IN THE INCOME TAX APPELLATE TRIBUNAL
"K" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI NARFENDRAKUMAR CHOUDHARY , JM

ITA No. 1216/Mum/2015
(Assessment Year: 2010-11)
&
ITA No. 374/Mum/2017
(Assessment Year: 2012-13)

&
ITA No. 1597/Mum/2018
(Assessment Year: 2014-15)

The Great Eastern Shipping Co. Ltd. Kalyaniwalla & Mistry LLP Esplanade House, 2nd floor, 29, Hazarimal Somani Marg, Fort, Mumbai-400 001 (Appellant)	Vs.	The Dy. Commissioner of Income-tax, Range-5(3), Room No.525B, 5th Floor, M.K. Marg, Mumbai-400 020 (Respondent)

PAN No. AAACT1565C

ITA No.2077/Mum/2018
(Assessment Year: 2014-15)

The Dy. Commissioner of Income-tax, Range-5(3), Room No.525B, 5th Floor, M.K. Marg, Mumbai-400 020 (Appellant)	Vs.	The Great Eastern Shipping Co. Ltd. Kalyaniwalla & Mistry LLP Esplanade House, 2nd floor, 29, Hazarimal Somani Marg, Fort, Mumbai-400 001 (Respondent)

Assessee by	:	Shri Jeet Kamdar , Shri Falee H Bilimoria and Ms yasmin Dastur ARs Ms.Yasmin Dastur,AR
Revenue by	:	Shri Byomkesh Pradiptakumar Panda CIT DR

Date of hearing	15-06-2023

Date of pronouncement	13.09.2023

O R D E R

PER PRASHANT MAHARISHI, AM:

01. There are three appeals by the assessee for assessment year 2010 – 11, 2012 – 13 and 2014 – 15 as well as a cross appeal by the assessing officer for assessment year 2014 – 15 involving common grounds of appeal, argued together by the parties and therefore disposed of by this common order.

02. For assessment year 2010 – 11, assessee has preferred an appeal against the order of the learned deputy Commissioner of income tax, Circle 5 (3) (2), Mumbai (the learned AO) passed under section 143 (3) read with section 144C (13) of the income tax act for the impugned assessment year dated 6/1/2015 wherein the returned income of the assessee filed on 29/9/2010 declaring a total income of ₹ 464,468,113/– was assessed at ₹ 2,141,221,370/– in view of the transfer pricing adjustment of ₹ 23,672,543 and disallowance under section 14 A of ₹ 115,296,911 made by the learned assessing officer pursuant to the order of the learned transfer pricing officer and subject to the direction of the learned dispute resolution panel dated 12/11/2014.

03. Assessee is aggrieved with the same and has preferred this appeal before us raising following grounds of appeal:-

Non-Transfer Pricing Issues

1. The learned DRP ought in holding that the provisions of section 14 A of the act were applicable in case of the appellant, since the dividend from shares/units of mutual funds is subjected to tax in the hence of the payer under section 115 – O/115 – R of the act and as the appellant receives and amount after the tax has been paid, it cannot be said that the such dividend income is not chargeable to tax under the act and hence the provisions of section 14 A are not attracted in case of the appellant.

2. The learned DRP ought in holding that the aggregate interest expenditure incurred by the appellant pertaining to the tonnage and non-tonnage activities was to be considered for computing the amount liable for disallowance under sub clause (ii) of clause 2 of rule 8D, without appreciating the fact that the interest expenditure pertaining to the tonnage activities was not claimed by the appellant against the non-tonnage activities.

3. The learned DRP further erred in directing the assessing officer that in case the disallowance of indirect interest expenditure computed under sub clause (ii) of clause 2 of rule 8D as above, exceeded the aggregate interest expenditure pertaining to the non-tonnage activities, the disallowance should be restricted to the extent of the entire non-tonnage indirect interest expenditure, without appreciating the fact that such interest expenditure incurred for non-tonnage activities pertained to borrowings which were utilised for earning tax free and taxable income.

4. Without prejudice to what is stated in the above ground numbers 2 and 3 and in any of, the appellant submits that the disallowance of interest expenditure computed at ₹ 36,828,776/– is not only erroneous, but also grossly excessive and arbitrary, and the same requires to be reduced substantially.

5. The learned DRP ought in confirming the disallowance of administrative and other expenditure aggregating to ₹ 86,623,364/– computed in accordance with sub clause (i) and (iii) of clause 2 of rule 8D towards the earning of exempt dividend income, as the same includes an ad hoc amount of ₹ 85,704,000/– computed in accordance with sub clause (iii) of clause number 2 of rule 8D at 0.5% of the average value of investments yielding tax free income, when in actual fact the aggregate actual administrative expenditure incurred by the Treasury division of the appellant was only ₹ 2,237,696/–.

6. Without prejudice to the above ground number 5 and in any event, the appellant submits that the disallowance computed at ₹ 86,623,364/– is grossly excessive and arbitrary and can in no tax is ₹ 919,364/– which is proportionate amount computed on the basis of the actual administrative expenditure of ₹ 2,237,696/– incurred by the Treasury division of the appellant for earning tax free and taxable income.

7. Without prejudice to the above grounds, the appellant submits that the investment in ship (India) Ltd and CGU adjusted Ltd are strategy for long-term investment for business purposes and hence the same are not to be considered as investments yielding tax free income for computing the average value of investments for the purpose of rule 8D.

8. Without prejudice to the aforesaid grounds, the learned DRP order in rejecting the contention of the appellant that the provisions of section 14 A of the act are not applicable to investments held as stock in trade.

9. The AO erred in not granting credit of tax deducted at source Aggregating to ₹ 31,120/– while framing the assessment order under section 143 (3) read with section 144C (13) of the act without assigning any reasons for the non-grant of such credit

Transfer Pricing Issues

10. assessing officer/transfer pricing officer erred in making adjustments under section 92C capital (3) without providing reasons as to which conditions of section 92C (3) had not been satisfied.

Financial guarantees given on behalf of the associated enterprises

11. The AO/TPO erred in holding that the financial guarantees given by the appellant on behalf of its associated enterprises

constituted an international transaction under section 92B of the income tax act

12. without prejudice, the AO/TPO erred in rejecting the arithmetic mean of internal comparable rates of guarantee commission of 1.15% per annum adopted by the appellant for benchmarking the financial guarantees given by it on behalf of its associated enterprises.

13. The AO/TPO/DRP erred in holding that the arm's-length price of the financial guarantee given by the appellant on behalf of its associated enterprise was 1.5% per annum.

Performance guarantees given on behalf of the associated enterprises

14. the AO/TPO erred in holding that the performance guarantees given by the appellant on behalf of its associated enterprises constituted an international transaction under section 90 2B of the income tax act

15. without prejudice, the AO/TPO erred in rejecting the appellant's contention that having regard to the facts and circumstances of the case, the arm's-length price of the performance guarantees given by the appellant on behalf of its associated enterprises was rupees nil

16. The AO/TPO erred in holding that the arm's-length price of the performance guarantees given by the appellant to its associated enterprise was 1% per annum.

04. At the time of hearing of the arguments the assessee further raised additional ground of appeal contesting the disallowance under section 14 A of the act as under:-

i. The appellant submits that both the lower authorities erred in applying section 14 A of the act in respect of several investments on which no dividend income was received by the appellant. The appellant submits that the disallowance under section 14 A) through rule 8D (2) (ii) and (iii). Computed by excluding those investments on which no dividend income was received during the year.

ii. The assessing officer erred in assuming jurisdiction under section 14 A (2) of the act without recording objective satisfaction as to the correctness of the claim of the appellant.

iii. The appellant submits that both the lower authorities erred in holding that the disallowance made under section 14 A of the act and under the normal computation of income is also required to be added back for computing book profits under section 115JB of the act. The appellant submits that section 115JB of the act is a separate code by itself and the provisions of section 14 A and rule 8D cannot be applied for computing the book profits under section 115JB of the act

05. Briefly stated the fact shows that the assessee company is engaged in the business of shipping, property development and finance operations including dealing in shares, securities, mutual funds and other money market operations and granting of loans and advances. The business of the assessee continued having the same facts and circumstances as compared to the earlier assessment years. It filed return of income on 29/9/2010 declaring total income of ₹ 464,468,113/–. The return of income was picked up for scrutiny.

06. As the assessee has entered into several international transaction, reference was made under section 92C capital (1) of the act for the computation of arm's-length price in relation to the international transaction by the learned assessing officer to the transfer pricing officer – ii (2), Mumbai (the learned TPO) on 18/1/2013. The learned TPO examined the international transaction. He found that

07. The assessee company has given financial guarantee to ICICI bank of US dollar 25 million of rupees hundred and 20.7 crores (at the end rupees nil) and to bank of Nova Scotia of US dollars 70.47 million (₹ 340.3 crores) at here and rupees nil) on behalf of its associated enterprises message great global energy services PTE Ltd. Both these guarantees were extinguished on 18/10/2009 and therefore it was operational four 201 days. The assessee has not charge any guarantee commission from its associated enterprise but has made suo motto transfer pricing adjustment of ₹ 29,196,121/– by adopting guarantee commission rate of 1.15% per

annum. For benchmarking the same the assessee stated that it has paid a guarantee commission of 1.10% to be a number of bank, adopting average rate of 1.15% for the period of 201 days to make the sumo to transfer pricing adjustment in respect of financial guarantee given to ICICI bank and bank of Nova Scotia on behalf of its associated enterprises is at arm's-length. Therefore the assessee stated that it has adopted cup method and for comparability has shown internal comparables.

08. The assessee has also given a performance guarantee outstanding of ₹ 147.87 crores and the year and in respect of vessel construction agreement between a Singapore entity and associated enterprise of the assessee, as in the previous year. The assessee did not charge any guarantee commission for the same and also did not made any suo Motto adjustment to that effect. According to the assessee it is not an international transaction that needs to be remunerated to the assessee at arm's-length price, as its ALP is nil.

09. The learned transfer pricing officer issued notice under section 133 (6) to the state bank of India and issued a show cause notice on that basis stating that financial performance guarantee and financial guarantee are both pari materia same and therefore deserves to be benchmarked. He found that the information received from the state bank of India shows that the guarantee commission rate for guarantee greater than ₹ 10 crores is 1.75% per annum. The assessee has relied on the rate quoted by a be a number of bank at the rate of 1.15% for the guarantee amount of ₹ 25 lakhs. Therefore that rate cannot be relied upon. He further held that as per the information available in public domain it could be seen that the banks and companies are charging rates of 3% for providing the guarantee. He therefore applied the external cup of the state bank of India and adopted 3% rate as arm's-length price. Therefore on the financial guarantee of ₹ 461 crores for 201 lazy computed the arm's-length price of ₹ 76,159,726/– and in respect of the performance guarantee outstanding of ₹ 147.87 crores he computed the arm's-length price of ₹ 44,361,000/–. As assessee has already offered the adjustment of ₹ 29,196,121/– the net adjustment of ₹ 91,324,605/– was made by passing an order under section 92CA (3) of the act dated 31/10/2013.

10. The draft assessment order included the above transfer pricing adjustment.

11. Further the learned assessing officer noted that assessee company has shown an amount of ₹ 423,053,242/– as dividend income out of which a sum of ₹ 8,151,229 has been treated as expenditure attributable to earning of dividend income and amount of ₹ 413,198,013 has been claimed as exempt under section 10 (34) of the act. The assessee was asked to furnish the details of the expenditure incurred for earning of the exempt income. Assessee contended that it is not incurred any expenditure for the purpose of earning exempt income and therefore no disallowance under section 14 A squad for. However during the course of assessment proceedings the assessee submitted that there is certain errors in showing the exempt income and therefore the revised working of the disallowance under section 14 A of the act was made of ₹ 7,339,311/– . However in spite of the repeated opportunities given by the AO the assessee company failed to furnish any evidence to prove that no expenses are incurred for earning of dividend income. The learned assessing officer after discussing the facts of the case and following the decision of the honourable Supreme Court made a disallowance under section 14 A read with rule 8D of ₹ 352,517,338/–. Out of this disallowances the offer disallowance of the assessee in the computation of total income of ₹ 8,155,229 was reduced and net disallowance was made of ₹ 344,362,109/–.

12. While computing the book profit also the learned AO made an adjustment of the above sum of ₹ 344,362,109 in clause (F) of explanation 1 to section 115JB of the act for the purpose of computation of book profit.. Accordingly by the disallowance of ₹ 344,362,109 and determined at ₹ 2,370,286,563/–.

13. The learned assessing officer further examines the claim of the assessee under the tonnage tax scheme. The AO examined the reallocation of interest expenditure between tonnage and non-tonnage activities of the assessee. AO found that interest expenditure of ₹ 395,353,738/– have been claimed as deduction against the assessee's non-tonnage activities. The assessee was asked to furnish the relevant evidences and to show cause as to why the interest expenses should not be relocated as in the

previous assessment years. After considering the explanation of the assessee AO found that interest expenditure of ₹ 5,670,168/– needs to be attributed to the tonnage tax activities of the company since these expenditure has direct linkage with the loans which were utilised for acquiring qualifying ships. AO found that the loans on which interest is paid are actually utilised for construction of vessel in case of KFW 2 where the interest expenditure debited to the profit and loss account is of ₹ 3,007,894. AO also noted that in case of KFW 3 the interest expenditure of ₹ 486,510 has been incurred which shows that the loan fund was not fully utilised for acquisition of ships. Further from society general and interest of ₹ 2,175,764 was debited which was also not fully utilised immediately for acquisition of the ship therefore it the learned AO was of the view that the said expenditure has to be necessary classified as pertaining to the tonnage tax activity. Accordingly the interest of ₹ 5,670,168 is classified as the interest expenditure which should relate to the shipping activity of the assessee chargeable to tax under the tonnage tax scheme but the assessee has claimed this interest as deduction from the regular income, hence the learned AO made the addition of the same.

14. Accordingly the draft assessment order was passed on 19/2/2014 determining total income of the assessee at ₹ 90,58,24,995/– wherein the adjustment of arm's-length price of international transaction of ₹ 93,024,605/–, disallowance under section 14 A of ₹ 344,362,109/– and reallocation of the interest expenditure amounting to ₹ 5,670,168/– was made to the returned income of ₹ 46,44,68,113. The book profit was also enhanced by disallowance under section 14 A of the act.

15. Assessee preferred an objection before the learned dispute resolution panel, directions were passed under section 144C (5) of the act on 12/11/2014. On the ground of the judicial consistency, the dispute resolution panel directed the learned assessing officer to delete the disallowance on account of reallocation of the interest expenditure of ₹ 5,670,168/–. The arm's-length price of the guarantee commission was directed to be worked out at 1.5% per annum with respect to the financial guarantee and 1% with respect to the performance guarantee. With respect to the disallowance under section 14 A of the act, the learned dispute resolution panel held that the non-tonnage tax interest

attributable to the investment tax free dividend wearing investment is ₹ 3.68 crores which is the amount of interest liable to be disallowed under section 14 A of the act. Accordingly the disallowance under section 14 A of the act was revised to ₹ 115,296,911. Adjustment of disallowance under section 14 A of the act to the book profit was upheld by the learned dispute resolution panel.

16. The final assessment order was passed by the learned assessing officer on 6/1/2015 determining total income of the assessee according to the normal competition of total income at ₹ 603,437,570 and the book profit under section 115 JB of the act of ₹ 214,12,21,370/–.

17. With respect to the non-transfer pricing issue related to disallowance under section 14 A of the act covering ground number 1 – 8 of the appeal, the learned authorized representative submitted that:-

Submissions

i) The Appellant is a tonnage tax company and the Profit & Loss Account for the tonnage tax and non-tonnage tax business activities is prepared from the separate books of account maintained by the Appellant in accordance with the provisions of Section 115VW(i) of the Act. TheProfit & Loss Account of the tonnage tax business and the Profit & Loss Account of the other businesses of the company have been duly reconciled with the audited Profit & Loss Account of the company(*Page 2 of the Compilation*).The gross receipts and the operating expenses and administrative and other costs pertaining to the Tonnage Tax and Non-Tonnage Tax Activities of the Appellant Company have been reflected in the segmental Profit & Loss Account. The profit from the tonnage tax business of Rs.183.61 crores has been duly certified by the Auditors in accordance with the provisions of Section 115VW(ii) in the prescribed Form 66 in Clause 9(i) (*Page 5 of the Compilation*).

ii) The computation of Total Income for the year ended March 31, 2010, relevant to the Assessment Year 2010-11 has been submitted in the compilation filed (*Pages 3&4 of the Compilation*). The tonnage tax income of Rs.183.61 crores has been excluded while computing the Business Income in accordance with the provisions of Section 115VF of the Act and tax is paid on the income computed in accordance with the provisions of Section 115V-I of the Act, based on the tonnage of the ships operated by the Appellant Company. Hence, the gross receipts of the tonnage

tax business (Rs.1931.34 crores) and the expenses pertaining to the tonnage tax business (Rs.1747.73 crores) have been excluded while computing the Business Income of the Appellant Company.

Disallowance under Rule 8D(2)(i) of the Rules

iii) The actual administrative expenditure incurred by the Treasury Division including employee costs and other relatable expenses has been allocated by the Appellant between the taxable and non-taxable gross receipts of the Treasury Division and the disallowance under Rule 8D(2)(i) is computed accordingly. There is therefore no dispute on this disallowance.

Disallowance under Rule 8D(2)(ii) of the Rules

iv) As regards the disallowance of interest expenditure in accordance with the provisions of Rule 8D(2)(ii), the details of the interest expenditure incurred by the Appellant during the year under consideration is as under:

Particulars	*Amount (Rs).*
Tonnage Tax Activities	103.43 crores
Non Tonnage Tax Activities	39.54 crores
Total	142.97 crores

v) Out of the aforesaid interest expenses of Rs.142.66 crores, the interest expenditure pertaining to the Tonnage tax activities amounting to Rs.103.43 crores has been excluded and disallowed as part of the tonnage tax income while computing the total income of the Appellant. Out of the interest expenditure pertaining to the non-tonnage tax activities amounting to Rs.39.54 crores, an amount of Rs.0.31 crores has been suo moto disallowed by the Appellant and reduced from such interest expenditure whereby the net interest expenditure claimed was Rs.39.23 crores only.

vi) The Assessing Officer and the learned DRP have considered the total interest expenditure of the Appellant Company aggregating Rs.142.97 crores, whichincludes the interest expenditure of the tonnage tax business of the Appellant of Rs.103.43 crores for computing the disallowance under Rule 8D(2)(ii), without appreciating the fact that such interest expenditure was directly

attributable to the tonnage tax activities and was therefore already excluded from the total income pursuant to which such interest expenditure was not claimed against the exempt income. Hence, interest expenditure directly attributable to the tonnage tax business cannot be considered as part of the indirect interest expenditure for computing the amount liable for disallowance under Rule 8D(2)(ii). Reliance is placed on the decision of Godrej & Boyce Mfg. Co. Ltd. reported in 328 ITR 81 (Bom.) to contend that rule 8D(2)(ii) applies only to the portion of interest expenditure where it is not possible to determine the specified purpose for which the borrowing on which interest paidwas used. It is only the indirect interest on borrowed funds that will be apportioned and the amount of expenditure by way of interest that will be taken will exclude any expenditure by way of interest which is directly attributable to or has a proximate nexus to any particular income or receipt.It is only in such a case that Rule 8D(2)(ii) gets attracted and the Assessing Officer has to adopt the prescribed formula and the amount of indirect interest attributable to exempt income also has to be computed by this formula.Reliance is also placed on the decision of Bharti Overseas Ltd. (ITA No. 802/2015) (Del.).

Without prejudice to the contention of the Appellant that there is no interest expenditure liable for disallowance under Rule 8D, it is respectfully submitted that in any event, the tonnage tax interest expenditure is required to be excluded while computing the disallowance under Rule 8D(2)(ii). This issue is covered in favour of the Appellant by the Hon'ble Income Tax Appellate Tribunal, Mumbai, in the Appellant's own case for the Assessment Year 2008-09 (Page 8, Para 10.1)whereby the interest expenditure of the tonnage tax business is to be excluded while computing the disallowance under Rule 8D(2)(ii).

vii) The Appellant contends that there is no interest expenditure which is liable for disallowance under Section 14A of the Act read with Rule 8D. On a perusal of the Share Capital and Reserves and Surplus in the Balance Sheet as at the year end, the Reserves and Surplus amount to Rs.521883 lakhs and the Share Capital amounts to Rs.15229 lakhs. Hence, the own funds of the company aggregate to Rs.537112 lakhs. The investments held by the company, as at the year-end, aggregate to Rs.325100 lakhs, and are far lower as compared to the capital employed consisting of own funds of Rs.537112 lakhs. In fact, the investments are more than covered by the Reserves of the Company itself. There is, therefore, no borrowing attributable to the investments yielding tax free income and such investments are out of the own funds

and internal accruals generated by the Company itself. In this regard, reliance is placed on the following decisions:

a) South Indian Bank Ltd. - 130 taxmann.com 178 (SC)
b) Reliance Industries Ltd. - 410 ITR 466 (SC)
c) Reliance Utilities and Power Ltd. - 313 ITR 340 (Bom.)
d) HDFC Bank Ltd. - 366 ITR 505 (Bom.)

This issue is covered in favour of the Appellant by the Hon'ble Income Tax Appellate Tribunal, Mumbai, in the Appellant's own case for the Assessment Year 2008-09 (Page 8, Para 10.3 & 10.4).

Disallowance under Rule 8D(2)(iii) of the Rules

viii) As regards indirect administrative expenditure, it is respectfully submitted that the total expenditure of the Treasury Divisionaggregatesto Rs.22.37lakhs. This actual administrative expenditure was allocated by the Appellant between the taxable and non-taxable gross receipts of the Treasury Division. Consequent thereto, the actual amount of expenditure liable for disallowance under clause 2(i) of rule 8D amounted Rs.9.19 lakhs. It is the submission of the Appellant that no further disallowance of indirect administrative expenditure is warranted.

ix) The Assessing Officer has however disallowed a further sum of Rs.8.57 crores, under clause 2(iii) of Rule 8D, being the amount computed @0.5% of the average value of investments held by the Appellant. However, the actual expenditure claimed of the Treasury Division based on the divisional Profit & Loss Account was only Rs.22.37 lakhs. The administrative expenditure under clause 2(i) & 2(ii) of Rule 8D cannot exceed the actual expenditure incurred by the Treasury Division of Rs.22.37 lakhs. Since Rs.9.19 lakhs has been disallowed by the Appellant under Rule 8D(2)(i), the balance amount of Rs.13.18 lakhs can be considered under Rule 8D(2)(iii). Thus, as against the actual aggregate administrative expenditure of Rs.22.37 lakhs incurred by the Treasury Division of the Appellant Company and claimed accordingly, the Assessing Officer has disallowed notional expenditure aggregating to Rs.8.57 crores under clause 2(iii) of Rule 8D, which is completely erroneous and unwarranted. Reliance in this regard is placed on the following decisions:

a) Adani Agro (P.) Ltd. - 253 Taxman 507 (Guj)

This issue is covered in favour of the Appellant by the Hon'ble Income Tax Appellate Tribunal, Mumbai, in the Appellant's own case for the Assessment Year 2008-09 (Page 8, Para 10.2).

General Applicability of Rule 8D of the Rules

x) The Appellant further submits that both the lower authorities erred in applying Section 14A of the Act in respect of several investments on which no dividend income was received by the Appellant during the year. Without prejudice to the contention of the Appellant that there is no further disallowance of interest expenditure or administrative expenditure, the Appellant submits that the disallowance under Section 14A read with Rule 8D2(ii) and (iii) be recomputed by excluding those investments on which no dividend income was received during the year. The statement giving the details of dividend income received by the Appellant during the year ended March 31, 2010, has been submitted in the compilation filed (*Pages 35 of the Compilation*). This issue is covered in favour of the Appellant by the decision of the Special Bench of the Income Tax Appellate Tribunal, Delhi, in the case of Vireet Investment Pvt. Ltd. reported in 82 taxmann.com 415 (Delhi - Trib.) (SB).

This issue is covered in favour of the Appellant by the Hon'ble Income Tax Appellate Tribunal, Mumbai, in the Appellant's own case for the Assessment Year 2008-09 (Page 9, Para 10.5).

xi) The Appellant submits that both the lower authorities erred in holding that the disallowance made under Section 14A of the Act under the normal computation of income is also required to be added back for computing book profits under section 115JB of the Act. It is respectfully submitted that section 115JB of the Act is a separate code by itself and the provisions of Section 14A and Rule 8D cannot be applied for computing the book profits under section 115JB of the Act. This issue is covered in favour of the Appellant by the decision of Special Bench of the Income Tax Appellate Tribunal, Delhi, in the case of Vireet Investment Pvt. Ltd. reported in 82 taxmann.com 415 (Delhi - Trib.) (SB), wherein it was held that the computation under clause (f) of Explanation 1 to Section 115JB(2) is to be made without resorting to the computation as contemplated under Section 14A read with Rule 8D of the Income-tax Rules, 1962.
This issue is covered in favour of the Appellant by the Hon'ble Income Tax Appellate Tribunal, Mumbai, in the Appellant's own case for the Assessment Year 2008-09 (Page 9, Para 10.5).

xii) Considering what is stated in the foregoing, the working of the disallowance under section 14A of the Act computed in accordance with Rule 8D of the Rules by considering the following contentions of the Appellant is attached herewith:

- There is no interest expenditure liable for a disallowance as the own funds consisting of the share capital and reserves, are far more than the aggregate value of investments held by the company.
- Without prejudice to the foregoing contention, even assuming though not conceding that some part of the interest expenditure is liable for a disallowance, the interest expenditure attributable to the tonnage tax business is required to be excluded.
- The administrative expenses cannot exceed the actual expenditure incurred.
- Without prejudice to the foregoing contentions, it is respectfully submitted that even if a disallowance is warranted under Rule 8D (2)(ii) & 8D(2)(iii), those investments on which no exempt dividend income was received by the Appellant during the year are to be excluded while computing such disallowance.
- No disallowance can be made under Section 14A of the Act when computing the Book Profit under Section 115JB of the Act.

  The statement giving the disallowance under Rule 8D as per the above contentions has been submitted in the compilation filed (*Pages 36 to 38 of the Compilation*), whereby the disallowance under Section 14A of the Act read with Rule 8D aggregates to Rs.22.37 lakhs.

18. The learned departmental representative vehemently supported the order of the learned assessing officer, which was passed pursuant to the directions of the learned dispute resolution panel.

19. However, both the parties submitted that identical issue has been raised in the appeal of the assessee for assessment year 2009 – 10 also.

20. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that identical issue arose in the case of the assessee for assessment year 2009 – 10 [ITA No 1656/Mum/2014] wherein after giving the following directions the issue is restored back to the file of the learned AO:-

> "031. Therefore we set aside these grounds of appeal concerning disallowance u/s 14 A rwr 8 D while computing normal computation of income to the file of the ld AO, assessee is directed to submit revised computation before ld Ao, The ld AO may examine the

same and following our above directions and finding recompute the disallowance by :-

i. No disallowance of expense or interest should be made out of tonnage tax income computation

ii. . As there is no interest expenditure liable for a disallowance as the own funds consisting of the share capital and reserves, are far more than the aggregate value of investments held by the company. No Interest disallowance should be made.

iii. The administrative expenses cannot exceed the actual expenditure incurred. iv. Those investments on which no exempt dividend income was received by the Appellant during the year are to be excluded while computing the disallowance under Rule 8D(2)(iii).

032. Both the lower authorities are not correct in holding that the disallowance made under Section 14A of the Act under the normal computation of income is also required to be added back for computing book profits under section 115JB of the Act. This issue is covered in favour of the assessee by the decision of Special Bench of the Income Tax Appellate Tribunal, Delhi, in the case of Vireet Investment Pvt. Ltd. reported in 82 taxmann.com 415 (Delhi - Trib.) (SB), wherein it was held that the computation under clause (f) of Explanation 1 to Section 115JB(2) is to be made without resorting to the computation as contemplated under Section 14A read with Rule 8D of the Income-tax Rules, 1962. Honorable Bombay High court in THE COMMISSIONER OF INCOME TAX, MUMBAI V. JSW ENERGY LTD. 2015 SCC ONLINE BOM 5243 has also held that such adjustment is not permitted. Therefore

adjustment to the book profit as computed u/s 115 JB of the act and further increasing it by disallowance computed u/s 14A rwr 8D is not warranted. Hence, we direct ld AO to delete the same."

21. Accordingly, with similar direction allowing ground number 1 – 8 of the appeal along with three additional issues raised, we restore the issue back to the file of the learned assessing officer.

22. Ground number 9 is with respect to the non-granting of tax deduction at source credit aggregating to ₹ 31,120. After hearing the parties we direct the learned assessing officer to verify the availability of the credit to the assessee and if it is found in accordance with the law, grant the same. Accordingly, ground number 9 of the appeal is allowed with above direction.

23. Ground number 10 was against the transfer pricing issues, no arguments were advanced and therefore, it is dismissed.

24. Ground number 11 – 13 is with respect to the determination of the arm's-length price of the financial guarantee given by the assessee to its associated enterprises. Both the parties confirmed that the facts and circumstances of the case are identical except to the fact that in that assessment year 2009 – 10, the assessee made assumed to adjustment of 0.55% of the financial guarantee, whereas in this case the adjustment is with respect to 1.15% as guarantee fees made by the assessee on its own.

25. We find that the issue in this ground is identical to the ground number 12 and 13 of the appeal of the assessee for assessment year 2009 – 10. While deciding ground number 12 and 13 in that assessment year we have held that assessee has adopted the internal cup and taken the average of the guarantee fee is charged by the bankers from the assessee. We find that the issue is of benchmarking with respect to the corporate guarantee fee is corporate guarantee issued by the assessee to associated enterprises which is quite different then the bank guarantees. Perhaps the bank guarantee rates adopted by the assessee are the highest rates by which the ALP is determined. For assessment year 2009 – 10 we have already upheld 0.55% being the arm's-length price of the

guarantee issued by the assessee to its associated enterprises holding as under :-

> "047. We have carefully considered the rival contentions and perused the order of The LD TPO as well as directions of the ld DRP on this issue. The coordinate bench in assessee's own case has decided this issue in Para no 197/Mum/2023 for Ay 2008-09 per Para no 23 as under :-
>
> > "23. In ground No. 22 to 24 of appeal, the assessee has assailed TP adjustment in respect of financial guarantee given by the assessee on behalf of its AE. The ld. Counsel for the assessee submitted that the assessee has made suo-motto charge of 0.55%. The ld. Counsel referred pages 92 to 95 of the paper book to show different rates of guarantee commission charged by different banks. He pointed that vide letter dated 15/07/2011 State Bank of India has given rate of commission charged by it. The rates vary from 2.75% to 1.75% depending upon the quantum of facility availed. Similarly, information was sought by the Transfer Pricing Officer from the Allahabad Bank. As per letter dated 12/07/2011 from Allahabad Bank (at page 94 of the paper book) for extending facility of financial guarantee, charges varies from 0.75% per quarter to 0.60% per quarter. The ld Counsel pointed that ABN AMRO Bank charges guarantee commission @0.35% p.a. (page 139 of paper book) and HSBC Banks charges 0.55% p.a. guarantee commission (page 146 of the paper Book). He further referred to the decision of Tribunal in the case of Greatship (India) Ltd. in ITA NO.1287/Mum/2017 decided on

05/04/2020. The Tribunal after considering various case laws, wherein different rates for guarantee commission were charged, upheld 0.43% commission p.a. charged by the assessee as ALP. In the instant case, the TPO had made adjustment by determining guarantee commission @3%. The rate of guarantee commission was restricted by the DRP to 1.5%. As is evident from the letters from various banks on record, different rates of guarantee commission are charged by different banks depending upon the extent and duration of facility availed. Taking note of wide-ranging guarantee commission rates being charged by different banks, we adopt guarantee commission rate approved by Hon'ble Bombay High Court in the case of Everest Kanto Cylinders Ltd., 378 ITR 57(Bom), i.e. 0.55%.We uphold guarantee commission charged by the assessee at 0.55%. Hence, no adjustment is warranted on this issue. The, assessee succeeds on ground No.22 to 24 of the appeal."

048. We have carefully considered the reasons given by the coordinate bench while deleting the adjustment on account of corporate guarantee commission. However, we are not inclined to accept that as the honourable Bombay High Court in case of Everest Kanto cylinders Ltd (378 ITR 57 (Bom)) has upheld the benchmarking of corporate guarantee commission at the rate of 0.5%, for all the years and in all economic circumstances and for all the assessee is across the globe, that rate should be accepted as arm's-length price of corporate guarantee

commission. If we accept that proposition, the requirement of maintaining contemporary erroneous document for each tax assessment year, transfer pricing order by the revenue authorities of international transaction every year would go for a toss. Further the decision of honourable Bombay High Court will become a safe harbour judicial precedent with respect to the arm'slength price of corporate guarantee issued by one corporate entity of MNE to other, irrespective of their creditworthiness, interest saving, cost of capital, the benefit arising out of the corporate guarantee to be shared by the entities etc. That could not render Justice to the assessee as well as to the revenue. Therefore, it is necessary to benchmark the international transaction by adopting the most appropriate method and also by showing comparable/comparability analysis.

049. However, for this assessment year, we find that the learned TPO and the learned DRP has repeated their own orders of earlier years i.e. assessment year 2008 – 09. Therefore, both these orders/directions are not in accordance with the transfer pricing provisions as they do not determine the arm's-length price of the international transaction in accordance with the provisions of section 92C (3) of the act. Therefore, we disapprove both the above orders and directions. 050. Coming to the benchmarking analysis adopted by the assessee, we noted that assessee has made a suo moto adjustment considering 0.55% as arm's-length price of the international transaction, despite the fact that, assessee has not charged any guarantee fees from its associated enterprises. For the purpose of benchmarking, the assessee adopted the comparable uncontrolled price method and

considered the average corporate guarantee charges charged by the bankers to the assessee placed at page number 383 of the paper book, which is 0.56%. On that basis, the assessee has benchmarked these corporate guarantees at the rate of 0.55%. Therefore, there was no dispute with the method i.e. CUP method as well as the comparables selected as average corporate guarantee charges charged by the bankers. As average corporate guarantee charged by the bankers on the assessee is 0 .56%, is compared with the corporate guarantee issued by the assessee to the bankers on behalf of its associated enterprises, in any way cannot exceed 0.56%. Therefore, the adjustment made by the assessee is at maximum. Therefore, even otherwise, when the assessee has offered the income being adjustment of ALP of international transaction more than what it could have been in a worst-case scenario, no further adjustment can be made. Therefore, for this solitary reason we do not find that the method adopted by the assessee is improper and further for comparison, the assessee has selected maximum what could have been charged as corporate guarantee fees. Accordingly, ground number 12 and 13 of the appeal of the assessee are allowed upholding the benchmarking analysis made by the assessee and thereby deleting upward adjustment made by the learned lower authorities."

26. For this year, the assessee has computed ALP at the rate of 1.15% on its own. Therefore, we have no hesitation in upholding that the guarantee commission rate adopted by the assessee is at arm's-length price. Accordingly, ground number 11 – 13 of the appeal is allowed.

27. Ground number 14 – 16 with respect to the performance guarantee given by the assessee on behalf of the associated enterprises. Assessee has not charged any guarantee fees and not disallowed any sum on this account.

The learned that assessing officer after the direction of the learned dispute resolution panel has computed 1% guarantee fee commission as arm's-length price of such performance guarantee. Both the parties agreed that identical issue arose in the case of the assessee for assessment year 2009 – 10 in ground number 14 – 16.

28. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that identical issue arose in the case of assessee for assessment year 2009 – 10 as per ground number 14 – 16 as per para number 57 to 64 of that order (ITA number 1656/M/2014) as under :-

> "057. We have carefully considered rival contentions, used the order of the learned transfer-pricing officer, direction of the learned dispute resolution panel and the order of the coordinate bench in assessee's own case for assessment year 2008 – 09. ITAT (ITA number 197/MUM/2013 (assessment year 2008 – 09)) has held as under :-
>
> > "20. In ground No.19 to 21 of appeal, the assessee has assailed TP adjustment in respect of Performance Guarantee given by the assessee on behalf of AE. The ld. Counsel for the assessee submitted that the assessee had extended Performance Guarantee in respect of its 100% subsidiary in Singapore to the shipyard. The terms and conditions of the Performance Guarantee agreement clearly indicate that there was no financial liability on the assessee company. In the eventuality of Performance Guarantee being invoked, the assessee would acquire the asset. Thus, the assessee would not be at loss in any case. The business of assessee and its AE is the same i.e. operation of ships, therefore, the asset that would be acquired by the assessee in eventuality of operation of Performance Guarantee would be utilized for the purpose of assessee's business. It would not be an unwanted asset. The ld. Counsel submitted that the

DRP has upheld performance guarantee commission @1% p.a. instead of 3% proposed by the TPO.

21. Per contra, the ld. Departmental Representative vehemently defended the impugned order and the directions of the DRP on this issue and prayed for dismissing the grounds raised by the assessee assailing the adjustment.

22. Both sides heard. The assessee had extended performance guarantee to shipyard in respect of its 100% subsidiary based in Singapore. The assessee has taken ALP of the performance guarantee facility as 'Nil'. The DRP has determined ALP of the transaction @1%. The agreement in respect of which performance guarantee has been extended by the assessee on behalf of its foreign subsidiary is with respect to construction of a ship. Guarantee has been extended to a shipyard. If guarantee were invoked, the assessee would be under obligation to pay guarantee, in turn the assessee would acquire the vessel. We find force in the argument of the Counsel for the assessee, there is no element of risk involved. In any case, on enforcement of guarantee clause, the assessee would acquire vessel, the assessee can use the same in its own business.

22.1. We find that the Tribunal in the case of ACIT vs. KEC International Ltd. 108 taxmann.com 172 (Mumbai) deleted adjustment made on account of performance guarantee where there was absolutely no risk involved for the assessee in issuing performance guarantee on behalf of its AE. Thus, in the facts of the case and the decision by the Coordinate Bench, we hold that no adjustment is warranted because of

performance guarantee. The assessee succeeds on ground no. 19 to 20 of the appeal."

058. The coordinate bench has held that wherein it has been held that there is no element of risk involved, in even to of enforcement of guarantee clause the assessee would acquire vessel, that can be used by the assessee in its own business, and therefore the coordinate bench has held that no adjustment is warranted on account of performance guarantee.

059. No doubt, the guarantees were given in earlier years however, as on 31st of March 2009; certain guarantees were outstanding at the end of the financial year. The fact shows that the orders have been placed by the associated enterprises for construction of 2 vessels with a Singapore entity. Guarantees were given by the assessee on behalf of those associated enterprises that in the event of their failure to perform the agreed contract, assessee will step into the shoes of those associated enterprises and fulfil the obligation. The fulfillment of the obligation is to acquire those two vessels from Singapore entity. Thus, the assessee has given the guarantee to the Singapore entity that a of the associated enterprises default in making payment to that party or default in provision of letter of credit, the appellant would make good to such default. The assessee has entered into a separate agreement with its associated enterprises that in each of the performance guarantee when such guarantees are invoked, the assessee shall step into the shoes of the AE and take delivery of the vessels for use in its own business. Therefore, there are two transactions, (1) issue of corporate guarantee in favour of Singapore entity on behalf of its associated enterprises by the assessee to make good the payment of construction of 2 vessels, if those associated enterprises failed to perform their obligation of

payment with respect to that agreement, (2) to mitigate the liability that may arise on the assessee, assessee entered into another agreement with its associated enterprises to take possession of those two vessels, which those associated enterprises failed to take delivery in the event this performance guarantee issued by the assessee to Singapore entity is invoked. Therefore, basically there is a risk involved of making a payment to the Singapore entity in the event of failure of payment by associated Enterprises to Singapore entity, by the assessee. Therefore, there is a financial liability involved. The agreement of the assessee with its associated enterprises to take the possession of 2 vessels is only mitigates or risk management action of the assessee arising out of the corporate guarantee. Thus, the argument of the assessee cannot be accepted that the situation is akin to the assessee placing an order for construction of vessels. It is immaterial that assessee has any number of vessels in its business in the current financial year; the only material aspect is that whether any independent party would have issued such performance guarantee on behalf of associated enterprises of the assessee without charging any commission for issue of such guarantee. The answer is clearly in negative. Therefore, there exists an international transaction; this international transaction should have resulted into remuneration to the assessee. Such remuneration should have been benchmarked and it should have been demonstrated that it is at arm's-length.

060. Performance guarantee is sharing the advantage of MNE against the individual standalone companies, whereby, less competent, less capable, less resourceful associated enterprise can ride on the shoulders of more competent, more capable, more resourceful another associated enterprise to boost their credibility if a related entity provides

them with a performance guarantee, i.e., pledges to fulfill their contractual obligations in case they fail to do so themselves. Of course, independent party can also issue such guarantee for another enterprises but it cannot be either without cost or without remuneration. Therefore, these performance guarantees are in the nature of financial guarantees only. Undoubtedly, in these financial guarantees there is a requirement to determine the expected loss arising out of that if the probability of invocation of the guarantee/default arises. Over and above, there is risk mitigation also in the form of acquisition of vessels. Therefore, the issuance of performance guarantee by the assessee in favour of the associated enterprises to a Singapore entity is a financial guarantee transaction, which is less unfavorable to the assessee compared to the financial guarantee transaction issued to the bankers, requires to be benchmarked as it involves the financial risk on the assessee by adopting one of the methods as the most appropriate method. Merely because, vessels would be used in the business of the assessee, it does not reduce the financial implication as and when guarantee is invoked. Therefore, such a consideration is superfluous.

061. Even the annual accounts of the assessee also depicts these financial guarantees as contingent liabilities in schedule "20": Notes on Accounts

(a) Guarantees given by banks counter guaranteed by the Company. 26712 lakhs

(b) Guarantees by bank given on behalf of a subsidiary company/joint venture. 409 lakhs

(c) Guarantees given to banks/ shipyard on behalf of subsidiaries. 128192 lakhs

062. In view of the above findings, and as the international transaction is required to be benchmarked for each financial/assessment year, we are of the view that the issue of performance guarantee which is a financial guarantee with risk mitigation, should also be benchmarked as it involves financial risk on the assessee.

063. However, we are also conscious of the fact that assessee has made Suo Motto adjustment with respect to the financial guarantee of 0.55% of the outstanding guarantees. These performance guarantees in the nature of financial guarantees needs to be benchmarked, which can be remunerated at less than that rate. As in the case of financial guarantees without any security, the assessee has offered Suo Motto disallowance of 0.55% as guarantee. In addition, here the assessee has adequate security and therefore the benchmarking of this performance guarantee needs to be substantially lower than pure financial guarantees. Thus the rates adopted by the learned TPO and the learned dispute resolution panel are not at all relevant and are exorbitant high without any basis. Therefore, those rates are already rejected by us.

064. Accordingly ground number 14 – 16 of the appeal of the assessee is set-aside to the file of the learned assessing officer with a direction to the assessee to benchmarked the above international transaction and produce relevant details of benchmarking to the learned assessing officer/transfer pricing officer, the learned AO/TPO may examine the same and decide the issue in accordance with the law."

29. While deciding that ground of appeal, the coordinate bench has held that performance financial guarantee is equivalent to the financial guarantee only and is and international transaction and therefore it needs to be benchmarked. Coordinate bench has Set-aside the issue back to the file of the learned assessing officer with a direction to the assessee to benchmark the international transaction of performance guarantee and the learned AO/TPO was directed to examine the arm's-length price. Accordingly, ground numbers 14 – 16 of this appeal are also set-aside to the file of the learned assessing officer with similar direction. Accordingly, these grounds are allowed with above directions.

30. In the result, appeal filed by the assessee for assessment year 2010 – 11 is partly allowed.

ITA NUMBER 374/M/2017

ASSESSMENT YEAR 2012 – 13

31. This appeal is filed by the assessee against the assessment order passed under section 143 (3) read with section 14 4 C (13) of the Income Tax Act, 1961 dated 29/11/2016 wherein the returned income of the assessee of ₹ 266,169,596 as per normal computation and the book profit under section 115JB of ₹ 933,781,634/– as per return of income filed on 23/11/2012 was assessed at ₹ 444,243,600 as per normal computation of the total income and book profit of ₹ 1,062,752,634/–. This assessment order was passed in accordance with the order under section 92CA (3) of the act passed by the learned transfer pricing officer on 30/11/2015 and subject to the direction of the dispute resolution panel – 2, Mumbai dated 15/9/2016.

32. The learned assessing officer has made only to addition to the normal computation of total income, (1) arm's-length price of the international transaction of ₹ 49,103,000/– with respect to the determination of ALPA of performance guarantee issued by the assessee to its associated enterprises in terms of order passed under section 92CA (3) dated 30/11/2015, (2) disallowance under section 14 A of ₹ 128,971,000/–. While computing the book profit, the disallowance made by the learned assessing officer under section 14 A of the income tax act was also made while computing the book profit.

33. Ground number 1 – 8 of the appeal is with respect to the disallowance under section 14 A of the act. The learned authorized representative submitted that identical issue has arose in the case of the assessee for assessment year 2009 – 10. The facts and circumstances are also similar. The learned departmental representative also confirmed the above fact.

34. On careful consideration of the facts and circumstances of the case, we find that identical issue arose in the case of the assessee for assessment year 2009 – 10 wherein we have set-aside the issue back to the file of the learned assessing officer with certain directions to compute the disallowance under section 14 A of the act. The similar directions were also repeated in the appeal of the assessee for assessment year 2010 – 11 disposed of by this order. With identical directions, we also set-aside ground number 1 – 8 of the appeal of the assessee along with the three additional issues raised by the assessee with respect to the above disallowances. The learned assessing officer may recompute the disallowance in pursuance of the above directions. Accordingly, ground number 1 – 8 of the appeal is allowed with above directions.

35. Ground number 9 – 11 is with respect to the arm's-length price of performance guarantee issued by the assessee to the associated enterprises. Both the parties confirmed these ground are identical to the facts and circumstances of the grounds of appeal raised in appeal of the assessee for assessment year 2009 – 10 wherein ground number 14 – 16 are on that issue itself.

36. We have carefully considered the rival contention and perused the order of the learned transfer-pricing officer and the direction of the learned dispute resolution panel. In the present case, the learned transfer pricing officer found that the assessee has given a performance guarantee in favour of Greatship Global Energy Services Pte Ltd amounting to ₹ 491 crores, the assessee has not charged any guarantee commission from its associated enterprises. The learned transfer-pricing officer after considering the explanation of the assessee and considering the reasons has computed the arm's-length price of guarantee fee commission at the rate of 1%. Accordingly, adjustment of ₹ 49,103,000 was proposed. This was upheld by the learned dispute resolution panel. We find that identical issue arose in the case of the assessee for assessment year 2009 – 10,

which has also been discussed in the appellate order for assessment year 2010 – 11 in this appeal. In that particular appeal in case of the assessee we have held that the performance guarantee in this case is a financial guarantee only and it is an international transaction required to be benchmarked. With similar reasons, we restore ground number 9-11 to the file of the learned assessing officer with similar direction. Accordingly, these grounds are allowed.

37. In the result ITA number 374/M/2017 for assessment year 2012 – 13 is allowed with above directions for statistical purposes.

ITA number 1597/M/2018 (by assessee)

&

ITA number 2077/M/2018 (by AO)

Assessment Year 2014 – 15

38. These are the cross appeals filed by the parties against the appellate order passed by the Commissioner of income tax (appeals) – 10, Mumbai (the learned CIT – A) wherein the appeal filed by the assessee against, assessment order passed under section 143 (3) of the income tax act 1961 dated 29/11/2016 by the assistant Commissioner of income tax, Circle (5) (3) (2), Mumbai (the learned assessing officer for assessment year 2014 – 15 wherein the total income of the assessee was determined according to the normal computation of total income at ₹ 784,560,302 and the book profit was computed at ₹ 877,743,075 against the returned income as per return of income dated 28/11/2014 as per normal computation of income at ₹ 129,580,418 and the book profit of ₹ 249,557,343., Was partly allowed. Therefore both the parties are aggrieved and are in appeal.

39. The assessee is aggrieved with the order of the learned CIT – A wherein the disallowance under section 14 A of the income tax act made by the learned assessing officer was upheld except to the exception that the learned assessing officer was directed to consider the interest expenditure liable for disallowance under section 14 A of the act with respect to the interest under the head of non-tonnage income after reducing the items of interest expenditure already disallowed by the appellant in the return of income and the interest expenditure on investment yielding taxable income. The assessee has preferred this appeal raising 1 – 5 grounds of

appeal on that issue. Further the learned CIT – A upheld the adjustment of book profit by the disallowance under section 14 A of the act, it is challenged by the assessee as per ground number six of the appeal.

40. The learned AO is aggrieved by the order of the learned CIT – A wherein, he has deleted the adjustment of ₹ 26,794,152/– being the interest expenditure attributable to the non-tonnage income. This is the solitary ground in the appeal of the AO.

41. With respect to the appeal of the assessee, both the parties confirmed that the disallowance under section 14 A of the act has already been dealt with in assessment year 2010 – 11, 2012 – 13 and in earlier years by the coordinate bench. There is no change in the facts and circumstances of the case. After hearing both the parties, we direct the learned assessing officer to recompute the disallowance under section 14 A of the act after considering our directions in assessment year 2009 – 10. Accordingly ground numbers 1 – 5 of the appeal are restored back to the file of the learned assessing officer. Thus ground numbers 1 – 5 of the appeal are restored back to the file of the learned assessing officer and are allowed with above direction.

42. With respect to ground number six, we find that issue is squarely covered in favour of the assessee by the decision of the honourable special bench, which has been considered by us in appeal of the assessee for assessment year 2009 – 10 wherein we have directed the learned assessing officer to following the decision of the honourable Bombay High Court. Accordingly, ground number 6 of the appeal is allowed.

43. In the result, appeal of the assessee (ITA number 1597/M/2018) is allowed for statistical purposes.

44. With respect to the appeal of the learned assessing officer, both the parties confirmed that identical issue has been dealt with by the coordinate bench in assessee's own case for assessment year 2006 – 07 and 2007 – 08 and further the learned dispute resolution panel has also not confirm the disallowance made by the learned assessing officer. Therefore the learned CIT – A has deleted the disallowance of interest expenditure of ₹ 26,794,152/– holding that the same is pertaining to the tonnage tax computation of the total income and not the normal computation of total income of other income. After hearing both the

parties we find that identical issue has been decided in favour of the assessee by the coordinate bench. Accordingly, we find no infirmity in the order of the learned CIT – A was followed the decision of the coordinate bench in assessee's own case. Accordingly the order of the learned CIT – A is confirmed and solitary ground of appeal in case of the AO is dismissed.

45. In the result, appeal filed by the learned AO is dismissed.

46. Accordingly, for assessment year 2014 – 15 the appeal of the assessee is allowed for statistical purposes and appeal of the learned AO is dismissed.

47. In the result, all the four appeals are disposed of by this common order.

Order pronounced in the open court on 13.09. 2023.

Sd/-	Sd/-
(NARENDER KUMAR CHOUDHARY)	(PRASHANT MAHARISHI)
(JUDICIAL MEMBER)	(ACCOUNTANT MEMBER)

Mumbai, Dated: 13.09. 2023
Sudip Sarkar, Sr.PS/ Dragon
Copy of the Order forwarded to:

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai