

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.1283/Mum/2021
(Assessment Year :2012-13)**

**ITA No.1197/Mum/2021
(Assessment Year :2013-14)**

**&
ITA No.1328/Mum/2021
(Assessment Year :2014-15)**

M/s. Edelweiss Financial Services Limited Edelweiss House, Off. CST Road Kalina, Santacruz East Mumbai – 400 098	Vs.	DCIT Central Circle-1(1) R.No.903, 9 th Floor Old CGO Building Annexe Maharshi Karve Road Churchgate, Mumbai – 400 020
PAN/GIR No.AACE1461E		
(Appellant)	..	(Respondent)

Assessee by	Shri Ravikant Pathak
Revenue by	Shri Prakash R Mane
Date of Hearing	16/08/2022
Date of Pronouncement	25/08/2022

आदेश / O R D E R

PER M. BALAGANESH (A.M.):

These appeals in ITA No. 1283/Mum/2021 & 1197/Mum/2021 & 1328/Mum/2021 for A.Y.2012-13, 2013-14 & 2014-15 respectively arise

out of the order by the Id. Commissioner of Income Tax (Appeals)-47, Mumbai in appeal Nos.CIT(A)-47/12785/2016-17, CIT(A)-47/10072/2017-18 & CIT(A)-47/12771/2016-17 dated 25/05/2021, 10/05/2021 & 19/01/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) & 143(3) r.w.s. 144C(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 19/12/2016 & 31/03/2016 respectively by the Id. Dy. Commissioner of Income Tax, Central Circle-1(1), Mumbai (hereinafter referred to as Id. AO).

With the consent of both the parties, the appeal for A.Y.2014-15 in ITA No.1328/Mum/2021 is taken up first.

2. The ground No.1 raised by the assessee is challenging the disallowance made u/s.14A of the Act r.w.Rule 8D(2) of the Rules.

2.1. We have heard rival submissions and perused the materials available on record. The assessee company is registered with Securities and Exchange Board of India (SEBI) as category I Merchant Banker and Portfolio Management Service (PMS) provider and is engaged in the business of advisory and transactional services and PMS services. Its principle and core business is of providing investment banking services such as acting as lead manager to IPO, advisors in open offer, Mergers and Acquisitions, Restructuring of companies etc., The assessee had filed its return for A.Y.2014-15 on 29/11/2014 declaring total income at Rs.18,41,61,150/- under normal provisions of the Act and book profit of Rs.53,02,93,945/- u/s.115JB of the Act. Subsequently, a revised return of income was filed by the assessee on 30/03/2016 to claim tax relief u/s.90 of the Act and additional TDS credit.

2.2. The assessee declared an amount of Rs.46,24,88,738/- as dividend and claimed the same as exempt u/s.10 of the Act. The assessee made suo moto disallowance of expenses u/s.14A of the Act in the sum of Rs.5,55,969/-. The basis of making the said disallowance of Rs.5,55,969/- is enclosed in page 55 of the paper book filed by the assessee as under:-

Particulars	Total cost	Proportionate expenses of dividend income segment
Employee costs	311,182,037	500,000
Auditors' remuneration	3,207,173	5,153
Communication	5,275,266	8,476
Electricity charges	1,813,876	2,914
Office expenses	665,365	1,069
Rent	23,871,347	38,356
	346,015,064	555,969

2.3. The Id. AO however, disregarded the aforesaid suo moto disallowance of expenses and proceeded to make disallowance u/s.14A of the Act r.w.Rule 8D(2)(iii) of the Rules in the sum of Rs.13,91,31,681/- after reducing the suo moto disallowance made by the assessee. This disallowance under Rule 8D(2)(iii) of the Rules was made by the Id. AO by adopting the revised computation mechanism provided in Rule 8D(2) provisions which is effective from 02/06/2016. We find that the Id. CIT(A) had held that the subsequent amendment in Rule 8D(2) brought w.e.f. 02/06/2016 cannot be applied for the year under consideration. However, the Id. CIT(A) directed the Id. AO to recompute the disallowance as per

the erstwhile provisions of Rule 8D(2)(iii) of the Rules against this direction of the Id. CIT(A). The Revenue had not preferred any appeal before this Tribunal according to the Id. AR. This is reckoned as a statement made from the Bar by the Id. AR.

2.4. The primary objection of the Id. AR is that the Id. AO directly resorted to proceed with computation provisions of Rule 8D without recording any objective satisfaction having regard to the accounts of the assessee in terms of Section 14A(2) of the Act. We have perused the entire assessment order on the impugned issue and we find that the objection of the Id. AR is correct. We hold that the Id. AO had not recorded any objective satisfaction with cogent reasons having regard to the accounts of the assessee as to why the voluntary disallowance made by the assessee in the sum of Rs.5,55,969/- in the return of income is incorrect. In fact, we find that the assessee before the Id. AO had furnished a detailed written submission in this regard as to why the computation mechanism provided in Rule 8D(2) of the Rules would not be applicable by referring to each and every expenses debited in the profit and loss account and had also justified the basis of voluntary disallowance made by it in the return of income. These written submissions are enclosed in pages 55-63 of the paper book filed before us. Admittedly, the Id. AO had not recorded any objective satisfaction as to why the voluntary disallowance made by the assessee is incorrect before proceeding to apply computation mechanism in Rule 8D(2)(iii) of the Rules in the instant case. This issue is no longer res-integra in view of the decision of this Tribunal in assessee's own case for A.Y.2016-17 and 2017-18 in ITA Nos. 92 & 93/Mum/2022 respectively dated 23/06/2022 wherein this Tribunal had elaborately discussed the very same issue of disallowance u/s.14A of the Act made under identical circumstances from

para 5 to para 8 and deleted the disallowance made by the lower authorities. We further find that this issue is also settled by the Hon'ble Supreme Court in the case of Maxopp Investments reported in 402 ITR 640 and by the decision of the Hon'ble Jurisdictional High Court in the case of Godrej & Boyce Manufacturing Co. Ltd., vs. Dy. Commissioner of Income Tax Range 10(2), Mumbai reported in 328 ITR 81. It is also pertinent to note that this decision of the Hon'ble Bombay High Court has been further affirmed by the Hon'ble Supreme Court.

2.5. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we direct the Id. AO to restrict the disallowance u/s.14A of the Act in the sum of Rs.5,55,969/- under normal provisions of the Act.

2.6. With regard to disallowance of expenses u/s.14A of the Act while computing book profits u/s.115JB of the Act, we find that the Id. AO had made same disallowance as was made by him under normal provisions of the Act, again while computing the book profit u/s.115JB of the Act. We find that the Special Bench of Delhi Tribunal in the case of Vireet Investments reported in 165 ITD 27 had categorically held that computation mechanism provided in Rule 8D(2) of the IT Rules cannot be imputed in Clause (f) of Explanation 1 to Section 115 JB (2) of the Act. However, the actual expenses incurred by the assessee for the purpose of earning exempt income had to be disallowed in terms of Clause (f) of Explanation 1 to Section 115JB (2) of the Act. The assessee had voluntarily disallowed the same at Rs.5,55,969/- under normal provisions of the Act u/s.14A of the Act. The same sum is to be disallowed while computing book profits u/s.115JB of the Act also. The computation of book profits u/s.115JB of the Act made by the assessee is not on record

and hence, the Id. AO is directed to verify the fact as to whether Rs.5,55,969/- has been disallowed by the assessee while computing book profits u/s.115JB of the Act. If it is so done then, no further disallowance is warranted. The Id. AO is directed accordingly. Since, relief is granted to the assessee on this technical aspect both under normal provisions as well as computing book profits u/s.115JB of the Act, the other facets of arguments on the same issue raised by the assessee in its grounds of appeal need not be adjudicated and they are left open.

2.7. The ground No.1 raised by the assessee is disposed off in the above mentioned terms.

3. The ground No.2 raised by the assessee is seeking the benefit of carry forward of long term capital loss reported by the assessee.

3.1. We have heard rival submissions and perused the materials available on record. The assessee claimed long term capital loss of Rs.1,57,45,360/- in the original return filed on 29/11/2014 which is evident from the ITR acknowledgement copy enclosed in page 76 of the paper book filed before us. It is a fact on record that assessee had filed its revised return of income on 30/03/2016. Even in the said revised return we find from the perusal of the entire income tax return, the assessee had duly disclosed the figure of long term capital loss of Rs.1,57,45,360/- in the relevant column. In the schedule of carry forward of losses of future years i.e. Schedule C F L in the income tax return form, this figure of Rs. 1,57,45,360/- ought to have been reflected automatically as apparently the said figure is to be picked from column No. B-9 of the Income Tax return. In Column No.B-9 the assessee had duly reflected the long term capital loss of Rs.1,57,45,360/-. But the same

was not automatically picked by the Income Tax e-filing system by posting the said figure under Schedule C F L. The Id. AO concluded that the assessee had withdrawn the claim of long term capital loss of Rs.1,57,45,360/-. We have gone through the entire income tax return form filed at the time of filing revised return. These documents are enclosed in pages 84-91 of the paper book. From the above narration, it could be seen that failure to reflect the long term capital loss figure of Rs.1,57,45,360/- in the schedule of carry forward of losses in the income tax return is purely not attributable to the assessee as it is an automatic pick of figure from Column B-9 in the IT return which is to be done by online system. So, this is purely a technical glitch in the income tax e-filing system, for which assessee could not be faulted. In fact, this was brought to the knowledge of Id. CIT(A) in the statement of facts itself. But the Id. CIT(A) had conveniently stated that assessee had not claimed this long term capital loss in the revised return which is factually incorrect as is evident from the above narration of facts.

3.2. In view of the above observations, we direct the Id. AO to allow the benefit of carry forward of long term capital loss of Rs.1,57,45,360/- to subsequent years. Accordingly, the ground No.2 raised by the assessee is allowed.

4. The ground No.3 raised by the assessee is seeking TDS credit in respect of income offered by the assessee.

4.1. We have heard rival submissions and perused the materials available on record. We find that assessee had claimed TDS credit of Rs. 11,53,97,902/- in the return of income. The Id. AO had allowed TDS credit of Rs.10,93,40,534/- thereby resulting in short TDS credit of

Rs.60,57,368/-. The assessee explained that the sum of Rs.5,05,620/- represents tax deducted by the payer on the income given to assessee but the said tax has been remitted by the payer in the immediately succeeding assessment year. The assessee also filed evidence on record that the sum of Rs.5,05,620/- has been reflected in form 26AS of immediately succeeding assessment year. Since the deductor has remitted the TDS belatedly, the assessee cannot be deprived of the TDS credit in the year under consideration especially when income relating to the said TDS has already been offered to tax by the assessee during the year under consideration. In this regard, the Id. AR placed reliance on the Co-ordinate Bench decision of this Tribunal in assessee's own case in ITA Nos. 92 & 93/Mum/2022 for A.Y.2016-17 and 2017-18 respectively dated 23/06/2022 wherein it was held that TDS credit should be granted to the assessee for the year in which income is offered. It is not in dispute that the income relating to the TDS component of Rs.5,05,620/- has been duly offered by the assessee during the year under consideration. Hence, the assessee would be eligible for TDS credit of Rs.5,05,620/- in A.Y.2014-15 i.e. year under consideration. The Id. AO is directed accordingly. The Id. AO is further directed to ensure that assessee had not claimed this TDS credit of Rs.5,05,620/- in the A.Y.2015-16 based on form 26AS. This direction is given in order to protect the interest of the Revenue by not giving double credit of TDS to the assessee.

4.2. With regard to the remaining TDS credit of Rs.55,51,748/-, the same represents taxes deducted by four payers but the TDS was not remitted by the payers to the account of the Central Government. The assessee pleaded that it had duly offered the income relating to the said TDS in the year under consideration. It was argued that merely because the deductor had not remitted the TDS to the account of the Central

Government having deducted the taxes from the amounts due to the assessee, assessee cannot be deprived or denied of its legitimate credit. This is a clear case of default committed by the deductor against whom the department is entitled to take suitable action as per law. The assessee cannot be denied TDS credit for no fault of it. We find that similar issue had come for adjudication before this Tribunal in assessee's own case for A.Y.2016-17 and 2017-18 vide order dated 23/06/2022 referred to supra wherein in para 22, it has been held as under:-

“22.....The assessee has shown a tax deduction at source made by tax deductor amounting to ₹54,59,764/-, which has been paid to the credit of Central Government by the various parties. However, assessee has submitted the list of 16 such parties where the amount of income has been offered by the assessee as income however, consequent TDS of ₹5459764/- was not granted as credit to the assessee. The reason being that it did not appear in form no. 26AS of the assessee. If the assessee proves that such tax has been deducted by the parties but it has not been reflected in the form no. 26AS, this issue has been considered by CBDT in office memo dated 11th March 2016. In paragraph no. 3, the CBDT has directed the officers not to enforce demand arising in such circumstances. Further, merely because the tax deductor has not filed the TDS return there is enough mechanism available to catch hold of such defaulting tax deductor. No doubt, it is the duty of the assessee to show that tax has been deducted. This issue is squarely covered in favour of the assessee by the decision of the Hon'ble Gujarat High A Court in case of Kartik Vijaysinh Sonavane Vs. DCIT [2021] 132 taxmann.com 293 (Gujarat). Therefore, this issue is restored to the file of the learned Assessing Officer for limited purpose of verification and thereafter to grant credit of the same.

- 4.3. The ground No.3 raised by the assessee is disposed of accordingly.
5. The ground No.4 raised by the assessee was stated to be not pressed by the Id. AR at the time of hearing. The same is reckoned as a statement made from the Bar and accordingly, the ground No.4 is hereby dismissed as not pressed.
6. In the result, appeal of the assessee in ITA No.1328/Mum/2021 for A.Y.2014-15 is partly allowed for statistical purposes.

ITA No.1197/Mum/2021 (A.Y.2013-14) – Assessee Appeal

7. The ground No.1 raised by the assessee is challenging the disallowance of expenses u/s.14A of the Act r.w.Rule 8D(2) of the Rules.

7.1. We have heard rival submissions and perused the materials available on record. We find that assessee had earned dividend income of Rs.56,03,07,986/- and claimed the same as exempt u/s.10 of the Act. It had voluntarily disallowed the sum of Rs.5,44,377/- u/s.14A of the Act in the return of income as expenses incurred for the purpose of earning exempt income. The assessee furnished a detailed note together with the workings of suo moto disallowance made by it before the Id. AO which are enclosing in pages 64 – 72 of the paper book filed before us. On perusal of the said note we find that assessee had pleaded that it had sufficient own funds in its kitty which are much more than investments that had yielded exempt income to the assessee. Apart from that assessee had also pleaded that even assuming interest is required to be disallowed in terms of Rule 8D(2)(ii) of the Rules, only the net interest paid, if any should be considered i.e. interest expenditure less interest income earned by the assessee. The assessee also gave details before the Id. AO that it had earned interest income of Rs.425.68 Crores as against interest expenditure of Rs.50.40 Crores, thereby resulting in net interest paid becoming negative. Accordingly, it was pleaded that no disallowance of interest in terms of Rule 8D(2)(ii) of the Rules could be made. With regard to disallowance of indirect expenses, the assessee pleaded that it had taken each and every expenses debited in the P & L account and had attributed certain ratio as relatable to the investment activity and wherever expenses that are not at all linked with the investment activity, the same has been ignored. The Id. AO however, disregarded the entire

contentions and written submissions of the assessee are directly proceeded to invoke the revised computation mechanism provided in Rule 8D(2) of the Rules which came into effect only from 02/06/2016 and made disallowance under Rule 8D(2)(iii) of the Rules. The Id. CIT(A) held that the revised computation mechanism was brought in the statute only from 02/06/2016 and hence, the same cannot be made applicable for the year under consideration. He however, held that the disallowance should be made as per the erstwhile computation mechanism provided in Rule 8D(2) of the Rules and he restricted the disallowance to Rs.7,12,77,273/- as against Rs.14,30,98,923/- made by the Id. AO. As far as the disallowance u/s.14A made by the Id. AO while computing book profits u/s.115JB of the Act, the assessee had raised specific ground before us that the Id. CIT(A) had not even adjudicated the said ground.

7.2. We find that the same issue has already been adjudicated by us hereinabove for A.Y.2014-15 and the decision rendered thereon shall apply mutatis mutandis to this assessment year also except with variance in figures. Accordingly, the ground No.1 raised by the assessee is allowed for statistical purposes.

8. The ground No.2 raised by the assessee is challenging the action of the Id. CIT(A) in upholding the action of the Id. AO in not computing short term or long term capital gain / loss submitted by the assessee during the assessment proceedings.

8.1. We have heard rival submissions and perused the materials available on record. From the computation of income enclosed in page 1 of the paper book filed before us, we find that assessee has disclosed short term capital gain of Rs.25,07,167/- and also claimed long term capital loss of

Rs.4,89,498/- thereon as Representative assessee (seed fund). The Id. AO had taxed the short term capital gain of Rs.25,07,167/- @ 30% while completing the assessment. During the course of assessment proceedings, the assessee filed revised workings of short term capital loss and long term capital loss. The assessee sought to set off the short term capital loss (STT paid) of Rs.3,54,731/- against business income. The assessee furnished the revised working of capital gains together with supporting documents before the Id. AO as under:-

(i) Short Term Capital Loss (STT paid)	-	Rs.(3,54,731)
(ii) Long Term Capital Gain (STT paid- Exempt Income)	-	Rs.20,59,114

8.2. It was pleaded that assessee had inadvertently offered short term capital gain of Rs.25,07,167/- on sale of units of mutual funds under the head 'short term capital gains' in the return of income as against short term capital loss (STT paid) of Rs.3,54,731/- and long term capital gain (STT paid-exempt income) of Rs.20,59,114/-. The Id. AO did not take cognizance of the same and there was absolutely no discussion regarding the same in his assessment order. The Id. CIT(A) by placing reliance on the decision of the Hon'ble Supreme Court in the case of Goetze India Ltd., reported in 284 ITR 323 stated that this revised claim was only made by the assessee during the course of assessment proceedings and the same was not claimed by way of a valid return of income, the same cannot be entertained.

8.3. We find that the decision of the Goetze India Ltd., referred to supra clearly enables the appellate authorities to consider the claim made by the assessee even if it is not made by way of a valid return of income but

claimed during the course of assessment proceedings. What is required to be seen is whether the claim of the assessee is legitimate or not? We further find that the Hon'ble Jurisdictional High Court in the case of CIT vs. Pruthvi Brokers and Shareholders reported in 349 ITR 336 had clearly considered this issue and had directed the Id. AO to grant deduction accordingly. Since, no finding on facts has been given by the lower authorities in this regard and since the workings of capital gains submitted by the assessee had not been verified by the Id. AO, we deem it fit and appropriate to remand this issue to the file of the Id. AO for denovo verification. If the workings submitted by the assessee is found to be correct, then the contention of the assessee is required to be accepted and total income of the assessee is to be re-computed accordingly as per law. The ground No.2 raised by the assessee is allowed for statistical purposes.

9. The ground No.3 raised by the assessee is with regard to claiming TDS credit which is identical to ground No.3 raised by the assessee for A.Y.2014-15. Hence, the decision rendered thereon for A.Y.2014-15 shall apply mutatis mutandis for this assessment year also except with variance in figures.

10. The ground No.4 raised by the assessee was stated to be not pressed at the time of hearing by the Id. AR. The same is reckoned as a statement made from bar and accordingly, ground No.4 is hereby dismissed as not pressed.

11. In the result appeal of the assessee for A.Y.2013-14 in ITA No.1197/Mum/2021 is partly allowed for statistical purposes.

ITA No.1283/Mum/2021 (A.Y.2012-13) Assessee Appeal

12. The ground No.1 raised by the assessee is challenging confirmation of action of the Id. AO in disallowing interest u/s.36(1)(iii) of the Act.

12.1 We have heard rival submissions and perused the materials available on record. During the course of assessment proceedings, the assessee filed details of loans and advances from which the Id. AO noticed that the assessee has given an amount of Rs.167,57,52,240/- as loan to employee welfare trust created for the welfare of the employees of the assessee. This loan is admittedly interest free. The Id. AO held that the said loan is not meant for the purpose of business of the assessee and accordingly, proceeded to disallow proportionate interest u/s.36(1)(iii) of the Act and disallowed a sum of Rs.20,04,27,101/- in the assessment. The contention of the assessee that amount advanced for the welfare of the employees of the assessee ultimately results into employee satisfaction which becomes a big asset, which in turn improves the efficiency and productivity thereon and hence, the same shall be eligible as deduction u/s.36 or 37 of the Act as staff welfare expenses. The assessee, on without prejudice basis, further pleaded that the borrowings made by it were utilised only for the purpose of business and that no part of the borrowings has been used for advancing loan to employee welfare trust. The assessee pleaded that it had sufficient interest free funds available with it to make advance of interest free loan to its employee welfare trust. The assessee placed reliance on the decision of the Hon'ble Jurisdictional High Court in the case of Reliance Utilities & Power Ltd., reported in 313 ITR 340 in support of its contentions.

12.2. The Id. CIT(A) observed that main objection of the Id. AO was that the money advanced to the Employees Welfare Trust by the assessee has been invested by the said trust for acquiring the shares of the assessee company itself and no welfare as such of employees has been done. It is not in dispute that assessee has submitted various details with respect of the trust deed, its objects and from whom it can accept funds for making the investments etc., The law settlor in the case of the Employees Welfare Trust is the assessee company itself and the trust was created for the welfare of the permanent employees excluding promoters and directors.

12.3. We find that the Id.CIT(A) in para 6.9 of his order had accepted to the fact that assessee had sufficient interest free surplus balance to the extent of Rs.12,245 Crores. However, he placed reliance on the decision of the Hon'ble Kerala High Court in the case of CIT vs. VI Baby & Co., reported in 254 ITR 248 wherein it was held that in case if the assessee is having sufficient interest free funds then there was no need for it to make any borrowings and pay interest on such borrowings. We find that the Hon'ble Jurisdictional High Court in plethora of cases in the case of Reliance Utilities and Power Ltd., reported in 313 ITR 340 and HDFC Bank Ltd., reported in 366 ITR 505 had categorically held that once there are mixed funds i.e. borrowed funds as well as own funds available with the assessee, natural presumption that could be arrived would be that interest free loans and advances and investments had been made out of own funds provided the interest free funds are more than the interest free advances and investments. This ratio has been ultimately upheld by the Hon'ble Apex Court in the case of Reliance Industries Ltd., and Hero Cycles Ltd., It is an admitted fact that assessee had created the Employee Welfare Trust to improve the efficiency and productivity of employees so

that they get immensely satisfied for having working with the assessee company and that satisfaction would inturn improve the efficiency and productivity of the employees of the assessee company. Hence, it could be held that the lending to Employee Welfare Trust is for the purpose of business.

12.4. In any case, we find that this loan was given in earlier year by the assessee. It is not the case of the Revenue that the said lending has been given out of borrowed funds of the assessee. When interest free loan has been given in earlier year and no disallowance of interest has been made in the year in which lending was made, that lending is deemed to have been accepted as meant for business purposes of the assessee. The said finding cannot be disturbed by the Revenue in the subsequent assessment years. Reliance in this regard has been rightly placed by the Id. AR on the decision of the Hon'ble Karnataka High Court in the case of Sridev Enterprises reported in 192 ITR 165. Hence, we have no hesitation in directing the Id. AO to delete the disallowance of interest made u/s.36(1)(iii) of the Act in the facts and circumstances of the instant case. Accordingly, the ground No.1 raised by the assessee is allowed.

13. The ground No.2 raised by the assessee is challenging the disallowance u/s.14A of the Act.

13.1. We have heard rival submissions and perused the materials available on record. We find that assessee had shown dividend income of Rs.61,06,54,600/- which was claimed as exempt u/s.10 of the Act in the return. The assessee had made suo-moto disallowance of Rs.5,68,254/- u/s.14A of the Act as expenses incurred for earning exempt income. The basis of arriving at the said disallowance figure is mentioned in pages 83-

91 of the paper book filed before us. The Id. AO ignoring the elaborate contentions of the assessee directly proceeded to make disallowance under Rule 8D(2)(ii) and Rule 8D(2)(iii) of the Rules. Both the parties stated before us that the issue is similar to issue decided hereinabove for A.Y.2014-15 vide ground No.1 above. Hence, the decision rendered in ground No.1 for A.Y.2014-15 shall apply mutatis mutandis for this assessment year also. Accordingly, the ground No.2 raised by the assessee is disposed of in the same lines as in A.Y.2014-15.

14. The ground No.3 raised by the assessee is challenging the confirmation of the action of the Id. AO in disallowing the provision made for expenses on the ground that they represent unascertained liability without any reasonable basis. The ground No.4 raised by the assessee is challenging the same disallowance made while computing book profits u/s.115JB of the Act.

14.1. We have heard rival submissions and perused the materials available on record. During the course of assessment proceedings, the Id. AO observed that assessee had created provision for expenses under various heads of expenditure and debited the same to profit and loss account. In response to show-cause notice of the Id. AO, the assessee responded by way of a tabular chart which are enclosed in pages 119 to 120 of the paper book filed wherein the assessee had provided entire list of expenses together with the name of the vendor, invoice number, date of invoice, invoice amount, service tax thereon and date of payment or booking of the said expenditure in subsequent year. These details in tabular form are filed for staff welfare expenses, rent, seminar and conference expenses, staff recruitment expenses, internal audit fee, life insurance expenses, general insurance expenses, vehicle insurance

expenses, legal and professional charges and commission and brokerage expenses. Despite these details, the Id. AO without going into the submissions provided, simply concluded that the assessee had failed to provide any explanation and treated the said provision for expenses as unascertained liability and proceeded to disallow the same both under normal provisions of the Act as well as in the computation of book profits u/s.115JB of the Act. We find that the assessee had duly explained that it being a listed company, the annual accounts are to be finalized and submitted to SEBI before the end of May i.e. within two months from the end of the financial year. Accordingly, if certain services are rendered to the assessee and value of services are not determined up to the date of finalization of accounts, the assessee in order to comply with the mercantile system of accounting regularly employed by it and in order to adhere to the matching concept of Revenue and income, resorts to make provision for expenses based on proforma invoice or a contract which is evident from table given in pages 119 & 120 of the paper book filed before us. The assessee has also given subsequent date of payment of the said expenditure in the said table. Hence, these are regular business expenses that had already accrued during the year under consideration for which provision has been made by the assessee. The consistent practice followed by the assessee is that the provisions as and when made as on 31st March of each year are being reversed on first April of the subsequent year by offering it to tax and the actual expenses based on the final invoice submitted by the vendor are booked as expenditure of that year. It is not in dispute that the reversal of provision for expenses made by the assessee in subsequent year has been accepted by the Revenue when income is being offered thereon. Similar practice has been followed by the assessee while making reversal of provision of earlier year expenses during the year under consideration by offering it to income,

which fact is also accepted by the Revenue. In these circumstances, we have no hesitation to hold that provision for expenses which have been made based on an agreed contract or based on proforma invoice for which services had already been rendered to the assessee by the vendors, becomes a provision made on a realistic and rationale basis and cannot fall within the ambit of unascertained liability. In any case, we find that the very same issue was subject matter of adjudication by this Tribunal in the case of sister concern of the assessee ACIT vs. Edelcap Securities Ltd., in ITA No.6837/Mum/2018 for A.Y.2013-14 dated 28/09/2021 wherein the facts and the findings recorded by this Tribunal are reproduced as under:-

“5. The ground Nos. 5 & 6 raised by the revenue is challenging the action of the ld. CIT(A) deleting the disallowance made on account of provision for expenses in the sum of Rs.3,58,10,173/- made under normal provisions of the Act as well as in the computation of book profits u/s.115JB of the Act.

5.1. We have heard rival submissions and perused the materials available on record. We find that the ld. AO observed that the assessee had created provision for expenses under various heads of expenditure and debited the same to profit and loss account. The assessee was specifically asked to provide the details of the same and show-caused as to why the same should not be disallowed, being contingent in nature, as the said provision represent unascertained liability. The assessee submitted the details of provision for expenses as under:-

<i>Sr. No.</i>	<i>Ledger Head</i>	<i>Provision as on 31.03.2013</i>
<i>1</i>	<i>Legal & Prof. Fees</i>	<i>123,500</i>
<i>2</i>	<i>Commission & Brokerage Exps</i>	<i>35,211,000</i>
<i>3</i>	<i>Warehousing Chgs</i>	<i>13,800</i>
<i>4</i>	<i>Annual Maintenance Chgs - IT</i>	<i>60,833</i>
<i>5</i>	<i>Outside Services - Others</i>	<i>353,040</i>
<i>6</i>	<i>Printing & Stationery Exps</i>	<i>3,000</i>
<i>7</i>	<i>Travel Exps - Local -</i>	<i>45,000</i>

	Conveyance	
		35,810,173

5.2. The assessee also submitted that out of the total commission and brokerage expenses of Rs.3,52,11,000/- a sum of Rs.3,50,00,000/- represents provision made as on 31/03/2013 which was duly written back in subsequent year and credited to profit and loss account and offered to tax by the assessee voluntarily in the return of income in A.Y.2014-15 and that the rate of tax being the same in both A.Y.2013-14 as well as in A.Y.2014-15. The ld. CIT(A) deleted the disallowance made by the ld. AO both under normal provisions of the Act as well as in the computation of book profits u/s.115JB of the Act.

5.3. Before us, the ld. DR vehemently argued that the assessee had made a provision on an estimated basis and the said expenditure had not crystalized into an ascertained liability during the year and that the provision has been made only as a contingent liability in the books with an intent to reduce the profitability of the year of the assessee. He argued that the ld. CIT(A) had granted relief to the assessee on the premise that the said provision has been reversed by the assessee voluntarily in the subsequent year and duly offered to tax and hence, there cannot be any double taxation. The ld. DR vehemently argued that correct income should be taxed in the correct assessment year.

5.4. At the outset, there is no dispute that assessee had made provision for certain expenses on an estimated basis during the year and claimed the same as deduction in the return of income. But we find from the perusal of the order of the ld. CIT(A) that there is a proper reasoning for the same. We find that assessee is a subsidiary of Edelweiss Financial Services Limited (EFSL) which is a company listed on Bombay Stock Exchange. Being a listed company, the EFSL needs to file its consolidated audited financial statements (i.e. including the financial results of subsidiary company) with Bombay Stock Exchange (BSE) as directed by the Securities Exchange Board of India (SEBI). In order to meet the said criteria, the subsidiary companies (including the assessee) get statutory audits done by the end of April or by second week of May. For getting the financial statements audited within the above period, the assessee freezes its computerized books of accounts by the end of April and while freezing the books of accounts it records the all accrued income, expenses, liabilities and assets.

5.5. In case of the expenses, the assessee records the actual expenses on the basis of bills received. In case, the assessee has not received the bills, it makes the estimate of expenses on reasonable and scientific basis and accounts the same in the books. Subsequently, on receipt of the bill, the assessee accounts the actual bill and reverses the entry passed on the basis of estimation. By reversing the estimated entry, the assessee increases its income and by accounting the actual bills, the assessee reduces the income to the extent of actual expense only. Thus, there is no impact on the taxable income of the assessee considering the practice followed, year on year. This is the practice followed by the assessee, year on year and a disclosure to this effect has also been made in the audited financial statements which reads as under:

"1.2 Use of estimates:

*The preparation of the financial statements in the conformity with the generally accepted accounting principles requires the management to make estimates and assumption that effect the reported amount of assets, liabilities, revenues and expenses and disclosure of contingent liabilities as on the date of the financial statements. **Actual result may differ from the estimates. Any revision to the accounting estimates is recognized prospectively in current and future periods**"*

5.6 The above accounting principle followed by the assessee is duly supported by the Accounting Standard (AS) 29 issued by the Institute of Chartered Accountants of India (ICAI). Thus, the provision made by the assessee are on estimate basis which is duly required by the AS issued by the ICAI which by virtue of section 211 of the Companies Act, 1956 mandatorily have to be followed by the Companies. Therefore, the Id AR submitted that the expenses booked by the assessee on the basis of estimation are duly allowable; hence, the disallowance thereof made by the AO shall be deleted.

5.7. We also find that this manner of making provision for expenses has been duly approved by the Hon'ble Supreme Court in the case of *Bharat Earth Movers vs CIT* reported in 245 ITR 428 (SC). It is also not in dispute that the assessee had duly reversed the said provision in A.Y.2014-15 and 2015-16 and had offered to tax as other income reflected in the profit and loss account of the assessee and hence taxing the very same provision for expenses in this year would result in double taxation. This practice has been consistently followed by the assessee over the years which has been accepted by the Revenue. It is also a fact that assessee being a subsidiary of Edelweiss Financial Services Ltd., which is a listed company had to get its accounts audited on or before 31st May from the end of the accounting year in order to submit the balance sheet to the stock exchange in accordance with listing norms. The audited financial statements of the assessee company has been signed on 14th May 2013, for which purpose, obviously accounts need to be frozen at least by the end of April. Hence, for the purpose of freezing of accounts, expenses and income that had accrued need to be provided atleast on estimated basis and based on past practices prevailing in the company. The assessee company does not have a luxury to wait for the receipt of actual bills from the concerned parties after the end of the financial year. Since assessee could not adopt 'wait and watch approach' and had to necessarily make provision for certain expenses on an estimated basis based on past practices to finalize its accounts, the provision made thereon cannot be treated as an unascertained liability or liability which is contingent in nature. In view of the same, we find that the Id. CIT(A) had rightly deleted the disallowance on which, we do not find any infirmity. Accordingly, the ground Nos. 5 & 6 by the Revenue are dismissed."

14.2. Hence, we direct the Id. AO to allow the deduction for the said provision for expenses both under normal provisions as well as in the

computation of book profits u/s.115JB of the Act. Accordingly, the ground Nos.3 & 4 raised by the assessee are allowed.

15. The ground No.5 raised by the assessee is seeking TDS credit. This ground is similar to ground No.3 raised by the assessee for A.Y.2014-15 and hence, the decision rendered thereon shall apply mutatis mutandis for this assessment year also.

16. The ground No.6 raised by the assessee was stated to be not pressed at the time of hearing by the Id.AR and hence the same is reckoned as statement made from the Bar and dismissed as not pressed.

17. In the result, appeal of the assessee for A.Y.2012-13 is partly allowed for statistical purposes.

18. TO SUM UP:-

All the appeals of the assessee are partly allowed for statistical purposes

Order pronounced on 25/08/2022 by way of proper mentioning in the notice board.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 25/08/2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai