

**आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, CHENNAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

- 1. आयकर अपील सं./ ITA No.233/Chny/2019**  
**(निर्धारण वर्ष / Assessment Year: 2011-12)**  
**&**  
**2. आयकर अपील सं./ ITA No.234/Chny/2019**  
**(निर्धारण वर्ष / Assessment Year: 2012-13)**  
**&**  
**3. आयकर अपील सं./ ITA No.235/Chny/2019**  
**(निर्धारण वर्ष / Assessment Year: 2014-15)**

<b>ACIT</b> Non-Corporate Circle-13(1) Chennai.	<b>बनाम/ Vs.</b>	<b>M/s. Dvara Trust</b> (formerly IFMR Trust), 10 <sup>th</sup> Floor, Phase I, IIT Madras Research Park Kanagam Village, Taramani, Chennai – 600 113.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAATI-5801-P		
(□ पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

- &**  
**4. आयकर अपील सं./ ITA No.240/Chny/2019**  
**(निर्धारण वर्ष / Assessment Year: 2011-12)**

<b>M/s. Dvara Trust</b> (formerly known as IFMR Trust) 10 <sup>th</sup> Floor, Phase I, IIT Madras Research Park, Kanagam Village, Taramani, Chennai – 600 113.	<b>बनाम/ Vs.</b>	<b>ACIT</b> Non-Corporate Circle-13(1), Chennai.
स्थायी लेखा सं./जीआइ आर सं./PAN/GIR No. AAATI-5801-P		
(□ पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओरसे/ <b>Assessee by</b>	:	Shri R.Vijayaraghavan (Advocate) – Ld. AR
प्रत्यर्थी की ओरसे/ <b>Revenue by</b>	:	Shri T. Vasanthan (CIT) –Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	12-01-2022
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	14-03.2022

## आदेश / O R D E R

### Manoj Kumar Aggarwal (Accountant Member)

1. The revenue is in further appeal before us for Assessment Years (AY) 2011-12, 2012-13 & 2014-15 whereas the assessee is in further appeal for AY 2011-12. All these appeals arise out of common order passed by learned Commissioner of Income Tax (Appeals)-14, Chennai [CIT(A)] on 25.09.2018. The assessment for all the years has been framed u/s 143(3) vide separate orders dated 12.03.2014 for AY 2011-12, dated 30.12.2017 for AY 2012-13 & 28.12.2016 for AY 2014-15.

The grounds raised by the revenue in AY 2011-12 read as under: -

1. The order of the learned CIT(A) is contrary to facts and circumstances of the case.
2. The Ld. CIT(A) erred in deleting the additions made in the assessment order to the extent of Rs.12,84,12,920/-
- 3.1 The Ld. CIT(A) erred in his decision that cost along with the markup was recovered from the concerned companies while facts on record show that even the cost was not recovered from the parties in spite of an agreement to do so.
- 3.2 The Ld. CIT(A) ought to have appreciate the fact that the related entities can claim such cost allocation in their hands. Assessing Officer has not made any such disallowance in their hands.
- 3.3 The Ld. CIT(A) failed to appreciate that the assessee is not earning any profit/loss in the transaction and it is only providing common facilities to related parties and recouping the expenses by way of cost allocation.
4. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored.

Similar are the grounds of revenue in other years.

The grounds raised by the assessee read as under: -

1. The order of the Commissioner of Income Tax (Appeals) [CIT(A)] in so far as Segment-I activity, is contrary to law, facts and circumstances of the case.

**2. Disallowance of Incubation Expenses**

- 2.1 The CIT(A) erred in disallowing incubation expenses amounting to Rs.2,20,47,402.
- 2.2 The CIT(A) ought to have appreciated that under Segment I, of the key objectives of the Appellant is to undertake feasibility studies in various areas for the development of rural household and incorporate/ develop and sustain entities in this connection.
- 2.3 The CIT(A) ought to have appreciated that expenditure incurred in carrying out research/ studies to incorporate, finance and sustain new entities is the objective under Segment I business of the Appellant.
- 2.4 The CIT(A) erred in not appreciating the nature of Segment I business carried on by the Appellant i.e. "business of investment" and consequently erred in not appreciating that "incubation expenses" debited to the P&L account is incurred for the purpose of Segment I business of the Appellant.
- 2.5 The CIT(A) ought to have appreciated that incubation expenses incurred during the year consisted only of salaries, bonus and other employee costs such as travel and conveyance that are related to the employees of the Appellant who were involved in carrying on studies in various sectors and hence an allowable expenditure.

**3. Disallowance of Consultancy and Legal & Professional charges**

- 3.1 The CIT(A) erred in disallowing consultancy charges amounting to Rs.27,98,660 and legal & professional charges amounting to Rs.41,77,147.
- 3.2 The CIT(A) ought to have appreciated that the consultancy charges consist mainly of monthly retainer payments to persons working for the Appellant who were in the capacity of consultants to support the Appellant's investment activities and its overall affairs.
- 3.3 The CIT(A) erred in not appreciating the nature of Segment I business carried on by the Appellant i.e. "business of investment" and consequently erred in not appreciating that "legal & professional charges" and "consultancy charges" debited to the P&L account is incurred for the purpose of business of the Appellant.
- 3.4 The CIT(A) ought to have appreciated that the consultancy charges do not represent any amount incurred in connection with the operational expenses of the incubated entities but were exclusively incurred for the Segment I business of the Appellant.
- 4. The Appellant craves leave to add, alter, amend, substitute, rescind, modify and/or withdraw in any manner whatsoever all or any of the foregoing grounds of appeal at or before the hearing of the appeal.

2. The assessee has preferred application under Rule 27 for AYs 2011-12, 2012-13 & 2014-15. However, the same has been withdrawn vide withdrawal letter dated 18.02.2021.

3. Our attention has been drawn to earlier orders of Tribunal in assessee's own case for AY 2009-2010, ITA No.1035/Mds/2013 order dated 07.07.2014, order for AY 2012-13, ITA No.962/Mds/2016 dated

16.02.2017, order for AY 2010-11, ITA No.232/Chny/2019 dated 26.08.2019. The assessee (earlier known as M/s IFMR Trust) was set up as a private trust on 19.10.2006 with an objective to finance the rural segment and to support entrepreneurs, promote innovative business opportunities in rural area and earn income from such business activities. The assessee trust is taxable at maximum marginal rate under the act.

4. The assessee is stated to have undertaken two distinct business activities i.e. (i) Incubation of new entities (referred to as Segment-1 activities) & ii) Providing Shared services & Infrastructure Services and Loans and Investments (referred to as Segment-II activities).

It is the submission of Ld. CIT-DR that the assessment as framed by Ld. AO was to be restored for all the years in the light of earlier orders of the Tribunal for AYs 2009-10 & 2010-11. The Ld. AR, on the other hand, submitted that facts in these years are different from earlier years as held by Tribunal in its order for AY 2012-13. For the same, our attention has been drawn to the cited Tribunal order.

After going through these orders, it become imperative to narrate the facts as noted by the bench in its order for AYs 2009-10, 2010-11 & 2012-13.

#### **Earlier orders of Tribunal**

5. Upon perusal of Tribunal order for AY 2009-10 (supra), it could be seen that in that year, the assessee claimed three deductions viz. incubation expenses, consultancy charges and legal / professional charges. The incubation expenses were held to be pre-operative expenditure by the revenue whereas the consultancy and legal & professional charges were held to be capital in nature since the same

were incurred for preparing feasibility reports and expenses incurred on research activities for setting-up new units in different sectors. In first appeal, Ld. CIT(A) held that it was not possible to hold that the assessee was carrying on any business or profession and the assessee was earning income which was assessable under the head 'income from other sources'. The interest earned by the assessee from loans and advances was to be assessed as 'income from other sources'. Since the assessee was not carrying any business, the expenditure could not be held to be incurred for the purpose of business activities carried on by the assessee. Upon further appeal to Tribunal, the bench, at para-23 of the order, observed that the assessee merely acted as a provider and a facilitator. The actual production / service activities were carried out by micro-individual units. When the assessee was creating such productive assets for the units set-up by it, it was not possible to hold that the expenditure was incurred for the purpose of the business. The bench also rejected the argument that the assessee was carrying on the business of investment. The assessee's main objects were not corporeal / physical but only supportive in nature. The assessee was striving for financial inclusion and market inclusion. It did not carry out any business directly and it also did not act as partner of micro-units set up by it. Finally, the income was held to be assessable as 'income from other sources'. The assessee was allowed deduction of expenditure @2% of gross income reported by the assessee. In other words, the assessee's appeal was dismissed.

6. In AY 2012-13 (supra), the only issue in assessee's appeal was whether Ld. CIT(A) was justified in upholding the decision of Ld. AO that the income derived by the assessee was to be assessed as 'income

from other sources' and allowing only 2% of expenditure on adhoc basis. In that year, the assessee earned income from shared services, income from infrastructure services, interest on loans to third parties, interest on investments, provisions written-back and other income which were offered as 'business income'. However, interest on fixed deposits out of surplus funds was offered as 'income from other sources'. Against 'business income', the assessee claimed staff cost and administration cost. The Ld. AO proposed estimated deduction of 2% as held in earlier appellate order. The assessee submitted that facts in this year were factually distinguishable and therefore, those orders would have no application to this year. The assessee also submitted that during this year, it had undertaken only Segment-II business activity whereas the orders for earlier years were only in respect of Segment-I business activity. It was submitted that the assessee had taken on lease a portion of space at IIT Madras Research Park which was utilized by the assessee by letting out this space to provide shared services and infrastructure services under Segment-II business Activity. However, rejecting the same, Ld. AO assessed the income under the head 'income from other sources' and allowed expenditure of 2% which was confirmed in first appellate order. Upon further appeal, Tribunal, vide para-7 of the order, observed that the assessee did not debit any expenditure towards 'incubation expenses'. The income earned by the assessee was offered to tax as 'business income' on the premises that the same were earned out of business activities. It was also observed that the assessee had not carried out any Segment-I business activity i.e. incubation of new entities during the year under appeal and it had carried out only Segment-II business activity. This vital fact was lost sight by the lower authorities.

The allowability of the expenses in the Profit & Loss account was to be adjudicated based on the findings to be given with regard to various streams of income in the form of shared services / infrastructure services etc. by the lower authorities and the head of income thereon. Accordingly, Ld. AO was directed to go through relevant agreements and give findings as to whether the same would fall within the objects of the assessee trust so as to fall within the ambit of business income of the assessee. If the same was to construed as 'income from other sources' even then the allowability of expenses would have to be considered in the light of the provisions of Sec.57(iii) of the act. It was agreed position that findings given in earlier years with regard to incubation of new entities would not apply to the facts during the year under appeal. Accordingly, entire assessment was restored to the file of Ld. AO for de-novo adjudication.

7. In AY 2010-11 (supra), the assessee earned interest on loans, interest on fixed deposits and other incomes. The Ld. AO disallowed the various expenditure claimed by the assessee which was agitated by the assessee up-to the level of Tribunal. The Tribunal remitted the matter back to the file of Ld. CIT(A). The Ld. CIT(A) passed order against which the assessee was again in appeal before Tribunal. The Ld. CIT(A) rendered a finding that in AY 2009-10 as well as in AY 2010-11, the assessee operated only in Segment-I activity and the decision of Tribunal for AY 2009-10 was applicable. Accordingly, the assessee's claimed was rejected by Ld. CIT(A). Since Ld. CIT(A) had followed the Tribunal order, the bench confirmed the stand of Ld. CIT(A) and dismissed assessee's appeal.

8. Thus, the position that emerges is that in AYs 2009-10 & 2010-11, the assessee operated in Segment-I activity only whereas in AY 2012-13, the assessee operated in Segment-II activity. Noticing this vital difference, the issue in AY 2012-13 was restored back by the bench to the file of Ld. AO for de-novo assessment.

### **Assessment Proceedings**

9.1 During set-aside proceedings for AY 2012-13, the assessee submitted that it pursued business activity under Segment-II which would consist of income from providing shared services & infrastructure services and interest from loans / investments. Upon perusal of various streams of income, it was noted by Ld. AO that the assessee reflected income from Shared Services and income from infrastructural services as 'other income'. The 'other income' refers to non-operational revenues of the business. Therefore, these two streams of income were to be assessed under the head 'income from other sources'.

9.2 It was noted by Ld. AO that the assessee had taken on lease certain space at IIT Madras Research Park for providing shared and infrastructure services. Infrastructure services consist of providing work space to related entities and subsidiaries. The assessee earned revenue of Rs.369.15 Lacs out of this activity. Shared services were rendered by the assessee to its 100% subsidiaries and affiliates. It consists of providing services like information technology, marketing and branding, human resource, finance and administration through its employees. The assessee earned income of Rs.150.07 Lacs under this activity. On cost side, the assessee paid security deposits of Rs.735.92 Lacs for 20 year. The amount of security deposit and cost of improvement was recovered by the assessee from associated concerns over a shorter period of 7

years. Thus, the assessee was providing shared and infrastructure services to the related parties. The assessee was exercising significant control over related parties and since the expenses were already claimed by its 100% subsidiaries, the assessee could not claim these expenses as the same would be against the principle that one could not profit from trading with oneself. Further, these activities were in continuation of incubation activities carried on by the assessee for the new entities. Therefore, the receipts could not be held to be business income for the assessee. Finally, Ld. AO held that the assessee would be entitled for deduction of expenditure @2% of gross receipts. Accordingly, the income was assessed at Rs.631.48 Lacs.

### **Appellate Proceedings**

10.1 Upon further appeal, Ld. CIT(A) noted that it was clearly held by the Tribunal that the assessee did not carry out Segment-I activity and not debited any expenditure towards incubation expenses. The Ld. AO was directed to go through all the relevant agreements entered into by the assessee and give a finding as to whether the same would fall within the objects of the trust so as to fall within the ambit of business income of the assessee. The Hon'ble Tribunal had also held that in case if the same is to be construed as 'income from other sources' even then the allowability of various expenses would have to be considered in the light of the provisions of Sec.57(iii) of the Act. As against this, Ld. AO simple stated that the activities of providing shared services and infrastructure services was only a continuation of incubation activity carried on by the assessee for the new entities. The Assessing Officer relied upon the website of IIT Madras Incubation Cell (IIT MIC) as an assessee providing post incubation facilities. The Assessing Officer also restricted the

expenses to 2% of the gross receipts. Thus, it would appear that Ld. AO merely followed the directions of the Tribunal for AY 2009-10 and not for AY 2012-13. While setting aside the case for AY 2012-13, the Tribunal had clearly held that the assessee had not carried out Segment-I activity relating to incubation of new entities during AY 2012-13. Therefore, Ld. AO could not say that Segment-II activity relating to shared services and infrastructure services were only a continuation of the incubation activity which was based upon the information as available on the website of IIT Madras Incubation Cell. The IIT Madras Incubation Cell did not specify that the assessee was providing incubation facilities and it merely says post-incubation facilities. Tax treatment for incubation facilities may be different from post-incubation facilities. The Tribunal had directed Ld. AO to find out whether the income of the assessee would fall within the ambit of business income by going through relevant agreements entered into by the assessee and also give a finding as to whether the same would fall within the objects of the trust. This was not done by the Assessing Officer.

10.2 Accordingly, Ld. CIT(A) proceeded to examine the written submissions filed by the assessee wherein the objects of the assessee trust as mentioned in trust deed were as under: -

Object (d) - Shared Services:

To advise, guide, make recommendations and otherwise participate in the management of the joint ventures, companies and trusts contemplated under sub-clauses (b) and (c) of this Section 2.06, in consultation with the Advisory Council;

Object (r) - Infrastructure Services:

To acquire, hold, manage, buy, sell, exchange, mortgage, charge, lease, licence or grant any right or interest in, over or upon any movable or immovable property of any kind, including contingent and reversionary interest in any property.

After examining these objects, Ld. CIT(A) held that these activities could not be said to be in the nature of business activities. Nowhere in the trust

deed was it mentioned that one of the objects was to carry on the business of shared services and infrastructure services. The objects of the trust as per trust deed dated 19.10.2006 were as under:

- a) To mobilize and receive Contributions (including any advances with respect thereto), capital or other sums to the Trust Fund from such Persons as the Trustee may deem fit and to issue Contribution Receipts to such Contributors;
- b) To enter into any arrangements for joint ventures or for sharing profits, union of interest or reciprocal concession or co-operate with any person, firm or company in consultation with the Advisory Council, and to subscribe to, invest in or acquire and hold and otherwise dispose of any shares or securities or other instrument pursuant thereof;
- c) To form, constitute, promote, subsidise, organize or aid in forming, constituting, promoting, organizing or assisting or aiding any companies / trusts (including any kind of funds in the form of companies / trusts) in consultation with the Advisory Council, to subscribe to, invest in or acquire and hold and otherwise dispose of any shares or securities or other instruments pursuant thereof, and to exercise any rights and derive any benefits as a result of subscribing to, investing in or acquiring and holding such shares or securities;
- d) To advise, guide, make recommendations and otherwise participate in the management of the joint ventures, companies and trusts contemplated under sub-clauses (b) and (c) of this Section 2.06, in consultation with the Advisory Council;
- e) Mobilizing investments in the joint ventures, companies and trusts contemplated under sub-clauses (b) and (c) of this Section 2.06 and managing and liaising with investors on the nature and scope of such investments;
- f) To invest the surplus amounts of the Trust Funds, if any, in Permitted Investments, in consultation with the Advisory Council;
- g) To make grants or endowments out of the Trust Funds to the Beneficiary or to any other Person in consultation with the Advisory Council; and
- h) Such other purposes as may be decided by the Trustee in consultation with the Advisory Council (which shall include anything incidental and ancillary to the functioning of the Trust and the objects stipulate hereinabove).

The assessee amended the trust deed on 4.4.2007 and following objects were included: -

## 2. AMENDMENTS

### 2.1 Amendment to Section 2.06: Objects of the Trust

Section 2.06 of the Trust Deed shall be amended to include the following after clause 2.06, sub-clause (h):

- i) To borrow, raise or take up money, lend or advance money with or without interest either upon or without security;
- j) To negotiate loans and advances, collect and transmit money and security and to deal on them, underwriting contracts, mortgage, equity participation, cash credits, over drafts and other financial facilities from banks, financial institutions.,

- governments or semi-government bodies and others, or on behalf of any companies, firms, societies, trustees, associates and others.
- k) To open banking account with any bank for the benefit of the beneficiary and contributor and to authorise any authorised person to operate the same.
  - l) To receive all kinds of bonds, scripts or valuables on deposit or for safe custody or otherwise, provide safe deposit vaults, collect and transmit money, negotiable instruments and all securities.
  - m) To buy, acquire, issue or commission, deal, sell, dispose of, exchange, convert, underwrite, subscribe, participate, invest in and hold whether on behalf of the beneficiary or contributors or on behalf of any person, body corporate, company, society, firm or association of persons whether incorporated or not, shares, stocks, funds, debentures, debenture stocks, units, promissory notes, bill of exchange, bonds, warrants, participation certificates or participation units, other money market or capital market instruments, obligations and securities and investments of all kinds issued or guaranteed by any government, state, dominion, sovereign body, commission, public body or authority, supreme, local or municipal or company or body, whether incorporated or not or by any person or association;
  - n) To purchase securities acquire ,invest in, transfer, sell dispose of or trade in any financial asset whatsoever, receivables, debt, whether unsecured or secured by mortgage of immovable or charge immovables or otherwise, securitized debts, asset or mortgage backed securities or mortgage backed securities debt and to manage, service or collect the same and to appoint managing, servicing or collection agent therefore and to issue certificates or other instruments in respect thereof to public or private investors and to guarantee and insure the due payment, fulfilment and performance of obligations in respect thereof or in connection therewith and to promote, establish, undertake, organise, manage, hold or dispose o.f any special purpose entity, body corporate or vehicle for carrying on all or any such activities.
  - o) To effect, insure, guarantee, underwrite, participate in managing and carrying out of any issue, public or private, of state, municipal or other loans or of shares, stock, debentures or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue.
  - p) To lend money, with or without interest, (with or without security} for any maturity period, in any form whatsoever including by way of loans, advances, instalment credit, trade finance, hire or otherwise to any person or persons( whether individuals, firms, companies, body corporate, government, state, sovereign, public body or authority, supreme, local or otherwise or other entities), whether in the private or public sector, for any purpose whatsoever, including agriculture, industry, infrastructure, export-import, housing, consumer or others.
  - q) To place deposits, keep money with security or otherwise either for or without interest with any person, company, bank, financial and other institution, trust, corporation, local authority, government, co-operative society, HUF or other body (whether incorporated or not).
  - r) To acquire, hold, manage, buy, sell, exchange, mortgage, charge, lease, licence or grant any right or interest in, over or upon any movable or immovable property of any kind, including contingent and reversionary interest in any property.

Upon perusal, it was held by Ld. CIT(A) that the two streams of income could not be held to be in the nature of business activities. Therefore, the income would be taxed under the head 'income from other sources'. However, the expenses claimed by the assessee would be allowable u/s 57(iii) as directed by Tribunal. The operative portion of impugned order was as under: -

9.6 Perusal of the above objects does not show any activity in the nature of business of shared services and infrastructure services. Nowhere in the trust deed it is mentioned that one of the objects is to carry on the business of shared services and infrastructure services.

9.7 No document is furnished before me by the assessee demonstrating that the assessee is indeed carrying on the business activity. Therefore, in my view the income earned by the assessee from the above said services including the other income disclosed are to be treated as income under the head income from other sources. However, as regards the allowance of expenses, the Hon'ble Tribunal has held that the same has to be allowed as per the provisions of Sec.57(iii) of the Act. Instead of following the directions of Hon'ble ITAT for the A.Y. 2012-13, the Assessing Officer simply restricted the expenses to 2% of the gross receipts. The shared services and infrastructure services are the activities carried out by the assessee and the cost along with the markup is recovered from the parties' concerned. The Assessing Officer cannot disallow the expenses on the ground that the subsidiaries also claimed the same expenses in their account. The above argument of the Assessing Officer is not correct. The cost for the assessee is debited in its Profit & Loss a/c and the same is recovered along with the markup from the subsidiary companies. The payment made by subsidiary companies to the assessee trust will obviously be expenses for the subsidiary companies. This cannot be stated as double claim of expenses. No evidence is brought on record to show that the expenses incurred are not for the purpose of earning of income. In these circumstances, the expenses are allowed u/s 57(iii) of the Act.

Aggrieved as aforesaid, the revenue is in further appeal before us.

### **Our findings and Adjudication**

11. After going through the orders of Tribunal in earlier years, we find that in order for AY 2012-13, it was the observation of the Tribunal that the assessee had not debited any expenditure towards 'incubation expenses'. It was also observed by the bench that the assessee had not

carried out any Segment-I business activity i.e. incubation of new entities during the year under appeal and it had carried out only Segment-II business activity. This vital fact was lost sight by the lower authorities. The allowability of the expenses in the Profit & Loss account was to be adjudicated based on the findings to be given with regard to various streams of income in the form of shared services / infrastructure services etc. by the lower authorities and the head of income thereon. Accordingly, Ld. AO was directed to go through relevant agreements and give findings as to whether the same would fall within the objects of the assessee trust so as to fall within the ambit of business income of the assessee. If the same was to construed as 'income from other sources' even then the allowability of expenses would have to be considered in the light of the provisions of Sec.57(iii) of the act. It was agreed position that findings given in earlier years with regard to incubation of new entities would not apply to the facts during the years under appeal. Accordingly, entire assessment was restored to the file of Ld. AO for de-novo adjudication.

However, ignoring the same and without making due examination / verification as directed by the Tribunal, Ld. AO merely held that the activities undertaken by the assessee were in continuation of incubation activities. The two streams of income were shown as 'other income' and therefore, the same were non-operational income. Another allegation was that the assessee was exercising significant control over related parties and since the expenses were already claimed by its 100% subsidiaries, the assessee could not claim these expenses as the same would be against the principle that one could not profit from trading with oneself. These findings are mere allegations and not fact-based findings.

Nothing has been brought on record to support this conclusion. The Ld. AO did not follow the directions of the Tribunal and did not make any efforts to go through the agreements etc. to render a finding as to whether the streams of income as earned by the assessee could be considered as business income of the assessee. It merely held that these activities were in continuation of incubation activities as evident from the website. Further, the allowability of expenses u/s 57(iii) was not considered by Ld. AO. Therefore, the findings of Ld. AO are bereft of any merits and contrary to the directions of the Tribunal.

12. The Ld. CIT(A), in our opinion, has clinched the issue in correct perspective and diligently examined the main objects of the assessee. Since Ld. AO had failed to carry out the directions of Tribunal, Ld. CIT(A) rightly went ahead to examine the activities carried out by the assessee. After analyzing the Trust Deed, concrete findings were rendered that shared and Infrastructure activities could not be held to be in the nature of business activities and therefore, the same would be assessable under the head 'income from other sources'. As per statutory mandate, the expenditure expended by the assessee to earn such an income would be an allowable deduction u/s 57(iii). Since the directions of Ld. CIT(A) are in accordance with law, we concur with the findings of Ld. CIT(A) in the impugned order and accordingly, dismiss the appeal of the revenue.

### **Cross-Appeals for AY 2011-12**

13. In this year, the assessee has earned total receipts of Rs.937.97 Lacs as detailed in para-5 of assessment order dated 12.03.2014. The assessee incurred expenditure of Rs.1284.12 Lacs. The Ld. AO, after examining the expenditure, specifically disallowed incubation expenses,

capital expenditure (consultancy and legal / professional charges) and diminution in the value of investments. However, in the alternative, Ld. AO disallowed entire expenditure for various reasons as stated in para-10 of the order. In other words, the returned loss of Rs.1427.79 Lacs was reduced to Rs.143.66 Lacs after disallowing entire expenditure. The interest on fixed deposits for Rs.53.55 Lacs was brought to tax as 'income from other sources'.

14. The Ld. CIT(A) noted that in this year, the assessee had carried out activities under both the segments. Accordingly, following Tribunal's order for AY 2009-10, the disallowance of incubation expenses, consultancy and legal / professional charges was confirmed since the same was incurred for conducting studies and research for setting up of individual units in different sectors. The receipts of the assessee would fall under the head 'income from other sources'. However, the assessee would be entitled to claim related expenditure u/s 57(iii) except expenses falling under the head incubation expenses, consultancy and legal / professional charges. The provision for diminution in value of investment was already disallowed by the assessee in the computation of income and disallowing entire expenditure would amount to double disallowance. Concurring with the same, Ld. AO was directed to verify the facts and delete the double disallowance. Accordingly, the appeal was partly allowed which has given rise to cross-appeal before us.

15. Keeping in view the fact that we have confirmed the impugned order in AY 2012-13, the adjudication for this year is also to be confirmed. The adjudication of Ld. CIT(A) is based on Tribunal's order for AY 2009-10 as well as its own finding for AY 2012-13 which we have already confirmed. In other words, the cross-appeals stand dismissed.

**Revenue's Appeal for AY 2014-15**

16. In this year, entire receipts have been brought to tax as 'income from other sources' and the assessee has been allowed deduction of 2% of the receipts. The Ld. CIT(A) noted that the assessee offered substantial income towards capital gain followed by Segment-II operation. No expenses were incurred for Segment-I activities. Accordingly, the findings of AY 2012-13 were applicable. Aggrieved, the revenue is in further appeal before us.

17. Since we have confirmed first appellate order for AY 2012-13 which has been followed by Ld. CIT(A) in this year, the adjudication of this year would not require any interference on our part. In other words, the revenue's appeal stands dismissed.

**Conclusion**

18. All the appeals stands dismissed.

Order pronounced on 14<sup>th</sup> March, 2022.

**Sd/-**  
**(MAHAVIR SINGH)**  
**उपाध्यक्ष / VICE PRESIDENT**

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
**लेखक सदस्य / ACCOUNTANT MEMBER**

चेन्नई / Chennai; दिनांक / Dated : 14-03-2022.  
EDN/-

**आदेश की प्रतिलिपि ञ ग्रेषित/Copy of the Order forwarded 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