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

BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER
&
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA Nos.730 & 731/Mum/2023
(A.Ys. 2016-17 & 2017-18)

National Stock Exchange of India Limited Exchange Plaza, Bandra Kurla Complex, Bandra East, Mumbai – 400051	Vs.	DCIT, Circle 7(1)(1) Room No. 126, 1st Floor, Aaykar Bhavan, M.K. Road, Churchgate -400 020
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AAACN1797L		
Appellant	..	Respondent

Appellant by :	Jehangir Mistri Sr. Adv. Harsh Kapadia
Respondent by :	Srinivasu

Date of Hearing	02.08.2023
Date of Pronouncement	26.10.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

Both these appeals filed by the assessee are directed against the different order of ld. CIT(A) NFAC for assessment year 2016-17 & 2017-18. Since common issue on identical facts and similar issues is involved therefore, for the sake of convenience these appeals are adjudicated together by taking ITA No. 730/Mum/2023 as a lead case and its finding will be applied mutatis mutandis to the other appeal.

ITA No.730/Mum/2023

"1.(a) The learned Commissioner of Income Tax (Appeals), National Faceless" Appeal Centre (the ld. CIT(A), NFAC) erred in upholding the disallowance of Rs.7,61,52,00,000/- made by the ld. Assessing Officer (ld. AO), being statutory contribution to Core Settlement Guarantee Fund (Core SGI), and the reasons assigned for doing so are wrong and

contrary to facts and circumstances of the case, the provisions of the Income Tax Act. 1961 and the default Rules made thereunder.

(b) The Id CIT(A), NFAC erred in not adhering to the judicial discipline as the issue of allowability of claim for deduction of Contribution to Core SGF was considered as allowable being crystalized liability by the judgement of jurisdictional Mumbai ITAT in the case of BSE Ltd.

The Id lower authorities erred in holding

(i) that Core SGF is in the nature of contingent reserve to meet contingent liability of appellant company:
(ii) Contribution is de-facto the part of the net-worth of the contributingClearing Corporation;
(iii) the ownership of the funds remains with appellant company forcontribution to the fund;
(iv) contribution to core SGF is only an appropriation out of appellant company own funds as there is no diversion of income by overriding title;
(v) contribution to Core SGF is similar to Cash Reserve Ratio maintained by the banks with the Reserve Bank of India;

which is wrong and contrary to the facts and circumstances of the case, the provisions of the Income Tax Act, 1961 and the Rules made thereunder.

2(a) The Id. CIT(A), NFAC erred in upholding the disallowance of Rs.1,29,52,158/-, being proportionate amortised amount of lease premium paid to Mumbai Metropolitan Regional Development Authority in respect of leasehold land and the reasons assigned for doing so are wrong and contrary to the facts and circumstances of the case, provisions of Income Tax Act, 1961, and Rules made there under.

(b) The ld. lower authorities erred in not appreciating that the lease premium paid was nothing but lease rent paid in advance as it is paid only for user of land during lease period and no capital asset would remain with the appellant company at the end of the lease period and the reasons assigned for rejecting the claim are wrong and contrary to the facts and circumstances of the case, provisions of Income Tax Act, 1961, and Rules made thereunder.

(c) The Id. lower authorities erred in not appreciating that the annual ground rent payable by the appellant is nominal/concessional as compared to market rate of rent which was much higher as per evidence submitted by the appellant company and the reasons assigned for rejecting the claim are wrong and contrary to the facts and circumstances of the case, provisions of Income Tax Act, 1961, and Rules made thereunder.

(d) The Id. lower authorities erred in not appreciating that the amortisation of such premium is allowable under generally accepted principles of accounting and the reasons assigned for rejecting the same are wrong and contrary to the facts and circumstances of the case, provisions of Income tax Act, 1961, and Rules made thereunder.

3.(a) The Id. lower authorities erred in in treating an amount of Rs.1,05,72,994/- being maintenance and other charges recovered from

the licensees to the extent of specific expenses incurred as "Income from House Property" and thereby erred in computing the Income from house property of Rs. 14,05,52,238/- as against Rs. 13,31,51,142 computed by the appellant in its revised 26 computation of income and the reasons assigned for doing so are wrong and contrary to the facts of the case and provisions of the Income Tax Act, 1961 and rules made thereunder

(b) The Id. lower authorities failed to appreciate that Rs. 1,05,72,994/- being maintenance and other charges recovered from the licensees towards facilities and other services provided by the appellant as separate charges over and above the rental charges as per the terms of the agreement, cannot be taken as annual value of property i.e., rental income from House Property though inadvertently considered as rental income under the head 'Income from House property' in the return of income filed by the appellant.

(c) Without prejudice, the ld. CIT(A), NFAC ought to have allowed maintenance and other charges of Rs.77,80,386/- being expenses specifically incurred as deduction from annual letting value chargeable to income under the head 'Income from House Property having treated Rs.1,05,72,994/-recovered from licensees as rental income and the reasons assigned for not doing so is wrong and contrary to the facts of the case, the provisions of the Income Tax Act. 1961 and the Rules made thereunder.

(d) Without prejudice, the ld. CIT(A), NFAC erred in not considering the amount of Rs.77,80, 386/- being the expenses incurred as deduction from the charges of Rs.1,05,72,994/- recovered from licensees specifically to meet expenses and the reasons assigned for not doing so is wrong and contrary to the facts of the case, the provisions of the Income Tax Act, 1961 and the Rules made thereunder.

The appellant craves leave to add, amend, alter, modify and/or delete any of the above grounds of appeal on or before the date of hearing."

2. Fact in brief is that return of income declaring total income of Rs.416,34,29,186/- was filed on 01.09.2016. The case of the assessee was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 28.08.2017. The assessee is a leading stock exchange of the country. The assessee NSE has been incorporated to facilitate/promote, assist, regulate and manage in the public interest, dealings in securities of all kinds and to provide specialised advanced, automated and modern facilities for trading, clearing and settlement of securities.

3. During the course assessment the assessing officer noticed that assessee has debited an amount of Rs.761.52 crores in its profit and loss account towards contribution to NSCCL Core Settlement Guarantee Fund (core SGF) and same was claimed as deduction from its profit. During the course of assessment, AO asked the assesse to justify the allowability of the said expenses under the Income Tax Act, 1961. The assessee has given detailed submission vide letter dated 24.12.2018 and 28.12.2018as under:-

> ***Core Settlement Guarantee Fund (Core SGF)***
>
> *Vide circular dated 27/08/2014, Securities and Exchange Board of India (SEBI) issued instructions and norms for the setting up of Core SGF by the Clearing Corporations.*
>
> *Core SGF is kind of a contingency reserve which is created with the Clearing Corporation as required by the SEBI with an objective to guard against any contingent lability arising from the default of any clearing member The quantum of the fund is to be determined by various stress tests done by the Clearing Corporation. The contributions to this fund have to be made by the Clearing Corporation (50%) Stock Exchange (25%) and the Clearing members.*
>
> *The corpus of the Core SGF is decided as per the directions of the SEBI The SEBI, in this regard, has directed the Clearing Corporations to run Risk Tests and on the basis of such risk lest determined the quantum of corpus that should be maintained at any point of time. Therefore, the Clearing corporation runs a Risk Test every month determining the quantum of corpus Any increase in the corpus, has to be contributed by the Stock Exchange, the Clearing Corporation and the Clearing members in the prescribed ratio in accordance with the SEBI directions.*
>
> ***The objective of the Core SGF as described in the aforesaid circular is as follows -***
>
> *"5. Clearing Corporation (CC) shall have a fund called Core SGF for each segment of each Recognised Stock Exchange (SE) to guarantee the settlement of trades executed in respective segment of the SE In the event of a clearing member (member) failing to honour settlement commitments, the Core SGF shall be used to fulfill the obligations of that member and complete the settlement without affecting the normal settlement process."*
>
> ***With respect to the Corpus of Core SGF, the aforesaid circular states as follows-***
>
> *"6. The corpus of the fund should be adequate to meet out all the contingencies arising on account of failure of any members) The risk or liability to the fond depends on various factors such as trade volume, delivery percentage, maximum settlement liability of the members the history of defaults, capital adequacy of the members, the degree of safety measures employed by the CC/SE etc. A fixed formula, therefore cannot be prescribed in*

estimate the risk or liability of the fund. However, in order to assess the fair quantum of the corpus of Core SGF CC should consider the following factors

- *Risk management system in force*
- *Current and projected volume turnover to be cleared and settled by the CC on guaranteed basis.*
- *Track record of defaults of members (number of defaults amount in default)"*

With respect to how to decide the corpus of the Core SGF-

"6. The corpus of the fund should be adequate to meet out all the contingencies arising on account of failure of any member(s). The risk or liability to the fund depends on various factors such as trade volume, delivery percentage, maximum settlement liability of the members, the history of defaults, capital adequacy of the members, the degree of safety measures employed by the CC/SE etc. A fixed formula, therefore, cannot be prescribed to estimate the risk or liability of the fund. However, in order to assess the fair quantum of the corpus of Core SGF, CC should consider the following factors:

- *Risk management system in force*
- *Current and projected volume/turnover to be cleared and settled by theCC on guaranteed basis*
- *Track record of defaults of members (number of defaults, amount indefault)"*

and

"7. However, Minimum Required Corpus of Core SGF (MRC) for each segment of each stock exchange shall be subject to the following.

i) The MRC shall be fixed for a month.

ii) By 15th of every month, CC shall review and determine the MRC for next month based on the results of daily stress tests of the preceding month. (For example, by 15th February, CC shalldetermine MRC for March based on results of various stress tests conducted in January). CC shall also review and determine by 15th of every month, the adequacy of contributions made by various contributors and any further contributions to the Core SGF required to be made by various contributors (as per clause 8) for the next month.

iii) For every day of the preceding month (i.e. January as per example in (ii) above), uncovered loss numbers shall be estimated by the various stress tests for credit risk conducted by the CC for the segment (as per clause 18) and highest of such numbers shall be taken as worst case loss number for the day.

iv) Average of all the daily worst case loss numbers determined in (a) above shall be calculated.

v) The MRC for next month (i.e, March as per example in (ii) above) shall be higher of the average arrived in at step iv above and the segment MRC as per previous review (i.e. review done on 15th January for the month of February)"

With respect to share in Contribution to Core SGF, the circular lays down as follows-

8. At any point of time, the contributions of various contributors to Core SG of any segment shall be as follows

a) Clearing Corporation contribution CC contribution to Core SGF shall be at least 30% of the MRC CC shall

make this contribution from its own funds CC contribution to core SGF's shall be considered as part of its net worth.

b) Stock Exchange contribution Stock Exchange contribution to Core SGF shall be at least 25% of the MRC can be adjusted against transfer of profit by Stock Exchange as per Regulation 33 of SECC Regulations, which may be reviewed in view of these guidelines).

c) Clearing Member primary contribution. If the CC wishes it can seek risk based contribution from Clearing Members (CMs) of the segment (including custodial clearing members) to the Core 5GF subject to the following conditions:

- *That total contribution from CMs shall not be more than 25% of the MRC*
- *that no exposure shall be available on Core SGF contribution of any CM (exposure-free collateral of CMavailable with CC can be considered towards Core SGF contribution of CM), and*
- *that required contributions of individual CMs shall be pro-rata based on the risk they bring to the system.*

CC shall have the flexibility is collect CM primary contribution either upfront or staggered over a period of time In case of staggered contribution the remaining balance shall be met by CC to ensure adequacy of total Core SGF corpus at all times Such CC contribution shall be available to CC for withdrawal as and when
further contributions from CMs are received"

With respect to access to Core SGF, the aforesaid circular directs-

13. CC may utilise the Core SGF in the event of a failure of member(s) so honour settlement commitment –

In case of default by a clearing member, the aforesaid circular lays down order of utilization of funds as "Default Waterfall, which is as follows-

"16. The default waterfall of CC for any segment shall generally follow the following order -

I. monies of defaulting member including defaulting member's primary contribution to Core SGF(s) and excess monies of defaulter in other segments)

II. Insurance, if any

III. CC resources (equal to 5% of the segment MRC)

IV. Core SGF of the segment in the following order:

1. Penalties

2. CC contribution to the extent of at least 25% of the segment MRC
3. Remaining Core SGF CC contribution Stock Exchange contribution and non-defaultingprimary contribution to Care SGF on pro-rata basis.

*V. Proportion of remaining CC resources (excluding CC contribution to core SGFs of other segments and INR 100 Crore) equal to ratio of segment MRC in sum of MRC's of all segments**

VI. CC/SE contribution to Core SGFs of other segments (after meeting obligations of those segments) and remaining CC resourses to that extent as approved by SEBI.

*VII. Capped additional contribution by non-defaulting members of the segment.***

*VIII. Any remaining lots to be covered by way of pro-rata haircut to payouts.****"

The AO has summed up the submission of the assesse as under:

"1. The contribution to MRC of Core SGF is statutory obligation casted upon NSE as per SEBI mandate promulgated as per regulations.

2. The amount, contribution, investment, utilization, use of Core SGF is cabined and cribbed at times by the SEBI that regulates the Cere SGF and assessee company have no domain or control over theall material funds sequestered in the Core SGF.

3. The amount once contributed or set aside is beyond the control and domain of the assessee company.

4. The amount of Core SGF can only become greater as the time goes by and never reduce.
5. This amount is not dependent on the existence of profits in the books of assessee company.
6. This is statutory diversion at source as the sum sequestered are not available for the use of NSE and NSE in no manner remained the beneficiary of the said funds.
7. The case of NSE is of diversion of Income by Overriding Title as it looses the control and domain over the funds."

4. The core SGF has been created to meet any liability that may arise in eventuality of default by any clearing member. The rational of such a reference is to ensure that the business of the assessee goes on smoothly even in the case of a default to ensure that there are sufficient resources readily available in the case of default to ensure that the stock exchange and clearing corporation keep functioning without any disturbance in their business even in case of default. The nature of business of the stock exchange is prone to risk of default by

clearing members. The basic requirement of business of stock exchange is to ensure the clearing and settlement of trade done on its platform. Therefore, in case any default take place it would become the liability of the Stock Exchange and the Clear Corporation to bear the risk.

5. However, the assessing officer was of the view that once assesse has made contribution to a fund and parted away from the said amount, it does not necessarily mean that the said contribution become an expense. The core SGF is in the nature of reserve that has been created with the NSE clearing corporation. The creation of this reserve while it benefitsthe investor, it primarily covers the risk of the stock exchange and guarantee settlement even in case of default by clearing member. The AO was of the view that the risk of the exchange and that of the investor are not delinked andthe fund acts as a trustee on behalf of the stock exchange and that clearing corporation. The funds guarantee the settlement of trade and there is a clear demarcation in the corpus of the fund, as to how much portion is contributed by whom. The assessing officer stated that during the course of scrutiny assessment information was sought with respect to the actual defaults of the clearing members during the year under consideration, but, there was no default during the year by clearing members, therefore, contributions made by the assesse to the core SGF was disallowed as expenditure and added to the total income of the assessee.

6. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee. The relevant operating part of the decision of ld. CIT(A) is reproduced as under:

> *"6.1.3 The contribution is not specifically an admissible deduction either under section 36 or under section 37.*

The provisions of section 36 are specific to the deductibility ofcontribution for specified purposes. The extract to the extent relevant is as under:

Section 36 'Other Deductions'

(IV) any sum paid by the assessee as an employer by way of contribution towards a recognised provident fund or an approved superannuation fund

(iva) any sum paid by the assessee as an employer by way of contribution towards a pension scheme, as referred to in section 80CCD, on account of an employee……

(v) any sum paid by the assessee as an employer by way of contributiontowards an approved gratuity fund created by him for the exclusive benefit of hisemployees under an irrevocable trust.

(va) any sum received by the assessee from any of his employees to which the provisions of sub-clause (x) of clause (24) of section 2 apply. if such sum is credited by the to the employee's account in the relevant fund or funds on or before the due date.

(viii) in respect of any special reserve created and maintained by a specifiedentity, an amount not exceeding twenty per cent of the profits derived from eligible business computed under the head "Profits and gains of business or profession" (before making any deduction under this clause) carried to such reserve account.

(xiv) any sum paid by a public financial institution by way of contribution to such credit guarantee fund trust for small industries as the Central Government may by notification in the Official Gazette, specify in this behalf.

Perusal of the above shows that the contribution to Core SGF is not a contribution specified under the income tax act to seek an automatic allowance as an item of expenditure.

6.1.4 Whether the contribution is an expenditure wholly and exclusively laid out for the purpose of business and therefore admissible under section 37?

Expenditure as it is understood in the common parlance an amount expended or agreed to be paid voluntarily for the purpose of receiving a benefit therefrom. It cannot be something by way of a direction from somebody. Where it is by way of mandate from any authority, its allowability depends on the express sanction in the law. Donations are voluntary contributions and they are only appropriation of income/profit, even though it may still be taxable in the hands of the recipient. The direction of SEBI initially to appellant was to transfer 25% of its profits. Later on the direction said that it is in relation to the extent of shortfall in the Minimum Required Corpus of Core SGF which would be fluctuating on the basis of stress tests. Still the percentage

prescribed as minimum for Stock exchange and Clearing Corporation and maximum for clearing members did not undergo any change. Instead of a fixed adhoc percentage of profits to be transferred as prescribed in the earlier years, due to the magnitude of the Fund reaching appreciable levels, the prescription changed to MRC (minimum required corpus which is a fluctuating phenomenon on the basis of stress tests) the contribution was required to be made in the same proportion of 25:50 25. These events do not alter the characteristic of the contribution that it was a buffer to be created to preserve an ecosystem from disruption as capital and money markets are important structures in any economy and they should remain robust and free from collapse.

Section 10(23EE) is a specific section which exempts the income by way of contribution from Stock exchange and makes it taxable when it is shared by the Core Settlement Guarantee Fund.

Merely because the contribution constitutes income which is exempt, the corollary that such contribution constitutes admissible expenditure is incorrect for the reason that the same is not sanctioned by section 28 to 43B of the Act.

The Hon'ble ITAT while deciding the appeal against the order of the CIT(A) in the case of Bombay Stock Exchange, was not shared with the full information relevant to the facts of the case by either party while deciding the appeal in favour of the assesse- appellant. Therefore, much reliance cannot be placed on the same.

The claims that the appellant lost control and domain over the money and therefore there is diversion at source, are not correct for the following reasons:

1. In the initial years, 25% of the profit after tax was transferred to provisions for contribution to Core SGF out of the book profits forthe year ended 31.3.2013 and 31.3.2014.

2. In the financial year ended 31.3.2016 the provisions made as above

were reversed and credited to the profit and loss account balance and the same was tapped for making contribution with corresponding debit to the profit and loss account as an item above the line.

3. The financials clearly reflect this as an exceptional item with specific name viz, 'Contribution to Core SGF. Even the financial results are measured as before and after contribution. The EPS (earning per share) is also calculated on earnings before and after contribution. So, there is every reason to hold this item as 'not an item of expenditure incurred for earning the revenue, for the distinct way it is treated from the rest of the expenditure claims.

4. Besides, expenditure in the normal sense is not measured as a percentage of profits, unless there is an agreement to that effect.(like commission at a certain percentage on profits).

5. Over and above the amount expensed in the profit and loss account, appropriations were made from the profit and loss account credit balance to make contribution.

6. Therefore, there is no question of diversion of income by overriding title as claimed by the appellant.

7. SECC regulations directed 25% of the profits to be transferred to Core Settlement Guarantee Fund as per Regulation 33 which stood amended with a direction to contribute to the Minimum Required Corpus of Core SGF which would be set periodically, and the contribution was a minimum 25% in the case of the appellant

8. The contributions were credited by the recipient viz., the Clearing Corporation to a distinct 'CORE SGF and the funds were utilised for making investments distinctly as Investments from CORE SGF'. The details of contribution, segment wise made by each of the contributory including the appellant was disclosed as part of the Notes on Accounts in all the financial years as part of the Annual Report of the Clearing Corporation and therefore the identity of the contributor and their relative rights are recognised and kept intact. This certainly goes against the claim of the appellant that the money spent is irretrievably lost.

9. Another factor which is recognised, and which goes against the claim of the appellant is that the income arising from investments out of the fund was adjusted towards the contribution payable by the contributories proportionate to the credit of each of the contributory in the Corpus as per details disclosed.

10. The contributions are adjusted only to the extent of default of clearing members that too, only after adjusting the deposits, cash equivalents and other collaterals standing to the credit of the defaulting clearing member. Therefore, to this extent the liability of the appellant is contingent on the date of making the contribution and becomes crystallised at a later date and the quantum of liability also is ascertained only to the extent of the Clearing Corporation's shortfall in making good the default by any of the clearing members.

11. Another disturbing fact is that the balance standing to the credit of the contributory is transferrable in an inter operable scenario where the stock exchange resorts to the clearing facility of another clearing corporation.

12.The Clearing Corporation (which is the wholly owned subsidiary of the appellant with a minimum commitment of 50% as compared to 25% from the assesse) has treated the contribution only as appropriation and not as charge to the profit and loss account.

13. The SECC regulations cannot be differently interpreted by each of the contributories - in other words, the clearing corporation treating the

contribution as appropriation out of profits and the assesse- appellant treating the same as charge to the profit and loss account.

14. The SECC regulations permitting the Clearing corporations to treat the Contribution to Core SGF to be reckoned for consideration whilecomputing its net worth cannot alter the tax treatment in the hands of the contributory viz., the appellant and the clearing corporation (WOS),

15. The appellant resorted to the unique way of charging the contribution to the profit and loss account knowing fully well that the money set apart would be lying with its own subsidiary and thereforethe control and claim is not difficult.

16. In fact, the right way of accounting would be that the Appellant should have reduced the profits to the extent of contribution made and credited to the Core SGF contribution and shown the same as deposit with NSE clearing corporation

17. There are so many deposits that are lying with statutory authorities which are not treated as charge to the profit and loss account, even though the certainty of such deposits coming back into the hands is not known.

18. SECC regulations did not prescribe that the contributions are expenditures to be expensed with in the books of the assessee.

19 SECC, being only a market regulator, its regulations cannot partake the character of a provision of law so as to guide the Assessing Officer to decide the allowability of a claim.

20. Another fact is that Core SGF, even though integral in the books of NSE Clearing Ltd, still the Fund is treated as a separate Entity enjoying tax exemption with requirement to file return of income by virtue of a specific provision in the Act. [Section 10 (23EE)] The argument that the said contribution is income in the hands of the FUND and therefore the said contribution would constitute expenditure in the hands of the appellant would be countered by the argument that every item of income in the hands of a person would not necessarily constitute an item of expenditure in the hands of the counter party, the apt example being voluntary contributions made to Trust. The contributions are only application of income in the hands of the contributor. Here even though there is a sanction from a statutory authority, it does not mean that it is expenditure, for the reason that the said statutory contribution lacks the necessary corresponding provision under Income tax Act to consider the same as expenditure.

21. The Fund and the investments and income therefrom belong to the respective contributories with their specific shares and therefore the contention that the identity of the share of contribution still remains intact, which goes against the contention of the appellant

22. The contributions do not enjoy the same sanction given to other statutory contributions by assessees which are specifically held tobe admissible deductions under specific provisions 2) If the legislature intended to give a different interpretation and tax treatment to the contribution [as has been done to the Core SGF by inserting section 10(23EE)], it would have done so. In the absence of the same it is not an admissible expenditure under section 37 for it is application of income as per the directives of SEBI for a specific purpose, similar to CSR and CRR as mentioned by the AO.

For the impugned assessment year, in view of the fact that the contribution made by the appellant and claimed as expenditure is only by reversing the provisions of the earlier years 31.3.2013 and 31.3.2014 and therefore it clearly constitutes an appropriation out of the accumulated profits, which is an undisputed fact as seen from the notes on accounts. For these reasons the addition of Rs.761.52 crores made by the AO stands upheld and does not call any interference. This ground is dismissed."

7. During the course of appellate proceedings before us the ld. Counsel contended that assessee company has made contribution to Core Settlement Guarantee Funds which has been set up under the guidelines issued by the SEBI. The ld. Counsel submitted that Core SGF was set up to meet settlement obligations of clearing corporation in case of clearing members failing to honour settlement obligations. The ld. Counsel further submitted that contributors to the Core SGF are the Stock Exchange, clearing corporation and the clearing members. Further submitted that contribution made by the assessee will never come back except in a case when the business is close down. He referred page no. 293 of the paper book pertaining to Securities Contracts (Regulation) (stock exchange & clear corporation) regulation 2012. He referred to regulation no. 9 to grant of recognition as per which the recognition to act as stock exchange is guaranteed after making compliance with the conditions laid down in these regulations. He referred part 33 of the regulation pertaining to contribution to the Settlement Guarantee Fund which provide that contribution to the funds as specified in regulation 39 shall be made by the recognised stock exchange, recognised clearing corporations

and the clearing members in the manner as may be specified by the board from time to time. He also referred regulation 39 regarding establishment of fund to guarantee the settlement of trades executed in recognised stock exchange. He also referred page no. 150 of the paper book pertaining to circular issued by the SEBI dated 27.08.2014 regarding Core Settlement Guarantee Fund which provide the objective of the fund and the percentage of contribution to the Core SGF to be made by the each parties and others conditions regarding operating and maintaining of the fund. The ld. Counsel also explained the nature of fund and its relevancy in the settlement of trading in securities transactions. The ld. Counsel also referred that on identical issue and similar facts the ITAT Mumbai in the case of BSE Ltd has adjudicated the issue in favour of the assessee vide ITA No. 1790/Mum/2019 in the case of BSE Ltd. vs. The Pr.CIT-2 dated 04.10.2019. He also referred the decision of Hon'ble Bombay High Court in the case of CIT Vs. Bombay State Road Transport Corporation (1977) 106 ITR 303 (Bom) regarding allowability of deduction u/s 37(1) in respect of statutory Contribution. The ld. Counsel has also placed reliance on the decision of Hon'ble Supreme Court in the case of Metal Box Company of India Ltd. Vs. Their Workmen dated August 20, 1968 on the propositions that even if the liability is a contingent provided the liability is ascertainable the same is to be considered to ascertain the income. On the similar proposition he also placed reliance on the decision of Hon'ble Supreme Court in the case of Rotork Controls India P. Ltd. Vs. CIT (2009) 314 ITR 62 (SC).

8. On the other hand, the ld. D.R submitted that the assessee has not incurred any revenue expenditure and the nature of the expenditure incurred by the assesse was of capital in nature which are

not allowable as a deduction. He supported the order of lower authorities.

9. Heard both the sides and perused the material on record. During the course of assessment the assessing officer has disallowed the claim of deduction of Rs.761.52 crores being statutory contribution made to Core Settlement Guarantee Fund (Core SGF) on the reasoning that no default was made during the year by the clearing members. The assessee company is a stock exchange recognised by Central Government u/s 4 r.w.s 8A of Securities Contract (Regulations) Act 1956. The securities and Exchange Board of India under the SEBI Act, 1992 protect the interest of investors in securities and to promote the development, regulate the securities market which is statutory regulatory authority which regulates the functions and activities of recognised stock exchanges in India and also clearing corporations.

11. SEBI as a regulator or Stock exchanges and clearing corporations in exercising of its power granted u/s 11 of SEBI Act keeps on issuing various directives/guidelines/circulars to the stock exchange and clearing houses to protect the interest of investors in securities and to promote the development and to regulate the security markets and the said directives are binding on the stock exchange and clear corporations. Vide circular dated 27.08.2014 in terms of Regulation 39 of Security Contracts (Regulations) 2001 notified on 20.06.2012 the SEBI has issued guidelines for setting up of Core Settlement Guarantee Fund specifying the default waterfall and stress test, norms for MRC on Core SGF contributions and utilisation. The purpose of creation of the said fund was to achieve the following objectives:

> *"a). create a core fund (called core settlement guarantee fund). within the SGF against which no exposure is given and which is readily and unconditionally available to meet settlement obligations of clearing corporation in case of clearing member(s) failing to honour settlement obligation.*

b) align stress testing practices of clearing corporations with FMI principles (norms for stress testing for credit risk, stress testing for liquidity risk and reverse stress testing including frequency and scenarios).

c) capture in stress testing, the risk due to possible default in institutional trades,

d). harmonise default waterfalls across clearing corporations,

e) limit the liability of non-defaulting members in view of the Basel capital adequacy requirements for exposure towards Central Counterparties (CCPs).

f) ring-fence each segment of clearing corporation from defaults in other segments, and

g) bring in uniformity in the stress testing and the risk management practices of different clearing corporations especially with regard to the default of members."

12. As per the SEBI guidelines the Corpus of the fund should be adequate to meet out all the contingency arising on account of failure of any member and in estimating the risk or liability of the fund and assessing a fair quantum of the corpus of the core SGF. The clear corporation of the stock exchange would consider the risk management system in force current and projected volume/turnover to be cleared and settled by clearing corporation on guaranteed basis and track record of defaultsof members with regard to number and amount.

13. We have perused the circular number CIR/MRD/DRMNP/25/2014dated 27.08.2014 issued by the SEBI relevant to the establishment and management of the Core Settlement Guarantee Fund and relevant extracts are reproduced as under:

भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

1

CIRCULAR

CIR/MRD/DRMNP/25/2014

August 27, 2014

To
All recognized Clearing Corporations/Stock Exchanges

Dear Sir / Madam,

Sub: Core Settlement Guarantee Fund, Default Waterfall and Stress Test

1) Vide circular no. SMD/POLICY/SGF/CIR-13/97 dated June 09, 1997 SEBI prescribed the "Guidelines for Settlement Guarantee Fund (SGF) at Stock Exchanges", which, inter-alia, covered criteria for corpus of the fund, contribution to the fund, management of the fund, access to / usage of the fund and recoupment of the fund corpus.

2) After an extensive study on the structure of Indian securities market, which has undergone significant structural changes in the past decade, SEBI notified the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012, (SECC) on June 20, 2012 to regulate recognition, ownership and governance in stock exchanges and clearing corporations. The SECC Regulations, inter-alia, state the following:

39 Fund to guarantee settlement of trades

(1) Every recognised clearing corporation shall establish and maintain a Fund by whatever name called, for each segment, to guarantee the settlement of trades executed in respective segment of a recognised stock exchange.
(2). . .
(3). . .
(4). . .
(5) In the event of a clearing member failing to honour his settlement obligations, the Fund shall be utilized to complete the settlement.
(6) The corpus of the Fund shall be adequate to meet the settlement obligations arising on account of failure of clearing member(s).
(7) The sufficiency of the corpus of the Fund shall be tested by way of periodic stress tests, in the manner specified by the Board.

3) In order to promote and sustain an efficient and robust global financial infrastructure, the Committee on Payments and Settlement Systems (CPSS) and the International Organization of Securities Commissions (IOSCO) updated the standards applicable for systemically important financial market infrastructures (central counterparties, payment systems, trade repositories and securities settlement systems) with the Principles for Financial Market Infrastructures (PFMIs).

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SEBI as a member of IOSCO is committed to the adoption and implementation of the new CPSS-IOSCO standards of PFMIs. As required under PFMIs, to provide greater legal basis for settlement finality, netting and rights of FMIs over collateral, Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Amendment) Regulations, 2013 were notified on September 02, 2013. Vide circular dated September 04, 2013, SEBI required FMIs under its regulatory purview to comply with the PFMIs applicable to them. The FMI principles, inter-alia, include standards regarding participant default rules and procedures, minimum financial resources to cover credit and liquidity exposure of central counterparties and testing (stress testing, reverse stress testing, back testing).

4) Based on deliberations in the Risk Management Review Committee of SEBI and further discussions with clearing corporations, stock exchanges and market participants, it has been decided to issue granular norms related to core settlement guarantee fund, stress testing and default procedures which would bring greater clarity and uniformity as well as align the same with international best practices while enhancing the robustness of the present risk management system in the clearing corporations. These norms are aimed at achieving mainly the following objectives:

a) create a core fund (called core settlement guarantee fund), within the SGF, against which no exposure is given and which is readily and unconditionally available to meet settlement obligations of clearing corporation in case of clearing member(s) failing to honour settlement obligation,
b) align stress testing practices of clearing corporations with FMI principles (norms for stress testing for credit risk, stress testing for liquidity risk and reverse stress testing including frequency and scenarios),
c) capture in stress testing, the risk due to possible default in institutional trades,
d) harmonise default waterfalls across clearing corporations
e) limit the liability of non-defaulting members in view of the Basel capital adequacy requirements for exposure towards Central Counterparties (CCPs),
f) ring-fence each segment of clearing corporation from defaults in other segments, and
g) bring in uniformity in the stress testing and the risk management practices of different clearing corporations especially with regard to the default of members.

Core Settlement Guarantee Fund (Core SGF)

)bjective of Core SGF

) Clearing Corporation (CC) shall have a fund called Core SGF for each segment of each Recognised Stock Exchange (SE) to guarantee the settlement of trades executed in respective segment of the SE. In the event of a clearing member (member) failing to honour settlement commitments, the Core SGF shall be used to fulfill the obligations of that member and complete the settlement without affecting the normal settlement process.

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Corpus of Core SGF

6) The corpus of the fund should be adequate to meet out all the contingencies arising on account of failure of any member(s). The risk or liability to the fund depends on various factors such as trade volume, delivery percentage, maximum settlement liability of the members, the history of defaults, capital adequacy of the members, the degree of safety measures employed by the CC/SE etc. A fixed formula, therefore, cannot be prescribed to estimate the risk or liability of the fund. However, in order to assess the fair quantum of the corpus of Core SGF, CC should consider the following factors:

- Risk management system in force
- Current and projected volume/turnover to be cleared and settled by the CC on guaranteed basis
- Track record of defaults of members (number of defaults, amount in default)

7) However, *Minimum Required Corpus of Core SGF* (MRC) for each segment of each stock exchange shall be subject to the following:

i) The MRC shall be fixed for a month.
ii) By 15th of every month, CC shall review and determine the MRC for next month based on the results of daily stress tests of the preceding month. (For example, by 15th February, CC shall determine MRC for March based on results of various stress tests conducted in January). CC shall also review and determine by 15th of every month, the adequacy of contributions made by various contributors and any further contributions to the Core SGF required to be made by various contributors (as per clause 8) for the next month.
iii) For every day of the preceding month (i.e., January as per example in (ii) above), uncovered loss numbers shall be estimated by the various stress tests for credit risk conducted by the CC for the segment (as per clause 18) and highest of such numbers shall be taken as worst case loss number for the day.
iv) Average of all the daily worst case loss numbers determined in (iii) above shall be calculated.
v) The MRC for next month (i.e., March as per example in (ii) above) shall be *higher of* the average arrived in at step iv above and the segment MRC as per previous review (i.e., review done on 15th January for the month of February).

Contribution to Core SGF

8) At any point of time, the contributions of various contributors to Core SGF of any segment shall be as follows:

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a. Clearing Corporation contribution: CC contribution to Core SGF shall be at least 50% of the MRC. CC shall make this contribution from its own funds. CC contribution to core SGFs shall be considered as part of its net worth.
b. Stock Exchange contribution: Stock Exchange contribution to Core SGF shall be at least 25% of the MRC (can be adjusted against transfer of profit by Stock Exchange as per Regulation 33 of SECC Regulations, which may be reviewed in view of these guidelines).
c. Clearing Member primary contribution: If the CC wishes, it can seek risk based contribution from Clearing Members (CMs) of the segment (including custodial clearing members) to the Core SGF subject to the following conditions:
    - that total contribution from CMs shall not be more than 25% of the MRC,
    - that no exposure shall be available on Core SGF contribution of any CM (exposure-free collateral of CM available with CC can be considered towards Core SGF contribution of CM), and
    - that required contributions of individual CMs shall be pro-rata based on the risk they bring to the system.

    CC shall have the flexibility to collect CM primary contribution either upfront or staggered over a period of time. In case of staggered contribution, the remaining balance shall be met by CC to ensure adequacy of total Core SGF corpus at all times. Such CC contribution shall be available to CC for withdrawal as and when further contributions from CMs are received.

The above prescribed limits of contribution by CC, SE and CMs may be reviewed by SEBI from time to time considering the prevailing market conditions.

9) Any penalties levied by CC (as per Regulation 34 of SECC Regulations) shall be credited to Core SGF corpus.

10) Interest on cash contribution to Core SGF shall also accrue to the Core SGF and pro-rata attributed to the contributors in proportion to their cash contribution.

11) CC shall ordinarily accept cash collateral for Core SGF contribution. However, CC may accept CM contribution in the form of bank FDs too. CC shall adhere to specific guidance which may be issued by SEBI from time to time in this regard.

Management of Core SGF

12) The Defaulter's Committee/SGF utilization Committee of the Clearing Corporation shall mange the Core SGF.

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The CCs shall follow prudential norms of Investment policy for Core SGF corpus and establish and implement policies and procedures to ensure that Core SGF corpus is invested in highly liquid financial instruments with minimal market and credit risk and is capable of being liquidated rapidly with minimal adverse price effect.

The instruments in which investments may broadly be made are Fixed Deposit with Banks (only those banks which have a net worth of more than INR 500 Crores and are rated A1 (or A1+) or equivalent, , Treasury Bills, Government Securities and money market/liquid mutual funds subject to suitable transaction/investment limits and monitoring of the same. The CCs shall further ensure that the financial instruments in which the Core SGF corpus is invested remain sufficiently diversified at all times.

SEBI may prescribe the investment norms in this regard from time to time.

Access to Core SGF

13) CC may utilise the Core SGF in the event of a failure of member(s) to honour settlement commitment.

Further contribution to / Recoupment of Core SGF

14) Requisite contributions to Core SGF by various contributors (as per clauses 7 and 8) for any month shall be made by the contributors before start of the month.

In the event of usage of Core SGF during a calendar month, contributors shall, as per usage of their individual contribution, immediately replenish the Core SGF to MRC.

In case there is failure on part of some contributor(s) to replenish its (their) contribution, same shall be immediately met, on a temporary basis during the month, in the following order:

(i) By CC
(ii) By SE

Review of Core SGF

15) The monthly review results shall be communicated to the Risk Management Committee and the Governing Board of the Clearing Corporation. The exception reporting shall be made to SEBI detailing the outcome of the review by the CC Governing Board, including steps taken to enhance the Core SGF.

Default waterfall

16) The default waterfall of CC for any segment shall generally follow the following order –

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I. monies of defaulting member (including defaulting member's primary contribution to Core SGF(s) and excess monies of defaulter in other segments).
II. Insurance, if any.
III. CC resources (equal to 5% of the segment MRC).
IV. Core SGF of the segment in the following order:
    i. Penalties
    ii. CC contribution to the extent of at least 25% of the segment MRC
    iii. Remaining Core SGF: CC contribution, Stock Exchange contribution and non-defaulting members' primary contribution to Core SGF on pro-rata basis.
V. Proportion of remaining CC resources (excluding CC contribution to core SGFs of other segments and INR 100 Crore) equal to ratio of segment MRC to sum of MRCs of all segments.*
VI. CC/SE contribution to Core SGFs of other segments (after meeting obligations of those segments) and remaining CC resources to that extent as approved by SEBI.
VII. Capped additional contribution by non-defaulting members of the segment.**
VIII. Any remaining loss to be covered by way of pro-rata haircut to payouts.***

* INR 100 Crore to be excluded only when remaining CC resources (excluding CC contribution to core SGFs of other segments) are more than INR 100 Crore.
**CC shall limit the liability of non-defaulting members towards additional contribution to a multiple of their required primary contribution to Core SGF and the framework regarding the same should be disclosed. In case of shortfall in recovery of assessed amounts from non-defaulting members, further loss can be allocated to layer 'VI' with approval of SEBI.
***In case loss allocation is effected through haircut to payouts, any subsequent usage of funds shall be with prior SEBI approval. Further, any exit by CC post using this layer shall be as per the terms decided by SEBI in public interest.

Stress testing and back testing

17) CC shall effectively measure, monitor, and manage its credit exposures to its participants and those arising from its payment, clearing, and settlement processes.

18) **Stress test for credit risk:** CC shall carry out daily stress testing for credit risk using at least the standardized stress testing methodology prescribed for each segment viz. equity, equity derivatives and currency derivatives in the Annexure. Apart from the stress scenarios prescribed for cash market and derivatives market segments in the Annexure, CCs shall also develop own scenarios for a variety of 'extreme but plausible market conditions' (in terms of both defaulters' positions and possible price changes in liquidation periods, including the risk that liquidating such positions could have an impact on the market) and carry out stress testing using

self-developed scenarios. Such scenarios should include relevant peak historic price volatilities, shifts in other market factors such as price determinants and yield curves, multiple defaults over various time horizons and a spectrum of forward-looking stress scenarios in a variety of extreme but plausible market conditions.

Also, for products for which specific stress testing methodology has not been prescribed in this circular, CCs shall develop extreme but plausible market scenarios (both hypothetical and historical) and carry out stress tests based on such scenarios and enhance the corpus of Core Settlement Guarantee Fund/reserves, as required by the results of such stress tests.

19) **Liquidity stress test and adequacy of liquidity arrangements:** CC shall ensure that it maintains sufficient liquid resources to manage liquidity risks from members, settlement banks and those generated by its investment policy. CC shall daily test the adequacy of its liquidity arrangements in order to ensure that its liquid resources are adequate to meet simultaneous default of at least two clearing members and their associates that would generate the largest aggregate liquidity obligation for the CC in extreme but plausible market conditions and compare such obligation with the resources mentioned hereunder:

a) Cash
b) Committed lines of credit available to CC

20) **Reverse stress test:** CC shall periodically carry out reverse stress tests designed to identify under which market conditions and under what scenarios the combination of its margins, Core SGF and other financial resources prove insufficient to meet its obligations (e.g. simultaneous default of top N members or N% movement in price of top 2 scrips by turnover or 20% movement in price of top N scrips by turnover etc.)

21) **Back testing for adequacy of margins:** CC shall daily conduct back testing of the margins collected vis-à-vis the actual price changes for the contracts being cleared and settled in every segment to assess appropriateness of its margining models.

22) **Adequacy of financial resources:** CC shall ensure that it maintains sufficient financial resources to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the two participants and their associates that would potentially cause the largest aggregate credit exposure to the CC in extreme but plausible market conditions. Thus, CC shall continuously monitor the adequacy of financial resources (as available in its default waterfall) against the uncovered loss estimated by the various stress tests conducted by the CC and take steps to beef up the same in case of shortfall.

23) On at least a monthly basis, CC shall perform a comprehensive and thorough analysis of stress testing scenarios, models, and underlying parameters and

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assumptions used to ensure they are appropriate for determining the CCP's required level of default protection in light of current and evolving market conditions. CC shall perform this analysis of stress testing more frequently when the products cleared or markets served display high volatility, become less liquid, or when the size or concentration of positions held by a CC's participants increases significantly. A full validation of CC's risk-management model shall be performed at least annually.

24) The results of tests carried out as per clauses 18, 19, 20, 21 and 22 above and review conducted as per clause 23 shall be monitored by the Risk Management Committee of the CC and the same should be communicated for discussion and review by the Board of the CC.

25) Clearing corporations and Stock Exchanges are directed to:

a) take necessary steps to put in place systems for implementation of the circular, including necessary amendments to the relevant bye-laws, rules and regulations;
b) bring the provisions of this circular to the notice of their members and also disseminate the same on its website;
c) make the following details available on its website:
   i. Policy on composition and contributions to be made to the Core SGF;
   ii. Investment policy for Core SGF;
   iii. Default waterfall for each segment along with the quantum of resources available in each layer of default waterfall;
d) implement the provisions of this circular by December 1, 2014 and communicate to SEBI the status of implementation.

26) This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market.

27) This circular is available on SEBI website at www.sebi.gov.in, under the category "Circulars".

Yours faithfully,

Shashi Kumar
General Manager
Division of Risk Management and New Products
Market Regulation Department
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Encl: as above

14. At para 8 of the Circular as referred supra in this order the assessee as Stock Exchange shall contribute at least 25% of the MRC (minimum Required Corpus which can be adjusted against transfer of profit by Stock Exchange as per Regulation 33 of SECCL Regulation. The SEBI vide the aforesaid mention circular dated 27.08.2014 vide para 8 of the circular has issued norms related to the computation and contribution to the Core Settlement Guarantee Fund by the Clearing Corporation minimum 50%, Stock Exchange minimum 25% and Clearing members minimum 25% of the MRC (minimum Required corpus of Core SGF (MRC) for each segment of each stock exchange. The assessee claimed that under the aforesaid regulatory requirement laid down by the SEBI it had made statutory contributions of Rs.761.52 cr. to Core Settlement Guarantee Fund and it has no control & domain over the such contribution and utilised only in the manner as laid down by SEBI in this behalf.

15. The ld. Counsel as referred supra in this order submitted that ITAT Mumbai has allowed the similar statutory deduction u/s 37 on the identical issues and facts in the case of BSE Ltd. (Bombay Stock Exchange) vide ITA No. 1790/Mum/2019 dated 04.10.2019 as per the copy of order placed at page no. 1 to 29 of the legal Paper Book filed

With the assistance of the ld. Representative we have gone through the decision of coordinate bench in the case of BSE Ltd. Vs. The Pr.CIT-2 as referred supra wherein the identical issue on similar facts has been adjudicated while deciding the appeal u/s 263 of the Act. The relevant extract of the operating para of the decision is reproduced as under:

> *"12. In view of the above, we noted that the PCIT observed in para 4.1(a) of Show Cause Notice that the contribution is in the nature of deposit/ contingency reserve. According to us, the said issues were already examined by the AO during the course of assessment proceedings. During the course of assessment proceedings, it was explained that contribution by BSE to Core SGF is a mandatory payment and expenditure is neither of capital in nature*

nor it has any enduring benefit or personal in nature but incurred wholly and exclusively for the purpose of business and therefore allowable under section 37 of the Act. We are of the view that contingency means a future event or circumstances which is possible but cannot be predicted withcertainty. In the present case the liability to pay/ contribute is certain and accrued as per the Circular of SEBI. The said amount is transferred to CSGF and has not remained with BSE; therefore, it cannot be said to be in a nature of contingency reserve. Secondly, the contribution cannot also be termed as deposit. Oxford dictionary defines deposit as "place (something) somewhere for safekeeping". In the present case the amount is transferred to CSGF of Indian Clearing Corporation Limited (ICCL) and has not been kept for safekeeping. The amount transferred will be utilized by ICCL as per the guidelines provided by SEBI from time to time. Therefore, the contribution is revenue in nature and not an asset or deposit. ICCL has also confirmed vide letter dated 7.12.2017 (refer Annexure 3) that BSE has contributed a sum of Rs. 25,78,84,501/- to CSGF and no amount has been shared with BSE as on 31.03.2015. BSE has no right over the amount already contributed to CSGF. We are of the view that the assessee is able to prove beyond doubt that the contribution to CSGF is not in the nature of any deposit/contingency reserve. Thirdly, on the contribution the circular itself says that it is "transfer of profit". We noted and are of the view that SEBI has prescribed the methodology to arrive at a figure of contribution to CSGF and therefore it's not an appropriation of profit as alleged. This fact was already explained before the AO and has also been considered in the assessment order.

13. We noted from the observations made in para 4.1(b) of Show Cause Notice with respect to the amount set aside to Investor Service Fund that the said issue was already examined by the AO during the course of assessment. Moreover, the contribution to the Investors Service Fund is being made by BSE from 1992 onwards and has been claimed as expense under section 37 of the Act. The said claim has been allowed and accepted by the department till date and there is no change in facts compared to earlier years. If there are no changes in the facts or circumstances over the years, then it would not be appropriate on part of the department to change the opinion in subsequent years. The details are as under: -

Sr. No.	AY	Contribution to Investor Service Fund	Whether order u/s 143(3) was passed	Whether Contribution was allowed
1.	2006-07	1,75,00,000	Yes	Yes
2.	2007-08	2,99,00,000	Yes	Yes
3.	2008-09	3,13,00,000	Yes	Yes
4.	2009-10	3,13,00,000	Yes	Yes
5.	2010-11	3,95,00,000	Yes	Yes
6.	2011-12	3,99,00,000	Yes	Yes
7.	2012-13	5,59,00,000	Yes	Yes
8.	2013-14	6,05,00,000	Yes	Yes
9.	2014-15	6,40,00,000	Yes	Yes
10.	2015-16	12,3,00,000	Yes	Yes (since revised u/s 263)

The contribution has been made by assessee even in prior years and never disallowed by Department.

For this proposition of consistency, Ld Counsel drew our attention to the decision of Hon'ble Supreme Court in the case of Radhasoami Satsang v/s CIT 193 ITR 321(SC), wherein it was held as under:

> *"13. We are aware of the fact that strictly speaking res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.*
> *14. On these reasonings in the absence of any material change justifying the revenue to take a different view of the matter—and if there was no change it was in support of the assessee—we do not think the question should have been reopened and contrary to what had been decided by the Commissioner in the earlier proceedings, a different and contradictory stand should have been taken. We are, therefore, of the view that these appeals should be a!!owed, and the question should be answered in the affirmative, namely, that the Tribunal was justified in holding that the income derived by the Radhasoami Satsang was entitled to exemption under sections 11 and 12'*

14. We also noted that the PCIT in para 4.2 of Show Cause Notice noted that the facts and circumstances of the case for A.Y. 2015-16 being same as A.Y. 2016-17, allowing the claim of contribution to the two funds as business expenditure makes the assessment order for A.Y. 2015-16 erroneous. In this connection, Ld Counsel submitted that during the assessment proceedings for A.Y. 2015-16 the AO had specifically enquired on both the relevant issues and after due application of his mind and considering the relevant provisions of the law accepted the stand of the BSE. Therefore, revision u/s 263 of the Act cannot be made on the basis of the assessment order passed u/s 143(3) of the Act of the subsequent assessment year. Hence, the order passed by the AO is in accordance with law and cannot be considered as erroneous and prejudicial to the interest of the revenue.

15. In this respect, our attention was invited to the decision of the jurisdictional High Court in the case of CIT v/s. Gabriel India Limited (203 ITR 108) wherein upholding the order of the Tribunal, which had set aside the revision order of the CIT, held as under: -

> *"The power of suo motu revision under subsection (1) is in the nature of supervisory jurisdiction and the same can be exercised only if the circumstances specified therein exist. Two circumstances must exist to enable the Commissioner to exercise power of revision under this sub-section, viz., (i) the order is erroneous; (ii) by virtue of the order being erroneous prejudice has been caused to the interests of the Revenue. It has, therefore, to be considered firstly as to when an order can be said to be erroneous. We find that the expressions "erroneous", "erroneous assessment" and "erroneous judgment" have been defined in Black's*

Law Dictionary. According to the definition, "erroneous" means "involving error; deviating from the law". "Erroneous assessment" refers to an assessment that deviates from the law and is, therefore, invalid, and is a defect that is jurisdictional in its nature and does not refer to the judgment of the Assessing Officer in fixing the amount of valuation of the property. Similarly, "erroneous Judgment" means "one rendered according to course and practice of court, but contrary to law, upon mistaken view of law, or upon erroneous application of legal principles.

From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualize a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order, unless the decision is held to be erroneous. Cases may be visualized where the Incometax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the Commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Incometax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at a conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion. It may be said in such a case that in the opinion of the Commissioner the order in question is prejudicial to the interests of the Revenue. But that by itself will not be enough to vest the Commissioner with the power of suo motu revision because the first requirement, viz., that the order is erroneous, is absent. Similarly, if an order is erroneous but not prejudicial to the interests of the Revenue, then also the power of suo motu revision cannot be exercised. Any and every erroneous order cannot be the subject-matter of revision because the second requirement also must be fulfilled.

As observed in Dawjee Dadabhoy and Co. vs. S. P. Jam [19571 31 ITR 872 (Cal), "the words" "prejudicial to the interests of the Revenue" have not been defined, but it must mean that the orders of assessment challenged are such as are not in accordance with law, in consequence whereof the lawful revenue due to the State has not been realized or cannot be realized. It can mean nothing else". The aforesaid observations were also applied by the Gujarat High Court in Addl. CIT v. Mukur Corporation [1978] 111 ITR 312. We are of the opinion that the aforesaid interpretation given by the Calcutta High Court to the expression "prejudicial to the interests of the Revenue" is the correct interpretation."

16. We have also gone through the judgment of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. v/s CIT 243 ITR 83 (SC). Wherein Hon'ble Court has stated that the provision of Sec. 263 of the Act cannot be invoked to correct each and every type of mistake or error committed by the AO and that it is only when the order is erroneous that the section would be attracted. In other words, what has been emphasized by the Hon'ble Supreme Court is that every loss of revenue as a consequence of an order of the AO cannot be construed to be prejudicial to the interests of the revenue, unless it can be established that the assessment order is erroneous in as much as the same is unsustainable in law. Hence, we are also of the view that in order to set aside an order under section 263 there must exist two circumstances to enable your honor to exercise the power of revision, viz; the order passed by the AO has to be erroneous and by virtue of the order being erroneous should be prejudicial to the interest of the revenue. From the facts as stated in the earlier paragraphs, it is very well established that the AO has not only applied his mind after proper enquiries but has examined and considered various details submitted during the course of assessment. Hence, the order passed by the AO is neither erroneous nor prejudicial to the interest of revenue i.e. involving any error or it is deviating from law. (as defined in Black's Law Dictionary). Since, the AO has acted in accordance with law and passed the assessment order, the same cannot be considered as erroneous and prejudicial to revenue, simply because AO has not elaborated various things in the body of the assessment order. Hence, we quash the revision order passed by PCIT and allow the appeal of the assessee on this issue.
17. In the result, the appeal of the assessee is allowed."

16. Apart of the above we have gone the through the Finace Bill 2015 which provide Exemption to income of Core Settlement Guarantee Fund (SGF) of the Clearing Corporations Under the provisions of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 (SECC) notified by SEBI, the Clearing Corporations are mandated to establish a fund, called Core Settlement Guarantee Fund (Core SGF) for each segment of each recognized stock exchange to guarantee the settlement of trades executed in respective segments of the exchange. Under the existing provisions, income by way of contributions to the Investor Protection Fund set up by recognised stock exchanges in India, or by commodity exchanges in India or by a depository shall be exempt from taxation. On similar lines, it is proposed to exempt the income of the Core SGF arising from contribution received and investment made by the fund

and from the penalties imposed by the Clearing Corporation subject to similar conditions as provided in case of Investor Protection Fund set up by a recognised stock exchange or a commodity exchange or a depository. However, where any amount standing to the credit of the Fund and not charged to income-tax during any previous year is shared, either wholly or in part with the specified person, the whole of the amount so shared shall be deemed to be the income of the previous year in which such amount is shared.

17. We have also perused the provisions of section 10 of the act.Section 10 under the IT Act is a provision that lists various types of incomes that are exempt from income tax in India. The section provides a list of incomes that are not of taxable nature for an individual or entity. These exemptions are provided to encourage certain activities or to provide relief to certain categories of taxpayers. Section 10(23EA) provide that Any income in the form of contributions received from recognized stock exchanges and the members of an investor protection fund is exempt. However, if any amount is shared with a recognized stock exchange, it becomes taxable.SimilarlySection 10(23EE) specified that income of a core settlement guarantee fund that is set up by a clearing corporation is provided exemption from tax under this section. However, in case where any amount standing to the credit of the Fund and not charged to income-tax is shared with the specified person,the amount so shared shall be deemed to be the income and shall be chargeable to income-tax.

18. The sub clauses of provision of section 10(23EE) are as under:-

• [7][(*23EE*)	any specified income of such Core Settlement Guarantee Fund, set up by a recognised clearing corporation in accordance with the regulations, as the Central Government may, by notification[48] in the Official Gazette, specify in this behalf:

		Provided that where any amount standing to the credit of the Fund and not charged to income-tax during any previous year is shared, either wholly or in part with the specified person, the whole of the amount so shared shall be deemed to be the income of the previous year in which such amount is so shared and shall, accordingly, be chargeable to income-tax.
		Explanation.—For the purposes of this clause,—
	(*i*)	"recognised clearing corporation" shall have the same meaning as assigned to it in clause (*o*) of sub-regulation (1) of regulation 2 of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012[49] made under the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
	(*ii*)	"regulations" means the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012* made under the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
	(*iii*)	"specified income" shall mean,—
		(*a*) the income by way of contribution received from specified persons;
		(*b*) the income by way of penalties imposed by the recognised clearing corporation and credited to the Core Settlement Guarantee Fund; or
		(*c*) the income from investment made by the Fund;
	(*iv*)	"specified person" shall mean,—
		(*a*) any recognised clearing corporation which establishes and maintains the Core Settlement Guarantee Fund;
		(*b*) any recognised stock exchange, being a shareholder in such recognised clearing corporation, or a contributor to the Core Settlement Guarantee Fund; and
		(*c*) any clearing member contributing to the Core Settlement Guarantee Fund;]

19. Similar to the provision of section 10(23EA), the provision of section 10(23EE) is introduced to provide exemption under section 10 of the act in respect of specified income of the Core Settlement Guarantee Fund.

20. As per provision 0f Section 10 (23EE) as reproduced above for claiming exemption, 'specified income' would include the following –

(i) the Income by way of contribution received from specified persons

(ii) the income through penalties imposed by the recognized clearing corporation and credited to the Core Settlement Guarantee Fund or

(iii) the income from investments made by the fund.

21. As per the provision, for the purpose of the exemption, 'specified person' would include the following;-

1. A recognized clearing corporation which has established the Fund and maintains it
2. A recognized stock exchange which is a shareholder of the recognized clearing corporation or which contributes to the Fund
3. Any clearing member who contributes to the Fund.

22. Section 10(23EE) exempt specify income and the specify income also include any income by way of contribution received from specified person.

23. The specify person in the section under clause 10(23EE)(iv)(b)also include any recognised stock exchange, being a shareholder in such recognised clearing corporation, or a contributor to the Core Settlement Guarantee Fund therefore assessee being a Stock Exchange is a specified person.

24. The provision of the section 10 as referred above clearly put the contribution made by the specified person to the Core Settlement Guarantee Fund in the category of income therefore corresponding claim of treating such contribution as expenditure in the hands of specified person cannot be simply brushed aside without any relevant reason.

25. We have also considered the findings of the coordinate bench in the case of BSE Ltd. at para 12 of this order on the issue of similar statutory contributions made by the Bombay Stock Exchange to the Core Settlement Guarantee Fund in accordance with the circular of the SEBI holding that assessee is able to prove beyond doubt that the contribution to Core SGF is not in the nature of any deposit/contingency/reserve. In that decision it is further held that the contribution to the Investor Service Fund was made by the BSE from 1992 onwards claimed as deduction u/s 37 of the Act which had been allowed by the department till date. Further in terms of the circular dated 27th August, 2014 issued by SEBI as reproduced supra in this order it is beyond any doubt that the assessee is governed by the rules and regulations framed by the SEBI for carrying on its business of stock exchange in India. The assessee is bound by the mandatory Rules and Regulations issued by the SEBI. Therefore, following the findings of the coordinate bench, rules/regulations of the SEBI and the provisions of section 10 as discussed supra, we consider that statutory contributions made by the assessee to the Core SGF on which it had no control is allowable u/s 37(1) of the Act as the same has been incurred exclusively in the course of carrying on its business. Therefore, this ground of appeal of the assessee is allowed.

Ground No. 2: (Amortization of Leasehold Land Rs.129,52,158):

26. During the F.Y. relevant to A.Y. under consideration, the assessee claimed deduction of Rs.129,52,158/- towards lease premium amortized on lease hold land being revenue expenditure. The assessee Company had obtained lease for the term of 80 years from the MMRDA and had paid lease premium of Rs.90,60,60,000/-. The assessee had to pay annual ground rent as follows:

"The appellant has to pay nominal amount of annual ground rent as follows:-

(Clause 7 on Page 10 of the agreement).

From Commencement of the term of lease upto the end of 3 years	Nil
From 4th year upto the 20th year of the term of lease	1% of the premium amount
From the 21st year upto the 50th year of the term of lease	2% of the premium amount
From the 51st year of term of lease upto the end of the term of lease	3% of the premium amount

As the lease period is of 80 years the aforesaid premium has been amortized over the said period and proportionate amount of Rs.129,52,158/- i.e for the period 01.04.2015 to 31.03.2016 debited to accounts has been claimed as deduction.

15. The assessee submitted before the AO that the lease premium of Rs.90,60,60,000/- paid to MMRDA was rent paid in advance. The assessee also mentioned the opinion of the expert commissioner of ICAI regarding amortization of the lump-sum payment over the period of lease. However, the AO has not agreed with the submission of the assessee and stated that assessee's similar claim for A.Y. 1995-96 to 2005-06 was disallowed by the ITAT.

27. The ld. CIT(A) dismissed the ground of appeal filed by the assessee.

28. Heard both the sides and perused the material on record. This is undisputed facts that assessee had capitalised the lease hold land and shown as asset in the form of land in its balance sheet and also claimed depreciation on the amount capitalised as leasehold land. During the course of appellate proceedings before us the ld. Counsel filed copy of ITAT order in the case of the assessee itself vide ITA No. 1739/Mum/2013 for A.Y. 2008-09 dated 16.10.2019 vide which the issue was restored to the file of the AO for deciding a fresh in the light of the decision of Hon'ble Gujarat High Court in the case of Sun

Pharmaceuticals Ltd. 329 ITR 479 (Guj). The relevant extract of the decision of the ITAT is reproduced as under:

> *"3.1. We have heard the rival submissions. We find that similar issue was subject matter of adjudication by this tribunal in the case of IOT Infrastructure & Energy Services Ltd (formerly Indian Oil Tanking Limited) in ITA Nos. 1901 & 2585/Mum/2009 for Asst Year 2004-05 ; ITA Nos. 3477 & 3241/Mum/2009 for Asst Year 2005-06 ; ITA No. 2208/Mum/2010 for Asst Year 2006-07 ; ITA No. 7035/Mum/2010 for Asst Year 2007-08 and ITA No. 7430/Mum/2011 for Asst Year 2008-09 dated 17.5.2013 wherein it was held as under:-*
>
> > *"19. As regards the premium and other charges paid in respect of leasehold land, the Id. Counsel for the assessee has submitted that although a similar issue has been decided by the- Tribunal against the assessed in A.Y. 1999-2000, the decision of Hon'ble Gujarat High Court in the case of Sun Pharmaceuticals Ind. reported in (2 010) 3 2 9 IT R 479 rendered subsequently on a similar issue is in favour of the assessee. A perusal of the judgment passed by the Hon'ble Gujarat High Court in the said case shows that the Tribunal in that case had found on analysis of the relevant lease agreement that the land in question was not acquired by the assessee. The lease Deed was registered because as per the Registration Act it was compulsory to do so. There was no change in the ownership of the land and the lease rent payable was very nominal. Keeping in view all these facts, it was held by the Tribunal that the benefit accrued to the assessee was only in the nature of an advantage for carrying on the business by paying nominal rent of the land and by obtaining the land on lease, the capital structure of the assessee did not undergo any change. Keeping in view all these findings of fact recorded by the Tribunal, which were not specifically disputed by the Revenue, the Hon'ble Gujarat High Court did not find any infirmity in the order of the Tribunal deleting the disallowance made on account of lease rent paid by the assessee to GIC treating the same as Revenue expenditure. In our opinion, before the ratio of the decision of Hon'ble Gujarat High Court in the case of Sun Pharmaceuticals Ind. Ltd. (supra) is applied in the present case, the relevant facts are required to be verified, we therefore restore this issue to the file of the A.O. for deciding the same afresh in the light of the decision of Hon'ble Gujarat High Court in the case of Sun Pharmaceuticals Ind. Ltd. (supra) after verifying the relevant facts. Ground No. 4 & 5 of the assessee's appeal are accordingly treated as allowed for statistical purpose."*
>
> *3.2. Respectfully following the same, we restore this issue to the file of ld. AO for deciding the issue in the light of decision of Hon'ble Gujarat High Court in the case of Sun Pharmaceuticals India Ltd reported in 329 ITR 479 (Guj). Accordingly, the Ground Nos. 2(a) to 2(d) raised by the assessee are allowed for statistical purposes."*

Following the decision of the ITAT as discussed supra this issue is also restored to the file of the AO for deciding a fresh as directed above in the findings of the ITAT. Therefore, this ground of appeal of the assessee is allowed for statistical purpose.

Ground No. 3: Rs.105,72,994/- being maintenance and other charges received from the Licensees treating as income from house property:

29. During the course of assessment the assessee explained that an amount of Rs.105,72,994/- was received towards maintenance charges from the various clients to whom the premises have been let out by the assessee. The assessee also explained that the said maintenance recovery for providing facilities like security etc, was the reimbursement of the cost incurred by it therefore, the same cannot be considered as income from house property. However, the AO has rejected the claim of the assessee and stated that deduction of 30% of the annual value would cover such expenses.

30. The ld. CIT(A) has dismissed the appeal of the assesse holding that there was failure on the part of the assessee to prove that what has been collected towards maintenance recovery has been on cost to cost basis.

31. Heard both the sides on this issue and perused the material on record. The ld. Counsel has referred submission made before the ld. CIT(A) stating that maintenance charges recovered were separate charges for proving facilities such as securities etc. The assessee explained before the ld. CIT(A) that these were the reimbursement of expenses incurred by the assessee.

Before the ld. CIT(A) the assessee also submitted that in the case of the assessee itself for A.Y. 2005-06 the ITAT vide its combined order ITA No. 3114/Mum/2009 dated 30.12.2011 has restored the

matter back to the ld. CIT(A) with a specific direction to deal with all the contentions of the assessee by way of a speaking order in accordance with the law. The assessee has also referred the relevant part of the ITAT order for A.Y. 2004-05 and A.Y. 2005-06 in its submission reproduced as under:

> *"Para 98 In Ground No.5, the assessee is aggrieved by the CIT(A)'s treating an amount of Rs.1,39,91,621 being maintenance charges recovered from the licenses as "income from house property".*
>
> *Para 99. The relevant material facts are like this. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has let out a part of its premises to various persons like QNGC, SEBI. National Securities Clearing Corp Ltd etc, and earned rental income from the same. The Assessing Officer further noticed that the total rentals received from these persons included rent (Rs.12,05,13,061), maintenance charges (Rs.1,39,91,621) and municipal taxes (Rs.2,43,72,366), but the assessee has not shown the amount of Rs.1,39,91,621 in the computation of income from house property. This amount was instead taken to the profits and gains from business and was shown as reduced from expenditure for maintenance, and only the net amount (excess of expenses over this receipt) was taken to the profit and loss account. The stand of the assessee was that the maintenance charges recovered was nothing but a reimbursement of expenses, and in fact a partial reimbursement. However, the Assessing Officer did not accept the said plea and included the maintenance expenses in the computation of income from house property. Aggrieved, assessee carried the matter in appeal but without any success. Elaborate arguments were advanced on the factual and legal aspects of this treatment, but the CIT(A) dismissed the arguments of the assessee by making a very brief observation to the effect that since the Assessing officer has based his conclusions on Hon'ble Supreme Court's judgment in the case of Shambhu Investments (263 ITR 143). the action of the Assessing Officer is sustained. The assessee is not satisfied and is in further appeal before us.*
>
> *Para 100. Having heard the rival contentions and having perused the material on record, we find that the CIT(A) has indeed been very superficial in his approach and has simply brushed aside contentions of the assessee. The issue in appeal does not have much to do with the decision of Hon'ble Supreme Court in the case of Shambhu Investments (supra). It is a case where separate payment is being made and there is no dispute that the rent is to be treated as income from house property. The question really is whether a separate payment is being made for other services whether the same could be treated as income from house property It is also to be examined whether such a payment is to be excluded for determination of annual value. There are decisions on the coordinate benches as also Hon'ble Courts above dealing with fine points regarding these aspects. Learned counsel has, even before us, made these legal submissions which the CIT(A) had no occasion to deal with by way of a speaking order. In this view of the matter, we deem it fit and proper to remit the matter to the file of the CIT(A) with a specific direction to*

deal with all the contentions of the assessee by way of a speaking order and in accordance with the law. We direct so.

Para 101. Ground No. 5 is thus allowed for statistical purposes in theterms indicated above.

Para 111 In Ground No. 3, the assessee is aggrieved by the CIT(A)'s treating an amount of Rs.1,62,05,179 being maintenance charges recovered from the licenses as "income from house property".

Para 112 Following the discussions and the conclusions earlier in this order, with respect to identical issue for the immediately preceding year, we remit this issue to the file for adjudication de novo by way of a speaking order, in accordance with the law and after giving a due and fair opportunity to the assessee."

32. In view of the facts, provision of law and findings of the ITAT Mumbai on the similar issue and identical facts as referred above we restore this issue to the file of the ld. CIT(A) for deciding a fresh by way of speaking order after taking into consideration the detailed submission made by the assessee. Therefore, this ground of appeal is allowed for statistical purpose.

33. In the result ground no.1 of the appeal of the assessee is allowed and grounds no.2 to 3 of the appeals of the assessee are allowed for statistical purposes.

ITA No. 731/Mum/2023

Ground No.1: regarding disallowance of Rs.1,34,07,00000 as contribution to Core Settlement Guarantee Fund.

34. Since the facts and issue involved in this appeal is similar to the ITA No. 730/Mum/2023 as adjudicated supra therefore applying the finding of ITA No.730/Mum/2023 as mutatis mutandis this ground of appeal of the assesse is also allowed.

Ground No. 3: regarding disallowance of Rs.129,52,158/- being proportionate amortized amount of lease premium:

35. This ground of appeal is based on similar issue and identical facts as we have adjudicated in the ground no. 2 vide ITA 730/Mum/2023 as supra in this order, therefore, applying that findings mutatis mutandis this ground of appeal is allowed for statistical purposes.

Ground No. 4: Regarding treating an amount of Rs.35,06,631/- being maintenance and other charges recovered from licensees as Income from House Property:

36. Similar issue on identical facts have been adjudicated in ground no. 3 vide ITA No. 730/Mum/2023 as supra in this order, therefore, applying these findings mutatis mutandis this ground of appeal of the assessee is also allowed for statistical purpose.

Ground No. 2:

37. The assessee has suo moto disallowed the expenses of Rs.2,08,72,452/- towards earning exempt income. However, the AO had computed the disallowance in accordance with the Rule 14A r.w.r 8D to the amount of Rs.19,49,00,000/-. The ld. CIT(A) has sustained the disallowance made by the AO.

38. Before us at the outset the ld. Counsel submitted that AO had not recorded any satisfaction before rejecting the suo moto disallowance made by the assessee. The ld. Counsel also referred the decision of the ITAT in the case of National Securities Clearing Corporation Ltd. wherein the disallowance was restricted to the 1% of the exempt income.

39. On the other hand, the ld. D.R vehemently contended that the AO had categorically made observation about inadequate disallowance made by the assesse. He supported the order of the lower authority.

40. Heard both the sides and perused the material on record. The assessee had suo-motto disallowed expenses under section 14A. We find that at para 9 of the assessment order the AO has categorically mentioned that he perused the financial of the assessee company and on perusal of such financial the AO noticed that assesse company had shown tax free income representing interest on tax free bonds of Rs.48,89,38,321/- and dividend income of Rs.162,94,55,193/-. To earn such exempt income the assessee company has made investment to the tune of Rs.1576.73 crores. Therefore, he observed that assessee had made substantial portion of the entire investment of the company for earning exempt income and the assessee had made suo moto disallowance of small amount of expenses on estimated basis of Rs.2,08,72,452/-. These findings of the AO demonstrate that AO has shown dissatisfaction over the suo-moto disallowance made by the assessee in comparison to the amount of exempt income and the amount of investment made by the assessee company to earn the exempt income.Therefore, the facts of the case of the assesse are distinguishable from the case of National Securities Clearing Corporation and other cases of H.T MediaLt.v/s PCIT 85 taxmann.com 113(Delhi High Court) and PCIT v/s Reliance Capital Asset Management Ltd.400 ITR 217(Bombay High Court) as per copies placed it the paper book filed . After recording the aforesaid dissatisfaction, the AO has asked the assessee as to why not the provision of section 14A read with rule 8D shall not be applied in its case. In response during the course of assessment vide letter dated 12.10.2019 the assessee submitted the breakup of suo motto estimation of expenses disallowed u/s 14A of the act as per page no.90 to 91of the paper book filed. The assessee explained vide letter dated 09/12/2019 that it had made allocation of expenses towards earning exempt income on reasonable basis. The AO after considering

the submission of the assessee categorically stated at para 9.4 of the assessment order that the assessee has not given any basis for applying percentage rate to the expenses on estimation basis. We consider that basis for the correctness of self -devised method of the assessee for estimating the disallowance u/s 14A is required to be examined at the level of the assessing officer. Therefore in order to decide the issue on merit we restore this issue to the file of the assessing officer for deciding de novo after verification of the basis of allocation of expenses under the different heads from the relevant material to be furnished by the assessee. It is needless to say that observation made by us will not injure or impair the case of the AO and will not cause any prejudice to the defence explanation of the assessee. Therefore, this ground of appeal of the assessee is allowed for statistical purpose.

41. In the result ground no.1 of the appeal of the assessee is allowed and grounds no.2 to 4 of the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 26.10.2023

Sd/-	Sd/-
(Aby T Varkey) Judicial Member	(Amarjit Singh) Accountant Member

Place: Mumbai
Date 26.10.2023
Rohit: PS

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

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

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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