आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JM &
HON'BLE SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 242/JP/2023
निर्धारण वर्ष/Assessment Year : 2018-19.

Career Point Limited, 112-B, Shakti Nagar, Kota.	बनाम Vs.	The Principal Commissioner of Income-tax, Udaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AABCC 4963 A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Vijay Goyal, CA &
Shri Kapil, CA

राजस्व की ओर से/ Revenue by : Shri Ajey Malik (CIT)

सुनवाई की तारीख/ Date of Hearing : 25/07/2023
उदघोषणा की तारीख/Date of Pronouncement: 22/08/2023

आदेश/ ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 16.03.2023 of ld. PCIT, Udaipur passed under section 263 of the IT Act. 1961 for the assessment year 2018-19. The assessee has raised the following grounds :-

1. On the facts and in the circumstances of the case, the order under section 263 of the Act passed by the PCIT is illegal, void ab initio and not justifiable, therefore, deserve to be annulled.

2. That learned PCIT erred in holding that the order section 143(3) passed by the AO was erroneous and prejudicial to the interest of revenue.

3. On the facts and in the circumstances of the case and in law the ld. Pr. CIT erred in applying provision of section 14A read with rule 8D on the

investment made by the appellant more so when the assessee's own funds (Equity+ Reserves is more than the value of investment.

4. On the facts and in the circumstances of the case and in law the ld. Pr. CIT erred in applying provision of section 14A read with rule 8D on the investment made by the appellant more so when the assessee has no exempt income and the explanation to section 14A inserted by Finance Act 2022 is applicable w.e.f. 01.04.2022 and it cannot be applied retrospectively.

5. On the facts and in the circumstances of the case and in law the ld. Pr. CIT erred in not accepting contention of appellant that no expenses were incurred for making investment and such investment was made by the appellant out of his own funds.

6. On the facts and circumstances of the case, the ld. PCIT passed the order under section 263 on assumption of wrong and incorrect facts, and relying the decisions which are on different facts and further erred the rejecting the ratio laid down in the decisions relied upon by the assessee.

7. The appellant prays for leave to add, to amend, to delete or modify the all or any grounds of appeal on or before the hearing of appeal.

2. The brief facts of the case are that the assessee is listed public limited company and engaged in the business of Coaching Centres and tuitions. The assessee filed original return of income on 31-10-2018 declaring total income of Rs. 13,03,13,740/-. The case of the assessee was selected for limited Scrutiny by CASS on the issue of "Expenses Incurred for Earning Exempt Income". Under the E-Assessment Scheme 2019 (faceless assessment scheme), notices under section 143(2) and 142(1) of the Income Tax Act, 1961 were issued calling for details. The assessee filed all the details from time to time. The E-assessment was completed on 28-01-2021 u/s 143(3) read with sections 143(3A) & 143(3B) of Income Tax Act, 1961 accepting the returned income of the assessee.

2.1 Thereafter, the ld PCIT, Udaipur issued notice u/s 263 of Income Tax Act, 1961 on 06-02-2023. The assessee filed detailed reply supported by various case laws vide letter dated 24-02-2023. However, ld PCIT held that the order passed by the AO (FAO) U/s 143(3) dated 28-01-2021 is erroneous and also prejudicial to the interest of the revenue and liable to revision under clause (a) & (b) of the Explanation (2) of section 263 of the Income Tax Act 1961. On the basis of her findings in para 6 to 9 at page 13 to 18 of her order, she set aside the assessment order passed by AO on the issue of section 14A/Rule 8D and she directed the AO that based on outcomes of inquires and verification, necessary additions, wherever required, may be made to the total income of the assessee as per law.

3. Aggrieved by the order of ld PCIT, Udaipur, the assessee has filed this appeal before the Tribunal, Jaipur Bench, Jaipur challenging the order of ld PCIT.

4. Before us, the ld. A/R submitted his written submissions as under :-

> "**2.1 The assessment order was passed under E- Assessment Scheme – 2019, therefore, there cannot be possibility of any error and prejudice to revenue in favour of the assessee.**
>
> The assessment order, dated 28.01.2021 for the year under consideration was carried out in the "faceless manner" by NFAC. It is a fact that any faceless assessment is carried out through a teamwork of :-
>
> (i) Assessment unit,
> (ii) Technical unit,
> (iii) Review unit,
> (iv) Verification unit

Since different units are headed by Principal Commissioner of Income Tax, therefore, in a faceless regime, normally there cannot be a case of prejudice of lack of enquiry for the reason that there is application of mind by multiple officers of Department and not by a single officer, therefore, the revision proceedings u/s 263 should be taken only on the basis of strong and tenable reasons. In the case of the assessee, considering the case laws decided by various courts and own history of the assessee, the ld PCIT has no strong and tenable reasons to justify the proceedings u/s 263 of the Act. So, the present proceedings assuming the order to be erroneous and prejudicial to the interest of the revenue deserves to be set aside.

2.2 The complete details were called for, examined and verified

At the outset we would like to submit that current assessment proceeding was selected under CASS for **limited scrutiny** to examine the following issue: -

"Expenses incurred for earning Exempt Income"

During the course of E-assessment proceeding the ld. AO issued the notice u/s 142(1) of the Act along with query letter **(Copy Enclosed as Annexure to WS),**thus, detailed inquiry was made from the assessee, which is apparent from the query letter.

Following notices under section 143(2) and 142 of the Income Tax Act, 1961 were issued during the course of assessment proceedings.

S. No	Date of Notice	PB PAGE
ITBA/AST/S/143(2)/2019-20/1018220568(1)	23rd Sep 2019	230-231/Vol -2
ITBA/AST/F/142(1)/2019-20/1025356837(1)	18th Feb 2020	234-238/Vol-2
ITBA/AST/F/142(1)/2020-21/1029027261(1)	16th Dec 2020	239-240/Vol-2

Above notices were duly responded by below mentioned submissions:-

S. No	Date of Submission	Copy at PB page

ITBA/AST/S/143(2)/2019-20/1018220568(1)	12th Oct 2019	15**/Vol-1**
ITBA/AST/F/142(1)/2019-20/1025356837(1)	09th Jan 2021	16-17**/Vol-1**
ITBA/AST/F/142(1)/2020-21/1029027261(1)	09th Jan 2021	16-17**/Vol-1**

The very basis of initiation of proceedings under Section 263 is that any order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of the revenue. Assessment order as passed by Ld. AO is enclosed herewith at **PB page no. 13-14/Vol-1** for your kind perusal.

Assessment order passed by the ld FAO was after full enquiry and the assessee has submitted detailed reply, therefore, the case does not fall within the clause (a) and (b) of Explanation 2 to Section 263 of I. Tax Act.

Against the applicability of section 14A the contention of the assessee was that **addition u/s 14A cannot be made where the own capital and surplus of the assessee was i.e. share capital and reserves are much more than the investment which may result the exempted income.** The ld FAO accepted this contention of the assessee keeping in mind various case laws.

Further, the view of the ld FAO is also supported by **past history** of the assessee and findings of Hon'ble ITAT Jaipur in assessee's own case for AY 2013-14. Here it is relevant to mention here the past history of the assessee as under:-

(i) AY 2013-14

The assessment of AY 2013-14 was completed u/s 143(3) wherein addition of **Rs. 59,69,827/-** u/s 14A was made. This addition was deleted by ld CIT(A). Copy of order of ld CIT(A) is at **PB page 277-288/Vol-2.**

Appeal filed by the revenue before **Hon'ble ITAT Jaipur** was dismissed and deletion of addition made by ld AO u/s 14A of I.Tax Act was upheld. Copy of the order of Hon'ble ITAT Jaipur is at **PB page 289-298/ Vol-2. The**

findings of Hon'ble ITAT is in para 4.2 & 4.3 at PB page 292-294/Vol-2.

(ii) AY 2014-15

The assessment of AY 2014-15 was completed u/s 143(3) wherein addition of Rs. 12,11,158 u/s 14A was made, which was deleted by ld CIT(A). Copy of order of ld CIT(A) is at **PB page 249-274/Vol-2.** Appeal filed by the revenue before Hon'ble ITAT Jaipur was dismissed. Copy of the order of Hon'ble ITAT Jaipur is at **PB page 275-277/ Vol-2.**

(iii) AY 2017-18

The assessment of immediate preceding year AY 2017-18 was completed u/s 143(3) wherein no addition u/s 14A was made. The copy of assessment order for AY 2017-18 is at **PB page 241-246/Vol-2. It is worthwhile to mention the investment in MF/Equities as on 31/03/2017 was of Rs. 21,957.06 lacs against the share capital and Reserves of Rs. 1816.29 lacs and 35,354.12 respectively totaling to Rs. 37,170.41**

Hence, PCIT has erred in assuming jurisdiction u/s 263 of the Act. Contention of ld PCIT that assessee submitted incomplete information as asked for by the FAO and assessee submitted an evasive reply. This finding of ld PCIT is perverse and incorrect. All replies submitted during the course of assessment proceedings enclosed herewith at **PB pageno.15-17/Vol-1**foryour kind perusal. Details with respect to investments as and when required by Ld. AO was also submitted.

The ld. FAO verified the information/documents/ replies filed by the assessee, which is apparent from the assessment order. In this regard we would like to draw your kind attention towards the para 2 of the assessment order **(Copy at PB Page 13-14),** wherein it is mentioned that:-

"*In connection with the issue of expenses incurred for early exempt income the assessee submitted that there is no interest paid on funds utilised for investment made during the year and all investment is through own funds. The submission given by the assessee is verified.*"

As per above extract of assessment order, it is clearly evident that Ld. AO has done proper verification of investments made and expense incurred for exempt income. After obtaining full satisfaction Ld. AO. accepted returned income without making any modifications in it. Assessment order passed by Ld. AO was not at all erroneous.

Assessee takes support of following judgments:-

(i) **Hon'ble HC of Karnataka in the case of CIT, Bangalore v. Chemsworth (P.) Ltd [2020] 119 taxmann.com 358 (Karnataka) (PB page 146-150).**

In this case it was held that where assessee filed all details before Assessing Officer (AO) that no expenditure under section 14A was attributable to exempt dividend income earned by it during year and AO accepted same, since AO had taken a plausible view, impugned invocation of revision under section 263 merely on ground that enquiry conducted by AO was inadequate was unjustified.

(ii) **ITAT KOLKATA BENCH 'C' in the case of Shringar Marketing (P.) Ltd. v. Principal Commissioner of Income-tax-4, Kolkata [2021] 128 taxmann.com 199 (PB page 151-163).**

In the case it was held that where Assessing Officer during course of original assessment verified all transactions of purchase/sales/stock of shares in case of assessee and made disallowance under section 14A read with rule 8D(2), Commissioner having failed to make out that order of Assessing Officer was erroneous as well as prejudicial to interest of revenue, order passed under section 263 was to be set aside.

The ld FAO completed the assessment after verifying complete details and taking a view which was binding on him in terms of judicial precedents available on the matter. Ld FAO, after adequate enquiry, has taken a judicious view. Revision u/s 263 is not permissible merely because ld PCIT may entertain a different view on the issue.

Hence it would not be correct to conclude that the assessment had been done based on incomplete or incorrect information provided by the assessee and the assessment order passed by ld FAO is erroneous and prejudicial to the interest of revenue. So, assessee prays your honour kindly to set aside the order passed by ld PCIT u/s 263.

2.3 Ld PCIT failed to consider the past history of the assessee before passing order u/s 263 of I. Tax Act:-

The ld PCIT failed to consider the past assessment history of the assessee wherein the contention of the assessee that addition u/s 14A cannot be made where the non-interest bearing funds i.e. share capital and reserves are much more than the investment which may result the exempted income was accepted. The past history of the assessee as settled in the AY 2013-14, AY 2014-15 and AY 2017-18 is very relevant to the issue in hand.

Hon'ble Rajasthan High Court in the case of **CIT Vs Bhawan Va Path Nirman (Bohra) & Co (No. 1) 258 ITR 431** has held that the past history of the assessee is best guiding factor.

2.4 In point no (iii) of para3at page 2 of order passed u/s 263 the ld PCIT assumed wrong facts by mentioning that the assessee has admitted that its case is covered by the provisions of section14A of the Act and also the explanatory circular of CBDT No.5/2014.

In point no (iii) of para3at page 2 of order passed u/s 263 the ld PCIT assumed wrong facts by mentioning that the assessee has admitted that its case is covered by the provisions of section14A of the Act and also the explanatory circular of CBDT No.5/2014. During the course of assessment proceedings, the assessee never admitted that its case is covered by the provisions of section 14A of the Act and

also the explanatory circular of CBDTNo.5/2014.Replysubmitted during the course of assessment proceedings on 12th Oct 2019 is reproduced herewith for ready reference**(PB page 15)**:

"1. During this year, the assessee was claimed the Exempt income of Rs.62,529 from the Long-term capital gain on sale of Equity oriented Mutual Fund in which total fund invest was Rs. 1,99,000 only. The assessee was neither incurred any expenditure to earn this exempt nor claimed any expenditure in return of income.

2. As per the provisions of section 14A of Income Tax Act,1961 and rules 8D of Income Tax Rules 1962 which further clarify by circular No. 5/2014 dated 11.02.2014no deduction in respect of expenditure incurred by the assessee in relation to the income which does not form part of the total income under this Act. In the case of the assessee entire investments were made by the assessee out of its own funds. As per the balance sheet, the assessee having sufficient its own capital and reserves and surplus. The own capital and reserve and surplus of the assessee was Rs. 38,508.89 Lakhs while the investments in such mutual fund was of Rs. 1.99 Lakhs only, Thus, the own funds of the assessee were much more than to investments, therefore no disallowance u.s. 14Aof Income Tax Act,1961 should be made."

It is clearly evident from the above reply submitted that assessee never admitted that case is covered by the provisions of section 14A of the Act and also the explanatory circular of CBDT No. 5/2014. Accordingly, this revisionary order passed u/s 263 of I. Tax Act is arbitrary assuming wrong facts and without any concrete basis. So, assessee hereby prays your honour kindly to set aside the order passed by ld PCIT u/s 263.

2.5 The order passed u/s 263 by ld PCIT by not considering the fact that interest earned by the assessee is much more than the interest paid so net interest cost of funds is NIL. Thus proposal for making additions of Rs.2,53,26,820 in the order passed u/s 263 of I. Tax Act is highly unjustified:-

Amount of interest income earned by the assessee during the relevant year is Rs. 654.45 Lacs **(PB page 38)** which is far more in excess of total interest cost claimed as expenditure during the relevant year

amount to Rs.303.41Lacs **(PB page 39)**. In the case of the assessee interest income earned outweigh the interest expenditure. It clearly shows that no interest cost has been incurred to make any investment which shall result in exempt income.

Assessee also like to bring your honor kind attention towards the rate of interest on which loan was taken and the rate of interest on which loans were given:

Rate of interest of Loan taken from IndusInd Bank 8.6% p.a.
Rate of interest of loan given to Gopi Bai Foundation 9% p.a.
Rate of interest of loan given to Srajan Capital Ltd. 9.75%p.a.

From above it is clear that rate of interest of loans given is higher than the rate of interest of loan taken. Whatever interest income earned by assessee had been duly reported in ITR filed.

Assessee relies upon the judgment of **Hon'ble GUJARAT HIGH COURT in the case of PCIT-1 v. Adani Infrastructure & Developers (P.) Ltd. [2021] 432 ITR 133 (Gujarat) (PB page 197-200)**

In the case it was held that Rule 8D(2)(ii) shall have no application where interest income earned outweigh interest expenditure.

Thus making additions of Rs.2,53,26,820 as proposed in the order passed u/s 263 of I. Tax Act is highly unjustified.

2.6 The Source of all investments as standing in the balance sheet of assessee is as below:

Investments	**As on 31Mar 2018 (Rs in Lacs)**	**Source of Investments**	**Interest paid on funds utilised**
Investment in Subsidiaries Companies equity shares	14856.39 **(PB page 30)**	(i)Share capital Rs. 1816.29 lacs **(PB 34)** and (ii) Reserves/Retained earnings Rs. 36692.60 lacs	Nil

as		**(PB page 35)** **Total 38508.89 lacs as on 31-03-2018.** **As On 31.03.2017 it was Rs. 1816.29+35354.12** **Total 37170.41Lacs**	
Unquoted non-cumulative redeemable preference shares	1255 **(PB page 30)**	As above	Nil
Unquoted equity shares	57 **(PB page 30)**	As above	Nil
Investment in Mutual Funds	1709.84 **(PB page 30)** +4506.29 **(PB page 31)** Total 6216.13	As above	Nil
Total	22384.52	**Total share capital and reserves were Rs. 38508.89 lacs as on 31-03-2018**	

Assessee had not used borrowed funds for making investments. Entire investments were made out of owned funds. Consequently, borrowing cost incurred in investment is NIL. Financial statements showing all schedules of relevant year is enclosed herewith at **PB page no. 30 & 31** for your kind perusal. Disallowance under Section 14A is not attracting in the case of assessee.

2.7 The Utilisation of fresh borrowings is as below:-

Funds borrowed from	**Funds borrowed (Rs inLacs)**	**Utilisation of Funds**	**Funds utilised to generate exempt income or taxable Income**	
IndusInd Bank **Ledger A/c is at PB page 61 Interest**	2500 Lacs	Rs.1400 Lacs paid inYes Bank Ltd OD Account. It reduces OD interest cost	Taxable income	

8.6%		**Ledger A/c is at PB page 62-64**		
		Rs.134Lacspaid in Deutsche Bank OD Account. It reduces OD Interest cost **Ledger A/c is at PB page 70**	Taxable income	
		Rs. 750 lacs paid on interest to Srajan Capital Ltd **On Interest 9.75%** **Ledger A/c is at PB page 65-68**	Taxable income	
		Rs.216 Lacs paid on interest to Gopi Bai Foundation **On Interest 9%** **Ledger A/c is at PB page 69-70**	Taxable income	

From above explanation of utilisation of fresh borrowings, it is crystal clear that no fresh borrowing has been utilised for investments which shall result the exempt income in current year as well as in future years. Accordingly, addition or disallowance under Section 14A is not in accordance with the provisions of section14A/Rule 8D.

Hon'ble Karnataka High Court in the case of **PCIT, Bangalore vs. Subramanya Constructions & Development Co. Ltd. [2021] 130 taxmann.com 115 (Copy at PB page 209-212) has** held that where investments had been made by assessee from capital and reserves and not out of borrowed funds and assessee had not incurred expenditure to earn

exemptincome,nodisallowancecouldbemadeundersection14A.

2.8 When mixed funds (interest bearing and interest free) are available, and payment is made out of that mixed fund, the investment must be considered to have been made out of the interest free funds: -

It is well accepted principal established by various court judgments referred hereinafter that when mixed funds (interest bearing and interest free) are available, the right of appropriation is vested with the assessee. It is right of the assessee to appropriate interest free funds to exempt income earning investments. Assessee's own funds i.e. equity and reserves amount to Rs. 38,508.89 Lacs which is much more than the value of current and non-current investments amount to Rs.22,384.52 Lacs as on 31st March 2018 as per the audited financial statements. Out of this value of investment was of Rs 1,99,000 that generated exempt income of Rs. 62,529 of long term capital gains under Section 10(38) on sale of UTI TRANSPORTATION AND LOGISTICS FUND which was purchased out of owned funds as assessee was having availability of ample of owned funds. So, no borrowing cost has been incurred towards purchase of this UTI TRANSPORTATION AND LOGISTICS FUND and other investments which may generate exempt income.

Reliance is placed on the following decisions: -

(i) Hon'ble Supreme Court in the case of **South India Bank Ltd v/s Commissioner of Income Tax [2021] 438 ITR 1 (SC)(Copy at PB page 140-145)**wherein the Hon'ble Supreme Court in Para 17 and 18 held as under:

> *""17. In a situation where the assessee has mixed fund (made up partly of interest free funds and partly of interest-bearing funds) and payment is made out of that mixed fund, the investment must be considered to have been made out of the interest free fund. To put it another way, in respect of payment made out of mixed fund, it is the assessee who has such right of appropriation and also the right to assert from what part of the fund a particular investment is made and it may*

not be permissible for the Revenue to make an estimation of a proportionate figure. For accepting such a proposition, it would be helpful to refer to the decision of the Bombay High Court in Pr. CIT v. Bombay Dyeing and Mfg. Co. Ltd. (I.T.A. No. 1225 of 2015) where the answer was in favour of the assessee on the question, whether the Tribunal was justified in deleting the disallowance under Section 80M of the Act on the presumption that when the funds available to the assessee were both interest free and loans, the investments made would be out of the interest free funds available with the assessee, provided the interest free funds were sufficient to meet the investments. The resultant SLP of the Revenue challenging the Bombay High Court judgment was dismissed both on merit and on delay by this Court. The merit of the above proposition of law of the Bombay High Court would now be appreciated in the following discussion.

18. In the above context, it would be apposite to refer to a similar decision in Commissioner of Income Tax (Large Tax Payer Unit) Vs. Reliance Industries Ltd, (2019) 410 ITR 466 SC/ (2019) 20 SCC 478 where a Division Bench of this Court expressly held that where there is finding of fact that interest free funds available to assessee were sufficient to meet its investment it will be presumed that investments were made from such interest free funds…."""

(ii) Hon'ble Supreme Court in the case of **Commissioner of Income Tax (Large Tax Payer Unit) Vs. Reliance Industries Ltd, (2019) 410 ITR 466 SC** where a Division Bench of this Court expressly held that where there is finding of fact that interest free funds available to assessee were sufficient to meet its investment it will be presumed that investments were made from such interest free funds.

(iii) Hon'ble ITAT Jaipur in the case of **DCIT Circle-2, Jaipur vs. M/s. AU Financiers India Ltd. 2016 (11) TMI 710 - ITAT Jaipur.** In this case Hon'ble ITAT has followed its own finding in assessee's own case for A.Y. 2011-12. The relevant findings as reproduced in the order are as under :-

"The above finding on fact by the Revenue is not controverted by placing any material on record. Moreover there is no dispute with regard to fact that the assessee has earned exempt income of 27,006/- against which disallowance of expenditure amounting to 42,22,857/- was made. The AO has not recorded his satisfaction as to how the expenditure disallowed by the assessee of 629878/- towards administrative expenses is not reasonable. Further we find that the assessee has demonstrated by placing sufficient material on record that no borrowed funds were utilized for making investment and wherefrom the exempt income is earned. In our considered view, the provisions of section 14A of the Act read with rule 8D of Income Tax Rules, cannot be invoked in mechanical way by AO. As per section 14A(2), the AO is required to determine the amount of expenditure incurred in relation to such income which does not form part of the total income under the Act and in accordance with rule 8D of Income Tax Rules, 1961 if the AO having regarding to the accounts, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to such exempt income, is empowered for making disallowance as per rule 8D. In the case in hand, no finding is recorded by the AO in this regard. On the contrary, the ld. CIT (A) has given a finding after examining the accounts of the assessee. The AO has not brought on record any material to show that the assessee has incurred any expenditure in relation to the incomer which do not form part of the total income. Moreover it is not in dispute that the assessee has earned exempt income of Rs. 27,006/- and expenditure amounting to 42,22,857/- in relation to this is disallowed The finding of the ld. CIT (A) is not rebutted by revenue by placing any contrary materials. Therefore, we do not see any reason to interfere with the order of the ld. CIT (A). The same is hereby upheld. The ground raised by the Revenue is dismissed."

(iv) Hon'ble High Court of Gujarat passed in Principal Commissioner of Income Tax-4 V/s Sintex Industries Ltd (2018) 403 ITR 418 (Gujarat).

"9. Considering the aforesaid facts and circumstances, more particularly the fact that the assessee was already having its own surplus fund and that too to the extent of ₹ 1981.55 Crores against which investment was made of ₹ 144.51 Crores, there was no question of making any disallowance of expenditure in respect of interest and administrative expenses under Section 14A of the Act, therefore, there was no question of any estimation of expenditure in respect of interest and administrative expenses of ₹ 24,37,500/- under rule 8D of the Rules. Under the circumstances and in the facts of the case, narrated hereinabove, it cannot be said that the learned Tribunal has committed any error in deleting the disallowance of expenditure of ₹ 24,37,500/- incurred in respect of interest and administrative expenses under Section 14A of the Act. We are in complete agreement with the view taken by the learned Tribunal. At this stage, decision of Division Bench of this Court in the case of Principal Commissioner of Income-tax vs. India Gelatine & Chemicals Limited, reported in [2015] 376 ITR 553 [Gujarat] needs a reference. In the said decision, it is observed and held by the Division Bench of this Court that when the assessee had sufficient interest-free funds out of which concerned investments had been made, disallowance under Section 14A is not justified."

The SLP filed against the said judgment has been dismissed by Hon'ble Supreme Court of India, in **Principal Commissioner of Income Tax-IV, Ahmedabad V. Sintex Industries Ltd (2018) 93 taxmann.com 24 (SC)**.

(v) Commissioner of Income-tax, Bangalore v. Karnataka State Industrial & Infrastructure Development Corpn. Ltd. [2016] 237 Taxman 240 (Karnataka)

Para 5 "As regards the interest referred to in the second limb of Rule 8D of the Rules, the assessee contends that the amounts of investment in such securities in the period under consideration is much less than the amount of capital and surplus funds available with the Company and no portion of the borrowed funds were utilized to make such investments. It is now well settled principle that the disallowance towards

interest is not tenable if the investments are made out of own funds or non-interest bearing funds and it is necessary to establish a nexus between the interest bearing funds in investments made. Therefore, the Appellate Authorities have rightly set aside the order passed by the Assessing Officer, which does not establish nexus between the investments and interest bearing funds."

(vi) Emtici Engineering Ltd. Versus ACIT (OSD). Anand Circle, Anand 2016 (3) TMI 186 - ITAT Ahmedabad.

"It was noted from records that the assessee was having share holding funds to the extent of 2607.18 crores and the investment made by it was to the extent of Rs. 195.10 crores. In other words, the assessee had sufficient funds for making the investments and it had not used the borrowed funds for such purpose. This aspect of huge surplus funds is not disputed by the revenue which earned it the interest on bonds and dividend income.

With regard to disallowance of 1% of administrative expenses averred to have incurred on account of the earning of interest, there is nothing on record to indicate that there has been in fact any actual expenditure incurred by the assessee for earning tax free income of Rs.14 crores. It is also to be noted that out of the total amount of exempt income of Rs. 14 crores, the assessee could point out that 6.12 crores (rounded oil) was earned by 'S' project which was under construction for which no expenditure had been claimed and for the remaining income of Rs 7.88 crores which consists of dividend and tax free interest, no part of expenditure appears to have been made towards the investment activity as emerging from the material. According to the respondent, the total investment from the huge surplus is comparatively small and investment made was effortless, without any burden of administrative expenses.

In view of fact that no expenditure was incurred for earning exempted income and that being the question of fact, disallowance of 1% of interest expenditure artificially or on the basis of assumption rightly has not been sustained by the Tribunal.

The revenue's appeal therefore, requires no further entertainment and hence dismissed."

(vii) **ITAT KOLKATA BENCH 'C' in the case of Deputy Commissioner of Income Tax, Circle-2, LTU, Kolkata v. Century Plyboards (I)Ltd[2021]123taxmann.com256. (copy at PB page 164-189)**

In the case it was held that where assessee's own interest-free funds in form of share capital and free reserves were more than its investment yielding exempt dividend income, impugned order passed by Assessing Officer making interest disallowance under section 14A in relation to such exempt income was to be set aside.

(viii) **HIGH COURT OF KARNATAKA in the case of Commissioner of Income Tax, Bangalore v. Brigade Enterprises Ltd[2021] 124 taxmann.com 237 (copy at PB page 190-196)** it was held that Where Assessing Officer madedisallowanceofassessee'sclaimundersection14A, read with rule 8D(2)(ii) on ground that overdraft facility was directly used by assessee for making tax exempt investments but Commissioner (Appeals) reversed his finding holding that amounts in reserves and surpluses of assessee were far more in excess than amount received by assessee as advances from customers which were sufficient to make tax free investments and this finding was also upheld by Tribunal, since concurrent findings were recorded on impugned issue, no interference was to be called with aforesaid findings.

2.9 Proposed disallowance under rule 8D against the indirect expenses:-

The ld PCIT calculated the proposed disallowance of Rs. 2,21,70,790/- against the indirect expenses under rule 8D (2)(ii). The assessee earned the exempt income of Rs. 62,529/- of long term capital gains under Section 10(38) on sale of **"UTI TRANSPORTATION AND LOGISTICS FUND"** which was purchased out of owned funds as assessee was having availability of ample of owned funds. So, no borrowing cost has been incurred towards purchase of this UTI TRANSPORTATION AND LOGISTICS

FUND. The ld PCIT proposed disallowance of Rs. 2,21,70,780/- as proportionate indirect expenses against the exempt income of Rs 62,529/-. The ld PCIT has not proved that the indirect expenditure sought to be disallowed had actually been incurred in earning the exempted income.

Reliance is placed on the following decisions:-

(i) **Hon'ble Supreme Court of India in Maxopp Investment Limited V. Commissioner of Income Tax (2018) 91 Taxmann.com 154 (SC)** has examined the scope of Rule-14A vis-a-vis Rule-8D in detail. The pertinent part of the judgment of Hon'ble Apex Court is reproduced below for your kind perusal.

> *"32. In the first instance, it needs to be recognised that as per section 14A(1) of the Act, deduction of that expenditure is not to be allowed* ***which has been incurred by the assessee "in relation to income which does not form part of the total income under this Act". Axiomatically, it is that expenditure alone which has been incurred in relation to the income which is includible in total income that has to be disallowed.*** *If an expenditure incurred has no causal connection with the exempted income, then such an expenditure would obviously be treated as not related to the income that is exempted from tax, and such expenditure would be allowed as business expenditure. To put it differently, such expenditure would then be considered as incurred in respect of other income which is to be treated as part of the total income."*

(ii) **GODREJ & BOYCE MANUFACTURING COMPANY LIMITED V. DY. COMMISSIONER OF INCOME-TAX & ANR.** [2017] 394 ITR 449 Here the assessee had access to adequate interest free funds to make investments and the issue pertained to disallowance of expenditure incurred to earn dividend income, which was not forming part of total income of the Assessee. Justice Ranjan Gogoi writing the opinion on behalf of the Division Bench observed that for disallowance of expenditure incurred in earning an income, it is a condition precedent that such income should not be includible in total income of

assessee. This Court accordingly concluded that for attracting provisions of Section 14A, the proof of fact regarding such expenditure being incurred for earning exempt income is necessary. The relevant portion of Justice Gogoi's judgment reads as follow:

> *"36. …… what cannot be denied is that the requirement for attracting the provisions of Section 14-A (1) of the Act is proof of the fact that the expenditure sought to be disallowed/deducted had actually been incurred in earning the dividend income……."*

(iii) Hon'ble ITAT Jaipur in the case of **DCIT Circle-2, Jaipur vs. M/s. AU Financiers India Ltd. 2016 (11) TMI 710 - ITAT Jaipur.** In this case Hon'ble ITAT has followed its own finding in assessee's own case for A.Y. 2011-12. The relevant findings as reproduced in the order are as under :-

> *"The above finding on fact by the Revenue is not controverted by placing any material on record. Moreover there is no dispute with regard to fact that the assessee has earned exempt income of 27,006/- against which disallowance of expenditure amounting to 42,22,857/- was made. The AO has not recorded his satisfaction as to how the expenditure disallowed by the assessee of 629878/- towards administrative expenses is not reasonable. Further we find that the assessee has demonstrated by placing sufficient material on record that no borrowed funds were utilized for making investment and wherefrom the exempt income is earned. In our considered view, the provisions of section 14A of the Act read with rule 8D of Income Tax Rules, cannot be invoked in mechanical way by AO. As per section 14A(2), the AO is required to determine the amount of expenditure incurred in relation to such income which does not form part of the total income under the Act and in accordance with rule 8D of Income Tax Rules, 1961 if the AO having regarding to the accounts, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to such exempt income, is empowered for making disallowance as per rule 8D. In the*

case in hand, no finding is recorded by the AO in this regard. On the contrary, the ld. CIT (A) has given a finding after examining the accounts of the assessee. The AO has not brought on record any material to show that the assessee has incurred any expenditure in relation to the incomer which do not form part of the total income. Moreover it is not in dispute that the assessee has earned exempt income of Rs. 27,006/- and expenditure amounting to 42,22,857/- in relation to this is disallowed The finding of the ld. CIT (A) is not rebutted by revenue by placing any contrary materials. Therefore, we do not see any reason to interfere with the order of the ld. CIT (A). The same is hereby upheld. The ground raised by the Revenue is dismissed."

(iv) Hon'ble High Court of Gujarat passed in Principal Commissioner of Income Tax-4 V/s Sintex Industries Ltd (2018) 403 ITR 418 (Gujarat).

"9. Considering the aforesaid facts and circumstances, more particularly the fact that the assessee was already having its own surplus fund and that too to the extent of ₹ 1981.55 Crores against which investment was made of ₹ 144.51 Crores, there was no question of making any disallowance of expenditure in respect of interest and administrative expenses under Section 14A of the Act, therefore, there was no question of any estimation of expenditure in respect of interest and administrative expenses of ₹ 24,37,500/- under rule 8D of the Rules. Under the circumstances and in the facts of the case, narrated hereinabove, it cannot be said that the learned Tribunal has committed any error in deleting the disallowance of expenditure of ₹ 24,37,500/- incurred in respect of interest and administrative expenses under Section 14A of the Act. We are in complete agreement with the view taken by the learned Tribunal. At this stage, decision of Division Bench of this Court in the case of Principal Commissioner of Income-tax vs. India Gelatine & Chemicals Limited, reported in [2015] 376 ITR 553 [Gujarat] needs a reference. In the said decision, it is observed and held by the Division Bench of this Court that when the assessee had sufficient interest-

free funds out of which concerned investments had been made, disallowance under Section 14A is not justified."

The SLP filed against the said judgment has been dismissed by Hon'ble Supreme Court of India, in **Principal Commissioner of Income Tax-IV, Ahmedabad V. Sintex Industries Ltd (2018) 93 taxmann.com 24 (SC)**.

(v) Emtici Engineering Ltd. Versus ACIT (OSD). Anand Circle, Anand 2016 (3) TMI 186 - ITAT Ahmedabad.

"It was noted from records that the assessee was having share holding funds to the extent of 2607.18 crores and the investment made by it was to the extent of Rs. 195.10 crores. In other words, the assessee had sufficient funds for making the investments and it had not used the borrowed funds for such purpose. This aspect of huge surplus funds is not disputed by the revenue which earned it the interest on bonds and dividend income.

With regard to disallowance of 1% of administrative expenses averred to have incurred on account of the earning of interest, there is nothing on record to indicate that there has been in fact any actual expenditure incurred by the assessee for earning tax free income of Rs.14 crores. It is also to be noted that out of the total amount of exempt income of Rs. 14 crores, the assessee could point out that 6.12 crores (rounded oil) was earned by 'S' project which was under construction for which no expenditure had been claimed and for the remaining income of Rs 7.88 crores which consists of dividend and tax free interest, no part of expenditure appears to have been made towards the investment activity as emerging from the material. According to the respondent, the total investment from the huge surplus is comparatively small and investment made was effortless, without any burden of administrative expenses.

In view of fact that no expenditure was incurred for earning exempted income and that being the question of fact, disallowance of 1% of interest expenditure artificially or on the basis of assumption rightly has not been sustained by the Tribunal.

The revenue's appeal therefore, requires no further entertainment and hence dismissed."

2.10 No disallowance u/s 14A can be made where there is no exempt income from the impugned investments.

Assessee's own funds i.e. equity and reserves amount to Rs. 38,508.89 Lacs is more than the value of current and non-current investments amount to Rs.22,384.52 Lacs as on 31st March 2018 as per the audited financial statements. During this year the exempt income of Rs. 62,529/- was generated from long term capital gain on sale of "UTI Transportation and Logistics Fund under section 10(38), and by investment of Rs 1,99,000/- which was made from owned funds as assessee was having availability of ample of owned funds. So, no borrowing cost has been incurred towards purchase of this UTI TRANSPORTATION AND LOGISTICS FUND and other investments which may generate exempt income.

Explanation to Section 14A of the Act was inserted by Finance Act 2022 and this explanation was made applicable w.e.f. 01-04-2022. It is prospective in nature and it cannot be applied retrospectively.

Reliance is placed on the following decisions:-

(i) Hon'ble ITAT MUMBAI BENCH 'B' in the case of **Assistant Commissioner of Income-tax v. Bajaj Capital Ventures (P.) Ltd. [2022] 140 taxmann.com 1 (Mumbai -Trib.) (copy at PB page 213-216)**
Held that Priorto1-4-2022, no disallowance could be made under section 14 A with respect to expenditure incurred by assessee to earn exempt income, when no exempt income was earned during relevant assessment year.

(ii) Hon'ble DELHI High Court in the case of **Principal Commissioner of Income-tax (Central) v. Era Infrastructure (India) Ltd. [2022]141 taxmann.com 289. (Copy at PB 217-222)**

It was held that Amendment made by Finance Act, 2022 to section 14A by inserting a non-obstante clause and Explanation will takeeffectfrom1-4-2022 and cannot be presumed to have retrospective effects.

2.11 **Entire investments shall not be considered to make disallowances**.

Ld PCIT computed total disallowance which required to be made u/s 14A at Rs. 2,53,26,820/-. Whereas only those investments which shall earn exempt income shall be considered to make disallowances.

Reliance is place on the decision of Hon'ble Calcutta High Court in the case of **Principal Commissioner of Income-tax v. REI Agro Ltd [2022] 140 taxmann.com 71(copy at PB page 223-225) wherein** it was held that Disallowance under section 14A, read with rule 8D is to be in relation to income which does not form part of total income and this can be done only by taking into consideration investment which has given rise to this income which does not form part of total income.

Accordingly, in assessee's case explanation to Section 14A does not applies and additions cannot be made if no exempt income is received.

2.12 Application of section 14A and rule 8D is notautomatic in each and every case:-

Application of section 14A and rule 8D is not automatic in each and every case where there is income not forming part of total income and before its application, it needs to be justified as to how expenditure incurred by assessee during relevant year related to income not forming part of its total income. The ld PCIT has not considered the submission of the assessee in judicial perception. The assessee has submitted that its interest free funds are much more that the investments which may result exempt income. The assessee cited various case laws before ld PCIT which were rejected in summary manner by saying that the facts of the case law quoted in support of the claim are found to be different from the facts and

circumstances of the case of the assessee and also it pertain Kolkata ITAT bench, which are not having binding effect. The ld PCIT miserably failed to appreciate that the assessee has also quoted the cases decided by Hon'ble Supreme Court and various High Court which have binding effects. The ld PCIT has not pointed out how the expenditure incurred by assessee during relevant year related to income not forming part of its total income.

Reliance is placed on the decision of Hon'ble Bombay High Court in the case of **Commissioner of Income Tax v. Sociedade De Fomento Industrial (P.) Ltd [2020] 429 ITR 358 (Bom) Copy at PB 201-208** it was held that:-

> *"19. Here, on facts, the Tribunal noted that the AO only discussed the provisions of section 14A(l) but has not justified how the expenditure the Assessee incurred during the relevant year related to the income not forming part of its total income. The AO, according to the Tribunal, straightaway applied Rule 8D. Indeed, there must be a proximate relationship between the expenditure and the tax-exempt income. Only then would a disallowance have to be effected. This Court, we may note, on more than one occasion, has held that the onus is on the Revenue to establish that there is a proximate relationship between the expenditure and the exempt income. That is, the application of section l4A and rule 8D is not automatic in each and every case, where there is income not forming part of the total income. No doubt, the expenditure under section 14A includes both direct and indirect expenditure, but that expenditure must have a proximate relationship with the exempted income. Surmise or conjecture is no answer."*

2.13 Ld PCIT, Udaipur erred in holding that the assessment order u/s 143(3) was deemed as liable for revision under the explanation (2) clause (a) and (b) of section 263.

As per clause (a) and (b) of Explanation 2 to section 263 of Income Tax Act, the order passed by ld. AO shall be deemed to be erroneous so far as it is prejudicial to the interest of the revenue if in the opinion

of the Principal [Chief Commission or Chief Commissioner or Principal] Commissioner or Commissioner: -

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim.

The case of the assessee is not covered in both the clauses because the ld. AO made the inquiries from the assessee, examined and verified the documents and thereafter he found that no expense was incurred for earning the exempt income and he made no addition u/s 14A of I. Tax Act. The view of the ld FAO is supported by various case laws. Ld FAO, after adequate enquiry, has taken a judicious view. Revision u/s 263 is not permissible merely because ld PCIT may entertain a different view on the issue.

The scope of section 263 as peer above explanation is triggered **where no inquiry has been made by ld. AO. If the ld. AO has made any short of inquiry in whatsoever manner as per his own satisfaction, then the revisionary power given in section 263 of the Act cannot be applied.** It is relevant to mention here that section 263 of the Act or any other provision of the Act does not prescribe the extent of enquirers to be conducted by the ld. AO and it is own wisdom of ld. AO to decide the extent to enquiry is to be made by him for completing the assessment proceeding. The revisionary power u/s 263 of the Act cannot be used just for the reason that in view point of PCIT the enquiry and verification was not proper **and ld PCIT cannot step into the shoes of ld AO**.

In this case the assessee explained to ld FAO that the entire investments were made by the assessee out of its own funds. As per the balance sheet, the assessee having sufficient its own capital and reserves and surplus. The own capital and reserve and surplus of the assessee was Rs. 38,508.89 Lakhs. Thus, the own funds of the assessee were much more than to investments, therefore no disallowance u.s. 14A of Income Tax Act,1961 should be made. This fact can be easily verifiable from the Balance Sheet available before ld FAO.

Ld PCIT has not specifically pointed out any credible defects in that. The ld. AO satisfied himself about the genuineness of the

explanation of assessee. When the legislature has empowered the AO to conduct the inquiry on the points which the AO may require and deemed fit and ld. PCIT cannot be allowed to interfere by imposing his opinion upon the AO. Section 142(1) unequivocally provides that for the purposes of making an assessment under this Act, the AO may serve a notice on any person who has made a return requiring him to produce or cause to be produced such accounts and documents as he may require or: "to furnish in writing and verified in the prescribed manner information in such format an on such points or matters (including a statement of all assets and liabilities of the assessee whether included in the accounts or not) as the AO may require." Language of section 143(2) also gives discretion to the AO to serve on the assessee a notice specifying particulars of claim of loss, exemption, deduction, allowance or relief and require him, where he has reason to believe that any claim of loss, exemption, deduction, allowance or relief made in the return is inadmissible'. A careful perusal of these provisions unveils that it is the prerogative of the AO to require the information "on such points or matters" as he may require. It is the AO who has to conduct an inquiry in the way he feels like.

Merely because from a perfectionist point of view, it is felt that some more enquiries and verifications could have been made by Assessing Officer while making assessment. The assessment order cannot be declared to be erroneous and prejudicial to interest of revenue.

In the following cases, it was held that assessment framed under section 143(3) cannot be revised on ground that desired inquiry was not made.

(a) Malabar Industrial Co Ltd. vs. CIT (2000) 243 ITR 83 (SC) Hon'ble Apex Court held that this phrase i.e. "prejudicial to the interest of the revenue" has to be read in conjunction with an erroneous order passed by the AO. Their Lordship held that it has to be remembered that every loss of revenue as a consequence of an order of AO cannot be treated as prejudicial to the interest of the revenue.

> *"10. The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every*

loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income Tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income Tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income Tax Officer is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the Revenue. (See Rampyari Devi Saraogi v. CIT [(1968) 67 ITR 84 (SC)] and in Tara Devi Aggarwal v. CIT [(1973) 3 SCC 482 : 1973 SCC (Tax) 318 : (1973) 88 ITR 323] .)"

(b) The Commissioner of Income Tax - 7 Vs M/S Paville Projects Pvt. Ltd. [2023] 453 ITR 447 (SC)
Hon'ble Supreme Court has held that in a case where two views are possible and the Assessing Officer has adopted one view, such a decision, which might be plausible and it has resulted in loss of Revenue, such an order is not revisable u/s 263.

(c) CIT vs Ganpat Ram Vishnoi (2008) 296 ITR 292 (Raj)

Held:- Undoubtedly, the jurisdiction under s. 263 is wide and is meant to ensure that due revenue ought to reach the public treasury and if it does not reach on account of some mistake of law or fact committed by the AO, the CIT can cancel that order and require the concerned AO to pass a fresh order in accordance with law after holding a detailed enquiry. But when enquiry in fact has been conducted and the AO has reached a particular conclusion, though reference to such enquiries has not been made in the order of the assessment, but the same is apparent from the record of the proceedings, **in the**

present case, without anything to say how and why the enquiry conducted by the AO was not in accordance with law, the invocation of jurisdiction by the CIT was unsustainable. As the exercise of jurisdiction by the CIT is founded on no material, it was liable to be set aside. Jurisdiction under s. 263 cannot be invoked for making short enquiries or to go into the process of assessment again and again merely on the basis that more enquiry ought to have been conducted to find something.

d) Hon'ble ITAT, Jaipur Bench, in the case of **Annu Agrotech Private Limited, ITA No. 09/JP/2021,** apropos assumption of jurisdiction under Section 263 by the Id. PCIT, laid down the following ratio:-

"1.14 (i). Every loss of Revenue as a consequence of the order of the AO cannot be treated as prejudicial to the interest of the Revenue. If the AO has adopted one of the two or more courses permissible in law and it has resulted in loss of revenue, or where two views are possible and AO has taken one view with which the PCIT does not agree, it cannot be treated as an erroneous order and it is prejudicial to the interest of the Revenue, unless the view taken by the AO is totally unsustainable in law;

1.14 (ii). The law is well settled that the assessment order cannot be held to be erroneous simply on the allegation of inadequate enquiry. Unless there is an established case of total lack of enquiry;

1.15. It is pertinent to note that the assessment in the case of assessee firm for the year under consideration was carried out in the "faceless manner" by the NFAC. Any faceless assessment is carried out through a teamwork of Assessment Unit, Technical Unit, Review Unit, Verification Unit. Also, officers of level of Additional Commissioners are involved. The different units are headed by Principal Commissioner of Income tax. Accordingly, in a faceless regime, there cannot be a case

of prejudice or lack of enquiry, for the reason that there is application of mind by multiple officers of Department and not by a single officer.

1.16. Where the assessee firm has furnished the requisite information and the NFAC has completed the assessment after considering all the facts, the order cannot be termed as erroneous. Reliance is placed on the following judicial pronouncements:

1. CIT v Ratlam Coal Ash Co (1988) 171 ITR 141 (MP)

2. Ashok Kumar Parasramka v ACIT (1998) 65 ITD 1 (Cal)

3. CIT v Mehrortra Brothers (2004) 270 ITR 157 (MP)

4. CIT v Parameshwar Bohra (2004) 267 ITR 698 (Raj) .

5. Paul Mathews & Sons v CIT (2003) 263 ITR 101 (Ker)

6. CIT v Arvind Jewellers (2003) 259 ITR 502 (Guj)

7. CIT v Hastings Properties (2002) 253 ITR 124 (Cal)

8. CIT v Goal (JP) (HUF) (2001) 247 ITR 555 (Cal)

1.17 From the facts on record (PB 22-27), it is crystal that the order was passed by AO after full enquiries and therefore, the case is not falling within clause (a) and (b) of Explanation 2 to Section 263.

In view of the above factual and legal position, ld. PCIT has grossly erred in assuming jurisdiction u/s 263. Thus, the entire order by ld.PCIT deserves to be quashed."

e) Hon'ble ITAT, Jaipur Bench, in the case of **M/S. AGRANI BUILDESTATE VERSUS THE PR. CIT-1 JAIPUR**, ITA No. 205/JP/2023, **2023 (7) TMI 237 - ITAT JAIPUR** apropos assumption of jurisdiction under Section 263 by the Id. PCIT, laid down the following ratio:-

"2.4 We have heard both the parties and perused the materials available on record. The Bench noted that Scope of revision jurisdiction under section 263 is very specific and limited and also different from appellate jurisdiction. Law, contained in section 263, does not allow CIT to impose his view over the judicious view adopted by AO unless the view adopted by AO is established to be not at all sustainable in law. The AO, in the present case, on appreciation of facts, found that assessee firm was receiving the rent from letting out the properties along with other amenities and, accordingly, using his judicial wisdom, taxed the income under the head business and profession. The view of AO was also supported by the CBDT Circular wherein also the principle laid down was that "letting out buildings along with other amenities" will fall in income from business. Ld. AO was duty bound to follow the directions of CBDT more so when specifically brought to his notice by the assessee during the assessment proceedings. It may be noted that Explanation to section 44AD defines "eligible assessee" as well as "eligible business". There is no bar, under both the definitions, for the rental income, earned by the assessee firm as business income, to be assessed on presumptive basis under section 44AD. Therefore, once the income is held to be business income applicability of section 44AD is a natural consequence. Attention was drawn of the ld. PCIT, during proceedings under section 263, towards the judgment of Chennai Properties & Investments Ltd. v. CIT [2015] 56 taxmann.com 456 (SC). Ld. PCIT although has not distinguished the case of Hon'ble Supreme Court yet has not followed the same. Similar to Chennai Properties case(Supra) the object as contained in the object clause of the partnership deed of the assessee firm was letting out the properties together with other amenities. The decision of Hon'ble Madras High Court in the case of Keyaram Hotels (P) ltd. v. Dy. CIT, Co. Circle- II (4), Chennai [373 ITR 494 Madras]has no

relevance in view of the judgment of the Hon'ble Apex Court in the case of Chennai Properties (Supra). It is also to be noted that judgment of Hon'ble Madras High Court was delivered on 11/11/2014 whereas the decision of the Hon'ble Supreme Court in Chennai Properties was delivered on 09/04/2015. The fact of rejection of assessee's SLP by the Hon'ble Supreme Court against the order of Keyaram Hotels (Supra)does not merge the decision of the Madras High Court into that of Supreme Court. The Hon'ble Supreme Court dismissed the SLP in the following words:

"The Special Leave Petitions are dismissed"

It is pertinent to mention that mere dismissal of SLP without commenting on the correctness or otherwise of the order from which leave to appeal is sought what the court means is that it does not consider it to be a fit case for exercise of its jurisdiction under Article 136 of the Constitution. Therefore, to argue that the order of the Hon'ble Madras High Court has been upheld by the Hon'ble Supreme Court is wrong. Reliance is placed on the following judicial pronouncements:

1. V.M. Salgaocar & Bros. (P) Ltd. and ors. v. CIT [2000] 160 CTR (SC) 225.

"10. Different considerations apply when a special leave petition under article 136 of the Constitution is simply dismissed by saying 'dismissed' and an appeal provided under article 133 is dismissed also with the words 'the appeal is dismissed'. In the former case it has been laid by this court that when special leave petition is dismissed this court does not comment on the correctness or otherwise of the order from which leave to appeal is sought. But what the court means is that it does not consider it to be a fit case for exercise of its jurisdiction under article 136 of the Constitution. That certainly could not be so when

appeal is dismissed though by a non-speaking order. Here the doctrine of merger applies. In that case, the Supreme Court upholds the decision of the High Court or of the Tribunal from which the appeal is provided under clause (3) of article 133, This doctrine of merger does not apply in the case of dismissal of special leave petition under article 136. When appeal is dismissed order of the High Court is merged with that of the Supreme Court. We quote the following paragraph from the judgment of this court in the case of Supreme Court Employees' Welfare Association v. Union of India &Anr. MANU/SC/0582/1989."

2. State of Punjab v. Davinder pal Singh Bhullar and Ors. AIR 2012 SC 364

"A large number of judicial pronouncements made by this Court leave no manner of doubt that the dismissal of the Special Leave Petition in limine does not mean that the reasoning of the judgment of the High Court against which the Special Leave Petition had been filed before this Court stands affirmed or the judgment and order impugned merges with such order of this Court on dismissal of the petition. It simply means that this Court did not consider the case worth examining for a reason, which may be other than merit of the case. An order rejecting the Special Leave Petition at the threshold without detailed reasons, therefore, does not constitute any declaration of law or a binding precedent."

3. Employees' Welfare Association v. Union of India and Anr. AIR 1990 SC 334

"22. It has been already noticed that the Special Leave petitions filed on behalf of the Union of India against the said judgments of the Delhi High Court were summarily dismissed by this Court. It is now a well settled principle of law that when a Special Leave Petition is summarily dismissed under Article

136 of the Constitution, by such dismissal this Court does not lay down any law, as envisaged by Article 141 of the Constitution, as contended by the learned Attorney General. In Indian Oil Corporation Ltd. v. State of Bihar it has been held by this Court that the dismissal of a Special Leave Petition in limine by a non-speaking order does not justify any inference that, by necessary implication, the contentions raised in the Special Leave Petition on the merits of the case have been rejected by the Supreme Court. It has been further held that the effect of a non-speaking order of dismissal of a Special Leave Petition without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that the Supreme Court had decided only that it was not a fit case where Special Leave Petition should be granted. In Union of India v. All India Services Pensioners Association. this Court has given reasons, for dismissing the Special Leave Petition. When such reasons are given, the decision becomes one which attracts Article 141 of the Constitution which provides that the law declared by the Supreme Court shall be binding on all the courts within the territory of India. It, therefore, follows that when no reason is given, but a Special Leave Petition is dismissed simliciter, it cannot be said that there has been a declaration of law by this Court under Article 141 of the Constitution."

Thus the AO, after adequate enquiry, has taken a judicious view. Revision under section 263 is not permissible merely because ld. PCIT may entertain a different view on the issue. The stand adopted by ld. AO is one which is plausible supported by CBDT Circular and Supreme Court decision and, therefore, cannot be said to be erroneous in terms of the provisions of section 263. From the records on merit of the case, we noticed that as per facts of the present case the assessee is a partnership firm which was incorporated on 15-05-2015. The object

and business of the assessee firm was to purchase, sell, acquire, develop, construct and to give on rent / lease of building etc. The return for the year under consideration was made on 28-09-2018. Since the assessee has earned income from letting out of the properties alongwith various services to the lessees, therefore, the said income was offered to tax under the head 'income from business and profession '. The case of the assessee was selected for scrutiny for verification of the following issues.

1. Refund Claim

2. Income from House Property

During the course of assessment proceedings, a detailed questionnaire was issued by the AO vide notice u/s 142(1) dated 20-11-2020 seeking pin pointed queries about the nature of business activities as well as verification of such receipts. The said notice was previously issued by the AO to verify the issue in question for which the case was selected for scrutiny. In reply to the said notice, the assessee furnished letter dated 06-12-2020 and explained the nature of the business and in this regard complete explanation was rendered regarding income falling under the head "Income from Business and Profession". Apart from this, a reference was also drawn to CBDT Circular No. 16/2017 dated 25-04-2017 and also the fact of Department having accepted the judgement in the case of CIT vs Information Technology Park Ltd. (2014) 47 taxmann.com 239 (Karnataka) wherein instructions were given to lower authorities that the business of lease rent received from letting out the properties alongwith other amenities was chargeable to tax under the head "Income from Business and not under the head "Income from House Property". During the course of assessment proceedings, it was pointed out by the AO that TDS u/s 194C was deducted towards rendering, managing and

maintaining services by the assessee firm. Consequently, the AO accepted the explanation of the assessee firm and assessed the income under the head "Income from Business and Profession". However, ld. PCIT while invoking the provisions of Section 263 of the Act erred in placing a restrictive interpretation to CBDT Circular No. 16/2017 dated 25-04-2017 wherein the ld. PCIT has missed the principal enumerated in the said circular. The said circular emphasizes that lease rent received by the assessee from letting out the building alongwith other amenities in a Software Technology Park would be chargeable to tax under the head "Income from House Property". Therefore, in this way, every case of "letting out buildings alongwith other amenities" would automatically fall in the income from business and it will not be merely restricted to Software Technology Park only as has been wrongly understood by ld. PCIT. It is important to mention here that the AO after detailed enquiries and verification on completed the assessment u/s 143(3) dated 15-02-2021 at the return income of Rs. 6,68,250/-. However, the assessment order was revised by the ld. PCIT by placing restrictive interpretation to CBDT Circular No. 16/17 dated 25-04-2017 by holding that the said circular is only applicable in the case of Software Technology Park. We also noticed that during the course of proceedings u/s 263 of the Act before ld PCIT, the decision of Hon'ble Supreme Court in the case of Chennai Properties & Investments Ltd. Vs CIT [2015] 56 taxmann.com 456 was brought to the notice of the ld.PCIT wherein the Hon'ble Supreme Court in this case has held that where object as per object clause of the company was to do business of letting out, the same has to be taxed under the head income from business and profession. It was further held… "It was highlighted and stressed that the objects of the company must also be kept in view to interpret the activities [Para 8 of the order]. Finally, in Para-11 of the order, Hon'ble SC taking

into consideration the fact that as per object clause of memorandum of association of the company, its object was letting out of properties held that …."letting of the properties is in fact is the business of the assessee". Ld, PCIT has neither distinguished in the case of Hon'ble SC nor has followed the same. The order of ld. PCIT is contrary to the law laid down by the Hon'ble Supreme Court. Thus from the totality of the discussion, we are of the view that in the present case since the assessment was completed by the AO on the basis of exhaustive enquiries and detailed submissions filed by the assessee firm and even otherwise Explanation 2 to Section 263 inserted vide Finance Act, 2015 cannot override the basic requirements of Sub-section (1) of Section 263. In this regard, we draw strength from the following case laws.

1. Torrent Pharmaceuticals Ltd. [2018) 173 ITD 130 (Ahd.-Trib)

2. Eveready Industries India Ltd.[2020] 181 ITD 528 (Kolkata Trib)

3. M/s. Smira Pune Food Pvt. Ltd (ITA No.3205/DEL/2017, ITAT Delhi Bench.

4. Shri Narayan Tatu Rane, ITA No2690/Mum/2016, ITAT Mumbai Bench

In the present case, the case of the assessee was selected for scrutiny for specific purpose for verification of refund claim and income from house property and, therefore, there cannot be any presumption of lack of enquiry more particularly when the detailed questionnaire was issued by the AO during the assessment proceedings and in this regard the assessee had also furnished all the details alongwith decision of Chennai Properties & Investments Ltd. vs CIT (supra). Therefore, it cannot be presumed that there was lack of enquiry

on the part of the AO. In this regard, we draw strength from the decision of Coordinate Bench in the case of Smt. Lata Phulwani (ITA No. 246/JP/2020). It is a settled law by now that where the AO has exercised the quasi judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be considered erroneous simply because the ld. PCIT does not feel satisfied with the conclusion. In this regard, we take into consideration the decision of Hon'ble Rajasthan High Court in the case of CIT vs Ganpat Ram Vishnoi, 296 ITR 292. Even otherwise, provisions of Section nowhere allow to challenge the judicial wisdom of the AO or to replace the wisdom in the guise of revision unless the view taken by the AO is not at all sustainable in law. We are of the view that extent of enquiry cannot be stretched to any level by forcing the AO to go through the assessment process again and again. We have also gone through the decisions of the Coordinate Bench in the cases Annu Agrotech Private Ltd. (ITA No. 9/JP/2021), apropos assumption of jurisdiction u/s 263 by the ld. PCIT laid down the following ratio:-

''1.14 (i). Every loss of Revenue as a consequence of the order of the AO cannot be treated as prejudicial to the interest of the Revenue. If the AO has adopted one of the two or more courses permissible in law and it has resulted in loss of revenue, or where two views are possible and AO has taken one view with which the PCIT does not agree, it cannot be treated as an erroneous order and it is prejudicial to the interest of the Revenue, unless the view taken by the AO is totally unsustainable in law;

1.14 (ii). The law is well settled that the assessment order cannot be held to be erroneous simply on the allegation of inadequate enquiry. Unless there is an established case of total lack of enquiry;"

It is pertinent to mention here that assessment in the present case of the assessee firm for the year under consideration was carried out in the "faceless manner" by NFAC. It is a fact that any faceless assessment is carried out through a teamwork of assessment unit, technical unit, review unit, verification unit etc. Since different units are headed by Principal Commissioner of Income Tax, therefore, in a faceless regime, normally there cannot be a case of prejudice of lack of enquiry for the reason that there is application of mind by multiple officers of Department and not by a single officer and thus at the end of our discussion, we are of the view that the assessee firm had furnished the requisite information and the NFAC has completed the assessment after considering all the facts, therefore, the order passed by the AO cannot be termed as erroneous. In this regard, we draw strength from following decisions.

1. CIT v Ratlam Coal Ash Co (1988) 171 ITR 141 (MP)

2. Ashok Kumar Parasramka v ACIT (1998) 65 ITD 1 (Cal)

3. CIT v Mehrortra Brothers (2004) 270 ITR 157 (MP)

4. CIT v Parameshwar Bohra (2004) 267 ITR 698 (Raj) .

5. Paul Mathews & Sons v CIT (2003) 263 ITR 101 (Ker)

6. CIT v Arvind Jewellers (2003) 259 ITR 502 (Guj)

7. CIT v Hastings Properties (2002) 253 ITR 124 (Cal)

8. CIT v Goal (JP) (HUF) (2001) 247 ITR 555 (Cal)

Therefore, after considering the totality of the facts of the case and keeping in view the legal position as discussed herein above, it is clear that the assessment order passed by the AO was after full enquiry and, therefore, the case does not fall within the clause (a) and (b) of Explanation 2 to Section 263 of the Act. Hence, the ld. PCIT has erred in assuming jurisdiction u/s 263 of the Act and the order passed by him stands quashed. Our view in this case is restricted only to the invocation of Section 263 of the Act by the ld. Pr. CIT and our findings are restricted only to this case considering the peculiar facts contained therein. Therefore, our this decision may not become precedent upon the merits of contemplated additions by the ld. Pr. CIT. Since we have not adjudicated or commented upon the merits of contemplated additions and have decided only invocation of provisions of Section 263 of the I.T. Act under peculiar circumstances of this case alone. Thus keeping view the above deliberations, the appeal of the assessee is allowed."

Similar proposition was upheld in the following rulings: -

(i) ITAT Delhi in the case of Braham Dev Gupta v. PCIT – [2017] 88 taxmann.com 831

(ii) Bombay High Court in the case of CIT v. Nirav Modi – [2016] 71 taxmann.com 272 (Bombay) [SLP dismissed by SC]

(iii) Supreme Court in the case of **PCIT vs. Sumati chand Tolamal Gouti – [2019] 111 taxmann.com 287 (SC)** Where High Court upheld Tribunal's order holding that AO had made detailed enquiries while allowing assessee's claim for deduction of business expenditure and, thus, revisional order passed by Commissioner was not sustainable, SLP filed against High Court's order dismissed.

2.14 Ld PCIT quoted decisions which are not applicable to the facts and circumstances of the case of the assessee:-

a) **Malabar Industrial Ltd Vs CIT 243 ITR 243 ITR 83 (SC)**This case rather support the assessee's case. Their Lordship held that it has to be remembered that every loss of revenue as a consequence of an order of AO cannot be treated as prejudicial to the interest of the revenue.

b) TTK LIG Ltd Vs ACIT (Mad) 51 DTR 228:-
This case is not applicable to the case of assessee in hand. The assessee filed details to support the claim that it has non interest bearing funds in shape of share capital and reserves much more than the investments which might earn the exempt income. Therefore, the order passed by ld FAO us not based on incorrect facts, assumption of wrong facts, or incorrect applicable of law or non application of mind etc.

c) Arvee International vs CIT ITAT Mumbai 101 ITD 495 This case is also not applicable to the case of assessee in hand. In the case of assessee the ld AO has passed the order after making all the inquiries and after verification of the facts stated by the assessee/ Ld PCIT has not pointed out any defects or falsehood in the facts stated by the assessee.

d) CIT Vs Raisons Industries Ltd 288 ITR 322 (SC)
This case is also not applicable to the case of assessee in hand. The power of ld PCIT is not absolute to treat any order as erroneous and prejudicial to interest of revenue. The assessee filed detailed reply to PCIT during the course of 263 proceedings. It submitted detailed chart of source of investment in MF/equities. It also submitted the utilization of the borrowing funds raised during the year. It also submitted the position of investment in MF/equities as on 31-03-2017 and 31-03-2018. It also submitted the position of borrowed funds on interest as on 31-03-2017 and 31-03-2018. The assessee has demonstrated that it has own capital reserves much more than the investment in MF/Equities. The ld PCIT without pointing out defect in the reply of the assessee and by assuming the wrong facts and figures, passed revisionary order u/s 263 of the Act.

e) **Seshasayee Paper & Boards Ltd [2000] 242 ITR 490 Mad**
This case is also not applicable to the case of assessee in hand. As stated earlier that the ld FAO passed the order u/s 143(3) after making the proper inquiries. The assessee's claim that its non interest bearing funds i.e. share capital and reserves are

much more than investment which may result exempt income and this fact itself is verifiable from the Balance Sheet in hand. Further no disallowance can be made u/s 14A where non interest bearing funds are more than the investments which may result exempt income and this view is duly supported by decisions of several court including the decision of Hon'ble Supreme Court in the case of South India Bank Ltd Vs CIT and CIT vs Reliance Industries Ltd [2019] 410 ITR 466 (SC)

In view of the above submission, it is clear that the no disallowance under section 14A read with rule 8D can be made as the assessee has non-interest bearing funds in the shape of share capital and reserves are much more than the investment which may result exempt income. Further, the assessee has not incurred any indirect expenses to earn the exempt income and ld PCIT has not bring any material to show that the assessee has incurred indirect expenses to earn the exempt income. The ld FAO passed the order u/s 143(3) after making proper inquiries and keeping in mind various case laws. Thus, ld. PCIT has no material to hold that the assessment order passed by the AO was erroneous and prejudicial to the interest of revenue and therefore the order passed by ld PCIT u/s 263 of I. Tax Act deserves to be quashed and set aside."

5. On the other hand, the ld. D/R supported the orders of the revenue authorities.

6. We have heard the rival submissions and perused the material on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us and gone through the orders of the revenue authorities. As per facts of the present case, we noticed that the assessee Public Limited Company, derived income from business of Coaching Centres and Tuitions. It had filed its return of income for the year under appeal on 31.10.2018 declaring total income of Rs. 13,03,13,740/-. Thereafter, the AO by passing the E-assessment order under section 143(3) of the IT Act, 1961 dated 28.01.2021,

considering the details furnished by the assessee, accepted the return income filed by the assessee. Subsequently, the ld. Pr.CIT by invoking provisions of section 263 of the IT Act, 1961, passed the impugned order mentioning the fact that the assessment order dated 28.01.2021 passed by the AO is erroneous in so far as it is prejudicial to the interest of Revenue.

7. From perusal of the record, we observed that the pre-requisites to exercise of jurisdiction by the ld. Pr.CIT u/s 263 of the Act is that the order of the AO is established to be erroneous in so far as it is prejudicial to the interest of the Revenue. The Pr. CIT has to be satisfied of twin conditions, namely (i) the order of the AO sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If any one of them is absent i.e. if the assessment order is not erroneous but it is prejudicial to the Revenue, Sec.263 cannot be invoked. This provision cannot be invoked to correct each and every type of mistake or error committed by the AO; it is only when an order is erroneous as also prejudicial to revenue's interest, that the provision will be attracted. An incorrect assumption of the fact or an incorrect application of law will satisfy the requirement of the order being erroneous. The phrase 'prejudicial to the interest of the revenue' has to be read in conjunction with an erroneous order passed by the AO. Every loss of Revenue as a consequence of the order of the AO cannot be treated as prejudicial to the interest of the Revenue. For example, if the AO has adopted one of the two or more courses permissible in law and it has resulted in loss of revenue, or where two views are possible and AO has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order and it is prejudicial to the interest of the

Revenue, unless the view taken by the AO is totally unsustainable in law. In this regard, we draw strength from the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. v/s CIT (2000) 243 ITR 83 (SC). We also draw strength from the decision of the Hon'ble Supreme Court in the case of CIT v/s Max India Ltd. (2007) 295 ITR 282 (SC) wherein it was held that:

> *"The phrase "prejudicial to the interests of the Revenue" in S. 263 of the Income Tax Act, 1961, has to be read in conjunction with the expression "erroneous" order passed by the AO. Every loss of revenue as a consequence of an order of the AO cannot be treated as prejudicial to the interests of the Revenue. For example, when the AO adopts one of two courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the AO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the Revenue, unless the view taken by the AO is unsustainable in law."*

8. It is submitted by the ld. A/R that the AO vide notices issued under section 143(2)/142(1) of the IT Act, 1961 had raised very specific and directly relevant queries/called for explanation and evidences with respect to investment made to earn exempt income and also give details of expenditure debited to P&L a/c for earning exempt income, details of unlisted equities and mutual funds and whether any income is earned from these equities & mutual funds. The relevant paras of the assessment order at pages 1 & 2, wherein the AO has examined each and every documents submitted by the assessee during scrutiny proceedings, is reproduced below :

" In connection with the issue of expenses incurred for early exempt income the assessee submitted that there is no interest paid on fund utilized for investment made during the year and all investment is through own fund. The submissions given by the assessee is verified.

After perusal of the details uploaded, the returned income is accepted and total income is assessed of Rs. 13,03,13,740/- without making any modification to the returned income. The sum payable or refund of any amount due on the basis of the assessment is determined as per the notice of demand. Accordingly, assessment order is finalized under section 143(3) read with Section 143(3A) and 143(3B) of the Income Tax Act, 1961."

The ld. A/R now raised the main issue in this case is whether the ld. Pr. CIT was justified in invoking jurisdiction under section 263 of the I.T. Act, 1961 and thereby proposing to make disallowance of Rs. 2,53,26,820/- under section 14A of the IT Act read with Rule 8D of IT Rules, 1961. The assessee has explained source of investment by submitting that it has total investment in equities and mutual funds of Rs, 22384.52 lacs against which its share capital and reserves stands for Rs. 38508.89 lacs. As assessee had not used borrowed funds for making investments. Entire investments were made out of owned funds. Consequently, borrowing cost incurred in investment is NIL. When mixed funds (interest bearing and interest free) are available, the right of appropriation is vested with the assessee. Hon'ble Supreme Court in the case of **South India Bank Ltd v/s Commissioner of**

Income Tax [2021] 438 ITR 1 (SC) (Copy at PB page 140-145) wherein the Hon'ble Supreme Court in Para 17 and 18 held as under:

> *"17. In a situation where the assessee has mixed fund (made up partly of interest free funds and partly of interest-bearing funds) and payment is made out of that mixed fund, the investment must be considered to have been made out of the interest free fund. To put it another way, in respect of payment made out of mixed fund, it is the assessee who has such right of appropriation and also the right to assert from what part of the fund a particular investment is made and it may not be permissible for the Revenue to make an estimation of a proportionate figure. For accepting such a proposition, it would be helpful to refer to the decision of the Bombay High Court in Pr. CIT v. Bombay Dyeing and Mfg. Co. Ltd. (I.T.A. No. 1225 of 2015) where the answer was in favour of the assessee on the question, whether the Tribunal was justified in deleting the disallowance under Section 80M of the Act on the presumption that when the funds available to the assessee were both interest free and loans, the investments made would be out of the interest free funds available with the assessee, provided the interest free funds were sufficient to meet the investments. The resultant SLP of the Revenue challenging the Bombay High Court judgment was dismissed both on merit and on delay by this Court. The merit of the above proposition of law of the Bombay High Court would now be appreciated in the following discussion.*
>
> *18. In the above context, it would be apposite to refer to a similar decision in Commissioner of Income Tax (Large Tax Payer Unit) Vs. Reliance Industries Ltd, (2019) 410 ITR 466 SC/ (2019) 20 SCC 478 where a Division Bench of this Court expressly held that where there is finding of fact that interest free funds available to assessee were sufficient to meet its investment it will be presumed that investments were made from such interest free funds…."*

Further amount of interest income earned by the assessee during the relevant year is Rs. 654.45 Lacs **(PB page 38)** which is far more in excess of total interest cost claimed as expenditure during the relevant year amount to Rs. 303.41 Lacs **(PB**

page 39). In the case of the assessee interest income earned outweigh the interest expenditure. It clearly shows that no interest cost has been incurred to make any investment which shall result in exempt income. **Hon'ble GUJARAT HIGH COURT in the case of PCIT-1 v. Adani Infrastructure & Developers (P.) Ltd. [2021] 432 ITR 133 (Gujarat) has** *held that Rule 8D(2)(ii) shall have no application where interest income earned outweigh interest expenditure*. The ld PCIT calculated the proposed disallowance of Rs. 2,21,70,790/- against the indirect expenses under rule 8D (2)(ii). The assessee earned the exempt income of Rs. 62,529/- of long term capital gains under Section 10(38) on sale of **"UTI TRANSPORTATION AND LOGISTICS FUND"** which was purchased out of owned funds as assessee was having availability of own funds. So, no borrowing cost has been incurred towards purchase of this UTI TRANSPORTATION AND LOGISTICS FUND. The ld PCIT proposed disallowance of Rs. 2,21,70,780/- as proportionate indirect expenses against the exempt income of Rs 62,529/-. The assessee has submitted profit and loss account with details of expenses. The ld PCIT has not showed that which indirect expenditure relates to exempt income which sought to be disallowed. **Hon'ble Supreme Court of India in Maxopp Investment Limited V. Commissioner of Income Tax (2018) 91 Taxmann.com 154 (SC)** has examined the scope of Rule-14A vis-a-vis Rule-8D in detail. The findings of Hon'ble Apex Court in Para 32 is as under:-

> *"32. In the first instance, it needs to be recognised that as per section 14A(1) of the Act, deduction of that expenditure is not to be allowed* ***which has been incurred by the assessee "in relation to income which does not form part of the total income under this Act". Axiomatically, it is that expenditure alone which has***

> ***been incurred in relation to the income which is includible in total income that has to be disallowed.*** *If an expenditure incurred has no causal connection with the exempted income, then such an expenditure would obviously be treated as not related to the income that is exempted from tax, and such expenditure would be allowed as business expenditure. To put it differently, such expenditure would then be considered as incurred in respect of other income which is to be treated as part of the total income."*

9. We note that the case of the assessee was selected for limited scrutiny to examine " Expenses incurred for earning Exempt Income ". The assessee, in response to notice issued under section 143(2) of the IT Act, 1961 dated 23.09.2019, furnished complete details of investment on 12.10.2019. Again, through notices issued under section 142(1) dated 18.02.2020 and 16.12.2020, the AO asked the assessee to provide details of investment made to earn exempt income and also give details of expenditure debited to P & L a/c for earning exempt income to which the assessee furnished detailed tabular details/information vide letters dated 09.01.2021. The assessee also filed computation of income and return of income showing that no exempt income except Rs. 62,529/-which was generated from long term capital gain on sale of "UTI Transportation and Logistics Fund under section 10(38), and by investment of Rs 1,99,000/- which was made from owned funds as assessee was having availability of ample of owned funds. So, no borrowing cost has been incurred towards purchase of this UTI TRANSPORTATION AND LOGISTICS FUND. The AO considered the information filed by the assessee and the same is evident from the assessment order wherein the AO has mentioned at page 2 of his order as under :

"After perusal of the details uploaded, the returned income is accepted and total income is assessed of Rs. 13,03,13,740/- without making any modification to the returned income. The sum payable or refund of any amount due on the basis of the assessment is determined as per the notice of demand. Accordingly, assessment order is finalized under section 143(3) read with Section 143(3A) and 143(3B) of the Income Tax Act, 1961."

Thus, the AO has considered the information filed by the assessee and arrived at conclusion that no disallowance is warranted under section 14A of the Act. The view of the AO is duly supported by the decisions of Hon'ble High Courts and Tribunals relied upon by the assessee. SLP filed by the revenue in this regard against the decisions of Hon'ble High Courts have been dismissed by the Hon'ble Supreme Court of India in the cases PCIT vs. Oil Industry Development Board (2019) 262 Taxman 102 (SC) and CIT vs. Chettinad Logistics Pvt. Ltd. (2018) 257 Taxman 2 (SC) as relied upon by the A/R of the assessee in the detailed submission. This position was duly taken into consideration by the AO while passing the assessment order, which is evidently clear from the assessment order itself, as reproduced herein above and the order passed by the AO is not warranted revision.

10. From the above discussion, in our considered opinion, the assessment order cannot be regarded as erroneous, or being prejudicial to the interests of the Revenue more so the assessee has non- interest bearing funds in the shape of share capital and reserves are much more than the investment which may result exempt income. Further, the assessee has not incurred any indirect expenses to earn the exempt income and ld. PCIT has not brought any material to show that the assessee

has incurred indirect expenses to earn the exempt income. In previous assessment year 2017-18 no addition u/s 14A read with rule 8D was made in complete scrutiny assessment u/s 143(3) of the Income Tax Act and the assessment for AY 2013-14 was completed u/s 143(3) wherein addition of Rs. 59,69,827/- u/s 14A was made. This addition was deleted by ld CIT(A). The assessee filed the copy of order of ld CIT(A) is at PB page 277-288/Vol-2. The revenue filed appeal before this Tribunal against the order of CIT(A) which was dismissed by this Tribunal in ITA No. 151/JP/2017 dated 11.05.2017 and deletion of addition u/s 14A of the Income Tax Act was upheld. Copy of the order of the ITAT Jaipur is at PB page 289-298/ Vol-2. The findings of the ITAT are in para 4.2 & 4.3 as under:-

> **"** *4.2 We have heard the rival contentions, perused the material available record and gone through the order of the authorities below. The Ld. CIT(A) has given a finding on fact as under:-*
>
> *"On careful perusal of assessee's balance sheet as on 31.3.2013, following details emerged:*
>
> | | |
> |---|---|
> | *Share capital (issued & subscribed)* | *Rs. 18,13,29,390/-* |
> | *Reserve & Surplus* | *Rs. 3,02,23,49,410/-* |
> | *Total Investment* | *Rs. 91,58,22,106/-* |
> | *Other Income (P & L a/c)* | *Rs. 6,82,91,163/-* |
>
> | | |
> |---|---|
> | *Dividend Income* | *Rs. 2,87,80,532/-* |
> | *Interest Income from Gr Companies* | *Rs. 1,23,21,610/-* |
> | *Interest from Bank Deposit* | *Rs. 52,68,744/-* |
> | *Other loans & Advances* | *Rs. 33,34,284/-* |
> | *Net Gain on sale of current investment* | *Rs. 1,65,12,080/-* |
> | *Profit on sale of fixed assets* | *Rs. 6,499/-* |
> | *Bad debts recovered* | *Rs. 2,50,455/-* |
> | *Miscellaneous Income* | *Rs. 18,16,959/-* |
> | _____ | *Rs. 6,82,91,163/-* |

From the chart containing the position of taxability of gain arose on redemption/sales/maturity of investments held at the end of the year it is also seen that out of total investments of Rs. 91,58,22,106/- the income on investments of Rs. 22,08,22,106/= was also exempted and the income on balance investments was taxable. In this regard, it submitted that the entire investments cannot be taken into consideration for computing the disallowance u/s 14A of Income Tax Act, 1961 by the AO is also not justified. On perusal of balance sheet of the assessee, it is found that the assessee was having sufficient its own capital and reserves & surplus. The own capital and reserves & surplus of the assessee was Rs. 3,20,36,78,800/- while the investments were of Rs. 91,58,22,106/- only. In view of this, it is submitted that the own funds of the assessee is much more than to investments, therefore disallowance u/s 14A of Income Tax Act, 1961 is uncalled for. In support of its contention, assessee has relied upon following decision:

- *Emtici Engineering Ltd. (ITAT Ahmadabad)*
- *Ram Krishna Verma (ITAT Jaipur)*
- *Vijay Solvex (Rajasthan High Court)*
- *Satish Katta(ITAT Jaipur)*
- *Motor Sales Ltd. (High Court Allahabad)*

In view of facts and circumstances of the case as discussed above and most respectfully, following the aforementioned case laws and when assessee admittedly had its own funds, as referred to earlier, and admittedly such funds/reserves being substantially higher than, even otherwise, the advances to the debtors, no notional interest or hypothetical interest could have been disallowed on such facts, the addition made by the AO by invoking the provisions of Sec 14A of the

Act cannot be sustained. Apart from this also, AO has failed to prove nexus between interest bearing funds and investments made out of that. Assessee's appeal in Gr no. 1 & 2 stands allowed."

4.3 The aforesaid finding of fact is not controverted by the Revenue by placing any contrary material on record. It is also transpired from the record that the Assessing Officer while computing the disallowance has taken into consideration both investments related to exempt income as well as taxable income. Under these facts in our considered view, the Assessing Officer was not justified in making the disallowance by invoking provision section 14A of the Act. The mandate of the section 14A(2) of the Act is that the Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income but in the given case the Assessing Officer has not restricted itself to the exempt income also considered the taxable income, while computing the disallowance. The Assessing Officer failed to give a clear finding in respect of the submissions of the assessee that the investment was made out of interest free fund. However, the Ld. CIT(A) demonstrated from the accounts of the assessee that the assessee was having sufficient on interest free fund for making such investment. Therefore, we do not see any reason to interfere into the order of the Ld. CIT(A), same is hereby affirm. The ground of the Revenue's appeal is dismissed."

Thus we are of the view the ld. PCIT has erred in invoking the provisions of Section 263 of the IT Act and in passing the impugned order. Accordingly, we find merit in the grievance raised by the assessee, accordingly we hold that the ld. PCIT is not justified in exercising jurisdiction for revisionary proceedings under section 263 of the IT Act and directing the AO to modify the assessment order under section

143(3) dated 28.01.2021 and make necessary addition under section 14A of the IT Act, 1961. The impugned order is accordingly quashed.

11. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 22/08/2023.

Sd/-	Sd/-
(राठौड़ कमलेश जयंतभाई)	(संदीप गोसाई)
(RATHOD KAMLESH JAYANTBHAI)	(SANDEEP GOSAIN)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 22/08/2023.
Das/

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

1. अपीलार्थी / The Appellant- Career Point Ltd., Kota.
2. प्रत्यर्थी / The Respondent- The PCIT, Udaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 242/JP/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar