IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) AND
MS KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 2508/MUM/2021
Assessment Year: 2016-17
&
ITA No. 2509/MUM/2021
Assessment Year: 2017-18
&
ITA No. 2512/MUM/2021
Assessment Year: 2018-19

Asstt. Commissioner of Income Tax, Central Circle-4(2), Room No. 1918, 19th floor, Air India Building, Nariman Point, Mumbai-400021.	**Vs.**	M/s Shoppers Stop Limited, 5th Floor, Umanag Tower, Malad Link Road, Mindspace, Malad (West), Mumbai-400064. **PAN No. AABCS 4383 A**
Appellant		**Respondent**

Revenue by	:	Mr. Kailash Kanojia, CIT-DR
Assessee by	:	Ms. Aarti Sathe & Aasavari Kadam, ARs
Date of Hearing	:	23/08/2022
Date of pronouncement	:	28/09/2022

ORDER

PER OM PRAKASH KANT, AM

These three appeals by the Revenue are directed against three separate orders, each dated 24.06.2021, passed by the Ld.

Commissioner of Income-tax (Appeals)-52, Mumbai, for assessment years 2016-17; 2017-18 & 2018-19 respectively. In these appeals, identical grounds have been raised except change of amount, therefore, these appeals were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

2. At the outset, the Ld. Departmental Representative (DR) pointed out that all these appeals have been filed with a delay of 122 days. The Ld. DR submitted that this period of delay is covered by the decision of Hon'ble Supreme Court in **Miscellaneous Application No. 665 of 2021 in SMW(C) No. 3 of 2020**, wherein the period from 15.03.2020 till 28.02.2022 shall stands excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of judicial or quasi judicial proceedings. Further, it is held that in case where limitation would have expired during the period of 28.02.2022, notwithstanding actual balance

period of limitation remaining all persons shall have limitation period of 90 days from 01.03.2022 and in the event, the actual balance of limitation remaining w.e.f. 01.03.2022 is greater than 90 days, that longer period shall apply.

3. The Ld. AR did not object seriously to the application for condonation of the delay in filing the appeal by the Revenue.

4. We have heard rival submissions of the parties on the issue of condonation of the delay. In view the decision of the Hon'ble Supreme Court in Miscellaneous Application (supra), the appeal filed is within limitation and accordingly same is admitted for adjudication.

4.1 As identical grounds have been raised by the Revenue in all the three appeals, for brevity, the grounds of appeal for assessment year 2016-17 are only reproduced as under :

1. *"Whether, on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the disallowance us 14A of the IT Act to the extent of exempt income received by the assessee during the year under consideration without appreciating the Circular No.S of 2014 dated 11.02.2014 of CBDT."*
2. *"Whether, on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of disallowance us 14A of the IT Act t the book profit of the assessee without appreciating the clause (f) of explanation 1 to section 115/8(2) of the Income Tax Act."*
3. *"Whether, on the facts and circumstances of the case and in law. Ld. the CIT(A), was justified in directing the AO to delete the addition of Rs.2,86,37,549 being income u/s 5 of the IT Act."*
4. *"Whether, on the facts and circumstances of the case and in law, the Ld. CIT(A), was justified in directing the AO to delete the addition of Rs.2,86,37,549 even when the assessee neither passed any resolution of non-charging of interest to the borrower company but only passed the resolution for the provision for impairment of loan (i.e. Rs.2486.40 lacs) nor made any provision of bad debt in its financial statement.*
5. *"Whether, on the facts and circumstances of the case and in law, the Ld. CIT(A), was justified in directing the AO to delete the addition of Rs.2,86,37,549/- on the basis of the resolution passed by the assessee company about non-charging of interest on loan."*
6. *"Whether, on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in not taking the cognizance of*

the fact that the borrowing company is 100% subsidiary of the assessee company and the principle of the arms length is not followed."

7. *"Whether, on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition made u/s 5 of the Income tax act, in the computation of Book profits u/s 1151B of the Income tax act, 1961, while the profits accrued to the assessee ought to be included in the computation of book profits u/s 1151B of the Income Tax act, 1961."*

5. Briefly stated, facts of the case are that assessee is engaged in the business of retailing of variety of household and consumer products. In the case of the assessee, a search was carried by the Investigation Wing of Income-tax Department on 30.11.2017 u/s 132 of the Income-tax Act, 1961 (in short 'the Act') along with other cases of 'K Raheja Group', the assessment for assessment year 2015-16 and 2016-17 have been completed u/s 153A r.w.s. 143(3) of the Act on 23.12.2019 and 27.12.2019 respectively. The assessment for AY 2018-19 has been completed u/s 143(3) of the Act on 27.12.2019. In all the three assessments, one of the disallowance made is u/s 14A of the Act. It was contested by the assessee that

there was no exempt income and therefore no disallowance should have been made in view of various judicial decisions relied by the assessee. However, the Ld. Assessing Officer following Rule 8D of the Income-tax Rules, 1962 made the disallowance. The said disallowance have been deleted by the Ld. CIT(A) in all the three years.

5.1 In assessment year 2016-17, the assessee challenged the disallowance mainly on three grounds. Firstly, no satisfaction has been recorded by the Ld. Assessing Officer. Secondly, merely because expenditure was debited to profit and loss account does not entitle for disallowance u/s 14A. Thirdly, no disallowance u/s 14A of the Act should have been made if no exempt income was earned. The Ld. CIT(A) in assessment year 2016-17 deleted the addition observing as under :

> *"5.7 In view of the aforesaid decision of Hon'ble Madras High Court in the case of Chettinad Logistics P Ltd (supra) and the decision of the*

Bombay High Court in the case of Nirved Traders, the disallowance made by the AO us 14A cannot exceed the tax-exempt income earned during the relevant year. It is noted that the appellant has not earned any tax-exempt income during the year. As such, no disallowance could have been made under section 14A. It is also noted that the case of the assessee is also squarely covered by the decision of ITAT in its own case. The addition made by the A by resorting to Rule 8D is, therefore, directed to be deleted."

5.2 Further, the Ld. CIT(A) held that since disallowance u/s 14A was deleted in respect of regular provisions and therefore, no adjustment was to be made u/s 115JB for computation of book profit. The relevant finding of the Ld. CIT(A) is reproduced as under:

"5.8 The adjustment made by the AO to the book profits computed u/s 115JB relying on computation u/s 14A does not survive once the computation of disallowance u/s 14A is deleted."

6. Before us, the Ld. Counsel of the assessee submitted that issue-in-dispute raised in ground No. 1 & 2 of the present appeals are covered in favour of the assessee by the order of the Tribunal in the case of the assessee for AY 2008-09 and subsequent assessment years. The relevant finding of the decision of the Hon'ble Tribunal in

the case of the assessee for 2008-09 in ITA No. 1753/Mum/2012 is reproduced as under:

> *"7.We have heard the rival submissions and perused the material before us.We find that assessee had not claimed any deduction in respect of exempt income nor has it claimed any expenditure against the income which does not form part of the total income.Thus, both the basic ingredients for making a disallowance u/s.14A are missing.Secondly,the fund flow statement made available to the FAA,during the appellate proceedings,clearly show that it had sufficient own funds to make investments(Pg-1 of the PB).The FAA has admitted that funds available to the assessee were more than the investments made during the year under consideration. Therefore, in our opinion there was no justification for making disallowance as per the provisions of section 14A r.w.r 8D of the Rules. Considering all these factors we are of the opinion that the FAA was not justified in upholding the order of the AO. Hence, reversing his order we decide the effective ground of appeal in favour of the assessee."*

6.1 Further, the relevant para of the order of the Tribunal for AY 2014-15 is also reproduced as under :

> *"9. The assessee has raised identical ground of appeal as raised in appeal AY 2013-14, which we have allowed. Therefore, following the rule of consistency, the appeal for AY 2014-1 is allowed with similar direction. To make it more clear the Assessing Officer directed to*

restrict the disallowance u/s 14A to suo-moto disallowance of ₹7,05,027/- offered by assessee."

6.2 Further, the Ld. Counsel of the assessee submitted that Hon'ble Delhi High Court in the case of **PCIT v. Era Infrastructure (India) Ltd. ITA No. 204/2022 & CM APPL. 31445/2022** has held that amendment made to Finance Act, 2022 to section 14A of the Act has been held prospective. For ready reference, relevant amendment to section 14A of the Act is reproduced as below:

"Amendment of section 14A.

In section 14A of the Income-tax Act. -

(a) in sub-section (1), for the words "For the purposes of", the words "Notwithstanding anything to the contrary contained in this Act, for the purposes of" shall be substituted;

(b) after the proviso, the following Explanation shall be inserted, namely:-

"[Explanation.-For the removal of doubts, it is hereby clarified that notwithstanding anything to the contrary contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where the income, not forming part of the total income under this Act, has not accrued or arisen or has

not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income."

6.3 The relevant finding of the Hon'ble Delhi High Court (supra) is reproduced as under:

"8. Consequently, this Court is of the view that the amendment of Section14A. which is "for removal of doubts" cannot be presumed to be retrospective even where such language is used, if it alters or changes the law as it earlier stood.

9. Though the judgment of this Court has been challenged and is pending adjudication before the Supreme Court, yet there is no stay of the said judgment till date. Consequently, in view of the judgments passed by the Supreme Court in Kunhayammed and Others vs. State of Kerala and Another, (2000) 6 SCC 359 and Shree Chamundi Mopeds Lid. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras (1992) 3 SCC 1, the present appeal is dismissed being covered by the judgment passed by the learned predecessor Division Bench in PCIT vs. IL & FS Energy Development Company Ltd (supra) and Cheminvest Limited vs. Commissioner of Income Tax-VI, (2015) 378 ITR 33.

10. Accordingly, the appeal and application are dismissed. However, it is clarified that the order passed in the present appeal shall abide

by the final decision of the Supreme Court in the SLP filed in the case of PCIT vs. IL & FS Energy Development Company Ltd (supra).”

6.4 In view of the above discussion, respectfully following the finding of the Tribunal in the case of the assessee as well as finding of the Hon’ble Delhi High Court in the case of Era Infrastructure (India) Ltd. (supra), we do not find any error in the order of the Ld. CIT(A) on the issue-in-dispute and accordingly, we uphold the same. The ground No. 1 and 2 of the appeal in respect of all three appeals are dismissed.

6.5 The ground No. 3 to 7 relates to the addition of income u/s 5 of the Act under regular provisions as well as under provisions of section 115JB of the Act. The facts in brief qua the issue-in-dispute are that the assessee company being a holding company advanced certain sum to its subsidiary specifying rate of interest @ 12.5 per cent per annum. However, the subsidiary went into deep losses and discontinued to pay the interest, accordingly, the assesee company

also discontinued to credit accrual of interest on said advances, it was the contention of the assessee that net worth of the subsidiary company was negative and it was unable to pay back its liability and therefore, assessee discontinued to accrue the interest on said advances. The Ld. AO reject the contention of the assessee and made addition of ₹2,86,37,549/- for AY 2016-17, observing as under:

> *"8.2.1 During the year under consideration, the assessee company has not charged interest on the Inter-corporate Deposit given by it to its subsidiary company. This decision of the assessee does indicate any business exigency. it gathered from the record that the borrower before passing the resolution of non-payment of interest to its money lender i.e. the assessee in the instant case, didn't take any consent of the holding company i.e. the assessee in the instant case. Thus, the borrower unilaterally passed the resolution for nonpayment of interest. The assessee claims that it passed a Board Resolution for not charging interest from 01/01/2009. However, in the resolution passed by the assessee, there is only mention of the closure of the borrower company but there is no mention of non-charging the interest. Moreover, before passing the resolution by the money lending company, the money borrowing company had already passed the resolution of not paying interest. This is also beyond imagination as to how a borrowing company can pass a resolution about not paying any interest when the terms and conditions for giving a loan*

is determined by a money lending company and not by a money borrowing company. If a money lending company passes a resolution about not charging interest that makes sense but in the instant case borrowing company passed a resolution about not paying interest which does not make sense.

8.2.2 Furthermore, this is not a case of commercial expediency or business exigency for not charging interest for the year. The financial condition of the subsidiary company Gateway were clearly known to the assessee company, then this type of subsequent arrangement cannot absolve the assessee company to charge interest in its Profit and Loss A/c on account of such interest free advances. The initial intention of the company is important in deciding the issue.

8.2.3 It worth to mention here that merely insolvency of the borrower company would not entitle it not to pay any interest to the company it received loans and advances. On the contrary, besides winding up, the borrower company should repay all the loans owed by it.

8.2.4 Further, the borrower company didn't cite any reason for the resource crunch before winding itself even when its turnover was multiplying leaps and bound year-by-year and its liabilities were decreasing accordingly.

8.2.5 It is pertinent to mention here that if the assessee's intention was of non-charging of interest on its loans given, it could have made the provision for bad-debt in its financial statement which has not been done. Moreover, on the same issue in the assessee's case, the Ld. CIT(A) had dismissed the assessce's appeal for A.Y. 2009-10.

8.2.6 If the assessee would not have advanced such loan, the assessee would have less liability of its own loan and that way also the assessee would have paid less amount of interest on its loan. This action of the assessee has direct bearing on its taxable income & tax thereof.

8.3 In view of the fact mentioned above, the submission of the assessee is not accepted. The average rate of ICD during FY 2015-16 is @ 12.50 %, the same interest rate would be applicable for current year. Accordingly, the interest that has been absolved would be taken in the term of the real income of the assessee and added to the total income of the assessee, such interest income of the assessee is computed as under:-

Month	**Opening balance**	**Amount Received**	**Closing Balance**	**Rate of Interest P.A.**	**Interest P.M.**
Apr-15	22,91,00,38	-	22,91,00,388	12.5	23,86,462
May-15	22,91,00,38	-	22,91,00,388	12.5	23,86,462
Jun-15	22,91,00,38	-	22,91,00,388	12.5	23,86,462
Jul-15	22,91,00,38	-	22,91,00,388	12.5	23,86,462
Aug-15	22,91,00,38	-	22,91,00,388	12.5	23,86,462
Sep-15	22,91,00,38	-	22,91,00,388	12.5	23,86,462
Oct-15	22,91,00,38	-	22,91,00,388	12.5	23,86,462
Nov-15	22,91,00,38	-	22,91,00,388	12.5	23,86,462
Dec-15	22,91,00,38	-	22,91,00,388	12.5	23,86,462
Jan-16	22,91,00,38	-	22,91,00,388	12.5	23,86,462
Feb-16	22,91,00,38	-	22,91,00,388	12.5	23,86,462
Mar-16	22,91,00,38	-	22,91,00,388	12.5	23,86,462
Total					**2,86,37,549**

Accordingly, an amount of ₹2,86,37,549/- is considered as real income of the assessee within the provision of section 5 of Income Tax Act, 1961 and to the total income of the assessee.

6.6 The Ld. CIT(A) in assessment year 2016-17 following the decision of the Tribunal in earlier years decided the issue in favour of the assessee observing as under:

> *"6.3 The assessee has made elaborate submissions on the issue. However, it is noted that this is a repetitive issue and Hon'ble Mumbal Tribunal has ordered the matter in favor of the of the appellant company for AY 2009-10, AY 2010-11. AY 2012-13, AY 2013-14 & AY 2014-15. The observations of the ITAT while dealing with the issue for AY 2014-15 are reproduced below:*
>
> > *"14. We have considered the submission of both the parties and gone through the order of lower authorities. The Assessing Officer made addition on account of presumptive basis under section 5 on advances made by assessee to its subsidiaries. The Assessing Officer computed the disallowance/addition of Rs. 2.86 crore. We have noted that the assessee advanced the money to its subsidiary, which falls under the business expediency. Therefore, in the present case that the assessee advances to its subsidiary for business requirements, which may have impact on the objectives of the assessee for earning future revenue to the assessee. When it made in relation to advances. Though, it is another fact that the business of such nature did not materialized in positive outcome and the subsidiary had to close such business operation. The Hon'ble Supreme Court in S.A. Builders (288/TR 1 SC) held that whether expenditure may not have*

been incurred under any legal obligation, yet it is allowable as a business expenditure if it was incurred on grounds of commercial expediency. The case of the assessee is that the assessee has made advances to its subsidiary for business expediency. Therefore, considering the decision of Hon'ble Supreme Court in SA Builder (supra), we do not find any infirmity in the order passed by Id. CIT(A). Even otherwise the Id. CIT(A) deleted the entire addition by following the decision of his predecessor in appeal for A. Y. 2010-11 & 2012-13.

15. No contrary fact or law to take other view is brought to our notice to take other view, nor any variations in facts brought to our notice. Therefore, we do not find any merit in the grounds of appeal raised by revenue."

6.7 Identical findings have been given by the Ld. CIT(A) in respect of AY 2017-18 & 2018-19 on the issue-in-dispute.

7. We have heard rival submissions of the parties on the issue-in-dispute and perused the relevant material on record. We note that the Ld. CIT(A) has adjudicated the issue following the binding precedent on the issue-in-dispute and therefore we do not find any error in the order of the Ld. CIT(A) on the issue-in-dispute in all the

three assessment years involved. Accordingly, the grounds No. 3 to 7 raised in all the three appeals are dismissed.

8. In the result, all the three appeals of the Revenue are dismissed.

Order pronounced in the open Court in 28/09/2022.

Sd/-	**Sd/-**
(KAVITHA RAJAGOPAL)	**(OM PRAKASH KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai;
Dated: 28/09/2022
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

BY ORDER,

//True Copy//

(Sr. Private Secretary)
ITAT, Mumbai