आयकर अपीलीय अधिकरण, **'बी'** न्यायपीठ**,** चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

माननीय श्री वी. दुर्गा राव**, न्यायिक सदस्य** एवं
माननीय श्री **जी. मंजूनाथा, ,** लेखा सदस्य **के समक्ष**
BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA Nos.547 & 548, 550, 551 & 553/Chny/2019**
निर्धारण वर्ष **/Assessment Years: 2010-11 & 2012-13, 2013-14, 2014-15 & 2015-16**

M/s.Keimed Pvt. Ltd., No.10-3-316A, Masab Tank, Hyderbad-500 028. [**PAN:** AABCK 4532 F]	**v.**	The Asst. Commissioner of Income Tax, Central Circle-3(1), Chennai-34.
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**

अपीलार्थी की ओर से/ Appellant by	:	Mr.T.Banusekar, CA
प्रत्यर्थी की ओर से /Respondent by	:	Mr.R.N.Siddappaji, CIT
सुनवाई की तारीख/Date of Hearing	:	06.01.2022
घोषणा की तारीख /Date of Pronouncement	:	31.01.2022

आदेश **/ O R D E R**

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

These five appeals filed by the assessee are directed against the common order passed by the Commissioner of Income Tax (Appeals)-19, Chennai, dated 24.12.2018 and pertains to AYs 2010-11 & 2012-13, 2013-14, 2014-15 & 2015-16. Since facts are identical and issues are common, for the sake of convenience, these appeals are heard together and are being disposed off, by this consolidated order.

ITA Nos.547 & 548/Chny/2019:

2. The assessee has more or less raised common grounds of appeals for both the AYs. Therefore, for the sake of brevity, grounds for the AY 2010-11 are re-produced as under:

Grounds for the AY 2010-11:

1 . For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interests of the appellant and is opposed to the principles of equity, natural justice and fair play.

2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.

3. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the disallowance of Rs.1,58,00,410/- u/s.14A r.w Rule 8D is not warranted in the facts and circumstances of the case.

4. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the provisions of section 14A read with rule 8D are not invocable in the facts and circumstances of the case.

5. For that the Assessing Officer has not recorded satisfaction for invoking Rule 8D of the Income Tax Rules.

6. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer erred in applying Rule 8D on expenditure which are not connected to earning exempt income.

7. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the investments of the appellant company were strategic investments for the improvement and growth of the business of the company.

8. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant had earned logistic fee out of such strategic investments which were admitted as its income chargeable to tax.

9. For that without prejudice to the above, the Assessing Officer ought to have restricted the disallowance to the exempt income earned.

10. For that without prejudice to the above, the Commissioner of Income Tax (Appeals) failed to appreciate that Assessing Officer erred in applying Rule 8D on entire investments without considering the fact that all the

investments did not yield any return in the form of dividend during the impugned assessment

PRAYER

For these grounds and such other grounds that may be urged before or during the hearing of this appeal, it is most humbly prayed that the Hon'ble Tribunal may be pleased to:

i. Delete the disallowance made u/s.14A
ii. Pass such other orders as the Hon'ble Tribunal may deem fit.

3. The assessee also filed a petition for admission of additional grounds and as per the petition filed by the assessee, the additional grounds filed by the assessee are as under:

Ground No.3

For that the assessment completed u/s. 143(3) r.w.s.153A is bad in law. (The existing ground numbers 3 to 10 may be renumbered as 4 to 11)

Ground No.12

For that the appellant objects to the levy of interest u/s.234B of the Income Tax Act.

4. At the time of hearing, the counsel for the assessee referring to petition for admission of additional grounds submitted that the additional grounds taken by the assessee challenging the validity of Assessment Order passed u/s.143(3) r.w.s.153(A) of the Income Tax Act, 1961 (in short "the Act") is purely legal issue, which can be taken at any time including proceedings before the Tribunal. Therefore, prayed for admission of additional grounds. The Ld.DR, on the other hand, strongly opposed the additional grounds filed by the assessee.

4.1 Having heard both the sides, we find that additional grounds taken by the assessee challenging validity of Assessment Order passed

u/s.143(3) r.w.s.153(A) of the Act is purely a legal ground for which, there is no need to examine fresh facts and further, facts with regard to the said grounds were already before the AO at the time of assessment and thus, we are of the considered view that the additional grounds filed by the assessee challenging legality of Assessment Order passed u/s.143(3) r.w.s.153(A) of the Act is admitted for adjudication.

4.2 The first issue came up for consideration from Ground No.3 of the assessee's appeal is validity of Assessment Order passed u/s.143(3) r.w.s.153(A) of the Act. The Ld.AR for the assessee referring to dates and events submitted that the Assessment Order passed by the AO u/s.143(3) r.w.s.153(A) of the Act is bad in law as it is not required to be passed since no incriminating material was found as a result of search. For this purpose, he relied upon the plethora of judicial precedents including the decision of the Hon'ble Supreme Court in the case of Pr.CIT vs. Meeta Gutgutia reported in (2018) 96 taxmann.com 468 (SC).

4.3 The Ld.DR, on the other hand, submitted that there is no merit in the arguments taken by the Ld.AR for the assessee because when a search took place, the AO shall assess or re-assess the total income, including undisclosed income, if any, found as a result of search and thus, the moment search took place the assessment for six AYs immediately preceding the AY, in which, search took place shall get re-opened and the AO shall have power to pass fresh Assessment Order in accordance with law.

4.4 We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The provisions of Sec.153A of the Act deals with search assessment, as per which, once search took place, the assessment for six AYs immediately preceding the AY, in which, search took place shall get re-opened and the AO shall have power to assess or re-assess the total income including undisclosed income, if any, found as a result of search. Further, as per legal principles laid down by various Courts including the decision of the Hon'ble Supreme Court in the case of Pr.CIT vs. Meeta Gutgutia, (supra), it is a well settled legal position that the AO cannot disturb unabated/concluded assessment as on the date of search, if no incriminating material found as a result of search which suggest undisclosed income. From the above, what is clear is that once search takes place, the AO shall have power to assess or re-assess the total income including undisclosed income, if any, found as a result of search, but such assessment should be passed on incriminating material found during the course of search. In other words, if there is no incriminating material found during the course of search, then no addition can be made to the total income, in case the assessments are unabated/concluded as on the date of search, but there is no restriction under the law to pass a fresh Assessment Order in pursuance to Sec.153A of the Act. Therefore, we are of the considered view that there is no merit in arguments of the ld.Counsel for the assessee, thus once there is no incriminating material was found as a result of search, no Assessment Order

is required to be passed. In so far as, various case laws relied upon by the ld.Counsel for the assessee including the decision of the Hon'ble Supreme Court in the case of Pr.CIT vs. Meeta Gutgutia, supra, we find that all those cases are deals with only situation where the AO has made additions to the total income in the absence of incriminating material found as a result of search, but none of the cases deals with the situation of no incriminating material and no Assessment Order should be passed. Hence, we are of the considered view that the case laws relied upon by the ld.Counsel for the assessee has no application to the fact of the present cases.

4.5 In this view of the matter and considering the facts and circumstances of this case, we are of the considered view that once, search takes place, the AO shall have the power to assess or re-assess the total income including undisclosed income, if any, found as a result of search, but no additions can be made to the total income in the absence of incriminating material found during the course of search. However, there is no restriction for the AO to pass fresh Assessment Order accepting income declared by the assessee in the return of income filed in pursuant to notice issued u/s.153A/153C of the Act. Hence, we reject the Ground No.3 taken by the assessee challenging validity of Assessment Order passed u/s.143(3) r.w.s.153A of the Act.

4.6 The next Ground No.12 of the assessee's appeal came up for consideration is that levy of interest u/s.234B of the Act up to the date of the Assessment Order passed u/s.143(3) r.w.s.153A of the Act. The AO has

completed assessment u/s.143(3) r.w.s.153A of the Act on 29.12.2017 and has accepted income declared by the assessee in the return of income filed for the relevant AY without making any additions to total income, but levied interest u/s.234B of the Act up to the date of assessment i.e.29.12.2017. The Ld.AR for the assessee referring to the provisions of Sec.234B(3) submitted that as per Sub-section(3), the AO can levy interest up to the date of re-assessment or re-computation on the basis of total income determined which exceeds the tax on the total income determined under sub-section (1) of Section 143(3) or on the basis of regular assessment as referred to in sub-section(1), as the case may be, but if there is no difference in income computed as per regular assessment u/s.143(3) and income computed as per re-assessment u/s.143(3) r.w.s.153A of the Act, then no interest can be computed up to the date of Assessment Order passed u/s.153A of the Act.

4.7 The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A) submitted that as per provisions of Sec.234B, the AO shall compute interest on total taxes payable by the assessee up to date of assessment u/s.143(3) of the Act and thus, the AO is very much right in levying interest up to date of assessment completed in pursuant to notice issued u/s.153A of the Act and hence, the arguments taken by the Ld.AR for the assessee should be rejected.

4.8 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. As per the

provisions of Sec.234B(3) of the Act, where as a result of order of re-assessment or re-computation u/s.147 or Sec.153A, the amount on which interest was payable in respect of short fall in payment of advance tax for any Financial Year is increased, the assessee shall be liable to pay simple interest @1% for every month or part of month comprised in the period commencing on the first day of April next following such Financial Year and ending on the date of re-assessment or re-computation u/s.147 or Sec.143(3) on the amount by which the tax on the total income determined on the basis of re-assessment or re-computation exceeds the tax on the total income determined under Sub-Section (1) of 143 or on the basis of regular assessment. From the above, it is very clear that interest u/s.234B can be levied up to the date of re-assessment or re-computation u/s.147 or 153A of the Act if the assessed income exceeds the income determined on the basis of regular assessment. In other words, if there is no change in assessed income as per regular assessment and re-assessment u/s.153A, then interest u/s.234B cannot be levied up to the date of re-assessment. In this case, on perusal of details filed by the assessee, we find that there is no difference in income assessed as per regular assessment u/s.143(3) and income assessed as per re-assessment u/s.153A of the Act. Therefore, the AO cannot compute interest u/s.234B up to the date of re-assessment. The AO as well as the Ld.CIT(A) without appreciating the facts has levied interest up to the date of re-assessment order passed u/s.143(3) r.w.s.153A, even though, there is no difference in

assessed income. Hence, we direct the AO to restrict levy of interest u/s.234B in accordance with sub-section (3) of Sec.234B of the Act.

5. In the result, appeals filed by the assessee in ITA Nos.547 & 548/Chny/2019 for the AYs 2010-11 & 2012-13 are partly allowed.

ITA Nos.550 & 551/Chny/2019 for the AYs 2013-14 & 2014-15:

6. The assessee has more or less raised common grounds of appeal for both the AYs. Therefore, for the sake of brevity, grounds of appeal filed for the AY 2013-14 are re-produced as under:

> *1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interests of the appellant and is opposed to the principles of equity, natural justice and fair play.*
>
> *2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.*
>
> *3. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the disallowance of Rs.36,27,655/- u/s.14A r.w Rule 8D is not warranted in the facts and circumstances of the case.*
>
> *4. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the provisions of section 14A read with rule 8D are not invocable in the facts and circumstances of the case.*
>
> *5. For that the Assessing Officer has not recorded satisfaction for invoking Rule 8D of the Income Tax Rules.*
>
> *6. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer erred in applying Rule 8D on expenditure which are not connected to earning exempt income.*
>
> *7. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the investments of the appellant company were strategic investments for the improvement and growth of the business of the company.*
>
> *8. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant had earned logistic fee out of such strategic investments which were admitted as its income chargeable to tax.*

9. For that without prejudice to the above, the Commissioner of Income Tax (Appeals) failed to appreciate that Assessing Officer erred in applying Rule 8D on entire investments without considering the fact that all the investments did not yield any return in the form of dividend during the impugned assessment year.

PRAYER

For these grounds and such other grounds that may be urged before or during the hearing of this appeal, it is most humbly prayed that the Hon'ble Tribunal may be pleased to:

i. Delete the disallowance made u/s.14A

ii. Pass such other orders as the Hon'ble Tribunal may deem fit.

7. The assessee had also filed petition for admission of additional grounds by taking a ground challenging the jurisdiction of the AO in passing Assessment Order u/s.143(3) of the Act dated 28.03.2016. The relevant additional grounds filed by the assessee are re-produced as under:

Ground No.3

For that the order of the Assessing Officer is without jurisdiction
(The existing ground nos.3 to 9 may be renumbered as 4 to 10)

Ground No.11

For that the appellant objects to the levy of interest u/s.234B of the Income Tax Act.

8. At the time of hearing, the Ld.Counsel for the assessee referring to petition filed for admission of additional grounds submitted that additional grounds taken by the assessee for both the AYs are purely legal issue, for which, there is no requirement of verification of fresh facts or evidences and thus, the additional grounds filed by the assessee may be admitted. The Ld.DR, on the other hand, opposed the additional grounds filed by the assessee.

8.1 having heard both the sides and considered petition filed by the assessee for admission of additional grounds, we are of the considered view that the additional grounds taken by the assessee challenging jurisdiction of the AO in passing Assessment Order for the AYs 2013-14 & 2014-15 u/s.143(3) of the Act is purely a legal issue which can be taken up at any stage of the proceedings including before the Tribunal and thus, the additional grounds filed by the assessee are admitted for adjudication.

8.2 The solitary issue came up for our consideration from additional grounds of appeal filed by the assessee for the AYs 2013-14 & 2014-15 is that the jurisdiction of the AO in passing the Assessment Order u/s.143(3) of the Act dated 28.03.2016 and 30.12.2016. The Ld.AR for the assessee referring to the date of search, submitted that the AO has passed order u/s.143(3) of the Act for both the AYs after date of search i.e. 05.01.2016 and thus, the Assessment Order passed by the AO is not maintainable, because once search took place, the pending assessments abates and the AO shall have the power to assess the total income including undisclosed income in the re-assessment orders passed u/s.143(3) r.w.s.153A of the Act. Since, the AO passed Assessment Orders u/s.143(3) of the Act subsequent to the date of search and further, the issue considered by the AO in the regular assessment had already been considered in re-assessment order passed u/s.143(3) r.w.s.153A of the Act, the present orders become infructuous and thus, appeals filed by the assessee against those orders are not maintainable. The Ld.AR, further, submitted that

moreover, the assessee has settled the dispute involved for both the AYs under the direct taxes Vivad-Se-Vishwas Scheme, 2020 and paid necessary taxes and thus, the present appeals filed by the assessee are not maintainable and may be dismissed as infructuous.

8.3 The Ld.DR, on the other hand, fairly agreed that the assessee has settled its tax dispute in respect of AYs 2013-14 & 2014-15 under the direct taxes Vivad-Se-Vishwas Scheme, 2020 and thus, the present appeals filed by the assessee become infructuous and may be dismissed as not maintainable.

8.4 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. We find that the AO has passed regular Assessment Order u/s.143(3) of the Act for both the AYs after the date of search. It is an admitted legal position of law that once, search took place, the pending assessments shall abate and the AO shall have power to re-assess the total income including undisclosed income, if any, found as a result of search in the Assessment Order passed in pursuant to search action u/s.132 of the Act. Thus, we are of the considered view that the Assessment Order passed by the AO u/s.143(3) of the Act dated 28.03.2016 and 30.12.2016 for the AYs 2013-14 & 2014-15 become infructuous and not maintainable. Moreover, the assessee has settled its tax dispute with regard to additions made for both the AYs under the direct taxes Vivad-Se-Vishwas Scheme, 2020 and paid necessary taxes. Hence, the present appeals filed by the assessee against regular

Assessment Orders passed subsequent to the date of search becomes infructuous and not maintainable and thus, the appeals filed by the assessee for the AYs 2013-14 & 2014-15 are dismissed as not maintainable.

9. In the result, appeals filed by the assessee in ITA Nos.550 & 551/Chny/2019 for the AYs 2013-14 & 2014-15 are dismissed as not maintainable.

ITA No.553/Chny/2019 for the AY 2015-16:

10. The assessee has raised the following grounds of appeal:

1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interests of the appellant and is opposed to the principles of equity, natural justice and fair play.

2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.

3. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the disallowance of Rs.4,94,64,602/- u/s.14A r.w Rule 8D is not warranted in the facts and circumstances of the case.

4. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the provisions of section 14A read with rule 8D are not invocable in the facts and circumstances of the case.

5. For that the Assessing Officer has not recorded satisfaction for invoking Rule 8D of the Income Tax Rules.

6. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the Assessing Officer erred in applying Rule 8D on expenditure which are not connected to earning exempt income.

7. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the investments of the appellant company were strategic investments for the improvement and growth of the business of the company.

8. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant had earned logistic fee out of such strategic investments which were admitted as its income chargeable to tax.

9. For that without prejudice to the above, the Assessing Officer ought to have restricted the disallowance to the exempt income earned.

10. For that without prejudice to the above, the Commissioner of Income Tax (Appeals) failed to appreciate that Assessing Officer erred in applying Rule 8D on entire investments without considering the fact that all the investments did not yield any return in the form of dividend during the impugned assessment year.

PRAYER

For these grounds and such other grounds that may be urged before or during the hearing of this appeal, it is most humbly prayed that the Hon'ble Tribunal may be pleased to:

i. Delete the disallowance made u/s.14A

ii. Pass such othqr orders as the Hon'ble Tribunal may deem fit.

11. The brief facts of the case are that during the course of assessment proceedings, the AO noticed that the assessee has earned dividend income of Rs.2,57,82,548/-. However, has not made suo moto disallowance of expenses relatable to exempt income. Therefore, called upon the assessee to explain, as to why, the disallowance contemplated u/s.14A shall not be computed in accordance with Rule 8D of the Income Tax Rules, 1962. In response, the assessee submitted that its investments in shares and securities which yielded exempt income are strategic investments for improvement and growth of business. Further, he submitted that the assessee has received logistic fee on account of such investments and the same has been offered to tax. Therefore, the question of disallowance of expenses relatable to exempt income does not arise. The assessee, further, submitted that if at all disallowance is required to be made then it can be made to the extent of Rs.35,77,471/- which includes interest expenses and other direct expenses for which the assessee has filed a computation of disallowance which is worked out at Rs.35,77,471/-.

11.1 The AO, however, was not convinced with the explanation furnished by the assessee and according to him, as per the investment schedule attached to balance sheet, the assessee has held more than 60% of the total value of assets in the form of investment in shares. He, further, noted that out of total value of assets as on 31.03.2015 at Rs.147.59 Crs, the value of investments was at Rs.90 Crs. Therefore, he opined that the assessee has made substantial investments in shares and securities which yielded exempt income and further, the possibility of incurring certain expenses for managing such huge investments cannot be ruled out and accordingly, rejected the explanation of the assessee and computed disallowance of expenses u/s.14A by invoking Rule 8D of the Income Tax Rules, 1962 at Rs.4,94,64,602/-. The relevant findings of the AO are as under:

> *8. The assessee's submissions are considered very carefully, and the same is not acceptable for the following reasons:-*
>
> *(A) The Assessee's main business is not earning income from investments. The assessee has invested huge sum with the intention to earn dividend income and thereby to claim exemption u/s.10 (34) of the IT.Act, 1961. It is seen from the balance sheet that more than 60% of the total value of assets is held in the form of investment in shares. That is the total value of assets as on 31.3.2015 was Rs.147.59 crores out of which the value of investments were Rs.90 crores*
>
> *(B) Investments, especially in share market, are not made for immediate gain. It is not necessary that all investments will yield dividend every year but dividend derived over a period of time will determine the profitability margin.*
>
> *(C) Investments are not made on an "Invest-and-forget" basis. Any investment requires follow-up and monitoring for which time and energy have to be expended and for which manpower has to be employed. Therefore, a part of the expenditure on manpower and other resources can be definitely attributed to earning this income. The assessee incurs routine expenditure to maintain its establishment and towards administration, a portion of which can be attributed towards the activity of earning dividend. The assessee also incurs managerial remuneration and claims the whole of the same as expenditure. The managerial staff and the Directors are involved in making decisions on investments. Such being the case, a portion of this managerial remuneration and Directors remuneration should also be attributed*

towards the dividend earning activity by the assessee. It is judicially held that disallowance u/s 14A covers all forms of expenditure regardless of whether it is fixed, variable, direct, indirect, administrative, managerial or financial. - Kalpataru Construction Overseas (P.) Ltd, v. Dy. CIT [2007] 13 SOT 194 (Mnm. -Trib.) - Parry ARTO Industries v. Asst. CIT 314 ITR (AT) 181(2009) (Cochin).

(D) As per the provisions of Section 14A of the Act, any sum incurred for earning an income exempt from tax cannot be allowed as expenditure in computing the taxable income. It essentially means that the expenses debited to the Profit & Loss Account of the assessee are to be divided into 2 categories viz., one relating to the exempt stream of income and the other relating to the taxable stream of income. The expenses relating to the exempt stream of income cannot be claimed against the taxable stream of income. It is not necessary that there should be any income earned during the year. The expenditure incurred for earning an income can be lesser than the income itself. On some occasions, there could not even be any income though expenses are incurred towards earning the same,

(E) The above position is further clarified by the usage of term 'includible' in the Heading to section 14A of the Act and also the Heading to Rule 8D of I. T. Rules, 1962 which indicates that it is not necessary that exempt income should necessarily be included in a particular year's income for disallowance to be triggered. Also, section 14A of the Act does not use the word 'Income of the year' but 'income under the Act'. This also indicates that for invoking disallowance under section 14A, it is not material that assessee should have earned such exempt income during the financial year under consideration.

(F) The Central Board of Direct Taxes (CBDT) issued Circular No. 5/2014 dated 11 February 2014, through which it has taken a view that disallowance of expenditure for earning exempt income under section 14A read with Rule 8D would be attracted even if the corresponding exempt income has not been earned during the financial year.

9. Therefore, the argument of the assessee that disallowance u/s.14A cannot be made in its case, cannot be accepted. To tide over this difficulty in determining the expenses attributable to earning an exempt income and to bring in uniformity in the different approaches adopted by the Assessing Officers, the Finance Act, 2006 has brought in the provisions of Section 14A(2) which requires the Assessing Officer to determine the expenses attributed to earn an exempt income in accordance with Rule 8D, if the assessing officer is not satisfied with the clarification furnished by the assessee. Hence, the assessee's working based on a different formula, not in accordance with Rule 8D is not acceptable.

14A DISALLOWANCE			
As per Rule 8D(2)(i) -			
Amount of expenditure directly relating to income which does not part form of Total income as per assessee's submission			24,97,396
As per Rule 8D(2)(ii)	In Rs.		
Interest paid for the year	7,83,08,160		
Less: Bank charges	29,65,501		
Less: Interest on hire purchase loans	31,55,875		
Less: Direct expenditure admitted by assessee under Rule 8D(2)(ii)	24,97,396		
A		6,96,89,389	
Value of Total investments as on 1st April 2015	90,21,56,055		

Value of Total investments as on 31st March, 2014	72,55,31,053		
Average value of investments – **B**		81,38,43,554	
Value of assets as on 01.04.2015	1,47,59,57,536		
Value of Total assets as on 31.03.2016	1,16,82,81,170		
Average total assets as appearing in Balance sheet – **C**		1,32,21,19,353	
A x B / C			4,28,97,987
As per Rule 8D(2)(ii) in Rs.			
Average value of investments (B above)		81,38,43,554	
0.5% thereof			40,69,217
Disallowance u/s.14A			**4,94,64,602**

11.2 Being aggrieved by the Assessment Order, the assessee preferred the appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has reiterated its arguments made before the AO. The assessee, further, contended that the AO has not recorded satisfaction as required under sub-section (2) of 14A of the Act, having regard to the books of accounts of the assessee before invoking Rule 8D of the Income Tax Rules, 1962.

11.3 The Ld.CIT(A) after considering the relevant submissions of the assessee and also by following certain judicial precedents, including the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. v. CIT [2018] 91 taxmann.com 154 (SC), rejected arguments of the assessee in light of investments for strategic purpose and also the question of satisfaction, as raised by the assessee and further confirmed the additions made by the AO towards disallowance of expenses u/s.14A r.w.r.8D of the Income Tax Rules, 1962. The relevant findings of the Ld.CIT(A) are as under:

> *4.1 As in the brief facts of this case and as mentioned in the grounds of appeal the only issue Involved is that of disallowance made by Assessing officer u/s 14A. The plea of the appellant is that disallowance should not have been done as the loan funds are used for the purpose of investment in shares capital with the*

intention of earning logistic fees on the turnover of the concerns which is beneficial to the appellant. The appellant also claims that the investments were made of the purpose of improvement of business of the company and the Investments of the company were strategic investments for the growth of the business of the company. It is seen that the contention of the appellant is focused on what is the dominant purpose for which investments were made. The section under reference i.e 14A does not call for dominant purpose test at all. It is based solely on theory of apportionment of expenditures by segregating them under taxable income and non-taxable incomes. The same issue came up before Honorable Supreme Court in Maxopp Investment Ltd. vs CIT [2018] 91 taxmann.com 154 (SC) and the decision dated 12 February 2018 decided the following questions of law:-

4.2. Whether dominant purpose for which investment into shares is made by may not be relevant as section 14A applies irrespective of whether are held to gain control or as stock-in-trade - Held, yes.

4.3. Whether however where shares are held as stock-in-trade, main purpose is to trade in those shares and earn profits therefrom and, in process, certain dividend is also earned which is tax exempt under section 10(34); expenditure attributable to dividend income will have to be appointed to be disallowed section 14A - Held, yes.

5. The relevant and operating part of the judgment in the present context is also quoted beiow:-

In the first instance, it needs to be recognized that as per section 14A(1), deduction of that expenditure is not to be allowed which has been incurred by the assesses in relation to income which does not form part of the total income under this Act. Axiomatically, it is that expenditure alone which has been incurred in relation to the income which is includible in total income that has to be disallowed. If an expenditure incurred has no causal connection with the exempted income, then such expenditure would obviously be treated as not related to the income that is exempted from tax, and such expenditure would be allowed as business expenditure. To put it differently, such expenditure would then be considered as incurred in respect of other income which is to be treated as part of the total income. [Para 32]

There is no quarrel in assigning this meaning to section 14A. In fact, all the High Courts, whether it is the Delhi High Court on the one hand or the Punjab and Haryana High Court on the other hand, have agreed in providing this interpretation to section 14A. The entire dispute is as to what interpretation is to be given to the words 'in relation to' in the given scenario, viz. where the dividend income on the shares is earned, though the dominant purpose for subscribing in those shares of the investee company was not to earn dividend. There are two scenarios in these sets of appeals. In one group of cases the main purpose for investing in shares was to gain control over the investee company. Other cases are those where the shares of investee company were held by the assesses as stock-in-trade (i.e. as a business activity) and not as investment to earn dividends. In this context, it is to be examined as to whether the expenditure was incurred, in respective scenarios, in relation to the dividend income or not. [Para 33]

Having clarified the aforesaid position, the first and foremost issue that falls for consideration is as to whether the dominant purpose test, which is pressed into service by the assessee would apply while interpreting section 14A or we have to go by the theory of apportionment. The dominant purpose for which the investment into shares is made by an assessee may not be relevant. No doubt, the assessee

like Maxopp Investment Limited may have made the investment in order to gain control of the investee company. However, that does not appear to be a relevant factor in determining the issue at hand. Fact remains that such dividend income is non-taxable. In this scenario, if expenditure is incurred on earning the dividend income, that much of the expenditure which is attributable to the dividend income has to be disallowed and cannot be treated as business expenditure. Keeping this objective behind section 14A in mind, the said provision has to be interpreted, particularly, the word 'in relation to the income' that does not form part of total income. Considered in this hue. the principle of apportionment of expenses comes into play as that is the principle which is engrained in section 14A.[Pam 34]

The Delhi High Court, therefore, correctly observed that prior to introduction of section 14A, the law was that when an assesses had a composite and indivisible business which had elements of both taxable and non-taxable income, the entire expenditure in respect of said business was deductible and, in such a case, the principle of apportionment of the expenditure relating to the non-taxable income did not apply. The principle of apportionment was made available only where the business was divisible. It is to find a cure to the aforesaid problem that the Legislature has not only inserted section 14A by the Finance (Amendment) Act, 2001 but also made it retrospective, i.e., 1962 when the Income Tax Act itself came into force. The aforesaid intent was expressed loudly and clearly in the Memorandum explaining the provisions of the Finance Bill, 200.1. Thus, the view taken by the Delhi High Court .is agreeable, and the opinion of Punjab and Haryana High Court which went by dominant purpose theory is not acceptable. The aforesaid reasoning would be applicable in cases where shares are held as investment in the investee company, may be for the purpose of having controlling interest therein. On that reasoning, appeals of Maxopp Investment Limited as well as similar cases where shares were purchased by the assessee to have controlling interest in the investee companies have to fail and are, therefore, dismissed. [Para 35]".

6. In view of the facts of the present case and the law in respect of section 14A as interpreted by Apex court in similar circumstances, it has to be construed that for making a disallowance under section 14A the purpose of loan funds is irrelevant. The only thing relevant is no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income. If any expenditure relatable to non-taxable income is part of deduction constituting total income, then that shall trigger the application of section 14A irrespective of its nature or purpose. In the present case of appellant, it is not disputed that appellant is deriving income (dividends) that does not form part of total income and expenditures relatable to that are debited to the profit and loss account. These facts in itself are sufficient to J attract the provisions of section 14A and the assessing officer has rightly done that.

7. In view of the foregoing all the grounds of appeal of the appellant that are connected with each other on the disallowance made u/s.14A are dismissed.

11.4 The Ld.AR for the assessee submitted that the Ld.CIT(A) is erred in not appreciating the fact that before invoking Rule 8D of the Income Tax Rules, 1962 for computing disallowances u/s.14A of the Act, the AO has not recorded satisfaction as required u/s.14A(2) of the Act. The Ld.AR,

further, submitted that the Ld.CIT(A) has failed to appreciate the fact that the investment made by the assessee in various companies are for strategic investment purpose for improvement and growth of business. Further, the assessee has received logistic fee from the said investments and the same was offered to tax. Therefore, when the investments are made for strategic business purpose, no disallowance can be made towards expenses relatable to exempt income. The Ld.AR for the assessee, further, submitted that, if at all, disallowance is required to be computed, then only those investments which have yielded exempt income should be taken for calculation. He further submitted that interest which are paid on loans taken for specific purpose, should not be taken for disallowance. Finally, he rest his arguments in light of certain judicial precedents and submitted that, if at all, disallowance is required to be made then it should be restricted to the extent of exempt income earned for the year.

11.5 The Ld.DR, on the other hand, strongly supporting the order of the Ld.CIT(A), submitted that the AO has recorded satisfaction as required u/s.14A having regard to the books of accounts of the assessee that the assessee has not made any disallowance towards expenses relatable to exempt income. He, further, submitted that after the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. v. CIT (supra), the theory of strategic investments has been done away, because the Hon'ble Supreme Court very clearly stated that the moment exempt income earned for the year, disallowances contemplated u/s.14A triggers.

Therefore, there is no merit in arguments taken by the Ld.AR for the assessee that when investments are made for strategic business purpose no disallowance could be made.

11.6 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. As regards, the first question raised by the assessee in light of provisions of Sec.14A regarding satisfaction required to be recorded by the AO before invoking Rule 8D of the Income Tax Rules, 1962 for computing disallowance of expenses, we find that the question of recording satisfaction comes into play only when the assessee makes suo moto disallowance of expenses relatable to exempt income. This legal principle is supported by the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. v. CIT (supra) where it was categorically held that, only in those case where the AO has not satisfied with suo moto disallowance made by the assessee, then he shall record satisfaction as required u/s.14A(2) of the Act before invoking Ruled 8D for computing disallowance. From the above what is clear is that only in a case where the assessee have made suo moto disallowance and the AO has not accepted suo moto disallowance made by the assessee, then the AO shall require to record satisfaction. In case, the assessee shall not made suo moto disallowance, then question of recording satisfaction as required u/s.14A does not arise. In this case, although the assessee has earned huge dividend income, but has not made any suo moto disallowance and thus, we are of the considered view that there is no merit

in argument taken by the assessee with regard to satisfaction required to be recorded by the AO. Moreover, we find from the Assessment Order that the AO has recorded satisfaction having regard to the exempt income earned for the year and various expenses debited into the P&L A/c and came to the conclusion that the claim of the assessee that no expenses were incurred for exempt income is not correct. Therefore, we are of the considered view that the AO has satisfied the conditions prescribed u/s.14A(2) with regard to satisfaction before invoking Rule 8D of Income Tax Rules, 1962. Accordingly, we reject the arguments of the assessee.

11.7 As regards, arguments of the assessee in light of strategic investment for improvement and growth of business, we find that in the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. v. CIT (supra), the Hon'ble Apex Court has considered the theory of strategic investment and held that the moment exempt income earned for the year from investments in the shares, disallowance contemplated u/s.14A triggers. The Hon'ble Supreme Court further held that even if investments are made for strategic business purpose, if the investments yield exempt income, then disallowance contemplated u/s.14A has to be made. Therefore, we are of the considered view that the arguments of the assessee that when investments are made for strategic business purpose for investment and growth of business no disallowance can be made towards expenses relatable to exempt income. Accordingly, we reject the arguments of the assessee. As regards, the another argument of the Ld.AR

for the assessee in light of decision of ITAT Special Bench in the case of ACIT vs. Vireet Investment (P.) Ltd. reported in (2017) 58 ITR (T) 313 (Del. Tri.)(SB), we find that it is a settled position of law by the decision of the Special Bench and also numerous other decisions that for the purpose of computing disallowance u/s.14A of the Act only those investments which have yielded exempt income should be considered. In this case, the facts with regard to the investments which yielded exempt income and investments which does not yield exempt income are not forthcoming from the records. Therefore, we direct the AO to re-compute the disallowance of expenses u/s.14A by considering those investments which yielded exempt income for the year under consideration. Finally, in so far as restricting disallowance of expenses u/s.14A to the extent of exempt income, we find that the decision of the Hon'ble Delhi High Court in the case of Joint Investment Pvt. Ltd. v. CIT reported in [2015] 372 ITR 694, had considered an identical issue and held that the disallowance contemplated u/s.14A cannot shallow entire exempt income earned for the year. In other words, disallowance of expenses relatable to the exempt income u/s.14A of the Act cannot exceeds exempt income earned for the relevant period. Therefore, we direct the AO to re-compute the disallowance of expenses relatable to exempt income u/s.14A by invoking Rule 8D in light of directions given herein above but restrict disallowance of expenses u/s.14A to the extent of exempt income earned by the

assessee for the relevant AY in case disallowances computed u/s.14A of the Act exceeds exempt income.

12. In the result, the appeal filed by the assessee in ITA No.553/Chny/2019 for the AY 2015-16 is partly allowed.

13. In the result, the appeals filed by the assessee in ITA Nos.547, 548 & 553/Chny/2019 are partly allowed and ITA Nos.550 & 551/Chny/2019 are dismissed.

Order pronounced on the 31st day of January, 2022, in Chennai.

Sd/-	***Sd/-***
(वी. दुर्गा राव)	**(जी. मंजूनाथा)**
(V. DURGA RAO)	**(G. MANJUNATHA)**
न्यायिक सदस्य**/JUDICIAL MEMBER**	लेखा सदस्य**/ACCOUNTANT MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 31st January, 2022.
TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF