

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

**BEFORE SHRI S. RIFAUH RAHMAN (ACCOUNTANT MEMBER) AND  
SHRI PAVAN KUMAR GADALE (JUDICIAL MEMBER)**

**ITA No. 7895/MUM/2019  
Assessment Year: 2012-13**

**&**

**ITA No. 7896/MUM/2019  
Assessment Year: 2013-14**

**&**

**ITA No. 7897/MUM/2019  
Assessment Year: 2014-15**

**&**

**ITA No. 7898/MUM/2019  
Assessment Year: 2015-16**

JM Finance Limited,  
7<sup>th</sup> floor, Cnergy, Appasaheb  
Marathe Marg, Prabhadevi,  
Mumbai-400025.

**Vs.** Deputy Commissioner of  
Income Tax Circle-4(3)(1),  
R. No. 649, 6<sup>th</sup> floor, Aayakar  
Bhavan, M.K. Road,  
Mumbai-400020.

**PAN No. AAACJ 2590 B  
Appellant**

**Respondent**

**ITA No. 163/MUM/2020  
Assessment Year: 2012-13**

**&**

**ITA No. 164/MUM/2020  
Assessment Year: 2013-14**

**&**

**ITA No. 166/MUM/2020  
Assessment Year: 2014-15**

**&**

**ITA No. 165/MUM/2019  
Assessment Year: 2015-16**

The ACIT-4(3)(1),  
Room No. 649, 6<sup>th</sup> floor, Aayakar  
Bhavan, M.K. Road,  
Mumbai-400020.

**Appellant**

**Vs.** JM Finance Limited,  
7<sup>th</sup> floor, Cnergy, Appasaheb  
Marathe Marg, Prabhadevi,  
Mumbai-400025.  
**PAN No. AAACJ 2590 B**  
**Respondent**

**CO. No. 104/MUM/2021**  
**(ITA No. 163/MUM/2020)**  
**Assessment Year: 2012-13**

**&**

**CO. No. 105/MUM/2021**  
**(ITA No. 164/MUM/2020)**  
**Assessment Year: 2013-14**

**&**

**CO. No. 106/MUM/2021**  
**(ITA No. 166/MUM/2020)**  
**Assessment Year: 2014-15**

**&**

**CO. No. 107/MUM/2021**  
**(ITA No. 165/MUM/2019)**  
**Assessment Year: 2015-16**

JM Finance Limited,  
7<sup>th</sup> floor, Cnergy, Appasaheb  
Marathe Marg, Prabhadevi,  
Mumbai-400025.

**PAN No. AAACJ 2590 B**  
**Appellant**

**Vs.** The ACIT-4(3)(1),  
Room No. 649, 6<sup>th</sup> floor,  
Aayakar Bhavan, M.K. Road,  
Mumbai-400020.

**Respondent**

Revenue by : Mr. S.N. Kabra, DR  
Assessee by : Dr. K. Shivraram, AR

Date of Hearing : 07/10/2021  
Date of pronouncement : 29/10/2021

**ORDER**

**PER BENCH**

The aforesaid appeals by the Revenue and cross objections by the assessee are for the assessment year 2012-13, 2013-14, challenging the impugned common order of even date 31<sup>st</sup> October 2019, passed by the learned Commissioner of Income Tax (Appeals)-9, Mumbai, and appeals by the assessee for the assessment year 2012-13, 2013-14, 2014-15 and 2015-16, challenging common order of even date 31<sup>st</sup> October 2019, passed by the learned Commissioner of Income Tax (Appeals)-47, Mumbai. As the issue involved in the captioned appeals are inextricably interlinked or in fact interwoven and having common issue, the same are therefore being taken up and disposed off by way of a consolidated order. Facts being identical we begin with the AY 2012-13.

**ITA No. 7895/MUM/2019**  
**Assessment Year: 2012-13**

2. At the time of hearing, it is brought to our notice that the issue involved in these appeals filed by the Revenue as well as assessee are under section 14A disallowance and disallowance of lease rentals paid on motor vehicle. It is brought to our notice that all the issues involved in these appeals are already covered in assessee's own case by the decision of the Co-ordinate Benches held for assessment year 2010-11 and 2011-12.

3. Considering the material facts on record and submission made by both the counsels. First, let us deal with 14A disallowance issues and we noticed that this issue was already considered by the Co-ordinate Bench in assessment year

2010-11 and it is submitted before us that the facts are exactly similar to the assessment year 2010-11 and also Departmental Representative has not controverted anything on record, therefore, the facts in this assessment year are similar to the facts in assessment year 2010-11. For the sake of clarity, the decision of the Co-ordinate Bench in assessment year 2010-11 are reproduced below:

*“7.1. We have heard the rival submissions. We find that the additional grounds raised by the assessee deserve to be admitted as they go to the root of the matter and does not involve verification of any fresh facts and they are purely legal in nature. We find that the assessee had earned exempt dividend income of Rs 37,91,61,612/- during the year under consideration. The assessee had made suo moto disallowance of Rs 55,91,168/- u/s 14A of the Act in the return of income. We find that this disallowance was worked out by the assessee by considering the salaries of Mr Nimesh Kampani, Mr Manish Sheth and Mr Rajesh Shah ( i.e one month salary cost) and list of various administrative expenses attributable to investment activity at 8.33% thereon. The details of the said workings were provided by the assessee before the ld AO. The ld AO completely ignored the workings of the assessee and did not record any objective satisfaction with cogent reasons in terms of Rule 8D(1) of the Rules as to how the computation made by the assessee is incorrect having regard to the accounts of the assessee. Instead we find that the ld AO had mechanically applied the computation mechanism provided in Rule 8D(2) of the Rules and computed the disallowance under third limb thereon towards administrative expenses in the sum of Rs 7,15,49,747/-. We find that the ld AO while computing this disallowance had considered all the investments of the assessee instead of considering only those investments which had yielded exempt income.*

*7.1.1. We find that the issue in dispute is decided in favour of the assessee in the case of JM Financial Consultants P Ltd (now known as JM Financial Institutional Securities P Ltd) vs DCIT in iTA No. 1863/Mum/2013 for Asst Year 2009-10 dated 7.10.2015 wherein it was held that the ld AO had not rejected the computation made by the assessee and hence the ld AO could not invoke the computation mechanism provided in Rule 8D(2) of the Rules mechanically. It was also held that the ld AO had not recorded any satisfaction in terms of Section 14A(2) of the Act read with Rule 8D(1) of the Rules by examining the accounts of the assessee and correctness of the claim of the assessee. We find that this decision of the tribunal was upheld by the Hon'ble Jurisdictional High Court in Income Tax Appeal No. 1482 of 2016 dated*

29.1.2019 wherein the question raised by the revenue before the Hon'ble High Court and the decision rendered thereon are as under:-

"1. Revenue is in the appeal against the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short) dated 7.10.2015 raising following question for our consideration:-

*Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in restricting the disallowance made by the Assessing Officer of Rs. 1,79,85,122/- to Rs. 7,64,949/- as offered by the assessee, without appreciating that when the assessee itself admitted that the disallowance had to be made with - regard to expenditure for earning of income which was exempt, the disallowance is not to be worked out on adhoc basis by estimating the same, but as per method prescribed in the Rule 8D(2)?"*

2. *The issue pertains to disallowance to be made under Section 14A of the income Tax Act, 1961 ("the Act" for short) towards the expenditure incurred by the assessee to earn exempt income. The Tribunal, by the impugned judgment while allowing the assessee's appeal came to the conclusion that the Assessing Officer had not recorded satisfaction with respect to the correctness of the claim of the assessee in respect of such expenditure. This is a requirement flowing from sub-section (2) of Section 14A of the Act Only when sub-section (2) of Section 14A is made applicable, the question of having resorted to Rule 8D(2) of the Income Tax Rules would arise. In the result, we do not find any error in the view of the Tribunal. The Tax Appeal is dismissed."*

7.2. *Respectfully following the same, we direct the Id AO to delete the disallowance made u/s 14A of the Act in the sum of Rs 7,15,49,747/- both under normal provisions of the Act as well as in the computation of book profits u/s 115JB of the Act. Hence the additional ground raised by the assessee on non-recording of satisfaction is allowed in this regard. Since the issue is adjudicated in favour of the assessee on the technical ground , the adjudication of other grounds become academic in nature."*

4. Considering the above decision of the Co-ordinate Bench and the facts on record. With regard to assessee's appeal, the assessee itself disallowed certain expenses and from the record, we notice that similar to earlier assessment year in AY 2010-11, the AO has not recorded any satisfaction. Respectfully following the decision of Co-ordinate Bench as per above para we are incline to direct the

Assessing Officer to delete the disallowance made u/s 14A. Accordingly, grounds raised by the assessee are allowed.

5. Further, we noticed that the Revenue raised the ground of appeal No. 2 objecting to the decision of Ld. CIT(A) wherein the Ld. CIT(A) restricted the disallowance under Rule 8D(2)(iii) to the extent of only those investments which yielded the exempt income. The Revenue contention was that provision of section 14A r.w.r. 8D are applicable irrespective of earning exempt income. This proposition that Rule 8D applicable even when there is no exempt income is against the judicial precedent and all the Courts have held that disallowance can be made only on those investments which had actually earned exempt income. Therefore, we reject the above proposition and decide this issue against the Revenue. Accordingly, ground No. 2 raised by the Revenue are dismissed.

6. Facts being identical, our decision for the AY 2012-13 (ITA No. 7859/M/2019) applies *mutatis mutandis* to AY 2013-14 to 2015-16 (ITA Nos. 7896/M/2019, 7897/M/2019 & 7898/M/2019).

7. In the result the appeals filed by the assessee are allowed.

8. With regard to Ground No. 1 of Revenue and cross objection filed by the assessee on disallowance of lease rentals paid on motor vehicles. The relevant facts are that the assessee had paid lease rentals to M/s Orix Auto Infrastructure Services Private Limited for cars taken on lease from them. The assessee had capitalized the value of vehicles in its books of accounts in accordance with the requirements of Accounting Standard (AS) 19 issued by

the Institute of Chartered Accountants of India (ICAI). Accordingly, the finance charges and the tax on the leased vehicles and Depreciation on leased vehicles were disallowed by the assessee voluntarily in the return of income. The assessee claimed the entire payment of lease rentals as deduction in its income tax return as they were incurred in the normal course of business of the assessee. The assessee also made an alternative plea without prejudice to its original claim of deduction towards lease rentals, submitted that if the Id. AO was inclined to disallow the lease rentals, then the assessee is to be allowed depreciation and finance charges with respect to the leased vehicles. The Id. AO ignoring the plea of the assessee proceeded to disallow the entire lease rentals claimed as deduction on the ground that the assessee itself had capitalized the value of leased vehicles as fixed assets in its books. However, the Id. AO did not accept the alternate claim of the assessee for granting depreciation and finance charges on leased assets. This action of the Id. AO was upheld by the Id. CIT(A). Aggrieved, the assessee is in appeal before us.”

9. At the time of hearing, it is brought to our notice that the Co-ordinate Bench has already considered this issue and decided the issue in favour of the assessee and against the Revenue. The relevant decisions are reproduced below:

*“6.2. We have heard the rival submissions. The primary facts stated hereinabove remain undisputed and hence the same are not reiterated for the sake of brevity. The Id AR stated that similar disallowance made by the Id AO in Asst Year 2008-09 was deleted by the Id CIT(A), against which no appeal was preferred by the revenue before this tribunal and that the issue had already become final. The Id AR also stated that no disallowance of lease rentals was made by the Id AO in Asst Year 2009-10 in the case of the assessee itself. We find that the issue in dispute is fully settled in favour of the assessee by the decision of the Hon’ble Supreme Court in the case of ICDS Ltd reported in 350 TIR 527 (SC) wherein it was held that depreciation*

*on leased assets is allowable in the hands of the lessor who is the owner. Though this decision has been rendered on the allowability of depreciation on leased assets from the angle of the lessor, the principle laid down could be made very much applicable to the facts of the instant case conversely for allowability of lease rentals in the hands of the assessee (lessee). Hence respectfully following the said decision, we hold that the assessee is entitled for deduction of ₹ 42,48,067/- towards lease rentals paid on cars and we direct the Id AO accordingly. Since the Ground No. A raised by the assessee is allowed, the adjudication of Ground Nos. B and C need not be adjudicated."*

10. Respectfully following the above decision we are herewith dismissing the ground raised by the Revenue and allowing the CO filed by the assessee.

11. Facts being identical, our decision for the AY 2012-13 (ITA No. 163/M/2020) and applies mutatis mutandis to AYs 2013-14 to 2015-16 (164/M/2020, 166/M/2020 and 165/M/2019).

12. In the result, the appeals filed by the Revenue are dismissed whereas the cross objections filed by the assessee are allowed.

13. In the result, the appeals filed by the assessee in ITA Nos. 7895/M/2019, 7896/M/2019, 7897/M/2019 and 7898/M/2019 are allowed. The appeals in ITA Nos. 163/M/2020, 164/M/2020, 166/M/2020 and 165/M/2019 filed by the Revenue are dismissed whereas the cross-objections filed by the assessee are allowed.

**Order pronounced in the open Court on 29/10/2021.**

Sd/-  
(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER

Sd/-  
(S. RIFAUH RAHMAN)  
ACCOUNTANT MEMBER

Mumbai;  
Dated: 29/10/2021  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)  
**ITAT, Mumbai**