

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

**BEFORE: SHRI MAHAVIR SINGH, VICE PRESIDENT
&**

SHRI M.BALAGANESH, ACCOUNTANT MEMBER

**ITA No.6889/Mum/2018
(Assessment Year :2013-14)**

M/s. Edelcap Securities Limited Edelweiss House, Off. CST Road, Kalina, Santacruz East Mumbai-400 098	Vs.	Assistant Commissioner of Income Tax Circle-3(1)(2) Room No.607, 6 th Floor Aaykar Bhavan Mumbai – 400 020
PAN/GIR No.AABCE9000A		
(Appellant)	..	(Respondent)

**ITA No.6837/Mum/2018
(Assessment Year :2013-14)**

Assistant Commissioner of Income Tax Circle- 3(1)(2) Room No.607, 6 th Floor Aaykar Bhavan Mumbai – 400 020	Vs.	M/s. Edelcap Securities Limited Edelweiss House, Off. CST Road, Kalina, Santacruz East Mumbai-400 098
PAN/GIR No.AABCE9000A		
(Appellant)	..	(Respondent)

**ITA No.6890/Mum/2018
(Assessment Year :2013-14)**

M/s. Ecap Equities Limited Edelweiss House, Off. CST Road, Kalina, Santacruz East Mumbai-400 098	Vs.	Assistant Commissioner of Income Tax Circle-3(1)(2) Room No.607, 6 th Floor Aaykar Bhavan Mumbai – 400 020
PAN/GIR No.AABCE8997N		
(Appellant)	..	(Respondent)

ITA No.6838/Mum/2018
(Assessment Year :2013-14)

Assistant Commissioner of Income Tax Circle- 3(1)(2) Room No.607, 6 th Floor Aaykar Bhavan Mumbai – 400 020	Vs.	M/s. Ecap Equities Limited Edelweiss House, Off. CST Road, Kalina, Santacruz East Mumbai-400 098
PAN/GIR No.AABCE8997N		
(Appellant)	..	(Respondent)

ITA No.6888/Mum/2018
(Assessment Year :2013-14)

M/s. Edelweiss Investments Advisors Ltd., Edelweiss House, Off. CST Road, Kalina, Santacruz East Mumbai-400 098	Vs.	Assistant Commissioner of Income Tax Circle-3(1)(2) Room No.607, 6 th Floor Aaykar Bhavan Mumbai – 400 020
PAN/GIR No.AABCE9811H		
(Appellant)	..	(Respondent)

ITA No.6836/Mum/2018
(Assessment Year :2013-14)

Assistant Commissioner of Income Tax Circle- 3(1)(2) Room No.607, 6 th Floor Aaykar Bhavan Mumbai – 400 020	Vs.	M/s. Edelweiss Investments Advisors Ltd., Edelweiss House, Off. CST Road, Kalina, Santacruz East Mumbai-400 098
PAN/GIR No.AABCE9811H		
(Appellant)	..	(Respondent)

Assessee by	Shri Jitendra Jain
Revenue by	Shri Ajay Pratap Singh
Date of Hearing	24/08/2021
Date of Pronouncement	28/09/2021

आदेश / ORDER

PER M. BALAGANESH (A.M):

**ITA No.6889/Mum/2018 (A.Y.2013-14) & 6837/Mum/2018
(A.Y.2013-14)**

These cross appeals in ITA No.6889/Mum/2018 & 6837/Mum/2018 for A.Yrs. 2013-14 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-8, Mumbai in appeal No.CIT(A)-8/10312/2016-17 dated 17/09/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 31/03/2016 by the Id. Asst. Commissioner of Income Tax, Circle-3(1)(2), Mumbai (hereinafter referred to as Id. AO).

**ITA No.6890/Mum/2018 (A.Y.2013-14) & 6838/Mum/2018
(A.Y.2013-14)**

These cross appeals in ITA No.6890/Mum/2018 & 6838/Mum/2018 for A.Yrs. 2013-14 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-8, Mumbai in appeal No.CIT(A)-8/IT-220/2016-17 dated 17/09/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 31/03/2016 by the Id. Asst. Commissioner of Income Tax, Circle-3(1)(2), Mumbai (hereinafter referred to as Id. AO).

**ITA No.6888/Mum/2018 (A.Y.2013-14) & 6836/Mum/2018
(A.Y.2013-14)**

These cross appeals in ITA No.6888/Mum/2018 & 6836/Mum/2018 for A.Yrs. 2013-14 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-8, Mumbai in appeal No.CIT(A)-8/IT-219/2016-17 dated 17/09/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 31/03/2016 by the Id. Asst. Commissioner of Income Tax, Circle-3(1)(2), Mumbai (hereinafter referred to as Id. AO).

2. Identical issues are involved in all these appeals, hence, they are taken up together and disposed of by this common order for the sake of convenience. With the consent of both the parties, Revenue appeal in the case of Edelcap Securities Ltd., for the A.Y.2013-14 in ITA No.6837/Mum/2018 is taken up for adjudication and the decision rendered thereon would apply with equal force for other assesseees in respect of identical facts except with variance in figures.

3. Ground Nos. 1 & 2 raised by the Revenue is with regard to challenging the action of the Id. CIT(A) deleting the disallowance of provision of Rs.2,77,67,241/- for mark to market loss on trading of derivative instruments by treating it as notional loss both under normal provisions of the Act as well as in the computation of book profits u/s.115JB of the Act.

3.1. We have heard rival submissions and perused the materials available on record. We find that assessee company is engaged in the

business of trading and arbitrage of commodities, securities and derivative instruments and also providing broking advisory services. The assessee is a member of interconnected stock exchange registered with Securities and Exchange Board of India (SEBI). During the year under consideration, the assessee has recognized loss on Mark to Market on trading in derivative instrument of Rs. 2,77,67,241/- and charged the same to the profit and loss account. The assessee during the course of assessment proceedings, explained that it has made provision for loss following accepted accounting principles as per the Guidance Note on "Accounting for Equity Index and Equity Stock Futures and Options" and Accounting Standards (AS) - 30 issued by the Institute of Chartered Accountants of India (ICAI) and claimed the loss as deductible business expenditure. However, the Id AO did not accept the contention of assessee and disallowed Rs. 2,77,67,241/- by treating the same as a notional loss. The reasons assigned by the AO for treating the loss as notional are as under:

- (i) There is no actual loss on account of dealing in derivative as the loss or gain arises only when something goes out or comes in the pocket of the assessee.
- (ii) Relying on the judgment of Hon'ble Supreme Court in the case of Sanjeev Woolen Mills vs CIT reported in 279 ITR 434 (SC).
- (iii) Relying on CBDT's instruction dated 23.03.2010.

3.2. The assessee submits that the bifurcation of loss on account of provision for mark to market is tabulated as under:

Particulars	Amount (Rs)
Currency Future	79,90,0243
Currency Options	12,03,560
Index Futures	94,29,052
Index Options	91,44,386
Total	2,77,67,241

3.3. The assessee submitted that it has recognized the above loss (Net) by debiting loss on trading in commodity derivative instruments (net)" and " Loss on trading in currency derivative instruments (net)" grouped under "Income from Treasury operation".

3.4. During the year under consideration, the assessee has entered into transaction for purchase and sale of derivative futures/option on stock exchanges. The transactions which are settled during the year and the difference between contract price and settled price being profit/loss are recognized in the books of accounts maintained by the assessee. Outstanding derivative contracts in the nature of futures/options are measured at fair value as at the balance sheet date. Fair value is determined using quoted market prices in an actively traded market, for the instrument, wherever available, as the best evidence of fair value. In the absence of quoted market prices in an actively traded market, a valuation technique is used to determine the fair value. The margin money paid/received on derivative contract relating to purchase (long position) and sale (short position) of options in respect of understanding position as on Balance Sheet date (i.e. 31.3.2013) are shown as margin

paid / received on derivatives and same are grouped under current assets / current liabilities respectively.

3.5. The assessee company has accounted for the loss/ gain from derivatives instruments following the principles laid down in Accounting Standard 30 -"Financial Instruments: Recognition and Measurement (AS 30)" and "Guidance Note on accounting for Equity Index and Equity Stock Futures and Options" issued by the Institute of Chartered Accountants of India (ICAI). The assessee submits that AS 30 and the Guidance Note provide that in case of future contracts/ option contracts as on the balance-sheet date, a provision should be created for anticipated loss on the open contracts. The derivatives are initially recognised at cost. Subsequent to initial recognition, the derivatives are measured at fair value prevailing on the last day of the financial year and any changes therein are accounted in profit and loss account.

3.6. The assessee submitted that accounting practices giving a true and fair view have always formed the basis of determining taxable profits, unless there is an provision in the tax laws that warrant a different method of computing the income. The assessee also placed reliance on the decisions of the Hon'ble Supreme Court in the case of CIT vs. Woodward Governor India Pvt. Ltd., reported in 312 ITR 254; Oil and Natural Gas Corporation Ltd., (ONGC) vs. CIT reported in 322 ITR 180; United Commercial Bank vs. CIT reported in 240 ITR 355. Apart from this, assessee also placed reliance on the decision of this Tribunal in the case of Edelweiss Capital Ltd., vs. ITO in ITA No.5324/Mum/2007, Edelweiss Securities Ltd., in ITA No.2193/Mum/2009, ITA No.7792/Mum/2012 and ITA No.5939/Mum/2011 among other cases. The assessee also stated

before the Id. CIT(A) that very same issue has been decided by the Id. CIT(A) for A.Y.2011-12 vide order dated 16/03/2016 and for A.Y.2012-13 vide order dated 14/07/2017 in favour of the assessee. The assessee also stated before the Id. CIT(A) that the decision of the Hon'ble Supreme Court in the case of Sanjeev Woolen Mills vs. CIT reported in 279 ITR 434 relied upon by the Id. AO actually strengthens the case of the assessee. In the said case, the Hon'ble Supreme Court held that the stock had to be valued at cost or market value whichever is lower. The assessee's case is identical in as much as an item of stock in trade in the form of opening position of derivative contract need to be valued at cost or market rate whichever is lower and accordingly, assessee had recorded the loss in its books of accounts. The assessee also submitted that the Id. AO had placed reliance on CBDT Instruction No.3/2010 dated 23/03/2010 which mandated disallowance of provision for loss of mark to market, by submitting that the said CBDT instruction had been duly considered by the Mumbai Tribunal in the case of DCIT vs. ECL Finance Limited in ITA No. 7656/Mum/2011 wherein the Tribunal after considering the CBDT instruction had decided the very same issue in favour of the assessee.

3.7. The Id. CIT(A) duly appreciating the entire contentions of the assessee and also taking into account that the issue is already covered in favour of the assessee by various Tribunal decisions and in assessee's own case by the order of his predecessor in the preceding two years, deleted the disallowance made on account of provision for mark to market loss. Aggrieved, the revenue is in appeal before us.

3.8. At the outset, we find that this issue is squarely covered by the order of this Tribunal in assessee's own case in ITA No.6547/Mum/2017

for earlier years. We find that the Id. CIT(A) had followed the decision relied by this Tribunal in the case of Edelweiss Securities Ltd., vs. Addl. CIT in ITA No.2193/Mum/2009 and DCIT vs. ECL Finance Ltd., in ITA No.7656/Mum/2011, both being sister concerns of the assessee, wherein similar issue has been decided in favour of the assessee. The relevant portion of the said orders are not reiterated herein for the sake of brevity. Hence, we do not find any infirmity in the order of the Id. CIT(A) following the Tribunal order while granting relief to the assessee. Accordingly, the ground Nos. 1 & 2 raised by the Revenue are dismissed.

4. The ground Nos. 3 & 4 raised by the revenue are with regard to issue of disallowance made u/s.14A of the Act r.w.r.8D(2) of the Income Tax Rules (hereinafter referred to as the 'Rules').

4.1. We have heard rival submissions and perused the materials available on record. We find that assessee had earned dividend income of Rs.57,04,843/- on shares held as 'stock in trade' and claimed the same as exempt u/s.10(34) and 10(35) of the Act. The assessee made suo-moto disallowance of expenses of Rs.1,67,317/- as expenditure incurred for earning exempt income. The Id. AO applied the computation mechanism provided in Rule 8D(2) of the Rules and made disallowance as under:-

a) Under Rule 8D(2)(i)	-	Rs.1,67,317/-
b) Under Rule 8D(2)(ii)	-	Rs.3,70,50,384/-
c) Under Rule 8D(2)(iii)	-	Rs.22,28,937/-

Total		Rs.3,94,46,638/-
Less amount already disallowed By the assessee		Rs.1,67,317/-

Net disallowance u/s.14A		Rs.3,92,79,321/-

4.2. The Id. CIT(A) restricted the disallowance to the extent of exempt income and directed the Id. AO accordingly.

4.3. Before us, the Id. AR vehemently argued that the assessee is having own funds of Rs.67.89 Crores as against the total investment of Rs.72.12 Crores. Hence, by placing reliance on the decision of the Hon'ble Jurisdictional High Court in the case of HDFC Bank Ltd., reported in 383 ITR 529 and the decision of Hon'ble Supreme Court in the case of Reliance Industries Ltd., reported in 410 ITR 466, he pleaded that the investment made to the extent of availability of own funds should not be considered for the purpose of disallowance u/s.14A of the Act. Accordingly, he pleaded that the interest disallowance under Rule 8D(2)(ii) of the Rules should be made only for the remaining investments of Rs.4.23 Crores (Rs. 72.12 Crores – Rs.67.89 Crores). He stated that the total interest expenditure is Rs.18.23 Crores and assessee had earned interest income of Rs.11.06 Crores and that the net interest expenditure should be considered while working out the disallowance of interest under Rule 8D(2)(ii) of the Rules. Reliance in this regard was placed on the decision of the Hon'ble Gujarat High Court in the case of PCIT vs. Nirma Credit and Capital Pvt. Ltd., reported in 85 Taxmann.com 72. He further pleaded that only those investments which had actually yielded exempt income should be considered for the purpose of working out the disallowance under Rule 8D(2)(ii) and under Rule 8D(2)(iii) of the Rules.

4.4. We find that the Hon'ble Gujarat High Court in the case of Nirma Credit and Capital Pvt. Ltd., referred to supra had categorically held that only the net interest expenditure should be considered for the purpose of working out the disallowance of interest under Rule 8D(2)(ii) of the Rules.

We find that out of the total investments of Rs.72.12 Crores, the assessee is having own funds to the tune of Rs.67.89 Crores which is evident from the perusal of the financial statements enclosed in the paper book filed before us. Hence, it could be reasonably presumed that investments only to the tune of Rs.4.23 Crores have been made out of borrowed funds, for which disallowance of interest could be made. Hence, in the light of decision of the Hon'ble Supreme Court in the case of Reliance Industries Ltd., reported in 410 ITR 466 and the decision of the Special Bench of Delhi Tribunal in the case of Vireet Investments reported in 165 ITD 27, we direct the Id. AO to recompute the disallowance of expenses u/s.14A of the Act as under:-

- i) To consider only net interest expenditure as per the decision of the Hon'ble Gujarat High Court in the case of Nirma Credit and Capital Pvt. Ltd., referred to supra.
- ii) To consider only those investments which had actually yielded exempt income to the assessee for the purpose of working out the disallowance under Rule 8D(2)(ii) and Rule 8D(2)(iii).
- iii) While working out the same, investments which were presumed to be made out of own funds should be given credit or should be reduced for the purpose of working out the disallowance under Rule 8D(2)(ii) of the Rules.
- iv) In any case, the total disallowance made u/s.14A of the Act shall not exceed exempt income.

4.5. The Id. AO is directed accordingly. The ground Nos. 3 & 4 raised by the Revenue are disposed of in the aforesaid manner.

5. The ground Nos. 5 & 6 raised by the revenue is challenging the action of the Id. CIT(A) deleting the disallowance made on account of provision for expenses in the sum of Rs.3,58,10,173/- made under normal provisions of the Act as well as in the computation of book profits u/s.115JB of the Act.

5.1. We have heard rival submissions and perused the materials available on record. We find that the Id. AO observed that the assessee had created provision for expenses under various heads of expenditure and debited the same to profit and loss account. The assessee was specifically asked to provide the details of the same and show-caused as to why the same should not be disallowed, being contingent in nature, as the said provision represent unascertained liability. The assessee submitted the details of provision for expenses as under:-

Sr. No.	Ledger Head	Provision as on 31.03.2013
1	Legal & Prof. Fees	123,500
2	Commission & Brokerage Exps	35,211,000
3	Warehousing Chgs	13,800
4	Annual Maintenance Chgs - IT	60,833
5	Outside Services - Others	353,040
6	Printing & Stationery Exps	3,000
7	Travel Exps - Local - Conveyance	45,000
		35,810,173

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5.2. The assessee also submitted that out of the total commission and brokerage expenses of Rs.3,52,11,000/- a sum of Rs.3,50,00,000/- represents provision made as on 31/03/2013 which was duly written back in subsequent year and credited to profit and loss account and offered to tax by the assessee voluntarily in the return of income in A.Y.2014-15 and that the rate of tax being the same in both A.Y.2013-14 as well as in A.Y.2014-15. The Id. CIT(A) deleted the disallowance made by the Id. AO both under normal provisions of the Act as well as in the computation of book profits u/s.115JB of the Act.

5.3. Before us, the Id. DR vehemently argued that the assessee had made a provision on an estimated basis and the said expenditure had not crystalized into an ascertained liability during the year and that the provision has been made only as a contingent liability in the books with an intent to reduce the profitability of the year of the assessee. He argued that the Id. CIT(A) had granted relief to the assessee on the premise that the said provision has been reversed by the assessee voluntarily in the subsequent year and duly offered to tax and hence, there cannot be any double taxation. The Id. DR vehemently argued that correct income should be taxed in the correct assessment year.

5.4. At the outset, there is no dispute that assessee had made provision for certain expenses on an estimated basis during the year and claimed the same as deduction in the return of income. But we find from the perusal of the order of the Id. CIT(A) that there is a proper reasoning for the same. We find that assessee is a subsidiary of Edelweiss Financial

Services Limited (EFSL) which is a company listed on Bombay Stock Exchange. Being a listed company, the EFSL needs to file its consolidated audited financial statements (i.e. including the financial results of subsidiary company) with Bombay Stock Exchange (BSE) as directed by the Securities Exchange Board of India (SEBI). In order to meet the said criteria, the subsidiary companies (including the assessee) get statutory audits done by the end of April or by second week of May. For getting the financial statements audited within the above period, the assessee freezes its computerized books of accounts by the end of April and while freezing the books of accounts it records the all accrued income, expenses, liabilities and assets.

5.5. In case of the expenses, the assessee records the actual expenses on the basis of bills received. In case, the assessee has not received the bills, it makes the estimate of expenses on reasonable and scientific basis and accounts the same in the books. Subsequently, on receipt of the bill, the assessee accounts the actual bill and reverses the entry passed on the basis of estimation. By reversing the estimated entry, the assessee increases its income and by accounting the actual bills, the assessee reduces the income to the extent of actual expense only. Thus, there is no impact on the taxable income of the assessee considering the practice followed, year on year. This is the practice followed by the assessee, year on year and a disclosure to this effect has also been made in the audited financial statements which reads as under:

"1.2 Use of estimates:

The preparation of the financial statements in the conformity with the generally accepted accounting principles requires the management to make estimates and assumption that effect the reported amount of assets, liabilities, revenues and

expenses and disclosure of contingent liabilities as on the date of the financial statements. Actual result may differ from the estimates. Any revision to the accounting estimates is recognized prospectively in current and future periods"

5.6 The above accounting principle followed by the assessee is duly supported by the Accounting Standard (AS) 29 issued by the Institute of Chartered Accountants of India (ICAI). Thus, the provision made by the assessee are on estimate basis which is duly required by the AS issued by the ICAI which by virtue of section 211 of the Companies Act, 1956 mandatorily have to be followed by the Companies. Therefore, the Id AR submitted that the expenses booked by the assessee on the basis of estimation are duly allowable; hence, the disallowance thereof made by the AO shall be deleted.

5.7. We also find that this manner of making provision for expenses has been duly approved by the Hon'ble Supreme Court in the case of Bharat Earth Movers vs CIT reported in 245 ITR 428 (SC). It is also not in dispute that the assessee had duly reversed the said provision in A.Y.2014-15 and 2015-16 and had offered to tax as other income reflected in the profit and loss account of the assessee and hence taxing the very same provision for expenses in this year would result in double taxation. This practice has been consistently followed by the assessee over the years which has been accepted by the Revenue. It is also a fact that assessee being a subsidiary of Edelweiss Financial Services Ltd., which is a listed company had to get its accounts audited on or before 31st May from the end of the accounting year in order to submit the balance sheet to the stock exchange in accordance with listing norms. The audited financial statements of the assessee company has been signed on 14th May 2013,

for which purpose, obviously accounts need to be freezed at least by the end of April. Hence, for the purpose of freezing of accounts, expenses and income that had accrued need to be provided atleast on estimated basis and based on past practices prevailing in the company. The assessee company does not have a luxury to wait for the receipt of actual bills from the concerned parties after the end of the financial year. Since assessee could not adopt 'wait and watch approach' and had to necessarily make provision for certain expenses on an estimated basis based on past practices to finalize its accounts, the provision made thereon cannot be treated as an unascertained liability or liability which is contingent in nature. In view of the same, we find that the Id. CIT(A) had rightly deleted the disallowance on which, we do not find any infirmity. Accordingly, the ground Nos. 5 & 6 by the Revenue are dismissed.

6. The ground No.7 raised by the Revenue is challenging the action of the Id. CIT(A) deleting the disallowance of Rs.7,74,36,669/- being loss incurred by the assessee of trading in commodity forward contracts.

6.1. We have heard rival submissions and perused the materials available on record. We find that during the course of assessment proceedings, the Id. AO observed that the assessee has booked a loss of Rs.7,70,59,855/- on account of trading in forward contracts. The assessee was asked to file the details of forward contracts entered by it along with relevant supporting documents to substantiate its claim of loss. The Id. AO on perusal of the same, observed that assessee has entered into forward contracts with other group entities being Edel Commodities Trading Ltd., EC Commodity Ltd., Edelcap Securities Ltd., and booked loss on the same. The contracts were entered of underlying commodity being

aluminium, nickel and platinum. The Id. AO observed that the forward contract is meant to cover exposure to the underlying security or as a speculative transaction with an intention to earn profit. He observed that the assessee does not deal with the commodities underlying the said contract and there is no element of hedging in the said transactions. He observed that the assessee had entered forward contract with its related party with an intention to make loss and make the group company earn profits. The Id. AO observed that by entering into forward contract with related parties, there was no intention to hedge or to earn profit, accordingly, he treated the loss of Rs.7,70,59,855/- as a speculative loss on account of trading in forward contract and disallowed the same as it was carried out with an intention to shift profits to group companies. The Id. CIT(A) granted relief to the assessee.

7. We find that assessee had entered into forward contracts and incurred the loss of Rs.7,74,36,669/- during the year under consideration. The name of the party with whom the contract was entered, commodity transacted, accrued value and settlement value is tabulated as under:-

Name of the parties	Commodity	Quantity	Contract Value	Settlement buy value	Settlement sell value	Profit or (loss)
EC Commodity Ltd.,	Nickel	14,50,000	13,96,28,80,053	13,45,68,07,215		(50,60,72,838)
EC Commodity Ltd.	Aluminium	8,90,00,000	10,46,05,81,981		10,11,65,63,517	34,40,18,464
EC Commodity Ltd.	Platinum	5,00,000	1,33,00,65,998	1,39,10,53,158		6,09,87,159
Edelweiss Finance & Investment Ltd.,	Aluminium	85,00,000	99,90,44,347		96,61,88,651	3,28,55,696
Edelweiss Finance & Investment Ltd.,	Nickel	20,00,000	1,92,59,14,490	1,85,61,11,340		(6,98,03,150)
Edel Commodities Trading Ltd.,	Aluminium	80,00,000	94,02,40,000	85,43,20,000		(8,59,00,000)

Edel Commodities Trading Ltd.,	Nickel	1,55,000	14,92,58,800		14,11,18,200	81,00,000
Edel Commodities Trading Ltd.,	Platinum	2,70,000	71,82,35,100	73,62,38,700		180,00,000
Styras Commodities Ltd.,	Aluminium	19,25,000	21,81,21,750	19,92,37,500		(1,88,84,000)
Styras Commodities Ltd.,	Nickel	16,00,000	1,58,90,70,400		1,44,98,08,000	13,92,62,000
Net Income / (Loss)						(7,74,36,669)

7.1. It was pleaded by the Id AR that by entering into above forward contracts, assessee has earned the income of Rs.60,32,23,319/- and incurred loss of Rs.68,06,59,988/- resulting into net loss of Rs.7,74,36,669/-. We find that the profit earned by the assessee had been accepted by the Id. AO to be genuine. In view of this, since the profit of the assessee is accepted by the Id. AO, we are unable to persuade ourselves to accept the contention of the Id. AO that the loss figure incurred by the assessee has been done with an intention to reduce its tax liability. Even the profit has been earned by the assessee only out of carrying out transactions with related parties which has been accepted by the Id. AO as genuine. The Id. AO cannot take a divergent stand when the loss occurs in respect of transactions with related parties. The entire genuinity of the transactions cannot be doubted in as much as all the transactions have been duly reflected in the books of accounts of the assessee and are also reflected in the books of accounts of the group entities which fact has been taken cognizance by the Id. CIT(A). Admittedly, the Id. AO assessing the other group entities has accepted the corresponding transaction in their books as genuine. We also find that the Id. CIT(A) has taken due cognizance of the fact that the prices at which these contracts were entered were purely driven by market forces on the

relevant date of transaction. We hold that entering into forward contract with group companies are not banned either by SEBI or Reserve Bank of India or any other regulatory authority who are governing forward markets. Merely because there is a doubt in the mind of the Id. AO that the transaction with related party could be used as tool to shift profits to group entities, it cannot automatically result in any addition that could be made in the hands of the assessee. At best it can only result in "reason to suspect", which may warrant further probing in the matter, if the Id. AO so desires. It is well settled that ***Suspicion, howsoever strong, cannot take the place of evidence.***

7.2. We find that the Id. CIT(A) had categorically observed that the parties with whom assessee company had entered into the forward contracts are regularly assessed to income tax and had duly paid their taxes on the income earned by them by entering into forward contracts with the assessee. The assessee has filed computation of total income and assessment orders framed in the hands of those group companies wherein it could be seen that the correct income had been duly taxed at the higher slab rate of 30%, hence, there cannot be any tax avoidance or mala fide intention on the assessee to reduce tax liability. The loss incurred by the assessee in the forward contract by buying or selling the aluminium commodity, Nickel, or platinum is only incurred in the normal course of running the business of the assessee and the prices thereof are purely driven by market forces. The transactions carried out with related parties are of no relevance for disallowing the loss incurred by the assessee. Reliance in this regard has been rightly placed by the Id. AR on the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Pitty Bros. Pvt. Ltd., reported in 120 ITR 709.

7.3. In view of the aforesaid observations, we do not find any infirmity in the order of the Id. CIT(A) deleting the disallowance of Rs.7,74,36,669/- being the loss incurred on account of trading in forward contracts. Accordingly, the ground No.7 raised by the Revenue is dismissed.

7.4. In the result, appeal of the Revenue in ITA No.6837/Mum/2018 for A.Y.2013-14 is partly allowed.

ITA No. 6889/Mum/2018 (A.Y.2013-14) Assessee Appeal

8. The only issue to be considered is with regard to disallowance of expenses u/s.14A of the Act r.w.Rule 8D of the Rules.

8.1. We have heard rival submissions and perused the materials available on record. We find that this issue has already been adjudicated by us while addressing ground Nos. 3 & 4 of Revenue's appeal for A.Y.2013-14 in an elaborate manner covering all the connected issues. The decision rendered therein in Revenue's appeal shall cover the grounds raised by the assessee in this appeal also.

9. The assessee has raised an additional ground for claiming deduction on account of education cess.

9.1. We have heard rival submissions and perused the materials available on record. We find that assessee has raised an additional ground before us claiming deduction on account of education cess. We find that this

additional ground deserves to be admitted as all the facts necessary for its adjudication are already on record and there is no dispute that assessee had indeed paid the education cess. Hence, respectfully following the decision of the Hon'ble Jurisdictional High Court in the case of Sesa Goa Ltd., vs. JCIT reported in 423 ITR 426, we direct the Id. AO to grant deduction on account of education cess paid by the assessee as an allowable business expenditure. Accordingly, the additional ground raised by the assessee is allowed.

10. In the result, appeal of the assessee is partly allowed.

**ITA No.6838/Mum/2018 (Assessment Year :2013-14)
Revenue Appeal**

11. The appeal of the Revenue in the case of Ecap Equities Ltd., for A.Y.2013-14 in ITA No.6838/Mum/2018 is having identical grounds with that of ITA No.6837/Mum/2018 for A.Y.2013-14. Hence, the decision rendered by us in the case of Edelcap Securities shall apply with equal force for this appeal also in respect of identical facts except with variance in figures. Both the parties agreed that the facts and the grounds raised by the Revenue are identical in this case also.

**ITA No.6890/Mum/2018 (Assessment Year :2013-14)
Assessee Appeal**

12. The appeal of the assessee in the case of Ecap Equities Ltd., for A.Y.2013-14 in ITA No.6890/Mum/2018 is having identical grounds with that of ITA No.6889/Mum/2018 for A.Y.2013-14. Hence, the decision rendered by us in the case of Edelcap Securities shall apply with equal force for this appeal also in respect of identical facts except with variance in figures. Both the parties agreed that the facts and the grounds raised by the assessee are identical in this case also.

**ITA No.6836/Mum/2018 (Assessment Year :2013-14)
Revenue Appeal**

13. The appeal of the Revenue in the case of Edelweiss Investments Advisors Ltd., for A.Y.2013-14 in ITA No.6836/Mum/2018 is having identical grounds with that of ITA No.6837/Mum/2018 for A.Y.2013-14. Hence, the decision rendered by us in the case of Edelcap Securities shall apply with equal force for this appeal also in respect of identical facts except with variance in figures. Both the parties agreed that the facts and the grounds raised by the Revenue are identical in this case also.

**ITA No.6888/Mum/2018 (Assessment Year :2013-14)-
Assessee Appeal**

14. The appeal of the assessee in the case of Edelweiss Investments Advisors Ltd., for A.Y.2013-14 in ITA No.6888/Mum/2018 is having identical grounds with that of ITA No.6889/Mum/2018 for A.Y.2013-14. Hence, the decision rendered by us in the case of Edelcap Securities shall apply with equal force for this appeal also in respect of identical facts

except with variance in figures. Both the parties agreed that the facts and the grounds raised by the assessee are identical in this case also.

15. In the result, all the appeals of the Revenue as well as the assessee are partly allowed.

Order pronounced on 28/09/2021 by way of proper mentioning in the notice board.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 28/09/2021

KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai