

आयकर अपीलीय अधिकरण  
मुंबई पीठ "एच", मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री गगन गोयल, लेखा सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "H", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
आअसं.3638/मुं/2012(नि.व. 2006-07)  
ITA NO.3638/MUM/2012(A.Y.2006-07)  
आअसं.1916/मुं/2014(नि.व. 2006-07)  
ITA NO.1916/MUM/2014(A.Y.2006-07)

Dandvati Investments & Trading  
Company Pvt. Ltd.  
'The International' 5<sup>th</sup> Floor,  
16, New Marine Lines Cross Road No.1,  
Churchgate, Mumbai – 400 020  
PAN: AAACD-3925-E ..... अपीलार्थी/Appellant

बनाम Vs.

Additional Commissioner of Income  
Range 2(1) Mumbai.  
Aaykar Bhavan, M.K.Road,  
Mumbai – 400 020 ..... प्रतिवादी/Respondent

आअसं.3635/मुं/2012 (नि.व. 2006-07)  
ITA NO.3635/MUM/2012(A.Y.2006-07)  
आअसं.1915/मुं/2014 (नि.व. 2006-07)  
ITA NO.1915/MUM/2014(A.Y.2006-07)

M/s. Firestorm Electronics Corporation Pvt. Ltd.  
'The International' 5<sup>th</sup> Floor,  
16, New Marine Lines Cross Road No.1,  
Churchgate, Mumbai – 400 020  
PAN: AAACF-4730-D ..... अपीलार्थी/Appellant

बनाम Vs.

Assistant Commissioner of Income  
Tax Circle -1(1), Mumbai.Room No.533,  
5<sup>th</sup> Floor,Aaykar Bhavan, M.K.Road,  
Mumbai – 400 020..... प्रतिवादी/Respondent

आअसं.3538/मुं/2012 (नि.व. 2006-07)

ITA NO.3538/MUM/2012(A.Y.2006-07)

Assistant Commissioner of Income

Tax Circle -1(1), Mumbai.

Room No.579, 5<sup>th</sup> Floor,

Aaykar Bhavan, M.K.Road,

Mumbai – 400 020

PAN: ACEPK-3529-L

..... अपीलार्थी/Appellant

बनाम Vs.

M/s. Firestorm Electronics Corporation Pvt. Ltd.

'The International' 5<sup>th</sup> Floor,

16, New Marine Lines Cross Road No.1,

Churchgate, Mumbai – 400 020

..... प्रतिवादी/Respondent

Assessee by :Shri Yogesh Thar &amp; Ms.Ikshu Shah

Revenue by :Shri Hoshang Boman Irani /

Shri Chetan Kacha

सुनवाई की तिथि/ Date of hearing : 26/08/2022

घोषणा की तिथि/ Date of pronouncement : 21/11/2022

आदेश/ORDER

PER VIKAS AWASTHY, JM:

ITA No.3638/Mum/2012 and ITA No.1916/Mum/2014 by the assessee, M/s. Dandvati Investments & Trading Co. Pvt. Ltd. are for Assessment Year 2006-07. ITA No.3638/Mum/2012 is arising out of assessment order passed u/s. 143(3) of the Income Tax Act, 1961 [in short 'the Act'] and ITA No.1916/Mum/2014 is arising out of reassessment proceedings for the same Assessment Year.

ITA NO.3638/MUM/2012 – A.Y. 2006-07:

2. This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals) -1, Mumbai [in short 'the CIT(A)'] dated 09/03/2012 for the Assessment Year 2006-07.

3. The assessee in appeal has assailed the findings of CIT(A) on five grounds. The gist of grounds raised in the appeal is as under:

- (i) Ground No.I – Disallowance of expenses Rs.24,20,347/- u/s.14A of the Act.
- (ii) Ground No.II -Disallowance of bad debts Rs.1,05,11,296/-.
- (iii) Ground No.III – Disallowance of foreign travel expenses Rs.7,10,863/-
- (iv) Ground No.IV – Enhancement of total income holding Non-compete Fees as business income.
- (v) Ground No.V–Without prejudice to ground No.IV, Non-compete Fee be held as Capital Gains.

3. Shri Yogesh Thar appearing on behalf of the assessee submitted that the assessee is a Private Limited Company engaged in the business of investments. The assessee filed its return of income for Assessment Year 2006-07 declaring total income of Rs.69,99,52,184/-. In scrutiny assessment, the Assessing Officer vide assessment order dated 31/12/2008 made addition/disallowances on following counts:

- (i) Disallowance u/s. 14A r.w.r. 8D Rs.48,03,858/-.
- (ii) Capital gains on sale of shares Rs.65,25,00,000/-.
- (iii) Disallowance of bad debts Rs.1,05,11,296/-
- (iv) Disallowance of foreign travel expenses Rs.14,21,726/-
- (v) Unpaid gratuity Rs.4,18,676/-

4. Aggrieved by the aforesaid additions/disallowances, the assessee filed appeal before the CIT(A). The CIT(A) vide impugned order granted part relief to the assessee by deleting some of the additions/disallowances. Further, the CIT(A) issued enhancement notice dated 29/07/2011 to tax Non-compete fee under the head "Income from Business and Profession". The present appeal by

the assessee is against the additions confirmed and enhancement of income by the CIT(A).

5. In respect of ground No.1, the Id. Authorized Representative for the assessee submitted that the Assessing Officer erred in applying the provisions of Rule 8D to the Assessment Year 2006-07. The Id. Authorized Representative for the assessee submitted that the provisions of Rule 8D apply w.e.f. assessment year 2008-09. To buttress his submissions, the Id. AR placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of Godrej & Boyce Mfg. Co. Ltd. vs. DCIT, 328 ITR 81. The CIT(A) granted part relief to the assessee by accepting that provisions of Rule 8D would not apply and restricted the disallowance to 5% of the dividend income earned. The Id. Authorized Representative for the assessee submitted that estimation of disallowance by CIT(A) is on higher side, he prayed that disallowance u/s. 14A of the Act should be restricted to 1% of the exempt income earned during the relevant period. In support of his submissions the Id. Authorized Representative for the assessee placed reliance on the following decisions:

- (i) CIT vs. HSBC Invest Direct (India) Ltd. in Income Tax Appeal No.1026 of 2014 decided by Hon'ble Bombay High Court vide order dated 19/12/2016.
- (ii) Allahabad Bank vs. ACIT in ITA No.2175/Kol/2009 for Assessment Year 2006-06 decided by Kolkata Bench of the Tribunal vide order dated 16/03/2016.
- (iii) MBSK Finvest Pvt. Ltd. vs. ITO in ITA No.345/Kol/2012 for Assessment Year 2006-07 decided by Kolkata Bench of the Tribunal vide order dated 04/04/2012.

5.1 In respect of ground No.II of appeal, the Id. Authorized Representative for the assessee submits that assessee had acquired debts of other companies aggregating to Rs.1,95,11,296/-. During the period relevant to the assessment year under appeal the assessee could recover debts only to the tune of Rs.90.00 lacs in full and final settlement. The shortfall of Rs.1,05,11,296/- was claimed as bad debts. In support of his submissions the Id. Authorized Representative for the assessee referred to the P&L Account for the Financial Year ended 2006-07 at page 14 of the paper book. The Id. Authorized Representative for the assessee submits that the shortfall in recovery of debts is business loss, hence, the same is allowable. The Id. Authorized Representative for the assessee further pointed that in the P&L Account, where the assessee has earned profit on assigning debts, the same has been offered to tax and the Department accepted the same. Whereas, the loss on recovery of debts written off by the assessee has been disallowed. The Revenue cannot adopt two different scales for treating the income and loss from the same business activity. The Id. Authorized Representative for the assessee in support of his submissions placed reliance on the following decisions:

- (i) TRF Ltd. vs. CIT, 323 ITR 397(SC);
- (ii) CIT vs. Walfort Share and Stock Brokers Pvt. Ltd., 326 ITR 1(SC);
- (iii) Dr. T.A. Qureshi Vs. CIT, 287 ITR 547.

5.2 In respect of ground No.III of appeal, the Id. Authorized Representative of the assessee submits that during the period relevant to assessment year under appeal assessee had claimed foreign travel expenses to the tune of Rs.14,21,726/-. The aforesaid expenses were incurred for travel of Directors and other employees. He submitted that the Directors of the assessee

company are operating from Dubai, therefore, Directors and professionals/ Sr. Consultants had to travel to Dubai for business purpose. During the course of assessment proceedings the assessee had furnished details of foreign travels in respect of each of the person/officials and the purpose of travel. The said details are at page 175 of the legal paper book. The CIT(A) after examining the facts restricted the disallowance to 50%. The Id. Authorized Representative for the assessee prayed that the disallowance made by the CIT(A) is on the higher side. He prayed for deleting the disallowance in toto and in alternate to make reasonable disallowance.

5.3 In ground No. IV and V of appeal, the assessee has assailed enhancement of income made by CIT(A) by way of notice dated 29/07/2011. The Id. Authorized Representative for the assessee submits that enhancement has been made by the CIT(A), holding Non-compete fees received by the assessee as "Income from Business and Profession". The enhancement has been made on the basis of new records. Therefore, order of enhancement by the CIT(A) is bad in law. The provisions of the Act does not permit CIT(A) to enhance income of the assessee by finding a new source. In support of his submissions the Id. Authorized Representative for the assessee placed reliance on the decision in the case of LokenathTolaram vs. CIT, 161 ITR 82(Bom). The Id. Authorized Representative submits that enhancement has been triggered by the assessment order in the case of Harshit Finlease and Investment Pvt. Ltd. for Assessment Year 2006-07 and the order of First Appellate Authority dated 23/12/2008 upholding said assessment order. The Id. Authorized Representative for the assessee referred to the written submissions made at page 176 of the paper book to further support his submissions on enhancement of income. The Id. AR fairly admitted that in case of Harshit

Finlease (supra) the Tribunal in ITA No. 4989/Mum/2011 vide order dated 03/12/2019 has upheld the findings of lower authorities in taxing non-compete fee u/s. 28(va) of the Act.

6. Per contra, Shri Hoshang Boman Iranirepresenting the Department vehemently supporting the findings of CIT(A) submitted that in assessment year 2007-08 and 2008-09 the Tribunal confirmed the disallowance u/s. 14A of the Act @5% of exempt income earned during the relevant period. The assessee raised grounds assailing disallowance u/s 14A of the Act @5% in appeal, however, the same were not pressed. Thus, the disallowance u/s. 14A of the Act @ 5% confirmed by the CIT(A) attained finality. The Id. Departmental Representative further submits that similar was the situation with respect to foreign travel expenses. The CIT(A) disallowed 50% of foreign travel expenses and the same was accepted by the assessee. The assessee did not press the ground raised before the Tribunal. In respect of disallowance of bad debts, the Id. Departmental Representative supported the findings of the CIT(A). The Id. Departmental Representative asserted that it is fictitious loss through arrangement of the debt within the group companies. It is not a trading debt as claimed by the assessee.

6.1 In so far as enhancement made by the CIT(A), the Id. Departmental Representative submits that the CIT(A) has co-terminus and extensive powers with that of the Assessing Officer. The CIT(A) issued show cause notice before enhancing the assessment. Due opportunity was granted to the assessee to make its submissions. The CIT(A) after considering the submissions of the assessee passed the order of enhancement. The Id. Departmental Representative further pointed that the issue of Non-compete fees was not

examined by the Assessing Officer although the assessee had mentioned the same in its books, thus, source of income was already before the Assessing Officer. The Assessing Officer failed to examine bifurcation of source of income. This issue was examined by CIT(A) and accordingly enhancement was made following the due process of law. The Id. Departmental Representative in support of his submissions placed reliance on the following decisions:

- (i) CIT vs. Nirbhayram Deluram, 224 ITR 610 (SC)
- (ii) Mega Trends vs. CIT, 388 ITR 16(Mad).
- (iii) Rallies IndiaLtd. Vs. CIT, 56 taxmann.com 282 (Bom)

7. We have heard the submissions made by rival sides and have examined the orders of authorities below. We have also considered the decisions on which the respective sides have placed reliance to buttress their arguments. The first issue in appeal by the assessee is with respect to disallowance u/s. 14A of the Act. The CIT(A) has estimated disallowance u/s. 14A of the Act at the rate of 5% of the exempt income earned. We find similar disallowance was made in assessment years 2007-08 and 2008-09. The assessee though carried the issue in appeal before Tribunal in ITA No.7262-7263/Mum/2011 but did not press the ground of appeal. The provisions of Rule 8D were introduced w.e.f. assessment year 2008-09, prior to assessment year 2008-09 disallowance u/s. 14A of the Act was made on mere estimation. The only criteria was reasonableness. The Id. Authorized Representative of the assessee has placed reliance on the decision of Tribunal and the Hon'ble Bombay High Court, wherein disallowance has been restricted to 1%. A perusal of the impugned order reveals that the assessee before the CIT(A) has prayed for restricting the disallowance to 2% of the exempt income by placing reliance on

the decision in the case of Godrej Agrovat Ltd. vs. ACIT reported as 2010 TOIL 616 (ITAT-Mum). We are of considered view that restricting disallowance u/s. 14A of the Act to 2% of the total exempt income earned during the relevant period would meet the ends of justice. We hold and direct accordingly. The ground No.1 of the appeal is partly allowed.

8. In ground No.2 of appeal, the assessee has assailed disallowance of bad debts. The assessee is an Investment Company. The assessee has purportedly taken over inter corporate deposits from following companies:

(i)	Shaw Wallace Executive Welfare & Benefit Company	- Rs. 27,57,042/-
(ii)	HarshitFinlease & Investments Ltd.	- Rs.1,13,83,136/-
(iii)	Hindustan Dorr- Oliver Ltd.	- <u>Rs.53,71,118/-</u>
	Total	- <u>Rs.1,95,11,296/-</u>

The aforesaid inter corporate deposits were given by the aforesaid entities to Mather & Platt Fire System Ltd. During the period relevant to the assessment year under appeal the assessee could recover only Rs.90,00,000/- towards full and final settlement. The remaining amount of Rs.1,05,11,296/- is claimed as bad debts. The contention of the assessee is that the irrecoverable debt was a business loss as the assessee failed to recover the debt in the normal course of business. We find that the CIT(A) has upheld the findings of Assessing Officer on this issue by observing as under:

*“5.4 .....It could be seen that the transaction were between the companies of Jumbo Group as a result of re-arrangement of business interests and it could not be shown as to how the advances effected in May, 2005 became non recoverable by July, 2005. The facts revealed that these are internal adjustments in the group and these adjustments are similar to zero sum game and it cannot be established that there was actually a business loss of the appellant company. It is also not established by facts and figures as to how the loss crystallized in A.Y.2006-07. These appear to be fictional losses the facts in regard to which are within the special knowledge of the*

*group and are not proved to be governed by business exigencies. Thus, ground No.3 is dismissed”*

The assessee has not been able to controvert the aforesaid observations made by the CIT(A). The Id. Authorized Representative for the assessee has merely placed reliance on the decisions, which in our considered view do not apply to facts of the present case. The ground No.2 of appeal is dismissed being devoid of any merit.

9. The ground of appeal No.3 is with respect to disallowance of foreign travel expenses. The contention of the assessee is that since directors of the company are based in Dubai, the foreign travel expenses is solely for the purpose of business. To support his contention the Id. Authorized Representative for the assessee referred the details of foreign travel at page 175 of the paper book. A perusal of the table reveals that the Vice President, Professionals/ Consultants have travelled to Dubai on different dates except Shri K.C. Wazir, Director. As per the narration given in table he has travelled to various places on various dates. It is not the case of assessee that Directors have travelled to various places in connection with the business. Hence, foreign travel expenses in respect of all the persons named in table at page 175 of the paper book are allowed except Shri K.C. Wazir, Director as no details of the travel in respect of Shri K.C.Wazir are given, hence, we are inclined to allow 50% of the foreign travel expenses qua Shri K.C.Wazir. The ground No.3 of the appeal is partly allowed in the aforesaid terms.

10. In ground No.4 & 5 of appeal, the assessee has assailed enhancement of total income by the CIT(A). The CIT(A) had issued show cause notice dated 29/07/2011 for enhancement of taxable income. During the period relevant to

assessment year under appeal the assessee had received Non-compete fees which was offered to tax by the assessee as "capital gains". The same was accepted by the Assessing Officer in scrutiny assessment proceedings. The CIT(A) observed that in the case of assessee's group company M/s. Harshit Finlease and Investments Ltd.(supra) for the same Assessment Year the Assessing Officer under same set of facts had held Non-compete fees as "Income from Business and Profession". The CIT(A) vide show cause notice intended to tax Non-compete fees under the head "Income from Business and Profession" as against "Capital Gains" offered by assessee.

11. The contention of the assessee is that enhancement is based on new source of information viz. decision in the case of assessee's group concern Harshit Finlease & Investments Ltd. The CIT(A) cannot make enhancement on new source of income. A perusal of documents on record reveal that during the course of assessment proceedings the Assessing Officer vide letter dated 05/12/2008 asked the assessee to furnish agreement relating to purchase/sale of shares of Shaw Wallace Group during Financial Year 2005-06. The assessee vide reply dated 26/12/2008 furnished certain documents and made detailed submissions with respect to sale of shares. The assessee expressed it's constraint to furnish copy of agreement relating to purchase/sale of shares of Shaw Wallace & Co. Ltd. due to 'confidentiality clause' in the agreement. However, relevant extracts of the agreement giving details of number of shares, share price, non-compete covenant etc. were provided to the assessee. The Assessing Officer after examining the details completed the assessment accepting the treatment given by assessee to the non-compete fee forming part of the transaction. The assessee offered non-compete fee under the head "Capital Gains". The CIT(A) was of the view that non-compete fee is taxable

under the head “Profits from Business & Profession”. This change of head of income would result in enhancement of taxable income. Hence, the enhancement notice was given by the CIT(A) not on new source of income as alleged by the assessee, but on an issue that emanates from the assessment proceedings. The CIT(A) referred to the assessment order and the order of First Appellate Authority for AY 2006-07 in the case of Harshit Finlease & Investment Ltd., assessee’s group concern to drive the point of parity of decision on same set of facts. The Id. AR of the assessee has not been able to show any difference in facts in the case of assessee and Harshit Finlease (supra) on the issue of taxability of non-compete fee under the head “Income from Business & Profession”.

The Co-ordinate Bench of Tribunal in the case of Harshit Finlease & Investment Pvt. Ltd. vs. Addl. CIT (supra), after analyzing the facts and considering various decisions concluded that the Assessing Officer/CIT(A) were right in bringing to tax the amount of non-compete fee under section 28(va) of the Act. We do not find any infirmity in the action of CIT(A) in bringing to tax non-compete fee under the head, “Income from Business & Profession”, resulting in enhancement of taxable income of the assessee. The CIT(A) followed due procedure, issued show cause and allowed opportunity of hearing to the assessee before enhancing the taxable income. These facts have not been disputed by the assessee. The submissions of the assessee on this issue are devoid of any merit. The ground of appeal no. IV & V are thus, dismissed.

**12. In the result, appeal by the assessee is partly allowed.**

**ITA NO.1916/MUM/2014- A.Y.2006-07:**

13. This appeal by the assessee is directed against the order of CIT(A) -1, Mumbai dated 26/12/2013 for the Assessment Year 2006-07. The appeal emanates from reassessment proceedings in the case of assessee. The assessee in appeal has assailed validity of reopening of assessment and the addition on merits.

14. The Id. Authorized Representative for the assessee narrating the facts of the case submitted that assessment order u/s. 143(3) was passed in the case of assessee on 31/12/2008. The assessee filed an appeal before the CIT(A) on 29/01/2009. The Assessing Officer issued notice u/s. 148 of the Act on 03/12/2010. The CIT(A) issued notice for enhancement on the same issue which was recorded in the reason for reopening on 29/07/2011. The assessment order u/s. 143(3) r.w.s. 147 of the Act was passed on 16/12/2011. The assessee filed appeal before the CIT(A) against reassessment order on 19/01/2012. The CIT(A) passed the order in appeal arising out of original assessment order on 09/03/2012. The CIT(A) passed the order in appeal arising out of reassessment proceedings on 26/12/2013. The Id. Authorized Representative for the assessee submits that in the first instance the issue was examined by the Assessing Officer during assessment proceedings u/s. 143(3) of the Act. To support his submissions the Id. Authorized Representative for the assessee referred to the submissions made before the Assessing Officer dated 21/10/2008 at pages 47 and 48 of the Paper Book and submissions dated 26/12/2008 at pages 67 to 69 of the Paper Book. The Id. Authorized Representative for the assessee pointed that Assessing Officer after examining the issue accepted the explanation furnished by the assessee and

made no addition. Thus, the reassessment proceedings have been initiated merely on change of opinion.

15. The Id. Authorized Representative for the assessee further assailing reassessment proceedings argued that the assessee replied to the show cause notice dated 03/12/2020 u/s. 148 of the Act on 20/12/2010. The reply of the assessee is at pages 26 and 27 of the paper book. The assessee had requested the Assessing Officer for providing copy of reasons for reopening. The assessee vide letter dated 04/01/2011 again requested the Assessing Officer to provide reasons for reopening. The reasons for reopening were furnished to the assessee on 23/09/2011 i.e. almost after nine months from first request for providing reasons for reopening. The assessee furnished objections to the reasons for reopening on 05/12/2011. The Assessing Officer disposed of the objections on the same date. Thereafter, within a short span of 11 days from the date of disposing of objections, passed the assessment order u/s. 148 r.w.s. 143(3) on 16/12/2011. The said assessment order has been passed in utter violation of the law laid down by Hon'ble Bombay High Court in the case of Asian Paints Ltd. vs. DCIT, 296 ITR 90 (Bom). Therefore, the impugned order is liable to be set-aside on this ground alone. The Id. Authorized Representative for the assessee further submits that there is no escapement of income. The assessee had disclosed Non-compete fees under the head "capital gains", the same was examined and accepted by the Assessing Officer during assessment proceedings. In reassessment proceedings the Assessing Officer had merely changed the head of income from "Capital Gains" to "Business Income". Therefore, the conditions necessary for invoking provisions of section 147 of the Act are absent. The Id. Authorized Representative for the assessee further pointed that during pendency of

reopening proceedings, the CIT(A) passed the order enhancing income of assessee on the same issue i.e. taxability of Non-compete fee under the head "Income from Business and Profession".

16. Per contra, the Id. Departmental Representative vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The Id. Departmental Representative pointed that the reasons for reopening were provided to the assessee on 23/09/2011. The assessee thereafter took two months to file objections against the reasons for reopening. On the same date the Assessing Officer passed a separate speaking order rejecting objections of the assessee. The Assessing Officer had no other option but to pass the assessment order within 11 days otherwise the assessment order would have become time barred.

17. We have heard the submissions made by rival sides and have examined the orders of authorities below. A perusal of documents on record reveal that during assessment proceedings u/s. 143(3) of the Act, the Assessing Officer had called for the details including agreement related to purchase/sale of shares of Shaw Wallace Group companies from the assessee. The Non-compete fees covenant was part of the agreement for sale and purchase of shares. This fact clearly emerges from the reply of assessee dated 26/12/2008 (at page 67 of the paper book). Since, the issue was examined by the Assessing Officer during assessment proceedings and the Assessing Officer allowed Non-compete fees under the head "capital gains" this indicates that the Assessing Officer after having examined the issue formed an opinion that Non-compete fees is taxable under the head "capital gains". Once the issue has been examined by the Assessing Officer in assessment proceedings, the

same issue cannot be allowed to be re-examined in proceedings u/s. 148 of the Act. It is a case of change of opinion by the Assessing Officer and the same impermissible under the provisions of the Act. Thus, in view of our above findings, we hold reopening of assessment in the instant case as bad in law. Consequently, the impugned order is set-aside and the appeal of assessee is allowed.

18. Since, we have decided the jurisdictional issue in favour of the assessee, ground No.2 raised in the appeal on merits is not deliberated upon.

19. **In the result, appeal by the assessee is allowed.**

**ITA NO.3635/MUM/2012 (A.Y.2006-07)- Assessee's Appeal**  
**ITA NO.3538/MUM/2012 (A.Y.2006-07)- Revenue's Appeal**

20. These cross appeals by the assessee and the Department are directed against the order of CIT(A) -1, Mumbai dated 09/03/2012 for the assessment year 2006-07.

21. Shri Yogesh Thar appearing on behalf of the assessee submitted at the outset that the facts in the appeal by the assessee are similar to the facts in the case of Dandvati Investments & Trading Company Pvt. Ltd. in ITA No.3638/Mum/2012 (supra). The assessee in present appeal has raised two grounds:

- (i) Disallowance u/s. 14A of the Act; and
- (ii) Enhancement of income in respect of Non-compete fees.

The Id. Authorized Representative of the assessee submits that the submissions made in respect of disallowance u/s. 14A of the Act and on the issue of enhancement in the case of Dandvati Investments & Trading Company

Pvt. Ltd. (supra) would equally hold good for the present appeal by the assessee from same group.

22. The Id. Departmental Representative submits that facts on both the issues are identical to the facts in the case of Dandvati Investment and Trading Co Pvt. Ltd., except for the amounts.

23. Both sides heard. We find that the facts germane to the appeal are similar to the facts in the case of Dandvati Investments & Trading Company Pvt. Ltd. (supra).

24. In ground-I of appeal the assessee is seeking deletion of disallowance made u/s14A of the Act. While making disallowance u/s 14A of the Act in respect of exempt income earned during the relevant period, the Assessing Officer invoked Rule 8D and made disallowance of Rs.73,63,900/-. In First Appellate proceedings, the CIT(A) held that the provisions of Rule 8D would not apply and restricted disallowance to Rs.3,59,165/- i.e. @ 2% of the total exempt income. We find no infirmity in the findings of CIT(A), ergo ground –I of appeal is dismissed.

25. The ground no. II and III of appeal are directed against enhancement of total income as a result of taxing non- compete fee as “Business Income”. The assessee has offered non-compete fee under the head “Capital Gains”. The grounds of appeal and the facts in appeal are pari materia to the grounds and facts in ITA No. 3638/Mum/2012 (supra). Therefore, the detailed reasoning giving in aforesaid appeal above (para-11) while deciding the grounds would mutatis mutandis apply to the present set of grounds. Consequently, ground no. II and III are dismissed for parity of reasons.

**26. In the result, appeal of the assessee is dismissed.**

27. The Revenue in appeal has raised solitary ground assailing the findings of CIT(A) in restricting disallowance u/s.14A of the Act to 2% of the total exempt income. The said ground of appeal by the Revenue corresponds to ground No-1 in appeal by the assessee. We have upheld the findings of CIT(A) while deciding appeal of the assessee. Hence, the solo ground raised in the appeal of Revenue is dismissed.

**28. In the result, appeal by the Revenue is dismissed.**

**ITA NO.1915/MUM/2012 (A.Y.2006-07)- Assessee's Appeal**

29. This appeal by the assessee is directed against the order of CIT(A) -1, Mumbai dated 26/12/2013, for the Assessment Year 2006-07. The appeal emanates from reassessment proceedings in the case of assessee. The assessee in appeal has assailed validity of reopening of assessment and the addition on merits.

30. Both sides are unanimous in stating that the facts in the appeal are similar to the facts in appeal ITA No. 1916/Mum/2014 (supra) by the assessee's group company. The submissions made in the aforesaid appeal would be applicable to the facts of the present appeal.

31. We find that the reasons for reopening are verbatim except for the amount and number of equity shares. The date of notice u/s148 of the Act and the date of assessment order passed under section 143(3) r.w.s. 147 of the Act are same. The reassessment order in both the cases is on same lines and reasons. On account of parity of facts, the findings given while deciding appeal

in ITA No. 1916/Mum/2014 (supra) would mutatis mutandis apply to the present appeal.

**32. In the result, appeal of the assessee is allowed.**

Order pronounced in the open court on Monday the 21<sup>st</sup> day of November, 2022.

Sd/-

(GAGAN GOYAL)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 21/11/2022

Vm, Sr. PS(O/S)

**प्रतिलिपि अग्रेषित Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/The CIT(A)-
4. आयकर आयुक्तCIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt.Registrar)/ Sr. Private SecretaryITAT,  
**Mumbai**