years, the disallowance made by the AO be deleted.

17. Learned DR on the other hand supported the order of lower authorities and further submitted that the AO has indeed recorded a satisfaction with respect to correctness of claim of the assessee of having not incurred any expenditure. She thus supported the order of lower authorities.

18. We have heard the rival submissions and perused the materials available on record. The issue in the present grounds is with respect to the disallowance u/s 14A r.w.r 8D of the Act. AO while disallowing the expenses had noted that it was not believable that for earning exempt income of Rs.6 crore, no expenditure was incurred by the assessee. We find that identical issue of disallowance u/s 14A of the Act arose in assessee's own case in A.Y. 2012-13 & 2013-14 (ITA Nos. 5435/Del/2017 and others) and the Co-ordinate Bench of Tribunal vide order dated 08.03.2021 has noted as under:

“21. Second common grievance relates to disallowance made u/s 14A r.w.r 8D of the Rules.

22. We are taking the facts for A.Y 2012-13 in which year the assessee earned dividend income of Rs. 3,70,22,149/- from investments held in mutual funds which was claimed to be exempt u/s 19(34) of the Act. The investments are in mutual funds namely, ICICI Prudential Plan, Birla Sunlife Cash Plus Institutional Plans and HDFC Mutual Fund and earned dividend on daily basis on such investment.

23. The Assessing Officer straightaway applied Rule 8D of the Rules invoking provisions of section 14A of the Act mechanically and made the impugned disallowance.

24. The ld. CIT(A) upheld the findings of the Assessing Officer following the order of the DRP for A.Y 2010-11.

25. Before us, the ld. counsel for the assessee stated that such disallowances were deleted by the Tribunal in earlier A.Ys. It is the say of the ld. counsel for the assessee that investments are only in mutual funds from which dividend is received on daily basis and simultaneously the sum is reinvested. The ld. counsel for the assessee vehemently stated that no satisfaction was recorded by the Assessing Officer having regard to the accounts of the assessee which is mandatory as held by the Hon'ble Supreme Court in the case of *Godrej Boyce* 394 ITR 449 and *Maxopp Investment* 402 ITR 640.

26. The ld. counsel for the assessee referred to the order of the Tribunal in A.Y 2011-12 in ITA No. 1482 and 1708/2016 order dated 26.08.2020 and stated that such disallowance was deleted by the Tribunal as no satisfaction was recorded by the Assessing Officer with respect to the examination of books of account.

27. Per contra, the ld. DR strongly supported the orders of the authorities below. It is the say of the ld. DR that the Assessing Officer has only applied the third limb of Rule 8D of the Rules and has made disallowance of only 0.5% of the average investment which is reasonable.

28. We have given thoughtful consideration to the orders of the authorities below. A perusal of the assessment order shows that no satisfaction was recorded by the Assessing Officer with respect to the examination of the books of account. While making disallowance, the Assessing Officer observed that "It is unbelievable that for earning income of Rs. 3.70 crores, no expenditure was made by the assessee". There is not even a whisper of examination of books of account of the assessee to verify the correctness of the claim of the assessee that no expenditure was incurred for earning exempt income.

29. On similar facts, the Tribunal in A.Y 2011-12 has deleted the disallowance in ITA No. 1482 & 1708/DEL/2016 order dated 26.08.2020. The relevant findings read as under:

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22. Ground number 10 of the appeal of the assessee is against the disallowance of 1,252,630 u/s 14A read with

rule 8D of the income tax rules. The fact shows that during the year the appellant has earned a dividend income of RS. 1 86,74,678 from investment held in mutual funds which was exempt u/s 10 (34) or (35) of the income tax act. The details of the above dividend income show that assessee has earned such dividend income on mutual funds of liquid plan, cash plus plan and other mutual funds. The learned assessing officer noted that it is unbelievable that no expenditure was incurred by the appellant in earning such income and made disallowance of 1,252,630 being 0.5% of the average value of investment related to the tax free income in terms of Section 14 A of the act by invoking the provisions of rule 8D (iii) Of the income tax rules. The learned dispute resolution panel on objection before it followed its own order for assessment year 2010 – 11 and upheld the findings of the learned assessing officer.

23. The learned authorized representative challenged the above addition on the fact that no satisfaction was recorded by the assessing officer having regard to the accounts of the assessee, which is mandatory. He relied upon the several judicial precedents for the proposition. He further submitted that appellant has earned dividend from investment in mutual fund only and mutual funds are required to pay dividend distribution tax on dividends distributed and only the net income has been received as dividends by the appellant. He further stated that mutual funds are covered by SEBI rules and charge fund management charges. Out of the income earned by the fund the fund management charges are deducted and net income is available for distribution to unit holders. He therefore submitted that during the year under consideration the assessee has received only the net income of Rs 186,74,678 after deduction of such fund management charges. He further stated that no effort/ time was utilized in receiving the dividend income and the investment activity only requires filing of mutual fund standard printed requisition forms and issue of cheques. The dividend on maturity proceeds are straightway credited to the appellant's bank account. In the end, it was submitted that the coordinate bench in assessment year 2010 – 11 has set aside the matter to the file of the learned assessing officer.

24. The learned departmental representative vehemently supported the orders of the lower authority and submitted that the learned assessing officer has recorded proper satisfaction therefore the argument of the learned authorised representative that no satisfaction has been recorded is devoid of any merit. It was further stated that the learned AO has merely computed disallowance being 0.5% of the average value of the investment. He otherwise submitted that even the minimum activities that as stated by the learned authorised representative also deserves to be considered for making the disallowance and the only option left with the learned assessing officer is to invoke the provisions of rule 8D of the income tax rule for disallowance u/s 14 A of the act. He therefore submitted that no fault could be found with the orders of the lower authorities.

25. We have carefully considered the rival contention and perused the orders of the lower authorities. On careful perusal of the assessment order, it is found that in para number seven of the assessment order the learned assessing officer noted that assessee has earned dividend income of Rs. 186,74,678, which did not form part of the total income. On the basis of this the learned assessing officer straightway asked the assessee to explain as to why the disallowance u/s 14 A read with rule 8D should not be made. The assessee submitted its reply on 6th January 2015 stating that the assessee has not incurred any expenditure in relation to the earning of such exempt income. The learned assessing officer in para number 7.2 held that it is unbelievable that for earning an income of 1.86 crores no expenditure was made by the assessee. He noted that it is pertinent that the assessee has not provided the details of such expenses as are directly attributable to and which are necessarily required for making / maintaining investment in shares and mutual funds and earning there from. Therefore, he held that he is not satisfied with the correctness of the claim of the assessee that no expenditure has been incurred in respect of such expenditure in relation to income, which does not form part of the total income under this act. Thereafter he proceeded to compute the disallowance applying the provisions of rule 8D and computed such disallowance at 1,252,630. On careful consideration of the reasons given by the learned assessing officer we do not

find any satisfaction with respect to the books of accounts maintained by the assessee that assessee has incurred any expenditure with respect to the earning of exempt income. In view of this, according to us, the learned assessing officer has failed to record any satisfaction with regard to the correctness of the claim of the assessee that it has not incurred any expenditure. The learned assessing officer did not cite any of the expenditure in the profit and loss account of the assessee, which is incurred by the assessee for earning of the exempt income. The satisfaction of the learned assessing officer as provided Under subsection 2 of Section 14 A of the income tax act is a preliminary requirement for invoking the provisions of rule 8D of the income tax rules for making a disallowance u/s 14 A of the act. Therefore, in absence of any satisfaction recorded by the learned AO with respect to the examination of the books of account of the assessee to verify the correctness of the claim of the assessee, the disallowance u/s 14A cannot be sustained. Accordingly we direct the learned assessing officer to delete the disallowance of 1,252,630 made u/s On the given facts of the case in hand and respectfully following the findings of the co-ordinate bench, we direct the Assessing Officer to delete the disallowance made u/s 14A of the Act r.w.r 8D of the Rules.”

30. Since we have already deleted the disallowance u/s 14A of the Act in normal computation of total income, we direct the Assessing Officer to delete the above addition while calculating the book profit u/s 115JB of the Act. This common grievance in all the appeals is allowed.”

19. We find that facts of the case in the year under consideration are identical to that of the earlier years. Further no distinguishing feature in the facts of the case in the year under consideration and that of the earlier years has been pointed out by the Revenue. Before us, Revenue has also not placed any material on record to demonstrate that the ITAT orders in assessee's own case for earlier years on identical issue has been

stayed/ set aside/ overruled by higher judicial forum. We therefore, following the order of the Tribunal in assessee's own case for earlier years and for similar reasons hold that the AO was not justified in disallowing the expenses u/s 14A r.w.r 8D of the Act. We therefore direct the AO to delete the disallowance of expenses. **Thus the ground of assessee is allowed.**

Now we take up additional ground:

20. Before us, Learned AR submitted that assessee in the return of income did not claim deduction for the education cess paid amounting to Rs.70,98,828/- before the due date of filing return of income. He submitted that Hon'ble Rajasthan High Court in the case of Chambal Fertilisers and Chemicals Ltd. vs. JCIT D.B ITA No.52/2018, vide order dated 31.07.2018 has held that education cess is an allowable deduction while computing the income under the head "profits and gains from business or profession" as it does not fall within section 40(a)(ii) of the Act. He further submitted that identical issue arose in assessee's own case for A.Y. 2012-13, 2013-14 and 2015-16 in ITA Nos. 8452/Del/2019, 5435 & 5436/Del/2017 wherein the Co-ordinate Bench of Tribunal allowed the additional ground raised in this regard and directed the AO to allow claim of deductibility of cess as deductible business expenditure. He pointed to the copy of relevant order placed at Page No.49. He therefore submitted that by following the order of Tribunal on identical facts in assessee's own case in earlier years, the grounds be allowed.

21. Learned DR on the other hand did not controvert the submissions made by the Learned AR.

22. We have heard the rival submissions and perused the materials available on record. The issue in the present additional ground is with respect to claim of deduction of Rs.70,98,828/- on account of payment of education cess. We find that identical issue arose in assessee's own case and the Co-ordinate Bench of Tribunal decided the issue in favour of the assessee by observing as under:

“33. By way of additional ground, the assessee has claimed deductibility of education cess.

34. Before us, the ld. counsel for the assessee stated that in the return of income filed for relevant A.Ys, the assessee did not claim deduction for education cess paid before the due date for filing return of income for subject A.Ys It is the say of the ld. counsel for the assessee that the Hon'ble Rajasthan High Court in the case of Chambal Fertilizers and Chemicals Limited in ITA No. 52/2018 order dated 31.07.2018 has held that education cess is an allowable deduction while computing the income under the head “Profits and gains from profession or business”.

35. Even the CBDT, in its Circular No. 91/58/66-ITJ(19) dated 18.05.1967 has clarified that the word “Cess” has been omitted from clause and effect of omission of the word “Cess” is that only taxes paid are to be disallowed in the assessments for the years 1961-63 onwards.

36. In light of the decision of the Hon'ble Rajasthan High Court [supra] we direct the Assessing Officer to allow claim of deductibility of cess from the income in the captioned A.Ys. Additional ground in all the appeals is allowed.”

23. We find that facts of the case in the year under consideration are identical to that of the earlier years. Further no distinguishing feature in the facts of the case in the year under consideration and that of the earlier years has been pointed out by the Revenue. Before us, Revenue has also not placed any material on record to demonstrate that the ITAT orders in assessee's own case for earlier years on identical issue has been stayed/ set aside/ overruled by higher judicial forum. We therefore, following the order of the Tribunal in assessee's own case for earlier years and for similar reasons direct the AO to allow the claim of deductibility of cess amounting to Rs.70,98,828/-. **Thus the ground of the assessee is allowed.**

24. **In the result, appeal of the assessee is partly allowed.**

Order pronounced in the open court on 06.09.2021

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 06.09.2021

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI