

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[DELHI BENCH: 'F' NEW DELHI ]**

**BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER**

**AND**

**SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**I.T.A. No. 4796/DEL/2017 (A.Y. 2012-13)**

Religare Finvest Ltd. 1 <sup>st</sup> Floor, Prius Global, Plot No. 11, A-3-5, Sector-125, Uttar Pradesh, Noida <b>PAN No. AAACM6533D</b> <b>( APPELLANT )</b>	Vs.	Deputy Commissioner of Income-Tax, Circle 21(1), C. R. Building, New Delhi <b>( RESPONDENT )</b>
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**I.T.A. No. 5202/DEL/2017 (A.Y. 2012-13)**

Assistant Commissioner of Income-Tax, Circle 21(1), Room No. 391, 3 <sup>rd</sup> floor, C. R. Building, New Delhi <b>( APPELLANT )</b>	Vs.	Religare Finvest Ltd. D-3, P3B, district Centre, Saket, New Delhi <b>PAN No. AAFCS6801H</b> <b>( RESPONDENT )</b>
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**I.T.A. No. 547/DEL/2018 (A.Y. 2013-14)**

Religare Finvest Ltd. 1 <sup>st</sup> Floor, Prius Global, Plot No. 11, A-3,4,5, Sector-125, Uttar Pradesh, Noida Uttar Pradesh <b>PAN No. AAFCS6801H</b> <b>( APPELLANT )</b>	Vs.	Deputy Commissioner of Income-Tax, Circle 21(1), C. R. Building, New Delhi <b>( RESPONDENT )</b>
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**I.T.A. No. 1105/DEL/2018 (A.Y. 2013-14)**

Deputy Commissioner of Income-Tax, Circle 21(1), Room No. 391, 3 <sup>rd</sup> floor, C. R. Building, New Delhi <b>( APPELLANT )</b>	Vs.	Religare Finvest Ltd. 2 <sup>nd</sup> Floor, Rajlok Building, 24, Nehru Place, New Delhi  <b>PAN No. AAFCS6801H</b> <b>( RESPONDENT )</b>
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**I.T.A. No. 7856/DEL/2017 (A.Y. 2014-15)**

Religare Finvest Ltd. 2 <sup>nd</sup> Floor, Rajlok Building, 24, Nehru Place, New Delhi  <b>PAN No. AAFCS6801H</b> <b>( APPELLANT )</b>	Vs.	Assistant Commissioner of Income-Tax, Circle 21(1), C. R. Building, New Delhi  <b>( RESPONDENT )</b>
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**I.T.A. No. 133/DEL/2018 (A.Y. 2014-15)**

Assistant Commissioner of Income-Tax, (OSD) Circle 21(1), C. R. Building, New Delhi <b>( APPELLANT )</b>	Vs.	Religare Finvest Ltd. 2 <sup>nd</sup> Floor, Rajlok Building, 24, Nehru Place, New Delhi  <b>PAN No. AAFCS6801H</b> <b>( RESPONDENT )</b>
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**I.T.A. No. 6116/DEL/2018 (A.Y. 2015-16)**

Religare Finvest Ltd. 1 <sup>st</sup> Floor, Prius Global, Plot No. 11, A-3,4,5, Sector-125, Uttar Pradesh, Noida Uttar Pradesh  <b>PAN No. AAFCS6801H</b> <b>( APPELLANT )</b>	Vs.	Deputy Commissioner of Income-Tax, Circle 21(1), C. R. Building, New Delhi  <b>( RESPONDENT )</b>
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**I.T.A. No. 7553/DEL/2018 (A.Y. 2015-16)**

Deputy Commissioner of Income-Tax, Circle 21(1), Room No. 202 B, 2 <sup>nd</sup> floor, C. R. Building, New Delhi <b>( APPELLANT )</b>	Vs.	Religare Finvest Ltd. 2 <sup>nd</sup> Floor, Rajlok Building, 24, Nehru Place, New Delhi  <b>PAN No. AAFCS6801H</b> <b>( RESPONDENT )</b>
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<b>Assessee by :</b>	<b>Sh. Rohit Jain, Adv &amp; Ms. Somya Jain, Adv.</b>
<b>Department by:</b>	<b>Sh. T. Kipgen, CIT DR</b>

<b>Date of Hearing</b>	<b>07.06.2023</b>
<b>Date of Pronouncement</b>	<b>13.07.2023</b>

**ORDER****PER YOGESH KUMAR U.S., JM**

The above ITA No. 4796/Del/2017 (A.Y 2012-13), ITA No. 547/Del/2018 (AY 2013-14), ITA No. 7856/Del/2017 (A.Y 2014-15), and ITA No. 6116/Del/2018 (A.Y 2015-16) filed by the assessee challenging the order passed by the Commissioner of Income Tax Appeals dated 19/05/2017, 29/11/2017, 29/09/2017 and 09/07/2018 respectively. The Appeals in ITA No. 5202/Del/2017 (A.Y 2012-13), ITA No. 1005/Del/2018 (A.Y 2013-14), ITA No. 133/Del/2018 (A.Y 2014-15) and ITA No. 7553/Del/2018 (A.Y 2015-16) dated 19/05/2017, 29/11/2017, 29/09/2017 and 09/07/2018 respectively filed by the Revenue.

2. The assessee and the Revenue have raised the following grounds of appeal in their respective Appeals as under:-

2.1. **I.T.A. No. 4796/DEL/2017 (A.Y. 2012-13) (Assessee)**

**Re : Disallowance under section 14A of the Act**

1. That the CIT(A) erred on facts and in law in upholding disallowance made by the assessing officer to the extent of Rs.6,40,98,834 under section 14A of the Income Tax Act, 1961 ("the Act") as against suo-motu disallowance of Rs.77,45,598 made by the appellant.

1.1. That the CIT(A)/ assessing officer erred on facts and in law in computing disallowance under section 14A of the Act by invoking provisions of Rule 8D of the Income Tax Rules, 1962 ('the Rules') without appreciating that conditions precedent for applying provisions of the said Rule as contained in sub-sections (2) and (3) of that section were not satisfied.,

1.2 That the CIT(A)/ assessing officer erred on facts and in law in computing disallowance under section 14A of the Act out of interest expenditure without appreciating that no part of borrowed funds was utilized for making any investment.

Without prejudice, that on facts and circumstances of the case, the CIT(A)/ assessing officer grossly erred in computing disallowance under section 14A of the Act, inter alia, by wrongly including (a) strategic/ business investments of the appellant; and (b) investments not actually yielding exempt income during the relevant year, while applying formulae prescribed in Rule 8D of the Rules.

1.3 Without prejudice, the CIT(A)/ assessing officer erred on facts and in law in not excluding investment in the form of share application money in Karnataka Bank Ltd., for the purpose of computing average value of investments while applying formulae prescribed under Rule 8D(2) of the Rules.

1.4. Without prejudice, that on the facts and circumstances of the case, provision for diminution in value of investments amounting to Rs. 5,77,76,120 is liable to be reduced while computing average value of investments referred to in Rule 8D(2) of the Rules.

**Re : Disallowance of depreciation claimed on vehicles given on finance lease**

2. That the CIT(A) erred on facts and in law in upholding disallowance of Rs.9,65,00,120 made by the assessing officer being difference of (i) depreciation of Rs.35,07,63,697 claimed on vehicles given on finance lease; and (ii) Rs. 25,42,63,574/- being portion recovery of principal amount of asset included in lease rentals offered to tax; claimed offered by the appellant in revised return of income filed under section 139(5) of the Act.

2.1. That on the facts and circumstances of the case and in law, the CIT(A) grossly erred in holding that the action of appellant in claiming depreciation on vehicles given on finance lease by way of filing revised return of income is outside the scope/ mandate of section 139(5) of the Act.

2.2. That on the facts and circumstances of the case, the CIT(A) erred in observing that the appellant had changed its consistent accounting policy in respect of vehicles given on lease and that such accounting treatment is not verified/ certified by the auditors. ,

2.3 That the CIT(A)/ assessing officer erred on facts and in law in disallowing the aforesaid claim for excess depreciation merely for the reason that similar claim qua leased assets was not made by the appellant in earlier years.

2.4. That the CIT(A)/ assessing officer erred on facts and in law in disallowing the aforesaid claim of depreciation without disputing that the lessor appellant (a) is the owner of the leased vehicles/ assets and (b) such assets are used for business purpose, and thus eligible for depreciation under section 32 of the Act.

**Re: Ad-hoc disallowance of support service fees and reimbursement of expenses**

3. That the CIT(A) erred on facts and in law in upholding ad-hoc disallowance to the extent :: Rs. 19,95,37,610 being 25% of support service fees and reimbursement of expenses aggregating to Rs.79,81,50,441/ (Rs. 63,55,67,850- service fee + Rs. 16,25,82,591- reimbursement of expenses) paid by the appellant to group companies.

3.1. That the CIT(A) erred on facts and in law in holding that the support service fees and reimbursement of expenses paid by the appellant to group companies are not wholly and exclusively

*incurred for the business of the appellant and hence not allowable under section 37(1) of the Act.*

*3.2. That the CIT(A) erred on facts and in law in holding that the aforesaid payments to group companies are made on arbitrary and adhoc basis.*

*3.3. That the CIT(A)/ assessing officer erred on facts and in law in not appreciating that the appellant had placed on record various documentary evidences/ explanation which clearly justified that the support service charges and reimbursement of expenses paid to group companies were reasonable as well as meant for business purposes of the appellant.*

*4. That the Assessing Officer erred on facts and in law in levying interest u/s 234D and withdrawing interest granted u/s 244A of the Act.*

**2.2. I.T.A. No. 5202/DEL/2017 (A.Y. 2012-13) (Revenue)**

*1. That on facts and circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the disallowance made u/s 14A r.w. rule 8D upto the dividend received.*

*2. That on facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of bad debts written off by the appellant of Rs. 21,67,50,189/-*

*3. That on facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of interest on compulsorily convertible debentures Rs. 13,75,19,178/-.*

**2.3. I.T.A. No. 547/DEL/2018 (A.Y. 2013-14) (Assessee)**

*“1. That the CIT(A) erred on facts and in law in upholding disallowance made by the assessing officer to the extent of Rs. 432,77,074 under section 14A of the Income Tax Act, 1961 (“the Act”) [restricted to dividend income] as against suo-motu disallowance of Rs. 69,98,173 made by the appellant.*

*1.1 That the CIT(A)/ assessing officer erred on facts and in law in mechanically computing disallowance under section 14A of the*

*Act by invoking provisions of Rule 8D of the Income Tax Rules, 1962 ('the Rules'), without appreciating that conditions precedent for applying provisions of the said Rule as contained in sub-sections (2) and (3) of that section were not satisfied.*

*1.2 That the CIT(A)/ assessing officer erred on facts and in law in computing disallowance under section 14A of the Act out of interest expenditure without appreciating that no part of borrowed funds was utilized for making any investment.*

*1.3 Without prejudice, that on facts and circumstances of the case, the CIT(A)/ assessing officer grossly erred in computing disallowance under section 14A of the Act, inter alia, by wrongly including (a) strategic/ business investments of the appellant; (b) investments yielding taxable income during the relevant year; and (c) investments not actually yielding exempt income during the relevant year, while applying formulae prescribed in Rule 8D of the Rules."*

**2.4. I.T.A. No. 1105/DEL/2018 (A.Y. 2013-14) (Department)**

- 1. "On the facts and under the circumstances of the case, Ld. CIT(A) has erred in law and facts in restricting the disallowance made u/s 14A r.w.r. 8D upto the dividend received.*
- 2. On the facts and under the circumstances of the case, the Ld. CIT(A) has erred in law and facts in deleting the disallowance of bad debts written off by the appellant of Rs. 89,30,64,775/-.*
- 3. On the facts and under the circumstances of the case, the Ld. CIT(A) has erred in law and facts in deleting the disallowance of interest on compulsorily convertible debentures Rs. 16,35,00,000/-."*

**2.5. I.T.A. No. 7856/DEL/2017 (A.Y. 2014-15) (Assessee)**

*"1. That the CIT(A) erred on facts and in law in upholding disallowance made by the assessing officer to the extent of Rs.4,91,93,909/-under Section 14A of the Income Tax Act, 1961 ("the Act") [restricted to dividend income] as against suo-motu disallowance of Rs.8,60,028/- made by the appellant.*

*1.1. That the CIT(A)/ assessing officer erred on facts and in law in computing disallowance under section 14A of the Act by invoking provisions of Rule 8D of the Income Tax Rules, 1962 ('the Rules') without appreciating that conditions precedent for applying provisions of the said Rule as contained in sub-sections (2) and (3) of that section were not satisfied.*

1.2 That the CIT(A)/ assessing officer erred on facts and in law in computing disallowance under section 14A of the Act out of interest expenditure without appreciating that no part of borrowed funds was utilized for making any investment.

1.3. Without prejudice, that on facts and circumstances of the case, the CIT(A)/ assessing officer grossly erred in computing disallowance under section 14A of the Act, inter alia, by wrongly including (a) strategic/ business investments of the appellant; and (b) investments not actually yielding exempt income during the relevant year, while applying formulae prescribed in Rule 8D of the Rules.

**Re: disallowance of interest paid on Compulsorily Convertible Debentures**

2. That the CIT(A) erred on facts and in law in upholding disallowance of Rs. 16,35,00,000/- made by the Assessing Officer on account of interest paid by the assessee on compulsorily Convertible Debentures (CCDs) subscribed by its holding company, i.e. Religare Enterprises Ltd.

2.1 That the CIT(A)/ assessing officer erred on facts and in law in holding that interest paid on CCDs, issued by the appellant and subscribed by its holding company, is akin to dividend, without appreciating the difference in the nature of CCDs and equity shares.

2.2. That on the facts and circumstances of the case, the CIT(A) erred in lifting/ piercing the corporate veil and holding that a colorable arrangement has been entered into between the assessee and its holding company to evade taxes.

**Re: Disallowance of bad debts written off**

3. That the CIT(A) erred on facts and in law in upholding disallowance of Rs.138,82,46,030 on account of loans written off, which were lent/ advanced in the ordinary course of money lending business.

3.1 That the CIT(A)/ assessing officer erred on facts and in law in holding that the aforesaid amount of loans were not actually written off in loan/ lenders accounts in the books of accounts of the assessee.

3.2 That the CIT(A)/ assessing officer erred in not appreciating that the write off of loans was in accordance with prudential norms prescribed by RBI and is allowable in terms of sections 36(2) / 36(l)(vii)/ 28 of the Act.”

2.6. **I.T.A. No. 133/DEL/2018 (A.Y. 2014-15) (Department)**

*“ On the facts and under the circumstances of the case, Ld. CIT(A) has erred in law in deleting the disallowance of Rs. 8,61,93,391/ - u/s 14A of IT Act ignoring the mandatory nature of Rule 8D and the binding CBDT Circular No. 5/2014 dated 11.02.2014.”*

2.7. **I.T.A. No. 6116/DEL/2018 (A.Y. 2015-16) (Assessee)**

**“Re: Disallowance under section 14A of the Act**

1. That the CIT(A) erred on facts and in law in upholding disallowance made by the assessing officer to the extent of Rs. 365,66,026 under section 14A of the Income Tax Act, 1961 (“the Act”) [restricted to dividend income] as against suo-motu disallowance of Rs. 74,01,728 made by the appellant.

1.1. That the CIT(A)/ assessing officer erred on facts and in law in mechanically computing disallowance under section 14A of the Act by invoking provisions of Rule 8D of the Income Tax Rules, 1962 (“the Rules”), without appreciating that conditions precedent for applying provisions of the said Rule as contained in sub-sections (2) and (3) of that section were not satisfied.

1.2. That the CIT(A)/ assessing officer erred on facts and in law in computing disallowance under section 14A of the Act out of interest expenditure without appreciating that no part of borrowed funds was utilized for making any investment.

1.3 Without prejudice, that on facts and circumstances of the case, the CIT(A)/ assessing officer grossly erred in computing disallowance under section 14A of the Act, inter alia, by wrongly including (a) strategic/ business investments of the appellant; (b) investments yielding taxable income during the relevant year; and (c) investments not actually yielding exempt income during the relevant year, while applying formulae prescribed in Rule 8D of the Rules.

2.8. **I.T.A. No. 7553/DEL/2018 (A.Y. 2015-16) (Revenue)**

*“1. That on facts and circumstances of the case, the Ld. CIT(A) has erred in law and facts in restricting the disallowance made u/s 14A r.w.r. 8D upto the dividend received.*

*2. That on facts and circumstances of the case, the Ld. CIT(A) has erred in law and facts in deleting the disallowance of bad debts written off by the appellant of Rs. 1,12,08,54,213/-.*

*3. On the facts and under the circumstances of the case, the Ld. CIT(A) has erred in law and facts in deleting the disallowance of interest on compulsory convertible debentures of Rs. 16,35,00,000/-.”*

3. Since the issues involved in the present appeals filed by the assessee and the Department are identical, for the sake of convenience, brief facts of the case for the Assessment Year 2012-13 are considered. The Assessee filed its return of income for AY 2012-13 on 27/09/2012 declaring income of Rs. 227,96,32,660/- which was subsequently revised on 26/03/2014 at Rs.218,31,32,540/-. The case was selected for scrutiny. Order u/s 143(3) of the Act was passed on 31/03/2015 assessing the income at Rs. 307,17,44,697/- after disallowance of Rs.16,72,58,935/- u/s 14A read with Rule 8D of the Income Tax Rules, 1962 ('Rules' for short), Rs. 9,65,00,120/- on account of depreciation arising out of change in method of accounting of financial lease, addition of Rs. 21,67,50,189/- on accounts of bad debts write off, Rs. 13,75,19,178/- on account of disallowance of interest on Compulsory Convertible debentures (CCDs) and disallowing of Rs. 27,05,83,732/- from support services and reimbursement expenses claimed, aggregating to total disallowances of Rs. 88,86,12,175/-.

4. Aggrieved by the assessment order dated 31/03/2015, the assessee preferred an Appeal before the CIT(A). The Ld. CIT(A) vide order dated 19/05/2017, upheld the disallowance made by the A.O. to the extent of Rs. 6,40,98,834/- u/s 14A of the Act as against the *suo-moto* disallowance of Rs.77,45,598/-, upheld the disallowance of Rs. 9,65,00,120/- claimed on vehicle given on finance lease and also upheld the ad-hoc disallowance to the extent of Rs. 19,95,37,610/- being 25% of support service fees and reimbursed of expenses, aggregating to Rs. 79,81,50,411/- paid by the Assessee to group Companies.

5. Aggrieved by the above said sustaining of the disallowance the assessee preferred the Appeal in ITA No. 4796/Del/2017 and as against the restriction of the disallowance u/s 14A, deletion of disallowance of bad debts written off and deletion of disallowance of interest on Compulsory Convertible Debentures, the department has preferred Appeal in ITA No. 5202/Del/2017 on the grounds mentioned above in the respective appeals.

#### **Disallowance under 14A of the Act**

6. Ground No. 1 to 1.5 of Assessee's Appeal in ITA No. 4796/Del/2017 and Ground No. 1 of Departments Appeal in ITA No. 5202/Del/2017 for A.Y 2012-13 are in respect of disallowance u/s 14A of the Act. The assessee earned dividend income during the year under consideration of Rs. 6,40,98,834/- earned from investment made in shares of Karnataka Bank Limited. The

assessee made *suo-moto* disallowance under Section 14A of the Act read with Rule 8D of the Rules, of Rs. 77,45,598/-. The Ld. A.O. made disallowance of Rs. 17,50,04,535/-. The Ld. CIT(A), however, restricted the disallowance to Rs. 6,40,98,834/- being the amount of exempt income earned during the year. As against restriction of disallowance the Revenue has raised the ground and as against sustaining the disallowance the Assessee has raised the above grounds.

7. The Ld. Counsel for the assessee submitted that no disallowance be made out of interest expenditure under Clause (ii) of Rule 8D since the investment in shares of Karnataka Bank Limited has been made out of own funds and further submitted that the said issue has been decided in favour of the assessee in Assessee's own case for Assessment Year 2007-08 in ITA No. 1947/Del/2018, wherein it is held that investment made in shares of Karnataka Bank Limited are out of own funds of the assessee and decided the issue in favour of the Assessee and the disallowance made by the A.O. which has been confirmed by the CIT(A) has been deleted by the Tribunal. Further submitted that the disallowance under Clause (ii)/(iii) of Rule 8D can be made only after considering average of investments which have actually yielded exempt income during the year under consideration and the said stand has been upheld by the Tribunal in Assessee's own case for the Assessment Year 2010-11 & 2011-12 in ITA No. 2559/Del/2016 and ITA No. 5266/Del/2016.

8. The Ld. Counsel further submitted that the issue involved in the Ground No. 1 to 1.5 of the Assessee's Appeal in I.T.A. No. 4796/Del/2017 for A.Y. 2012-13, I.T.A. No. 547/Del/20118 for A.Y. 2013-14, I.T.A. No. 7856/Del/2017 for A.Y. 2014-15 and I.T.A. No. 6116/Del/2018 for A.Y. 2015-16, and the Ground No. 1 in Department's Appeal I.T.A. No. 5202/Del/2017 for A.Y.2012-13, I.T.A. No. 1005/Del/2018 for A.Y. 2013-14, I.T.A. No. 133/Del/2018 for A.Y. 2014-15 and I.T.A. No. 7553/Del/2018 for A.Y. 2015-16 are squarely covered in Assessee's own case, therefore, submitted that the above-mentioned grounds of Appeals of the Assessee and the Revenue may be disposed off in terms of the said order of the Tribunal.

9. The Ld. Ld. Departmental Representative relied on the orders of the Ld. CIT(A) and sought for dismissal of the Grounds of Appeals of the Assessee and prayed for allowing the Grounds of Appeals of the Revenue on the issue in hand.

10. We have heard both the parties and perused the material available on record. It is the specific contention of the Assessee that no disallowance be made out of interest expenditure under Clause (ii) of Rule 8D of the Rule since the investment in share of Karnataka bank Limited has been made out of own funds and the similar issue has come for consideration by the Tribunal in the Assessment Year 2007-08 and 2009-10 in ITA No. 1947/Del/2018 and connected Appeals wherein the Coordinate Bench of the Tribunal has decided

the issue in favour of the assessee. We have gone through the order dated 24/08/2020 passed in ITA No. 1947/Del/2018 (Assessment Year 2007-08 and 2009-10), wherein it is held as under:-

*“3.10. In the case, while disallowing suo-moto expenses towards earning exempted income , the assessee has not taken interest expenditure towards allocation for earning exempt dividend income on the ground that investment was made out of own funds rather than borrowed funds. This claim of the assessee as far as investment in shares of 'Karnataka Bank Ltd' (KBL) of Rs. 35.35 crores, is concerned is found to be acceptable from the explanation given in the report of the chartered accountant available on page 85-86 of the Paper-book. The relevant part of the said report is reproduced as under:*

*"7.2 In the FY 2006-07, RFL has invested in Equity Shres of KBL amounting Rs.35.35 crores. The said investments were made on several dates during the said financial year.*

*Analysis In the assessment proceedings, the Company has stated that the said investment was made out of own funds. On a close scrutiny of the books of account, we find that:*

*a. The company had received Share Application Money amounting to Rs.125 crores during the period December 12, 2006 to December 21, 2006.*

*b. The investment in the KBL shares amounting to Rs.35.35 crores has been made during the period December 27, 2006 to January 5, 2007/*

c. *The profits before depreciation and taxes of RFL for the year ended March 31, 2007 amounted to Rs.29.46 crores. If it is presumed that the profits accrue evenly throughout the year, then the profits accruing upto the date of investment in KBL shares on a pro-rata basis, would amount to Rs.22.09 crores (Approximately)*

d. *Here, the aggregate of Share Application Moneys and the profits accruing during the year upto the dates of investments in KBL shares are far in excess of the investment in KBL shares.*

*Having regard to the above facts and the legal principles discussed in paras 6.3 to 6.7 above, it can be safely inferred that the investment in KBL shares is indeed out of own funds.*

*As a cross-check we have also reviewed the yearly funds flow statement extracted from the audited financials of FY 2006-07. The said yearly funds flow statement, showing the incremental funds position for FY 2006-07. The said yearly funds flow statement, showing the incremental funds position for FY 2006-07 is annexed and marked as Annexure 3. The Summary of the incremental yearly funds position is as under:*

*(Rs. In Crores) Particulars FY 2006-07 Shareholder's Funds A 112.82 Loan Funds B 86.23 Deferred tax Liability (Net) C 0.22 Total D=A+B+C 199.27 Fixed Assets E 1.67 Investments Tax Free Investments F 35.35 Others G NIL Net Current Assets: H 162.25 Total I=E+F+G+H 199.27 As would be observed from the above, the year in which investment in Equity Shares of KBL has been made, the incremental borrowings (Rs.86.23 crores) for that year were much lesser than the net increase in the Fixed Assets and Net*

*Current Assets (Rs.163.92 Crores = Rs.1.67 Crores + Rs.162.25 Crores). Thus, based on the judicial principles discussed in Para 6 above, it can be said that the borrowings have been fully utilized for the business purposes and not for the purpose of making investments. Therefore, it can be safely inferred that the question of allocating interest u/s 14A of the Act towards investments in the shares of KBL does not arise. In fact, the internal accrual during the said year is much higher than the amount of investments made in KBL."*

*3.11 The source of the investment in shares of KBL is out of share application money is also evident from the copy of the bank statement available on page 101 of the Paper-book.*

*3.12. But, we find that the assessee has also made investment in mutual funds. According to the detail of investment available on schedule to the balance sheet on page 24 and 25 of the paper- book, we find that during the year assessee traded in mutual funds worth ₹ 1545.84 crores. The assessee has not explained source of investment in those mutual funds. In view of the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. reported in 402 ITR 640(SC) the expenditure on assets which may yield exempt income as well as taxable income, need to be apportioned towards both the exempted and non- exempted income. Thus, the certain interest expenditure towards investment in mutual fund clearly needs to be disallowed, which the assessee has not considered in its suo-motu disallowance. No such breakup of proportionate expenses towards exempted and non-exempted income from investment in mutual funds has been provided either lower authorities or before us. In absence of any such working provided by the assessee, it is not possible for us to quantify the*

*proportionate disallowance out of the interest expenditure incurred for investment in Mutual funds.*

*3.13 We find that Hon'ble Delhi High Court in the case of Joint Investment Company Private Limited Vs. CIT: 372 ITR 694 (Del.) has restricted the disallowance under section 14A to the extent of the exempted income. Following the finding of the Hon'ble Delhi High Court in the case of Joint Stock Investment Ltd. (supra), The Ld CIT(A) has restricted the disallowance u/s 14A of the Act in the case of the assessee to the extent of excepted income. In the facts and circumstances of the case, we do not find any error in the order of the Ld. CIT(A) on the issue in dispute in following a binding precedent of the jurisdictional High Court. and accordingly, we uphold the same. The grounds of the appeal of the assessee as well as ground No. 1 of the Revenue are accordingly dismissed.”*

11. By respectfully following the above ratio and also considering the fact that the investment in shares of Karnataka Bank Limited has been made out of own funds of the assessee, we hold that no disallowance can be made out of interest expenditure under Clause (ii) of Rule 8D of the Rules. Accordingly, we allow Ground No. 1 to 1.5 of the Assessee's Appeal in I.T.A. No. 4796/Del/2017 for A.Y. 2012-13, I.T.A. No. 547/Del/2018 for A.Y. 2013-14, I.T.A. No. 7856/Del/2017 for A.Y. 2014-15 and I.T.A. No. 6116/Del/2018 for A.Y. 2015-16, and dismiss the Ground No. 1 in Department's Appeal in I.T.A. No. 5202/Del/2017 for A.Y.2012-13, I.T.A. No. 1005/Del/2018 for A.Y. 2013-14, I.T.A. No. 133/Del/2018 for A.Y. 2014-15 and I.T.A. No. 7553/Del/2018 for A.Y. 2015-16.

**Disallowance of depreciation on vehicles given on finance lease**

12. Ground No. 2 to 2.4 of the Assessee's appeal in ITA No. 4796/Del/2017 (A.Y 2012-13) is regarding disallowance of depreciation claimed on vehicle given on finance lease. The Ld. A.O. disallowed the excess claim of depreciation over and above the excess income declared amounting to Rs. 9,65,00,120/- and added back to the income of the assessee in following manners:-

*“3.3. The reply of the assessee has been considered but not found acceptable. The assessee has not been able to furnish the impact of change in accounting method for the last five years. The methodology adopted by the assessee consistently in the past years cannot be changed without mentioning the impact on taxable income for the preceding and subsequent years. The assessee did not answer the specific query raised that what shall be the impact of computation of income if same method of charging depreciation and principal amount be adopted in last 5 years alongwith claiming additional tax withheld. On the other hand the treatment given by the lessee in its books of account and the agreement of the assessee company with the lessee has also not been given. The assessee has not been showing the leased assets in the chart of fixed assets neither in the year under consideration and nor in earlier years. The allow ability of the claim of the assessee is therefore, unfounded and not verifiable and properly supported. The claim of the assessee is being rejected and the income of assessee shall be adopted as provided in the original return of income. The excess claim of depreciation over and above the excess income declared amounting to Rs.9,65,00,120/- is being disallowed and added back to the income of the assessee.”*

13. On the above finding of the A.O., in the Appeal, the CIT(A) held that the action of the A.O. in rejecting the claim is in order and sustained the disallowance of depreciation claimed on vehicles given on financial lease in following manners:-

*“5.2. I have carefully considered the assessment order and written submission filed by the Ld. AR. The AO disallowed part of the depreciation claim of Rs.9,65,00,120/- i.e. the difference between the depreciation of Rs.35,07,63,697/- claimed by the appellant u/s 32 of the Act on the cars given on finance lease and the principle amount of Rs.25,42,63,574/- recovered by the appellant which is offered to tax. The AO held as under.*

*“3.3 The reply of the assessee has been considered but not found acceptable. The assessee has not been able to furnish the impact of change in accounting method for the last five years. The methodology adopted by the assessee consistently in the past years cannot be changed without mentioning the impact on taxable income for the preceding and subsequent years. The assessee did not answer the specific query raised that what shall be the impact of computation of income if same method of charging depreciation and principal amount be adopted in last 5 years alongwith claiming additional tax withheld. On the other hand the treatment given by the lessee in its books of account and the agreement of the assessee company with the lessee has also not been given. The assessee has not been showing the leased assets in the chart of fixed assets neither in the year under consideration and nor in earlier years. The allowability of the claim of the assessee is therefore, unfounded and not verifiable and properly supported. The claim of the assessee is being rejected and the income of assessee shall be adopted as provided in the original return of income. The excess claim of depreciation over and above the excess income declared amounting to Rs.9,65,00, 120/- is being disallowed and added back to the income of the assessee.”*

*5.3. The Ld. AR has submitted that pursuant to decision of the Hon'ble apex Court in the case of ICDS Ltd. vs. CIT, Mysore, 350 ITR 527 wherein it was held that it is the lessor is entitled to claim depreciation u/s 32 of the Act in respect of leased out assets, the appellant revised its return of income and claimed depreciation of Rs.35,07,63,697/- on the cars given on finance lease and offered Rs.25,42,63,574/- being the principal amount recovered by the appellant from its customers in relation to such cars given on finance lease.*

*5.4. The appellant company had been consistently following an accounting method as 84 per which the value of assets given on finance lease is shown as a loan recoverable from the lessee. The lease rental amount received by the appellant is split into the principal amount is adjusted against the loan recoverable from the lessee and the interest amount which is credited to the P & L Account. Depreciation was not claimed on the assets under finance lease. However, in the revised return of income filed on 26.03.2014 this*

*consistent method was practically abandoned to claim depreciation of Rs.35,07,63,697/- on the leased assets and the principal amount of loan recovered for vehicles given on finance lease of Rs.25,42,63,574/- was offered to tax.*

*5.5. The critical issue for consideration is whether the appellant could make such a claim in the revised return of income filed u/s 139(5) of the Act and whether it can be considered to be an omission or any wrong statement in the original return of income. Section 139(5) is reproduced as under:*

*“139(5) If any person, having furnished a return under sub-section (1), or in pursuance of a notice issued under sub-section (1) of section 142, 66 discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier”*

*Provided that where the return relates to the previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, the reference to one year aforesaid shall be construed as a reference to two years from the end of the relevant assessment year.”*

*5.6 In my view the mandate of Section 139(5) is clear, that a revised return can be filed only if the person (the appellant) discovers any omission or any wrong statement in the original return. The appellant is consistently method of accounting and its book results, depreciation claims etc. have been duly verified and certified by the statutory/tax auditors under the Companies Act and u/s 44AB of the Income Tax Act. Admittedly, there is a decision of the Hon'ble Apex Court on depreciation claim by the lesser in the finance lease arrangement, but this decision in anyway does not make out the case for the appellant to claim depreciation on assets which were never shown in the books of accounts and subject to any verification by the statutory/tax auditors. The appellant cannot suo moto change its accounting system, as there is no way to verify the tax implication arising from such a claim made in the revised return of income. Recovery of principal amount of loan cost of assets depreciation claimed thereon, opening and closing WDV of these assets are items of facts which are verified and certified by statutory/tax auditors. In the absence of such certification and verification, the appellant suo moto cannot, revise its accounting method consistently followed over the years to claim depreciation on assets which were never recorded in its books of accounts or write back principal amount of recoveries of loans against these assets to claim additional depreciation. The sanctity of consistency in accounting and the certification by statutory/tax auditors would be given a*

*complete go by if the claim of the appellant is entertained just by filing of revised return. The Hon'ble Apex Court had observed in Radha Soami Satsang vs. CIT, 193 ITR 321 as under:*

*"We are aware of the fact that strictly speaking res judicata does not apply to income tax proceedings, again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it allow the position to be changed in a subsequent year."*

5.7. *In view of the above, I do not find any merit in the claim of the appellant company and it is held that since the scope of Section 139(5) does not mandate admission of a claim of such nature which can be termed as mistake or omission in the original return of income, and is not legally sustainable. Further, there is no way to verify the implication arising out of the change of accounting system resorted by the appellant only for the limited purpose of claiming additional depreciation. Unsettling of a settled and consistent accounting method without any certification/verification merely by revising the return, is not an acceptable proposition. The AO's action in rejecting the claim is in order and is sustained. This ground of appeal is ruled against the appellant."*

14. The above finding and the conclusion of the CIT(A) is under challenge before us. The Ld. Counsel for the assessee submitted that the issue of allowability of depreciation of vehicles given on lease stood decided in favour of the assessee vide order dated 12/05/2023 by the Assessee's own case for the Assessment Year 2011-12 in ITA No. 857/Del/2019. Therefore, prayed for allowing the Ground No. 2 to 2.4 of the assessee in ITA No. 4796/Del/2017. Per contra, the Ld. Departmental Representative relied on the orders of the Lower Authorities.

15. We have heard both the parties and perused the material available on record. The Coordinate Bench of the Tribunal while deciding the issue of disallowance of depreciation claimed on vehicle on finance lease in Assessee's own case for the Assessment Year 2011-12 in ITA No. 857/Del/2019 vide order dated 12/05/2023 held as under:-

*“4. We have heard both the parties and perused the records. We find that the Ld CIT(A) has duly taken the note that after issuance of AS-19 issued by the ICAI, the CBDT vide Circular No. 2/2001 dated 9 February 2011 has clarified that capitalization of assets acquired under the finance lease by the lessees in their books of account will not have any bearing on the allowance of depreciation on those assets under Section 32 of the Income Tax Act and also states that the ownership of the asset is determined by the terms of contract between the lessor and the lessee. Further, as per the above circular the owner is entitled to depreciation, whether he is lessee or lessor, depending upon the terms of the contract.*

*4.1 Further, the Ld. CIT(A) taken the note of the Hon'ble Supreme Court in the case of ICDS Ltd. vs. CIT. The Hon'ble Supreme Court has reaffirmed the position that in a leasing transaction it is the lessor and not the lessee, who is entitled to claim depreciation on the leased assets. Hence, we are of the opinion that the order of the Ld. CIT(A) is in accordance with law, in the facts and circumstances of the case. We find no reason to interfere with the order of the ld. CIT(A).”*

16. Following the above ratio, the disallowance of depreciation claimed on vehicles give on finance lease requires to be deleted. Accordingly, the Ground No. 2 to 2.4 of the Assessee's Appeal in I.T.A. No. 4796/Del/2017 are allowed.

**Ad-hoc disallowances of support service fee and reimbursement of expenses**

17. Ground No. 3 to 3.3 of the Assessee's appeal in ITA No. 4796/Del/2017 (A.Y 2012-13) is regarding ad-hoc disallowances of support service fee and reimbursement of expenses. Brief facts of the case are that: During the previous year relevant to Assessment Year 2012-13, the Assessee had paid business support service fee to the following parties:-

S.No.	Particulars	Amount (Rs.)
1	Religare Enterprises Limited	28,41,84,487
2	Finserve Shared Services Limited	26,81,42,354
3	Religare Housing Finance and Development Corporation Ltd	36,00,000
4	Religare Infra Facilities Limited	7,48,79,953
5	Religare Securities Limited	3,786
6	Vistaar Religare Capital Advisors Ltd.	47,20,265
7	Auriga Marketing Services Private Limited	37,005
	<b>Total</b>	<b>63,55,67,850</b>

In addition to the aforesaid, following expenses were also recovered by REL, on cost-to-cost basis, from the Assessee:

S.No.	Particulars	Amount (Rs.)
1	Recovery of expenses directly incidental to provision of support services	3,39,82,487
2	Rent paid to REL	12,85,99,888
	<b>Total</b>	<b>16,25,82,591</b>

Thus, for the year under consideration, the Assessee made a total payment of Rs.79.81 crore (Rs. 63.55 Cr + 16.25 cr) to its group companies for provision of support services. The assessing officer made an ad-hoc disallowance of 25% of the support service fee paid by the assessee to its group companies under

section 40A(2)(b) of the Act on the grounds that the Assessee had failed to explain the reasonableness of the payment made on account of support service by provided by the group companies holding that: justification for incurring such expenditure was not explained properly by the Assessee and the Assessee failed to furnish cost allocation key and list of expenses reimbursed by Assessee and the Assessee had failed to deduct tax at source on certain expenses reimbursed.

18. On appeal, the Ld. CIT(A) sustained/ confirmed the disallowance made by the assessing officer holding that Assessee had failed to prove that the said expenditures were incurred wholly and exclusively for the purpose of the business of the Assessee. However, taking note of the computational error in the assessment order, the CIT(A) directed the assessing officer to re-compute the disallowance under section 37(1) of the Act at 25% of the correct amount of Rs.79.81 crores. Aggrieved, by the same the assessee raised Ground No. 3 to 3.3 before us in ITA No. 4796/Del/2017 for A.Y. 2012-13.

19. The Ld. Counsel for the assessee has filed detailed submission by explaining the services received from each of the group companies and further submitted that the payment for services made to group entities were in respect of regular business functions which were essential for smooth day to day functioning of any company, it was only reduce cost and enjoy benefit of energy among the group over provisions of support services were centralized rather

than each company employing their own resources for similar business functions, thereby leading to overall increase in the group operating cost as a whole. Further submitted that the Id. CIT(A) on the basis of incorrect observation held that the entire expenditure incurred on support service payment cannot be considered to be expenditure incurred wholly and exclusively for the purpose of business within the meaning of Section 37(1) of the Act and thus committed an error in disallowing 25% of the expenditure incurred. The Ld. Counsel for the assessee has also submitted that, the CIT(A) erred in not considering following corroborative evidenced placed on record by the assessee to demonstrate that the services were rendered for the smooth functioning of business of the assessee.

<b>Particulars submitted before the AO and CIT(A)</b>	<b>Page No of PP No. 12</b>
List of employees of the appellant evidencing that all employees of the appellant were involved in core business functions and the appellant did not have employees for business support functions;	712-756
List of employees working in support functions of REL for providing support services to the group companies	757-765
List of employees working in support functions of FSSL for providing support services to the group companies	1011-1021
Copy of agreement(s) governing the provision of support services: - REL - FSSL - RHDFC - REL Infra - Vistaar RSL and Auriga (based on debit notes raised for professional services)	709-711, 777-787 955-987 1097-1108 1153-1154
Copy of debit notes/ invoices raised by the companies from whom services has been received- - REL - FSSL	789-822; 830-951 988-992
-RHDFC -REL Infra	1109-1119 1157-1167

Copy of emails exchanged with the service providing companies evidencing provision of services-	
- REL	829
- FSSL	1022-1096
- RHDFC	1130-1152
Copy of IDS certificates evidencing deduction of tax on the payment made for support services-	
- REL	766-774
- FSSL	993-1010
- RFIDFC	1120-1127
- REL Infra	1168-1220
- Vistaar	1235-1242
- Auriga	1245

20. The Ld. Counsel for the Assessee further submitted that, the CIT(A) in his order nowhere considered or refuted the above evidences placed on record by the assessee and without any basis observed that the payment has not been made wholly and exclusively for the purpose of business of the assessee.

21. The Ld. DR relying on the order of the Lower Authorities justified the observation made by the CIT(A), submitted that in the absence of the materials, the CIT(A) rightly held that the payment has not been made wholly and exclusively for the purpose of business of the assessee.

22. We have heard and perused the documents. Considering the fact that the CIT(A) had observed in its order that payment has not been wholly and exclusively for the purpose of business of the assessee without referring to the documents produced by the assessee (mentioned above), we are of the opinion that, if the issue involved in Ground No. 3 to 3.3 is remanded to the file of CIT(A) for adjudicating the same afresh after considering all the documents

produced by the Assessee, the substantial to 3 to 3.3 of the assessee is remanded to the file of CIT(A) with a direction to adjudicate the issue afresh after verifying the documents produced by the assessee in accordance with law. Needless to say, the assessee shall be provided with an opportunity of being heard. Accordingly, the Ground No. 3 to 3.3 of the assessee in I.T.A. No.4796/Del/2017 is allowed for statistical purpose.

**Disallowance of bad debts written off**

23. Ground No. 2 of the Department in I.T.A. No. 5202/Del/2017 for A.Y. 2012-13, I.T.A. No. 1005/Del/2018 for A.Y. 2013-14 and ITA No. 7553/Del/2018 A.Y 2015-16 are against the deletion of disallowance of bad debts written off by the assessee of Rs. 21,67,50,189/-, Rs. 89,30,64,775/- and Rs. 1,12,08,54,213/- respectively and the Assessee's Ground No. 3 in I.T.A. No. 7856/Del/2017 against upholding of the disallowance of bad debts written off. The Ld. Counsel for the assessee submitted that the said issue stood covered in favour of the assessee in ITA No. 2559/Del/2016 vide order dated 10/12/2021 passed by the Co-ordinate Bench of this Tribunal in Assessee's own case for the Assessment Year 2010-11, wherein the Tribunal has followed the decision of Vijaya Bank Vs. CIT(A) reported in 323 ITR 166 and held that since the assessee company duly reduced the bad debts from the figure of loss and advances as appearing in the balance sheet, the same could not be treated as merely creating provision and was in the nature of bad debts written off.

24. We have heard both parties, perused the materials. The Co-ordinate bench of the Tribunal in Assessee's own case for the Assessment Year 2010-11 vide order dated 10/12/2021 in I.T.A. No. 2559/Del/2016 (A.Y 2010-11), while dealing with the similar issue of disallowance of bad debts written off by the assessee, decided the same in favour of the Assessee in following manners:

*"12. In the case of Vijaya Bank v. Commissioner of Income Tax: 323 ITR 166, the assessee made a provision for bad and doubtful debt by debiting the amount of bad debt to the Profit and Loss Account so as to reduce the profits of the year, and also the provision account so created was debited and simultaneously the amount of loans and advances or debtors stood reduced and, consequently, the provision account stood obliterated. Further, loans and advances or the sundry debtors of the assessee as at the end of the year lying in the Balance Sheet was shown as net of "provisions for doubtful debt" created by way of debit to the Profit and Loss Account of the year. Learned Assessing Officer disallowed deduction on the ground that the entry made by the assessee was a mere provision and could not be equated with actual write off of bad debts in terms of the section. Ld. CIT(A) and the Tribunal allowed the assessee's claim, but the High Court reversed the order of the CIT(A) and the Tribunal. On appeal by the assessee, Hon'ble 8 Apex Court, while reversing the order of the High Court and referring to its earlier ruling in the case of Southern Technologies Ltd. v. JCIT: 320 ITR 577 held that the credit entry in each and every individual debtor's account was not necessary to constitute actual write off of bad debts. Hon'ble apex Court explained the impact of Explanation to section 36(1)(vii) and the concept of write off as follows:*

*"To understand the above dichotomy, one must understand 'how to write off'. If an assessee debits an amount of doubtful debt to the P&L Account and credits the asset account like sundry debtor's Account, it would constitute a write off of an actual debt. However, if an assessee debits 'provision for doubtful debt' to the P&L Account and makes a corresponding credit to the 'current liabilities and provisions' on the Liabilities side of the balance sheet, then it would constitute a provision for doubtful debt. In the latter case, assessee would not be entitled to deduction after April 1, 1989."*

*-Hon'ble Apex Court observed that if the assessee had not only debited the P&L account but also correspondingly reduced the amount from Debtors A/c on the assets side of the Balance Sheet and, consequently, at the end of the year, the figure shown on the assets side was net of the alleged provision, amounted to actual write off for the purpose of availing benefit of deduction under the section.*

*13. Having considered the material placed on record, Ld. CIT(A) reached a conclusion on facts that the assessee had already disallowed in the computation of income the provision for NPA of Rs. 26,06,230/- and general provision of loans to the tune of Rs. 9,07,19,756/- created by it for the financial year 2009-10 which was reported separately in schedule R of the profit and loss account for the said year. Ld. CIT(A) further found that the learned Assessing Officer did not make any 9 adverse comments in respect of the reduction of loans and advances by an amount of Rs.47,40,16,508/- in the Balance Sheet of the assessee which is clearly a writing off of bad debts in the books of accounts of the assessee. Basing on the record Ld. CIT(A) recorded a finding that the writing off of the loans of Rs.47, 40,16, 508/- is an actual writing off and not a provision and the same is bona fide and based on its commercial expediency of the assessee.*

*14. On a careful consideration of the matter and analyzing the facts in the light of the addition of the Hon'ble Apex Court in the case of Vijaya Bank (supra), we are of the considered opinion that in this matter the assessee not only debited the amount of doubtful debt to the P&L Account but in fact registered the value of assets in the Balance Sheet, and therefore we find that it's not the case of mere creating provision but actual writing off of the bad debts, and accordingly the assessee is entitled to the deduction under section 36(1)(vii) of the Act. On this premise we uphold the findings of the Ld. CIT(A) and dismiss ground No. 1 of the appeal."*

25. By respectfully following the order of the Co-ordinate Bench in Assessee's own case for A.Y. 2010-11 (supra), we find no merit in the Ground No. 2 of the Revenue, for A.Y. 2012-13, A.Y 2013-14 and A.Y 2015-16. Further we find merit in Assessee's Ground No. 3 for A.Y. 2014-15, accordingly, Ground No. 2 of

the Revenue in I.T.A. No. 5202/Del/2017, I.T.A. No. 1005/Del/2018 and ITA No. 7553/Del/2018 are dismissed and Assessee's Appeal Ground No. 3 in I.T.A.7856/Del/2017 is allowed.

**Disallowance of interest on compulsory convertible debentures.**

26. Ground No. 3 in Revenue's Appeal in I.T.A. No.5202/Del/2017 for A.Y. 2012-13 is regarding disallowance of interest on compulsory convertible debentures. During the year under consideration, the Assessee had issued and allotted 1500, 10.90% Compulsory Convertible Debentures ('CCDs'), having face value of Rs.1,00,000 each, aggregating to Rs.150 crores to its holding company, viz. M/s. Religare Enterprises Limited vide the Subscription Agreement dated 30/03/ 2011. The assessee claim to have incurred interest expenditure of Rs.13,75,19,178/- in respect of the aforesaid debentures. The said amount was paid by the assessee to Religare Enterprises Limited after deduction of tax at source. The interest so paid was debited to the profit and loss account of the assessee and was included in "interest expense on debentures/debenture application money" under the head "Finance costs". The assessing officer disallowed the interest expenditure of Rs.13,75,19,178 incurred by the assessee on the Compulsory Convertible Debentures issued to Religare Enterprises Limited holding that the interest paid on CCDs is akin to dividend as the intent for issuance of Compulsory Convertible Debentures is to issue equity shares. While making the disallowance, the assessing officer relied upon the Circular No. 74 dated 08.06.2007 issued by the RBI under the FDI Policy.

27. On appeal, the CIT(A) for the Assessment Year 2012-13 deleted the disallowance of Rs. 13,75,19,178/- made by the assessing officer holding that CCDs are in the nature of loan until the date of conversion into equity shares and accordingly, held that the interest paid thereon could not be treated as dividend. The said finding is under challenge in Ground No. 3 by the Department in ITA No. 5202/Del/2017 for Assessment Year 2012-13.

28. It is found that the similar findings and the conclusion have been arrived by the CIT(A) for the A.Y 2013-14 and 2015-16 in favour of the Assessee, wherein the CIT(A) deleted the disallowance of interest on compulsory convertible debentures of Rs. 16,35,00,000/- each which is under challenge in Ground No. 3 of the Appeal filed by the Department in ITA No. 1005/Del/2018 A.Y 2013-14 and ITA No. 7553/Del/2018 for A.Y 2015-16.

29. It is further observed that in the Assessment Year i.e. A.Y 2014-15 the Ld. CIT(A) has taken a contrary view that was taken in the Assessment Year 2012-13 and by distinguishing the above order of CIT(A) for A.Y. 2012-13, upheld the disallowance of Rs. 16,35,00,000/- made by the A.O. on account of interest paid by the Assessee on compulsory convertible debentures subscribed by its holding Company i.e. Religare Enterprises Ltd.

30. The Ld. Departmental Representative submitted that the CIT(A) has erred in deleting the disallowance for A.Y 2012-13, A.Y 2013-14 and A.Y 2015-16

further submitted that the CIT(A) rightly upheld the disallowance of interest on compulsory convertible debentures subscribed by its holding Company i.e. Religare Enterprises Ltd interest for the A.Y 2014-15, wherein the CIT(A) has taken into account of the order passed by its predecessor for the Assessment year 2012-13 and taken a contrary view, which requires no interference.

31. Per contra, the ld. Assessee's Representative submitted a detailed written submission on the above issue and also relied on various judicial pronouncements to support the contentions of the Assessee. The Ld. AR submitted that the assessee duly withheld tax @ 10% under section 194A of the Act on such interest on CCD and the aforesaid interest aggregating to Rs. 13,75,19,178/- received by REL has been credited to its profit and loss account and was duly included in the taxable income for assessment year 2012-13. Further submitted that the two instruments viz., "debenture" and "shares" are mutually exclusive, with separate rights and obligations of both the issuer company and the subscriber, for instance, instrument of debenture is an evidence of existence of a debt with the issuing company. Unlike, debentures, instruments in the nature of shares (be it equity or preference) is not in the nature of debt, but form part of the permanent capital of the company, entitling the holder to certain preferential rights, like voting rights, dividend, etc.

32. The Ld. Counsel further submitted that following salient terms and conditions for the issuance of CCDs issued by the assessee case, which are as under:

- CCDs shall be automatically and mandatorily converted into equity shares on the Mandatory Conversion Date which was defined as May 30, 2016, i.e., after 5 years (refer Clause 4.6 of the agreement).

-Pertinently, the CCD's shall be converted at conversion rate which was defined as fair market value of shares on the conversion date (refer Clause 4.7 of the agreement).

-CCDs' holder (REL) is entitled to interest @ 10.90% p.a. w.e.f. date of allotment to the date of conversion into equity shares unlike, equity shares which do not give assured return. Interest is payable irrespective of profits/ losses incurred by the appellant (refer Clause 4.4. of the Subscription Agreement read with Amendment letter dated August 12, 2011 detailing the interest payable on CCDs);

-CCD holder (REL) does not have any voting right, which is available only to equity shareholders (refer Clause 4.5);

-CCDs' issued to REL are secured by a pari passu mortgage over the appellant's immovable property situated in Gujarat and first pari passu charge on the business receivable of the appellant unlike, equity shares which are not secured by a charge over the assets of the issuer (refer Clause 2.2(b));

-Only upon conversion of the CCDs into equity shares, REL shall become entitled to receive dividend, if any. Till the date of conversion, the appellant will pay interest to the debenture-holders (REL) (refer Clause 4.7(b)).

Thus the Ld. AR submitted that, in view of the aforesaid salient terms and conditions of CCDs Subscription Agreement, especially: - (i) interest burden on the issuing company; (ii) no voting rights in lieu of debenture holding; security issued; fixed returns, etc., CCDs cannot be equated with shares, until conversion. *The Ld. Counsel for the Assessee has taken us through various judicial pronouncements .*

33. We have heard the parties perused the material. The question arises for consideration as to whether the compulsory convertible debentures are in the nature of debt or equity? and consequently the interest paid by the Assessee on compulsory convertible debentures subscribed by its holding Company i.e. Religare Enterprises Ltd. is allowable or not. The said issue regarding allowability of interest paid on Compulsory Convertible Debenture is no longer res-integra.

33.1. The Hon'ble Rajasthan High Court in the case of CIT Vs. Secure Meters Ltd. 321 ITR 661 held that the expenses incurred on issue of debentures, whether convertible or not, were deductible as business expenditure under section 37(1) of the IT Act. The Court held that the debenture when issued is a debt, and therefore, whether it is convertible or non-convertible does not militate against the nature of the debenture. The relevant extracts from the judgment is reproduced hereunder:

*"At this stage it was contended by the learned counsel for the revenue, that a distinction should be drawn between the convertible, and non-convertible debentures, inasmuch as if the debenture is converted into shares, then it partakes the character of capital, and in that event, the expenditure would not be revenue expenditure, and would be capital expenditure. Learned counsel for the assessee informs, that though it has not come on record so far, but as a matter of fact the debentures issued were of convertible nature. Then, the learned counsel for the assessee argued, relying upon the judgment of Calcutta High Court, in CIT YEast India Hotels Ltd./20011 252 ITR 860, that the expenditure incurred, even in raising loan by convertible debenture would also be admissible as revenue expenditure. The Calcutta High Court had adopted the reasoning, that conversion of debentures results into repayment of loan, and issuance of shares. This is one aspect of the matter. In our view, the other more important aspect of the matter is, that the Hon'ble Supreme Court in India Cement Ltd.'s case (supra) has clearly excluded this aspect from consideration, by holding, that it is irrelevant to consider the object, with which the loan was obtained. Admittedly the debentures when issued is a loan, and therefore, whether it is convertible, or non- convertible, does not militate against the nature of the debenture, being loan, and therefore, the expenditure incurred would be admissible as revenue expenditure." (emphasis supplied)."*

Further the Department had filed Special Leave Petition against the above said order of the Hon'ble Rajasthan High Court in the case of Security Meters (supra) which has been dismissed by the Hon'ble Supreme Court vide order dated 11/08/2009 in SLP No. 10548/2009.

33.2 Further in the case of CIT Vs. Havells India Ltd. 352 ITR 376 (Del) the Hon'ble Jurisdictional High Court has held as under:

*"25. The Revenue is in appeal. The main contention on its behalf is that the position should be seen not only with reference to time at which the debentures are issued but the fact that at a future point of time they were to be converted in shares should also be taken note of in order to judge the allowability of the expenditure incurred in connection with the debenture issue. It was submitted that on the*

*facts of the present case, the debentures were to be converted within a period of 15 months, that is on or before 12.6.2006, and that the assessee company had even fixed the price at which the shares would be issued upon conversion of the debentures, and that even the issue of bonus shares had been finalised at the time of the debenture issue and all these facts clearly showed that the issue was in truth and effect only an issue of share capital. It was accordingly contended that the judgments of the Supreme Court cited supra were squarely applicable .*

*26. It is well settled that expenditure incurred in connection with the issue of debentures or obtaining loan is revenue expenditure. Reference in this connection may be made to the leading judgment of the Supreme Court in India Cements Ltd.v. CIT [1966] 60 ITR 52. The question before us however, is whether it is a debenture issue or an issue of share capital involving the strengthening of the capital base of the company. Though it prima facie appears that there are sufficient facts to indicate that what was contemplated was an issue of shares to the Mauritius Company under the Investor Agreement which would result in strengthening of the assessee's capital base, having regard to the judgments cited on behalf of the assessee, in which it has been held that despite indications to the effect that the debentures are to be converted in the near future into equity shares, the expenditure incurred should be allowed as revenue expenditure on the basis of the factual position obtaining at the time of the debenture issue, we are not inclined to take a different view. (emphasis supplied).”*

33.3. The similar views have been expressed on the issue of CCDs/OCDs were held to be allowable revenue deduction in following judicial pronouncements:-

- DCIT v. ITC Hotels Ltd.: 334 ITR 109 (Kar.)
- CIT v. South India Corporation (Agencies) Limited: 290 ITR 217 (Mad.)
- CIT v. East India Hotels Limited: 252 ITR 860 (Cal.)
- Ganesh Benzoplast v. ACIT: 111 TTJ 385 (Mum.)
- Crane Software International Ltd: ITA Nos. 741&742 Bang/2010 (Bang)
- DCIT v. Modern Syntex (India) Ltd.: 95 TTJ 161/3 SOT 27 (Jaipur).

33.4. The Co-ordinate Bench of the Tribunal in the case of DCIT Vs. UAG Builders Pvt. Ltd. 53 SOT 370 dealing with the issue of allow-ability of deduction of interest paid on OCDs observed as under:-

*“We have heard the rival contentions in light of the material produced and precedent relied upon. We find ourselves in agreement with the Ld Commissioner of Income Tax (A)’s finding that there was no contingency involved in the accrual of liability with reference to the interest on the debentures. Ld. Commissioner of Income Tax (A) rightly observed that debentures, whether fully or partly or optionally convertible, are nothing but debt till the date of conversion and any interest paid on these debentures is allowable as normal business expenditure. The only uncertainty in the optionally convertible debentures issued by the assessee is whether the debenture holder will go for conversion into shares or will continue to hold them as debentures. Ld. Commissioner of Income Tax (A) rightly held that this uncertainty in no way impacts the assessee company’s liability to pay interest till the date of conversion. Ld. Commissioner of Income Tax (A) has rightly held that the case laws referred by the Assessing Officer were not applicable on the facts of the present case, Accordingly, in the background of the aforesaid discussion, we do not find any infirmity in the order of the Ld Commissioner of Income Tax (A) and accordingly, we uphold the same. ”(emphasis supplied).”*

34. The above said judicial pronouncements clearly laid down the law in favour of the Assessee holding that Compulsory Convertible Debentures are in the nature of borrowed fund and continued to be debt till conversion thereof into shares and consequently interest on CCDs is allowable as revenue deduction u/s 36(1)(iii) of the Act.

35. The Ld. A.O. while disallowing the compulsory convertible debentures placed reliance of circular No. 74 dated 08/06/2007 issued by the RBI which reads as under:-

*"It has been noticed that some Indian companies are raising funds under the FDI route through issue of hybrid instruments such as optionally convertible/partially convertible debentures which are intrinsically debt-like instruments. Routing of debt flows through the FDI route circumvents the framework in place for regulating debt flows into the country. It is clarified that henceforth, only instruments which are fully and mandatorily convertible into equity, within a specified time would be reckoned as part of equity under the FDI Policy and eligible to be issued to persons resident outside India under the Foreign Direct Investment Scheme in terms of Regulation 5 (1) of Foreign Exchange Management (Transfer and Issue of shares by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA 20/2000-RB dated May 3, 2000."*

36. On bare perusal of the above circular, it does not re-characterized convertible debentures into equity. The Circular deems CCDS as part of equity/capital merely for the purpose of keeping check on measures used to circumvent the frame work for regulating debt flow in the country. The ITAT Tribunal Bangalore Bench while dealing with the said issue in the case of ACIT Vs. CAE Flight Training (India) Pvt. Ltd. in ITA No. 2060/Bang 2016 held as under:-

*"21. Now we first decide the First and most important issue i.e. this that CCDs are Debts or equity and interest on it is allowable or not? On this issue, in the order of CIT (A) para 4 in the first year i.e. A. Y 2009-10 is relevant and therefore, this Para is reproduced for ready reference herein below.*

*23. As per above paras of this tribunal order, it comes out that even if Thin capitalization Principle is on Statute book of the other country, no disallowance can be made in India by applying this Principle. To*

*this extent, we uphold the finding of CIT (A) by respectfully following this tribunal order. But the issue still remains because, the objections of AO/TPO are not merely on the basis of Thin capitalization Principle. Their basic objection is this that since the interest is paid on CCDs, this is not an interest on debt but on equity and hence, not allowable. On page 11 of his order for A. Y. 2009-10, the TPO has reproduced certain comments of RBI in 2007 Policy on convertible debentures in which it is stated that fully and mandatorily convertible debentures into equity within a specified time would be reckoned as equity under FDI policy. In view of this RBI Policy, the TPO concluded that these CCDs are equity and not debt and therefore, interest on it is not allowable u/s 36 (1) (iii). This finding of TPO is not by invoking Thin Capitalisation principle and therefore, it has to be decided independently. We find that the decision of TPO is bases on RBI policy of FDI. We all know that RBI policy of FDI is governed by this that what will be future repayment obligation in convertible foreign currency and since, CCDS does not have any repayment obligation, the same was considered by RBI as equity for FDI policy. Now the question is that such treatment given by RBI for FDI policy can be applied in every aspect of CCDs. Whether the holder of CCDs before in conversion can have voting rights? Whether dividend can be paid on CCDs before its conversion? In our considered opinion, the reply to these questions is a BIG NO. On the same logic, in our considered opinion, till the date of conversion, for allow-ability of interest w/s 36 (1) (iii) of Income tax Act also, such CCDs are to be considered as Debt only and interest thereon has to be allowed and it cannot be disallowed by saying that CCDs are equity and not debt. We hold accordingly. This issue is decided.*

.....

*Apart from relying on this decision of Special Bench of the Tribunal, the ld. DR of revenue in written submissions as reproduced above has mainly reiterated the same arguments which are adopted by the TPO in its order i.e. regarding RBI Master Circular on Foreign Investment in India dated 02.07.2007 and 01.07.2008. We would like to observe that such circular in the context of FDI policy of RBI is in a different context i.e. regarding future re-payment obligations in convertible foreign currency and to have control over such future re-payment obligations, the RBI is exercising strict and control so that such future re-payment obligations does not go beyond a point and since in the case of fully convertible debentures, there is no future*

*re-payment obligation, the same was considered as equity for the purpose of FDI policy. In our considered opinion, any definition of any term is to be considered keeping in mind the context in which such definition was given. This definition of convertible debentures given by RBI is in the context of FDI policy to exercise control on future re-payment obligations in convertible foreign currency. In our considered opinion, such definition of the term convertible debentures cannot be applied in other context such as allow-ability of interest on such debentures during pre-conversion period or regarding payment of dividend on such convertible debentures during pre-conversion period or regarding granting of voting rights to the holders of such convertible debentures before the date of conversion. If you ask a question as to whether dividend can be paid on such convertible debentures in a period before the date of conversion or whether such holders of convertible debentures can be granted voting rights at par with voting rights of share holders during pre-conversion period, the answer will be a big NO. On the same analogy, in our considered opinion, the answer of this question is also a big NO as to whether interest paid on convertible debentures for pre-conversion period can be said to be interest on equity and interest on debentures allowable w/s. 36(1)(iii) of the IT Act." (emphasis supplied)."*

37. In view of the above discussions and the aforesaid legal position, we hold that CCDs are in the nature of borrowed fund and continued to be debt till conversion thereof into shares and consequently interest on CCDs is allowable as revenue deduction u/s 36(1)(iii) of the Act. Accordingly, the Ground No. 2 of the assessee in ITA No. 7856/Del/2017 for A.Y 2014-15 is allowed and Ground No. 3 in ITA No. 5202/Del/2017 for A.Y 2012-13, ITA No. 1005/Del/2018 for A.Y 2013-14, ITA No. 7553/Del/2018 for A.Y 2015-16 of the Revenue are dismissed.

38. **In the result,**

**-Appeal in ITA No. 4796/Del/2017 for A.Y 2012-13 filed by the assessee is partly allowed for statistical purpose.**

**-Appeals in ITA No. 547/Del/2018 for A.Y 2013-14, ITA No. 7856/Del/2017 for A.Y 2014-15 and ITA No. 6116/Del/2018 for A.Y 2015-16 filed by the assessee are allowed.**

**-Appeals in ITA No. 5202/Del/2017 for A.Y 2012-13, ITA No. 1005/Del/2018 for A.Y 2013-14, ITA No. 133/Del/2018 for A.Y 2014-15 and ITA No. 7553/Del/2018 for A.Y 2015-16 filed by the Department are dismissed.**

Order pronounced in the open court on : **13/07/2023.**

**Sd/-**  
**( Dr. B. R. R. KUMAR )**  
**ACCOUNTANT MEMBER**  
Dated : 13/07/2023

*R.N, Sr. PS\**

Copy forwarded to :-

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

**Sd/-**  
**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI