IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH: BANGALORE

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

ITA No.580/Bang/2022
Assessment Year: 2013-14

M/s. Century Real Estate Holdings Pvt. Ltd. No.10/1, Ground Floor, Lakshminarayana Complex, Palace Road Vasanth Nagar Bangalore 560 052 **PAN NO : AADCC0651M**	**Vs.**	Deputy Commissioner of Income-tax Central Circle-2(2) Bangalore
APPELLANT		**RESPONDENT**

ITA No.740/Bang/2022
Assessment Year: 2013-14

Deputy Commissioner of Income-tax Central Circle-2(4) Bangalore	**Vs.**	M/s. Century Real Estate Holdings Pvt. Ltd. Bangalore 560 052
APPELLANT		**RESPONDENT**

Appellant by	:	Smt. Sheetal Borkar, A.R.
Respondent by	:	Shri Gudimella V.P. Pavan Kumar, D.R.

Date of Hearing	17	11	2022
Date of Pronouncement	30	11	2022

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

These are cross appeal directed against order of CIT(A) dated 24.6.2022 for the assessment year 2013-14.

ITA No.580/Bang/2022 (Assessee's Appeal):

2. First, we will take up assessee's appeal in ITA No.580/Bang/2022. The assessee has raised following grounds of appeal:

1. *"The Learned CIT(A) has erred in confirming the action of Assessing Officer in making the addition of Rs.4,23,55,400/- on account of Project Management Fees*

2. *The AO and the Ld. CIT(A) have failed to appreciate that the appellant, being in the Real Estate Business, has followed Accounting Standard 7 for project completion method and has recognized the income over a period of 5 years, being the duration of the contract.*

3. *Without prejudice, the order of the Ld. CIT(A) has resulted in double addition, as this amount has been offered for tax in the subsequent years by the Appellant based on Project Completion Method.*

(Tax effect Rs.1,37,42,210 (Notional))"

2. Facts of the case are AO made an addition of Rs. 4,23,55,400/- by observing Form 26AS that the assessee had received an amount of Rs 8,59,55,400/- as project management fees from Mis Scania Commercial Vehicles Pvt. Ltd. [Scania]. However, the assessee had declared an amount of Rs.4,36,00,000/- only in its return of income. The issue was duly confronted by the AO to the assessee. In response to the same, the assessee argued before the AO that the amount received by it from Scania was recognized by it over a period of 5 years being the duration of the agreement. The assessee further argued that it was in the business of real estate development and the receipts

received by it were from real estate transactions and as per the Accounting Standards - 7 issued by ICAI, it was to follow percentage completion method. The assessee submitted that the receipts from Scania would be recognized by it over a period of 5 years. However, these arguments of the assessee were not accepted by the AO. The reasons given by the AO are as follows:

- On being inquired, Scania informed that the payment of Rs 8,59,55,409/-was made to the assessee during the year under consideration on the basis of three invoices raised by the appellant and thus the same was not in nature of advance but full and final payment for the services provided.
- The agreement with Scania at para 6.2 clearly provided that the payment was to be made on the basis of invoice raised by the assessee and that payment of any intermittent advance would be avoided by Scania.
- Scania was to pay @ Rs.55 lacs per acre as consultancy cum advisory fee to the assessee and the payment received by the assessee related to such services provided during the year itself. The agreement doesn't provide that the payments would be made over a period of five years.
- The nature of services provided by the assessee was of advisory nature and did not relate to any real estate development of its own and so the issue of percentage completion method did not arise.

3. The Ld. CIT(A) observed in his findings that as regards the claim of the assessee, that it is a real estate developer following the percentage completion method, the same needs to be rejected. The AO has rightly observed that the transaction was that of advisory services provided and the income was required to be disclosed as and when received. The agreement with

Scania also provided payments on the basis of invoice and as such the payments were not in nature of advance payment or the payments for the services to be rendered in future. The purpose of five-year contract was to get services over a period of five years but payment was to be made as and when invoice for the services rendered was raised. A perusal of the agreement by the Ld. CIT(A) also shown that the payments were not contingent upon the services to be provided over the remaining period of the contract. Although the assessee has argued that Scania never stated in its reply that the payments made by it were not advances and that the same were made in full and final settlement of the invoices raised by it, however the assessee has not brought anything on record to show that the payments received by it were in relation to the services to be rendered in future also and that it had raised invoices for advance payments. In fact, the assessee has itself admitted that the invoices were raised on the basis of the area of the land identified for Scania and thus the same were based @ Rs 55 lacs per acre.

3.1 Ld. CIT(A) further observed that although the assessee has relied upon certain decisions, however the same are found to be rendered on different facts. In the case *of Taparia Tools (supra)* the issue was that of deferred interest expenditure. The High Court observed that the interest needed to be deferred over the period of debenture and the action of the assessee in claiming entire interest during the first year itself was incorrect and not as per mercantile system of accounting as corresponding income would arising over a period of time only. Applying the ratio of this decision to the appeal under consideration, Ld. CIT(A) found that the same supports the

action of the AO. The expenditure related to the services rendered during the year had already been claimed by the assessee in its profit and loss account. The invoices were raised after rendering the services. So the corresponding income was required to he declared by it during the year and the same could not have been deferred or spread over the remaining period of the contract as nothing additional was required to be done by it in relation to the services already rendered. As such the payment received was not contingent on any future services. If the assessee had chosen not to provide any future services, it would not have any impact on the payments already received. So this decision doesn't help the assessee but it strengthens the action of the AO. The reliance of the assessee on the decisions in the cases of CIT Vs. Shoorji Vallabhdas & Co. 46 ITR 144 (SC) and Bilahari Investment (P) Ltd 299 ITR 1 (SC) are also misplaced as the ratios of the said decisions are also not applicable to the facts of the case under consideration. As regards the decision in the case of Excel Industries Ltd 358 ITR 295, the Hon'ble Supreme Court had decided in favour of the assessee as the Revenue had earlier accepted the method followed by it but contested the same later on without any convincing reasons. The facts were thus entirely different.

3.2 The Ld. CIT(A) further observed that as regards argument of the assessee that it had offered income in subsequent assessment years, this is a settled law that income needs to be taxed in a year to which it belongs on the basis of the provisions of the Act. It does not depend on the whims of the assessee to choose the year in which it wants to disclose its income. If allowed to do so, the postponement of the income and thus tax liability would continue indefinitely. The payment of correct taxes in the relevant year by the assessees enables the Government to timely get its share of revenue and thus

avoids the burden of interest, which it would otherwise be required to bear on account of borrowings if there is shortfall in tax collection. Further, Ld. CIT(A) stated in his report that even the AO too does not have an option in this matter and the income is required to be assessed as per law in the relevant assessment year only. Against this assessee is in appeal before us.

4. The Ld. A.R. submitted that the assessee is following Percentage Completion Method with regard to income arising out of project management fees received from M/s. Scania Commercial Vehicles Pvt. Ltd. The entire amount disclosed in Form No.26AS at Rs.8,59,55,400/- cannot be considered as income accrued to the assessee in the assessment year under consideration. Out of this, an amount of Rs.4.3 Crores only was accrued to the assessee and the same has been offered for taxation in the assessment year under consideration. Since the entire service to be rendered to M/s. Scania Commercial Vehicles Pvt. Ltd. is spread over to 5 years as per clause No.4.2, of the MOU dated 1st March, 2011, as tenure of rendering service is 5 years and may be extended for further period based on mutual agreement between the parties. The assessee has to receive Rs.5.5 million per acre as Consultancy-cum-Advisory fees for rendering services as prescribed in para 2 of the MOU. According to the ld. A.R., though the assessee has received an amount of Rs.8,59,55,400/- and the same has been reflected in Form 26AS, on the basis of invoice raised by assessee, it cannot lead to the conclusion that said entire amount has been accrued to the assessee, though it has been received by the assessee. Further, it was submitted that this amount has been offered to tax either in earlier year or in subsequent years as below:

The incomes offered for the five assessment years 2012-13 to 2016-17:

Asst. Year	One-fifth of Rs.19,80,00,000	One-fourth of Rs.1,60,00,000	One-third of Rs.70,00,000	Total Revenue offered in Return
2012-13	3,96,00,000	0	0	3,96,00,000
2013-14	3,96,00,000	40,00,000	0	4,36,00,000
2014-15	3,96,00,000	40,00,000	23,33,333	4,59,33,333
2015-16	3,96,00,000	40,00,000	23,33,333	4,59,33,333
2016-17	3,96,00,000	40,00,000	23,33,334	4,59,33,334
Total	19,80,00,000	1,60,00,000	70,00,000	22,10,00,000

4.1 Thus, she submitted that taxing entire amount of receipt of Rs.8,59,55,400/- in the assessment year under consideration amounts to double taxation i.e. one on receipt basis and another on accrual basis. In this regard, she relied on the order of the coordinate bench of the Delhi Tribunal in the case of Dr. Aman Khera in ITA No.475/Del/2011 dated 4.5.2012.

5. On the other hand, the ld. D.R. submitted that the assessee M/s. Century Real Estate Holding Pvt. Ltd is a company engaged in real estate business. As per 26 AS statement of the assessee, Rs.8,59,55,000/- was paid by M/s. Scania Commercial Vehicles India Pvt. Ltd ("Scania", hereafter), during financial year 2012-13. However, the assessee has declared an amount of only 4,36,00,000/- in its return of income. The ground taken by the assessee for not declaring the entire receipts of Rs.8,59,55,000/- in its return of income is that the assessee is engaged in the business of real estate and it recorded the transaction as per the Accounting Standard (AS)- 7 and followed the percentage completion method in recognizing the receipts. Accordingly, an amount of only Rs.4,36,00,000/- has been declared by the assessee as receipts from Scania during the Financial Year 2012-13.

5.1 The Ld. D.R. argued that the Accounting Standard-7 is applicable to only *"Construction Contracts", as evident from the scope of AS-7 defined in Para 2.1 of the Accounting Standard-7.* However, the services rendered to Scania by the assessee are not in the nature of the Construction Contracts. Hence, he stated that the AS-7 is not applicable to record the transactions as far as transactions related to Scania are concerned, as mentioned in the relevant clauses of Agreement between the assessee and Scania. Without prejudice to the above, as a rule of generality, the amount paid by Scania to the assessee, against the three invoices raised by the assessee, during the financial year 2012-13, ought to have been offered to tax in the same financial year. The assessee's claim that it would stagger offering receipts received from Scania for 5 years is not tenable and hence, he argued that it is liable to be rejected. Thus, he relied on the order of Ld. CIT(A).

6. We have heard the rival submissions and perused the materials available on record. The assessee herein engaged in project management services and undertaken works in favour of Scania Commercial Vehicles India Pvt. Ltd. and on this count, assessee entered into agreement on 1.3.2011 for providing consultancy and advice for the acquisition of industrial converted land for setting up their factory premises. As per this agreement, the scope of services required by SCANIA from the assessee are as follows:

> *"SCANIA shall take the advisory and assistance on need basis and CREH has agreed to commit a maximum of 1000 hours of consultation time per annum of Directors.*

The following points have been discussed and mutually agreed upon:

1. *SCANIA hereby appoints CREH as Project management Advisors for the purposes set forth in this Letter and subject to the terms of this letter.*

2. *The services required from CREH shall include, but not be limited, to the following as Non-Exclusive Project Management Advisors:*

2.1 Assist SCANIA in arranging location analysis of Bangalore region to identify high caliber industrial areas. Assisting in site visits and property search including shortlisting of high caliber areas with detailed profiling of the lands, detailed analysis and market valuation report from approved valuers.

2.2 Advise on aspects of the background check of the land including method, structure, pricing and timing so as to have a seamless transactions.

2.3 Advise on Information Memorandum, Business Plan, Financial Projections and other such documents necessary and required for setting up an establishment.

2.4 Advice and assist to, interact with and evaluate various land related institution tax incentive and benefits available for the identified industrial areas.

2.5 Assist in coordinating for all work, including documentation necessary for the transaction including mapping of Application Process of various authorities.

2.6 Advice Company's Management tam of the typical process and structuring of the said Land buying Transaction, its standard as well as special terms and the expectations of Companies Management team during the process.

2.7 Advise on presentations to be built with the relevant parties regarding the project.

2.8 Assist in co-ordinating the overall survey/land marking/title report/drafting of sale deed/registration of the land and related title documents process."

6.1 As is evident from the above terms, the services required from the assessee were just not restricted to identification and procurement of the land for SCANIA, but also included advise on Business Plan,

Financial Projections and other aspects required for setting up of the establishment. It was for this reason that the Agreement was spread over a period of five years, though the method of invoicing by the assessee to SCANIA was based on the acreage of land acquired as evidenced by the clause relating to the payment of compensation by SCANIA to the assessee:

> *"6. Compensation:*
>
> *6.1 Consultancy cum advisory fee: SCANIA will pay CREH a total of INR 5.5 million per acre as consultancy cum advisory fee.*
>
> *6.2 Payment terms: The above mentioned amount shall be payable as follows:*
>
> - *The amount as mentioned above against the consultancy cum transaction fee is payable on invoice.*
> - *Though we try to avoid any intermittent advance, if the need be, will required to be paid by SCANIA.*
> - *Payment against Invoice raised by CREH shall be made only on certification by SCANIA.*
>
> *6.3 All payments made to CREH under this letter are exclusive of taxes. (service taxes, of any other such tax) SCANIA can, however, if required by law, deduct withholding taxes at source and make the balance payments to CREH while forwarding the tax certificates etc. in order for CREH to claim the said tax credits."*

6.2 Though the identification of lands for acquisition by SCANIA took place during the financial years 2011-12 and 2012-13, the services of the assessee were required to be provided to SCANIA over the period of Agreement of five years, which was up to February 2016. For these services, the fees received by the assessee (exclusive of Service Tax), which was broadly based on the acreage of land under acquisition/acquired was as under:

Fin. Year 2010-11	Rs.13,75,00,000
Fin. Year 2012-13	Rs. 7,65,00,000
Fin. Year 2013-14	Rs. 70,00,000

Total	Rs.22,10,00,000

6.3 The amount received during the FY 2010-11 was an advance (the Agreement was entered into on 01-03-2011) to facilitate the acquisition of land. The acquisition of the first parcel of land measuring 36 acres was finalized during the FY 2011-12, and as per the terms of the Agreement, the fees payable at the rate Rs.55,00,000/- per acre amounted to Rs.19,80,00,000/-. As the assessee was required to continue providing consultancy services up to setting up of the establishment over a period of five years, the fees of Rs.19,80,00,000/- was divided into five parts and one-fifth of the fees amounting to Rs.3,96,00,000/- each was offered as income for the five assessment years 2012-13 to 2016-17, pertaining to the previous years 2011-12 to 2015-16.

6.4 Subsequently, during the FY 12-13, 2.91 acres was acquired for which the fees payable at the rate Rs.55,00,000/- per acre amounted to Rs.1,60,00,000/-. As the balance period of Agreement was 4 years, this amount was divided into four parts and one-fourth of the fees amounting to Rs.40,00,000/- each was offered as income for the four assessment years 2013-14 to 2016-17.

6.5 Similarly, during the FY 2013-14, the fees received of Rs.70,00,000/- was divided into three parts based on the balance period of Agreement, and Rs.23,33,333/- each was offered for the three assessment years 2014-15 to 2016-17.

6.6 Hence the total amount of billing is equal to the amount received from SCANIA, either as advance or actual payment against billing as under:

Financial year 2011-12	Rs.19,80,00,000
Financial year 2012-13	Rs. 1,60,00,000
Financial year 2013-14	Rs. 70,00,000
Total	Rs.22,10,00,000

6.7 For the sake of convenience, the incomes offered for the five assessment years 2012-13 to 2016-17 are reproduced in the table below:

Asst. Year	One-fifth of Rs.19,80,00,000	One-fourth of Rs.1,60,00,000	One-third of Rs.70,00,000	Total Revenue offered in Return
2012-13	3,96,00,000	0	0	3,96,00,000
2013-14	3,96,00,000	40,00,000	0	4,36,00,000
2014-15	3,96,00,000	40,00,000	23,33,333	4,59,33,333
2015-16	3,96,00,000	40,00,000	23,33,333	4,59,33,333
2016-17	3,96,00,000	40,00,000	23,33,334	4,59,33,334
Taal	19,80,00,000	1,60,00,000	70,00,000	22,10,00,000

6.8 Copies of the Financial Statements for the relevant five financial years, 2011-12 to 2015-16 have been submitted by the assessee which has been kept on record.

6.9 During the FY 2012-13 relevant to the assessment year in appeal, the assessee received Rs.8,59,55,400/- which comprised of fees of Rs.7,65,00,000/- (as mentioned above) plus service tax of Rs.94,55,400/-. The Assessing Officer, in his assessment order dated 31-03-2016, based on the information in Form 26AS and disregarding the assessee's submissions that the revenues are to be spread over a period of five years based on the period of the Agreement, and without taking into consideration that the total revenues have been already offered for tax in the Returns filed for the

respective years pertaining to the period of Agreement, added the difference of the Project Management Fees as shown in Form 26AS and as offered in the Return filed (Rs.8,59,55,400 — Rs.4,36,00,000) amounting to Rs.4,23,55,400/- as Project Management Fees not offered to tax.

6.10 This addition made by the Assessing Officer is not in accordance with the facts of the case for the following reasons:

- Though the payment of Rs.8,59,55,400/- (inclusive of Service Tax) was received during this assessment pear, the payment was a part-payment of fees for services relating to Project Management to be rendered over a period of five years as per the Agreement.
- Accordingly, the assessee divided the Revenues over the period of the Agreement and offered it for tax spread over five years.
- As the assessee is in the business of Real Estate, and the fees received is for Project Management for setting up the factory in India for SCANIA, the period of the project is for a period of five years from the date of the Agreement, which is 01-03-2011. Accordingly, the fees received is to be spread over the period of the Agreement, even though received in advance.
- The assessee has offered the entire fees received over the period of the Agreement, consisting of five assessment years. Hence without prejudice, if the fees is increased for the purpose of taxation during one particular assessment year, then a corresponding decrease has to be made in the other assessment years, failing which, it will amount to double taxation. If these adjustments are made, the final result will be tax neutral.
- On page 4 of the assessment order, it was stated by the Assessing Officer that *"The payer M/s Scania Commercial Vehicles India Pvt. Ltd. has also confirmed that the payments*

made to the assessee were not advances and were payments made in full and final settlement of the invoices raised by the assessee." M/s Scania have only certified the payments made during the FY 2012-13 against the invoices raised and nowhere have they stated that the payments are made in full and final settlement of the invoices, meaning the full and final settlement of the work concluded.

6.11 At this point of time, it is appropriate to take support of the judgement in the case of **Taparia Tools Ltd. Vs. JCIT, reported in 260 ITR 102 (Born)** and approved in 26 taxmann.com 253 (SC), the Hon. Bombay High Court has held as under:

> *"Under the mercantile system of accounting, in order to determine the net income of an accounting year, the revenue and other incomes are matched with the cost of resources consumed (expenses). Under the mercantile system of accounting, the matching is required to be done on accrual basis. Under the matching concept, revenue and income earned during an accounting period, irrespective of actual cash in-flow, is required to be compared with expenses incurred during the same period, irrespective of actual out-flow of cash. In the instant case, the assessee was following mercantile system of accounting. The Matching concept is very relevant to compute taxable income particularly in cases involving deferred revenue expenditure (DRE)."*

6.12 Hence, there has to be a match between the revenue received and the expenses incurred. If the revenue is received as an advance for which the expenses are to be incurred in the future years, this advance cannot be treated as income of the assessee.

6.13 In the case of CIT v. **Shoorji Vallabhdas & Co. 46 ITR 144 (SC),** the Hon'ble Supreme Court has held as follows: —

> *"Income-tax is a levy on income. No doubt, the Income-tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt; hut the substance of the matter is the income. If income does not result at*

all, there cannot be a tax, even though in book-keeping, an entry is made about a 'hypothetical income, which does not materialise. Where income has, in fact, been received and is subsequently given up in such circumstances that it remains the income of the recipient, even though given up, the tax may be payable. Where, however, the income can be said not to have resulted at all, there is obviously neither accrual nor receipt of income, even though an entry to that effect might, in certain circumstances, have been made in the books of account."

6.14 Hence, though the money is received by the assessee in a particular year, it does not by itself imply that this money results in the accrual of income.

6.15 The contention of assessee now before us is that the income reflected in form No.26AS is not accrued to the assessee in its entirety and the assessee is required to render services to M/s. Scania Commercial Vehicles India Pvt. Ltd. over a period of 5 years and the proportionate income relating to the assessment year under consideration has been offered for taxation in the assessment year under consideration and the ld. A.R. relied on the Accounting Standard-9 issued by ICAI, New Delhi. This proposition was supported by decision of Hon'ble Supreme Court in the case of E.D. Sasoon & Company Ltd. Vs. CIT (26 ITR 27).

In this case at pages 51-52, the Hon'ble Supreme Court has observed as under:-

"*If income has accrued to the assessee it is certainly earned by him in the sense that he has contributed to its production or the parenthood of the income can be traced to him. But in order that the income can be said to have accrued to or earned by the assessee it is not only necessary that the assessee must have contributed to its accruing or arising by rendering services or otherwise but he must have created a debt in his favour. A debt must have come into existence and he must have acquired a right to receive the payment. Unless and until his contribution or parenthood is effective in bringing into existence a debt or a right to receive the payment or in other words a debitum in prasenti, solvendum in futuro it cannot be said that any income has accrued to him.".*

6.16 Now we examine the present case on the touch-stone of the aforesaid decision. Admittedly, assessee, in this case, duration of the period of five years of service has not expired. Assessee has not rendered enough services to warrant emoluments of Rs.8,59,55,400/-. It is assessee's submission that during the year under consideration he has not created a debt or a right to receive the payment equivalent to Rs.8,59,55,400/-. Hence, it cannot be said that the income equivalent to total emolument at Rs.8,59,55,400/- has accrued to the assessee, though it was actually received by the assessee.

6.17 In this regard, assessee's reliance of AS-9 issued by the ICAI is also relevant. AS-9 deals with the system of recognition of revenue in the rendering of services. In para 7.1 it states that revenue from service transactions is usually recognized as the service is performed, either by proportionate completion method or by the completed service contract method. It further specifies that in proportionate completion method, the revenue is recognized proportionately by reference to the performance of each Act and when services are provided by an indeterminate number of acts over a specific period of time, revenue is recognized on a straight-line basis over the specific period. In other words, AS-9 also prescribes that in case of service contracts which is spread over to various years, the revenue is recognized on proportionate basis.

6.18 We further find that the decision of Hon'ble Delhi High Court in the case of C.I.T. vs. Dinesh Kumar Goel in (331 ITR 10) (Del) also supports the case of the assessee. In this case assessee was running an institute of coaching students and had received the total fee of the entire course having the duration of two years. The fee was non-refundable. The said assessee claimed

that the fee should be spread over to the years for which the coaching was to be made, whereas the Revenue was of the view that because the money was non-refundable and as per the agreement the students have to pay the entire fee in advance at the time of admission, therefore, it is assessable in the year of receipt. The Jurisdictional High Court negated the contention of the Revenue and held, after following the judgment of E.D. Sasoon & Co. (Supra) that because the services had to be rendered in two years, therefore the entire fee had to be spread over in two years and had to be assessed proportionately.

6.19 Furthermore, in the case of Career Launchers (India) Ltd. vs. ACIT (131 ITD 414), the Coordinate Delhi Bench of the Tribunal has also held that even if the amount is non-refundable, it has to be assessed on proportionate basis on the basis of duration of services rendered.

6.20 The Special Bench of the Tribunal, Chennai in the case of ACIT vs. Mahendra Holidays & Resorts (India) Ltd. in 131 TTJ 1 has also held that where the services are required to be rendered in various years, the receipts have to be spread over the years for which the services are required to be rendered. The Special Bench of the Tribunal further observed that recognizing entire receipt in the year of receipt can lead to a distorted picture. We further find that the other case laws relied by the ld. counsel of the assessee also support the assessee's case.

6.21 In the case of Dr. Aman Khera Vs. Deputy Commissioner of Income-tax (138 ITD 443) (Del.), the coordinate bench of Delhi Tribunal has held as under:

"Admittedly, the assessee has not served for the period of five years. The assessee has not rendered enough services to warrant emoluments of Rs.1,21,83,494/-. It is assessee's submission that during the year under consideration he has not created a debt or a right to receive the payment equivalent to Rs.1,21,83,494/-. Hence, it cannot be said that the income equivalent to total emolument of Rs.1,21,83,494/- has accrued to the assessee.

In this regard, the assessee's reliance on AS-9 issued by the ICA1 is also relevant. AS-9 deals with the system of recognition of revenue in the rendering of services. In para 7.1. it states that revenue from service transactions is usually recognized as the service is performed, either by proportionate completion method or by the completed service contract method. It further specifies that in proportionate completion method, the revenue is recognized proportionately by reference to the performance of each act, and when services are provided by an indeterminate number of acts over a specific period of time, revenue is recognized on a straight-line basis over the specific period. In other words, AS-9 also prescribes that in case of service contracts which are spread over to various years, the revenue is recognized on proportionate basis. [Para 8.4]

From the above discussion and some judicial precedents, it is amply clear that in service contract the income has to be recognized in proportion to the services rendered in a particular year. In the instant case, admittedly the assessee has not rendered services for the period of 5 years. Hence; there is no question of recognizing the entire amount as income of the assessee in the year of receipt. It cannot be said that assessee has created such a debt or right against the 'UG' that the income for the entire 5 years had accrued to the assessee. In the background of the aforesaid discussion, the assessee has correctly declared professional fee from the 'UG' in proportion to the period of services rendered during the year."

6.22 In the case of CIT-X Vs. Smt. Paramjeet Luthra, the Hon'ble Delhi High Court reported in (2014) 15 txmann.com 571 (Delhi) wherein held as under:

"Section 28(i), read with section 68, of the Income-tax Act, 1961 – Business income – Year in which taxable (Commission) - Assessment year 2007-08 - Assessee had undertaken liaisoning work of sale of medical equipments, etc:, and had received certain commission - As assessee had future obligation of maintenance of medical equipments for next five years: with spare parts and for another five years without spare parts, she had treated 39 percent of said Commission as maintenance contract income and offered same. for tax in proportionate basis in 5 assessment years ***as*** *corresponding or necessary expenditure, would be incurred in said span of 5 years – Assessing Officer held that bifurcation was not. justified and made addition of said amount by invoking* ***section*** *68.- Whether when assessee had future obligation of maintenance services-and necessary* ***expenditure*** *required therefor, and assessee's*

calculation was made on scientific basis, assessee was justified in treating 39 percent of total price as an amount for fulfillment of warranty conditions – Held, yes (para 8 & 11) (In favour of assessee).”

6.23 From the above discussion and precedents, it is amply clear that in service contract the income has to be recognized in proportion to the services rendered in a particular year. In the present case, admittedly the assessee has not rendered services for the period of 5 years. Hence, there is no question of recognizing the entire amount as income of the assessee in the year of receipt. It cannot be said that assessee has created such a debt or right against the M/s. Scania Commercial Vehicles Pvt. Ltd. that the income for the entire 5 years had accrued to the assessee. In our considered opinion, in the background of the aforesaid discussion and precedent, we find that the assessee has correctly declared professional fee from M/s. Scania Commercial Vehicles Pvt. Ltd. in proportion to the period of services rendered during the year.

6.24 In our opinion, the assessee has been following Percentage Completion Method of recognition of revenue and this system of accounting has been followed by the assessee in earlier assessment year 2011-12 and this has been accepted by the AO by his order dated 24.2.2015. After accepting the method of accounting followed by the assessee on the basis of same agreement, which generate the income to the assessee, it cannot be disturbed by the AO in subsequent assessment years or AO cannot change the method of accounting in the middle of period of completion of project. In our opinion, rule of consistency has to be followed.

6.25 Further, in our opinion, the impugned addition made by the AO in the assessment year under consideration based on project

completion method will result in double taxation, which is impermissible in law. For this purpose, we place reliance on the judgement of Hon'ble Supreme Court in the case of ITO Vs. Bachu Lal Kapoor (1966) (60 ITR 74) (SC), wherein held that:

"*A HUF is a separate unit of assessment. It is a distinct assessable entity. It is a "person" within its definition in the Act. It is liable to be assessed to income-tax in respect of its income. A member of that HUF is not liable to pay any tax in respect of any sum which he receives as a member of that family out f the income of that family. If the said HUF has escaped assessment for any year, the ITO, subject to the conditions laid down in section 34(1) of the 1922 Act, may issue a notice thereunder calling upon the said HUF to submit a return of its income for that year and proceed to assess it in terms thereof. It is manifest from a combined reading of the said provisions of sections 3, 14, 2, 22 and 34 of the 1922 Act that the ITO can issue a notice to a HUF under section 34 of the 1922 Act on the ground that it has escaped assessment.*

In the counter-affidavit filed by the ITO in the High Court, it was stated that he had reason to believe, in consequence of information in his possession, that income, profits or gains chargeable to income-tax had escaped assessment. His information was that, notwithstanding the compromise decree, the members of the family were living together had joint mess and the business was run by the assessee. In short, the case of the revenue was that the compromise was a make-believe one and the family in fact continued to be a joint Hindu family.

The exercise of the option to do one or other of the two alternatives open to an officer assumes knowledge on his part of the existence of two alternatives. If the case of the revenue be true, the ITO at the time he assessed the individual members of the family had no knowledge that a united joint family existed, he presumably proceeded on the basis that the said family had really ceased to exist under the terms of the compromise decree. This was, therefore, not a case of election between two alternative units of assessment, but an attempt to bring to tax the income of an assessable entity which had escaped assessment. That apart, under section 3 of the 1922 Act, in the matter of assessment, there is no question of any election apart, under section 3 of the 1922 Act, in the matter of assessment, there is no question of any election between a HUF and a member thereof in respect of the income of the family. If a HUF exists, under section 3 of the 1922 Act, the ITO has to assess it in respect of its income. Indeed, under section 14(1) of the 1922 Act, any part of the income reeived by its members cannot be assessed over again. While section 3 of the 1922 Act confers an option on the ITO to assess either the association of persons or the members of the association individually, no such option is conferred on him thereunder in the case of a HUF, as its existence excludes the liability of its members in respect of the income of the former received by the latter.

It was true that the Act does not envisage taxation of the same income twice over "one passage of money in the form of one sort of income". It is equally true that section 14(1) of the 1922 Act expressly debars the imposition of tax on any part of the income of a HUF received by its members. The fact that there is no provision in the Act dealing with a converse position does not affect the question, for the existence of such a converse position is legally impossible under the Act. So long as the HUF exists, the individuals thereof cannot separately be assessed in respect of its income. None the less, if, under some mistake, such income was assessed to tax in the hands of the individual members, which should not have been done, when a proper assessment was made on the HUF in respect of that income, the revenue had to make appropriate adjustments; otherwise, the assessment made in respect of that income on the HUF would be contrary to the provisions of the Act, particularly section 14(1) of the 1922 Act. Therefore, if the assessment proceedings initiated under section 34 of the 1922 Act culminates in the assessment of the HUF, appropriate adjustments have to be made by the ITO in respect of the tax realised by the revenue in respect of that part of the income of the family assessed on the individuals of the said family. To do so was not to reopen the final orders of assessment, but in reality to arrive at the correct figure of tax payable by the HUF. The only question that arises at the time the ITO proposes to take proceedings under section 34 of the 1922 Act is, whether the income has escaped assessment or has been under assessed in the hands of the person against whom the said proceedings are initiated. At this stage, the question of resolving the conflict between the proposed assessment and an earlier assessment made on a wrong person does not arise. Therefore, the High Court went wrong in holding that the ITO had no jurisdiction to initiate proceedings under section 34 against the assessee as the karta of a HUF. Further, the High Court had not expressed its opinion on the question based upon section 25 of the 1992 Act. In the result, the order of the High Court was set aside and the appeal was remanded to the High Court for disposal in accordance with law."

6.26 In our opinion, the entire issue is revenue neutral and consequently no addition could have been made in the impugned assessment year. For this proposition, we place reliance on the following decisions –

i) CIT v. Excel Industries Ltd. (2013) 358 ITR 295 (SC)

ii) CIT v. Bilhari Investment (P.) Ltd 299 ITR 1(SC)

6.27 It is a settled position of law that department cannot collect tax twice on the very same income and observation of the AO is absolutely contrary to the scheme of the Act. Being

so, we set aside the order of the lower authorities and decide the issue in favour of the assessee.

6.28 In the result, the appeal filed by the assessee is allowed.

ITA No.740/Bang/2022 (Revenue's appeal):

7. In this appeal, the revenue has raised following grounds of the Income-tax Act,1961 ['the Act' for short]

1. *"The order of CIT(A) is opposed to law and facts of the case.*
2. *The CIT(A) has erred in not following the decision of the Hon'ble Supreme Court in the case of M/s. Maxopp Investments Limited 402 ITR 640 (SC) which held that in case of mixed funds and indivisible business the provisions of Rule 8D(2)(ii) are attracted?*
3. *Tile CIT(A) erred in not following the decision of the Punjab-and Haryana High Court in Avon Cycles Limited (11 ITR-OL-381) affirmed by the Supreme Court in M/s Maxopp Investments Limited 402 ITR 640 (SC).*
4. *The CIT(A) erred in not distinguishing the law applicable for investments in stock in trade as laid out by the Hon'ble Supreme Court in the case of M/s Maxopp Investments Ltd 402 ITR 640 (SC).*
5. *The CIT(A) has erred in not appreciating the fact that the decision in the case of Maxopp Investments Ltd 402 ITR 640 makes it clear that disallowance in case of holding as investment attracts provisions of Section 14A and Rule 8D(2)(iii) irrespective of whether dividend is earned or not.*
6. *The CIT(A) has erred in not appreciating the facts that CBDT Circular No.5/2014 dated 11.02.2014 has been in essence upheld by the Hon'ble Supreme Court and is binding law.*
7. *For these and such other grounds that may be urged at the time of hearing with the plea that the orders of the CIT(A) may be set aside and that of the Assessing Officer may be restored."*

8. Facts of the case are that the AO made a disallowance of Rs 2,73,94,061/- by invoking the provisions of Section 14 A of the Act read with Rule 8D of the Income-tax Rules. In brief, during assessment proceedings it was observed by the AO that the assessee

was having certain investments which had yielded tax exempt income of Rs 59,27,915/-. The AO asked the assessee to explain as to why the provisions of Section 14A of the Act read with Rule 8D of the I.T. Rules should not be applied in its case. After considering the reply of the assessee, the AO computed the disallowance at Rs. 2,73,94,061/-

9. The Ld. CIT(A) allowed the appeal of the assessee by placing reliance on the order of the Tribunal in assessment year 2014-15 in assessee's own case in ITA No.284/Bang/2020 dated 24.6.2020. Against this revenue is in appeal before us.

10. We have heard the rival submissions and perused the materials available on record. In our opinion, this issue was recently considered by this Tribunal n assessee's own case in ITA No.1590/Bang/2017 & ITA No.1589/Bang/2017 in assessment years 2010-11 & 2011-12, wherein the Tribunal held as under:-

9. We have heard both the parties and perused the material on record. The learned Departmental Representative submitted that in earlier assessment year, i.e., A.Y. 20092010 in ITA No.1583/Bang/2017, similar issue came up for consideration before the Tribunal and the Tribunal vide order dated 28.06.2021 held as under:-

> *"4. We heard the parties and perused the record. The Ld. D.R. placed her reliance on the decision rendered by Hon'ble High Court of Karnataka in the case of CIT Vs. Kingfisher Finvest India Ltd. (2020) 121 Taxmann.com 233. We have gone through the said decision and the same relate to a case where no dividend income was received. In this case, the assessee has earned dividend income and hence, in our view the said decision is not applicable to the facts of the present case.*
>
> *5. We notice that the own funds available with the assessee was Rs.355.57 crores while the value of investment in partnership firm mutual funds and shares aggregated to Rs.251.82 crores. In view of the decision rendered by Hon'ble Karnataka High Court in the case of CIT Vs. Micro Labs Ltd. (2016) 383 ITR 490, no disallowance out of interest expenditure is called for. For the sake of convenience, we extract below the observations made by Hon'ble Karnataka High Court in the above said case.*

"40. We have heard the rival submissions. A copy of the availability of funds and investments made was filed before us which is at pages 38 to 42 of the assessee's paper book and the same is enclosed as ANNEXURE-III to this order. It is clear from the said statement that the availability of profit, share capital and reserves & surplus was much more than investments made by the assessee which could yield tax free income.

41. The Hon'ble Bombay High Court in Reliance Utilities & Power Ltd. 313 ITR 340 (Bom) has held that where the interest free funds far exceed the value of investments, it should be considered that investments have been made out of interest free funds and no disallowance u/s. 14A towards any interest expenditure can be made. This view was again confirmed by the Hon'ble Bombay High Court in CIT v. HDFC Bank Ltd., ITA No.330 of 2012, judgment dated 23.7.14, wherein it was held that when investments are made out of common pool of funds and non-interest bearing funds were more than the investments in tax free securities, no disallowance of interest expenditure u/s. 14A can be made.

42. In the light of above said decisions, we are of the view that disallowance of interest expenses in the present case of Rs.49,42,473 made under Rule 8D(2)(ii) of the I.T. Rules should be deleted. We order accordingly."

Thereafter, it was held by Hon'ble Karnataka High Court as under:-

"The aforesaid shows that the Tribunal has followed a decision of the Bombay High Court in the case of CIT v. HDFC Bank Ltd. [2014] 366 ITR 505/226 Taxman 132 (Mag.)/49 taxmann.com 335 . When the issue is already covered by a decision of the High Court of Bombay with which we concur, we do not find any substantial question of law would arise for consideration as canvassed."

Accordingly, we confirm the deletion of disallowance of interest expenses of 8D(2)(ii) of IT Rules

6. The next issue relates to disallowance out of expenditure under rule 8D(2)(iii). We notice that the Ld. CIT(A) has deleted the disallowance by accepting the submissions of the assessee that the assessee has cross charged a sum of Rs.1.19 crores out of operating and other expenses to the respective partnership firms. We are unable to agree with the view of Ld CIT(A) on this aspect. The cross charging of expenses is normally made in respect of services/facilities availed by one concern from another concern. Accordingly, the amount of Rs.1.19 crores cross charged by the assessee to other concerns, would represent facilities/services availed by the partnership firms from the assessee.

7. The object of provisions of section 14A of the Act is to disallow expenses relatable to exempt income, i.e., it is required to segregate the expenses debited to the Profit and Loss account as relatable to "taxable income" and "exempted income". Hence, what is required to be considered for the purpose of section 14A of the Act is the amount finally debited to profit & loss account. The actual expenses incurred by the assessee would have been reduced by the amount cross charged to the partnership firms and the net amount would have been charged to the profit & loss account. The disallowance u/s 14A of the Act is called for out of the above said net amount.

8. We notice that the assessee has earned exempt income as detailed below:

Share profit from partnership firms - Rs.2,46,49,618/-
Dividend from mutual funds - Rs. 17,91,146/-

Rs.2,64,40,765/-

The dividend received from mutual funds also does not require much expenditure for the assessee. In respect of partnership firms, we have earlier noticed that the services rendered in respect of partnership firms have been cross charged by the assessee. Hence over all supervision may be relevant for the purposes of sec.14A of the Act. Under these set of facts, we are of the view that the provisions of rule 8D need not be applied for computing the disallowance out of general expenditure. Accordingly, we are of the view that a lumpsum disallowance of Rs.15 lakhs may be made out of general expenditure and the same, in our view would meet the requirements of section 14A of the Act. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue and direct the A.O. to restrict the disallowance under 14A of the Act to Rs.15 lakhs.

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9. The Ld. A.R. submitted that he will not press cross objection, if disallowance u/s 14A of the Act is made on a reasonable figure. However, we notice that the cross objection filed by the assessee is delayed by more than a year. We notice that the assessee has not filed any petition for condoning the delay. Hence, the cross objection filed by the assessee is liable to be dismissed in limine. Accordingly, we decline to admit the cross objection filed by the assessee.

9.1 Further, in assessment year 2014-2015, similar issue came up for consideration before the Tribunal in ITA No.284/ Bang/2020 and the Tribunal vide order dated 24.06.2020, held as under:-

> *6. We have heard the rival contentions and perused the records. The ground nos. 1, 2, 3, 5, 8 and 9 are general in nature. Ground no.4 is related to non-recording of dissatisfaction. As rightly pointed out that the Ld CIT(A), we notice that the AO has issued show cause notice to the assessee on due examination of financial statements of the assessee, since the assessee did not make any disallowance u/s 14A of the Act, even though it had earned exempt income. Hence the dissatisfaction of the AO has been demonstrated in the assessment order and it is not a*

case of mechanical invoking of provisions of Rule 8D. Accordingly we reject ground no.4 of the assessee.

7. In ground no.6, the assessee is contending that the assessee has got sufficient own funds and hence disallowance u/s 14A is not warranted. Before us, the Ld. A.R. submitted that the own funds available with the assessee is in excess of the value of investment made in shares and hence the A.O. should not have disallowed any expenditure out of interest expenses under Rule 8D(2)(ii) of I T Rules. In this connection, Ld. A.R. invited our attention to the copies of Balance Sheet placed in the paper book. On a perusal of the same, we notice that the Ld. A.R. has considered only the value of investments made in shares for advancing this argument and did not consider the value of investments made in partnership firm. We have noticed earlier that the exempt income earned by the assessee included "share income from partnership firm", which is exempt u/s 10(2A) of the Act. Hence, we are of the view that the investments made in partnership firm are also required to be considered for comparing the value of investments with the available own funds. We notice that the value of investments held by the assessee as at the year end is Rs.1,444.46 crores, whereas the own funds available with the assessee was Rs.585.21 crores only. Hence, it cannot be said that the own funds available with the assessee was more than the value of investments. Hence, this argument of the assessee also fails on the above said facts.

8. Before addressing ground no.7, we prefer to adjudicate two more contentions urged orally by Ld A.R. The first contention of Ld A.R was that the share income from partnership firm should not be considered as exempt income, since the profits of partnership firm have already suffered tax in the hands of the partnership firm. We notice that the very same issue was considered by Ahmedabad Special bench of ITAT in the case of Shri Vishnu Anand Mahajan (ITA No.3002/Ahd/2009 dated 2505-2012) and identical contentions made by the assessee were rejected by holding that, once the share income is excluded from the total income u/s 10(2A) of the Act, the provisions of section 14A of the Act would apply to it. Hence, this contention of the assessee would fail.

9. The next contention urged by the assessee is a partner in many firms. Some firms have earned profit and other firms have incurred loss. She submitted that the A.O. has considered only "share of profit received from partnership firm" for the purposes of sec.14A and did not consider "share of loss divided to the assessee". The Ld A.R submitted that the share of profit/loss from partnership firms should be cumulated and in that case, net result would be only loss from the partnership firms. Hence the AO should have ignored the share of profit received from some of the firms for the purposes of computing disallowance under sec.14A of the Act. We do not find any merit in this contention of the assessee, since what is exempted under the Act is share income received from the partnership firm u/s 10(2A) of the Act, meaning thereby, the profit or loss received from the partnership firm does not enter into computation of income at all. Hence the question of setting off income from partnership firm inter

se does not arise. Accordingly, once a particular income does not enter into the computation on the ground the same is exempt, as held by special bench in the case of Sri Vishnu Anand Mahajan (supra), provisions of section 14A of the Act would apply. In this case, there is no dispute that the share income from partnership firm to the tune of Rs.1,02,01,474/- has been claimed as exempt u/s 10(2A) of the Act. Hence the provisions of sec.14A shall apply to the above said exempt income.

10. In ground no.7, the assessee is contending that the disallowance made by the tax authorities u/s 14A of the Act is much more than exempt income. Before us, the Ld. A.R. submitted that the quantum of disallowance u/s 14A of the Act should not exceed the amount of exempt income. In support of this proposition, the Ld. A.R. placed reliance on the decision rendered by Hon'ble High Court of Delhi in the case of Joint Investment Private Limited Vs. CIT 372 ITR 694 and also the decision rendered by Mumbai bench of Tribunal in the case of Future Corporate Resources Limited Vs. DCIT (ITA No.4658/Mum/2015 dated 26.7.2017).

11. The Hon'ble Delhi High Court has considered an identical issue in the case of PCIT vs. Caraf Builders & Construction (P) Ltd (2019)(101 taxmann.com 167) and has held as under:-

"25. Total exempt income earned by the respondent-assessee in this year was Rs. 19 lakhs. In these circumstances, we are not required to consider the case of the Revenue that the disallowance should be enhanced from Rs. 75.89 crores to Rs. 144.52 crores. Upper disallowance as held in Pr. CIT v. McDonalds India (P.) Ltd. ITA 725/2018 decided on 22nd October, 2018 cannot exceed the exempt income of that year."

The Mumbai bench of Tribunal has also taken an identical view in the case of Future Corporate Resources Ltd (supra) and the relevant observations made by the Tribunal in the above said case are extracted below:-

"10. Coming to the second argument of the assessee, the assessee argued that it had earned meager dividend income of Rs. 24,138 as against which, the assessing officer disallowed a sum of Rs. 3,36,28,000 which is more than the exempt income. The assessee further argued that dis-allowance under section 14A cannot exceed amount of exempt income. The assessee relied upon case laws in support of its arguments. We find that the Hon'ble Delhi High Court in the case of Joint Investments (P.) Ltd. (supra) held that the window for dis allowance is indicated in section 14A and is only to the extent of disallowing expenditure incurred by the assessee in relation to tax exempt income. This proportion or portion of the tax exempt income surely cannot swallow the entire amount as has happened in this case.

We further notice that the Hon'ble Delhi High Court in the case of CIT v. Holcim India (P.) Ltd. (2014) 272 CTR 282 (Delhi) has held that there can be no dis allowance under section 14A in the absence of exempt income. The rationale behind these judgments is that the amount of disallowance cannot exceed exempt income. In this case, on perusal of the facts, we find that the assessee has earned exempt income of Rs. 24,138, whereas the assessing officer disallowed an amount of Rs. 3,36,28,000. Therefore, considering the facts and circumstances of the case and also following the ratios of the case laws discussed above, we are of the view that dis allowance under section 14A cannot exceed the exempt income. Hence, we direct the assessing officer to restrict dis allowance under section 14A to the extent of exempt income earned by the assessee."

The above said decisions would support the contention of the assessee on this point. Accordingly we set aside the order passed by Ld CIT(A) on this issue and direct the AO to restrict the disallowance u/a 14A to the amount of exempt income.

12. Since appeal itself is disposed of, the stay petition shall become infructuous.

13. In the result, the appeal of the assessee is partly allowed."

9.2 Further, the Hon'ble jurisdictional High Court in the case of Biocon Limited v. DCIT (2021) 431 ITR 326 (Kar.), wherein it was held that when there is exempt income, there cannot be any disallowance u/s 14A of the Act. In other words, it means that disallowance u/s 14A of the Act should be limited to the exempt income.

9.3 In view of the above judgment of the Hon'ble jurisdictional High Court, we direct the A.O. to disallow the amount made u/s 14A of the Act to the extent of exempted income only as decided by the Tribunal in assessment year 2014-2015."

11. In view of the above order of the Tribunal, taking a consistent view, we do not find any infirmity in the order of Ld. CIT(A) to limit the disallowance to the extent of exempted income only. Ordered accordingly.

12. In the result, the assessee's appeal in ITA No.580/Bang/2022 is allowed and the revenue's appeal in ITA No.740/Bang/2022 is dismissed.

Order pronounced in the open court on 30th Nov, 2022

Sd/-	**Sd/-**
(Beena Pillai)	**(Chandra Poojari)**
Judicial Member	**Accountant Member**

Bangalore,
Dated 30th Nov, 2022.
VG/SPS

Copy to:

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

By order

Asst. Registrar,
ITAT, Bangalore.