IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI

BEFORESHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA No. 763/Mum/2020 (A.Y 2015-16)

Tata Realty And Infrastructure Limited "E" Block Voltas Premises, T.B. Kadam Marg, Chinchpokli, Mumbai 400 033	Vs.	Assistant Commissioner of Income tax 2(3)(1) Room No. 552, Aayakar Bhavan, Maharishi Karve Road, Mumbai- 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCT6242L		
Appellant	..	Respondent

ITA No. 730/Mum/2020 (A.Y 2015-16)

Jt. CIT (OSD)-2(3)(1) Room No. 552, 5th Floor, Aayakar Bhavan, M.K. Road Mumbai – 400 020	Vs.	M/s Tata Realty and Infrastructure Ltd. 2nd Floor, Elphinstone Building, 10, Veer Nariman Road, Mumbai- 400001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCT6242L		
Appellant	..	Respondent

Appellant by :	Aarti Vissanji
Respondentby :	Sanjeev Kashyap

Date of Hearing	09.12.2021
Date of Pronouncement	28.01.2022

आदेश / O R D E R

PER AMARJIT SINGH, AM:

Both the appeals of the assessee and revenue are directed against the order of the Ld. CIT(A)-6, Mumbai. Since identical issues and facts are involved

in these appeal, therefore for the sake of convenience both the appeals are adjudicated together in this order.

ITA No. 763/Mum/2020 A.Y. 2015-16

2. Facts in brief that the assessee had filed a return of income on 28.01.2015 declaring a loss of Rs.15,99,62,735/-. The return was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 17.03.2016. The assessment u/s 143(3) of the Act was finalized on 28.12.2017 and total income was determined at Rs.22,50,66,210/-. The remaining facts are discussed while adjudicating the ground of appeal of the assessee as follows:

Ground No. (1) Addition of notional interest income of INR 11,75,07,945/- on advance given by the Appellant to International Amusement Limited (IAL) under normal provisions of the Act.

> *"On the facts and circumstances of the case and in law, the learned Commissioner of Income-tax, (Appeals)-6, Mumbai ['the learned CIT(A)] erred in upholding that notional interest income of INR 11,75,07,945/- on the advance given by the Appellant to IAL is taxable under the normal provisions of the Act without appreciating the fact that no real interest income accrued to the Appellant due to significant uncertainty on the ultimate collection of the said interest income.*

3. During the course of the assessment proceedings from the computation of income, the A.O noticed that the assessee had not offered any interest income on the advance of Rs.160 crores given to International Amusement Ltd.(IAL), however, in the previous assessment year the assessee had offered interest income of Rs.11,75,07,945/- being 8% receivable interest on the advance given. On query the assessee explained that the notional interest income on advance given to IAL had neither been included in the taxable business income computed under the normal provision nor it was included in the book profit computed u/s 115JB of the Act. It was submitted by the assessee that due to financial difficulty IAL was not able to repay such advance to the assessee and also failed to pay the earlier interest amount shown by the assessee as its income. The assessee

has also referred Accounting Standard 9 (AS9) issued by the institute of Chartered Accountant of India for not recognizing such notional interest in its taxable income. The A.O has not agreed with the submission of the assessee. He was of the view that assessee had continuously recognized interest income receivable from IAL till F.Y. 2013-14 and had failed to give reason as to why interest were offered as its income in the previous year and not offered during the year under consideration. Therefore, notional interest amount to the amount of Rs.11,75,07,945/- was added to the total income of the assessee in normal provisions as well as MAT income u/s 115JB of the Act.

4. Aggrieved, assessee filed appeal before the ld. CIT(A). The ld. CIT(A) sustained the addition holding that the action of the A.O of adding the accrued interest on the advance given to IAL while working out the total income of the assessee under the normal provisions of the Act found to be justifiable, however, the addition of such accrued interest while working out the profit u/s 115JB of the Act was not found to be justifiable after following the decision of the coordinate bench of the ITAT, Mumbai, in the case of the assessee itself pertaining to assessment year 2014-15 vide ITA Nos. 7135, 7136/Mum/2017.

5. During the course of the appellate proceedings before us the ld. Counsels contended that the assessee had given an advance of Rs.160 crores to IAL for purchase of shares of group companies of IAL for acquiring land for the purpose of development of land but the transactions could not fructify as the due approval from government authorities could not be obtained. However, because of financial difficulty IAL was not able to repay such advances. She has further contended that because of uncertainty of collection of principal amount and interest amount the assessee has not recognized any notional interest income on such advance in accordance with Accounting Standard 9. She has also submitted that due to non recovery of advance from IAL, the assessee had

written off 70% of the principal amount advanced to IAL in F.Y. 2016-17 and balance 30% of such principal amount was written off in F.Y. 2018-19. On the other hand, the ld. Departmental Representative placed reliance on the order of the lower authorities.

6. Heard both the sides and perused the material available on record. The assessee had given advance to Internal Amusement Ltd. (IAL) amounting to Rs.160 crores, in the earlier assessment years the assessee had offered interest income receivable @ 8% on the advance given. However, in the year under consideration the assessee has not offered any such interest income in the computation of total income since due to financial difficulties IAL was not able to repay such advance. The A.O has not agreed with the submission of the assessee and added notional interest amount @ 8% to the amount of Rs.11,75,07,945/- to the total income of the assessee under the normal provision as well as MAT provisions. Without reiterating the facts as elaborated in this order it is an undisputed fact that recovery of principal and interest amount was uncertained, therefore, the assessee had written off 70% of the principal amount advanced to IAL in F.Y. 2016-17 and remaining 30% of such principal amount was written off in F.Y. 2018-19. The ld. counsel has referred the decision of Hon'ble Bombay High Court in the case of India Fianance & Construction Co. P. Ltd. Vs. B.N. Panda, Deputy Commissioner of Income Tax (1993) 200 ITR 710 (Bom). We have perused the referred pronouncement wherein the Hon'ble jurisdictional High Court on identical issue held as under:-

> *"the assessee company has in fact not received any interest in respect of this advance from M/s C.R. Developers Pvt. Limited in the assessment year 1988-89. When no income is received there is no question of paying any tax on income which the respondents think should have been received but was in fact not received."*

The ld. Counsel has also referred the decision in the case of Commissioner of Income Tax Vs. Goyal MG Gases P. Ltd. (2008) 303 ITR 159 (Del). The relevant part of the decision is reproduced as under:

> "Held dismissing the appeal, (i) that given the facts of the case, there was no hope left with the assesse of recovering the amount from K and it is this which prompted the assessee *to seek winding up of K by an appropriate order to be passed by the Calcutta High Court. K had been declared a sick company by the BIFR and there was nothing to indicate what assets, if any, were with K from which the assessee could, if at all, recover its debts. The amount was deductible as a bad debt.*
>
> *(ii) That both the Commissioner (Appeals) as well as the Tribunal had come to the conclusion that there was no real accrual of interest. It had been noted that the interest had not even been recorded by the assessee in its books of account. The assessee had also issued a notice to the parties under section 138 of the Negotiable instruments Act, 1881, for dishonour of cheques issued by all (except one of the debtors) followed by initiation of appropriate proceedings. The debts were written off as bad debts and were also allowed by the Assessing Officer in the subsequent years. Therefore, realisation of even the principal amount was in jeopardy and, therefore, there could not be said to be any real accrual of income by way of interest.*

The ld. Counsel has also placed reliance on the decision of the Commissioner of Income Tax Vs. Eicher Ltd. (2010) 320 ITR 410 (Del). The relevant part of the decision is reproduced as under:

> *"Held, dismissing the appeal, that on the basis of the fats on record the Tribunal had rightly held that actual income in fact never accrued to the assessee and the assessee in fact had already paid tax on interest income actually received by it. The Tribunal, therefore rightly deleted the addition of accrued interest as income of the assessee.*

We have also gone through the Accounting Standard 9 (AS9) for revenue recognition issued by the institute of chartered accountant of India where at para 9.5 of the said AS9 it is mentioned that when recognition of revenue has postponed due to effect of uncertainties, it is considered as revenue of the period in which it is properly recognized. In such cases it may be appropriate to recognize revenue only when it is reasonably certain that the ultimate collection will be made. In the light of the above facts and findings it is evident that the assessee has not accounted for notional interest income in the books of accounts from advance made to IAL as recovery of principal as well as interest amount was uncertained. The amount given to IAL was not recoverable and

same was written off in the books of account of the assessee in the subsequent year as discussed supra in this order. In fact, the assessee had paid the tax and interest income in the earlier years without actually receiving the accrued interest income from IAL. The aforesaid facts demonstrate that there was no real accrual of income by way of interest. Therefore, we consider that decision of the ld. CIT(A) of sustaining the notional interest income is not justified. Accordingly, this ground of appeal of the assessee is allowed.

Ground 2 (i) & (ii) Disallowance of interest expense under section 36(l)(iii) of the Act:

"(i) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in upholding the disallowance of interest expense of INR 303,76,808/- under section 36(l)(iii) of the Act without appreciating the fact that such advance was given by the Appellant to its group company for the strategic purposes and out of the commercial exigencies and hence interest expense incurred by the Appellant on the borrowed funds utilised for granting such advance is incurred wholly and exclusively for the business of the Appellant and that the similar issue has been upheld in favour of the Appellant by the Honourable Income Tax Appellate Tribunal (ITAT) in its own case for AY 2009-10.

(ii) Without prejudice to above, relaying on the principle laid down by the Honourable Bombay High Court in case of CIT vs. Reliance Utilities and Power Ltd [(2009) 178 Taxman 135]. where the Appellant has both, interest free own funds and interest bearing borrowed funds, and that the interest free own funds are sufficient to grant above mentioned interest free advance to the group company, then the presumption theory that such interest free advances would have been given out of interest free own funds should apply and the learned CIT(A) ought to not have disallowed interest expense under section 36(1)(iii) of the Act."

7. During the course of the assessment from the balance sheet the A.O noticed that assessee has extended short term loan and advances to its subsidiaries amounting to Rs.431,17,90,000/-, however, the assessee has not offered any interest income on such loans. The A.O noticed that the assessee itself had total long term borrowings of Rs.250,00,00,000/- as on 31.03.2015 and short term borrowing of Rs.830,00,00,000/- as on 31.03.2014 on which assessee had paid interest towards loan amounting to Rs.27,86,692,270/- during the year. The assessee was show caused to explain by no disallowance should be made u/s 36(1)(iii). In response, the assessee explained that it has given interest bearing advance of Rs.149,79,80,000/- out of the total closing balance of

Rs.431,17,90,000/-. The advance was given out of the consideration received from M/s Tata Sons Ltd. in lieu of issuance of 0.01% compulsory convertible debentures on which no interest were paid. It is further explained that the balance advance of Rs.31,38,10,000/- was given by the assessee to its group company for strategic and business purpose. The assessee officer has accepted partial submission of the assessee and stated that to the extent of interest free advance of Rs.31,38,90,000/- the assessee had not furnished enough reasons as to by no disallowance should have been made u/s 36(1)(iii). The A.O stated that advance given to M/s TRIC Infopark Ltd. from the fund received from M/s Tata Sons Ltd. was found to be acceptable and no disallowance was made on the same. Therefore, the assessing officer has computed the interest @ 9.68% per annum and made disallowance of Rs.303,76,808/- on the advance amount of Rs.31,38,90,000/- and added to the total income of the assessee.

8. Aggrieved, assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed this ground of appeal of the assessee holding that the assessee could not prove that advance given to its group companies was for business purpose or commercial expediency of the assessee.

9. During the course of the appellate proceedings ld. counsel contended that the assessee has to manage projects, identity designs, supervise, invest, construct and maintain the project for which it received PMC fees. She has further submitted that the assessee provide funding to SPV group companies for smooth execution of the project in which the asesssee plays a major role in the overall project management. She has further submitted that no interest was disallowed u/s 36(1)(iii) of the Act in past years on the opening balance of advance granted.

10. On the other hand the ld. D.R has placed reliance on the decision of the CIT(A).

11. Heard both the sides and perused the material on record. The ld. Counsel has referred page no. 28 of the paper book, pertaining to details of advances given by the assessee to its group companies. On the perusal of the above referred page it is noticed that asesssee has claimed to have given interest free advances to the following companies:

"Interest free advances given to Group Companies:

i. Gurgaon Construct Well Private Limited
ii. Pioneer Infratech Pvt. Ltd. (Urban)
iii. TRIF Realty Projects Pvt. Ltd./TRIL Hospitality Pvt. Ltd.
iv. HV Farms Limited
v. Arrow Infrastate Private Limited
vi. TRIL Infopark Limited
vii. Gurgaon Realties Limited
viii. TRIL Urban Transport Private Ltd."

However, the assessee has not proved with relevant material that the amount was advanced to aforesaid group companies for business purposes and commercial expediency of the assessee. We have also perused the copies of the balance sheet of the asesssee company placed at page No. 2 to 5 of the paper book and neither we find any evidence of strategic investment made in the above referred companies nor the assessee had correlated any significant investment in such companies except advancing of impugned interest free loans. Without retreating the facts as discussed in para 9 of this order, after taking into consideration the submission of the assessee it is evident that the assessee has received project management fees from the group company on account of rendering project management services, and not because of advancing of interest free fund to these group companies. She has also placed reliance on the decision of Hon'ble Karnataka High Court in the case of Sridev Enterprises Vs. CIT (1991) 192 ITR 165 (Kar), and decision of the Hero Cycle P. Ltd. VS. CIT (2015) 379 ITR 347 and S.A. Builder Ld. Vs. CIT(A) (2007) 288 ITR 1 (SC) & CIT Vs. Reliance Communications Infrastructure Ltd. (2013) 260 ITR 159 (Bombay

High Court). We find that judicial pronouncement referred by the ld. counsel in the case of Commissioner of Income Tax Vs. Sridev Enterprises as referred above is distinguishable from the fact of the case of the assessee as in the above referred case the claim for deduction of interest paid was allowed since those advances were not out of the borrowed funds. However, in the case of the assessee it has been categorically admitted before the A.O and Ld. CIT(A) that same were out of interest bearing funds as discussed supra in this order. We have also perused the other judicial pronouncements referred by the assessee in the case of Hero Cycle Pvt. Ltd. & S.A. Builder and CIT Vs. Reliance Communication on the issue that assessee has advanced fund to group companies for strategic purpose out of commercial expediency. However, in the case of the assessee it is demonstrated from the submission of the assessee that assessee has earned PMC fees from the group companies because of rendering of project management services and not directly by advancing interest free loans. Therefore, we do not find force in the ground no. 2(i) of the assessee and same stands dismissed.

Ground 2(ii):

12. Without retreating the facts as elaborated above in respect of the alternative plea of the assessee that its interest free own funds sufficient to grant abovementioned interest free funds to the group companies, we have gone through the page no. 2 to 4 of the paper book pertaining to financial statements notes to balance sheet. It is noticed that as on 31.03.2015 the assessee was having interest free own fund comprising share capital reserve and surplus to the amount of Rs.10,589,162,649/- and such fund as on 31.03.2015 was to the amount of Rs.10,652,589,195/-. As on 31.03.2015 the assessee has extended advances to its associate concern of Rs.4,31,17,90,000/-. In this regard, we have perused the decision of the Bombay High Court in the case of CIT Vs. Reliance Utilities & Power Ltd. (2009) (178 taxman 135) referred by the assessee wherein

the Hon'ble jurisdictional High Court held that if there are funds available both interest free and overdraft and /or loans taken, then a presumption would arise that investment out of interest free funds generated or available with company provided said funds are sufficient to meet investment.

13. The assessee had demonstrated from the balance sheet as referred above that it was having interest free own funds to the amount of Rs.10,58,91,62,649/- whereas loan and advance given to its subsidiary was only to the amount of Rs.43,11,79,0000/-. Therefore, we directe the A.O to verify and examine the same from the relevant details submitted by the assessee and allow the claim of the assessee in accordance with decision of Hon'ble Bombay High Court in the case of CIT Vs. Reliance Utilities & Power Ltd. as supra. Therefore, this ground of appeal of the assessee is allowed for statistical purposes.

ITA No.730/Mum/2020 A.Y. 2015-16

Ground No. 1 & 2: Disallowance u/s 14A of the Income Tax Act, 1961:

> "*On the Ld. CIT(A) has erred in deleting disallowance u/s 14A of the Act without appreciating the fact that as per CBDT Circular No. 5 of 2014, it was directed that disallowance u/s 14A should be made even if the assesses did not earn am ^exempt income during the previous year.*
>
> *On the facts and in the. circumstances of the case and in law, the Ld. CIT(A) has erred in deleting disallowance u/s 14A of the Act without appreciating the fact that the assessee itself disallowed expense u/s 14A in its return but did no compute the disallowance as per Rule 8D."*

14. During the course of assessment the A.O has computed the disallowance u/s 14A r.w.r 8D of the Act to the amount of Rs. 21,48,91,352/- and added to the total income of the assessee.

15. Aggrieved, assessee has filed the appeal before the ld. CIT(A). The ld. CIT(A) has deleted the disallowance holding that since assessee has not earned any exempt income therefore no disallowance can be made u/s 14A of the Act.

16. Heard both sides and perused the material available on record. It is undisputed fact that assessee has not earned any exempt income during the year under consideration. In this regard, we have perused the decision of Hon'ble Bombay High Court in the case of Pr. CIT Vs. Ballarpur Industries ltd. (ITA No. 51 of 2016) & Hon'ble Delhi High Court in the case of Cheminvest Ltd. Vs. CIT (2015) 378 ITR 33 (Del), wherein it is held that if no exempt income is earned or received by the assessee then no disallowance u/s 14A should be made. Following the decision of the jurisdictional High Court and other referred as supra, we don't find any infirmity in the decision of the ld. CIT(A), therefore, both the ground of appeal of the revenue stand dismissed.

Ground No. 3: Deleting the disallowance of tenancy right:

> *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting disallowance oj tenancy right without appreciating the fact that the assessee acquired enduring right for using the property and hence the transaction should be treated as capital in nature."*

17. During the assessment the A.O noticed that assessee has claimed Rs. 50 lac as premium paid on leave and license. The A.O asked the assessee to show cause as to why the premium paid on leave & license should not be disallowed as the expenses being capital in nature. The assessee explained that it paid compensation of Rs.2,50,00,000/- to Brandon Company Pvt. Ltd. for vacating the premises occupied by them and availing the said premises on leave & license basis for a period of 60 months was beneficial to the company. The assessee company claimed 1/5 of the said amount as revenue expenditure during the year under consideration. The A.O has not agreed with the submission of the assessee, he was of the view that tenancy right was a capital asset therefore, deduction claimed by the assessee was disallowed.

18. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee after following the decision of ITAT Mumbai

in the case of assessee itself for subsequent year 2014-15 vide ITA No. 713/Mum/2018 dated 09.05.2019.

19. Heard the rival contentions and perused the material available on record. At the outset the ld. counsel of the assessee submitted that identical issue on similar facts in the case of the assessee itself for assessment year 2014-15 has been adjudicated by the coordinate bench of the Mumbai ITAT in favour of the assessee. With the assistance of the ld. Representative we have gone through the decision of the ITAT. The relevant para of the decision vide ITA No. 713/Mum/2018 dated 09.05.2019 is reproduced as under:

> *"14. Upon careful consideration, we find that assessee has paid the aforesaid sum as compensation for obtaining the premises on lease for a period of five years. Assessee had paid the sum in Assessment Year 2011-12. Assessee has amortized the aforesaid sum at the rate of 20% for the period of five years of the lease. The Revenue allowed the aforesaid ITA No.713Mum/2018 Tata Realty & Infrastructure Ltd. 9 amortisation in the earlier two years. The Assessing Officer has disallowed the expenses for the current year. On the facts and circumstances, it is clear that assessee has not spent the amount for purchase of any capital asset. On the touchstone of decision from the Hon'ble Apex Court issue in the case of Madras Auto Service (supra), the entire amount was allowable as revenue expenditure. However, the assessee has been claiming the sum proportionately over the period of lease. This has been allowed in earlier two years. In absence of any change in facts and circumstances in our considered opinion there was no reason for the AO to take a different stand. Accordingly, in the background of aforesaid discussion and precedent, we do not find any infirmity in the order of the Ld. CIT(A), accordingly be of formed the same."*

Respectively following the decision of the coordinate bench of the ITAT we don't find any error in the decision of the CIT(A). Therefore, this ground of appeal of the revenue stand dismissed.

Ground No. 4 Deleting the expenses of Rs.1,75,02,841/- u/s 37(1) of the Act:

> *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting disallowance of expenses of Rs. 1,75,02,841/- u/s 37(1) of the I. T. Act treating it as revenue in nature without appreciating the fact that the expenses claimed by the assessee were mainly related to capital asset or towards instances which would mainly give enduring benefits to the assessee and hence the transaction should be treated as capital in nature."*

20. During the course of the assessment the A.O noticed that assessee has paid legal and professional charges to number of parties as per break up given at

para 6 of the assessment order. The break-up given at para 6 of the assessment order is reproduced as under:

Vendor Name	Expenses	Nature of payment
BMR & Associates LLP	57,80,589	Fees on advice on regulatory matter on acquisition of companies and fees for legal & Tax.
Accenture Services Pvt. Ltd.	40,00,000	Prof. fees for conducting business model
AZB & Partners	10,22,034	Legal fees for acquisition of Cos. – Peepul Tree and Fund Companies
R.J. Treasuryavala	16,02,000	Fees for retainership for bidding for Airports
MZSK & Associates	12,50,000	Valuation of Equity shares for SPVs
J Sagar Associates	1,06,1647	Fees for reviewing of Joint Draft Agreement of companies
Tata Consulting Engineers Ltd.	7,00,000	Fees for JVLR traffic study
Swapnendra Singh Nayak	4,50,000	Fees for JVLR Traffic Study
Knight Frank (I) Pvt. Ltd.	4,15,000	Valuation Fee Land Parcel at Gurgaon Sect. 72
BSR & Co.	2,21,571	License fee certificate – F.Y. 2013-14, Sector 72 & Direct Tax CIT(A) Appeal for A.Y. 2009-10 & 2010-11.
Total	1,75,02,841	

The A.O has treated all these expenses of capital in nature on the reasoning that it provides enduring benefit to the assessee.

21. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has deleted the disallowance holding that these expenses can hardly be treated of capital in nature after taking into consideration the business background of the assessee company. The ld.CIT(A) after examination of the detail of expenses stated that these expenses were incurred in respect of fees paid on regulatory matter, fees for legal and tax, professional fees for conducting business modal, legal fees for acquisition of companies, fees for retainership for biddings for airports, valuation of equity shares for SPV, fees for reviewing of joint draft agreement of companies, valuation fees of loan parcel etc. The ld. CIT(A) has also referred the decision of Hon'ble Supreme Court in the case of Empire Jute Mills (124 ITR 1) wherein held that if the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of

the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched the expenditure would be on revenue account, even though, the addition may endure for an indefinite future.

22. Heard both sides and perused the material available on record. During the course of the assessment the assessing officer has disallowed the legal and professional expenses aggregating to Rs.175,02,841/- u/s 37(1) of the Act stating that expenses were mainly related to capital asset which would provide enduring benefit to the assessee. After perusal of the material on record it is observed that asessee is engaged in the business of real estate development, investment advisory services, management development consultancy, construction management facilities etc. The assessee also carry on its business through Special Purpose Vehicles (SPV). The A.O has not specified how the expenses of the nature of fees on regulatory matter on acquisition of companies, fees for legal and tax, professional fees for conducting business modal, fees for reviewing a joint profit agreement of companies etc. can be brought to the category of capital expenditure. In the light of the nature of expenditure, finding of the ld. CIT(A) and the decision of Hon'ble Supreme Court in the case of Empire Jute Company Ltd, we consider that assessee has incurred the aforesaid expenditure to facilitate and conduct its business efficiently and more profitably, therefore, we do not find any reason to interfere in the findings of ld. CIT(A). Accordingly, this ground of appeal of the revenue is dismissed.

Ground No. 5 Addition of notional interest income of Rs.11,75,07,945/- on advance given by the assessee to International Amusement Ld. under MAT provision of the Act:

> *"On the facts and circumstance of the case and in law whether Hon'ble CIT(A) was justified in nullifying the action of the AO in making the addition of such accrued interest while working out the book profit u/s 115JB of the Act without considering that the Ld. AO had held in the order that the assessee's profit & loss account was not prepared in accordance with the provisions of Part II of Schedule VI to the companies Act and thus the book profit u/s 115JB of the Act was understated by the assessee".*

23. Without reiterating the facts as discussed in the ground no. 1 of the appeal of the assessee at para 3, during the course of the assessment the A.O has added notional interest income of Rs.11,85,07,945/- on the advance given to IAL under MAT provision u/s 115JB of the Act. In the appeal the ld. CIT(A) has deleted the addition of notional interest under MAT provision by placing reliance on the order of coordinate bench of the ITAT in the case of the assessee itself for assessment year 2012-13 to A.Y. 2014-15 vide ITA No. 7135,7136/Mum/2017 & 7137/Mum/2018.

24. During the course of the appellate proceedings at the outset the ld. counsel of the assessee has contended that issue in appeal is squarely covered in favour of the assessee by the decision of the coordinate bench of the ITAT as referred above in the findings of the ld. CIT(A). The ld. Departmental Representative is fair enough to could not controvert that the issue is covered by the above referred decision of the coordinate bench of the ITAT Mumbai.

25. Heard both the sides and perused the material available on record. With the assistance of the ld. representatives, we have gone through the decision of coordinate bench of the ITAT vide 15 vide ITA Nos. 7135, 7136/Mum/2017. Relevant part of the decision is reproduced as under:

> *"11. We find that the proposition laid down in the above case laws is fully applicable. The A.O has duly applied his mind and accepted the income offered u/s 115JB which did not include this interest accrued amount as it was not provide in the books of account. Moreover the ld. CIT(A)'s opinion that the book profit needs to be reworked and the impugned amount added to book profit is not sustainable. In this regard we note on this very issue, the Hon'ble Apex Court has given a decision in Appollo Tyres Ltd.(supra). In this case, it was held as under:*
>
> > *It has been submitted that in this decision, at page 280, it has been held that "we are of the opinion that the Assessing Officer while computing the income under section 115J has only the power of examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The Assessing Officer thereafter has the limited power of making increase and reductions as provided for in the Explanation to the said section. To put it differently, the Assessing*

Officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation to section 115J." In this regard, it observed that the aforesaid judgment is not applicable in the case of the assessee as it has been discussed in the preceding paragraphs (para 5) that the accounts of the assessee has not been prepared in accordance with provisions of Part II to Schedule VI to the Companies Act.

12. From the above, it is amply evident that the Hon'ble Apex Court has expounded that once the accounts have been certified by the auditors and adopted in the annual general meeting, the A.O. has only the power of examining whether the books of account are certified by the authorities under the Act as having been properly maintained in accordance with the companies act. The A.O. thereafter has a limited power to make adjustments as provided for in the explanation of the said section. From the above exposition, it is amply clear that the Hon'ble Apex Court has duly held that the A.O. does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extend provided in the Explanation to section 115J.

13. We find that the exposition by the Hon'ble Apex Court is the law of the land and if the A.O. had duly followed the same, he did not need to declare so in his assessment order. In fact what the Id. CIT(A) has done is not at all sustainable in law. He has distinguished the above Hon'ble Apex Court decision on the premise that the accounts have not been prepared as per Part II of Schedule VI of the Companies Act. It is not the case of the Id. CIT(A) that the accounts are not certified by the authorities under the Companies Act. In this view of the matter, the distinction brought on record by the Id. CIT(A) is totally unsustainable in law.

14. We further note that similar view was again taken by the Hon'ble jurisdictional High Court in the case of TV CIT vs. Bhagwan Industries Lid. (in ITA No.436 of 2015 vide order dated 18.07.2017) which reads as under:

(i) The learned counsel for the Appellant submits that Tribunal was not justified in not accepting the reworking of the book profits by the Assessing Officer as per the provisions of Section 115JB of the Income Tax Act. The Assessee had directly credited the profit of Rs.2.84.84.000/ arising from sale of land to Capital Reserve Account in the balance sheet rather than routing it through Profit and Loss Account in the manner provided as per Part II and Part III of Schedule VI to the Companies Act, 1956.

(ii) Tribunal while passing the impugned Order observed that while computing the book profit under Section 115JB of the Income Tax Act. the Assessing Officer added the sum of Rs.2,84.84,000/- in the book profit. The Commissioner of Income Tax (Appeals) deleted the addition. The Tribunal referring to the Judgment of the Apex Court in a case of Apollo Tyres Ltd. v. C.I.T. reported in 255 ITR 273 and Judgment of this Court in case of Akshay Textiles Trading and Agencies Pvt. Ltd., reported in 304 ITR 401 has observed as under:
"Respectfully following the decision of Hon'ble Bombay High Court in the case of Abdhut Trading Co. Pvt. Ltd. (supra) and in the case of Akshay Textiles Trading and Agencies Pvt. Ltd. (supra), we do not find any infirmity in the order of Id. CIT(A) for deleting the addition under Section 115JB."

(iii) In light of above, the Tribunal has not committed any error. The Appeal as such is dismissed. No costs.

15. In the background of the aforesaid discussion and precedent, we find that A.O has taken a correct view as the mater stands covered in favour of the assessee. The reworking of book profit as suggested by the ld. CIT(A) is not permissible. Hence, WE quash the order passed by the ld. CIT(A) us/ 263 of the Income tax At. 1961."

Following the decision of the coordinate bench of the ITAT as supra, we don't find any infirmity in the decision of the ld. CIT(A) therefore, this ground of appeal of the revenue stand dismissed.

Ground No. 6 Disallowance of credit of tax deducted at source (TDS) of Rs.355,00,849/- claimed of reimbursement of Capital Work in Progress (CWIP) received from Tata Consultancy Services Ltd. (TCS)

"On the facts and circumstance of the case and in law, whether Hon'ble CIT(A) was justified in giving the direction to AO to verify the facts of the case and if the claim of TDS that has been made by the assessee during the year under consideration and further if such amount is not found to be taxable as revenue in nature then after due verification of the acts and in accordance with law, the credit of claim of TDS nay be given without appreciating the fact that AO has rightly disallowed the claim of assessee following as per provisions of section 199 r.w.r. 37BA and such amount capital in nature."

26. During the course of assessment from the submission of the assessee, the A.O noticed that Tata Consultancy Services Ltd. (TCS) has credited an amount of Rs.35.5 crores on which it deducted TDS of Rs.3.55 crores. The A.O observed that assessee had raised the debit notes to TCS in the F.Y. 2013-14 but the payment was made in F.Y. 2014-15. The AO has further observed that the assessee raised debit notes for the job done in earlier years and transferred the same to capital work in progress to TCS and in return TCS made payment to it. The A.O was of the view that even if it is considered that the TDS was deducted on capital receipt the credit for TDS should be given in F.Y. 2013-14 when the debit notes were raised and not in the F.Y. 2014-15. Therefore, claim of TDS amount of Rs.3.55 crores was disallowed and added to the total income of the assessee.

27. Aggrieved, the assessee filed the appeal before the CIT(A). The ld. CIT(A) in its findings referred provision of Section199(1) of the Act and Rule 37BA of the I.T. Rule1962. The ld. CIT(A) stated that sub-rule 3(i) of the rules 37BA clearly stipulates that credit for tax deducted at source and paid to the central government, shall be given for the assessment year for which income is assessable. Further, the sub-rule (4) of the Rule 37BA provides for grant of credit for the tax deducted on the basis of the information relating to deduction of tax furnished by the deductor to the Income tax authority and the information in the return of income in respect of the claim for the credit. The ld. CIT(A) after taking into consideration the facts and provision of law and the decision of the coordinate bench of the ITAT in the cases of Imperial Procurement Services Ltd. Vs. ITO (ITA No. 6674/Mum/2014, Arvind Munjani Brands Pvt. Ltd. Vs. ITO (137 ITD 173 1) & Digi JPR Network Pvt. Ltd. Vs. CIT (ITA No. 6070/Mum/2014) directed the A.O to verify the facts of the case and if claim of TDS has been made by the assessee during the year under consideration is pertaining to the same amount for which debit note was issued in the immediately preceding year but the TDS has been made during the year under consideration and further if such amount is not found to be taxable as revenue in nature then after due verification of the facts and in accordance with law, the credit of claim of TDS may be given.

28. Heard both the sides and perused the material available on record. Without retreating the facts as discussed above, it is observed that ld. CIT(A) after taking into consideration the provision of Sec. 199 of the Act r.w.r 37BA has rightly directed the A.O that the credit of claim of TDS may be given after due verification of the facts and in accordance with law. Therefore, we don't find any reason to interfere in the findings of the ld. CIT(A) and the A.O is directed to take necessary action as per the direction given by the ld. CIT(A). Therefore, this ground of appeal filed by the revenue is allowed for statistical purposes.

29. Resultantly, the appeal filed by the assessee is allowed and the appeal filed by the revenue is partly allowed.

Order pronounced in the open court on 28.01.2022.

Sd/-	Sd/-
(VIKAS AVASTHY)	(AMARJIT SINGH)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dated 28.01.2022
Rohit, Sr. PS

आदेश की प्रतिलिपि ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,
सत्यापित प्रति //True Copy//

(Asst. Registrar)
ITAT, Mumbai