

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

Appeal No.	Appellant	Respondent	Assessment Year
ITA No. 1705/Bang/2017	M/s. GMR Infrastructure Ltd., No. 25/1, Skip House, Museum Road, Bangalore – 560 025. PAN: AABCG8889P	The Deputy Commissioner of Income Tax, Central Circle 2(2), Bangalore.	2010-11
ITA No. 1622/Bang/2017			2011-12
ITA No. 1599/Bang/2017			2012-13
ITA No. 1600/Bang/2017			2013-14
ITA Nos. 1741 to 1744/Bang/2017	The Assistant Commissioner of Income Tax, Central Circle – 2(2), Bangalore.	M/s. GMR Infrastructure Ltd., No. 25/1, Skip House, Museum Road, Bangalore – 560 025. PAN: AABCG8889P	2010-11 to 2013-14
C.O. Nos. 111 to 114/Bang/2017 (in ITA Nos. 1741 to 1744/Bang/2017)	M/s. GMR Infrastructure Ltd., No. 25/1, Skip House, Museum Road, Bangalore – 560 025. PAN: AABCG8889P	The Assistant Commissioner of Income Tax, Central Circle – 2(2), Bangalore.	2010-11 to 2013-14
ITA No. 1643/Bang/2019	M/s. GMR Highways Ltd., No. 25/1, Skip House, Museum Road, Bangalore – 560 025. PAN: AADCG9020E	The Deputy Commissioner of Income Tax, Circle 3 (1)(2), Bangalore.	2015-16
ITA No. 495/Bang/2020			2016-17

Assessee by	:	Shri Yogesh A Thar, CA
Revenue by	:	Dr. Manjunath Karkihalli, CIT-DR

Date of Hearing	:	22-03-2022
Date of Pronouncement	:	25-05-2022

ORDER

PER BENCH

Present cross appeals are filed by the assessee as well as the revenue for assessment years under consideration arising out of following orders passed by the Ld.CIT(A).

Assessment Year	Order passed by Ld.CIT(A)
GMR Infrastructure Ltd.	
2010-11	30.05.2017
2011-12	30.05.2017
2012-13	30.05.2017
2013-14	30.05.2017
GMR Highways Ltd.	
2015-16	12.06.2019
2016-17	16.03.2020

2. From the above impugned orders, following are issues are raised vis-a-vis the grounds in the appeals filed by the assessee and revenue for relevant Assessment Years:

For GMR Infrastructure Ltd.:

Sl. No.	Issues	A Y	Assessee's Appeal Ground No	Department Appeal Ground No	Cross Objection No
1	Adjustment towards Stand by Letter of Credit	2010-11	1	1	1
		2011-12	1	1	1
		2012-13	1	1	1
		2013-14	1	1	1
2	Adjustment towards Corporate Guarantee	2010-11		2	2
		2011-12		2	2
		2012-13		2	2
		2013-14		2	2

Sl. No.	Issues	A Y	Assessee's Appeal Ground No	Department Appeal Ground No	Cross Objection No
3	Disallowance under section 14A	2010-11	2 to 6	3& 4	3
		2011-12	2 to 6	3& 4	3
		2012-13	2 to 5	3& 4	3
		2013-14	2 to 5	3 & 4	3
4	Disallowance under section 14A in Book Profit	2010-11	7 & 8		
		2011-12	7 & 8		
		2012-13	6 & 7		
		2013-14	6 & 7		
5	Amortization of Upfront Fees and legal Fees paid as revenue expenditure	2010-11	9		
6	Interest under section 234B	2010-11		5	4
		2011-12		5	4

3. It is submitted that the above issues that are common are on identical facts for A.Ys. 2010-11 to 2013-14 in case of GMR Infrastructure Ltd.

In case of **GMR Highways Ltd.** for A.Ys. 2015-16 and 2016-17 following are the common issues alleged by assessee.

Issues	Assessment Year	Ground No.
Disallowance u/s. 14A	2015-16	2 to 4
	2016-17	3 to 5
Addition of difference between revenue as per books of A/c and 26AS	2015-16	1
	2016-17	1

Accordingly these appeals are being disposed off by common order.

4. ISSUE Nos. 1

GROUND ON STANDBY LETTER OF CREDIT:

Assessment Year 2010-11

4.1 The assessee as well as the revenue raised issue relating to the adjustment towards stand by letter of credit ('SBLC'). The assessee has also filed a cross objection in the appeal filed by revenue on this issue.

Facts of this issue is as under:

4.2 The assessee provided SBLC for and on behalf of the AE being Istanbul Sabiha Gokcen Havalimani Yatirim Yapim Veisletme A S (ISG), through assessee's Indian bank out of non-fund based limits to the foreign lenders of the said AE. The bank charged a commission of Rs. 2,56,93,224/- at the rate of 0.90% - 0.95% of the amount of SBLC to the assessee. The assessee, in turn, recovered an amount of Rs. 32,09,585/- from its AE. The Ld.AR placed reliance on Page no.230 to 235 of paper book in support.

4.3 The Ld.TPO made adjustment of the entire commission amount of Rs. 2,56,93,224/-, charged by the bank to Assessee, stating that the risk premium to be charged by the Assessee from its AE should be the bank rate of 0.90% - 0.95%.

Against this, the assessee preferred appeal before the Ld.CIT(A).

4.4 The Ld. CIT(A) granted relief to the extent of commission recovered by the Assessee from the AE and upheld the adjustment made by the Ld.TPO to the extent of the balance amount that was not recovered by the assessee from its AE of Rs. 2,24,83,639/-.

4.5 Against this view of the Ld.CIT(A), the assessee as well as the revenue are in appeal before this *Tribunal*.

4.6 The Ld.AR submitted that, coordinate bench of this *Tribunal* in assessee's own case for assessment year 2014-15 in ITA No. 2870/Bang/2018 by order dated 03.02.2020 on identical facts held that, the adjustment should be restricted to the extent of commission amount that the Assessee has borne, and not charged/ recovered from its AE. This *Tribunal* observed and held as under:

"3. The assessee company is in the business of promotion of infrastructure development and investments in the shares and securities, and filed the Return of Income on 29.11.2014 with total loss of Rs.35,66,74,072 under the normal provisions of Income Tax and Book Profits u/sec 115JB Rs.211,85,82,199. The case was selected for scrutiny and Notice under Section 143(2) of the IT Act was issued. The Assessing Officer as per Form 3CB Report filed by the assessee, found that the assessee has international transactions, and referred the matter for determination of Arm's Length Price (ALP) to the Transfer Pricing Officer (TPO). Whereas the TPO made an adjustment of Rs.15,45,49,138 on transaction of Stand By Letter of Credit (SBLC) and similarly on Corporate Guarantee TP adjustment of Rs.41,28,60,585 and passed order u/sec 92CA of the Act. Subsequently, The AO along with the Transfer Pricing Adjustments, made disallowance under Section 14A of the act and unamortized amounts claimed and Finally Assessed the total income of Rs.1,67,87,08,248 and passed the order under Section 143(3) r.w.s. 144C of the Act dt.15.12.2017. Aggrieved by the order, the assessee has filed an appeal with the CIT(Appeals). The CIT(Appeals) on the disputed issue considered the submissions of the assessee and observed that the TPO has made adjustments towards commission for utilization of non-fund based limits of the assessee by Associated Enterprises (AEs) and the Bank has issued SBLC and charged commission of Rs.35,56,787. Whereas the assessee has recovered an amount of Rs.11,07,050 charged by the Bank from its ISG AE, and balance amount of Rs.24,49,737 is non-recoverable .Hence CIT(A) restricted the addition to the extent of Rs.24,49,737 and with other reliefs partly allowed the appeal. Aggrieved by the CIT (A) order, the assessee has filed an appeal with the Tribunal.

5. We heard the rival contentions and perused the material on record. The sole matrix of the disputed issue as envisaged by the learned Authorized Representative that there is no requirement of TP Adjustment, as the standby letter of credit (SBLC) was issued in Group Concerns, where the AE was allowed to utilize the non-fund base limits of the assessee, which are in the nature of a shareholder activity and satisfy the test of commercial expediency. We found the CIT(Appeals) has made observations at page 10 and para 6.1.4 of the order which is read as under :

The learned Authorized Representative vehemently submitted that, there is no necessity of Transfer Pricing adjustment on SLBC because of commercial expediency, But could not controvert the observations and findings of the CIT(Appeals) with cogent evidence. Accordingly, we are not inclined to interfere with the order of CIT (A) on this disputed issue and confirm the same and dismiss the ground of appeal of the assessee.”

4.7 Similar is the view taken by coordinate bench of this *Tribunal*, in the case of its group concern, namely GMR Energy Ltd., for AY 2013-14 in ITA No. 1737/Bang/2017 & CO. 07/Bang/2018. The said order is placed at page no 407 to 445 of LPB-2

4.8 The Revenue on the contrary, supported the view taken by authorities below.

We have perused the submission advanced by both sides in light of records placed before us.

4.9 We note that, there is no dispute regarding the similarities of facts in the present case vis-a-vis, the decisions relied by the Ld.AR in assessee's own case, and in the case of its group concern for the subsequent assessment year. Further, there is no distinguishing facts brought to our notice by the revenue in order to deviate from the above consistent view.

4.10 Respectfully following the above consistent view, by coordinate bench of this *Tribunal*, we direct the Ld.AO to restrict the addition to the amount of commission not recovered by the

assessee from its AE. We therefore do not find any infirmity in the view taken by the Ld.CIT(A).

4.11 Accordingly, Ground No. 1 raised by the assessee and the revenue for assessment year 2010-11 stands dismissed.

4.12 As the ground filed by the revenue on this issue is dismissed, the C.O. of assessee on this issue becomes infructuous.

4.13 It is submitted that identical **Ground no. 1** is raised by the assessee as well as the revenue in Assessment years 2011-12, 2012-13 & 2013-14. As the facts and circumstances are the same, following the consistent view taken by the coordinate bench of this *Tribunal*, we hold that the addition is restricted to the amount of commission not recovered by the assessee from its AE.

4.14 Accordingly, this ground raised by the Assessee and the revenue for assessment year 2011-12 to 2013-14 stands dismissed and accordingly the issue raised in C.O. by assessee becomes infructuous.

5. ISSUE No. 2 – Adjustment towards Corporate Guarantee:

5.1 This issue has been raised by the revenue for A.Ys. 2010-11 to 2013-14 in case of GMR Infrastructure Ltd.

Brief facts are as under:

5.2 Assessee in these years have advanced corporate guarantee in furtherance to its business of Infrastructure development in the field of Airports, Coal mining, Power projects abroad for which the assessee has set AEs abroad to facilitate in its expanding Infrastructure activities overseas. The assessee instead of

borrowing money in India and investing by way of equity capital in its overseas AEs allowed foreign AEs to borrow funds overseas and in order to facilitate borrowing overseas for furtherance of its business it provided corporate guarantee.

5.3 The assessee only gives a guarantee to the bank of the AE that in case of a default by the AE, the loan taken by the AE would be repaid by the assessee. There is no loan given by the assessee to the AE. It is also submitted that there is no cost to the assessee as no amount is charged by the bank of the assessee.

5.4 It is submitted that the bank which has provided funding to the AE has prohibited charging of any commission by the assessee from its AE till the repayment of entire loan amount and that the assessee has obtained Counter guarantee from AEs to compensate it in case of any default and hence no risk of whatsoever nature undertaken by the assessee.

5.5 The Ld. TPO made an adjustment towards corporate guarantee extended considering 50% of differential rate of annualized average yield on 5 years bonds. In doing so, the Ld.TPO has assumed assessee's credit rating as BBB (12.28% / 11.51%) while that of AE at BBB- (13.37% / 12.75%). The differential ratio so computed works out to 0.545% / 0.62%.

5.6 Aggrieved by the order of Ld.CIT(A), revenue is in appeal before this *Tribunal*. Before us, the Ld. CIT.DR submitted that following issue has not been considered by Ld.CIT(A) while granting relief to the assessee.

- a) Amendment made by Finance Act 2012 is prospective in nature;
- b) Corporate Guarantee was given as part of shareholder's activity;
- c) Corporate guarantee given does not have any bearing on the cost, profits, assets and no income has been received;
- d) Assessee does not carry any risk in view of counter guarantee obtained from AE.

5.7 Against the relief granted by Ld.CIT(A), assessee has filed cross objections on the above issues that has not been adjudicated.

The Ld.AR has filed written submission wherein following details in respect of credit rating and the *suo moto* adjustment considered by assessee have been submitted which is reproduced as under:

The details about Credit Rating of the assessee as well as AE and the amount of commission charged by Bank and recovered by the assessee is as under:

Credit rating of the Assessee: BBB.

Credit rating of the AE being GMR Energy (Netherlands) B V: BBB.

Credit rating of the AE being GMR Coal Resources Pte Ltd: BBB+

<i>Sr No</i>	<i>AY</i>	<i>Amount charged by the Bank Rs.</i>	<i>Amount recovered by the Assessee Rs.</i>
<i>1</i>	<i>2010-11</i>	<i>Nil</i>	<i>Nil</i>
<i>2</i>	<i>2011-12</i>	<i>Nil</i>	<i>Nil</i>
<i>3</i>	<i>2012-13</i>	<i>Nil</i>	<i>Nil</i>
<i>4</i>	<i>2013-14</i>	<i>Nil</i>	<i>Nil</i>

The FPB references with respect to the credit rating of the Assessee and its AEs are filed at Pg 6 of submission filed on March 02, 2022.

The details of suo-moto adjustment considered by the Assessee, AO upon completion of assessment and by the Ld CIT(Appeals) for different AYs with respect to Corporate Guarantee is as under:

<i>Sr No</i>	<i>AY</i>	<i>Assessee</i>	<i>TPO/ Assessing Officer Rs.</i>	<i>CIT(Appeals) Rs.</i>
1	2010-11	Nil	43,38,582	Nil
2	2011-12	Nil	98,99,209	Nil
3	2012-13	Nil	7,68,67,693	Nil
4	2013-14	Nil	16,76,96,684	Nil

5.8 Based on the above, the Ld.AR raised following propositions:

1. No addition in case where the Credit Rating of AE is same as that of its parent entity or more than parent entity credit rating
2. No commission could be charged on corporate guarantee given for the purpose of furtherance of business of Assessee overseas
3. Corporate Guarantee is not an international transaction, and giving of one to an AE is in the nature of shareholder's activity in which no costs are involved
4. Without prejudice to above, Proposition IV: Amendment to section 92B is prospective in nature and shall apply from Assessment Year 2013-14 onwards
5. Blanket rates cannot be adopted to benchmark the transaction of corporate guarantee and the commission, if any, be restricted to 0.20%
6. Where Counter guarantee is obtained by the assessee from AE then in that event appropriate adjustment should be provided for such counter guarantee received by the assessee from its AE.

5.9 Whereas the Ld. CIT.DR submitted that the issue may be remanded to the Ld.AO to consider it afresh.

5.10 We have perused the submissions advanced by both sides in the light of records placed before us.

5.11 Primarily, we reject the argument of assessee that corporate guarantee is not an international transaction. WE find that section 92(1) requires that any income arising from an international transaction shall be computed having regard to the arms length price. To this extent, there is no dispute that the transaction in the present facts are is the transaction to the assessee and the associated enterprises and therefore falls within the ambit of section 92(1). The decision of *Hon'ble Kolkata Special Bench* in case of *Instrumentarium Corporation Ltd. vs. DDIT* in ITA Nos. 1548 & 1549/Kol/2009 & ITA No. 2058/Kol/2010 by order dated 03.08.2018 deals on this aspect at great length and therefore any transaction that has an impact on the profit or loss of the assessee has to be considered as per section 92(3) of the Act. Accordingly, the decision relied by the Ld.AR under this proposition cannot be of any assistance.

5.12 A corporate guarantee is a legal agreement between a borrower, lender, and guarantor, whereby a corporation takes responsibility for the debt repayment of the borrower provided it faced bankruptcy. A personal guarantee is a similar document to the corporate guarantee.

5.13 In the matter of guarantee commission, the adjustment made by the TPO is based on instances restricted to the commercial

banks providing guarantees. When a commercial bank issues bank guarantees which being a part of their business activity, in the event of any default, a higher commission is charged. In the present case, it is assessee company that is issuing Corporate Guarantee to the effect that if the foreign AE does not repay loan availed by it, then in such event, the assessee would make good the amount and repay the loan. The considerations which applied for issuance of a Corporate guarantee are distinct and separate from that of bank guarantee and accordingly we are of the view that commission charged by the Ld.TPO under the facts of the case cannot be approved. In our view the comparison has not been drawn between like transactions but the comparisons are between guarantees issued by the commercial banks as against a Corporate Guarantee issued by holding company for the benefit of its AE, a subsidiary company.

5.14 The issue as to whether LIBOR is to be taken as the basis of interest benchmarking for foreign currency denominated loans or whether Indian PLR will be relevant for the same, is no longer *res integra*.

5.15 In the case of *CIT Vs Tata Autocomp Systems Ltd.*, reported in (2015) 56 *taxmann.com* 206 , Hon'ble Court observed as follows:

"7. We find that the impugned order of the Tribunal inter alia has followed the decisions of the Bombay Bench of the Tribunal in cases of VVF Ltd. v. Dy. CIT [IT Appeal No. 673 (Mum.) of 2006] and Dy. CIT v. Tech Mahindra Ltd. [2011] 12 taxmann.com 132/46 SOT 141 (Mum.) (URO) to reach the conclusion that ALP in the case of loans advanced to Associate Enterprises would be determined on the basis of rate of interest being charged in the country where the loan is received/consumed. Mr. Suresh Kumar the learned counsel for the revenue informed us that the Revenue has not preferred any appeal against the decision of the Tribunal in VVF Ltd. (supra) and Tech Mahindra Ltd. (supra) on the above issue. No reason has been shown to us as to why

the Revenue seeks to take a different view in respect of the impugned order from that taken in VVF Ltd. (supra) and Tech Mahindra Ltd. (supra). The Revenue not having filed any appeal, has in fact accepted the decision of the Tribunal in VVF Ltd. (supra) and Tech Mahindra Ltd. (supra). 8. In view of the above we see no reason to entertain the present appeal as in similar matters the Revenue has accepted the view of the Tribunal which has been relied upon by the impugned order. Accordingly, we see no reason to entertain the proposed questions of law.”

5.16 Similar is the ratio laid down *Hon'ble Delhi High Court* in case of *CIT vs. Cotton Naturals (I)(P) Ltd.*, reported in (2015) 55 *taxman.com* 523.

5.17 Respectfully following the above views we direct the Ld.TPO to compute the guarantee commission rate in accordance with the principles laid down in *CIT Vs Tata Autocomp Systems Ltd. and CIT vs. Cotton Naturals (I)(P) Ltd.*, (supra).

Further in case of *Xchanging Solutions Ltd. vs. DCIT* reported in [2017] 78 *taxmann.com* 54 (Bangalore-Trib.), Coordinate Bench of this *Tribunal* on identical issue observed and held as under:

“15. We have considered the rival submissions as well as the relevant material on record. At the outset we note that the assessee has raised the objection before the DRP as recorded in paras 6.1 and 6.2 as under :

'6.1 Grounds 1, 2 and 3 are considered together for convenience. Briefly stated the assessee provides software development and information technology enabled services (ITES) to its AEs. During the FY 2005-06 the assessee provided a corporate guarantee to a third party bank on behalf of an AE but failed to charge a fee for the guarantee. The assessee conducted a TP study and concluded that this transaction was at arm's length however during audit proceedings the TPO rejected the analysis of the assessee and made adjustments to this transaction. The taxpayer cites the order of Four soft Ltd wherein the Hon'ble ITAT Hyderabad observed as under:

"We find that the TP legislation provides for computation of income from international transaction as per section 92B of the Act. The corporate guarantee provided by the assessee company does not fall within the definition of international transaction. The TP legislation does not stipulate any guidelines in respect to guarantee transactions. In the absence of any charging provision, the lower authorities are not correct in bringing aforesaid transaction in the TP study. In our considered view, the corporate guarantee is very much incidental to

the business of the assessee and hence, the same cannot be compared to a bank guarantee transaction of the Bank or financial institution."

6.2 It has also been submitted by the assessee that the transaction arising on account of ownership linkage and which derives large from the reputation of the group necessarily implies that there can be no guarantee acceptable to the banker which can be provided by the independent third party. The guarantee provided by financial institutions are characteristically different compared to the guarantee provided by the parent. The advantages arising to the parent itself from providing guarantee in lieu of equity support or financial support is also not capable of being evaluated satisfactorily. These differences between the alleged controlled transaction and the guarantee provided by independent parties in the uncontrolled transaction are not capable of being evaluated so as to arrive at determination of the fair uncontrolled price. In the circumstances, computation methodology of TP exercise may fail. It is undisputed that failure of computation mechanism results in failure of the charge.'

Thus it is clear that grievance of the assessee against the order of the TPO on the issue of ALP in respect of guarantee fees is limited only regarding the correct ALP. We further note that prior to the decisions of Mumbai Bench in the case of Siro Clinpharm Pvt. Ltd. Vs. DCIT (supra) there are series of decisions of this Tribunal including the decision in cases of Four Soft Pvt. Ltd. Vs., DCIT (supra) and Nimbus Communication Ltd. Vs. ACIT (supra) wherein the Tribunal has taken a consistent view that providing corporate guarantee to AE is an international transaction however, the ALP of such transaction was to be computed having regard to the financial consideration as the nature of transaction between the related parties. The Tribunal has taken a view that the guarantee fees for providing corporate guarantee should not be more than 0.5%. The Hyderabad Benches of this Tribunal in the case of Four Soft Pvt. Ltd. Vs. DCIT (supra) has considered an identical issue in paras 24 to 26 as under :

24. It is noted by the TPO, during the F.Y. 2005-06 the assessee has provided bank guarantees on behalf of its Overseas subsidiary, Foursoft BV, Netherlands for an amount of Rs.69,81,16,000/- which is continuing for the year under consideration also. The TPO following the order passed for A.Y. 2006-07 treated the commission charged by ICICI Bank at 3.75% arms length price for the corporate guarantee provided by the assessee to its AE worked out the TP adjustment of Rs.2,61,79,350/-. The DRP also rejected assessee's objection on the issue.

25. We have heard the parties and perused the material on record. The sum and substance of the submissions made by the learned AR is, the corporate guarantee provided by the assessee cannot be equated to bank guarantee and resultantly the commission

rate for bank guarantee cannot be applied to the corporate guarantee. It was submitted that the corporate guarantee is nothing but an additional guarantee provided by the parent company and it does not involve any cost or risk to the shareholders. It was submitted that since the corporate guarantee was given keeping in view paramount business interest of the parent company it has to be allowed as business expenditure. It is the further submissions of the learned AR that the retrospective amendment effected to section 92B of the Act, by Finance Act, 2012 by insertion of Explanation (i)(c) to section 92B also has not enlarged the scope of the 'international transaction' to include the corporate guarantee in the nature provided by the assessee. The learned AR further contended that the issue is covered in favour of the assessee by virtue of the order passed by the Tribunal in assessee's own case for AY 2006-07 (supra).

25. 1 The learned DR, on the other hand, submitted that by virtue of the amendment made to section 92B of the Act with retrospective effect from 01/04/2002, the corporate guarantee provided by the assessee is to be considered as an international transaction, and, therefore, the Assessing Officer was justified in determining arm's length price of such transaction.

25. 2 Having considered the submissions of the parties, we are unable to accept the contention of the learned AR that corporate guarantee of the nature provided by the assessee will not come within the meaning of international transaction in terms with section 92B of the Act. It is not disputed that section 92B of the Act has been amended by the Finance Act, 2012 with the insertion of Explanation I (c) with retrospective effect from 01/04/2002. Explanation (i)(c) to section 92B, reads as under:

"capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business. "

25. 3 A reading of the aforesaid clause from the Explanation would make it clear that the corporate guarantee provided by the assessee comes within the scope and ambit of 'international transaction' as per the aforesaid clause. Therefore, the contention of the learned AR that the issue is covered in favour of the assessee by virtue of the order passed in assessee's own case for AY 2006-07 no longer holds good since the order passed by the coordinate bench is prior to the amendment made to provision of section 92B of the Act. It will be pertinent to mention here that this issue was also considered by the ITAT Mumbai Bench in case of Mahindra & Mahindra Vs. DCIT in ITA No. 8597/Mum/2010, 54 SOT (UR) 146. The coordinate bench of

this Tribunal while considering similar argument advanced on behalf of the assessee by placing reliance on the decision of the Four Soft Ltd.(supra), held as under:

“15. 2 After hearing the rival submissions we feel that Assessing Officer will have to follow the decision of the ITAT Hyderabad or the amended provision of the Act in this regard. If the Finance Bill of 2012 is passed by the Parliament amending the provisions of section 92B, with effect from 1st April , 2002, he will have to ignore the decision of the ITAT Hyderabad. In case section 92B is not amended with retrospective effect, he should grant relief to the appellants. ”

25.4 In the aforesaid view of the matter, we agree with the TPO that ALP of the corporate guarantee has to be determined as it falls within the scope and ambit of an international transaction after the retrospective amendment to section 92B. However, it appears that the TPO has applied the rate of 3.75 %, which is applicable to bank guarantee issued by the bank. As the corporate guarantee is not in the nature of bank guarantee, the rate applicable to bank guarantee provided by the bank cannot be applied to corporate guarantee which is provided by a group company. In case of Glenmark Pharmaceuticals V s. ACIT in ITA No. 5031/Mum / 2012, dated 13/11/2013, the Mumbai Bench of the Tribunal after analysing the facts in that case had held that 0.53 % corporate guarantee rate in that case was appropriate. The ITAT Hyderabad Bench in case of Infotech Enterprises Ltd. in ITA No.115/Hyd/ 2011 and in ITA No. 2184/Hyd/ 2011, dated 16/01/2014 while considering identical issue of determining ALP of corporate guarantee provided by the assessee to its AE followed the ratio laid down in case of Glenmark Pharmaceuticals Vs. ACIT (supra) and remitted the issue back to the TPO to decide the quantum of corporate guarantee rate by following the method adopted in case of Glenmark Pharmaceuticals (supra).

26. Since the issue in the present case is identical to the issue decided by the ITAT, Hyderabad Bench in case of Infotech Enterprises (supra), following the same, we also remit this issue to the file of the TPO to decide the quantum of corporate guarantee rates accordingly. If the assessee is able to bring on record any comparables with regard to corporate guarantee, the TPO may also consider the same while determining ALP of corporate guarantee. The TPO must provide a reasonable opportunity of being heard to the assessee before deciding the issue. This ground is allowed for statistical purposes.”

It is pertinent to note that in case of corporate guarantee provided to a bank or financial institution on behalf of the AE, the assessee creates a charge on its assets in favour of the bank/financial institution and to that extent the transaction of providing corporate

guarantee is having bearing on the assets of the assessee and in turn the assessee cannot use those assets under charge for the purpose of availing further financial credit/loans from the bank/financial institution. Thus this Tribunal held that by providing corporate guarantee falls in the definition of international transactions as per Section 92B(1) without considering the Explanation to the said Section. As we have discussed in the foregoing part of this order that the Tribunal has been taken a consistent view that corporate guarantee provided to the AE falls in the ambit of international transactions as per Section 92B(1) even without considering the Explanation inserted vide Finance Act, 2012. The Mumbai Bench of this Tribunal in the case of Siro Clinpharm Pvt. Ltd. Vs. DCIT (supra) has restricted its finding only to the applicability of Explanation in the cases where the assessment was completed prior to the insertion of the said Explanation retrospectively. Even otherwise the earlier decisions of the Tribunal on this issue were not considered by the Delhi Bench of the Tribunal. In the case of M/s. Nimbus Communication Ltd. Vs. ACIT in ITA Nos.6816/Mum/2010 and 7105/Mum/2011, the Tribunal vide order dt.7.8.2013 has considered an identical issue in paras 4 & 5 as under :

“ 4. As regards the issue raised in ground No. 2 relating to TP adjustment made on account of guarantee commission in respect of corporate guarantee given by the assessee to its Associated Enterprises (AEs) for obtaining bank loans, the ld. representatives of both the sides have agreed that a similar issue was involved in assessee's own case for the immediately preceding year i.e. A.Y. 2005-06 and the Tribunal vide its order dated 12-06-2013 passed in ITA No. 3664 & 2359/Mum/2010 has already decided the same vide para No. 9 & 10 which read as under:-

"9. We have considered the rival submissions and also perused the relevant material available on record. For the guarantee given to the bank against the financial assistance given to its AEs, no commission was charged by the assessee company on the ground that the said AEs were not benefited by the guarantee so given and it was the assessee who benefited as a result of commercial benefits secured for future. In support of this stand of the assessee, the ld. counsel for the assessee has contended that business strategy should be taken into consideration while making any TP adjustments in respect of such transactions and has relied on the OECD Transfer Pricing Guidelines issued in 2010. As stated in para 1.59 of the said guidelines, the business strategies should also be examined in determining comparability for transfer pricing purposes and certain illustrations of such business strategies are also given therein. As stated in para 1.60 of the said guidelines which has been relied upon by the ld. Counsel for the assessee, business strategies also could include market penetration schemes and taxpayer seeking to penetrate a market or to increase its market share might temporarily charge a

price for its product that is lower than the price charged for otherwise comparable products in the same market. As explained further, a tax payer seeking to enter a new market or expand (or defend) its market share might temporarily incur higher costs and hence achieve lower profit levels than other taxpayers operating in the same market. In our opinion, the relevant facts of the present case do not indicate that there was any such business strategy adopted by the assessee in not charging commission in respect of guarantees issued for its Associated Enterprises. As a matter of fact, there is nothing to suggest that any such business strategy was adopted by the assessee with specific intention or motive and the case has been sought to be made out merely on the basis of commercial expediency by claiming that the assessee was benefited as a result of giving the guarantees in the form of commercial benefits secured for future. In our opinion, such commercial expediency cannot be equated with business strategy, which is specific and well laid out. As rightly held by the Id. CIT(A), a financial loan guarantee is a commitment entered into by the assessee company with a third party lender of its Associated Enterprises which obliges the assessee company to cover the risk of default by its Associated Enterprise and this act thus involves performance or carrying out of service to cover the risk of default for which "price" has to be charged. Even the OECD Transfer Pricing Guidelines 2010 supports this view in para 7.13 where it is explained that where higher credit rating of Associated Enterprise is due to a guarantee by another group member, such association positively enhances the profit making potential of that Associated Enterprise. We, therefore, find ourselves in agreement with the contention of the Id. D.R. that there was a clear benefit accrued to the Associated Enterprises by the guarantee provided by the assessee and when such benefit was passed on by the assessee to the said Associated Enterprises, guarantee commission should have been charged at arm's length price. The commercial relationship between the assessee and its Associated Enterprises is distinct and separate from the transactions of giving guarantee and such transactions have to be considered and examined independently in order to determine the arm's length price.

10. As regards the rate of guarantee commission, it is noted that the arm's length price of guarantee commission was determined by the TPO by applying CUP method and the arithmetic mean of 1.5% of the guarantee commission charged by the HSBC Bank in the range of 0.15 to 3% was taken as arm's length price. The Id. CIT(A) upheld the CUP method applied by the TPO but adopted the rate of 0.25% of guarantee fee as arm's length price relying on the decision of French Court in the case of Societe Carrefour. The Id. D.R., at the time of hearing before us has relied on the decision of the co-ordinate Bench of this Tribunal in the case of M/s Everest Kanto Cylinder Ltd. (supra) wherein while accepting the CUP method as the most appropriate method for benchmarking the guarantee fee, the Tribunal accepted

0.5% guarantee fee/commission to be at arm's length after taking into consideration the rates of guarantee commission charged by various banks including the guarantee commission charged by the HSBC Bank in the range of 0.15% to 3%. Since the facts involved in the present case are materially similar to the facts involved in the case of Everest Kanto Cylinder Ltd. (supra), we prefer to follow the decision rendered by the co-ordinate Bench of this Tribunal in the said case over the decision of French Court in the case of Societe Carrefour (supra). We, accordingly modify the impugned order of the ld. CIT(A) on this issue and direct the A.O. to recompute the commission for guarantee given by the assessee to its Associated Enterprises @ 0.5% being the arm's length price. Ground No. 1 of Revenue's appeal is thus partly allowed whereas ground No. 2 of assessee's appeal is dismissed".

5. As the issue involved in the year under consideration as well as all the material facts relevant thereto are similar to A.Y. 2005-06, we respectfully follow the order of the co-ordinate Bench of this Tribunal for A.Y. 2005-06 and direct the A.O. to restrict the TP adjustment by recomputing the commission for guarantee given by the assessee to its AEs at 0.5% being the arm's length price. Ground No. 2 of the assessee's appeal for A.Y. 2006-07 is partly allowed."

As it is clear that the Tribunal has followed the decision of the Tribunal for the earlier assessment year and while taking a consistent view held that guarantee provided by the assessee gives the benefit to the AE and such benefit was passed on by the assessee to the said AE and therefore should have been charged at ALP."

5.18 In the above decision, this *Tribunal* has considered the commission on guarantee fee at 0.5%. In view of the above, we direct the Ld.AO/TPO to recompute the rate of commission attributable to the corporate guarantee in the present facts, in the light of the above.

5.19 Accordingly this ground raised by revenue for assessment years 2010-11 to 2013-14 stands partly allowed and the cross objection filed by the assessee stands dismissed.

6. ISSUE No. 3:

6.1 The next issue in assessee and revenue appeals relates to disallowance u/s. 14A under normal provisions.

6.2 We note that issue relating to 14A disallowance under normal provisions of the Act, is been challenged by both assessee as well as revenue.

In case of GMR Infrastructure Ltd.

	Assessee's Ground No.	Department's Ground No.
A.Y. 2010-11	2 to 6	3-4
A.Y. 2011-12	2 to 6	-----do-----
A.Y. 2012-13	2 to 5	-----do-----
A.Y. 2013-14	2 to 5	-----do-----

6.3 The assessee has filed the cross objection supporting the view taken by the Ld.CIT(A).

In case of GMR Highways Ltd.

	Assessee's Ground No.
A.Y. 2015-16	2 to 4
A.Y. 2016-17	3 to 5

Brief facts of the case are as under:

6.4 The Ld.AR submitted that, the details of exempt income earned by the assessee for years under consideration are as under:

In case of GMR Infrastructure Ltd.,

A.Y. 2010-11	No exempt income	Suo moto disallowance made which was withdrawn by filing revised computation during the assessment proceedings.
A.Y. 2011-12	No exempt income	
A.Y. 2012-13	Exempt income of Rs. 35 Lakhs	
A.Y. 2013-14	Exempt income of Rs.7,037/-	

In case of GMR Highways Ltd.

A.Y. 2015-16	No exempt income	Suo moto disallowance made which was withdrawn by filing revised computation during the assessment proceeding.
A.Y. 2016-17	No exempt income	

Assessment Year: 2010-11

6.5 For sake of convenience we are considering the facts for Assessment Year 2010-11. Identical submissions are raised by the Ld.AR for A.Ys. 2011-12 to 2013-14 in case of GMR Infrastructure Ltd. and for A.Ys. 2015-16 & 2016-17 for GMR Highways Ltd.

6.6 The Assessee made suo-moto disallowance u/s. 14A read with Rule 8D of Rs. 11,27,16,953/- in its return of income. However, during the course of assessment proceedings, in view of judicial developments on this issue, vide submission dated 28.12.2015, the assessee withdrew such disallowance, by filing Revised Computation of total income. The assessee therein declared disallowance u/s. 14A at Rs Nil, in view of the fact that no exempt income was earned by it during A.Y. 2010-11, and therefore there can be no disallowance u/s. 14A of the Act. The Ld.AR relied on the copy of the letter of withdrawal, placed at Page 242 to 264 of Assessee's PB.

6.7 The Ld.AO while passing the assessment order, rejected the submission and the Revised Computation of total income, declaring therein, disallowance u/s.14A at Rs. Nil filed in course of

assessment proceedings and thereby, rejected withdrawal of voluntary disallowance made by the assessee. The Ld. AO on the other hand, disallowed an amount of Rs. 53,72,22,595/- u/s. 14A r.w. Rule 8D, and thus, made addition to the returned income of the assessee of Rs.42,45,05,642/- (53,72,22,595 - 11,27,16,953).

6.8 Aggrieved by the order of the Ld.AO, the assessee preferred appeal before the Ld.CIT(A).

6.9 The Ld.CIT(A), considering the fact that, the own funds were more than tax free investments, and the fact that, the assessee did not earn any exempt income during the year, deleted the disallowance made by the Ld.AO, but upheld the suo-moto disallowance of Rs.11,27,16,953/- made by the assessee in its return of income, by relying on the CBDT Circular No. 549 dated 31.10.1989, wherein it is stated that, the assessed income cannot be less than the amount of returned income.

6.10 The Assessee is in appeal before this *Tribunal* for disallowance upheld by the Ld.CIT(A) to the extent of Rs.11,27,16,953/-.

6.11 The Department is in appeal before this *Tribunal* against the relief granted by the Ld. CIT(A).

6.12 The Ld.AR primarily submitted that, the fact that the assessee has not earned any exempt income is undisputed and self evident from Schedule 13 of the financial statements on 'Operating Income'. The said fact is also accepted by the Ld. CIT(A) and the Ld.AO.

6.13 The Ld.AR relied on the decision of its group concern, GMR Enterprises Pvt. Ltd., for AY 2010-11 to AY 2012-13 in ITA Nos.

2145, 2146 & 2148/Bang/2016, wherein, coordinate bench of this Tribunal held that, there cannot be any disallowance u/s. 14A of the Act, in case no exempt income is earned. The Ld.AR relied on following decisions in support:

- *Decision of Hon'ble Supreme Court in case of PCIT vs GVK Project and Technical Services Ltd. reported in (2019) 106 taxmann.com 181*
- *Decision of Hon'ble Supreme Court in case of PCIT vs Oil Industries Development Board reported in (2019) 103 taxmann.com 326*
- *Decision of Hon'ble Supreme Court in case of CIT v. Chettinad Logistics(P) Ltd. reported in (2018) 95 taxmann.com 250*
- *Decision of Hon'ble Madras High Court in case of CIT v. Chettinad Logistics(P) Ltd. reported in 2017 80 taxmann.com 221*
- *Maxopp Investment Ltd. v. CIT 402 ITR 640*

6.14 Following were the propositions submitted by the Ld.AR.

A. **For Assessment Years 2012-13 & 2013-14** the Ld.AR submitted that, disallowance u/s. 14A read with Rule 8D, cannot exceed the exempt income earned by the assessee during these years, which has been upheld in the following judicial pronouncements:

- *Decision of Coordinate Bench of this Tribunal in Assessee's own case in ITA Nos.1704 & 1740/Bang/2017 & CO No.110/Bang/2017 for AY 2008-09*
- *Decision of Coordinate Bench of this Tribunal in group concern, namely: M/s. GMR Enterprises Private Limited v. DCIT (AY 2010- 11 to AY 2012-13) (ITA No. 2145, 2146 & 2148/Bang/2016)(Bang Trib.)*
- *Decision of Hon'ble Karnataka High Court in case of Pragathi Krishna Gramin Bank vs JCIT reported in 95 Taxmann.com 41*
- *Decision of Hon'ble Supreme Court in case of PCIT v. State Bank of Patiala reported in 99 taxmann.com 286*
- *Decision of Hon'ble Delhi High Court in case of PCIT v. Caraf Builders & Constructions (P) Ltd. reported in 101 taxmann.com 167*
- *Maxopp Investment Ltd. v. CIT (402 ITR 640) (SC)*

B. The Ld.AR submitted that, in the event where own funds are more than tax free investments, it is well settled in the following

judicial pronouncements that, no disallowance of interest expenditure u/s. 14A could be made:

- *Recent decision of Hon'ble Bangalore ITAT in Assessee's own case in ITA Nos.1704 & 1740/Bang/2017 & CO No.110/Bang/2017 for AY 2008-09 [Page no.398-406 of LPB-2]*
- *Hon'ble Bangalore ITAT in group concern, namely: GMR Energy Limited in ITA Nos.1638, 1661 to 1664/Bang/2017, 1733 to 1737/Bang/2017 & CO Nos. 3,4,5,6 & 7/Bang/2017 for AY 2009- 10 to 2013-14 [Page no. 407-445 of LPB-2]*
- *PCIT v. Sintex Industries Limited (82 taxmann.com 171)(Guj HC) [Page no. 450-454 of LPB-2]*
- *PCIT v. Sintex Industries Limited(93 taxmann.com 24)(SC) [Page no.455 of LPB-2]*
- *CIT v. Microlabs Ltd (383 ITR 490) (Karnataka) [Page no. 456-460 of LPB-2]*
- *CIT v. HDFC Bank Ltd. (366 ITR 505) (Bom.) [Page no. 461-463 of LPB- 2]*
- *HDFC Bank Ltd v. DCIT (383 ITR 529)(Bom) [Page no. 464-476 of LPB- 2]*
- *Reliance Utilities & Power Limited (313 ITR 340) (Bom.) [Page no.477-480 of LPB-2]*
- *PCIT v. Subramanya Constructions & Development Co. Ltd (130 taxmann.com 115) (Karnataka) [Page no. 481-484 of LPB-2]*

C. The Ld.AR then submitted that, it is a settled principle that, only such investments that yielded exempt income, should be considered for the purpose of computing disallowance u/s. 14A r.w.r. 8D. In support he relied on the following decisions:

- *Recent decision of Hon'ble Bangalore ITAT in Assessee's own case in ITA Nos.1704 & 1740/Bang/2017 & CO No.110/Bang/2017 for AY 2008-09 [Page no. 398-406 of LPB-2]*
- *Hon'ble Bangalore ITAT in group concern, namely: M/s. GMR Enterprises Private Limited in ITA No. 2145, 2146 & 2148/Bang/2016 for AY 2020-11 to 2012-13 [Page no. 485-492 of LPB-2]*
- *ACB India Ltd. Vs. ACIT (62 taxmann.com 71) (Del. HC) [Page no. 493-495 of LPB-2]*
- *ACIT Vs. Vireet Investments (P.) Ltd. (2017) 165 ITD 27 (Del. Trib. SB) [Page no. 496-526 of LPB-2]*
- *J V Holdings Pvt Ltd v. DCIT (ITA No.1337/Bang/2018) [Page no. 527-538 of LPB-2]*
- *Ms. Zee Media Corporation Ltd v.CIT(ITA No.2695-M-2016)(Mum-Trib) [Page no. 539-553 of LPB-2]*

6.15 For **A.Ys. 2010-11 and 2011-12**, the assessee filed revised claim withdrawing the *suo moto* disallowance during the assessment proceedings which was not considered by the revenue.

6.16 On the issue, whether the assessee can revise its claim of disallowance during the course of assessment proceedings, the Ld.AR submitted that, it is well settled in the following judicial pronouncements that, an assessee is entitled to raise/modify the claim of deduction before the assessing authority, in course of assessment proceedings, by filing letter/revised computation of total income, otherwise than by revising the return of income, and before the appellate authorities, by way of additional grounds in terms of additional claim, not made in the return filed by it:

- *Hon'ble Bangalore ITAT in group concern, namely M/s. GMR Enterprises Private Limited in ITA No. 2145, 2146 & 2148/Bang/2016 for AY 2010-11 to 2012-13 [Page no. 485-492 of LPB-2]*
- *Gujarat Gas Co. Ltd. v. JCIT (245 ITR 84) (Gujarat) [Page no. 584-604 of LPB-2]*
- *TATA Industries Ltd vs. ITO [ITA No. 4894/M/2008] [Page no. 605-658 of LPB-2]*
- *M/s HDFC Bank Ltd. v. ACIT (5480/5481/Mum/2014) (Mum.T) [Page no. 659-664 of LPB-2]*
- *Sajjan India Ltd. v. ACIT (89 taxmann.com 21) (Mumbai - Trib.) [Page no. 665-669 of LPB-2]*

6.17 The Ld.AR placed reliance on the decision of the *Coordinate Bench* of this *Tribunal* in case of GMR Enterprises Pvt. Ltd. in *IT(TP)A No. 2310/Bang/2019*, wherein identical issue was considered whereby, the disallowance u/s. 14A is restricted to the exempt income earned by the assessee and not the *suo moto* disallowance made in the original return of income that was

withdrawn during the course of assessment proceedings by filing revised computation of income.

The revenue on the contrary supported the orders of authorities below.

6.18 The Ld. DR relied upon the order of the *Coordinate Bench* of this *Tribunal* in Assessee's own case for AY 2007-08 in ITA No.1895/Bang/16 by order dated 28.07.2017, wherein the Assessee raised a fresh claim to withdraw its suo-moto disallowance u/s.14A of the Act in course of 153A proceedings (i.e. after completion of assessment u/s. 143(3) and acceptance of disallowance u/s. 14A in such completed assessment) and the Ld.AO and Ld.CIT(A) did not consider such fresh claim of the assessee to withdraw the *suo moto* disallowance in 153A proceedings, since the assessment u/s. 143(3) was completed.

6.19 On an appeal before this *Tribunal*, the action of the Ld.CIT(A) relying on the decision of *Hon'ble Rajasthan High Court* in case of *Jai Steel Limited* reported in *36 taxmann.com 523* that, no fresh claim can be made by the assessee in 153A proceedings was upheld.

6.20 We have perused the submissions advanced by both sides in the light of records placed before us.

6.21 We note that the *Coordinate Bench* of this *Tribunal* in the case of *GMR Enterprises Pvt. Ltd. (supra)* for A.Y. 2015-16 held as under:

"Ground No.II : Disallowance u/s 14A of the Act amounting to Rs.145,02,09,668/-:

3.1The assessee is a private limited company. For the assessment year, the return of income was filed on 28.11.2015 declaring loss of Rs.50,95,80,349 and book profit loss of Rs.45,82,24,981. In the

return of income the assessee had made voluntary disallowance u/s 14A of the I.T.Act of Rs.145,02,09,668. The assessee during the relevant assessment year had received exempted income of Rs.27,37,47,187. The assessee filed revised computation of income during the course of assessment proceedings. In the revised computation, the assessee had restricted the disallowance u/s 14A of the I.T.Act to the exempted income earned of Rs.27,37,47,187 for the relevant assessment year. The assessee during the course of assessment proceedings, by placing reliance on various judicial pronouncements (refer para 5.5 of the draft assessment order) submitted that the disallowance u/s 14A of the I.T.Act is to be restricted to the exempted income earned for the relevant assessment year. The Assessing Officer by placing reliance on the CBDT Circular No.5/2014 dated 11.02.2014, held that even if there is no exempt income earned by the assessee during the year, disallowance u/s 14A can be made. Pursuant to the draft assessment order dated 28.12.2018, the assessee filed objections before the Dispute Resolution Panel (DRP).

3.2 The DRP vide its directions dated 30.09.2019, upheld the disallowance u/s 14A of the I.T.Act amounting to Rs.145,02,09,668. The DRP by placing reliance on the judgment of the Hon'ble Orissa High Court in the case of Orissa Rural Housing Development Corporation Ltd. v. ACIT in Writ Petition (C) No.4554 of 2011, held that an error or omission can be rectified only filing a revised return within the prescribed time limit u/s 139(5) of the I.T.Act. Therefore, it was concluded by the DRP that the assessee is not entitled to raise such a claim before the Assessing Officer nor the Assessing Officer is empowered to entertain such claim. Pursuant to the DRP's direction, final assessment order was passed on 14.10.2019. 3.2. Aggrieved, the assessee has raised this issue before the Tribunal. The learned AR reiterated the submissions made before the Income Tax Authorities and also placed reliance on the order of the Tribunal in assessee's own case for assessment years 2010-2011, 2011-2012 and 2013-2014 in ITA Nos.2145, 2146 & 2148/Bang/2016 (order dated 08.02.2019).

3.3 The learned Departmental Representative, on the other hand, submitted that the assessee had voluntarily made the disallowance u/s 14A of the I.T.Act amounting to Rs.145,02,09,668 and hence, was precluded from changing its stand and seeking the reduced of disallowance u/s 14A of the I.T.Act to Rs.27,37,47,187.

3.4 We have heard rival submissions and perused the material on record. It is settled position of law that disallowance cannot exceed the amount of dividend income earned during the relevant assessment year. In this context, the following judicial pronouncements support the stand of the assessee:- (i) *Joint Investments Pvt. Ltd. v. CIT* (59 Taxmann.com 295) – it was held that disallowance u/s 14A of the Act is to be restricted to the tax exempt income. (ii) *Daga Global Chemicals Pvt. Ltd. v. ACIT* [2015- ITRV-ITAT-MUM-123] – has held that disallowance u/s 14A r.w.Rule 8D cannot exceed the exempt income. (iii) *M/s.Pinnacle Brocom Pvt. Ltd. v.ACIT* (ITA No.6247/M/2012) – has held that disallowance u/s 14A cannot exceed the exempt income. (iv) *DCM Ltd. v. DCIT* (ITA No.4567/Del/2012) – held that the disallowance u/s 14A of the Act cannot exceed the exempt income.

3.5 In view of the above settled position, the amount of disallowance u/s 14A of the I.T.Act needs to be restricted to the extent of exempted income earned during the relevant assessment year. As would be evident that in the facts and circumstances of the present case the amount of exempted income of Rs.27,37,47,187 was earned on investment and consequently the amount of disallowance, if at all, to be made is to be restricted to Rs.27,37,47,187.

3.6 However, in this case, the assessee had made disallowance of Rs.145,02,09,668 voluntarily while filing the return of income. In this context, it is important to refer to the judgment of the Hon'ble Madras High Court in the case of *M/s.Marg Limited v. CIT* in Tax Case Appeal Nos.41 to 43 & 220 of 2017 (judgment dated 30.09.2020). The Hon'ble Madras High Court followed the judgment of the Hon'ble Karnataka High Court in the case of *Pargathi Krishna Gramin Bank v. JCIT*[(2018) 95 taxman.com 41 (Kar.)]. In the case considered by the Hon'ble Madras High Court, the assessee therein had made voluntarily disallowance u/s 14A of the I.T.Act more than the dividend income earned and the Tribunal confirmed the disallowance made u/s 14A of the I.T.Act. However, the Hon'ble Madras High Court held that the disallowance u/s 14A of the I.T.Act cannot exceed the exempt income earned during the relevant assessment year. The relevant finding of the Hon'ble Madras High Court reads as follow:-

“20. Before parting, we may also note with reference to the Table of disallowance voluntarily made by the Assessee, which is part of the Paper Book before us for the four assessment years in question. In the Table quoted in the beginning of the order, shows that the

Assessee himself computed and offered the disallowance beyond the exempted income in the particular year, namely AY 2009-10, as against the dividend income of Rs.41,042/- and the Assessee himself computed disallowance under Rule 8D of the Rules to the extent of Rs.2,38,575/-, which was increased to Rs.98,16,104/- by the Assessing Authority. Similarly, for AY 2012-13, against Nil dividend income, the Assessee himself computed disallowance at Rs.8,50,000/-, which was increased to Rs.2,61,96,790/-.

21. We cannot approve even the larger disallowance proposed by the Assessee himself in the computation of disallowance under Rule 8D made by him. These facts are akin to the case of Pragati Krishna Gramin Bank(2018) 95 Taxman.com 41 (Kar.) decided by Karnataka High Court. The legal position, as interpreted above by various judgments and again reiterated by us in this judgment, remains that the disallowance of expenditure incurred to earn exempted income cannot exceed exempted income itself and neither the Assessee nor the Revenue are entitled to take a deviated view of the matter. Because as already noted by us, the negative figure of disallowance cannot amount to hypothetical taxable income in the hands of the Assessee. The disallowance of expenditure incurred to earn exempted income has to be a smaller part of such income and should have a reasonable proportion to the exempted income earned by the Assessee in that year, which can be computed as per Rule 8D only after recording the satisfaction by the Assessing Authority that the apportionment of such disallowable expenditure under Section 14A made by the Assessee or his claim that no expenditure was incurred is validly rejected by the Assessing Authority by recording reasonable and cogent reasons conveyed to Assessee and after giving opportunity of hearing to the Assessee in this regard.

22. We, therefore, dispose of the present appeal by answering question of law in favour of the Assessee and against the Revenue and by holding that the disallowance under Rule 8D of the IT Rules read with Section 14A of the Act can never exceed the exempted income earned by the Assessee during the particular assessment year and further, without recording the satisfaction by the Assessing Authority that the apportionment of such disallowable expenditure made by the Assessee with respect to the exempted income is not acceptable for reasons to be assigned the Assessing Authority, he cannot resort to the computation method under Rule 8D of the Income Tax Rules, 1962.” (underlining supplied).

3.7 In view of the above judgment of the Hon'ble Madras High Court in the case of M/s.Marg Limited v. CIT (supra), it is clear that the disallowance u/s 14A of the I.T.Act cannot exceed the exempt income earned during the relevant assessment year irrespective whether larger amount was disallowed by the assessee u/s 14A of the I.T.Act while filing the return of income. Therefore, the AO is directed to restrict the disallowance u/s 14A of the I.T.Act to Rs.27,37,47,187.

3.8 In the result, ground No.II raised by the assessee is allowed.”

6.22 We note that the decision relied by the Ld.DR in assessee's own case for A.Y. 2007-08 is not same as the facts in the present case before us.

6.23 In the present facts for A.Y. 2010-11, the assessee revised its computation of total income by withdrawing the claim during the course of original assessment proceedings, and not after completion of assessment. Therefore, the decision relied by the Ld. CIT. DR is distinguishably applicable to the present facts.

6.24 We also note that the *Coordinate Bench* of this *Tribunal* recently in Assessee's own case for AY 2008-09 in ITA No.1704/B/2017 by order dated 07.02.2022, in identical circumstances, permitted to withdraw the *suo-moto* disallowance during the course of assessment proceedings u/s. 143(3) r.w.s 153A of the Act.

6.25 There is no dispute in respect of the facts that assessee had not earned any exempt income during the assessment year 2010-11

6.26 It is also not disputed that assessee had withdrawn the claim by filing a revised computation which the Ld.AO should have considered during the assessment proceedings that was pending. Further, it is not the case of the revenue that assessee do not have

sufficient interest free funds to make investments that would yield exempt income. Therefore the decisions relied by the Ld.AR referred to hereinabove supports this contention.

6.27 Respectfully following the view taken by Coordinate Bench in assessee's sister concern case, we are of the view that the Ld.AO is directed to delete the *suo moto* disallowance made by assessee for A.Y. 2010-11 as the assessee filed revised computation during the original assessment proceedings.

6.28 We note that similar is the situation for appeals pertaining to A.Y. 2011-12. For Assessment Years 2015-16 and 2016-17 in case of GMR Highways Ltd. filed before this *Tribunal*, the facts were identical wherein assessee had revised the computation of income during the assessment proceedings that was pending as the facts are identical to the A.Y. 2010-11, the view taken hereinabove is applied *mutatis mutandis*. In support we rely on the decision of *Coordinate Bench* in case of the *assessee's sister concern (supra)*. We direct the Ld.AO to delete the *suo moto* disallowance based on the revised computation withdrawing such disallowance filed by assessee during the assessment proceedings.

In respect of A.Ys. 2012-13 and 2013-14, we direct the Ld.AO to restrict the disallowance to the extent of exempt income earned by assessee. In support of this view, we refer to the decision of *Hon'ble Delhi High Court* in case of *Cheminvest Ltd. vs. CIT* reported in (2015) 378 ITR 33 and the decision by *Hon'ble Special Bench* of this *Tribunal* in case of *ACIT vs. Vireet Investments Pvt. Ltd. (supra)*.

6.29 Accordingly the grounds raised by the assessee for A.Ys. 2010-11 to 2013-14 and 2015-16 & 2016-17 stands allowed as indicated hereinabove. Appeals filed by the revenue for A.Ys. 2010-11 to 2013-14 stands dismissed.

6.30 As we have dismissed the appeals of the revenue, the Cross Objections by the assessee becomes infructuous.

7. ISSUE No. 4:

Disallowance u/s. 14A for computing book profits u/s. 115JB.

Assessment Year	Ground No.
2010-11	7-8
2011-12	-----do-----
2012-13	6-7
2013-14	6-7
2015-16	NIL
2016-17	NIL

Facts of the issue for A.Y.: 2010-11

7.1 The Assessee had suo moto disallowed u/s. 14A read with Rule 8D, an amount of Rs. 11,27,16,953/- in its return of income. The Assessee disallowed the aforesaid amount also while computing book profits u/s. 115JB of the Act.

7.2 However, during the course of assessment proceedings vide submission dated 28.12.2015, the Assessee withdrew the disallowance by filing revised computation of total income, in view of the fact that, no exempt income was earned by it and therefore there can be no disallowance u/s. 14A of the Act and consequently, no disallowance u/s. 14A in the computation of Book Profit u/s. 115JB.

7.3 The Ld. AO at the time of passing the assessment order, added the disallowance made by him u/s. 14A r.w. Rule 8D while computing book profits u/s. 115JB of the Act.

7.4 The Ld. CIT(A) upheld the action of the Ld.AO by relying on the decision of coordinate bench of this *Tribunal* in the case of Sobha Developers Ltd. in *ITA No. 1410/Bang/2013* by order dated *09.01.2015*.

7.5 The Assessee is in appeal before this *Tribunal* against the view taken by the Ld.CIT(A).

7.6 The Ld.AR submitted at the outset that, in *ACIT Vs. Vireet Investments (P.) Ltd.* reported in *(2017) 165 ITD 27 Hon'ble Delhi Special Bench* held that, computation of book profits u/s. 115JB is to be made without resorting to the computation, as contemplated under section 14A r.w. rule 8D. This view is also upheld by *Hon'ble Karnataka High Court* in the case of *Sobha Developers Ltd v. DCIT* reported in *(2021) 125 taxmann.com 72* and held that disallowance u/s. 14A is a notional disallowance and therefore, such amount could not be added to book profits of assessee u/s. 115JB. Similar is the view by *Hon'ble Karnataka High Court* in the case of *CIT vs. Gokaldas Images (P.) Ltd.* reported in *122 taxmann.com 160*.

7.7 The Ld.DR supported the orders passed by the authorities below.

7.8 We have heard the rival submissions. In our opinion, this issue stands squarely covered by the decision of *Hon'ble Special Bench of Delhi Tribunal* in case of *ACIT vs. Vireet Investments (P.)*

Ltd. (supra), where in it was held that “S.14A/Rule8D: (i) the computation under clause (f) of Explanation 1 to section 115JB(2) is to be made without resorting to the computation as contemplated u/s 14A read with Rule 8D of the Income tax Rules 1962, (ii) Only those investments to be considered for computing the average value of investment which yielded exempt income during the year”. Same view has been taken by *Hon’ble Karnataka High Court* in the case of *Sobha Developers Ltd. v. Deputy Commissioner of Income-tax (supra)*. We accordingly direct the Ld.AO to compute the book profits under section 115JB without resorting to the computation u/s. 14A r,w.Rule 8D.

7.9 Accordingly, these grounds raised by assessee stands allowed.

7.10 Identical issue is raised by assessee for A.Ys. 2011-12, 2012-13 & 2013-14. As the facts are identical, applying the above view *mutatis mutandis* for the subsequent assessment years also, this issue raised by assessee stands allowed.

7.11 Accordingly, the grounds raised on this issue stands allowed.

8. ISSUE No. 5

Amortization of Upfront Fees and legal Fees paid as revenue expenditure

A.Y.: 2010-11

8.1 This issue is raised in Ground no. IX in assessee’s appeal for A.Y. 2010-11.

Facts of the case are as under:

8.2 It is submitted that, the Assessee for A.Y. 2010-11 issued NCDs to ICICI Bank of Rs. 500 crores for the tenure of 5 years. In relation to such debentures issued, the assessee paid non-refundable fee for structuring, processing and advisory services amounting to Rs. 19,13,58,698/- to ICICI Bank. It is submitted that in the books of account, the amount was charged to securities premium account to be amortized over the tenure of the debentures, however, in the income tax return, the Assessee claimed the entire amount of fees in AY 2010-11.

8.3 The Ld.AO, disallowed the unamortized upfront fees of Rs.19,13,58,698/- and allowed the proportionate amortized upfront fees of Rs. 31,57,734/- for A.Y. 2010-11 on the premise that, the service for which payment was made, would benefit the assessee over the entire tenure.

Aggrieved by the order of the Ld.AO, the assessee filed appeal before the Ld.CIT(A).

8.4 The Ld. CIT(A) relying on the decision of *Hon'ble Supreme Court* in the case of *Madras Industrial Investment* reported in 225 ITR 802, upheld the disallowance made by the Ld.AO, and dismissed the appeal of the Assessee.

Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before this *Tribunal*.

8.5 The Ld.AR submitted that, the expenditure incurred for obtaining loan is revenue in nature. The Ld.AR submitted that *Hon'ble Supreme Court* in the case of *India Cements Ltd v. CIT*

reported in (1966) 60 ITR 52 held that, the nature of expenditure incurred in raising a loan does not depend on the nature and purpose of the loan. Thus, *Hon'ble Supreme Court* held that, the expenditure incurred by the assessee therein on stamp duty, registration fees etc., for raising loan was in the nature of revenue expense to be allowed in the year of raising the loan.

8.6 The Ld.AR also relied on the decision of *Hon'ble Supreme Court* in the case of *Taparia Tools Ltd. V. JCIT* reported in (2015) 55 *taxmann.com* 361, wherein, the assessee issued debentures for 5 years, and as per one of the payment option, made one-time upfront discounted interest payment, instead of making payment of interest periodically, the entire amount so paid was allowed as deduction in year of payment itself, since such interest was a revenue expense. The Ld.AR submitted that, *Hon'ble Supreme Court* in Para 16 of *Taparia Tools Ltd. (supra)*, discussed how the decision in the case of *Madras Industrial (supra)* will not be applicable to the facts of that case by observing as under:

"16. Judgment in Madras Industrial Investment Corpn. Ltd. v. CIT [1997] 225 ITR 802/91 Taxman 340 (SC) was cited by the learned counsel for the Revenue to justify the decision taken by the courts below. We find that the Court categorically held even in that case that the general principle is that ordinarily revenue expenditure incurred wholly and exclusively for the purpose of business is to be allowed in the year in which it is incurred. However, some exceptional cases can justify spreading the expenditure and claiming it over a period of ensuing years. It is important to note that in that judgment, it was the assessee who wanted spreading the expenditure over a period of time and had justified the same. It was a case of issuing debentures at discount; whereas the assessee had actually incurred the liability to pay the discount in the year of issue of debentures itself. The Court found that the assessee could still be allowed to spread the said expenditure over the entire period of five

years, at the end of which the debentures were to be redeemed. By raising the money collected under the said debentures, the assessee could utilise the said amount and secure the benefit over number of years. This is discernible from the following passage in that judgment on which reliance was placed by the learned counsel for the Revenue herself:

"15.. The Tribunal, however, held that since the entire liability to pay the discount had been incurred in the accounting year in question, the assessee was entitled to deduct the entire amount of Rs.3,00,000 in that accounting year. This conclusion does not appear to be justified looking to the nature of the liability. It is true that the liability has been incurred in the accounting year. But the liability is a continuing liability which stretches over a period of 12 years. It is, therefore, a liability spread over a period of 12 years. Ordinarily, revenue expenditure which is incurred wholly and exclusively for the purpose of business must be allowed in its entirety in the year in which it is incurred. It cannot be spread over a number of years even if the assessee has written it off in his books over a period of years. However, the facts may justify an assessee who has incurred expenditure in a particular year to spread and claim it over a period of ensuing years. In fact, allowing the entire expenditure in one year might give a very distorted picture of the profits of a particular year. Thus in the case of Hindustan Aluminium Corporation Ltd. vs. CIT, (1982) 30 CTR (Cal) 363: (1983) 144 ITR 474 (Cal) the Calcutta High Court upheld the claim of the assessee to spread out a lump sum payment to secure technical assistance and training over a number of years and allowed a proportionate deduction in the accounting year in question.

16. Issuing debentures at a discount is another such instance where, although the assessee has incurred the liability to pay the discount in the year of issue of debentures, the payment is to secure a benefit over a number of years. There is a continuing benefit to the business of the company over the entire period. The liability should, therefore, be spread over the period of the debentures."

8.7 It is the submission of Ld.AR that the facts of the assessee's case is similar to the case of *Taparia Tools (supra)*, and the ratio therein is squarely applicable to the assessee. The Ld.AR further submitted that *Coordinate Bench* of this *Tribunal in Syndicate Bank v. DCIT* reported in 38 *taxmann.com* 25 held that, raising of funds

by issue of bonds is akin to borrowing and the expenses incurred in issuing bonds will therefore be cost of loan or borrowing. It was held that such expenses would therefore be considered as revenue expenditure.

8.8 The Ld.AR further submitted that, in the decision of *Madras Industrial (supra)*, the assessee therein issued debentures at a discount though the redemption would be at par and based on such facts, held that although assessee incurred liability to pay the discount in the year of issue of debentures, the payment was to secure a benefit over a number of years.

8.9 The Ld.AR submitted that the facts of *Madras Industrial (supra)* cannot be applied to the facts of the assessee since the assessee incurred upfront fees and legal expenses, which are in the nature of revenue expenses as held by *Hon'ble Supreme Court* in *India Cement and Taparia Tools (supra)*.

8.10 The Ld.AR submitted that it is a settled law that accounting entries in books of account cannot be determinative or conclusive and that the issue have to be examined based on the provisions of the Act. He relied on this decision by *Hon'ble Supreme Court* in case of *Kedarnath Jute Mfg Ltd.* reported in 82 ITR 363.

On the contrary, the Ld. CIT.DR relied on the orders passed by authorities below.

8.11 We have perused the submissions advanced by both sides in the light of records placed before us.

8.12 We have perused the decisions relied by both sides vis-à-vis the facts of issue. We note that, the authorities below have not

verified the facts in correct perspective. Admittedly, the assessee paid non-refundable fee for structuring, processing and advisory services to ICICI Bank in respect of NCD's issued by assessee to ICICI. The assessee claimed the entire fee in the year of accrual in computation of Income, however amortized the amount in the books of account to the securities premium account, over the tenure of the debentures.

8.13 We note that *Hon'ble Supreme Court* while considering the facts in case of *Madras Industrial Investment Corporation Ltd.* reported in *225 ITR 820*, distinguished between, various situations and also observed that;

“Ordinarily, expenditure incurred wholly and exclusively for the purpose of business must be allowed in its entirety in the year in which it is incurred. It cannot be spread over a number of years even if the assessee has written it off in his books over a period of years”.

8.14 In present facts, the Ld.AO spread over the expenditure over the period of tenure. The Ld.AO treated the same as deferred expenditure, which is an accounting concept and alien to the Act. The provisions of the Act recognizes only capital or revenue expenditure.

8.15 In a subsequent decision by *Hon'ble Supreme Court* in case of *CIT vs. Secure Meters Ltd.* reported in *2009 TIOL 93*, it was held that an expenditure on loan was allowable as revenue expenditure. Similar is the view expressed in case of *Taparia Tools (supra)* by *Hon'ble Supreme Court*.

8.16 Respectfully following the above views by *Hon'ble Supreme Court*, we direct the Ld.AO to allow the claim of assessee in entirety in the year under consideration.

8.17 Accordingly this ground raised by assessee for A.Y. 2010-11 stands allowed.

9. ISSUE No.6: Levy of interest u/s. 234B:

9.1 This ground is raised in A.Ys. 2010-11 and 2011-12.

Ground V – Dept. Appeal

Ground IV-C.O. of assessee

Facts of the case are as under:

9.2 In the return of income filed by the Assessee, no interest u/s. 234B was calculated in absence of any shortfall in payment of advance tax. The return was processed and intimation u/s. 143(1) of the Act was passed accepting the returned income. Thereafter, consequent to the search operation, order u/s. 143(3) r.w.s. 144C and 153A was passed. The Ld.AO levied interest u/s. 234B for assessment years 2010-11 & 2011-12 in the assessment order passed.

9.3 The Ld. CIT(A) allowed relief to the assessee holding that, interest u/s. 234B would be levied from the date of passing of intimation u/s. 143(1) and ending on the date of order passed u/s. 153A as per provisions of section 234B(3) that is applicable prior to amendment brought by vide Finance Act, 2015, effective from June 1, 2015.

Against this view of Ld.CIT(A), the revenue is in appeal before this *Tribunal*.

9.4 The Ld.AR submitted that, the provisions of sub-section (3) of section 234B provides that, interest u/s. 234B would be levied in

cases where, as a result of an order u/s. 153A, the income u/s. 143(1) is increased and that interest would be levied from the day following the date of determination of total income u/s. 143(1) and ending on the date of the re-computation u/s. 153A. He submitted that, the aforesaid sub-section (3) of section 234B was amended vide Finance Act, 2015 w.e.f. June 1, 2015 to provide that interest would be levied from 1st day of April, following the relevant financial year under consideration and ending on the date of the re-computation u/s. 153A.

9.5 The Ld.AR relied on following decisions in support:

- *In case of group concern, GMR Energy Limited in ITA Nos.1638, 1661 to 1664/Bang/2017, 1733 to 1737/Bang/2017 & CO Nos. 3,4,5,6 & 7/Bang/2017 for AY 2009-10 to 2013-14 by order dated 23.10.2019*
- *CIT v. B.Lakshminathan reported in 198 Taxmann 485 (Ker HC)*
- *MBG Commodities (P.) Ltd v. DCIT reported in 163 ITD 130 (Hyd Trib)*

9.6 The Ld. DR relied on the orders passed by the authorities below.

9.7 We have perused the submissions advanced by both sides in the light of records placed before us.

9.8 We note that the *Coordinate Bench* of this *Tribunal* in assessee's group concern case (*supra*) observed as under:

"22. Last ground argued by the ld. DR is with respect to levy of interest under Section 234B of the Act. We found the learned CIT (Appeals) has considered amendment and also dealt at page 36 & 37 paras 6.7.1 and 6.7.2 and relied on the judicial decision and allowed the ground of appeal with the observation on charging of interest under Section 234B from the date of passing the intimation under Section 143(1) of the Act as under :

6.7.1 In this regard the appellant in the written submissions has contended that the Appellant has filed the return of income on

September 30, 2009. Subsequently it has filed the revised return of income on August 30, 2010. In the return of income, the Appellant has not calculated any interest u/s.234B since there was no shortfall in payment of advance tax. The revised return of income filed on August 30, 2010 was processed and Intimation u/s. 143(1) dated March 7, 2011 was passed accepting the income offered for tax. Further, in the said Intimation, no interest u/s.234B was levied. Consequent to search operation, Income tax assessment has been completed vide Order u/s.143(3) r.w.s. 153A r.w.s. 144C making certain disallowances/additions. In the assessment order, the AO has levied interest u/s.234B of Rs.2,00,48,336/- calculated from first day of the assessment year till the date of order passed u/s.143(3) r.w.s. 153A r.w.s. 144C. It is submitted that as per the provisions of Section 234B(3) which are applicable to the assessment year under consideration, interest is to be levied from the date of determination of total income u/s.143(1) till the date of assessment u/s.153A. In support the appellant has placed reliance on the decision of Kerala High Court in the case of CIT (Central) vs B Lakshmikanthan 198 Taxman 485 (Kerala). The appellant has further submitted that the provisions of sub-section 3 of section 234B have been amended by the Finance Act, 2015 w.e.f. June 1, 2015 and hence the amended provisions are not applicable for the year under consideration. In this respect relied on (a) Reliance Jute & Industries Ltd. v. CIT (1979) 120 ITR 921 (SC) (b) J. K. Synthetics Ltd. v. ITO 119 CTR (SC) 222 (c) Sree Karpagambal Mills Ltd. v. CIT (1999) 238 ITR 842 (Madras)

6.7.2 I have considered the submission of the appellant and the amendment made in section 234B vide Finance Act, 2015 and having regard to the provisions of section 234B as applicable prior to June 1st 2015 interest under section 234B is to be charged from the date of passing of intimation under section 143(1). Therefore, the Assessing Officer is directed to levy interest under section 234B from the date of passing of intimation under section 143(1). This ground of the appellant is ALLOWED.

23. The learned Departmental Representative relied on the order of the Assessing Officer could not controvert the findings of the CIT (Appeals) with any new evidence or data and accordingly we uphold the order of the learned CIT (Appeals) that this ground of appeal and dismiss the grounds of revenue's appeal."

9.9 Respectfully following the above, interest u/s. 234B is to be computed from the date of intimation u/s. 143(1) and not from the 1st day of April of the relevant Assessment Year.

Accordingly this ground in revenue's appeal is dismissed and CO stands dismissed as infructuous.

10. For A.Ys. 2015-16 and 2016-17, following common issue has been raised by the assessee (GMR Highways Ltd.).

Ground No. I:

10.1 Addition of notional amount being difference in the revenue as per books of account and Form 26AS.

It is submitted that facts on this issue are identical and similar for both the years, which are as under.

Facts:-

10.2 The assessee is a company engaged in the business of providing management, operation and maintenance services in the highway sector relating to the development, operations and maintenance of various highway projects. The assessee enters into operation and maintenance agreements with Highway Special Purpose Vehicle (SPV) for the operation, repairs and maintenance of highways.

10.3 During the years under consideration, there is a difference between the gross receipts as per Form 26AS, and the gross receipts as per the returned income and books of account of the Assessee.

10.4 During the course of assessment proceedings, the Ld.AO added the difference as undeclared business receipts to the returned income of the assessee.

10.5 Against the order passed by the Ld.AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) dismissed the appeal of the assessee and upheld the addition made by the Ld.AO.

Aggrieved by the order of Ld.CIT(A), the assessee is in appeal before this *Tribunal*.

10.6 Before this *Tribunal*, the Ld.AR submitted that, the Ld.AO proceeded to make the addition without considering the submissions

of the assessee, with respect to the difference in income reported in Form 26AS and income as disclosed in the return.

10.7 Before reconciling the smaller items of differences, the assessee vide submission dated 18.12.2018 also explained that the major difference in receipts as per return and as per books was on account of the fact that parties with whom the assessee had entered into major maintenance contracts including GTTEL, deducted TDS on the basis of provision created towards the expenses. It was submitted that, since the assessee had not undertaken any major maintenance repair work for the captioned AY, it had not raised invoices on the said parties, and therefore not accrued any income. In the subsequent years, as and when the work was carried out by the assessee, it accounted for revenue on the basis of actual work done.

10.8 The Ld.AR submitted that the revenue failed to consider the aforementioned submissions of the assessee and, in a very cryptic manner, proceeded to add the entire difference between income as per Form 26AS and returned income as undeclared business receipts without providing any rationale for the same.

10.9 He also submitted that the Ld.CIT(A) did not examine any of the 24 items of reconciliation except one with respect to TDS deducted by GTTEL on provision basis with respect to major maintenance work to be carried out by the assessee.

10.10 He once again reiterated that the Highway maintenance and repair agreement with GTTEL was entered into with respect to periodic maintenance works, as well as, major maintenance works. As regards periodic maintenance works for which a fixed fee was payable by GTTEL to the assessee every month, the same was

recognized as income in the books of the assessee and also reflected in Form 26AS.

10.11 He submitted that the Ld.CIT(A) on incorrect presumption that the fixed periodic maintenance fees were not recognized as income by the assessee, confirmed the action of the Ld.AO and that the Ld.CIT(A) did not deal with any of the other items of reconciliation in his Appellate Order not called for any other additional information from the assessee.

10.12 He submitted that the assessee filed Additional Evidence Petition before this *Tribunal* vide letter dated 15.12.2020, with a note on the requirement and basis of provision of major maintenance works in the books of GTTEL along with relevant supporting documents. He thus requested the issues to be remanded for proper verification.

The Ld. CIT. DR did not object for the issues to be remanded for verification.

10.13 Based on the above, we remand this issue to the Ld.AO for *de novo* verification. The Ld.AO is directed to verify the claim in the light of the evidences including the additional evidence. The Ld.AO is also directed to verify if in the subsequent years it is accounted as and when the work was carried out by the assessee, it cannot be taxed in this assessment year and TDS credit to be given in this assessment year.

11. In the result, Ground no. 1 raised for A.Y. 2015-16 & 2016-17 stands partly allowed.

11.1 The appeals filed by the assessee for A.Ys. 2010-11 to 2013-14 stands partly allowed.

11.2 Departmental appeals for A.Ys. 2010-11 to 2013-14 stands partly allowed.

11.3 Cross objections by assessee stands dismissed.

11.4 Appeals filed by assessee for A.Ys. 2015-16 and 2016-17 stands partly allowed for statistical purposes as indicated hereinabove.

The summary of the issues in appeals filed by assessee and revenue is annexed as **Annexure A** for a bird's-eye view.

Order pronounced in open court on 25th May, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 25th May, 2022.
/MS /VGP

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore

ANNEXURE – A

Sl.No.	Grounds of appeals raised by Assessee & Revenue in different AYS and in CO by assessee.	M/s. GMR INFRASTRUCTURE LTD.											M/s. GMR HIGHWAYS LTD.		
		AY 2010-11			AY 2011-12			AY 2012-13			AY 2013-14		AY 2015-16	AY 2016-17	
		A	R	CO	A	R	CO	A	R	CO	A	R	CO	A	A
		(ITA No. 1705/Bang/2017 by Assessee), (ITA No.1741/Bang/2017 by Revenue) & CO No.111/Bang/2017 by Assessee)			ITA No.1622/Bang/2017 by Assessee), (ITA No.1742/Bang/2017 by Revenue) & CO No.112/Bang/2017 by Assessee)			ITA No.1599/Band 2017 by Assessee), (ITA No.1743/Bang/2017 by Revenue) & CO No.113/Bang/2017 by Assessee)			ITA No.1600/Bang/2017 by Assessee), (ITA No.1744/Bang 2017 by Revenue) & CO No.114/Bang/2017 by Assessee)		ITA No.1643/Bang 2019 by Assessee)	ITA No.495/Bang/2020 by Assessee)	
1	Adjustment towards Stand by Letter of Credit	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	--	--
2	Adjustment towards Corporate Guarantee	--	Y	Y	--	Y	Y	--	Y	Y	--	Y	Y	--	--
3	Disallowance under section 14A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
4	Disallowance under section 14A in Book profit	Y	--	--	Y	--	--	Y	--	--	Y	--	--	--	--
5	Amortization of Upfront fees and legal fees paid as revenue expenditure	Y	--	--	--	--	--	--	--	--	--	--	--	--	--
6	Interest under section 234B	--	Y	Y	--	Y	Y	--	--	--	--	--	--	--	--
7	Addition on the basis of 26AS	--	--	--	--	--	--	--	--	--	--	--	--	Y	Y
Result		PA	PA	D	PA	PA	D	PA	PA	D	PA	PA	D	PAS	PAS

Note: Y – YES (Ground raised in respective appeal by Assessee/Revenue) A – Assessee; R-Revenue; CO-Cross Objection by Assessee PA-Partly Allowed; D – Dismissed; PAS – Partly allowed for statistical purposes.