आयकर अपीलीय अधिकरण,' 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH, CHENNAI
श्री जी. मंजुनाथ, लेखा सदस्य एवं श्री अनिकेश बनर्जी, न्यायिक सदस्य के समक्ष
BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER
AND SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

आयकर अपीलसं./**I.T.A.Nos.1888/Chny/2018, 929, 2149 & 2150/Chny/2019**

(निर्धारणवर्ष / Assessment Years: 2013-14 to 2016-17)

M/s. Sundaram BNP Paribas Home Finance Ltd., Sundaram Towers, 46,Whites Road Chennai-600 014.	Vs	The Deputy Commissioner of Income Tax, Corporate Circle-6(2) Chennai-34.
PAN: AADCS 4826J		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

&

आयकर अपीलसं./**I.T.A.Nos.3219 & 1513/Chny/2018, 301, 829, 2077 & 2078/Chny/2019**

(निर्धारणवर्ष / Assessment Years: 2011-12, 2013-14, 2012-13, 2014-15 to 2016-17)

The Assistant / Deputy Commissioner of Income Tax, Corporate Circle-6(2) Chennai-34	Vs	M/s. Sundaram BNP Paribas Home Finance Ltd., Sundaram Towers, 46,Whites Road Chennai-600 014.
		PAN: AADCS 4826J
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Assessee by	:	Mr. R.Vijayaraghavan, Advocate
प्रत्यर्थीकीओरसे/ Revenue by	:	Dr. S.Palani Kumar, CIT

सुनवाईकीतारीख/Date of hearing	:	26.05.2022
घोषणाकीतारीख /Date of Pronouncement	:	15.06.2022

आदेश / O R D E R

PER BENCH :

This bunch of 10 cross appeals filed by the assessee as well as the Revenue are directed against separate, but identical orders of learned Commissioner of Income Tax(Appeals)-15, Chennai even dated 28.02.2018, 28.12.2018, 29.04.2019, 30.04.2019 / 27.08.2018, 26.11.2018 and pertain to assessment years 2011-12 to 2016-17. Since, facts are

identical and issues are common, for the sake of convenience, these appeals filed by the assessee as well as the Revenue are heard together and are being disposed off, by this consolidated order.

2. At the outset, learned AR for the assessee and learned DR for the Revenue submitted that the appeals in ITA No.1888/Chny/2018 & 3219/Chny/2018 filed by the assessee and the Revenue respectively, are time barred by 19 / 31days for which necessary petition for condonation of delay along with affidavit explaining the reasons for the delay has been filed. The AR further submitted that the assessee could not file appeal within the time allowed under the Act, due to the fact that the Managing Director was out of station which caused delay of 19 days. The delay in filing appeal is neither intentional nor willful but for the unavoidable reasons, therefore, delay may be condoned in the interest of advancement of substantial justice.

3. The learned DR submitted that the Department could not file appeal within the time allowed under the Act, due to the fact of mixing of appeal papers with other files and thus, there was

delay in filing of appeal by the Revenue and prayed that the delay may be condoned.

4. Having heard both sides and considered the petition filed by the assessee and Revenue for condonation of delay, we are of the considered view that reasons given by the assessee and the Revenue for not filing the appeals within the time allowed under the Act comes under reasonable cause as provided under the Act for condonation of delay and hence, delay in filing of these two appeals is condoned and appeals filed by the assessee & the Revenue are admitted for adjudication.

5. The Revenue has raised more or less common grounds of appeal for all assessment years, however, major issues challenged by the Revenue for all assessment years are disallowance of deduction u/s.36(1)(viii) of Income Tax Act, 1961, disallowance of expenditure relatable to exempt income u/s.14A r.w. Rule 8D of the I.T. Rules, 1962 and disallowance of employees contribution to PF & ESI u/s.36(1)(v) r.w.s 43B of the Income Tax Act, 1961. Therefore, we deem it not necessary to reproduce grounds of appeal filed by the

Revenue. Similarly, the assessee has more or less raised common grounds of appeal for all assessment years and only issue that came up for our consideration from appeals filed by the assessee from all assessment years is disallowance u/s.14A of the Act and thus, we deem it not necessary to reproduce grounds of appeal filed by the assessee for all assessment years.

6. The first issue that came up for our consideration from appeals filed by the Revenue from all assessment years is disallowance of deduction u/s.36(1)(viii) of the Income Tax Act, 1961. The facts with regard to impugned dispute are that the assessee is into business of long term finance for eligible business, has claimed deduction @ 20% of profit derived from eligible business. i.e., business of providing long term finance for construction or purchase of house in India for residential purposes. The assessee while working out deduction u/s.36(1)(viii) has excluded profit from non-housing portfolio as well as profit from housing loan given for period less than five years from profits of business and has arrived at profit from eligible business. Further, while computing deduction u/s.36(1)(viii), the assessee has considered certain incomes

which are in the nature of income from other sources, like investment income, profit on sale of current investments, other operating income, interest receipts, profit on sale of fixed assets and miscellaneous income as part of income derived from eligible business . The Assessing Officer has recomputed deduction u/s.36(1)(viii) of the Act by excluding other income reported by the assessee in the financial statements for the relevant assessment years on the ground that eligible profit for the purpose of section 36(1)(viii) means profit derived from business of providing long term finance, but it does not include other income like interest income, profit on sale of current investments etc. On appeal, the learned CIT(A) by following decision of the ITAT .,Chennai in assessee's own case for the assessment year 2005-06 deleted additions made by the Assessing Officer towards disallowance u/s. 36(1)(viii) of the Act. Aggrieved by the learned CIT(A) order, the Revenue is in appeal before us.

7. The learned DR referring to financial statements filed by the assessee for financial year 2011-12 to 2016-17 submitted that the assessee has computed deduction u/s.36(1)(viii) by including other income like interest income from Govt. securities

(SLR) other investments income, provision on standard asset, interest on short term deposit, investment income, profit on sale of current investments, interest receipts, profit on sale of fixed assets and miscellaneous income etc. As per provisions of section 36(1)(viii) of the Act, it is very clear that deduction u/s.36(1)(viii) shall be allowed @ 20% on the profits derived from eligible business computed under the head 'profits & gains of business or profession'. The learned DR further submitted that although, there is no dispute about nature of business of the assessee and its entitlement for deduction u/s.36(1)(viii), but when it comes to computation of deduction on eligible profit, the assessee has included other income, which is not derived from main business activity of providing long term finance for the construction or purchase of house in India for residential purpose, including interest income and on profit on sale of fixed assets etc. The Assessing Officer, after considering relevant facts has rightly excluded other income reported in financial statements for relevant assessment years while computing deduction u/s.36(1)(viii) of the Act. However, the learned CIT(A) without appreciating facts has deleted additions made by the Assessing Officer by following decision

of the ITAT., Chennai in assessee's own case for the assessment year 2005-06, even though, the Tribunal for the assessment year 2005-06 has considered only one segment of income from SLR securities. The learned DR further referring to decision of the Hon'ble Delhi High Court in the case of National Co-operative Development Corporation Vs. ACIT (2011) 16 taxmann.com 251, submitted that dividend received in respect of redeemable preference shares does not amount to profits derived from providing long term finance within the meaning of 36(1)(viii). Likewise, interest income from securities, profit on sale of investments, profit on sale of fixed assets cannot be at any stretch of imagination be considered as profit derived from eligible business. Therefore, the learned DR submitted that the learned CIT(A) has deleted additions made by the Assessing Officer without considering necessary facts and thus, issue may be set aside to the file of the Assessing Officer to reconsider in light of findings given by the Tribunal for the assessment year 2005-06. In this regard, the learned DR has filed detailed written submissions which has been reproduced as under:-

> "*In all the above Departmental appeals, the main ground was excess claim of deduction u/s 36(1)(viii) of the I.T. Act, that was restricted by the A.O and that was subsequently allowed by the CIT(A). As this issue involves several facts and substantial question of law this written submission is made for appreciating the facts in*

this case. Section 36(1)(viii) of the I.T. Act is placed under Chapter IV — "Computation of Business income". As per this section, the deductions provided in various clauses of section 36(1) of the I.T. Act shall be allowed in respect of the matters dealt with therein, in computing the income referred in section 28. Section 36(1)(viii) deals with deduction, In respect of any special reserve created and maintained by a specified entity, an amount not exceeding 20% of the pro/Its derived from eligible business computed under the head "profits and gains of business or profession" carried to such reserve account.
"Specified entity" means,

(i) A finance corporation specified in sec 4(A) of Company's Act.

(ii)A finance corporation which is a public sector company.

(iii)A banking company.

(iv)A cooperative bank other than primary agricultural credit society or primary cooperative agricultural and rural development bank.

(v)A housing finance company and

(vi)Any other financial corporation including a public company.

"Eligible business" means,
(i) in respect of the specified entity referred to in sub-clause(i) or sub-clause(ii) or sub-clause(iii) or sub-clause(iv) of clause (a), the business of providing long- term finance for -

(A). Industrial or agricultural development
(B) Development of infrastructure facility in India or
(C) Development of housing in India

In the present case, there is no dispute on the explanation "specified entity". The main dispute is computation of profit derived out of the eligible business. The method adopted by the appellant company was questioned by the AO in all the assessment orders. It is once again reiterated that,
- the assessee should carry out "eligible business"
- and derive the profit from that eligible business
- and that profit has to be computed under the head "Profits and gains on business or profession".

With this back ground, the assessee company's audited financials have been examined by the A.O and he found that they claimed excess deduction of 36(1)(viii) on some of the profits that was not

derived out of eligible business. As per the AO some of the income or profit or gain were not assessable under the head "Profits and gains on business or profession". They were assessable under the head "income from other sources" and "capital gains". The AY wise deduction claimed, deduction allowed, excess claim disallowed are as under:

A.Y	Deduction claimed (Rs.)	Deduction allowed (Rs.)	Excess claim (Rs.)
2011-12	9,15,83,173	7,56,11,972	1,59,51,200
2012-13	19,17,30,002	17,27,08,002	1,90,22,000
2013-14	20,15,87,442	17,44,35,450	2,71,51,992
2014-15	26,07,29,000	14,13,36,000	11,93,93,000
2015-16	23,89,64,000	6,53,69,600	17,35,94,400
2016-17	25,22,26,000	12,12,40,000	13,09,85,000

2. Income that was not derived from eligible business as observed by the A.O.

A.Y/ Ineligible heads	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Interest income from Government securities - SLR	7.54 Cr	6.44 Cr	0	0	0	0
Other investment income	0.43 Cr	0	0	0	0	0
Provision on standard asset – non housing, including commercial	0	0	4.24 Cr	0	0	0
Interest on short term deposits	0	8.97 Cr	0	0	0	0
Investment income	0	0	0	18.22 Cr	18.58 Cr	18.15 Cr
Investment income on mortgage backed security	0	23.44 Lakh	0	0	0	0
Investment income related to non housing	0	0	9.33 Cr.	0	0	0
Profit on sale of current investments	0	0	0	19.12 Cr	34.06 Cr	22.05 Cr
Other operating income	0	0	0	22.12 Cr	33.80 Cr	25.03 Cr
Interest receipts	0	0	0	14.86 lakh	26.13 lakh	19.44 lakh
Profit on sale of fixed assets	0	0	0	6.16 lakh	4.95 lakh	2.05 lakh
Miscellaneous income	0	0	0	0.44 lakh	3.28 lakh	1.66 lakh

1. As per the A.O, all the above said income are nothing to do with eligible business of providing long finance for development of Housing.
2. As per the audited financials the assessee company had clubbed all its housing and non-housing finance business together and declared net profit of the business of company. On that declared net profit, total income for the purpose of various heads were computed in the computation of income.
3. In that computation of income there was a separate computation of total income under the head Business or profession (including eligible and ineligible business), income from other sources and Capital gain.
4. Computation of profit derived out of eligible business is enclosed separately. This computation did not have any basis as they did not have any separate accounts. Flow this profit was arrived could not be explained.
3. Analysis of the financials and Computation of income:

3.1 AY 2012-13
As per the audited financials the net profit was Rs. 130,50,00,921/. It includes profit of both eligible and non- eligible business. On this net profit, the company made various adjustments in computation of income to determine the gross total income of various heads i.e. business or profession, income from other sources, capital gain etc. They determined the gross total income of each head. In the next sheet another calculation was given for net profit for the purpose of section 36(1)(viii) of the IT Act. As per that sheet a sum of Rs. 95,86,50,010/- was calculated as profit derived out of eligible business. This was not in accordance with provisions of IT Act and that was questioned by the AO. AO had reduced some of the ineligible profits out that profit calculated by the appellant company unscientifically without any basis. This critical fact was not examined by the CIT(A) while allowing the appeal of the assessee.
3.2 AY 20 13-1
The net profit as per the P&L A/C (annual report) was Rs. 176,67,78,000. This includes eligible as well as non-eligible profit. The company started computing the business profit (including eligible and ineligible business) starting with Rs. 176,67,78,000/- by making various adjustments. It includes profit on sale on fixed assets, profit on sale on investment, income from other sources etc that were separately declared under the head "Capital Gain" and "Income from other sources". In this assessment year, the profit from housing finance business of Rs. 100,79,37,210/ was

determined indirectly without having any separate accounts. Prima facie, this profit computation was questioned.

On this 20% was claimed as deduction. In the computation of income, provision on standard asset- non housing (including commercial) of Rs.4,24,24,306/- was added back which the AO held that it was not related to eligible business. The AO observed that Rs.9,33,35,652/- as investment income related to non-housing. This was excluded.

3.3 AY 2014-15

The net profit as per the P&L A/C (annual report) was Rs. 2 15,12,69,504/. This includes eligible as well as non-eligible profit. The company starts its profit and gain from business or profession with Rs. 215,12,69,504/ and making various adjustments. It includes profit on sale on fixed assets, profit on sale on investment, income from other sources, Interest on NHB tax free bonds etc that were separately declared under the head "Capital Gain" and "Income from other sources". In this assessment year, the profit from housing finance business of Rs. 130,36,47,790/- was determined indirectly without having any separate accounts. On this 20% was claimed as deduction. The AO observed that investment income, profit on sale of current investment, other operating income, interest receipts, profit on sale of fixed assets, miscellaneous income etc were not pertaining to eligible business as per section 36(1)(viii). This was excluded.

3.4 AY 2015-16.

In this assessment year the profit as per the P&L A/C (annual report) was Rs. 2,19,26,14,063. This includes eligible as well as non-eligible profit. The company started computing its profit and gain with Rs. 2,19,26,14,063/ by making various adjustments. It includes profit on sale on fixed assets, profit on sale on investment, income from other sources, Interest on NHB tax free bonds etc that were separately declared under the head "Capital Gain" and " Income from other sources". In this assessment year also, the income from housing finance business of Rs. 119,48,21,859/- was determined indirectly without having any separate accounts. On this 20% was claimed as deduction. The AO observed •that investment income, profit on sale of current investment, other operating income, interest receipts, profit on sale of fixed assets, miscellaneous income etc were not pertaining to eligible business as per section 36(1)(viii). This was excluded.

3.5 AY 2016-17:

In this assessment year the net profit as per the P&L A/C (annual report) was Rs. 233,29,72,616/. This includes eligible as well as non-eligible profit. The company started computing profit and gain from business or profession with Rs.233,29,72,6l6/ and making various adjustments. It includes profit on sale on fixed assets, profit on sale on investment, income from other sources, Interest on NHB tax free bonds etc that were separately declared under the head "Capital Gain" and "Income from other sources". In this assessment year also, the income from housing finance business of Rs. 13 8,11,30,267/- was determined indirectly without having any separate accounts. On this 20% was claimed as deduction. The AO observed that investment income, profit on sale of current investment, other operating income, interest receipts, profit on sale of fixed assets, miscellaneous income etc were not pertaining to eligible business as per section 36(1)(viii). This was excluded.

4. Judicial pronouncements on this issue:
1. In the case of South Indian Bank Limited Vs ACIT, [2019] 104 taxmann.com
452 Hon'ble ITAT Cochin Tribunal held that section allows deduction only to specified entity providing long term finance for development of housing in India and not for individual residential houses. Hence the law laid down by Hon'ble ITAT touches the root of the matter. Annexure -1

2. Hon'ble High Court of Delhi in the case of National Co-operative Development Corporation Vs. Assistant Commissioner of Income-tax, Circle 13(1)12011116 taxmann.com 251 (Delhi) held that Dividend received in respect of redeemable preference shares does not amount to profits derived from providing long term finance within meaning of section 36(l)(viii). Annexure-2

3. Hon'ble ITAT Delhi Bench in the case of Tourism Finance Corporation of India Ltd. Vs. Joint Commissioner of Income-tax in [20101 2 ITR(TRiB.) 1 (DELHI) held that Interest on equipment credit scheme, lease rental and financial charge, dividends, profits on sale of investment, miscellaneous income, interest on deposits, other fees and charges do not fall within ambit of income derived from long-term finance and, as such, no deduction in respect

thereof will be allowable under section 36(l)(viii) of the IT Act. Annexure-3.

In the present case the appellant had mixed up every business under one basket and prepared their annual report and published. In the computation of income various adjustments were done for each head of income. The manner in which the profit derived out of eligible business as contemplated in section 36(l)(viii) of the IT Act was questioned by AO in all the assessment orders.

4. Summary and Prayer:
In all the assessment years the grounds of appeal of the revenue is revolving around this particular factual aspect. The appellant company computed the profit derived from eligible business indirectly without having any books of accounts for that eligible business. Their financials revealed a fact that they were into so many other businesses apart from providing long term finance for housing. Many of the ineligible income/profit/gain were also clubbed together and net profit of the company was published in the annual report.

The manner in which the net profit of the eligible business was calculated by the company in computation of income raised serious doubts to the revenue and AO had removed some of the ineligible profits out of those computation. The C1T(A) unilaterally calculated deduction u/s 36(1)(viii) of the IT Act without appreciating all the facts narrated above. Hence his order was treated as erroneous on fact and law by the revenue.

It is for this reason the revenue has moved appeal that many of the income/profit/gain are not falling under the head profits and gains of business or profession and such income/gain/profit is not eligible for deduction u/s 36(1)(viii) of the IT Act. Hence it is prayed that the CIT(A) order may be set aside..”

8. The learned A.R for the assessee, on the other hand, supporting order of the learned CIT(A) submitted that the issue is squarely covered in favour of the assessee by the decision

of ITAT., Chennai in the assessee's own case for the assessment year 2005-06, where the Tribunal, after considering relevant facts and also provisions of section 36(1)(viii) of the Act, held that interest income received on SLR investments is eligible for deduction u/s.36(1)(viii) of the Act. The learned A.R further submitted that although, the assessee has claimed deduction on other income like profit on sale of current investments, investments income, investment income on mortgaged back security and interest etc., but the learned CIT(A) by following decision of the ITAT., Chennai in the assessee's own case has directed the Assessing Officer to consider only net income for the purpose of excluding other income, while computing deduction u/s.36(1)(viii) of the Act and the assessee has accepted findings of the learned CIT(A). Therefore, there is no reason for the Revenue to agitate order of the learned CIT(A) on the issue of deduction claimed u/s.36(1)(viii) of the Act. Therefore, the learned AR submitted that the issue is squarely covered in favour of the assessee and therefore, there is no need to set aside the issue to the file of the Assessing Officer for further verification.

9. We have heard both the parties, perused material available on record and gone through orders of the authorities below . The provisions of section 36(1)(viii) deals with deduction in respect of any special reserve created and maintained by specified entity, an amount not exceeding 20% of profits derived from eligible business computed under the head 'profits & gains of business or profession' carried to such reserve account. From plain reading of section 36(1)(viii), it is abundantly clear that deduction is available in respect of reserve created and maintained by specified entity, amount not exceeding 20% of profits derived from eligible business computed under the head 'profits & gains of business or profession'. Therefore, eligible entity is entitled for deduction u/s. 36(1)(viii) in respect of profit derived from eligible business computed under the head 'profits & gains of business or profession'. In other words, any other income reported under other heads, other than the head 'profits & gains of business or profession' is not eligible for deduction, even though said income is incidental to carry out eligible business. In this case, there is no dispute with regard to business activity carried out by the assessee and its entitlement for deduction u/s.36(1)(viii)

of the Income Tax Act, 1961. In fact, the Assessing Officer has categorically admitted that the assessee is entitled for deduction u/s. 36(1)(viii) of the Income Tax Act, 1961. The only dispute is with regard to manner in which such deduction should be computed. The assessee has included certain other incomes like interest earned on SLR securities, profit on sale of current investments, other operating income, interest receipts, profit on sale of fixed assets and miscellaneous income etc. It was claim of the assessee before the Assessing Officer that interest income from Government securities–SLR is derived from eligible business, because as per statutory requirements, the assessee is required to maintain SLR ratio and said investment is required to be deposited in Govt. securities and thus, interest, if any, earned from SLR securities is also eligible for deduction u/s.36(1)(viii) of the Income Tax Act, 1961. Likewise, the assessee has canvassed deduction for other income like profit on sale of current investments, profit on sale of fixed assets etc. The Assessing Officer has denied deduction claimed u/s.36(1)(viii) in respect of other income, including interest earned from Govt. securities-SLR.

10. We have given our thoughtful consideration to the reasons given by the Assessing Officer in light of various arguments advanced by the learned A.R for the assessee and we find that in respect of interest earned on Govt. securities (SLR), issue has been settled by the Tribunal in assessee's own case for earlier assessment year, where the Tribunal held that interest earned from Govt. securities (SLR) is eligible for deduction u/s.36(1)(viii) of the Income Tax Act, 1961. Therefore, to this extent, we find that reasons given by the Assessing Officer to disallow deduction claimed on interest earned from SLR securities is not in line with settled position as per decision of the Tribunal and thus, we reject arguments of the learned DR for the Revenue.

11. As regards, deduction claimed towards other income like other investments income, provision on standard asset, interest on short term deposits, investment income, profit on sale of current investments, profit on sale of fixed assets and miscellaneous income, we find that the assessee has reported all those incomes under 'other income' category in the financial statement prepared for relevant assessment years. However, claimed that although, those incomes are reported under 'other

income', but all incomes are incidental to main business activity of lending long term finance for housing sector and further, the assessee has disclosed all those incomes under the head 'profits & gains of business or profession' in the computation of total income for relevant assessment years and thus, above incomes are eligible for deduction u/s.36(1)(viii) of the Income Tax Act, 1961. We find that law is very clear inasmuch as the assessee is entitled for 20% deduction towards reserve created and maintained on the profits derived from eligible business computed under the head 'profits & gains of business or profession' and thus, any other income, including incidental income reported under 'other income' is not entitled for deduction u/s.36(1)(viii) of the Income Tax Act, 1961. However, fact remains that the assessee argument was that the Assessing Officer has considered total income derived under the head 'other income', including income derived from non-eligible business, while computing deduction u/s.36(1)(viii) of the Income Tax Act, 1961. The learned CIT(A) has directed the Assessing Officer to exclude only income pertains to business segment of providing long term finance to housing sector and the assessee has accepted findings of the learned

CIT(A).Although, there is merit in the arguments advanced by the learned A.R for the assessee that only 'other income' relatable to eligible business sector needs to be excluded, while computing deduction u/s.36(1)(viii) of the Income Tax Act, 1961, but from the records, it is not clear whether the assessee has apportioned 'other income' to eligible business and non-eligible business or not. Therefore, to ascertain facts with regard to apportionment of income to eligible business and to compute deduction u/s.36(1)(viii) of the Income Tax Act, 1961, the issue needs to go back to file of the Assessing Officer. Therefore, we set aside the issue to file of the Assessing Officer for limited purpose of examining claim of the assessee that the learned CIT(A) has restricted deduction only to other income which relates to eligible business, we direct the Assessing Officer to examine claim of the assessee and while computing deduction u/s.36(1)(viii) of the Income Tax Act, 1961 by following directions given by the Tribunal in assessee's own case for the assessment year 2005-06 and decide the issue in accordance with law for the impugned assessment years.

12. The next common issue that came up for our consideration from the assessee as well as the Revenue

appeal is disallowance u/s.14A r.w. Rule 8D of I.T.Rules, 1962. The assessee has earned exempt income in the form of dividend from investments and interest from NHB bonds and claimed exemption u/s.10(34) of the Income Tax Act, 1961, however, has not made any *suo motu* disallowances u/s.14A read with Rule 8D of I.T. Rules, 1962 in respect of expenditure incurred in relation to exempt income. The Assessing Officer has computed disallowance u/s.14A by invoking Rule 8D and determined disallowance of interest and other expenses. The learned CIT(A) has upheld computation of disallowance u/s.14A by invoking Rule 8D of I.T. Rules, 1962, but restricted disallowances computed by the Assessing Officer to the extent of exempt income earned for the relevant assessment year by following decision of the Hon'ble Delhi High Court in the case of Joint Investments Pvt. Ltd. 372 ITR 694. Aggrieved by the learned CIT(A) order, the assessee and Revenue are in appeal before us.

13. The learned A.R for the assessee submitted that the learned CIT(A) erred in restricting disallowances u/s.14A to the extent of exempt income, even though the assessee has demonstrated with necessary evidences that it does not incur

any expenditure towards earning exempt income. The learned A.R for the assessee further submitted that in respect of interest disallowances under Rule 8D2(ii), the assessee had sufficient own funds in the form of capital and reserves, which is in excess of investments made in dividend yielding securities and thus, question of disallowance of interest expenses does not arise. The learned AR further submitted that in respect of other expenses under Rule 8D(2)(iii), it is well settled principle of law, only those investments which yield exempt income needs to be considered for the purpose of disallowance. The learned CIT(A) without appreciating above facts has simply restricted disallowances to the extent of exempt income .

14. The learned DR, on the other hand, submitted that the learned CIT(A) has erred in restricting disallowances u/s.14A to the extent of exempt income without appreciating fact that disallowance us/.14A is mandatory and thus, once there is exempt income, the Assessing Officer is bound to compute disallowance by applying prescribed procedure provided under Rule 8D of I.T. Rules, 1962. Therefore, it is incorrect on the part of the learned CIT(A) to restrict disallowances to the extent of exempt income.

15. We have heard both the parties, perused material available on record and gone through orders of the authorities below. There is no dispute with regard to fact that the assessee has earned exempt income in the form of dividend and interest from NHB bonds which has been claimed as exempt u/s.10(34) of the Income Tax Act, 1961. It is also an admitted fact that the assessee has not made any *suo motu* disallowance of expenditure relatable to exempt income u/s.14A of the Income Tax Act, 1961. Although, the assessee claims to have not incurred any expenditure in respect of exempt income, but when the assessee has maintained common set of books of accounts for taxable and exempt income, possibility of incurring common expenditure for both segments cannot be ruled out and therefore, we are of the considered view that there is no error in the reasons given by the Assessing Officer to invoke Rule 8D of Income Rules, 1962 to compute disallowance u/s.14A of the Income Tax Act, 1961 and thus, we reject arguments of the assessee.

16. Having said so, let us examine second contention of the assessee with regard to interest disallowance under Rule 8D(2)(ii) of Income Tax Rules, 1962. It was explanation of the

assessee that it has sufficient own funds in excess of investments made in exempt income yielding investments and thus, interest disallowances cannot be made. We find that law is very settled by the decisions of various High Courts, including decision of the Hon'ble Bombay High Court in the case of CIT Vs. HDFC Bank Ltd. 366 ITR 505 and CIT Vs. Reliance Utilities & Power Ltd., 313 ITR 340 (Bom), where it has been held that once the assessee proves that investment is made out of mixed funds, including own funds and borrowed funds, then presumption goes in favour of the assessee that investments is made out of own funds. In this case, claim of the assessee is that it has sufficient own funds in excess of investments made in shares and securities which yield exempt income. But, facts are not clear and the assessee has not filed any cash flow statement to prove availability of own funds when those investments were made during the relevant assessment years. Therefore, we are of the considered view that this issue needs to go back to the file of the Assessing Officer to verify facts with regard to availability of own funds to explain investments made in shares & securities which yield exempt income.

17. As regards, second arguments of the assessee that only those investments which yielded exempt income needs to be considered for working out disallowance under Rule 8D(2)(iii) of the I.T. Rules, 1962, we find that this legal principle is supported by plethora of judicial precedents, including decision of the Hon'ble Delhi High Court in the case of Cheminvest Ltd. Vs. DCIT 378 ITR 33 (Del), where it has been very clearly held that only those investments which yielded exempt income for relevant assessment year needs to be considered for disallowing other expenses under Rule 8D(2)(iii) of the Income Tax Rules, 1962. In this case, it was claim of the assessee that Assessing Officer has considered total investments, including investments which does not yield any exempt income for relevant assessment years. Further, the assessee had also filed computation explaining disallowances to be made under section 14A r.w. Rule 8D(2)(iii) of the Income Tax Rules, 1962, which is part of paper book filed by the assessee. But, fact remains that these details are not forthcoming from the orders of the lower authorities and further, the assessee has filed computation explaining manner and method of computing disallowance under Rule 8D(2)(iii) for the first time before this

Tribunal. Therefore, we are of the considered view that this issue also needs to go back to file of the Assessing Officer for further verification.

18. In this view of the matter and considering facts and circumstances of the case, we are of the considered view that issue of disallowance u/s.14A needs to go back to file of the Assessing Officer for fresh consideration. Hence, we set aside the issue to the file of the Assessing Officer and direct the A.O. to re-examine claim of the assessee in light of various averments made by the assessee, including availability of own funds to explain source of investments to compute disallowance of interest under Rule 8D(2)(ii) and also to verify details of investments to ascertain and segregate investments which yield exempt income for the relevant assessment years to compute disallowance under Rule 8D(2)(iii) of I.T. Rules, 1962. The Assessing Officer is directed to examine claim of the assessee and recompute disallowance in line with our discussions given hereinabove and restrict disallowances to the extent of exempt income, in case, disallowance computed by the Assessing Officer for any assessment year exceeds exempt income in light of decision of the Hon'ble Delhi High

Court in the case of Joint Investments Vs CIT 372 ITR 694(Del).

19. The next issue that came up for our consideration from Revenue appeal for the assessment year 2013-14 is disallowance of employees contribution to PF & ESI u/s. 36(1)(va) r.w.s 43B of the Income Tax Act, 1961. The Assessing Officer has disallowed employees contribution to ESI and added back as income of the assessee u/s.2(24)(x) read with section 36(1)(va) of the Income Tax Act, 1961, on the ground that the assessee has remitted employees contribution to ESI beyond due date specified under respective Acts. It was explanation of the assessee before the Assessing Officer that employees contribution to ESI although, remitted beyond due date specified under respective Acts, but paid within date for filing of return of income u/s.139(1) of the Act for the relevant assessment year and thus, same cannot be disallowed u/s.36(1)(va) r.w.s. 2(24)(x) of the Act.

20. Having heard both the sides and considered relevant materials on record, we find that this issue is squarely covered in favor of the assessee by the decision of the ITAT., Chennai

in the case of M/s. Adyar Ananda Bhavan Sweets India Ltd., in ITA Nos.402 & 403/Chny/2021 dated 08.12.2022, where the Tribunal after considering amendment made to the provisions of Sec.36(1)(va) of the Act, by the Finance Act, 2020, held that amendment brought u/s.36(1)(va) of the Act, is applicable from assessment year 2020-21 and employees contribution to approved funds including PF & ESI remitted beyond due date specified under respective Acts, but paid within due date for filing return of income u/s.139(1) of the Act cannot be disallowed u/s.36(1)(va) of the Income Tax Act, 1961. In this case, it was claim of the assessee that all payments have been made on or before due date for filing return of income for the relevant assessment years, however, no such details have been filed before us. Therefore, we are of the considered view that this issue needs to go back to the file of the Assessing Officer for verification. Hence, we set aside the issue to file of the Assessing Officer to verify dates of payment of employees contribution to ESI and in case, the assessee has remitted the amount on or before due date for filing return of income u/s.139(1) of the Act, then additions made u/s.36(1)(va) r.w.s.2(24)(x) should be deleted.

21. In the result, all these appeals filed by the assessee and the Revenue are treated as allowed for statistical purposes.

Order pronounced in the open court on 15th June, 2022

Sd/-	Sd/-
(अनिकेश बनर्जी)	**(जी. मंजुनाथ)**
(Anikesh Banerjee)	(G.Manjunatha)
न्यायिक सदस्य /Judicial Member	लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 15th June, 2022
DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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