

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI**

**SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 7589/MUM/2007
(Assessment Year: 2001-02)**

**ICICI Bank Limited,
(erstwhile ICICI Limited),**
ICICI Bank Towers,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400051
[PAN: AA ACT1398K]

..... **Appellant**

Vs

**Deputy Commissioner of Income Tax,
Range 3(1),**
Aayakar Bhavan, Mumbai - 400020

..... **Respondent**

**ITA No. 7508/MUM/2007
(Assessment Year: 2001-02)**

**Deputy Commissioner of Income-
Tax, Circle 3(1),**
Room No. 607, 6th Floor, Aayakar
Bhavan, Mumbai - 400020

..... **Appellant**

**ICICI Bank Limited,
(In respect of M/s ICICI Ltd. merged
with M/s ICICI Bank Ltd.),**
Zenith House, Keshavrao Khade Marg,
Mahalaxmi, Mumbai - 400034
[PAN: AA ACT1398K]

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Ms. Aarti Vissanji
For the Respondent/Department : Shri K.C. Selvamani
Ms. Nayana Krishnakumar

Date

Conclusion of hearing : 21.04.2023
Pronouncement of order : 27.04.2023

ORDER

Per Rahul Chaudhary, Judicial Member:

1. These are cross appeals arising out of the order, dated 28.09.2007, passed by the Ld. Commissioner of Income Tax (Appeals)-XXVII, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2001-02, whereby the Ld. CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 27.02.2004, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The relevant facts in brief are that the Assessee is a company set up as a Development Finance Institution. For the Assessment Year 2001-02, the Assessee filed original return of income on 31/10/2001 declaring total income of INR 314,57,08,980/-. The Assessee filed a revised return of income on 28/03/2003 declaring loss of INR 91,11,71,830/- after claiming, inter alia, higher depreciation and deduction on account of bad debts under the normal provisions of the Act. In the revised return the total income of the Assessee under Section 115JA of the Act was computed at INR 95,72,42,478/-.
3. The case of the Assessee was selected for scrutiny and notices under Section 143(2) and 142(1) of the Act were issued and served upon the Assessee. The Assessing Officer completed the assessment under Section 143(3) of the Act vide Assessment Order, dated 27/02/2004 at total income of INR 1263,01,56,819/-after making certain additions/disallowances.
4. Being aggrieved, the Assessee preferred appeal before the CIT(A). Vide order, dated 28/09/2007, the CIT(A) partly allowed

the appeal preferred by the Assessee. Therefore, both, the Assessee as well as the Revenue are in cross-appeals before us against the aforesaid order of the CIT(A).

ITA No. 7589/MUM/2007 (Assessee's Appeal)

5. We would first take up appeal preferred by the Assessee wherein 8 grounds of appeal have been raised by the Assessee which are taken up in seriatim.

Ground No. [1] and [8]

6. Ground No. [1] and [8] are general in nature, and therefore, do not require adjudication.

Ground No. [2]

7. Ground No. [2] pertains to exemption claimed by the Assessee under Section 10(23G) of the Act and read as under:

"On the facts and circumstances of the case and in law, the CIT(A) erred in partly confirming the interest expenses at Rs. 3,33,37,57,096 incurred for earning interest on tax free bonds instead of Rs. 4,30,69,65,255 being only direct expenses viz. interest on borrowings made for infrastructure financing and thereby by allowing only part exemption under section 10(23G)"

- 7.1. During the relevant previous year, the Assessee had earned income of INR 696,07,04,844/- consisting of the following:

S.No.	Particular	Amount (INR)
i.	Interest income	585,75,94,350/-
ii.	Guarantee commission	25,59,90,785/-
iii.	Front end fee	18,69,57,750/-
iv.	Appraisal fees	2,80,92,178/-
v.	Project fees	25,00,000/-
vi.	Conversion fee	1,65,45,931/-
vii.	Pre payment premium	2,71,40,000/-
viii.	Loan processing fees	9,76,77,000/-
ix.	Long term capital gains	48,82,06,850/-
	Total	696,07,04,844/-

8. The Assessee claimed that the above income of INR 696,07,04,844/- was exempt under Section 10(23G) of the Act which provides for exemption in respect of income by way of Interest, Long Term Capital Gains and Dividend of an infrastructure capital company from investments made by way of share and long term finance in any enterprise carrying on the business of developing, maintaining and operating any infrastructure facility. Further, during the relevant previous year, the Assessee has raised funds INR 4942,33,00,000/- by way of public issue of bonds eligible for benefit under Section 88, 54EA and 54EB of the Act which was utilized exclusively lending to infrastructure sector. The Assessee had incurred interest cost of INR 333,37,57,096/- in respect of the aforesaid funds. Therefore, in the return of income Assessee had disallowed INR 333,37,57,096/- under Section 14A of the Act, and had, thus, in effect, claimed exemption under Section 10(23G) of the Act in respect of INR 362,69,47,748/- [INR 696,07,04,844/- minus INR 333,37,57,096/-] only.
9. However, the Assessing Officer restricted the amount of exemption under Section 10(23G) of the Act to INR 142,06,82,932/- holding that the Assessee was entitled to claim exemption under Section 10(23G) of the Act in respect of Net Interest Income (as opposed to the gross interest receipt). Accordingly, the Assessing Officer made an addition of INR 220,62,64,856/- holding the same to be excess amount of exemption claimed by the Assessee under Section 10(23G) of the Act.
10. Being aggrieved, the Assessee carried the issue in appeal before

CIT(A). The CIT(A) granted some relief to the Assessee holding as under:

"4.4. I have carefully considered the submissions made by the Appellant, I find that the computation made by the AO has to be modified. Keeping in view that all the investment made cannot be said to be out of the borrowed funds and therefore, there is a necessity to identify the percentage of interest expenses allocable to the earnings. Therefore, the AO will calculate the deduction U/s 10(23G) as under:

a. The AO will calculate the ratio of own funds to total funds and apply the same to the Gross Income claimed exempt u/s 10(23G) to find out the component of Infrastructure Income out of own funds.

b. Thus, the AO will also arrive at the Infrastructure Income out of borrowed funds.

c. The AO will work out ratio of allocable expenses after considering interest and administrative expenses and after reducing expenses clearly not relatable to earning of Infrastructure income.

d. The ratio arrived at in (c) will be applied to (b) to determine interest expenses allocable to (b).

e. The difference of (b) and (d) will give Net Infrastructure income out of borrowed funds.

f. The AO will add (a) to (c) and the Capital Gains to arrive at Total income exempt u/s 10(23)(G) of the Act.

The relief admissible u/s 10(23G) will thus modified in the light of the above."

11. Not being satisfied with the relief granted by the CIT(A), the Assessee carried the issue in appeal before the Tribunal.
12. Both the sides agreed that identical issue stands decided in the case of the Assessee in appeals for the Assessment Years 1997-98 to 2000-01 and 2002-03.
13. While deciding identical ground raised in appeal for the

Assessment Year 2000-01 [ITA No. 4657 & 4826/Mum/2004, dated 31/01/2017] the Tribunal restored the issue back to the file of the Assessing Officer with certain directions holding as under:

"5. *The next common issue in this appeal of the assessee and that of Revenue is as regards to the order of the CIT (A) partly confirming the interest expenses of Rs.379,11,90,416/- incurred for earning interest free income from bonds instead of Rs.174,37,66,592/- being only direct expenses thereby allowing only part expenses u/s 10(23G) of the Act. For this, the assessee has raised following grounds No.3 and 4:-*

*"(B) Re: Deduction under section 10(23G)
Rs.3,79,11,90,416*

3. On the facts and circumstances of the case and in law, the CIT(A) erred in partly confirming the interest expenses at Rs.4,18,73,63,942 incurred for earning interest on tax free bonds instead of Rs.1,74,37,66,592 being only direct expenses viz. interest on borrowings made for infrastructure financing and thereby allowing only part exemption under section 10(23G).

4. The CIT(A) also erred in not specifically dealing with the ground regarding guarantee commission excluded by the assessing officer while considering income exempt under section 10(23G) of the Act."

The Revenue has raised following ground No. 3 :-

"3 (a) On the facts and circumstances of the case and in law, the learned CIT(A) erred in holding that computation made by the Assessing Officer in respect of exemption u/s.10(23G) has to be modified."

3 (b) On the facts and circumstances of the case and in law, the learned CIT(A) failed to appreciate that interest and other expenditure relatable to earning of infrastructure income was correctly computed in the assessment order."

3 (c) On the facts and circumstances of the case and in law, the learned CIT(A) erred in devising a formula without appreciating that the same will not give the correct figure of interest and other expenses,

attributable to earning of such income."

6. *Both the parties admitted that the facts and circumstances are exactly identical what was in assessment year 1999-2000& 1998-1999 also. Before us, the learned Counsel for the assessee stated that identical issue was decided in assessment year 1997-98 in ITA No.5424/Mum/2001 wherein the Tribunal has set aside the issue to the file of the AO vide Para 8.3 and 8.4 by observing as under:-*

" 8.3 We have gone through the facts of this case and find that the order passed by the Ld. CIT (A) is not a speaking order on various aspects of computation of income on net basis as were raised by the assessee in its statement of facts filed before the Ld. CIT(A). Before us, the assessee has submitted detailed working sheet so as to calculate correctly, the amount of net income available for exemption u/s 10(23G). For the sake of ready reference, the said work sheet submitted by the ld. Counsel is reproduced below:

xx xx

8.4 These facts have not been analysed by either of the lower authorities. In principle, we agree with the contention of the ld. Counsel that only those expenses which are relatable to earning of the exempt income can be deducted for computing net income available for exemption u/s 10(23G). Under these circumstances, we send this issue back to the file of the Assessing Officer, who shall decide this issue afresh after giving adequate opportunity of hearing to the assessee to submit requisite details and documents in support of claim made by the assessee. The assessee shall also extend requisite cooperation to the Assessing Officer. The Assessing Officer shall consider aforesaid circular of the Board as well as judgments relied upon by both the parties before us. The assessee is also free to place on record any other judgment in its support as may be available at the time of passing of fresh assessment order. The assessee is free to raise all legal and factual issues in this regard. The Assessing Officer is also at liberty to taken into account latest position of law as may be available at the time of deciding this issue afresh. The Assessing Officer shall consider all the submissions and evidences as may be placed by the assessee on objective basis and shall decide all the issues as may be raised by the assessee before him.

Thus, this issue is sent back to the Assessing Officer with our direction as given above and these grounds may be treated as partially allowed for statistical purposes”.

According to the learned Counsel for the assessee, the AO has disallowed exemption u/s 10(23G) of the Act on account of receipts of financing to infrastructure sector and not the gross receipt. The assessee filed revised computation during assessment claiming exemption of entire amount of gross receipt of Rs.379,11,90,416/-. The AO allowed the claim of exemption at Rs.104,74,00,449/- relating to income computed on account of infrastructure sector eligible for claim of deduction u/s 10(23G) of the Act. The CIT (A) further allowed relief partly modifying the order of the AO. Aggrieved, now the assessee as well as the Revenue, both are in appeal before the Tribunal.

7. Before us now, as narrated above, the assessee relied on the decision of the Coordinate Bench of the Tribunal for Assessment Year 1997-98 wherein no interest expense was disallowed by the assessee by claiming that it was the gross income to be allowed as exempt u/s 10(23G) of the Act. As in the earlier year, now, the assessee before us also filed alternative working of expenses, which was not before the lower authorities. Before us now, as per the working of the expenses, the same was not analyzed by the lower authorities. Hence, we remit the mater back to the file of the AO for fresh consideration. The only differential fact in the present case is that the assessee itself has disallowed direct expenses of Rs. 174,37,66,592/- by way of interest expenses for earning of income u/s 10(23G) of the Act, which has been offered for disallowance. We also agree that only those expenses which are relatable to earning of exempt income can be claimed as deduction for computing net income u/s 10(23G) of the Act. In term of the above and in term of the direction of the Coordinate Bench of the Tribunal in assessment year 1997-98 in assessee’s own case in ITA No.5424/Mum/2001, the AO will decide the issue. Accordingly, this issue of assessee’s appeal is allowed for statistical purposes and the issue of Revenue’s appeal is dismissed.” (Emphasis Supplied)

14. Similarly, while disposing appeal for the Assessment Year 2002-03 [ITA No. 836 & 392/Mum/2008, dated 07/07/2017] it was held by the Tribunal as under:

"8. We have heard the rival contentions and perused the material on record. As it appears from the facts on record, the Assessing Officer while computing deduction under section 10(236) has presumed that the entire investment for infrastructure was out of borrowed funds which according to us is not correct. In our view, only those expenditure directly relatable to the earning of exempt income can be reduced / set-off for computing net income under section 10(32G). We Have noted that identical issue came up for consideration before the Co-ordinate Bench in assessee's own case for the assessment year 1997-98 and 2000-01. While deciding assessee's appeal in assessment year 2000-01 in ITA no.4657/Mum/2011, dated 31st January 2017, the Tribunal followed its own order in ITA no.5425/ Mum/2001, and restored the matter to the file of the Assessing Officer with following directions:-

"7. Before us now, as narrated above, the assessee relied on the decision of the Coordinate Bench of the Tribunal for assessment year 1997-98 wherein no interest expense was disallowed by the assessee by claiming that it was the gross income to be allowed as exempt u/s 10(23G) of the Act. As in the earlier year, now, the assessee before us also filed alternative working of expenses, which was not before the lower authorities. Before us now, as per the working of the expenses, the same was not analyzed by the lower authorities. Hence, we remit the mater back to the file of the AO for fresh consideration. The only differential fact in the present case is that the assessee itself has disallowed direct expenses of Rs. 174,37,66,592/- by way of interest expenses for earning of income uls 10(23G) of the Act, which has been offered for disallowance. We also agree that only those expenses which are relatable to earning of exempt income can be claimed as deduction for computing net income uls 10(23G) of the Act. In term of the above and in term of the direction of the Coordinate Bench of the Tribunal in assessment year 1997-98 in assessee's own case in ITA No.5424/Mum/2001, the AO will decide the issue. Accordingly, this issue of assessee's appeal is allowed for statistical purposes and the issue of Revenue's appeal is dismissed."

9. The issue being identical, following the decision of the Co-ordinate Bench as referred to above, we restore the issue back to the file of the Assessing Officer for deciding afresh

with similar direction. Ground no.2, is allowed for statistical purposes."

15. Both the sides agreed that the facts and circumstances in the assessment year before us (i.e. Assessment Year 2001-02) are identical to those prevailing in the preceding assessment years and Assessment Year 2002-03. Therefore, in view of the above decisions of the Tribunal in appeals for the immediately preceding and succeeding assessment years, consistent with the view taken by the Tribunal, we restore the issue back to the file of Assessing Officer for deciding the issue afresh keeping in view the directions of the Tribunal reproduced hereinabove. It is clarified that the Assessee would be eligible to claim eligible for exemption under Section 10(23G) of the Act in respect of net income. Further, while computing the net interest income eligible for exemption under Section 10(23G) of the Act, the Assessing Officer shall deduct only those expenses which are relatable to earning of exempt income and shall take into consideration the suo-motu disallowance of INR 333,37,57,096/- made by the Assessee in terms of Section 14A of the Act. In terms of the aforesaid, Ground No. [2] raised by the Assessee is allowed for statistical purposes.

Ground No. [3]

16. Ground No. [3] pertains to exemption claimed by the Assessee under Section 10(33) of the Act and read as under:

"On the facts and circumstances of the case and in law, the CIT(A) erred in partly confirming the interest expenses at Rs. 69,76,98,835 and managerial and administrative expenses @ 1% at Rs. 1,12,17,496/- instead of Rs. Nil as declared by the Appellant."

17. During the relevant previous year the Assessee received dividend

of INR 112,17,49,605/- which was claimed by the Assessee to be exempt under Section 10(33) of the Act. The Assessing Officer concluded that exemption under Section 10(33) of the Act is allowable in respect of net dividend income and not on gross basis and was claimed by the Assessee. Applying the average cost of fund of 10.65%, the Assessing Officer computed the amount of interest expenditure incurred by the Assessee for earning dividend income at INR 485,54,00,000/- and attributed 1% of dividend as managerial expenditure incurred for earning dividend income, to arrive at managerial expenses of INR 1,13,00,000/-. Thus, arriving at aggregate cost/expenditure of INR 486,67,00,000/- incurred by the Assessee to earn dividend income of INR 112,17,49,605/-. Since, according to the Assessing Officer the amount of expenditure relatable to earning dividend income exceeded the dividend income, the Assessing Officer concluded that the Assessee was not entitle to claim any exemption under Section 10(33) of the Act.

18. Being aggrieved, the Assessee carried the issue in appeal before CIT(A). The CIT(A) granted partial relief to the Assessee as the CIT(A) observing that investments were made out of common pool of funds consisting of own funds as well as borrowed funds. The CIT(A) directed the Assessing Officer to exclude expenses not relatable to earning dividend income and modified the order passed by the Assessing Officer holding as under:

"6.5 I have carefully looked into the case and the submissions made by the Appellant before me and I find that the computation made by the AO deserves to be modified. It is a fact that the Appellant has own funds and borrowed funds in the common pool out of which investments were made. Therefore,

a. The AO should work out the ratio of borrowed funds to

the total funds and apply it to gross dividend received, to determine the gross dividend income out of the borrowed funds.

b. The AO should thereafter take into account the total interest expenses and reduce from the same, the depreciation on leased assets, technical service charges on leased assets and bad and doubtful debts to arrive at the net interest expenses. On this basis, the ratio for allocation of expenses has to be worked out by the AO.

6.6 *For calculating exemption available u/s 10(33), the AO will take note of the fact that in view of (a) above, only a percentage of gross income claim exempt u/s 10(33) can be said to be out of the borrowed funds. Applying the ratio calculated in (b) above to the said dividend income out of the borrowed funds, the AO can ascertain the interest expenses allocable to the above dividend. The difference between the dividend income out of the borrowed funds and the interest expenses allocable to the above dividend would give the net income u/s 10(33) out of the borrowed funds. This net income u/s 10(33) when added to the income from owned funds (ie. residual) would yield the total dividend income computed after taking into account the interest cost. The AO will thereafter reduce 1% of gross dividend of Rs.113,00,000 for administrative and managerial expenses to arrive at the net exemption u/s 10(33) of the Act. The Appellant thus succeeded in part in regard to ground E. In view of the said relief para no.25 in respect of further expenses of Rs.12,17,49,605 disallowed from business income accordingly stands deleted as the same now becomes only academic"*

19. Not being satisfied with the relief granted by the CIT(A), the Assessee carried the issue in appeal before the Tribunal.
20. The Ld. Authorised Representative for the Assessee appearing before us submitted that identical issue covered in Assessment Year 1998-99 to 2000-01 to 2000-01 and Assessment Year 2002-03, Assessment Year 2004-05 and Assessment Year 2005-06. She submitted that no interest expenses to be allocated as investments made out of Assessee's own funds and in this regard she relied upon 'Statement Showing Non-Interest Bearing Funds

and Investments' placed at page 46 of the paper-book. She submitted that as on 31/03/2001, Total Own and Non-Interest bearing Funds stood at INR 8008.32 Crores, whereas Investment Earning Exempt Income stood at INR 4559.10 Crores only. She also placed reliance upon the judgment of Hon'ble Supreme Court in the case of South Indian Bank Ltd. vs. CIT : 438 ITR 1 (SC) and CIT vs. Reliance Industries Ltd. : 410 ITR 466 (SC).

21. Per contra, the Ld. Departmental Representative relied upon paragraph 5 to 5.30 of the Assessment Order and submitted that admittedly, the Assessee common pool of funds which was utilized for business activities including acquisition of shares. Therefore, the Assessing Officer was justified in attributing a portion of the interest expenditure to earning of exempt dividend income. Further, the investment activity would result in consumption of management and administrative resources and therefore, the Assessing Officer was justified in attributing 1% of the dividend as managerial expenditure incurred for earning dividend income. Thus, the Ld. Departmental Representative supported attribution of administrative expenditure of INR 1,13,00,000/- and INR 485,54,00,000/- as administrative expenditure and interest expenditure, respectively, incurred by the Assessee for earning exempt dividend income of INR 112,17,49,605/-.
22. We have considered the rival submissions and perused the material on record. We note that the identical facts and circumstances, the Tribunal had, while disposing appeal for the Assessment Year 2004-05, (common order dated 03/11/2017 passed in ITA No. 6137 & 6127/Mum/2008) had held as under:

"27. We have heard rival contentions and perused the material available on record. The main contention of the assessee against disallowance of interest expenditure is, investment in dividend earning assets were made out of surplus interest free funds available with the assessee. We find substantial merit in the aforesaid submissions of the learned Authorised Representative. If surplus interest free funds are available with the assessee to take care of the investments made in shares giving rise to dividend income, no disallowance of interest expenditure can be made in view of the decision of the Hon'ble Jurisdictional High Court in HDFC Bank Ltd. (supra). As far as managerial / administrative expenditure are concerned, we have noted, in the assessment year 1997-98, the assessee had furnished a working of disallowance of expenditure to be made for earning exempt income wherein, it has quantified the disallowance for administrative expenditure at 1% of the gross exempt income. Notably, in assessment year 2000-01, the Tribunal while deciding identical issue has restored the matter back to the file of the Assessing Officer observing as under:-

"12. We find that the assessee claimed exemption u/s 10(33) of the Act but the AO disallowed interest expenses and managerial & administrative expenses at Rs.257.63 crore and Rs.2.70 crore respectively and disallowed exemption u/s 10(33) of the Act as against the claim of the assessee of Rs.222,69,96,573/-. The CIT(A) partly confirmed the disallowance of interest expenses at Rs.134,37,32,781/- and managerial and administrative expenses at 1%. The assessee before us now claimed that no interest expenses to be allocated as the investment is made out of assessee's own funds. For this, the learned Counsel for the assessee relied upon the decision of the Hon'ble Bombay High Court in the case of CIT Vs. HDFC Bank Ltd. 366 ITR 505 (Bom.) and also in the case of CIT Vs. Reliance Utilities & Power Ltd. 313 ITR 314 (Bom.). It was contended by the learned Counsel for the assessee that the entire interest expenses are to be allowed as expenses and no interest expenses to be allocated as the investment is made out of assessee's own funds. She referred to the Tribunal's decision in assessee's own case in assessment year 1997-98 in ITA No.5424/Mum/2001 wherein the issue is decided vide Para 10.3 by observing as under:-

"10.3 It is noted that in earlier years, this issue has been decided in favour of the assessee, after considering the judgment of Hon'ble Bombay High

Court in the case of Emerald Co. Ltd. (supra). It is noted that in assessment year 1995-96 (order dt. 09.09.2015), the Tribunal decided this issue after considering not only the judgment of Hon'ble Bombay High Court in the case of Emerald Co. Ltd. (supra) but after considering section 14A as well. Therefore, respectfully following the orders of earlier years, this ground is principally decided in favour of the assessee, subject to verification of facts of this year. Thus, AO is directed to follow the orders of earlier years and decide this ground after verification of facts of this year, and compute the deduction allowable to the assessee taking guidance from tribunal's orders of earlier years. This ground is treated as allowed for statistical purposes".

13. After hearing both the sides, we find that the AO while examining the assessee's own funds vis-à-vis investments in shares will follow the decision of the Hon'ble Bombay High Court in the case of HDFC Bank Ltd. (supra) and Reliance Utilities & Power Ltd. (supra). In case, the investment is made out of assessee's funds, then, no interest expenses is to be allocated to the interest income. Accordingly, we set aside this issue to the file of the AO to verify the facts. This issue of the assessee is allowed for statistical purposes and the issue in Revenue's appeal is dismissed."

28. Consistent with the view expressed by the Co-ordinate Bench of the Tribunal reproduced herein above, we direct the Assessing Officer to verify the facts and decide the issue keeping in view the directions of the Tribunal herein above. Ground no.5, raised by the Revenue corresponding to ground no.4, in assessee's appeal are allowed for statistical purposes" (Emphasis Supplied)

23. Since facts in the present appeal are identical to appeal for the Assessment Years 2000-01 and 2004-05, consistent with the above view expressed by the Co-ordinate Bench of the Tribunal, we direct the Assessing Officer to verify the facts and decide the issue keeping in view the directions given by the Tribunal while deciding appeal for the Assessment Years 2000-01 and 2004-05 reproduced herein above. Accordingly, the Ground No. [3], raised by the Assessee is allowed for statistical purposes.

Ground No. [4]

24. Ground No. [4] pertains to disallowance of interest paid on capitalization of building read as under:
- "On the facts and circumstances of the case and in law, the CIT(A) erred in not allowing as a revenue expenditure interest on loan for building amounting to Rs. 14,47,986/-.*
25. In the computation of income the Assessee had claimed deduction for INR 14,47,986/- being the amount of interest related to purchase/construction of building claimed as deduction though capitalized in the books of accounts. The Assessing Officer disallowed deduction for the aforesaid interest amount of INR 14,47,986/- on the ground that the same had been capitalized in the books of accounts. The provisions of Section 36(1)(iii) of the Act are applicable on interest on borrowing and not on cost of assets which is governed by provision of Section 43(1) and other allied provisions pertaining to depreciation etc.
26. Being aggrieved, the Assessee carried the issue in appeal. The CIT(A) upheld the disallowance made by the Assessing Officer following the order passed by his predecessor in appeal for the Assessment Year 2000-01. The CIT(A), however, accepted the without prejudice contention of the Assessee and directed the Assessing Officer to allow depreciation @ 10% on the interest amount of INR 14,47,986/-.
27. Being aggrieved, the Assessee carried the issue in appeal before the Tribunal.
28. The Ld. Authorised Representative for the Assessee submitted that the interest expenditure was allowable under Section

36(1)(iii) of the Act and the same was incurred wholly and exclusively for the purpose of business. She also relied upon the order, dated 31/01/2017, passed by the Tribunal in appeal for the Assessment Year 2000-01 (ITA No. 4657 & 4826/Mum/2004) and the judgment of Hon'ble Supreme Court in the case of DCIT vs. Core Healthcare Ltd. : 298 ITR 194 (SC).

29. Per contra, Ld. Departmental Representative relied upon the order passed by the Assessing Officer and the CIT(A) and submitted that the interest were capitalized in the books of accounts by the Assessee and therefore, the same could not be treated as revenue expenditure.
30. We note that the Tribunal has, in the case of the Assessee in appeal for the Assessment Year 2000-01 (ITA No. 4657/Mum/2004), vide order dated 31.01.2017 held as under:

"19. At the outset, the learned Counsel for the assessee stated the claim of depreciation and claim of interest on loan for building on fixed assets acquired on merger with Anagram Finance Ltd. but the CIT(A) has not considered this aspect. She claimed that the depreciation on business and commercial rights acquired at the time of merger being in the nature of goodwill should have been allowed in term of the decision of the Hon'ble Supreme Court in the case of CIT v. Smiffs Securities Ltd. 348 ITR 307 (SC) and as regards to interest on capitalization of building ought to have been allowed as revenue expenditure following the decision of the Hon'ble Bombay High Court in the case of CIT v. Tata Chemicals 175 CTR 443 (Bom). On query from the bench, the learned Sr. DR fairly conceded that let the facts be examined by the AO because none of the authorities below have deliberated on these issues. Learned Counsel for the assessee has not objected to the proposal. In term of the above, we restore these two issues back to the file of the AO for deciding the issue in terms of decision of the Hon'ble Supreme Court in the case of Smiffs Securities Ltd. (supra) on the issue of depreciation and in term of Tata Chemicals (supra) on the issue of interest capitalization on building. Accordingly, these two issues are restored back to the file of the AO." (Emphasis Supplied)

31. On perusal of above, it can be seen that for the Assessment Year 2000-01, the Tribunal has remanded the issue back to the Assessing Officer for adjudication keeping in view the judgment of Hon'ble Bombay High Court in the case of CIT vs. Tata Chemicals 175 CTR 443 (Bom). Since the CIT(A) had followed the order of his predecessor for the Assessment Year 2000-01, we deem it appropriate to remand this issue back to the file of the Assessing Officer for fresh adjudication keeping in view the judgment of the Hon'ble Bombay High Court in the case of CIT vs. Tata Chemicals (256 ITR 395 (Bombay) and the judgment of Hon'ble Supreme Court in the case of DCIT vs. Core Healthcare Ltd. : 298 ITR 194 (SC). In view of the aforesaid, Ground No. [4] raised by the Assessee is allowed for statistical purposes.

Ground No. [5]

32. Ground No. [5] pertains to claim of exemption made by the Assessee under Section 10(15)(iv)(h) of the Act read as under:

"On the facts and circumstances of the case and in law, the CIT(A) erred in partly confirming the interest expenses at Rs. 4,44,51,655 instead of Rs. Nil as declared by the Appellant."

33. In the return of income the Assessee had claimed exemption of INR 6,68,01,850/- under Section 10(15)(iv)(h) of the Act in respect of interest earned on tax free bonds on gross basis. However, the Assessing Officer restricted the quantum of exemption to INR 1,00,20,278/- being 15% of the interest on the ground that exemption under Section 10(15)(iv)(h) of the Act is available on net basis. Thus, the Assessing Officer made a disallowance of INR 5,67,81,572/-.

34. Being aggrieved, the Assessee carried the issue in appeal before CIT(A). The CIT(A) granted partial relief to the Assessee by modifying the computation made by the Assessing Officer

observing that it cannot be held that all the investments were made out of borrowed funds and therefore, it was necessary to identify the percentage of interest expenses allocable to the earnings.

35. Not being satisfied with the relief granted by the CIT(A). The Assessee carried the issue in appeal before the Tribunal.

36. Both the sides agreed that identical issue was decided by the Tribunal while disposing appeal for the Assessment Year 2004-05 (ITA No. 6137 & 6217/Mum/2008, dated 03/11/2017). The relevant extract the decision of the Tribunal read as under:

"8. *Ground no.2, raised by the Revenue corresponding to ground no.3, raised by the assessee are on the common issue of allocation of interest and other expenditure for earning tax free interest income under section 10(15) of the Act.*

9. *Brief facts are, during the assessment proceedings, the Assessing Officer noticed that in the relevant previous year assessee had earned interest income on tax free bonds issued by Konkan Railway NBARD National Housing Bank, HUDCO, etc., amounting to ` 7,44,42,709. After calling for necessary details and explanation of the assessee, the Assessing Officer applying the same methodology which he adopted for computing net exempt income under section 10(23G) of the Act by applying the gross profit rate of 13.69% reduced net income exempt under section 10(15) of the Act to ` 1,01,91,207. The assessee challenged the disallowance made out of net exempt income under section 10(15) of the Act before the learned Commissioner (Appeals).*

10. *The learned Commissioner (Appeals) after considering the submissions of the assessee directed the Assessing Officer as under:*

(a) The A.O. will calculate the ratio of own funds and non-interest bearing funds to total funds and apply the same to the gross income claimed u/s 10(15)(iv)(h) to find out the component of tax free income out of own funds and non-interest bearing funds;

(b) Thus, the A.O. will also arrive at the tax free income out of interest bearing borrowed funds;

(c) The A.O. will work out ratio of allocable expenses after considering interest and administrative expenses and after reducing expenses clearly not relatable to earning of tax free income;

(d) The ratio arrived at in (c) will be applied to (b) to determine interest expenses allocable to (b);

(e) The difference of (b) and (d) will give net tax free income out of interest bearing borrowed funds;

(f) The A.O. will add (a) to (e) will give net tax free income exempt u/s 10(15)(iv)(h) of the Act. The relief admissible u/s 10(15)(iv)(h) to arrive at total income exempt u/s 10(15)(iv)(h) of the Act."

- 11. Learned Authorised Representative reiterating the stand taken before the Departmental Authorities submitted, no disallowance under section 14A of the Act can be made in respect of interest expenditure as the entire investment giving rise to exempt interest income was made out of own funds and no borrowed fund was utilised. Referring to the assessment order the learned Authorised Representative submitted that as on 31st March 2004, the assessee had own interest free funds of ` 15619.62 crore as against tax free income yielding investment of ` 3107.92 crore. Thus, she submitted, no disallowance of interest expenditure can be made. Further, she submitted, as far as disallowance of administrative expenditure is concerned, the learned Commissioner (Appeals) has directed the Assessing Officer to work out the allocable expenditure towards exempt income. She, therefore, submitted, in assessee's own case for the preceding assessment year, the Tribunal has decided the issue in favour of the assessee even in so far as it relates to disallowance of administrative expenses.*
- 12. Learned Departmental Representative submitted, interest expenditure relating to utilisation of borrowed funds for earning exempt interest income should be disallowed. He further submitted, part of the administrative expenditure allocable to earning of exempt interest income should also be disallowed.*
- 13. We have heard rival contentions and perused the material available on record. As far as disallowance of interest*

expenditure for computing net exempt income is concerned, we are of the view that if the investment made in exempt income yielding assets are made out of interest free funds available with the assessee, there cannot be any disallowance of interest expenditure. Therefore, what is required to be seen is whether sufficient interest free funds are available with the assessee to make investment in exempt income yielding assets. As per facts and material on record, surplus interest free funds available with the assessee far exceeds the investment made in tax free interest income yielding assets, therefore, no disallowance of interest expenditure can be made in view of the decision of the Hon'ble Jurisdictional High Court in CIT v/s Reliance Utilities and Power Ltd., [2009] 313 ITR 340 (Bom.) and CIT v/s HDFC Bank Ltd., [2014] 366 ITR 505 (Bom.). As far as disallowance of administrative expenses is concerned, it is the contention of the assessee that in the preceding assessment year, it has voluntarily disallowed 1% of the administrative expenditure attributable to earning of exempt income. However, we have noted, in assessment year 2001-02, the Tribunal while deciding the issue in Revenue's appeal being ITA no.393/Mum./ 2008, dated 2nd March 2016, has restored the issue to the Assessing Officer for considering afresh. In view of the aforesaid, we are inclined to restore the issue to the file of the Assessing Officer for deciding afresh keeping in view the directions of the Tribunal in the preceding assessment year. Thus, ground no.2, raised by the Revenue corresponding to ground no.3, raised by the assessee are allowed for statistical purposes."

37. A perusal of the order shows that the Tribunal has restored the issue back to the file of the Assessing Officer, inter alia, with the directions to verify whether sufficient interest free funds as claimed by the Assessee were available for investment yielding tax free interest income. Consistent with the view expressed by the coordinate Bench of the Tribunal reproduced hereinabove, we restore this issue back to the file of the Assessing Officer for fresh adjudication as per the directions of the Tribunal for the Assessment Year 2004-05 reproduced herein above. While verifying whether sufficient interest free funds were available with the Assessee the Assessing Officer shall also take into

consideration the funds invested by the Assessee for making investment into investments yielding tax-free dividend income claimed to be exempt under Section 10(33) of the Act.

Ground No. [6]

38. Ground No. [6] pertains to disallowance of club expenses of INR 32,17,567/- and reads as under:

"On the facts and circumstances of the case, the CIT(A) erred in not considering the Appellant's ground regarding disallowance of payments made to clubs amounting to Rs. 32,71,567."

39. The Assessee had claimed deduction for INR 32,71,567/- in respect of payments made to clubs. The Assessing Officer disallowed the same without giving any reasons for the said disallowance. In appeal, the CIT(A) also failed to consider this ground. The Ld. Authorized Representative for the Assessee submitted that the payments made to clubs were incurred wholly and exclusively for business and were allowable as deduction under Section 37 of the Act. She relied upon the decision of Mumbai Bench of the Tribunal in the case of the Assessee for the Assessment Year 2004-05 [ITA No. 6217 & 6137/Mum/2008, dated 03/11/2017]. She also relied upon the decision of the Hon'ble Bombay High Court in the case of Otis Elevator Co. (India) Ltd. vs. CIT : [1992] 195 ITR 682 (Bombay) Per contra, the Learned Departmental Representative submitted that since the issue has not been considered by the CIT(A) the same could be remanded back to the CIT(A) for adjudication.
40. We have considered the rival submission and perused the material on record. We find that the Assessing Officer has made the disallowance in the Assessment Order without assigning any

reason. Further, the Tribunal has while deciding appeal for the Assessment Year 2004-05 [ITA No. 6217 & 6137/Mum/2008, dated 03/11/2017], held as under:

"53. In ground no.9, the Revenue has challenged deletion of addition of Rs.19,11,850, on account of club membership fees.

54. Brief facts are, the Assessing Officer during the assessment proceedings noticing that the assessee has debited an amount of Rs.19,11,850 towards club membership fees called upon the assessee to furnish necessary details. The Assessing Officer having found that such expenditure was incurred for acquiring corporate membership for directors / senior management officers of the assessee disallowed the expenditure by treating it as capital in nature. The assessee challenged the disallowance before the learned Commissioner (Appeals).

55. The learned Commissioner (Appeals) after considering the submissions of the assessee and following the decisions of the Tribunal in assessee's own case for assessment year 1990-91 and 1991-92, deleted the addition.

56. We have heard rival contentions and perused the material available on record. The Hon'ble Supreme Court in United Glass Manufacturing Co. Ltd., Civil Appeal no.6649 of 2012, has held that club membership fees for employees are to be treated as business expenditure of a company under section 37 of the Act. We must also observe that in the decisions referred to by the learned Commissioner (Appeals) similar view has been expressed. That being the case, we do not find any reason to interfere with the order of the learned Commissioner (Appeals) on this issue. Accordingly, we uphold the order of the learned Commissioner (Appeals) by dismissed ground no.9 raised by the Revenue."
(Emphasis Supplied)

Respectfully following the above decision of the Tribunal, we hold that the Assessee is entitled to claim deduction under Section 37 of the Act in respect of payment of INR 32,71,567/- made to the clubs as membership fee. Accordingly, we delete the addition of INR 32,71,567/- made by the Assessing Officer. Ground No. [6] raised by the Assessee is, therefore, allowed.

Ground No. [7]

41. Ground No. [7] pertains to charging of interest under Section 234B of the Act, and the same is disposed of as being consequential in nature.

ITA No. 7508/Mum/2007 (Department's Appeal)

Ground No. 1

42. Ground No. 1 raised by the Revenue is directed against the relief granted by the CIT(A) by modifying the order passed by the Assessing Officer in relation to exemption under Section 10(23G) of the Act and reads as under:

"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in modifying the computation made by the AO u/s 10(23G) of the Act."

43. We note that Ground No. 1 raised by the Revenue in appeal is connected to Ground No. [2] raised by the Assessee in appeal. Accordingly, in view of our findings/adjudication in relation to Ground No. [2] raised by the Assessee in appeal in paragraph 7 to 15 above, Ground No. 1 raised by the Revenue is allowed for statistical purposes in terms of paragraph 15 above.

Ground No. 2

44. Ground No. 2 raised by the Revenue is directed against the relief granted by the CIT(A) by modifying the order passed by the Assessing Officer in relation to exemption under Section 10(33) of the Act and reads as under:

"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in modifying the computation for deduction u/s 10(33) of the I.T. Act allowable to the assessee."

45. We note that Ground No. 3 raised by the Revenue in appeal is connected to Ground No. [3] raised by the Assessee in appeal. Accordingly, in view of our findings/adjudication in relation to Ground No. [3] raised by the Assessee in appeal in paragraph 16 to 23 above, Ground No. 2 raised by the Revenue is allowed for statistical purposes in terms of paragraph 23 above.

Ground No. 3

46. Ground No. 3 raised by the Revenue is directed against the order of CIT(A) accepting the claim of deduction of INR 226,90,30,000/- made by the Assessee in respect of additional bad debts, over and above the limit specified by the Reserve Bank of India guidelines and/or prudential norms, written off by the Assessee during the relevant previous year and reads as under:

"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of additional bad debts amounting to Rs. 226,90,30,000/-."

47. The relevant facts in brief are that in the return of income the Assessee had claimed deduction for write-off of bad debts under Section 36(1)(vii) of the Act in respect of debts of INR 226,90,30,000/- which were written off as irrecoverable in the accounts of the Assessee as irrecoverable bad debts in accordance with the systematic method of evaluation followed by the Assessee. According to the Assessee, the bad debts written off during the relevant previous year fulfilled all the conditions laid down under Section 36(2) of the Act as these debts represented money lent in the ordinary course of business which have turned bad and hence, written off as per the system followed by the Assessee. The Assessee had an elaborate internal system for write off of bad debts through account heads "Bad

Debts". Individual accounts of borrower companies were appraised, and after scrutiny of individual borrower company, the amounts determined to be irrecoverable are written off in the accounts to the extent the debts are irrecoverable. Separate departments of the Assessee monitored the working of various projects. When accounts were determined to be fully irrecoverable the same were written off as "Bad debts". The aforesaid method/system of writing off bad debts was consistently being followed right from the beginning viz. assessment year 1971-72 onwards from which such write offs are usually made in account. The RBI guidelines provide for provisioning norms which was the minimum statutory requirement for financial institutions. In case the actual provisioning/write off requirement was higher, the bank/FII was permitted to make additional write off. During the relevant previous year the Assessee had made write off over and above RBI requirements only after ascertaining that each of the amounts written off was irrecoverable as per an elaborate system being followed by the Assessee consistently over the years. Thus the claim for deduction in respect of bad debts written off during the relevant previous year should have been allowed to the Assessee in terms of Section 36(1)(vii) of the Act. However, the Assessing Officer was not convinced with the explanation/submissions of the Assessee and therefore, made a disallowance of INR 226,90,30,000/- in respect of deduction for bad debts written off claimed by the Assessee.

48. Being aggrieved, the Assessee carried the issue in appeal before CIT(A). Following the decision of the Tribunal in the case of the Assessee for the Assessment Year 2002-03 [ITA No. 836 &

392/Mum/2008, dated 07.07.2017] the CIT(A) deleted the disallowance of INR 226,90,30,000/- made by the Assessing Officer.

49. Being aggrieved that the above relief granted by the CIT(A), the Revenue has carried the issue in appeal before us.
50. Having considered the rival submission and perused the material on record, we find that the issue under considerations stands decided in favour of the Assessee and against the Revenue by the decisions of the Tribunal in the case of the Assessee for the Assessment Year 2002-03 in ITA No. 836 & 392/Mum/2008, dated 07.07.2017 wherein under identical facts and circumstances it was held by the Tribunal as under:

"37. Brief facts are, during the assessment proceedings, the Assessing Officer after calling for details of provisions of bad debt written-off over and above RBI guidelines called upon the assessee to explain why additional provision made over and above the RBI guidelines should not be disallowed. In reply, it was submitted by the assessee that out of total provisions made in excess of guidelines issued by the RBI only a sum of 44.40 crore has been written-off as bad debt. It was also submitted by the assessee that if the company writes-off of a particular debt in its account as irrecoverable as per the regular system or identifying bad debt followed by it, it would be sufficient compliance to the provisions of section 36(1)(vii). The Assessing Officer, however, did not find merit in the submissions of the assessee. Referring to the RBI guidelines, the Assessing Officer observed that such guidelines make it clear the objective behind issuance of such guidelines relating to income recognized and provisioning of bad and doubtful debt is not only to bring uniformity among all the financial Institutions in India but also to bring at par with the norms followed internationally. Therefore, bad debt over and above the guidelines Issued by the RBI cannot be written-off. Accordingly, he disallowed and added back the amount of 44,40,16,800.

38. While deciding assessee's appeal against the addition so made the learned Commissioner (Appeals) following his order passed in case of assessee for assessment year 2001-02, deleted the

addition on the reasoning that in the case of recovery of the bad debt written-off earlier it is to be taxed in the year of recovery.

39. The learned Departmental Representative submitted, bad and doubtful debt when actually written-off is to be allowed as deduction.

40. The learned Counsel for the assessee relying upon the finding of the learned Commissioner (Appeals) submitted, assessee actually having off the bad debt it was rightly allowed by the first appellate authority. In support of her contention, the learned Authorised Representative relied upon the following decision:-

- i) TRF Ltd. v/s CIT, [2010] 323 ITR 397 (SC); and
- ii) Vijaya Bank v/s CIT, [2010] 323 ITR 166 (SC)

41. We have considered the submissions of the parties and perused the material available on record. As per the provisions contained in Section 36(1)(vii), after its amendment w.e.f. 1st April 1989, any bad debt if actually written-off as irrecoverable in the books of account is to be allowed as deduction. However, Explanation-1 to section 36(1)(vii) puts a caveat that the amount to be allowed as bad and doubtful debt shall not include any provision for bad and doubtful debt made in the account. It is the contention of the assessee before the Departmental Authorities as well as before us that the assessee has actually written-off the amount claimed as bad debt and it is not in the nature of provisions. The aforesaid fact has not been controverted by bringing any material on record. Therefore, applying the statutory provisions and the ratio laid down in the decision cited by the learned Authorised Representative, since, the assessee has actually written-off the bad debt in its books of account, the amount is allowable as deduction under section 36(1)(vi). Accordingly, we uphold the order of the learned Commissioner Appeals on this issued. Ground no.5, is dismissed.” (Emphasis)

51. It is admitted position that the Assessee had claimed deduction only for the debts actually written off as bad in the books of accounts of the Assessee. The CIT(A) had granted relief to the Assessee by placing reliance upon the decision of the Special Bench of the Tribunal in the case of DCIT vs. Oman International Bank: 100 ITD 285 wherein it was held that after its amendment in Section 36(1)(vii) of the Act, with effect from 01/04/1989, it

was not obligatory on part of an assessee to prove that debt written off by him is indeed a bad debt for purpose of allowance under section 36(1)(vii) provided the same has been actually written off in the books of accounts during the relevant previous year.

52. Thus, in view of the above, we do not find any infirmity in the order passed by the CIT(A). Ground No. 3 raised by the Revenue is, therefore, dismissed.

Ground No. 4

53. Ground No. 4 raised by the Revenue reads as under:

"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the claim of deduction of Rs. 53,60,600/- being discount on purchase of foreign currency borrowing with finding that this represented the accounting entry."

54. The relevant facts in brief are that during the assessment proceedings the Assessee was asked to explain why amount of INR 53,60,600/- claimed by the Assessee to be capital receipt arising from re-purchase of foreign currency bonds issued by the Assessee should not be treated as a revenue receipt. In response, vide letter dated 16/02/2004 the Assessee explained that the foreign currency bonds issued by the Assessee were re-purchased by the Assessee at a discount which was credited to revenue account which cannot be regarded as a revenue receipt being merely in the nature of an accounting entry. However, the Assessing Officer was not satisfied with the explanation furnished by the Assessee and therefore made an addition of INR 53,60,600/- as a trading receipt arising from sales/purchase of foreign currency bonds.

55. Being aggrieved the Assessee carried the issue in appeal before CIT(A). The CIT(A) has granted relief to the Assessee and deleted the addition by following the decision of the Tribunal in the case of the Assessee in appeal for the Assessment Year 2000-01 [ITA No. 4657 & 4826/Mum/2004, dated 31/01/2017], the relevant extract of which read as under:

"32. We find that the claim of deduction of Rs.84,32,492/- represents discount on re-purchase of foreign currency borrowings, which is nothing but a capital receipt and it only represents an accounting entry. We find no infirmity in the order of CIT(A). Hence, this issue of revenue's appeal is dismissed."

56. Being aggrieved by the above order of the CIT(A) deleting the addition of INR 53,60,600/-, the Revenue has preferred appeal on this issue.
57. Having perused the material on record we find that identical issue was decided by the Tribunal in favour of the Assessee and against the Revenue while disposing of appeal for the Assessment Year 2000-01 [ITA No. 4657 & 4826/Mum/2004, dated 31/01/2017]. The CIT(A) has granted relief to the Assessee and deleted the addition by following the aforesaid decision of the Tribunal. Therefore, we do not find any infirmity in order passed by the CIT(A) on this issue. Respectfully following the above decision of the Co-ordinate Bench of the Tribunal in the case of the Assessee for the Assessment Year 2000-01[ITA No. 4657 & 4826/Mum/2004, dated 31/01/2017]., we confirm the order passed by the CIT(A) and dismiss Ground No. 4 raised by the Revenue.

Ground No. 5

58. Ground No. 5 read as under:

"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of computer expenses of Rs. 2,86,12,500/-

59. While framing assessment vide Assessment Order dated 27/02/2004 passed under Section 143(3) of the Act. The Assessing Officer treated amount of INR 3,81,50,000/- as capital expenditure incurred for purchase of software and allowed depreciation @ 25% while making disallowance of the balance 75% and thus, making an addition of INR 2,86,12,500/-.
60. Before CIT(A), the Assessee has claimed that during the relevant previous year the Assessee has incurred of INR 3,81,00,000/- as expenditure towards purchase of software licenses. The Assessee has claimed deduction for the aforesaid expenditure by treating the same as revenue in nature. Since, no enduring benefit had accrued to the Assessee on account of due to the need for replacement for software to meet business exigencies on account of fast changing technology in the field of software. The CIT(A) accepted the contention of the Assessee and deleted the disallowance of INR 2,86,12,500/-. Therefore, the Revenue is in appeal before us on this issue.
61. We have considered the rival submissions and perused the material on record. The CIT(A) has accepted the claim contention of the Assessee by placing reliance decision of the Tribunal in the case of the Assessee for the Assessment Year 1995-96 [ITA No. 4915/Mum/1999] holding as under:

"11.3 The Appellant has submitted before me that software expenses are not capital in nature as they do not give any enduring benefit in the fast changing technology in the field of software and due to the need for its replacement to meet

exigencies of business. The Appellant has relied upon the Mumbai Tribunal decision in its own case for A.Y. 1995-96 in ITA No. 4916/Mum/99 wherein the Tribunal following its earlier decision in the case of Dancal (I) Pvt. Ltd. vs. DCIT (ITA No. 5644/Mum/97) and Jt. CIT vs. Crisil (ITA No. 3199/Mum/2000) has allowed the Appellant claim of software expenses as revenue.

11.4 I have considered the submissions of the Appellant. In view of the favourable ITAT decision in the Appellant's own case for A.Y. 1995-96 I hold the said ground in favour of the Appellant."

62. On perusal of above it can be seen that the CIT(A) has granted relief to the Assessee by following the above decision of the Tribunal. The finding returned by the CIT(A) that software licenses do not result in any enduring benefit to the Assessee has also not been controverted. Accordingly, we decline to interfere with the order passed by the CIT(A) on this issue and confirm order passed by the CIT(A) in this regard. Ground No. 5 raised by the Revenue is, therefore, dismissed.

Ground No. 6

63. Ground No. 6 raised by the Revenue is directed against the order of CIT(A) allowing claim of depreciation of INR 2,77,73,600/- on ship and reads as under:

"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the claim of depreciation of Rs. 2,77,73,600/- on ship."

64. The relevant facts in brief are that the Assessee had claimed depreciation of INR 2,77,73,600/- in respect of ship held for sale. The Assessee had sanctioned Indian Rupee loan equivalent to USD 8.3 million to Radiant Shipping Ltd. (RSL) in March, 2000 for acquisition of three ships from Balaji Group, Chennai which was to be disbursed in three tranches for acquiring three ships.

However, RSL failed to arrange for equity contribution for the third ship and therefore, the third ship was purchased in the name of the Assessee and given to RSL under Bare Boat Charter-Cum- Demises Agreement dated 07/03/2001. According to the aforesaid agreement, RSL was given the ship for commercial employment in return for charter charges. Further, RSL had optioned to purchase a ship on payment of Call Option price. The Assessing Officer had disallowed the depreciation claimed by the Assessee on the ground that the Assessee had failed to furnish details related to acquisition of ship during the assessment proceedings. However, the CIT(A) allowed the claim of depreciation on ship after examining the Bare Boat Charter-Cum-Demises Agreement, dated 07/03/2001, and after taking note of the fact that claim of depreciation on ship was not disallowed for the Assessment Year 2002-03 by the Assessing Officer even though similar query was made by the Assessing Officer during the assessment proceedings. The CIT(A) concluded that the conditions specified in Section 32 of the Act stood fulfilled and therefore, the Assessee was allowed to claim depreciation on ship.

65. We have considered the rival submissions and perused the material on record. For the Assessment Year 2002-03, the Assessing Officer has allowed depreciation and thus, accepted the contention of the Assessee that the assessee is the owner of the ship entitled to claim depreciation. Hence, we do not find any infirmity the order passed by the CIT(A) to the extent it hold that the Assessee is entitled to claim depreciation on ship. The only issue that survives for consideration is the quantum of depreciation. Accordingly, the Assessing Officer is directed to

verify the date on which the ship was put to use and allow depreciation under Section 32 of the Act in respect of the same as per law. Ground No. 6 raised by the Revenue is partly allowed for statistical purposes.

66. In the result, both the appeals are partly allowed.

Order pronounced on 27.04.2023.

Sd/-
(B.R. Baskaran)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 27.04.2023
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai