IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I-1" NEW DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
PRASHANT MAHARISHI, ACCOUNTANT MEMBER

I.T.As. No.5940 & 5941/DEL/2017
Assessment Years 2012-13 & 2013-14

Addl. CIT, Special Range-03, New Delhi.	v.	DLF Ltd., DLF Centre, Sansad Marg, New Delhi.
TAN/PAN: AAACD3494N		
(Appellant)		(Respondent)

Cos. No.5 & 6/DEL/2021
Assessment Years 2012-13 & 2013-14

DLF Ltd., DLF Centre, Sansad Marg, New Delhi.	v.	Addl. CIT, Special Range-03, New Delhi
TAN/PAN: AAACD3494N		
(Appellant)		(Respondent)

Appellant by:	Shri Surender Pal, CIT-DR		
Respondent by:	S/Shri R.S. Singhvi & Satyajeet Goel, CA		
Date of hearing:	19	07	2021
Date of pronouncement:	10	09	2021

O R D E R

PER AMIT SHUKLA, A.M.

The aforesaid appeal has been filed by the revenue against order dated 20.06.2017, passed by Ld. CIT (A)-3, New Delhi for the quantum of assessment for the AY 2012-13. The assessee has filed cross-objection involving solitary issue.

2. The Revenue has raised following **grounds of appeal**:

1) "Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs. 2,04,73, 12,536/- made by the AO on account of revenue recognition as per POCM."

2) "Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case the addition of Rs.1,52,63,41,000/- made by the AO on account of capitalization of the interest."

3) "Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs. 2,21,32,624/- made by the AO on account of brokerage and commission."

4) "Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs. 38,08,6241- made by the AO on account of net interest free security deposit."

5) "Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs. 6, 78,81,157/-made by the AO on account of non-allocation of proportionate over head expenditure to other group entities."

6) "Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case by restricting the addition of Rs. 2,77,16,42, 129/- made by the AO to Rs.6,61,871/- u/s 14A."

7) "Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs. 18,67,82,2877- made by the AO on account of treating the business income as 'Income from the House Property."

8) "Ld. Commissioner of e case in deleting the addition of Rs. 5,27,018/- made by the AO on account of notional rent on the properties lying vacant during the year."

9) "Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs.4,45,732 - made by the AO on account of depreciation."

10) "Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs. 44,58,450/- made by the Ao on account of expenditure pertaining to the prior period."

11) "Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs.23,11,00,3671- made by the AO on account of personal in nature."

12) "Ld Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs. 1,59,02,00,000/- made by the AO on account of notional interest from the subsidiaries.

13) "Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs. 14,64,00,000/- made by the AO on account of short non-allocation of proportionate overhead expenditure to windmills at Gujarat and Karnataka."

14) "Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs. 9,52,53,136)- made by the AO on account of carbon credits which is claimed by the company."

15) "Ld. Commissioner of Income Tax (Appeals) erred in law and on the facts of the case in deleting the addition of Rs. 2,48,86,268/- made by the AO on account of adjustment towards Arm's Length Price."

3. On the other hand, the **cross-objection** of the assessee is as under:

1a. That learned CIT(A) has grossly erred in law and on the facts and in the circumstances of the appellant's case in confirming the net addition ofRs.6,80,874/- [i.e. after allowing standard deduction @ 30% on gross addition ofRs.9,72,677/- which works out toRs.2,91,803/-) made by the Assessing Officer on account of notional rent where security deposits were received from the tenants but no rental income has been received by the appellant.

1b. That learned CIT(A) has grossly erred in law and on the facts in not appreciating the fact that the taxable income means real income and not a fictional income.

4. On the date of hearing, the Ld. Counsel Sh. R.S. Singhvi, CA appearing for the assessee filed ground-wise chart and submitted that most of the issues involved in the appeal are squarely covered by the decision of Coordinate bench in assessee's own case in preceding years. It was further, submitted that except ground No. 13 and 15 of the appeal which are new issues, all the other grounds are fully covered in favour of assessee.

5. The Ld. CIT DR did not dispute the factual position. However, he submitted that where the facts and basis of disallowance/addition is same, the orders of coordinate bench may be followed. Further, the Ld. DR advanced arguments in respect of Ground 6,11 and 15 involving issue of disallowance u/s 14A, disallowance of expense on personal nature and transfer pricing adjustment u/s 92C respectively. With regard, to ground no. 13, he relied upon the assessment order and supported the action of the assessing officer.

Firstly, we are taking up appeal filed by the revenue.

6.1 Ground No. 1 is against deletion of addition on account of revenue recognition from construction project as per Percentage of Completion Method (POCM). The assessing officer has considered the addition on the basis of observation of Special Auditor in AY 2009-10 wherein it was pointed out that appellant company has changed the method for apportionment of internal development charges from FY 2008-09. As per the new method, the internal development charges incurred upto the end of a particular year is charged on total saleable area including un-launched area whereas upto FY 2008-09, the IDC was charged only to area pertaining to launched project. The assessing officer on the basis of finding recorded in assessment order passed for AY 2011-12, made addition of Rs. 204,73,12,536/- on account of understatement of profit due to change in POCM method.

6.2 The First appellate authority vide finding recorded at Page 16-24 Para 8.1 to 8.2 deleted the addition after observing that this very issue has been decided in preceding years from AY 2006-07 to 2011-12. It was concluded by CIT(A) that since there was increase in Saleable area of Phase-V, Gurgaon project after requisite approval from local authorities, the assessing officer was not justified in restricting the apportionment of IDC only to previously launched area and rework the profit under POCM method.

6.3 We have considered the orders of the sub-ordinate authorities and find that the basis of addition in the year under reference is identical to that in preceding years. In fact, the assessing officer himself has followed the observation of Special Auditor in AY 2009-10 and finding recorded in the assessment order for AY 2011-12. As the issue of reworking of profit under POCM on the basis of re-apportionment of IDC has been decided by the Coordinate bench in preceding years, the same is decided as per the table given in **19** of this order.

7.1 Ground No. 2 is against deletion of disallowance of interest expenses of Rs. 152,63,41,000/- on account of capitalization of the same. The assessing officer capitalized part claim of interest on the reasoning that interest expenses on fixed period loans cannot be fully allowed and is allowable in proportion to revenue recognized from various projects. The disallowance and capitalization of interest was computed as per formula suggested by Special Auditor in preceding years.

7.2 The CIT(A) after referring to order of first appellate authority in AY 2009-10 and ITAT order for AY 2006-07 deleted the addition vide finding recorded at Page 46 Para 10.1.

7.3 We have perused the assessment order and the impugned order before us. It is noted that the issue of capitalization of interest is a recurring issue and has been extensively dealt with first appellate authority and Coordinate bench in favour of assessee in preceding years wherein it has been held that notional capitalization of interest is not permissible particularly when the assessee has already capitalized interest pertaining to projects under execution. There is nothing on record to show that facts and the basis of disallowance in the year under consideration is different from that in preceding years. As the issue of capitalization of interest has been decided by the Coordinate bench in preceding years, the same is decided as per the table given in para 19.

8.1 Vide **Ground No. 3**, the revenue is aggrieved by the order of CIT(A) deleting disallowance of brokerage expense amounting to Rs. 2,21,32,083/-. The assessing officer considered the disallowance on the ground that brokerage paid by the assessee should have been linked with each project and transferred to WIP and recognized as per POCM method.

8.2 The CIT(A) deleted the addition on the basis of order of Coordinate bench in assessee's own case for AY 2006-07 and finding recorded by his predecessor in AY 2009-10.

8.3 We have considered the issue in hand. The action of assessing officer in treating brokerage as part of cost under POCM method has been deprecated by the Coordinate bench in orders passed for AY 2006-07 to 2011-12 wherein it has been held that brokerage expenses are allowable in the year of incurring and same cannot be associated with construction cost. It has been stated by Ld. AR that the deletion of disallowance in AY 2006-07 by Coordinate Bench has been accepted by the revenue and no further appeal has been filed before High Court on this issue. In fact, the assessing officer has accepted the claim in AY 2016-17.
As this ground is subject matter of adjudication by the Coordinate bench in preceding years, the same is decided as per the table given in **para 19** of this order.

9.1 Ground No. 4 is directed against deletion of addition of Rs. 38,08,624/- on account of net interest free maintenance security deposits. The assessing officer vide finding recorded at Para 4.5 and 4.6 of the assessment order was of the opinion that maintenance charges collected by the assessee is in the nature of income.

9.2 The first appellant authority deleted the addition after following the CIT(A) order for AY 2009-10.

9.3 We have considered the entire facts and perused the orders of lower authorities. It is noted that the assessee is collecting interest free maintenance security deposit from customers for meeting out future liabilities such as insurance premium and maintenance charges of the buildings. The amount so collected is handed over to resident association/Condominium association upon formation and are shown as liability in the books of account. Further, it is noted that the issue of maintenance and security deposit is a recurring issue where the assessing officer is making addition year after year and the matter has travelled before Coordinate bench in successive preceding years wherein the addition stood deleted. It has been stated by Ld. AR that the deletion of identical disallowance in AY 2006-07 by Coordinate Bench has been accepted by the revenue and no further appeal has been filed before High Court on this issue. In fact, the assessing officer has accepted the claim in AY 2016-17.

As this issue is covered in favour of assessee by orders of Coordinate bench, the same is decided as per the table given in **para 19** of this order.

10.1 **Ground No. 5** is against deletion of disallowance of expenses towards allocation of overheads to other group entities. The assessing officer has considered the disallowance of Rs. 6,78,81,157/- after making allocation of overhead expenses claimed by the assessee to group concerns namely M/s. DLF Infocity Developers (Chennai) Ltd. and M/s. DLF

Cyber City Developers Ltd. The allocation of expense and consequential disallowance is wholly on the basis of assessment order passed for AY 2006-07 to 2011-12 which is evident from Para 5.1 of the assessment order.

10.2 In the impugned appellate order, the CIT(A) deleted the addition by following the reasoning given in order of CIT(A) in preceding years i.e. AY 2006-07 to 2011-12 as well as order of ITAT in assessee's own case of AY 2006-07.

10.3 On careful perusal of the facts, we find that the basis adopted by the assessing office while making disallowance of expenses in the hands of the assessee on account of allocation of overheads to group concerns is static and borrowed from earlier years assessment orders. Further, as this issue has already been decided by Coordinate bench in AY 2006-07 to 2011-12 wherein the disallowance was deleted. On parity of facts, this ground is also decided as per table given in **para 19** of this order.

11.1 Ground No. 7 is regarding deletion of addition of Rs. 186,782,287/- by reclassifying income offered to tax under the head Income from House Property to Income under head Business and Profession. As per the questionnaire reproduced at Page 60 Para 7.11 of the assessment order, the reclassification has been done in line with assessment order for AY 2006-07 to 2011-12. The assessing officer is of the view that rental income earned on properties shown as stock

under current asset is assessable as business income and not income from house property.

11.2 The CIT(A) concurred with order of CIT(A) passed in appeal for preceding years and ordered the deletion of addition.

11.3 We have considered the assessment order, order of CIT(A) and order passed by Coordinate Bench in preceding years. We find that this issue has been dealt with by Coordinate bench in AY 2005-06 to 2011-12 wherein the addition was deleted by holding that lease income from asset lying under current asset is also assessable under the head Income from House Property. Accordingly, this ground is also decided as per table given in **para 19** of this order.

12.1 Ground No. 8 is against deletion of addition of Rs. 5,27,018/- made on account of rent on properties lying vacant during the year under reference. The assessing officer on the basis of view taken in AY 2006-07 to 2011-12, made addition of notional rent in respect of properties listed at Page 64 of the assessment order.

12.2 The addition so made was deleted by CIT(A) on the ground that similar addition made in preceding years was deleted based on detailed reasoning.

12.3 We have gone through the facts of the case and orders passed by assessing officer and CIT(A). It is not in dispute that addition in the year under reference is based on assessment order for AY 2006-07 to 2011-12 and has come up for consideration before Coordinate bench. Further, the Ld. Counsel for the assessee has submitted that that the deletion of identical addition in AY 2006-07 by Coordinate Bench has been accepted by the revenue and no further appeal has been filed before High Court on this issue. In fact, the assessing officer has not made any addition on this issue in AY 2016-17.

As this issue is covered in favour of assessee by orders of Coordinate bench, the ground is decided as per the table given in **para 19** of this order.

13.1 Ground 9 is directed against order of CIT(A) deleting disallowance of depreciation of building DLF Centre to the tune of Rs. 4,45,732/- u/s 32 of the Act. The assessing officer made the disallowance on the basis of observation of Special auditor relevant for AY 2006-07 as per which WDV of the property was calculated as on 01/04/2005 after reducing notional depreciation from 01/04/1999 to 31/03/2005. The initial disallowance of depreciation was in AY 2006-07 and thereafter every year on the basis of reduced WDV.

13.2 The CIT(A) deleted the disallowance in AY 2006-07 and the revenue accepted the order of CIT(A) on this issue

and did not prefer appeal before ITAT. However, in AY 2007-08 this issue came for consideration before Coordinate bench for the first time wherein vide order dated 01/11/2017 in ITA No. 4342/D/12 the disallowance of depreciation was deleted as per finding recorded in Para 151. Further, the Ld. Counsel submitted that the assessing officer has accepted the claim of depreciation on DLF Centre building in AY 2016-17 and no disallowance was made.

13.3 As the issue of depreciation is recurring issue based on recalculated WDV and same having been decided by Coordinate bench in preceding years, this ground is also decided as per table at **para 19** of this order.

14.1 Ground No. 10 of the appeal is against deletion of disallowance of expense to the extent of Rs. 44,58,450/- on ground of prior period expenses. The assessing officer on the basis of tax audit report noted that claim of various expenses enumerated at Page 79 Para 11.2 of the assessment order pertains to earlier years and hence not allowable in the year under reference.

14.2 The CIT(A) vide finding recorded at para 18.1 held that liability in respect of claim of expenses crystallized during the year under reference and merely because the expense relates earlier year would not affect the admissibility of the claim.

14.3 We have considered the orders passed by sub-ordinate authorities. It is noted that assessing officer has primarily relied upon reporting in tax audit report and there is no finding with regard to actual nature of expenses so disallowed or whether the liability towards the same crystallized in the year under consideration. On perusal of assessment order, it is observed that expenses disallowed are of routine nature for example advertisement, insurance, travelling and conveyance, legal & professional, sales promotion, repair and maintenance etc.. The genuineness of these expenses is not in dispute. Further, the CIT(A) has given a clear finding that liability to pay expenses has accrued/arose during the year and as such the same are allowable. Moreover, these expenses are settled in the year under consideration. In these circumstances, we find no convincing reasons to interfere with the order of CIT(A) setting-aside the disallowance. In fact, on similar facts, the coordinate bench has considered similar issue and deleted the disallowance in AY 2006-07 to 2011-12 and as such this ground is decided as per table given at **Para 19** of this order.

15.1 Ground No. 11 of the appeals related to claim of expenses towards running and maintenance of Helicopter and aircraft to the tune of Rs. 23,11,00,367/-. The assessing officer while referring to assessment order for AY 2010-11 and 2011-12 made the disallowance on the ground that aircraft and helicopter have been used for personal purposes and

accordingly estimated ad-hoc disallowance @ 66.67% of the total expenses relating to aircraft and helicopter including depreciation.

15.2 The CIT(A) after placing reliance on the judgement of Hon'ble Delhi High Court in the case of Dalmia Cement (Bharat) Ltd. 254 ITR 377 held that assessing officer cannot question the reasonableness of the expenditure incurred for the purpose of business. On the basis of decision of Hon'ble Gujarat High Court in the case of Sayaji Iron and Engg. Co 253 ITR 749I, it was further held that assessee is a public ltd. company and being a distinct assessee, there cannot be a case of disallowance of expenses on account of personal expense. If the expenses are incurred for the purpose of Director or employees of the company, the same are allowable.

15.3 We find that this issue came for up consideration before Coordinate bench in AY 2010-11 and 2011-12 wherein the disallowance of expenses relating to aircraft and helicopter on the ground of personal expense was deleted. The finding of Coordinate bench in ITA No. 4793/D/15 relating to AY 2010-11 is reproduced hereunder:

> *4. Ground number 16 and 17 of the appeal is with respect to the disallowance of expenses not incurred wholly and exclusively for business purposes amounting to ₹ 49,629,551 and operational expenditure of ₹387,449,073/–. This issue has been raised by the learned assessing officer wherein he disallowed the expenditure of the above sum considering the*

same as a personal in nature and disallowed 66.6% of the expenditure amounting to ₹ 387,449,073 on the maintenance of the aircraft and helicopter observing that assessee has not proved business expediency of the expenditure and those expenditure appeal to be personal in nature. The learned CIT – A has dealt with this issue at para number 23 of his order at page number 177 – 196 noting that assessee is engaged in the business of development of real estate and it is one of the largest realistic developer in the field of colonization and township developments all over the country the procurement of the various material is source from the various countries across the globe. The company takes technical assistance/know-how from the repeated technical consultants globally. The company requires two flights directors, senior executives, ingenious and consultants both on its rolls and hired in India and abroad which various project sites located all over the country. Due to the frequency of such transportation the company deemed it fit to acquire the aircraft and helicopter rather than only hire such services. Therefore the expenditure on maintenance and operation of the helicopter and aircraft and chartering of aircraft and other routine expenditure were expended for the purposes of the business. It was further held by him that assessee is a public limited companies are distinct assessable entity as per the definition of person u/s two (31) of the act therefore it cannot be stated that the expenditure identified as expended by the directors and other employees of the company is personal in nature because of the limited company is an in animated person and there cannot be anything personal about such an entity. He further followed the decision in case of Sayaji Iron

and engineering Co Ltd 253 ITR 749 and deleted the addition/disallowance. The learned departmental representative could not show us any reason to state that the expenditure incurred by the assessee on such travel expenditure of aircraft and helicopter can be considered as a personal expenditure of a company. There were no contrary decision is pointed out before us. In view of this we do not find any infirmity in the order of the learned CIT(A) in deleting the above disallowance. Accordingly ground number 16 and 17 of the appeal of the learned assessing officer is dismissed.

As the basis of disallowance in the present appeal is same as that in AY 2010-11 and respectfully following the order of Coordinate bench, this ground is decided as per table at **para 19** of this order.

16.1 Ground No. 12 is against deletion of addition of interest of Rs. 1,59,02,000/- by the CIT(A). The assessing officer vide para 13.3 and 13.4 of the assessment order has observed that rate of interest charged by the assessee company on loans advanced to group concerns is less than that paid to financial institutions and banks. The assessing officer worked out the interest short charged from the group concerns on proportionate basis and accordingly made addition in the hands of the assessee.

16.2 The assessee succeeded before CIT(A) who deleted the addition as per finding record at Para 20.1 of the impugned order. The CIT(A) relied upon the decisions of Apex

Court in the case of S.A. Builders 288 ITR 1 and M/s. Taparia Tools 372 ITR 605 (SC) while holding that assessing officer was not empowered to make addition of notional interest.

16.3 We have considered the assessment order and order passed by CIT(A). The issue under consideration is addition of interest over and above what has been charged by the assessee on loans given to group concerns on the ground that the interest so charged is less than that charged by the banks/financial institutions on loans taken by the assessee. We find that there is no provision in the Income tax Act which warrants addition of interest on notional basis and as such the order of CIT(A) deleting the addition is well reasoned. In fact, it is not the case of the assessing office that money borrowed from the banks and its subsequent utilization is not for the purpose of business and as such we see no rationale behind charging of additional interest on notional basis on money advanced to group concerns. We further find that this very issue has came up for consideration before Coordinate bench in assessee's own case for AY 2010-11 in ITA No. 4793/D/15 wherein the addition was deleted as per following finding:

> *26. The issue before us that the learned assessing officer has made the addition of ₹ 693,100,000 on account of short charging of interest from the subsidiaries and further disallowed a sum of Rs 455,15,030 on account of not charging of interest on loans given to related parties for business purposes. The main reason for the disallowances that the*

assessee has given funds borrowed at a higher rates from financial institution and banks to group entities at lower rates which is distorting the correct taxable profits of the company. Therefore the learned assessing officer computed the disallowance of ₹ 69.31 crores. The learned CIT appeal noted that the order of the assessment passed by the assessing officer wherein it has been held that the company is close to its subsidiaries at the rate of 6.5% in most of the cases and 12 – 14% in case of some of the advances. The company has taken loan from the banks and other financial institution where the weighted average interest cost is 9 – 9.5 % and therefore the disallowance has been made. He deleted the disallowance holding that in the instant case the learned assessing officer has not raised the question regarding the capital borrowed for the purposes of the business. The only objection is that the borrowing is at the rate higher than the amount of interest charged from its subsidiaries. He deleted the disallowance relying on the decision of the honourable Supreme Court in case of SA builders (288 ITR 1) and M/s Taparia Tools V JCIT wherein he noted that the honourable Supreme Court has observed that while examining the allowability of deduction of the interest the AO is required to consider the genuineness of the business borrowing and that the borrowing was for the purposes of the business and not an illusionary and colourable transaction. Once the genuineness of the borrowing is proved and the interest is paid on the borrowing it is not within the powers of the learned assessing officer disallowed the deduction either on the ground that the rate of interest is unreasonably high of that the assessee had himself charged the lower rate of interest on the money which

it has advanced. The learned departmental representative could not controvert the above finding of the learned CIT – A. In view of this, we confirm the order of the learned CIT – capital and dismiss ground number 18 and 19of the appeal.

Respectfully following the order of Coordinate bench and taking the consistent view, we uphold the order of CIT(A) deleting the addition. The Ground No. 12 is decided as table at **Para 19** of this order.

17.1 Ground No. 14 is directed against deletion of addition of Rs. 9,52,53,136/- made on account of income from sale of carbon credits by treating the same is revenue receipt. The assessee has claimed that carbon credits are in the nature of capital receipt not taxable under the I.T. Act.

17.2 The CIT(A) deleted the addition by placing reliance on the decision of Hon'ble Andhra Pradesh High Court in the case of CIT v. My Home Power Ltd. 365 ITR 82 wherein it was held the income from sale of carbon credits is a capital receipt. The CIT(A) further made reference to decisions of Coordinate benches of ITAT.

17.3 We find that in assessee's own case for AY 2011-12 in ITA No. 4794/D/15, the Coordinate bench has decided this issue in favour of assessee on the basis of decision of Hon'ble Andhra Pradesh High Court in the case of My Home Power ltd. (Supra). The relevant finding is reproduced hereunder:

15. Ground number 19 of the appeal is with respect to the addition on account of carbon credits amounting to Rs. 122,34,040/–. The assessee has submitted that this issue is squarely covered in favour of the assessee by the decision of the honourable Andhra Pradesh High Court in Commissioner of income tax versus my home Power Ltd 365 ITR 82. Assessee has claimed the above sum as a capital receipt whereas the learned assessing officer has made the addition on the ground that the decision of the coordinate bench in case of my home Power Ltd dated 2November 2012 has not been accepted by the revenue and is further challenged. Now we find that above decision has been confirmed by the honourable Andhra Pradesh High Court in [2014] 46 taxmann.com 314 (Andhra Pradesh)/[2014] 225Taxman 8 (Andhra Pradesh) (MAG.)/ [2014] 365 ITR 82 (Andhra Pradesh)/[2015]276 CTR 92 (Andhra Pradesh wherein it has been held that:-

"3. We have considered the aforesaid submission and we are unable to accept the same, as the learned Tribunal has factually found that "Carbon Credit is not an off shoot of business but an offshoot of environmental concerns. No asset is generated in the course of business but it is generated due to environmental concerns." We agree with this factual analysis as the assessee is carrying on the business of power generation. The Carbon Credit is not even directly linked with power generation. On the sale of excess Carbon Credits the income was received and hence as correctly held by the Tribunal it is capital receipt and it cannot be business receipt or income. In the circumstances, we do not find any element of law in this appeal."

The learned departmental representative could not controvert the above decision and therefore respectfully following the decision of the honourable Andhra Pradesh High Court we confirm the order of the learned CIT – A in deleting the addition of Rs. 122,34,040 on account of Carbon credit receipt holding the same to be a capital receipt. Accordingly ground number 19 of the appeal is dismissed.

In the light of the decision of Hon'ble Andhra Pradesh High Court and Coordinate bench, we find no reasons to deviate from view taken by the CIT(A) and the order of CIT(A) deleting the addition is upheld. Accordingly, this ground is also decided as per table at **Para 19** of this order.

Coming to the cross objection of the assessee (Co No.6 of 2021)

18.1 The sole issue involved in the CO is addition of Rs. 6,80,874/- being notional rent in respect of kiosks let out to tenants. The assessee is not recognizing the rental in its hand on the basis of mutual arrangement with maintenance company M/s. DLF Services ltd. which is providing maintenance and upkeep services in the Mall. The claim of the assessee is that the income did not accrue or arise in its hands and same has duly been taxed in the hands of the actual recipient M/s. DLF Services Ltd.

18.2 However, the AO and CIT(A) disagreed with the contention of the assessee and considered addition on the

ground that since the security deposit from these kiosks has been received by the assessee, the rental income arising from the same is taxable in its hands only.

18.3 We find that this very issue came up before the Coordinate bench while deciding the appeal for AY 2007-08 in ITA No. 3846/D/12) wherein it was held that mutual arrangement created an overriding title resulting in diversion of rental income in favour of M/s. DLF Services Ltd. and as such the same cannot be taxed again in the hands of the assessee.

> *45. After hearing both the parties, we are of the view that the appellant assigned DLF Services Ltd. right to recover lease rent for maintenance and upkeep services of Mall and as such there was a genuine business arrangement between the parties. If the lease income is considered as chargeable to tax in the case of appellant, the appellant may be eligible for claim of expenses on account of maintenance of Mall which was owned and run by the appellant and as such appellant has not derived any tax benefit on the basis of such arrangement and for diversion of lease rent. It is further relevant to take note of the fact that such lease rent has been subjected to tax in case of M/s. DLF Services Ltd.*
>
> *46. After considering the facts of the case, we are of the view that there is no justification for addition of Rs. 12,60,000/- as same was towards business obligation*

and for specific services rendered by M/s.DLF Services Ltd. and accordingly the impugned disallowance is directed to be deleted.

The above decision of Coordinate bench has been followed and applied in appeals for AY 2008-09 to 2011-12. In absence of any distinguishing fact and respectfully following the decision of Coordinate bench, we direct the assessing office to delete the addition and the cross objection filed by the assessee is allowed.

19. In view of discussion in aforesaid paras it is clear that the majority of the grounds raised in these appeals are decided by the Coordinate Bench in appeals right from AY 2006-07 till AY 2011-12and in absence of any change of facts and respectfully following the decisions of Coordinate bench which is binding upon us, the various grounds which have been tabulated hereinbelow is based on order of Coordinate bench for AY 2008-09 and 2011-12 which is a matter of precedence, we respectfully follow.

Gr No.	**Particulars of the Ground**	**Issue covered by ITA order dtd. 27/5/2019 for A.Y. 2008-09**	**Issue on identical facts and circumstances dealt with in order dated 29/09/2020 in ITA No. 4187 & 4793/D/15 for A.Y. 2010-11**	**Issue on identical facts and circumstances dealt with in order dated 29/09/2020 in ITA No. 4794/D/15 for A.Y. 2011-12**	**Our decision on grounds following the order of coordinate bench in preceding years**

Appeal of the revenue (ITA No. 5941/Del/17)					
1	Disallowance deleted on account of revenue recognition under POCM	Para number 81-87 of the order	Para number 9 of the order	Para number 13 of the order	Dismissed
2	Holding that interest expenditure is capital in nature which CIT appeal allowed in favour of the assesse holding it to be revenue in nature	Paragraph 94-98 covers the issue in favour of the assessee	Paranumber 10	Para number 13 of the order	Dismissed
3	Disallowance on account of brokerage and commission expenditure deleted b the learned CIT-A	Decided in favour of the assesse as per paragraph number 99-103	Decided in favour of the assesse as per paragraph number 11 of the order	Para number 13 of the order	Dismissed
4	Deletion of disallowance on account of net interest free security deposit	Covered in favour of the assessee as per paragraph number 112-115	Covered in favour of the assessee as per paragraph number 13	Para number 13 of the order	Dismissed

5	Deletion of disallowance on account of non-allocation of overhead to group companies	Decided in favour of the assesse by paragraph number 125-130	Decided by paragraph number 15 in favour of the assesse.	Para number 13 of the order	Dismissed
7	Deletion disallowance/ Reclassification of income of income from house property to income from business and profession	Decided in favour of assesse as per paragraph number 155-160	--	Para number 13 of the order	Dismissed
8	Deletion of addition on account of notional rent/additional annual letting vale in respect of the vacant and least out premises.	Decided in favour of the assesse as per paragraph number 161-165	Decided in favour of the assesse as per paragraph number 20 of the order	Para number 13 of the order	Dismissed
9	Deletion of disallowance of depreciation on DLF Centre building	Decided in favour of the assesse by paragraph number 166-170	Decided in favour of the assesse as per paragraph number 21	Para number 13 of the order	Dismissed

10	Deletion of disallowance on account of prior period expenditure	Decided in favour of the assesse as per paragraph number 42-45	Decided in favour of the assesse is for paragraph number 22	Para number 13 of the order	Dismissed
11	Disallowance of expenses for operation and maintenance of helicopter and aircraft expenditure not been fully and exclusively incurred for the purposes of the business	--	Allowed in favour of the assesse s per paragraph number 24 dealing with ground number 16 and 17	Para number 13 of the order	Dismissed
12	Deletion of addition on account of notional interest income for interest income short book.	-- --	Covered in favour of the assessee by paragraph number 25-26 of the order.25-26 of the order.	Para number 13 of the order	Dismissed
14	Deletion of addition on account of carbon credits	--	--	Para number 15 of the order	Dismissed
Cross Objection of the assessee (CO No. 6 of 2021)					
1	Addition of notional rent on kiosks	Decided in favour of the assesse as per paragraph	Covered in favour of the assessee by paragraph number 32 of	Covered in favour of the assessee by paragraph number 7-10	Allowed

		number 21-24	the order.	of the order.	

20. However, we deem it fit to adjudicate in detail the grounds for which specific arguments were advanced by the both the sides including the grounds which are not directly covered by the orders of Coordinate bench.

21.1 Ground No. 6 of the revenue's appeal is against deletion of disallowance of Rs. 2,77,16,42,129/- u/s 14A read with Rule 8D of the Income Tax Act, 1961. The assessee in its return of income made suo moto disallowance u/s 14A to the extent of Rs. 6,61,871/-. However, the assessing officer enhanced disallowance u/s 14A on the basis of Rule 8D(2)(ii) and (iii) without making any comment on suo moto disallowance by the assessee. Aggrieved by the disallowance, the assessee challenged the same before CIT(A) which deleted the disallowance on the ground of non-recording of satisfaction in terms of section 14A(2) of the Act. The CIT(A) further observed that assessee was having sufficient funds of its own which are used for making investment.

21.2 At the time hearing, the Ld DR appearing for the revenue submitted that assessing officer has recorded requisite satisfaction before invoking rule 8D and as such the CIT(A) was not justified in deleting the entire disallowance on technical ground. It was further argued that assessee company has made huge investment in shares, mutual funds

and partnership firms and managing of such investments requires incurring of administrative and management cost which are inadmissible and needs to be disallowed u/s 14A of the Act.

21.3 The Ld. AR on the other hand supported the order of CIT(A) and contended that identical issue has been decided in AY 2010-11 and 2011-12 wherein the ITAT was pleased to delete the disallowance on account of failure to record satisfaction. It was highlighted that order of assessing officer in the year under reference is verbatim same as that in AY 2010-11 and 2011-12. However, the Counsel in his alternate submission argued that the computation of disallowance under rule 8D is incorrect and arbitrary as the entire investment in shares, mutual fund and partnership firm is out of own interest free funds and there is no case of claim of any direct or indirect interest expenses in relation to earning of tax free income. It was further submitted that disallowance, if any, is required to be made only under Rule 8D(2)(iii) i.e. 0.5% of average annual investment yielding tax free income. The working of proposed disallowance under 8D was placed on record. However, it was contended that even for making disallowance under rule 8D(2)(iii), the assessing officer is required to give finding that disallowance considered by the assessee is not correct.

21.4 We have considered the rival submissions and gone through the material on record. As noted above, the assessee

has made suo moto disallowance of Rs. 6,61,871/- being salary to an employee looking after the work of investment which are mainly continuing from earlier years. The assessing officer made enhanced disallowance u/s 14A after invoking Rule 8D(2)(ii) and (iii). The CIT(A) deleted the disallowance u/s 14A by holding as under:

> *"13.4 I find that section 14A(2) provides that the Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act and section 14A(3) provides that, "the provisions of sub section (2) shall apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act". While a lot of emphasis is placed by the counsel on wordings of section 14A(2) which refer to the need of' Assessing Officer's satisfaction to the effect that the claim, made by the assessee is incorrect, it simply overlooks the provisions of section 14A(3) which state that a disallowance u/s 14A(2) can also be made in a case in which assessee claims that no expenditure has been incurred for earning the tax exempt income. Therefore, a plain reading of the statutory, provisions of section 14A(2) and (3) shows that when assessee offers a disallowance u/s 14A, the provisions of section 14A(2) read with Rule 8D cannot be*

invoked unless the Assessing Officer is satisfied about incorrectness of the disallowance so offered, bụt when assessee does not offer any disallowance u/s. 14A on his own, the provisions of section 14A(2) read with Rule 8D can be invoked without there being any need to express satisfaction about the incorrectness of such a claim.

13.5 in the instant case, the appellant had made of its own disallowance of Rs. 6,61,871/- and the Assessing Officer has not recorded the dissatisfaction about the disallowance so made by the appellant. The plain reading of the statutory provisions of section 14A(2). and 14A(3) shows that when the assessee offered the disallowance u/s 14A, the provisions of Section 14A(2).read with Rule 8D cannot be invoked unless the Assessing Officer is dissatisfied about the correctness of the disallowance so offered. In view of this, the addition on this account is restricted to Rs.6,61,871/- under Rules 8D(2)(ii)&(iii) read with section 14A of the Act."

From the order of CIT(A), it emerges that satisfaction recorded by the assessing officer before applying Rule 8D did not find favour with CIT(A) and the disallowance was vitiated at the threshold. It is relevant to note that Hon'ble Supreme Court in the case of **Maxopp Investment Ltd. v. CIT [2018] 402 ITR 640 (SC)** has thrusted upon recording of valid satisfaction in terms of section 14A(2) and as such the recording satisfaction is sine qua non before proceeding to compute disallowance under 8D.

On careful perusal of assessment order, we find that assessing officer has nowhere recorded its dissatisfaction

regarding suo moto disallowance made by the assessee and the entire discussion revolves around quantum of investment appearing in the balance sheet. Moreover, the assessing officer has overlooked the availability of interest free own funds and so-called observation regarding claim of interest expenses is unsubstantiated and not based on books of account of the assessee. The CIT(A) has given a specific finding that no part of interest bearing funds were used for making investment yielding exempt income. In these circumstances, we are constrained to observe the satisfaction recorded by the assessing officer fails to pass the test laid down by Supreme Court and does not provide valid basis for invocation of rule 8D.

We find that identical issue came up for consideration before Coordinate bench in the case of assessee for immediately preceding **AY 2011-12 (ITA No. 4794/D/15)** and **AY 2010-11 (ITA No.4793/D/15)**wherein the disallowance was deleted by observing that satisfaction recorded by the assessing officer is invalid. The satisfaction recorded in present case is ad-verbatim that in AY 2010-11 and 2011-12. The finding of coordinate bench in AY 2010-11 is reproduced hereunder for ready reference:

> *"18. We have carefully considered the rival contention and perused the orders of the lower authorities. Apparently in this case the learned assessing officer has not recorded the satisfaction stating that why the claim of the assessee that it has incurred only ₹ 1,815,695 on account of in admissible*

expenditure u/s 14 A of the act. The learned assessing officer has only given a general observation. The issue is squarely covered by the decision of the honourable Delhi High Court in case of Eicher Motors Ltd. v. Commissioner of Income-tax-III [2017] 86 taxmann.com 49 (Delhi)/[2017] 250 Taxman 532 (Delhi)/[2017] 398 ITR 51 (Delhi)*

> *"13. As regards the disallowance of expenditure for earning exempt income in terms of Section 14A of the Act, the settled legal position is that the AO had to record reasons for disagreeing with the submission of the Assessee that it had incurred no expenditure for earning such exempt income. This is plain even from Rule 8D (1) which requires the AO to mandatorily record his satisfaction that the claim made by the Assessee that no expenditure has been incurred is incorrect "having regard to the accounts of the assessee." In this case, a perusal of the AO's reasoning shows that the AO has merely conjectured that there is an inbuilt cost even in passive investment as also incidental expenditure like collection, telephone, follow up etc., The AO thus concludes that the expenses are embedded as indirect expenses. This is not as per the requirements of Rule 8D. There is no satisfaction recorded Rs. based on the accounts of the assessee'. The AO simply presumes that since the exempt income exists and is being claimed by the Assessee, some portion of the expenses ought to be added back. This is not sufficient as per the law. Once this mandatory requirement is itself not fulfilled, in terms of the law explained by this Court in Maxopp Investment Ltd. v. CIT [2012] 347 ITR 272/[2011] 203 Taxman 364/15*

taxmann.com 390 (Delhi), the question of remanding the matter to the CIT (A) and to call for a remand report from the AO for the purposes of rectifying this jurisdictional defect simply did not arise. In this context, the Court also notices that in the order passed by the AO on 28/30th December 2016 pursuant to the impugned order of the ITAT on remand, the AO had simply repeated his entire assessment order passed in the first instance. Be that as it may, the Court is of the view that the ITAT erred in overlooking the correct legal position in remanding the matter to CIT (A).

14. Accordingly, both the questions are answered in favour of the Assessee and against the Revenue. The impugned order of the ITAT and the consequential order of the AO dated 28/30th December 2016 are hereby set aside but without any order as to costs."

Therefore respectfully following the decision of Honourable Delhi High Court, we direct the learned assessing officer to delete the disallowances u/s 14 A of the act by invoking rule 8D without recording of satisfaction. Accordingly ground number 10 of the appeal of the learned assessing officer is dismissed and ground number one of the appeal of the assessee is allowed."

In the light of finding recorded in aforesaid para and respectfully following the order of Coordinate bench, we find no reasons to interfere with order of CIT(A) deleting the disallowance u/s 14A r.w.r 8D and same is upheld.

22.1 Ground No.13 is in respect of deletion of disallowance of expenditure to the tune of Rs. 14,64,00,000/- on account of short/non-allocation of proportionate overhead expenditure to windmill unit in Gujarat and Karnataka. The assessing officer made the disallowance on the ground that the windmill units located in Gujarat and Karnataka are claiming deduction u/s 80IA and assessee has failed to allocate overhead expenses to these units. Eventually, the assessing officer allocated the establishment, finance and general administration expenses in the ratio of turnover and disallowed the expenses so allocated in the hands of the assessee company. The impugned disallowance was deleted by CIT(A).

22.2 The Ld. DR supported the order of assessing officer and submitted that allocation of expenses to windmill units in Gujarat and Karnataka as done by the assessing officer is correct.

22.3 The Ld. Counsel for the assessee filed synopsis on this issue and argued that separate books of account are maintained in respect of eligible windmill unit in Gujarat and Karnataka and there is no case of any short allocation of expenses. It was further submitted that working of profit in these units is supported from certificate in Form 10CCB issued by Chartered Accountant. The Ld. Counsel also relied upon the decision of Addl. CIT v. Delhi Press Patra Prakashan [2006] 10 SOT 74 (Delhi) (URO).

22.4 We have considered the rival submissions and gone through the orders passed by sub-ordinate authorities. The issue before us is allocation of expenses to eligible units claiming deduction u/s 80IA and consequential disallowance in the hands of the assessee company. In short, the assessing officer has observed that common expenses pertaining to units claiming exemption u/s 80IA have been claimed by the assessee company and same are not allowable. The CIT(A) has deleted the disallowance by holding as under:

> *"21.1 Having gone through the submissions of the assessee, the order of assessment passed by the Assessing Officer and the material evidences placed the record, it emerges from the facts of the case that the Assessing Officer made the disallowance of the expenditure of Rs. 14,64,00,000/- on account of allocation to the windmills at Karnataka and Gujarat. The Assessing Officer is of the view that the assessee has not allocated the establishment, finance and general administrative cost to the windmill division and proceeded to make the allocation of the expenditure on the basis of the percentage of the total income of the wind mill division in proportion to the net profit of the DLF as a whole The Assessing Officer, accordingly made the adhoc allocation of the expenditure in regard to the establishment, finance and general administrative expenses. By doing so; the Assessing Officer allocated Rs.3.90 crore to the windmill in Karnataka and Rs.:10.74 crore to windmill in Gujarat.*

It is pertinent to note that the operations and maintenance of the windmills has been outsourced by the company to M/s Suzlon Infrastructure Services Ltd. and M/s. Evercan India Ltd. who submit the quarterly bills to the company for the operation and maintenance of the windmills. The company has only incurred expenditure in connection with insurance and rebate for the early payment to the parties. There is no linkage and justification for the allocation of any expenses to the windmill project, no expenditure claimed in the taxable income can be linked with the windmill project.

In view of the above, it is clear that no, expenditure can be allocated to the windmill project. Both the divisions have maintained the separate books of accounts and all the expenditure in the nature of operational and general and administrative expenses have been debited to the respective divisions. There is no force in the argument of the Assessing Officer that the assessee has not allocated any expenses to the separate divisions. The separate books of accounts maintained by both the divisions leave no "scope for making any addition on account of the administrative and other expenses. The addition of Rs. 14,64,00,000/- made by the Assessing Officer is therefore, deleted. The Assessing Officer is directed to modify the order of assessment accordingly."

The Ld. DR was unable to controvert the finding recorded by CIT(A). On closer perusal of assessment order, we find that assessing officer has not given any basis for making impugned disallowance and the only reasoning behind the allocation of expense is that windmill units have not claimed any expenses on account of finance, establishment or general admin cost. The Ld. AR has drawn our attention to form 10CCB which contained complete working of profit and claim of various expenses incurred for running these units. It is self evident that separate set of books of account are maintained for respective windmill unit at Gujarat and Karnataka. In these circumstances, unless there is some material or conclusive finding on record that books of account of these units are not correct or expenses pertaining to these units have not been claimed, there could be no case of any notional allocation of expenses in the ratio of income. The assessment order is silent on this aspect and merely contains working of disallowance by allocation expenses in the ratio of income which in our view is not sustainable. At this juncture, it is pertinent to make reference to decision of Hon'ble Allahabad High Court in the case of **CIT v. Translam Ltd. [2014] 231 Taxman 901 (Allahabad)** wherein it was held that assessing officer is bound to point out defect in separate books of account of units before disputing the correctness of income/loss declared therein.

In view of above, we find ourselves in agreement with the order of CIT(A) deleting the disallowance of expenses on

account of notional re-allocation and the order of CIT(A) on this count is upheld. As a result, the Ground 13 is dismissed.

23.1 Ground No. 15 is directed against deletion of transfer pricing adjustment u/s 92C amounting to Rs. 2,84,86,268/- on account of Corporate Guarantee fee. During the year under reference, the assessee has provided corporate guarantee to Standard Chartered bank for a loan availed by its AE M/s DLF Global Hospitality Ltd., Cyprus. The Transfer pricing officer after rejecting the contention of the assessee that rendering corporate guarantee is not an international transaction u/s 92B, considered adjustment u/s 92C after benchmarking the same @ 0.3750% p.a. being 50% of the interest saved.

23.2 The respondent succeeded before CIT(A) which deleted the addition by holding that corporate guarantree is not an international transaction in terms of section 92B of the Income Tax Act, 1961.

23.3 The Ld. DR disputed that finding of CIT(A) and argued that giving of corporate guarantee to bank on behalf of AE results in saving of interest in the hands of the AE. Further, as per amendment brought in by Finance Act, 2012 in section 92B, the rendering of Corporate guarantee is an international transaction as per clause (c) of Explanation to section 92B of the Act. It was accordingly argued that TPO has rightly benchmarked the transaction for the purpose of

transfer pricing adjustment after applying interest saving approach.

23.4 The Ld. AR reiterated the arguments advanced before CIT(A) and supported the order of CIT(A). It was argued that giving corporate guarantee to bank does not have any bearing on profit, income, losses or assets of the companies, the same cannot be treated as international transaction u/s 92B of the Income Tax Act, 1961. The Ld. AR is his alternate submission argued that the benchmarking of guarantee commission fee by applying interest rate @ 0.375% p.a. is excessive and same be reduced to 0.25% p.a..

23.5 We have heard both sides. The issue of corporate guarantee has been subject matter of dispute between the taxpayer and revenue. From the side of the taxpayer, the argument taken is that corporate guarantee falls outside the purview of section 92B and is not an international transaction, whereas the revenue contends that post amendment in section 92B, the corporate guarantee has been explicitly included in the definition of international transaction with retrospective effect. The revenue further argues that provision of corporate guarantee results in benefit in the hands of the AE on behalf of which such guarantee is given and as such under the Arm's length situation, transfer pricing adjustment is required in the hands of the guarantor.

24. On going though the facts of the present case, the assessee had furnished corporate guarantee to Standard Chartered Bank for loan facility availed by its wholly owned subsidiary in Cyprus. The TPO at page 2 of its order has extracted letter dated 22nd January 2015 Standard Chartered bank (lender bank) from which it is noted that owing to guarantee provided by the assessee, the AE was able to avail loan facility at discounted interest rate of LIBOR +425 bppa in place of LIBOR+500 bppa. However, on closer perusal of the said letter, it is unclear whether the assessee has provide corporate guarantee or letter of comfort. Ostensible both the terms are used in the said letter issued by the bank which is creating doubt over the real nature of the transaction. In fact, the order of TPO is silent on this aspect and TPO has proceeded on the ground that assessee has provided corporate guarantee.

25. On the issue of corporate guarantee, we find that Hon'ble Madras High Court in the case of **PCIT v. Redington (India) Ltd. [2020] 122 Taxmann.com 136 (Madras)** has held that Corporate guarantee is an international transaction u/s 92B requiring adjustment in terms of section 92C of the Act. The decision of Madras High Court is relevant in the present case in the absence of any contrary decision of jurisdiction High Court or any other High Court. Based on contents of communication of Standard Chartered Bank dated 22nd January, 2015, it is clear that AE was able to obtain loan at concessional rate of interest, however, it is

pertinent to first ascertain the true nature and character of assistance give by assessee to its AE i.e. whether its a case of comfort letter or corporate guarantee. We may make it clear that in case of letter of comfort, there may not be any financial implication as far as assessee is concerned which in turn will take the entire issue out of purview of section 92B of the Act. Further, in case it is concluded that assessee has provided corporate guarantee, adjustment based on provisions of section 92C is required in light of decision of Hon'ble Madras High Court in the case of **PCIT v. Redington (India) Ltd. (Supra).**

26. Keeping in view the totality of facts, we are of the considered view that the issue requires reconsideration at the level of TPO. Accordingly the adjustment made by the assessing officer is set-aside and the matter is restored to the file of TPO with the direction to examine the nature is assistance given to AE i.e. letter of comfort or corporate guarantee. Also, as noted above, in case the arrangement is in the nature of corporate guarantee, ALP, if any should be determined on the basis of FAR analysis and employing CUP method. Needless to say, that assessee should be afforded opportunity to furnish necessary explanation/clarification.

Appeal for AY 2013-14 (ITA No. 5940/D/17 and CO No. 5 of 2021)

27. We have perused the grounds raised in the appeal filed by the revenue and Cross objection of the assessee. It is noted that all the issues involved in this appeal are exactly same as that adjudicated by us in appeal relating to AY 2012-13 and as such the finding and decision rendered by us in ITA No. 5941/D/17 and CO No. 6 of 2021 are applicable mutatis mutandis to this appeal and CO.

Order pronounced in the open Court on 10th September, 2021.

Sd/-	Sd/-
[PRASHANT MAHARISHI]	**[AMIT SHUKLA]**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

DATED: 10th **September, 2021**

PKK: