

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT  
AND  
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA No.908/Del/2012  
Assessment Year: 2005-06

**AND**

ITA No.909/Del/2012  
Assessment Year: 2006-07

ACIT, Circle-4(1), New Delhi	<b>Vs.</b>	M/s. Jay Bharat Maruti Ltd., 601, Hemkunt Chamber, 89-Nehru Place, New Delhi
<b>PAN :AAACJ2021K</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

**AND**

C.O. No.113/Del/2012  
[Arising out of ITA No.908/Del/2012]  
Assessment Year: 2005-06

**AND**

C.O. No.114/Del/2012  
[Arising out of ITA No.909/Del/2012]  
Assessment Year: 2006-07

M/s. Jay Bharat Maruti Ltd., 601, Hemkunt Chamber, 89-Nehru Place, New Delhi	<b>Vs.</b>	ACIT, Circle-4(1), New Delhi
<b>PAN :AAACJ2021K</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

**AND**

ITA No.4672/Del/2011  
Assessment Year: 2005-06

M/s. Jay Bharat Maruti Ltd., Neel House, Lado Sarai, Opp. Qutab Minar, Mehrauli, New Delhi	<b>Vs.</b>	ACIT, Circle-4(1), New Delhi
<b>PAN :AAACJ2021K</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

**AND**

ITA No.2180/Del/2017  
Assessment Year: 2012-13

M/s. Jay Bharat Maruti Ltd., 601, Hemkunt Chamber, 89, Nehru Place, New Delhi	<b>Vs.</b>	DCIT, Circle-13(2), New Delhi
<b>PAN :AAACJ2021K</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

**AND**

ITA No.1885/Del/2017  
Assessment Year: 2012-13

DCIT, Circle-13(2), New Delhi	<b>Vs.</b>	M/s. Jay Bharat Maruti Ltd., 601, Hemkunt Chamber, 89, Nehru Place, New Delhi
<b>PAN :AAACJ2021K</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. R. Shantanam, Advocate Sh. Naveen Kathpal, CA Sh. Sunil Bansal, AR
Respondent by	Ms. Anupama Singla, Sr. DR

Date of hearing	31.08.2022
Date of pronouncement	29.11.2022

**ORDER**

**PER SAKTIJIT DEY, JM:**

Captioned appeals and cross-objections arise out of three separate orders of learned Commissioner of Income Tax (Appeals), New Delhi, pertaining to assessment years 2005-06, 2006-07 and 2012-13.

**ITA No.908/Del/2012**  
**(Revenue's Appeal for AY: 2005-06)**

2. The effective grounds raised by the Revenue in this appeal are as under:

2. *On the fact and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition of Rs.6,68,43,636/- made on account of depreciation on leased assets.*
3. *The Ld. CIT(A) ignored the finding recorded by the AO that the assessee had already debited Rs.19,82,97,000/- on account of lease rent in P & L account and therefore, the deduction claimed by the assessee at Rs.6,68,43,636/- needed to be disallowed.*
4. *The Ld. CIT(A) has appreciated the facts that the Assessing Officer did not give any finding in respect of allowability of lease rentals in earlier assessment years and that the Principle of Res-Judicata is not applicable as every proceeding is a separate proceeding.*

3. As could be seen from the grounds raised, the only issue arising for consideration is deletion of addition of Rs.6,68,43,636/- representing deduction claimed by the assessee towards rental of leased assets.

4. Briefly the facts are, the assessee is a resident corporate entity. As stated by the Assessing Officer, the assessee is engaged in manufacturing of sheet metal components, fuel neck, rear axle assemblies, sub-assemblies and muffler assemblies & components. For the assessment year under dispute, the assessee

filed its return of income on 31.12.2007 declaring income of Rs.8,16,16,740/-. The assessment in case of the assessee was originally completed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act') determining the total income at Rs.9,47,96,215/-. Subsequently, based on audit objection, the Assessing Officer reopened the assessment under section 147 of the Act. The reason being, though, the assessee had already debited an amount of Rs.19,28,97,000/- to the profit and loss account on account of lease rent, the assessee has again claimed deduction for an amount of Rs.6,68,42,636/- on account of lease rent paid on leased assets. According to the Assessing Officer, this amounted to double deduction claimed by the assessee towards lease rent. In course of reassessment proceeding, the Assessing Officer issued a show-cause notice to the assessee to explain, why the deduction claimed towards payment of lease rent amounting to Rs.6,68,43,636/- to State Bank of India should not be disallowed. In response to the show-cause notice, the assessee submitted that the lease rent of Rs.19,28,97,000/- debited to the profit and loss account was on assets taken on lease prior to 01.04.2001. Whereas, the assessee submitted, the lease rent of Rs.6,68,42,636/- was on assets taken on lease after 01.04.2001.

Explaining further, the assessee submitted that as per accounting standard AS-19 introduced, w.e.f., 01.04.2001 in case of Finance lease the lessee has to recognized it as capital asset and liability towards depreciation and finance charge is charged in the profit and loss account in place of lease rent in accordance with Companies Act provision. However, for Income tax purpose the depreciation and finance charge debited to the profit and loss account is audited back in the computation of income and deduction is claimed under section 37 of the Act towards payment of lease rental. Thus, the assessee submitted that there is no double deduction claimed by the assessee, as, both the amounts are distinct and separate. The Assessing Officer, however, was not convinced with the submission of the assessee and disallowed the deduction claimed towards lease rental amounting to Rs.6,68,43,636/-. The assessee contested the aforesaid disallowance before learned first appellate authority. After considering the submissions of the assessee in the context of facts and materials on record, learned Commissioner (Appeals), being convinced that the deduction claimed of Rs.6,68,43,636/- towards lease rental is distinct and separate from the lease rental of Rs.19,28,97,000/-, deleted the disallowance. While doing so, he

took note of the fact that in assessment years 2002-03, 2003-04 and 2004-05, the assessee claimed similar deduction of lease rental in respect of assets leased prior to 01.04.2001 and post 01.04.2001 and the Assessing Officer allowed such deduction.

5. We have considered rival submissions and perused materials on record. As could be seen from the facts on record, the assessee had taken assets on lease from banks and financial institutions. For assets taken on lease prior to 01.04.2001, the assessee debits the lease rentals paid to banks and financial institutions in the profit and loss account. However, for assets taken on lease from State Bank of India post 01.04.2001 the assessee apportioned the lease rental paid to SBI to finance charges and depreciation and debited to the profit and loss account. The assessee had to resort to this accounting treatment in view of introduction of accounting standard AS-19, which provided that in respect of lease assets obtained after introduction of AS-19, the lease rental has to be apportioned between finance charge and depreciation and debited to the profit and loss account. However, as per the provisions of Income Tax Act as well as legal position, it is the lessor, being the owner of the leased assets, can claim depreciation on the leased assets. The assessee

being a lessee cannot claim depreciation on the leased assets. Thus, in view of the aforesaid legal position, though, the assessee had debited the leased rentals as finance charges and depreciation to the profit and loss account, however, for Income Tax purpose, while computing the income in the computation of income, the assessee has added back the amount debited to the profit and loss account and claimed deduction of the very same amount towards leased rentals paid, under section 37(1) of the Act. From the facts on record, it is very much clear that the amount of Rs.19,20,97,309/- debited to the profit and loss account towards leased rental is for assets taken on lease prior to 01.04.2016. Whereas, the amount of Rs.6,68,43,636/- claimed as deduction under section 37(1) of the Act is towards lease rental paid for assets taken on lease after 01.04.2001. Learned Commissioner (Appeals) has given a categorical factual finding that both the amounts have been shown separately by the assessee to ensure that the leased assets taken before 01.04.2001 and after 01.04.2001 are not mixed up. The aforesaid factual finding of learned Commissioner (Appeals) could not be controverted by Revenue with any cogent evidence.

6. On the contrary, it appears, the Assessing Officer has completely misconceived the facts while disallowing the deduction claimed, by wrongly assuming that the assessee has claimed deduction twice. The aforesaid conclusion of the Assessing Officer is factually incorrect. It will be relevant to observe, the Assessing Officer himself has allowed similar deduction claimed by the assessee in various other assessment years, such as, assessment years 2002-03, 2003-04, 2004-05 and 2007-08. It will be interesting to note the following observations of the Assessing Officer while dealing with identical issue in assessee's own case in assessment year 2007-08:

*“.....The reply filed by the assessee is considered and after due consideration the contention of the assessee appears to be correct as it is found that lease rental claimed for 10.64 lacs was on account of lease taken on assets before 01.04.2001 and further a sum of 296.24 lacs claimed in computation of income is in respect of lease rental after the period 01.04.2001 and accordingly deprecation on lease rent of 274.20 lacs and interest on lease assets of 8,72 lacs aggregating to 282.92 lacs (debited in Profit & Loss Account) has been added in computation of income as per A5-1.9. Further, reliance is also placed on ICDS Ltd. vs. CIT, Mysore (2013) 29 Taxrnan.com 129 (SC) wherein it was categorically held that the lessor i.e. owner of the asset is entitled to claim depreciation in respect of assets which are leased out. Thus, in the case of assessee who is a lessee is not entitled to claim depreciation or interest but only lease rental as the said depreciation is entitled to be claimed by the lessor.....”*

7. Undisputedly, the assessee has followed identical practice in the impugned assessment year, as well, while claiming deduction in respect of lease rental for assets taken on lease prior to 01.04.2001 and post 01.04.2001. This, being the factual position emerging on record, we do not find any valid reason to interfere with the decision of learned Commissioner (Appeals) on the issue. Grounds raised are dismissed.

8. In the result, the appeal is dismissed.

**C.O. No.113/Del/2012**  
**(Assessee's Cross Objections for AY: 2005-06)**

9. In the cross-objection, the assessee has taken grounds challenging the validity of reopening of assessment under section 147 of the Act. In view of our decision in Revenue's Appeal being ITA No. 908/Del/2012 above, the cross-objection has become infructuous, hence, dismissed.

**ITA No.909/Del/2012**  
**(Revenue's Appeal for AY: 2006-07)**

10. The effective grounds raised by the Revenue are as under:

*"2. On the fact and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition of Rs.6,68,43,6361- made on account of depreciation on leased assets.*

3. *The Ld. CIT(A) ignored the finding recorded by the AO that the assessee had already debited Rs.19,82,97,0001- on account of lease rent in P & L account and therefore, the deduction claimed by the assessee at Rs.6,68,43,6361- needed to be disallowed.*
4. *The Ld. CIT (A) has appreciated the facts that the Assessing Officer did not given any finding in respect of allowability of lease rentals in earlier assessment years and that the Principle of Res-Judicata is not applicable as every proceeding is a separate proceeding.*
5. *On the fact and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting addition of Rs.44,45,3631- pm account of trial run expenses as the trial run expenses will give the assessee the benefit of enduring nature and thus need to be capitalized.”*

10. Ground nos. 2, 3 and 4 are identical to ground nos. 2, 3 and 4 of ITA No.908/Del/2012 decided in the earlier part of the order. Following our decision therein, we uphold the order of learned Commissioner (Appeals) on the issue. These grounds are dismissed.

11. In ground no. 5, the Revenue has challenged the deletion of addition of Rs.44,45,363/- claimed by the assessee towards trial run expenses.

12. Briefly the facts are, in course of assessment proceeding, the Assessing Officer noticed that the amount of Rs.44,45,363/- on account trial run expenses, though, were capitalized in the books but claimed as deduction in computation of income. Being of the

view that the expenditure is of capital nature, the Assessing Officer called upon the assessee to explain, why the deduction claimed should not be disallowed. The assessee furnished its explanation objecting to the proposed disallowance. However, rejecting the submissions of the assessee, the Assessing Officer proceeded to disallow the amount by treating it as an expense incurred prior to commencement of commercial production, hence, capital expenditure. The assessee contested the aforesaid disallowance before learned Commissioner (Appeals). After considering facts and materials on record and being convinced with the submissions of the assessee, learned Commissioner (Appeals) deleted the disallowance.

13. We have considered rival submissions and perused the materials on record. It is evident, in response to the query raised by the Assessing Officer, the assessee had specifically submitted that the expenditure was incurred towards payment to a Japanese entity for sending their engineers for supervising the Swift Rear Axle Line after the start of production. It was further explained that the entire amount consists of travelling as well as hotel and other expenses of the engineers during their stay in India. In sum and substance, the assessee has submitted that,

though, the expenditure was nomenclatured as trial run expenses, however, in reality the expenditure was after start of production of new production line, hence, in the nature of post production expenditure, hence, is allowable as deduction under section 37 of the Act.

14. In our view, the Assessing Officer has failed to appreciate the factual position correctly. Whereas, learned Commissioner (Appeals) having taken note of the fact that the expense incurred was towards travelling and hotel expenses as well as supervision charges of foreign technicians who visited to inspect the production line, was convinced that the expenditure incurred was post commencement of production, hence, deleted the disallowance. No contrary material has been brought on record by the Revenue to demonstrate that the nature of expenditure is not relating to travel and other expenses of foreign technicians who visited India to supervise the production, hence, is post production expenditure.

15. In view of the aforesaid, we do not find any reason to interfere with the decision of learned Commissioner (Appeals). This ground is dismissed.

16. In the result, the appeal is dismissed.

**C.O. No.114/Del/2012**

**Assessee's Cross Objections for AY: 114/Del/2012**

17. In the cross-objection, the assessee has taken grounds challenging the validity of reopening of assessment under section 147 of the Act. In view of our decision in Revenue's Appeal being ITA No. 909/Del/2012 above, the cross-objection has become infructuous, hence, dismissed.

**ITA No.4672/Del/2011**

**Assessee's Appeal for AY: 2005-06**

18. In this appeal, the assessee has challenged the decision of learned Commissioner (Appeals) in upholding the imposition of penalty under section 271(1)(c) of the Act in respect of addition/disallowance of capital loss.

19. Briefly the facts are, in course of assessment proceedings, the Assessing Officer noticed that the assessee had claimed short term capital loss of Rs.11,16,769/- by considering the market value of the investment at the end of the year. The Assessing Officer was of the view that since the redemption/sale of the investment has not taken place, the loss claimed by the assessee is in the nature of a notional loss, hence, not allowable in terms of

section 94(7) of the Act. Accordingly, loss claimed was disallowed. Though, the assessee contested the disallowance before the first appellate authority, however, ultimately, he withdrew the ground. In sum and substance, the issue regarding claim of short term capital loss on investment remained undecided before the first appellate authority.

20. Be that as it may, on disallowance of short term capital loss of Rs.11,16,769/- as well some other additions, the Assessing Officer initiated proceeding for imposition of penalty under section 271(1)(c) of the Act alleging furnishing of inaccurate particulars of income and ultimately imposed penalty under the said provision. However, presently, penalty imposed under section 271(1)(c) of the Act is surviving only in respect of disallowance of short term capital loss of Rs.11,16,769/-.

21. Before us, learned counsel appearing for the assessee submitted that since, the assessee withdrew its ground against the disallowance of short-term capital loss before learned Commissioner (Appeals) it cannot be said that the issue was decided against the assessee. Further, he submitted, all facts and materials relating to the claimed of loss was furnished before the Assessing Officer and nothing was concealed. Only because the

assessee made a claim, which was disallowed, it cannot lead to imposition of penalty on the allegation of furnishing of inaccurate particulars of income. He submitted, in regular course, assessee was investing in units of mutual funds and getting dividends. He submitted, prior to 01.04.2005, transaction in purchase and sale of units were not covered by the provision of section 94(7) of the Act. He submitted, this being the first year, wherein, section 94(7) became applicable, the assessee being unaware of the change in law acted bonafide in claiming the loss in the return of income filed for the assessment year under disputed. He submitted, once the assessee became aware of the change in the statutory provisions, it voluntarily offered the income and did not contest the issue. Thus, he submitted, penalty levied should be deleted.

22. Learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

23. We have considered rival submissions and perused the materials on record. As far as the factual aspect of the issue is concerned, there is no dispute that the assessee has claimed short term capital loss of Rs.11,16,769 based on the market value of the units at the end of the year. However, since, there was no

actual transaction of sale, the Assessing Officer disallowed the claim by invoking the provisions of section 94(7) of the Act. Undisputedly, section 94(7)(b) and section 94(8) were introduced to the Statute by Finance Act, 2004, w.e.f. 01.04.2005. Therefore, assessee's claim that being unaware of the change in the statutory provision, which for the first time became applicable to the impugned assessment year, the assessee acted bona fide by claiming short term capital loss, in our view, is believable and the assessee can be given the benefit of doubt in terms of section 273B of the Act. Even, otherwise also, penalty under section 271(1)(c) of the Act has been imposed alleging furnishing of inaccurate particulars of income. However, facts on record reveal that all material facts relating to investments in shares and mutual funds as well as capital gain/loss derived therefrom have been furnished by the assessee before the Assessing Officer. Thus, the assessee has disclosed all material facts in its return before the Assessing Officer. It is a fact on record that various other additions made by the Assessing Officer have been deleted either by the first appellate authority or by the Tribunal. The only addition which survived is the addition on which penalty under section 271(1)(c) of the Act. It is a fact that the assessee, though,

contested the disallowance of short term capital loss before learned Commissioner (Appeals), however, ultimately, he withdrew the ground, being conscious of the legal position. Merely because the assessee withdrew the ground taken before learned Commissioner (Appeals), it cannot lead to the conclusion that the assessee has knowingly and deliberately tried to suppress a part of its income. Thus, on overall consideration of facts and materials on record, we are of the view that penalty imposed under section 271(1)(c) of the Act deserves to be deleted. Accordingly, we do so.

24. In the result, the appeal is allowed.

**ITA No.1885/Del/2017**  
**Revenue's Appeal for AY: 2012-13**

25. The effective grounds raised by the Revenue are as under:

1. *The Ld. CIT (A) has erred in law and on facts in holding the income of Rs.28,92,2000/- as rental income and allowing standard deduction of 30% at Rs.8,67,600/- on the same by ignoring that the industrial shed is neither a building nor land appertent thereto and such industrial shed is not a house property to which section 22 of the Income Tax Act applies.*
2. *The Ld. CIT (A) has erred in law and on facts in deleting the addition of Rs.1,73,27,3731- on account of capitalization of bins by ignoring the fact that bins are inseparable part of plant & machinery and cost of such bins cannot be allowed as revenue expenditure at 100%.*

26. Insofar as ground no. 1 is concerned, briefly the facts are, in course of assessment proceedings, the Assessing Officer while verifying the return filed by the assessee noticed that the rental income of Rs.28,92,000/- received by the assessee from letting out an industrial shed has been offered as income under the head 'income from house property' and the assessee has claimed deduction at the rate of 30% under section 24 of the Act. Being of the view that the property let out was used for the purpose of business or profession of the assessee, the Assessing Officer concluded that the rental income received would not fall in the category of house property income but has to be assessed as income from business. Accordingly, he disallowed assessee's claim of deduction under section 24 of the Act, instead, he allowed depreciation at the rate or 10%. The assessee contested the aforesaid decision of the Assessing Officer before learned Commissioner (Appeals). After considering the submissions of the assessee in the context of facts and materials on record, learned Commissioner (Appeals) accepted assessee's claim and deleted the disallowance made by the Assessing Officer.

27. We have considered rival submissions and perused the materials on record. As could be seen from the facts on record,

the premises from which the assessee derived the rental income was let out to M/s. Neel Metal Products Ltd. from assessment year 2005-06. From assessment years 2005-06 onwards, the assessee is offering the rental income under the head 'income from house property' and assessee's claim has been accepted by the Assessing Officer in assessment years 2005-06 and 2006-07. However, from assessment year 2007-08 onwards, the Assessing Officer treated the rental income as income from business. However, learned Commissioner (Appeals) reversed the decision of the Assessing Officer and allowed assessee's claim of income from house property. It is observed, though, the Revenue challenged the decision of the first appellate authority in assessment years 2005-06, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2013-14 and 2014-15 before the Tribunal, however, due to low tax effect Revenue's appeals were dismissed. Thus, in sum and substance, the decision of learned Commissioner (Appeals) in holding that the rental income received by the assessee is to be assessed as income from house property has attained finality. Since, the claim of the assessee has prevailed in past as well as subsequent assessment years, by applying the rule of

consistency; we hold that no interference is called for on this issue. Ground raised is dismissed.

28. In ground no. 2, the Revenue has challenged deletion of addition of Rs.1,73,27,373/-.

29. Briefly the facts are, in course of assessment proceeding, the Assessing Officer noticed that the assessee has claimed deduction under section 37 of the Act for an amount of Rs.2,66,77,515/- representing replacement of bins capitalized in the books. Noticing that similar claim by the assessee was disallowed by the Assessing Officer in assessment years 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12, the Assessing Officer followed the earlier assessment orders and disallowed the deduction claimed. However, he allowed deduction of 30% on the expenditure claimed on account of depreciation by treating the asset as capital asset. Thus, he made a net disallowance of Rs.73,40,385/-. The assessee contested the aforesaid disallowance before learned Commissioner (Appeals). After considering the submissions of the assessee in the context of facts and materials on record and taking note of the fact that in assessment year 2005-06 similar disallowance was deleted by the

first appellate authority, learned Commissioner (Appeals) deleted the disallowance.

30. We have considered rival submissions and perused the materials on record. Undisputedly, the disputed disallowance has been made in respect of assessee's claim of expenditure incurred on bins and trolleys for storing and supplying automobile parts and components to M/s. Maruti Suzuki Ltd. It appears from facts and record, the bins and trolleys have limited self life of one year or so depending upon the extent of wear and tear or uses. Therefore, no enduring benefit is derived from such assets so as to treat it as capital expenditure. The material facts on record reveal that similar deduction claimed by assessee in assessment years 2002-03, 2003-04 and 2004-05 was accepted by the Assessing Officer in scrutiny assessments. In assessment year 2005-06, though, the Assessing Officer disallowed the expenditure claimed by treating it as capital expenditure, however, learned first appellate authority allowed assessee's claim of deduction and the order of first appellate authority attained finality as Revenue's appeal was dismissed by the Tribunal due to low tax effect. Thus, in sum and substance, the issue has been decided in favour of the assessee by learned first appellate

authority from assessment years 2005-06 till 2014-15. Therefore, applying the rule of consistency, deduction claimed by the assessee has to be allowed. Even otherwise also, the reasonings of learned Commissioner (Appeals) while treating the expenditure incurred as revenue expenditure are sound and reasonable, considering the fact that the bins and trolleys on which the assessee has incurred the expenditure have limited self life due to high degree of wear and tear, hence, cannot be considered to be assets of enduring nature.

31. In view of the aforesaid, we uphold the decision of learned Commissioner (Appeals) on the issue. Ground raised is dismissed.

32. In the result, the appeal is dismissed.

**ITA No.2180/Del/2017**  
**Assessee's Appeal for AY: 2012-13**

33. The only issue arising for consideration is disallowance made under section 14A of the Act read with Rule 8D of the Income-tax Rules, 1962 (in short 'the Rules').

34. Briefly the facts are, in course of assessment proceedings, the Assessing Officer noticed that in the year under consideration the assessee had received exempt income by way of dividend amounting to Rs.5,33,911/-. Whereas, the assessee has

disallowed an amount of Rs.1,19,275/- suo motu, being 0.5% of the average value of investment. The Assessing Officer, however, was not convinced with the disallowance made by the Assessing Officer and was of the view that it is not in accordance with Rule 8D. Having held so, he proceeded to compute disallowance by applying Rule 8D. In the process, he disallowed interest expenses of Rs.10,54,730/- under Rule 8D(2)(ii), in addition, to suo motu disallowance made by the assessee. Though, the assessee contested disallowance before learned Commissioner (Appeals), however, the disallowance was sustained.

35. We have considered rival submissions and perused the materials on record. Undisputedly, during the year under consideration, the assessee had earned exempt income of Rs.5,33,911/-. Whereas, voluntarily the assessee has disallowed an amount of Rs.1,19,275/- under Rule 8D(2)(iii). The suo motu disallowance made under Rule 8D(2)(iii) has been accepted by the Assessing Officer. However, insofar as, the disallowance of interest expenditure under Rule 8D(2)(ii), the assessee specifically submitted that the investments on which the dividend income was earned are old investments and, as such, no expenditure was incurred on them. Whereas, the interest cost relates to term loan,

working capital loan, vehicles loan, cash discount & ECB loan etc., which were exclusively utilized for the purpose of business. The aforesaid explanation of the assessee has not been appreciated by the Assessing Officer and learned Commissioner (Appeals). This, in our view, is unacceptable. When investments, on which, the assessee has earned dividend income are continuing from past years and the interest cost has no linkage with such investments, in our view, no disallowance under Rule 8D(2)(ii) is called for. In any case of the matter, the disallowance made by the Assessing Officer is far in excess of the quantum of exempt income earned by the assessee during the year. As per the settled legal principle, the disallowance under section 14A of the Act cannot exceed the quantum of exempt income.

36. Be that as it may, while rejecting the suo motu disallowance made by the assessee, the Assessing Officer has not recorded any satisfaction as required under section 14A(2) read with Rule 8D(2). It is further relevant to observe, while deciding identical issue in assessee's own case for assessment years 2005-06, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12 and 2013-14, the Coordinate Bench has observed as under:

“5. In assessee's appeal for the Assessment Year 2007 - 08; Cross Objection for Assessment Year 2008-09; and in appeal for the Assessment Year 2009-10, the assessee has challenged disallowance of Section 14A read with Rule 8D, viz., Assessment Year 2007-08 disallowance of Rs.4,28,237/-, Assessment Year 2008-09 disallowance of Rs.7,32,750/- and Assessment Year 2009-10 disallowance of Rs.8,87,866/-. Since the facts and issues in all the appeals are common arising out of identical set of facts, therefore, same were heard together and are being disposed of by way of this consolidated order. In all the Assessing Officer noted that assessee has made investments in equity shares of various companies as well as units of mutual funds on which it has earned dividend income of Rs.5,10,255/- in Assessment Years 2007-08, dividend income of Rs.2,68,280/- Assessment Year 2008-09 and dividend income of Rs.479336/- in the Assessment Year 2009-10 which was claimed exempt. In the return of income the assessee has suo motu disallowed sum of Rs.5103 in the Assessment Year 2007-08; Rs.26,828/- in the Assessment Year 2008-09; and Rs.47,934/- in the Assessment Year 2009-10, which was added back to the income treating the same as expenditure attributable for earning of the exempt income u/s.14A. The Assessing Officer mechanically applied Rule 8D and made disallowance of Rs.4,28,237/- in the Assessment Year 2007-08; Rs.7,32,650/- in the Assessment Year 2008-09; and Rs.8,87,866/- in the Assessment Year 2009-10, which included major amount of disallowance of interest and disallowance of indirect expenditure by taking 0.5% of the average investments. This disallowance has been confirmed by the Ld. CIT(A).

6. Before the authorities below, the submissions of the assessee as incorporated in the impugned orders are that, in so far as disallowance of interest expenditure is concerned, the assessee had categorically explained that firstly, no loan was utilized for making the investments; and secondly, assessee had huge surplus funds in the form of net profits and capital surplus. For instance, in the Assessment Year 2007-08, the assessee had earned net profit after taxation at Rs.1197.41 lakhs and capital and reserves of Rs.5410.87 lakhs; for the Assessing Year 2008-09 net profit of Rs.1583.62 lakhs and capital and reserves at Rs.6704.62 lakhs; and in Assessment Year 2009-10 the net profit of Rs.1036.08 lakh and capital and reserves Of Rs.7187.41 lakh. The investments made in the purchase of equity shares in

*Assessment Year 2007-08 was Rs.235 lakhs in Assessment Year 2007-08; no investment in Assessment Year 2008-09; and in Assessment Year 2009-10 the investment was only Rs.6 lakh. Apart from that, assessee had also given break up of secured loan including cash credit that all these loans were for specific purpose and none of the loan account was utilized for purchasing the investments. Thus, interest expenditure could have been disallowed. In so far as disallowance of indirect, expenditure is concerned the assessee has given detailed working of suo motu disallowance attributing indirect expenditure on which Assessing Officer has neither point out any defect nor has recorded any satisfaction that why the claim of the assessee; is not maintainable. Once the assessee had sufficient interest free Funds for making such investment and interest bearing loan has not been diverted in any investment earning exempt income, then there is no question of any disallowance of interest expenditure and same is directed to be deleted. Even the disallowance of indirect expenditure is uncalled for, firstly for the reason that assessee has given the working of suo motu disallowance and Assessing Officer has not recorded any satisfaction which is mandatory requirement before proceeding to apply Rule 8D in terms of Section 14A(2). Hence, all the disallowance are directed to be deleted.”*

37. Facts in the impugned assessment years are identical to the facts involved in the assessment years, wherein, the Tribunal has recorded the aforesaid finding. In view of the aforesaid, we are inclined to delete the disallowance made by the Assessing Officer, over and above, the suo motu disallowance made by the assessee.

28. In the result, the appeal is allowed.

29. In nutshell, the appeals are decided as under:

1.	ITA No.908/Del/2012	Revenue's Appeal	AY:2005-06	Dismissed
2.	CO No.113/Del/2012	Assessee's Cross-Objections	AY:2005-06	Dismissed
3.	ITA No.909/Del/2012	Revenue's Appeal	AY:2006-07	Dismissed
4.	CO No.114/Del/2012	Assessee's Cross-objections	AY:2006-07	Dismissed
5.	ITA No.4672/Del/2011	Assessee's Appeal	AY:2005-06	Allowed
6.	ITA No.1885/Del/2017	Revenue's Appeal	AY:2012-13	Dismissed
7.	ITA No.2180/Del/2017	Assessee's Appeal	AY:2012-13	Allowed

***Order pronounced in the open court on 29<sup>th</sup> November, 2022***

***Sd/-***  
**(G.S. PANNU)**  
**PRESIDENT**

***Sd/-***  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Dated: 29<sup>th</sup> November, 2022.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi