

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI
BEFORE S SHRI RIFAUR RAHAMN, ACCOUNTANT MEMBER &
PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2336/Mum/2019 (A.Y:2013-14)

DCIT – CC-7(3) Room No. 655, 6 th Floor, aayakar Bhavan, MK Road, Mumbai – 400020.	Vs.	Macrotech Developers Ltd (Successor to Bellissimo Crown Buildmart Pvt Ltd) (Earlier known as Lodha Crown Build Mart Ltd) 412, 17-G, Vardhaman Chambers, CP Road, Horniman Circle Fort, Mumbai – 400001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACL1490J		
Appellant	..	Respondent

ITA No. 2387/Mum/2019 (A.Y:2013-14)

Macrotech Developers Ltd (Successor to Bellissimo Crown Buildmart Pvt Ltd) (Earlier known as Lodha Crown Build Mart Ltd) 412, 17-G, Vardhaman Chambers, CP Road, Horniman Circle Fort, Mumbai – 400001.	Vs.	DCIT – CC-7(3) Room No. 655, 6 th Floor, aayakar Bhavan, MK Road, Mumbai – 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACL1490J		
Appellant	..	Respondent

ITA No. 68/Mum/2019 (A.Y:2015-16)

ACIT, CC-7(3) Room No. 655, 6 th Floor, aayakar Bhavan, MK Road, Mumbai – 400020.	Vs.	Macrotech Developers Ltd (Earlier known as Lodha Developers Ltd) 412, 17-G, Vardhaman Chambers, CP Road, Horniman Circle Fort, Mumbai – 400001.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACL1490J		
Appellant	..	Respondent

ITA No. 131/Mum/2019 (A.Y:2015-16)

Macrotech Developers Ltd (Earlier known as Lodha Developers Ltd) 412, 17-G, Vardhaman Chambers, CP Road, Horniman Circle Fort, Mumbai – 400001.	Vs.	DCIT – CC-7(3) Room No. 655, 6 th Floor, aayakar Bhavan, MK Road, Mumbai – 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACL1490J		
Appellant	..	Respondent

Appellant/Respondent by :	Shri. Niraj Sheth & Shri Avinash Gupta.AR
Respondent/Appellant by :	Shri.Mehul Jain. Sr.DR

Date of Hearing	11.02.2022
Date of Pronouncement	28.03.2022

आदेश /O R D E R

PER PAVAN KUMAR GADALE JM:

These are the Cross appeals filed by the revenue and the assessee for the A.Y 2013-14 & 2015-16 against the separate orders of the Commissioner Of Income tax CIT(A)-49 Mumbai passed u/sec143(3) and U/sec250 of the Act.

Since the issues involved in these appeals are identical and interlinked hence are clubbed, heard and consolidated order is passed.

For the sake of convenience, we shall take up the assessee appeal in ITA No. 131/Mum/2019 for the A.Y 2015-16 as lead case and the facts narrated therein. The assessee has raised the following grounds of appeal:

“1. On the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in upholding disallowance of Rs. 1,68,56,525/- u/s 14A of the Act being 0.5% of average value of investment.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that the appellant's own funds was greater than investment capable of generating exempt income and hence no additional disallowance u/s 14A is warranted in the case of the appellant. ”

2. The Brief facts of the case are that the assessee company is engaged in the business of Land

development and constructions of real estates. The assessee has filed the return of income electronically on 30.08.2015 for the A.Y 2015-16 disclosing a total income of Rs.63,89,62,7282/-.Subsequently the assessee has filed revised return of income on 21.03.2017 with a total income of Rs. 64,35,71,675/- And the case was selected for scrutiny under CASS and notice u/s 143(2) and 142(1) of the Act are issued. In compliance the Ld.AR of the assessee appeared from time to time and furnished the details and the case was discussed. The Assessing officer (A.O.). On perusal of the financial statements found that (i) the assessee has claimed interest expenditure of Rs. 66,45,26,655/- in respect of inventory as revenue expenditure. The A.O. has dealt on the provisions of Sec. 36(1)(iii) of the Act and observed that the assessee has considered the interest component in the work in progress. The contentions of the assessee that the assessee is following Mercantile System of Accounting and the revenue recognition is as per the project completion method Accounting Standard of ICAI. Whereas, the A.O dealt on the provisions of Act, judicial decisions and was not satisfied with the explanations and disallowed the

claim. (ii) Similarly the A.O made disallowance u/s 14A r.w.r 8D and observed that the assessee has earned dividend income of Rs. 4,87,78,454/- and claimed exempt u/sec10(34) of the Act. Whereas the assessee holds investments yielding exempt income as on 31.03.2014 Rs. 15,823 lakhs and Rs. 51,603 lakhs as on 31.03.2015 and the assessee has borrowing funds in the F.Y.2014-15. The assessee has filed the explanations that the investments in equity shares of its associate companies are strategic investments and no exempt income is earned on such investments and further no expenditure was incurred for earning income from investments. The A,O, was not satisfied with the submissions and dealt on the provisions of sec14A of the Act, Rule 8D(2) of I T Rules, interpretations, CBDT circular, and Judicial decisions at page 4 to 7 of the order and computed the disallowances u/sec14A r.w.r 8D(2)(ii)&(iii) of Rs.21,10,14,719/- and after set off of sumoto disallowance u/sec14A of the Act by the Assessee of Rs.62,65,593/- the balance of Rs.20,47,49,126/- was added to the total income. (iii)The A.O. has denied the setoff of the brought forwarded long term capital losses against the capital gains of Rs. 11,11,89,976/-

and finally assessed the total income of Rs.162,40,40,432/- and passed u/s 143(3) of the Act on 29.12.2017.

3. Aggrieved by the order, the assessee has filed an appeal with the CIT(A). In the appellate proceedings the CIT(A) considered the grounds of appeal, findings of the A.O, and submissions of the assessee. Whereas in respect of capitalization of interest, the A.O has made addition to the work in progress and the assessee has filed the elaborate submissions in the appellate proceedings referred at Para 7.2 of the order on the factual aspects of the business operations, provisions of the law and the judicial decisions. Whereas the CIT(A) has considered the submissions on the interest capitalization and observed that this is a recurring issue and was decided in favour of the assessee for the A.Y 2014-15 referred at page 11 Para 7.3 of the order and directed the A.O. to delete the addition and allowed the ground of appeal.

3. (i) In respect of revised grounds of appeal no.3 & 4, where the A.O has made a disallowance u/s 14A r.w.r 8D(2) of Rs. 20,47,49,126/- the CIT(A) has dealt on

the observations of the A.O at Para 8.1 on the provisions of Sec. 14A r.w.r 8D(2) of I T Rules, finance Act2001, judicial decisions on the applicability of law. In the appellate proceedings, the assessee has filed the submissions referred at Page 21 Para 8.2 of the order where the assessee mentioned that the dividend income earned was Rs.4.88 crores from small time investments in mutual funds and claimed exempted U/sec 10(34) of the Act. Further, the assessee's own funds are higher than the investments and the disallowance u/s 14A r.w.r 8D(2)(ii) has to be worked out on the net interest expenditure. The A.O has erred in not considering the facts and own funds available with the assessee. Alternative plea of the assessee that the disallowance u/s 14A of the Act should be restricted to exempt income and relied on the judicial decisions. The CIT(A) observed that there is no clarity of own funds available with the assessee and is of the opinion that they are mixed funds and some interest portion is attributed to the investments. The CIT(A) relied on the decision of the coordinate bench of the Honble Tribunal in the case of Morgan Stanely Security Pvt Ltd Vs. CIT in ITA No. 507/Mum/2005 and observed that the net interest debited to profit

and loss account should be considered for the purpose of computation under Rule 8D(2)(ii) of I T Rules and the A.O is directed accordingly and partly allowed this ground of appeal.

3.(ii) In respect of ground of appeal no 5, set off of carry forward long term losses of earlier years, the assessee has filed the submissions referred at Para 9.2 of the order. The CIT(A) accepted the assessee's contentions and the Income Tax settlement commission order passed u/sec245D(4) of the Act and directed the A.O to verify the assessment record and issued directions with respect to allowability of long term capital loss to be set off and partly allowed the ground of appeal and further the CIT(A) has granted the partial relief in other grounds of appeal and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in upholding the disallowance of Rs. 1,68,67,525/- u/s 14A of the Act being the 0.5% of the average value of investments. The assessee's own funds are more than the investments which are

capable of generating the exempt income and disallowance u/s 14A of the Act is not warranted. Further, if any disallowance has to worked out it should restricted to exempt income and only dividend/exempted income yielding investments should be considered for average value of investments in computing disallowance under Rule 8D(2)(iii) of the I T Rules. Further the Ld. AR submitted that there is no satisfaction recorded by the A,O in respect of disallowance made u/s 14A of the Act. The Ld. AR supported the submissions with the paper book, judicial decisions and prayed for allowing the assessee appeal.

5. Contra, the Ld. DR submitted on the applicability of Rule 8D(2)(iii) and the facts of expenditure incurred and emphasizes on the A.O. calculations and supported the order of the CIT(A) on the disputed issue..

6. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue is with respect to disallowance u/s 14A r.w.r 8D(2)(iii) of I T Rules being the third limb where the A.O has made the addition based on the average value

of investment @ 0.5%. On perusal of the facts, the A.O has not considered information relating to investments disclosed in the audited balance sheet. We find that the assessee has made su moto disallowance of Rs.62,65,592/- in respect of the exempted income and the A.O has applied separate factors and recomputed the disallowance. Whereas the CIT(A) in respect of disallowance under Rule 8D(2)(ii) has directed the A.O to recompute the disallowance considering the net interest component. The assessee has challenged the calculation of 0.5% of the average investments. We found that the A.O has discussed in the assessment order on the provisions of Sec. 14A of the Act, applicability, exemptions and CBDT Circular. Whereas the contentions raised in respect of exempted income was not considered by the A.O. The main claim of the assessee that if any disallowance is computed it should be restricted to the exempted income and relied on the financial statements, judicial decisions and the assessee own case for the A.Y.2014-15. Further, we find that there is no specific mention in the assessment order, whether the A.O has considered only the investments which yield dividend income for

calculation of average value of investments. In the present case the assessee has suo moto made disallowance of Rs.62,65,593/- and further the assessee prayed that the disallowance u/sec14A r.w.r 8D(2) of the I T rules should be restricted to exempt income. We rely on the ratio of decision of Honble Tribunal special bench in ACIT Vs Vireet Investments Pvt Ltd (188 TTJ 01(Delhi) (i) That only those investments which yield exempt income should be considered for computing average value of investments and (ii) while computing book profits u/s 115JB of the Act, the disallowance u/s 14A r.w.r 8D(2) of the I T rules are not to be considered.

7. We find Honble High Court of Bombay in the case of PCIT Vs. Huntsman international India Pvt Ltd I.T.A. No. 1619 of 2016 dated 30.01.2019 has observed as under:

4. We notice that the Revenue has raised additional question, which reads as under :-

"On the facts and in the circumstance of the case and in law, the Tribunal erred in allowing 14A Rule 8D since the Revenue has not accepted the decision of Delhi High Court in the case of Chem Investment Ltd. Vs. CIT, Delhi ?"

5. This question relates to disallowance made by the Assessing Officer under [Section 14A](#) of the Income Tax Act,

1961 r/w Rule 8D of the Rules of the expenditure incurred by the assessee for earning exempt income. The Tribunal by the judgment which is impugned in this appeal held that the assessee had not earned any exempt income during the year under consideration. The Tribunal, therefore, followed the decision of Delhi High Court in case of CIT Vs. Holcim India (Pvt.) Ltd. (2014) 272 CTR 282. In such decision, the Delhi High Court ruled that when there is no exempt income earned by the assessee, no disallowance under [Section 14A](#) of the Act can be made. It is pointed out to us that this Court in Income Tax Appeal No.693 of 2015 in case 2 of 4 Uday S. Jagtap 1619-16-ITXA-34=.doc of Principal CIT Vs. M/s. Rivian International (P) Ltd., by order dated 21.11.2017, following the judgment of Delhi High Court in case of Holcim India (P) Ltd. (supra), has adopted the same principle making following observations :-

"3. We have given careful consideration to the submissions. On facts, it appears from the impugned judgment that the assessee had made investment in shares of closely held companies which did not declare any dividend. On fact, there is no dispute that the assessee has not earned any exempt income during the year under consideration. After consideration of Section 14A, the Delhi High Court followed decisions of certain other High Courts. Section 14A of the said Act provides that for the purpose of computing the total income, 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 under the said Act. In other words, Section 14A provides that if there is an income which does not form a part of the total income under the said Act, the expenditure which is incurred for earning the income is not an allowable deduction. Therefore, during the relevant year, if the assessee has not earned any tax free income, the corresponding expenditure incurred cannot be taken into consideration for dis-allowance.

4. We respectfully concur with the view taken by the Delhi High Court as the said view can always be taken on fair reading of Section 14A of the Said Act. A Division Bench of

Allahabad High Court has also taken a similar view in the case of [Commissioner of Income Tax V. Shivam Motors \(P\) Ltd.](#) (supra). Hence, in our view, no fault can be found with the impugned judgment of the Appellate Tribunal whereby disallowance under Section 14A was ordered to be deleted. No substantial question of law arises. Appeal is, accordingly, dismissed."

6. Counsel for the assessee also brought to our notice the fact that the Supreme Court in case of CIT Vs. Chettinad Logistics (P) Ltd. 95 3 of 4 Uday S. Jagtap 1619-16-ITXA-34=.doc taxmann.com 250 has dismissed the Revenue's SLP against the judgment of the Delhi High Court in Holcim India (P) Ltd. (supra), taking a similar view. This additional question is, therefore, not entertained.

8. We find on the similar/identical issue of restricting the disallowance u/sec14A r.w.r 8D(2) of the I T rules. The Hon'ble Tribunal in DCIT Vs M/s Palava Dwellers Pvt Ltd (Merged in Lodha Developers Limited) in ITA No. 2147/Mum/2018 A.Y 2014-15 dated 20.02.2020 has dealt and observed at page 15 Para 8 to 11 read as under:

8. Coming to Ground No. 3 of grounds of appeal of the revenue it relates to restricting the disallowance u/s. 14A of the Act to the exempt income earned by the assessee.

9. The Assessing Officer while completing the assessment applying Rule 8D made disallowance u/s. 14A of the Act at 80,75,718/-, though assessee made suomoto disallowance of ₹.54,01,967/- which is the entire exempt income earned by the assessee and claimed as deduction.

10. On appeal the Ld.CIT(A) restricted the disallowance only to the exempt income observing as under: -

“The submissions of the learned counsel have been carefully considered. It is the contention of the learned counsel that the investments made have been made out of own funds and that the own funds of the assessee are much more than the investments made. Further the investments have been made in the subsidiaries for strategic purpose and hence have to be excluded for disallowance under section 14 A. The learned counsel further relied upon the judgment of Hon'ble Chennai High Court in the case of Shiva Industries Holdings Ltd vs. ACIT 11 Taxmann.com 404 and also that of the jurisdictional ITAT in the case of Daga Global Chemical Private Ltd vs. ACIT ITA number 5592/MUM/2012 wherein it has been held that the disallowance should be restricted to and should not exceed the exempt income. Further, the jurisdictional ITAT in the case of Sandeep Bharat Singh Kothari vs. ACIT ITA number 8706/MUM/2011 followed the coordinate bench in the case of Daga Global Chemical Private Ltd and held that the disallowance under section 14A read with rule 8D cannot exceed the exempt income. While the disallowance made by the AO in accordance with Rule 8D is agreed to in principle, following the decision of the jurisdictional ITAT in the case of Daga Global Chemical Private Ltd, the AO is directed to restrict the disallowance to the exempt income earned i.e. Rs.54,01,967/-. This ground of appeal is ALLOWED.”

11. We have heard rival contentions and perused the orders of the Assessing Officer and Ld.CIT(A). We find that Ld.CIT(A) restricted the disallowance u/s. 14A of the Act to the exempt income earned by the assessee following the decision of the Hon'ble Madras High Court in the case of Shiva Industries Holdings Ltd v. ACIT [11 Taxmann.com 404] and the decision of the Coordinate Bench in the case of Daga Global Chemical Pvt. Ltd., v. ACIT in ITA.No. 5592/Mum/2012. This bench is consistently holding that, the disallowance u/s. 14A of the Act shall not be more than the exempt income and shall be restricted to the exempt income earned by the assessee. Thus,

the decision of the Ld.CIT(A) is in tune with the consistent view of this Tribunal. Hence we do not find any infirmity in the order passed by the Ld.CIT(A). This ground of the revenue is dismissed.

9. Considering the facts, circumstances, provisions of the law, submissions of the assessee and ratio of the judicial decisions and the assessee group case in the earlier years. We find the submissions of the Ld.AR are supported with the material information. Accordingly, we direct the Assessing officer to restrict the disallowance u/s 14A r.w.r 8D(2) of the I T rules to the extent of exempt income earned by the assessee and partly allow the ground of appeal of the assessee.

In the result, the appeal filed by the assessee is partly allowed.

ITA 68/Mum/2016, A.Y 2015-16.

10. The revenue has raised the following grounds of appeal

1. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 66,45,29,655/- made by the AO u/s 36(1)(iii) and capitalized the same to inventory.*

2. *On the fact and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.*

66,45,29,655/- relied upon the decision of the judgment of the jurisdictional High Court in the case of Lokhandwala Constructions Ind Ltd 260 ITR 579 the same were rendered before the proviso to Sec 36(1)(iii) has been inserted vide Finance Act 2003.

3. Whether on the fact and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 14,06,26,48/- made by the A.O u/s 14A r.w.r 8D and limiting the disallowance made by the AO to the extent of exempt income of the assessee as claimed not to the expenditure as per rule.

11. The Ld. DR submitted on ground of appeal no 1 & 2 that the CIT(A) has erred in deleting the addition u/s 36(1)(iii) of the Act though the A.O has treated the interest as a capital expenditure and the decisions relied by the CIT(A) are prior to the proviso inserted in Finance Act 2003. In respect of 3rd ground of Appeal, the Ld. DR submitted that the CIT(A) erred in deleting the addition made under sec14A r.w.r 8D(2)(ii) and to consider the net interest expenditure. Contra, the Ld.AR submitted that the CIT(A) has considered the valid information in the financial statements and granted the relief and relied on the judicial decisions and supported the order of the CIT(A) on these two disputed issues.

12. We heard the rival submissions and perused the material available on record. We find the grievance of

the revenue that the CIT(A) erred in deleting the addition u/sec36(1)(iii) of the Act relying on the decision of Honble High Court of Bombay. We find the Coordinate Bench of the Honble Tribunal in the assessee's group case M/s. Palava Dwellers Pvt Ltd & Lodha Developers Ltd ITA No. 2147/Mum/2018 & 2348/Mum/2018 for the A.Y 2014-15 has dealt on the same issue in the revenue appeal, where the similar grounds of appeal are raised and observed at page 2 Para 3 as under:

1. In so far as Ground Nos. 1 and 2 are concerned, briefly stated the facts are that, the Assessing Officer while completing the assessment on 30.12.2016 u/s.143(3) of the Act noticed that assessee for the purpose of construction of residential project borrowed interest bearing funds from group concerns, banks and financial institutions. Assessing Officer noticed that assessee paid interest of ₹.164.71 Crores and earned interest income of ₹.42.57 Crores and net interest expenses were shown at ₹.122.15 crores. Assessing Officer noticed that out of this ₹.122.15 crores the assessee capitalized an interest of ₹.105.13 crores and shown as work in progress. He further noticed that in the return of income interest of ₹.89.12 crores have been claimed as deduction out of this ₹.105.13 Crores which were capitalised in the Books of Accounts. The assessee was required to explain as to why interest expenses claimed in the return of income shall not be disallowed. The assessee submitted that interest expenses have been claimed as deduction in the year of incurrance as the interest is periodic cost and pertains to the year for which it belongs to. It was further submitted that the said interest is allowable as deduction u/s. 36(1)(iii) of the Act being interest pertaining to stock in trade of the assessee. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of Taparia Tools Pvt. Ltd., v. JCIT in Civil Appeal No. 6366/2003

dated 23.03.2015 and the decision of the Hon'ble Bombay High Court in the case of CIT v.LokandwalaConstruction Industries Ltd., [260 ITR 579].

2. Not convinced with the submissions of the assessee, the Assessing Officer placing reliance on the judgement of the Hon'ble Special Bench, Mumbai in the case of M/s. Wall Street Construction Limited [102 TTJ 505] wherein it has been held that the interest cost shall be debited to work in progress and allowed to be claimed as deduction only in the year in which corresponding income offered to tax, Assessing Officer denied the claim of the assessee. On appeal the Ld.CIT(A) following the decision of the Hon'ble Jurisdictional High Court in the case of CIT v.Lokandwala Construction Industries Ltd., [260 ITR 579] and various other decisions of the Coordinate Benches allowed the claim for deduction of interest. Against this order the revenue is in appeal before us.

3. Ld. DR vehemently supported the order of the Assessing Officer and also the decision of the Special Bench in the case of M/s. Wall Street Construction Limited (supra).

4. We have heard the rival submissions, perused the orders of the authorities below and case laws relied on. This aspect of the matter has been elaborately considered by the Ld.CIT(A) with reference to the averments of the Assessing Officer and considering the submissions of the assessee and also the decision of Hon'ble Jurisdictional High Court in the case of CIT v.Lokandwala Construction Industries Ltd., (supra) and various other decision and allowed the claim of the assessee observing as under: -

“The submissions of the learned counsel have been carefully considered. According to the learned counsel the interest claimed by the assessee is a period cost and has to be allowed under section 36 (1) (iii) of the Act. The assessee has relied upon the judgment of the apex court in the case of the Taparia tools Ltd vs. DCIT (2015) 272 ITR 605 wherein the Supreme Court held that the only aspect which needed examination was as to whether the provisions of section 36 (1) (iii) read with section 43 (2) of the act was satisfied or not. Once these are satisfied there is no question of denying the benefit of deduction in the year in which such an amount was actually paid or incurred. Further, the proviso

introduced by the Finance Act 2003 prohibits the allowance of interest cost only if the borrowed funds have been utilized for acquisition of a capital asset even for existing business. In this case the borrowed funds have been utilized for stock in trade which is not a capital asset. The jurisdictional Bombay High Court in the case of Lokhandwala constructions Inds Ltd 260 ITR 579 held as under:

"in the instant case, it was dear that the assessee undertook two-fold activities. It bought and sold flats. Secondly, the assessee was also engaged in the business of construction of buildings. The profits from both the activities were assessed under section 28. The assessee had undertaken the project of construction of flats. Therefore, the loan was obtained for obtaining stock-in-trade. The project constituted the stock-in-trade of the assessee. The project did not constitute a fixed asset of the assessee. Since the assessee had received loan for obtaining stock-in-trade, it was entitled to deduction under section 36(1)(iii).

While adjudicating the claim for deduction u/s 36(1)(iii), the nature of expenses, whether the expenses are on capital account or revenue account is irrelevant as the section itself says that interest paid by the assessee on the capital borrowed by the assessee is an item of deduction. The utilization of the capital is irrelevant for the purpose of adjudicating the claim for deduction u/s 36(1)(iii)."

The SLP filed by the Department against the Bombay High Court judgment has been rejected by the Supreme Court. The Hon'ble ITAT Mumbai in the case of M/S Ashish Builders Private Ltd vs. ACIT ITA number 310/M/2012 held as under:

"A) Interest on unsecured loans and fixed deposits: It is the claim of the assessee that the entire interest expenditure is allowable as it is a time related fixed finance cost on the borrowed capital. The claim of the assessee should be allowed in full in view of the various decisions on this issue. To start with, we perused the order of the Tribunal in the case of Rohan Estates Pvt. Ltd. (supra) which is one of the sister concerns of the assessee. We perused the para 3.2 of the said order of the Tribunal and find it is a self explanatory and the decision of the Tribunal supports the case of the assessee. Under comparable facts of the assessee, interest cost was allowed in favor of the assessee relying on binding jurisdictional High Court judgment in the case of M/s

Lokhandwala Construction Industries Ltd. (supra). For the sake of completeness of this order we extract relevant para 3.2 of the order which is reproduced as under:

"3.2 With regard to the interest expenditure,.....The interest cost on the corresponding capital borrowed would nevertheless continue to be incurred, without any corresponding increase in the value of the inventory or the project. Similarly, a project, or part thereof, may be partly sold or even remain unsold for quite some time after its completion. While revenue would stand to be booked only on the part, if any, sold, the interest cost would continue to be incurred on the entire capital, even as no corresponding gain inures in terms of value addition to the project, which stands in fact completed, so as to increase its cost by loading the said cost thereon. It is for these reasons that interest (financing) cost is normally considered as only a period (fixed) cost, and charged to the operating statement for the year in which the same is incurred. As such, what in our view would prevail is the method of accounting being regularly followed by the assessee, i.e. on a year basis. The same also has the sanction of law inasmuch as sec. 145 clearly provides for determination of the business income on the basis of the method of accounting being regularly followed, with the mandate of sec 36(l)(iii) being also satisfied, and toward which the assessee relies on the decision in the case of CIT vs Lokhandwala Construction Inds. Ltd(supra). The same also clarifies that the interest cost is to allowed u/s 36(l)(iii), irrespective of whether it stands incurred in relation to stock-in-trade or on capital account, as the said section draws no such distinction. The issue, though, we may clarify, is not as to whether the borrowed capital stands utilized toward trading operations or on capital account; the instant case being decidedly of the former, but whether the said cost, having been incurred, is to be capitalized as a part of the project cost and, thus, taken into account for the purpose of valuation of inventory (stock-in-trade) as at the year-end and, consequently, the determination of gross profit for the year. It is only the cost that is incurred and otherwise allowable, which, it may be appreciated, would stand to be considered thus, where it otherwise qualifies for being reckoned as a part of the cost of production/construction, and thus of the inventory or the project cost as at the year-end. The deducibility of the said cost u/s 36(l)(iii) is thus neither in doubt nor in dispute, Further, it may also be in place to state that section 36(l)(iii) stands since amended by Finance Act, 2003 w.e.f, 01/04/2004, by way of insertion of a

proviso thereto, so that any interest cost on capital account is to be necessarily capitalized. Accordingly, it is only the interest cost computing the business income qua the business of which the relevant asset is or is to constitute a part (also refer Explanation 8 to s.43(l)). The said decision may, thus, in the given facts and circumstances of the case as, well as the amended law, not be of much assistance."

We have also perused the said binding High Court judgment in the case of M/s Lokhandwala Construction inds. Ltd. (supra) and find the same is relevant for the following conclusion - "construction project undertaken by the assessee builder constituted its stock in trade and the assessee was entitled to deduction under section 36(l)(iii) of the Act in respect of the interest on the loan obtained for execution of said project." Relying on the another judgment of Hon'ble Bombay High Court in the case of Calico Dying and Printing Works 34 ITR 265 Bombay, Hon'ble Bombay High Court concluded that the interest expenditure relating to the borrowed capital is allowable u/s 36(l)(iii) of the Act. The relevant lines from the para 4 reads as under;

"that, while adjudicating the claim for deduction under section 36(l)(iii) of the Act the nature of expense - whether the expenditure was on capital account or revenue account - was irrelevant as the section itself says that interest paid by the assessee on the capital borrowed by the assessee was an item of deduction. That the utilization of capital was the relevant for the purpose of adjudicating the claim of deduction under section 36(l)(iii) of the Act. (referring to the judgment in the case of Calico) It was laid down that where an assessee claims deduction of interest paid on the capital borrowed all that the assessee was to show that the capital which was borrowed was used for business purpose in the relevant year of account and it did not matter whether capital was borrowed in order to acquire the revenue asset or a capital asset....."

Considering the above settled position in the matter we are of the opinion that the assessee is entitled to claim entire interest deduction relating to the capital borrowed and utilized for business purposes in the year under consideration. Resultantly, we disapprove the decision of the Assessing Officer/CIT(Appeals) in transferring the interest expenditure to WIP account.

Therefore, assessee is justified in debiting the same to the P&L accounts of the respective assessment years. Thus, we order the Assessing Officer to accept the claim as made in the return of income. Accordingly, this part of the ground No. 1 is allowed in favour of the assessee”

The Hon'ble ITAT in the case of ITO vs Rohan states ITA number 7200/MUM/2010 held as under:

“3.2 With regard to the interest expenditure, though the Accounting Standard -2 (AS-2) on the valuation of inventories issued by the Institute of Chartered Accountant of India (ICAI) would suggest that the interest expenditure ought to be taken into account in the valuation of inventories where and to the extent there is a direct nexus, the said standard is not mandatory under the Act. In fact, even following AS-2 a direct nexus has to be established for the interest cost to form part of the cost of production or construction, as the case may be, and, thus, a part of the valuation of the unsold inventory or work-in-progress as at the year-end. This is as, to cite by way of an example from the civil construction itself, the work on a project may not be underway at all for the whole or a part of the year, or say as its optimum or normative level, on account of various business exigencies. The interest cost on the corresponding capital borrowed would nevertheless continue to be incurred, without any corresponding increase in the value of the inventory or the project. Similarly, a project, or part thereof, may be partly sold or even remain unsold for quite some time after its completion. While revenue would stand to be booked only on the part, if any, sold, the interest cost would continue to be incurred on the entire capital, even as no corresponding gain inures in terms of value addition to the project, which stands in fact completed, so as to increase its cost by loading the said cost thereon. It is for these reasons that interest (financing) cost is normally considered as only a period (fixed) cost, and charged to the operating statement for the year in which the same is incurred. As such, what in our view would prevail is the method of accounting being regularly followed by the assessee, i.e. on a year basis. The same also has the sanction of law inasmuch as sec. 145 clearly provides for determination of the business income on the basis of the method of accounting being regularly followed, with the mandate of sec 36(l)(iii) being also satisfied, and toward which the assessee relies on the decision in the case of CIT vs Lokhandwala Construction Inds. Ltd(supra). The same also clarifies that the interest cost is to allowed

u/s 36(l)(iii), irrespective of whether it stands incurred in relation to stock-in-trade or on capital account, as the said section draws no such distinction. The issue, though, we may clarify, is not as to whether the borrowed capital stands utilized toward trading operations or on capital account; the Instant case being decidedly of the former, but whether the said cost, having been incurred, is to be capitalized as a part of the project cost and, thus, taken into account for the purpose of valuation of inventory (stock-in-trade) as at the year-end and, consequently, the determination of gross profit for the year. It is only the cost that is incurred and otherwise allowable, which, it may be appreciated, would stand to be considered thus, where it otherwise qualifies for being reckoned as a part of the cost of production/construction, and thus of the inventory or the project cost as at the year-end. The deductibility of the said cost u/s 36(l)(iii) is thus neither in doubt nor in dispute. Further, it may also be in place to state that section 36(l)(iii) stands since amended by Finance Act, 2003 w.e.f. 01/04/2004, by way of insertion of a proviso thereto, so that any interest cost on capital account is to be necessarily capitalized. Accordingly, it is only the interest cost computing the business income qua the business of which the relevant asset is a or is to constitute a part (also refer Explanation 8 to s.43(l)). The said decision may, thus, in the given facts and circumstances of the case as, well as the amended law, not be of much assistance.

In fact, even going by the Revenue's stand, another issue would arise and, accordingly, need to be determined apriori. Considering the said cost as includable in the project cost may have a direct bearing on the gross profit rate, and which may therefore stand to decline from the reported and accepted rate of 23%, and cannot be presumed be remain as such, i.e., unchanged."

The Hon'ble ITAT Pune in the case of M/S Kolte Patil Developers Ltd erstwhile Corola reality Ltd merged with Kolte Patil Developers Ltd) also held as under:

"Further, we find the Mumbai Bench of the Tribunal in the case of M/s Ashish Builders Pvt. Ltd. (supra) has decided an identical issue in favour of the assessee. Relevant Paragraphs are being reproduced hereunder for better appreciation of the issue:

"6. Ground No. 1 of the appeal relates to the addition of some of the expenses to the WIP account i.e. interest on unsecured loan/fixed deposit (sic-car loan), advertisement expenses, brokerage expenses and loan processing fees. AO considered the above expenses as relatable to the WIP account and recomputed the WIP account at Rs.5,33,28,399/- . /Assessee contends that the above said expenditure is fully allowable in the year under consideration. In this regard, assessee relied on various ITA No. 80/PUN/2016 M/s Kolte Patil Developers Ltd., decisions. This issue is relevant for AYs/appeals under consideration. We shall take up expenditure-account wise adjudication in the following paragraphs:

"A) Interest on unsecured loans and fixed deposits: It is the claim of the assessee that the entire interest expenditure is allowable as it is a time related fixed finance cost on the borrowed capital. The claim of the assessee should be allowed In full in view of the various decisions on this issue. To start with, we perused the order of the Tribunal in the case of Rohan Estates Pvt. Ltd. (supra) which is one of the sister concerns of the assessee. We perused the para 3.2 of the said order of the Tribunal and find it Is a self explanatory and the decision of the Tribunal supports the case of the assessee. Under comparable facts of the assessee, interest cost was allowed in favor of the assessee relying on binding jurisdictional High Court judgment in the case of M/s Lokhandwala Construction Industries Ltd. (supra). For the sake of completeness of this order we extract relevant para 3.2 of the order which is reproduced as under:

"3.2 With regard to the interest expenditure.....The interest cost on thecorresponding capital borrowed would nevertheless continue to be incurred, without any corresponding increase in the value of the inventory or the project. Similarly, a project, or part thereof, may be partly sold or even remain unsold for quite some time after its completion. While revenue would stand to be booked only on the part, if any, sold, the interest cost would continue to be incurred on the entire capital, even as no corresponding gain inures I terms of value addition to the project, which stands in fact completed, so as to increase its cost by loading the said cost thereon. It is for these reasons that interest (financing) cost is normally considered as only a period (fixed) cost, and charged to the operating statement for the year in which the same is incurred, As such, what in our view would prevail Is the method of

accounting being regularly followed by the assessee, i.e. on a year basis, The same also has the sanction of law Inasmuch as sec. 145 clearly provides for determination of the business income on the basis of the method of accounting being regularly followed, with the mandate of sec 36(l)(iii) being also satisfied, and toward which the assessee relies on the decision in the case of CIT vs Lokhandwala Construction Inds. Ltd(supra). The same also clarifies that the interest cost is to allowed u/s 36(l)(iii), irrespective of whether it stands incurred in relation to stock-in-trade or on capital account, as the said section draws no such distinction. The issue, though, we may clarify, is not as to whether the borrowed capital stands utilized toward trading operations or on capital account; the instant case being decidedly of the former, but whether the said cost, having been incurred, is to be capitalized as a part of the project cost and, thus, taken into account for the purpose of valuation of inventory (stock-in-trade) as at the year-end and, consequently, the determination of gross profit for the year. It is only the cost that is incurred and otherwise allowable, which, it may be appreciated, would stand to be considered thus, where it otherwise qualifies for being reckoned as a part of the cost of production/construction, and thus of the inventory or the project cost as at the year-end. The deducibility of the said cost u/s 36(l)(iii) is thus netherin doubt nor in dispute. Further, it may also be in place to state that section 36(l)(iii) stands since amended by Finance Act, 2003 w.e.f. 01/04/2004, by way of insertion of a proviso thereto, so that any interest cost on capital account is to be necessarily capitalized. Accordingly, it is only the interest cost computing the business income qua the business of which the relevant asset is a or is to constitute a part (also refer Explanation 8 to s.43(l)). The said decision may, thus, in the given facts and circumstances of the case as, well as the amended law, not be of much assistance."

We have also perused the said binding High Court judgment in the case of M/s Lokhandwala Construction inds. Ltd. (supra) and find the same is relevant for the following conclusion - "construction project undertaken by the assessee builder constituted its stock in trade and the assessee was entitled to deduction under section 36(l)(iii) of the Act in respect of the interest on the loan obtained for execution of said project/' Relying on the another judgment of Hon'ble Bombay High Court in the case of Calico Dying and Printing Works 34 ITR 265 Bombay, Hon'ble Bombay High Court concluded that the interest expenditure relating to the

borrowed capital is allowable u/s 36(l)(iii) of the Act. The relevant lines from the para 4 reads as under;

"that, while adjudicating the claim for deduction under section 36(l)(iii) of the Act the nature of expense 0- whether the expenditure was on capital account or revenue account was irrelevant as the section itself says that interest paid by the assessee on the capital borrowed by the assessee was an item of deduction. That the utilization of capital was the relevant for the purpose of adjudicating the claim of deduction under section 36(l)(iii) of the Act. (referring to the judgment in the case of Calico) It was laid down that where an assessee claims deduction of interest paid on the capital borrowed all that the assessee was to show that the capital which was borrowed was used for business purpose in the relevant year of account and it did not matter whether capital was borrowed in order to acquire the revenue asset or a capital asset...../'

Considering the above settled position In the matter we are of the opinion that the assessee is entitled to claim entire interest deduction relatable to the capital borrowed and utilized for business purposes in the year under consideration, Resultantly, we disapprove f decision of the Assessing Officer/CIT(Appeals) in transferring the interest expenditure to WIP account.

Therefore, assessee is justified in debiting the same to the P&L accounts of the respective assessment years. Thus, we order the Assessing Officer to accept the claim as made in the return of income. Accordingly, this part of the ground No. 1 is allowed in favour of the assessee."

14. From the above, it is evident that any amount of the interest paid in respect of capital borrowed for the business purposes constitutes an allowable deduction. The said clause (Hi) of section 36(1) of the Act supports the assessee's claim in the present case. This view is upheld in the case of CIT vs Lokhandwala Construction Industries Ltd. (supra) as well as the decision of the Tribunal in the case of M/s. Ashish Builders Pvt. Ltd. (supra) irrespective of the method of accounting of recognizing the income followed by the assessee. The present case involves the payment of interest of Rs.8,19,23,638/-, the interest paid to debenture holders, Financial institutions, Unsecured loan etc. It is not the case of the Revenue that the interest claim of Rs.3,00,57,566/- and related

capital borrowed was not utilized by the assessee for business purposes of the assessee."

However, the case of Wall Street construction is one where the assessee was following project completion method and therefore the ITAT held that the interest cost shall be debited to work in progress and allowed to be claimed as deduction only in the year in which the corresponding income is offered to tax. In the instant case, the assessee is following percentage completion method (POCM) of therefore the judgment of Wall Street construction is not applicable to this case. The assessee is following percentage completion and offers a part of the revenue every year depending upon the percentage of completion. The funds have been borrowed for the purpose of construction and have gone into the projects of the assessee which are stock in trade and not capital asset of the assessee. Therefore, the amendment brought in the Act with effect from 2003 by way of introducing the proviso to section 36 (1) (iii) also does not affect the facts of the case of the assessee. In view of the binding judgment of the jurisdictional High Court in the case of Lokhandwala constructions and also of the jurisdictional ITAT in the cases of Ashish Builders Private Ltd and Rohan Estate Private Ltd and also the various judicial pronouncements relied upon by the assessee the interest expenditure claimed by the assessee is held to be allowable, It is also to be mentioned here that during the proceedings before the Income Tax Settlement Commission, the AO had raised specific question in relation to claim on interest expenditure made by the appellant and reply was filed by the appellant explaining the same. Wherein the assessee explained that disallowance cannot be made u/s 36(l)(iii) of the Act, in view of the jurisdictional High Court's decision in the case of Lokhandwala Construction (supra). After considering the assessee's submissions, the AO accepted the same and did not raise objection in relation to interest claimed in the report u/s 245D (3) report filed before the ITSC. Further no disallowance/ adjustment was made by ITSC in relation to such interest claimed while passing the order. The addition made by the AO is directed to be deleted. These grounds of appeal are ALLOWED."

- 7.** *On a careful perusal of the order of Ld.CIT(A), we do not see any infirmity in allowing the claim of the assessee as the claim of the assessee is in tune with the decision of the Hon'ble Jurisdictional High*

Court in the case of Lokandwala Construction (supra) wherein it has been held that when the project constructed by the assessee is its stock in trade and not a fixed asset of the assessee the interest paid on loans obtained for stock in trade is an allowable deduction u/s. 36(1)(iii) of the Act. We also find that in the proceedings before the settlement commission the assessee claimed interest expenses and as per the order dated 28.07.2014 of the settlement commission and during verification proceedings u/s. 245D(3) of I.T. Act, the assessee informed the Assessing Officer that interest of ₹.124.02 crores as claimed in the computation of income on ground of interest expenses retained in inventory is deductible under provisions of section 36(1)(iii) of the Act. It was further informed that the said amount of interest paid was in respect of capital borrowed for the purpose of business or profession. It was further submitted that the construction and development having commenced, the business is in operation, therefore, interest is allowable u/s. 36(1)(iii) of the Act. It was also further brought to the notice of the Assessing Officer that in the case of CIT v. Lokandwala constructions Industries Ltd., [131 Taxman 810] the assessee's claim for deduction of interest, although the revenue was recognized only on project completion basis in subsequent year, was allowed in the year in which the claim of interest was made. Thus, it was contended that the interest expenditure incurred during the year is claimed and allowable as expenses even though the same has been inventorised in the Books of Accounts. These contentions were accepted by the revenue and no objection has been raised by the Assessing Officer and the settlement commission has accepted these contentions of the assessee. This fact was also taken note by the Ld.CIT(A) in allowing the claim of the assessee. Therefore, since the revenue could not controvert the findings of the Ld.CIT(A) that the project constructed by the assessee for which the loans have been taken is not a stock in trade and also the other findings of the Ld.CIT(A), we do not find any valid reason to interfere with the findings of the Ld.CIT(A) and accordingly we sustain the order of the Ld.CIT(A) on this issue. Grounds raised by the revenue are rejected.

13. We find the CIT(A) has dealt on the disputed issue at Para 7 of the order and relied on the facts, provisions of law, amendments, accounting standards

and judicial decisions of the Honble High Court and Honble Tribunal and directed the assessing officer to delete the addition u/sec36(1)(iii) of the Act and passed a reasoned order on the disputed issue. The Ld. DR could not controvert the findings of the CIT(A) on this disputed issue with any new cogent evidence or information. Accordingly, we do not find any infirmity in the decision and are not inclined to interfere with the order of the CIT(A) passed relying on the decision of Jurisdictional Honble High court and Honble Tribunal and we follow the judicial precedence and up hold the decision of the CIT(A) on this disputed issue and dismiss the grounds of appeal of the revenue.

14. On the 3rd ground of appeal, the Ld. DR submitted that CIT(A) has erred in granting the relief on the disallowance U/sec14A r.w.r 8D(2)(ii).we find the CIT(A) has dealt at Para 8.4 of the order and directed the A.O to recompute as under:

8.4 In the appellants case, the appellant also has mixed funds and therefore some interest portion has to be attributed to the investments made. Therefore, this plea of the Ld. Counsel not to make a disallowance for the reason that the appellants own funds are greater than the investments is rejected. The Ld. Counsel has also taken without prejudice a

plea that for the calculation of interest disallowance the net interest should be taken in place of the gross income. The Hon'ble ITAT, Mumbai in the case of Morgan Stanley Securities Pvt Ltd Vs. CIT ITA No. 5072/Mum/2005 held that the net interest debited to the profit and loss account should be considered for the purpose of Rule 8D(2)(ii). This plea of the assessee is acceptable and the AO is directed to recompute the disallowance u/s 14A r.w.r 8D by computing the net interest debited which is Rs. 14,06,26,480/- for the purpose of computation of interest disallowance. These grounds of appeal are partly allowed.

15. We find in the present case the CIT(A) has considered the fact of calculation of disallowance under rule 8D(2)(ii) and issued the directions to the A.O. Whereas, the Ld.DR submitted that the action of the CIT(A) in granting the relief overlooking the facts of interest component is not acceptable. We considering the overall facts and findings of the appellate authority, find that the CIT(A) has rejected the assessee plea of own funds more than investments and considered the alternative submissions and relied on the judicial decision and issued directions to the A.O. to recompute the disallowance u/sec14A r.w.r8D(2) considering the net interest claimed. The Ld.DR could not controvert on the observations of the CIT(A) with any new cogent material evidence or information to take a different view. Accordingly, we are not inclined to interfere in the decision of the

CIT(A) on this disputed issue and uphold the same and dismiss the ground of appeal of the revenue. And the appeal filed by the revenue is dismissed.

ITA 2336/Mum/2019, A.Y 2013-14

16. The revenue has raised the following grounds of appeal:

“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 84,31,93,343/- made by the AO u/s 36(1)(iii) and capitalized the same inventory.

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 2,24,60,000/- relied upon the decision of the judgment of the jurisdictional High Court in the case of Lokhandwala Construction Ind 260 ITR 597 the same were rendered before the proviso to se 36(1)(iii) has been inserted vide Finance Act 2003.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 1,05,73,789/- that no exempt income was earned during the year, thereby ignoring the CBDT Circular No. 5 of 2014 dated 11.02.2014 wherein it is specifically stated that provision of Sec 14A of the Act are attracted even to cases where no exempt income has been earned during the year.”

17. In the Grounds of appeal No. 1 & 2, the facts and circumstances are identical to ITA No. 68/Mum/2019 for A.Y.2015-16 except the variance in figures. Therefore, the decision rendered in paragraph no

12&13 would apply mutatis mutandis for this grounds of appeal also. Accordingly, these grounds of appeal of the revenue are dismissed.

18. The Ld. DR made submissions on the 3 rd ground of appeal that the CIT(A) has erred in deleting the addition as there is no exempt income earned by the assessee. The CIT(A) over looked the CBDT circular/ notification on applicability of provisions of section 14A of the Act, which are attracted even though there in no exempted income earned. Contra, the Ld. AR supported the order of the CIT(A) on this disputed issue and submitted that there is no exempt income earned by the assessee and therefore addition was not sustained and relied on the judicial decisions. At this juncture, we considered it appropriate to refer to the observations of the CIT(A) on the issue at Page 20 Para 6 as under:

6.0 The Second, third and fourth grounds of appeal are against the addition of Rs. 1,05,73,789/- u/s 14A r.w.r 8D of the Rules.

6.1. It is seen from the assessment order that the assessee has made investment of Rs.31.56 Crores in the preference shares of the fellow subsidiary companies. The assessee has not made disallowance. To the query as to why disallowance u/s. 14A r.w. Rule 8D be not made, the assessee explained

that the entire investment was made in the preceding years and it had not incurred any expenses for the purpose of making any investment. Further, all the investments have been made from the assessee's own funds. The AO did not find the assessee's explanation acceptable for the reason that there were huge borrowed funds and the assessee failed to prove the nexus that borrowed money has been used exclusively for business. He, therefore, proceeded to make a disallowance u/s. 14A r.w. Rule 8D.

6.2 During the course of appellate proceedings, it has further being submitted by the assessee that it had not earned any exempt income during the year. The computation of income filed by the assessee along with the financials have been perused and it is seen that the assessee has not earned any exempt income.

6.3 It has been held by the Hon'ble Delhi High Court in the case of Cheminvest Ltd. 378 ITR 33, wherein the Hon'ble High court held categorically that section 14A will not apply if no exempt income is received or receivable during the relevant previous year. More recently the jurisdictional High Court in the case of PCIT 8 vs Zee News Ltd. ITA Nos. 785 & 789 of 2015 vide its order dated 05.02.2018 held as under:

"We find that the impugned order of the Tribunal has recorded a finding of fact that in the subject Assessment year no income in the form of dividend or otherwise was claimed as exempt income by the Respondent - assessee. The impugned order of the tribunal placed reliance upon the decisions of Gujrat high Court in the case of CIT vs Corrttech Energy (P) Ltd. (2014) 223 Taxman 130145 2014-TIOL-661-HC-AHM-1L and Punjab & Haryana in the case of CIT vs Winsome Textile Industries Ltd. (2009) 319 ITR 204 (Punjab & Haryana), to hold that no disallowance under Section 14A can be made in the absence of the Assessee claiming any income to be exempt in the subject Assessment year.

The aforesaid finding by the Tribunal has been accepted by the Revenue. Therefore, it is not a subject matter of challenge before us. In fact, a similar issue had been raised by the revenue in the case of Pr. CIT Vs. Rivian Internationa (P.) Ltd ITXA No. 693 of 2015 dedicated on 21st Nov 2017 2017-IIOL-2575-HC-Mum-IT- where this court following the decision of the Delhi Court in the case of CIT Vs. Holcim India (P.) Ltd. (2015) 57 Taxman.com 28 2014-TIOL-1586-HC-DEL-IT and decision in the case of CIT vs. Shivam Motors (p.) Ltd. (2015) 230 Taxman 0063 2014-TIOL-754-HC-ALL-IT has held that if for the relevant Assessment Year, Assessee has not earned any tax free income, the corresponding expenditure incurred cannot be taken into consideration for disallowance.

In view of the fact that, the Revenue is not challenging the above finding of the Tribunal on the above issue the question as framed for our consideration by the Revenue become academic. Therefore, none of the question give rise to any substantial questions of law in the contact of the present facts."

6.3. In view of the binding judgment of the jurisdictional High Court, it is held that no disallowance can be made u/s 14A when there is no exempt income earned as in the interest case. Therefore, the addition made by the AO of Rs. 1,05,73,789/- u/s 14A is directed to be deleted. This ground of appeal is allowed.

19. The Ld. DR submitted that as per CBDT Circular, the disallowance u/s 14A r.w.r 8D of the Act has to be worked out even though there is no exempt income. We find Hon'ble High Court of Delhi in the case of Cheminvest Ltd(Supra) has considered the

CBDT Circular and observed that Sec. 14A of the Act will not be applied if no exempt income is received or receivable during the previous year. We find the CIT(A) has dealt on the judicial decisions and facts and finally directed the A.O to delete the addition as there is no exempt income earned/ received. The Ld. DR could not controvert the observations of the CIT(A) with any new cogent material or information. Accordingly, we do not find any merits in the submissions of the revenue and uphold the decision of the CIT(A) on the disputed issue. Accordingly, the ground of appeal raised of the revenue is dismissed.

In the result the appeal filed by the revenue is dismissed.

ITA 2387/Mum/2019, A.Y 2013-14

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

“1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the disallowance of 50% of the payments/reimbursements to Lodha Developers UK Ltd amounting to Rs. 43,89,154/- by merely stating that agreement and bills provided by the appellant are not sufficient evidence of providing the services.”

2. *The appellant craves leave to add, amend, alter or delete the said ground of appeal.*

21. At the time of hearing, the Ld. AR submitted that the assessee company is engaged in the real estate constructions and the assessee has made some payments to Lodha Developers UK Ltd towards the selling and marketing services but the assessee could not substantiate fully with the details of claim of marketing and selling expenses. The A.O found that the total payments/ reimbursements aggregated to Rs.87,78,309/- and the assessee could submit only marketing agreement in the assessee proceedings and supporting evidences of claim were not produced. Finally, the A.O was not satisfied with the submissions and information and restricted the claim to the extent of 50% of the expenses being Rs. 43,89,154/-. On appeal, the CIT(A) has confirmed the addition and dismissed the ground of appeal. On further appeal before the Hon'ble Tribunal, the Ld. AR submitted that the assessee has appointed agents as per the agreement and there is increase in the revenue due to NRI customers investments in properties in India. The Ld. AR for the first time has filed the details of payments, marketing & selling

expenses incurred by the Lodha Developers U K Ltd, sample invoices of marketing expenses incurred in UK, and statement of sale of properties in India to NRI customers in the F.Y.2012-13 and prayed for allowing the claim based on the substantial evidence filed. The Ld.DR submitted that the A.O. should be provided an opportunity to verify and examine the additional evidence filed by the assessee. Further on perusal of the assessment order, we find that the assessee could not substantiate the claim with proper evidences for various reasons. Accordingly, to meet the ends of justice and the principles of natural justice, we restore the disputed issue for limited purpose to the file of the Assessing officer to verify and examine the claim and grant the relief and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information and we allow this ground of appeal of the assessee for statistical purposes.

In the result the appeal filed by the assessee is allowed for statistical purposes.

22. In the result, the appeal filed by the assessee for A.Y 2013-14 is allowed for statistical purpose and

the appeal filed by the revenue for is dismissed. And
The appeal filed by the revenue for A.Y.2015-16 is
dismissed and the assessee appeal is partly allowed.

Order pronounced in the open court on 28.03.2022.

Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 28.03.2022

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/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, Mumbai / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)

ITAT, Mumbai