

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B" NEW DELHI

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER  
AND  
SHRI M BALAGANESH, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A Nos.4317/Del/2014

निर्धारणवर्ष/Assessment Year:2008-09

DCIT (LTU) NBCC Plaza, Pushp Vihar, Sector-III, New Delhi.	<u>बनाम</u> Vs.	Dalmia Cement (Bharat)Ltd. (Now known as M/s Dalmia Bharat Sugar & Industries Ltd.) 11 <sup>th</sup> & 12 <sup>th</sup> Floors, Hansalaya, 15, Barakhamba Road, New Delhi.
		PAN No. AAACD2281K
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

आ.अ.सं./I.T.A Nos.4338/Del/2014

निर्धारणवर्ष/Assessment Year:2008-09

Dalmia Cement (Bharat)Ltd. (Now known as M/s Dalmia Bharat Sugar & Industries Ltd.) 11 <sup>th</sup> & 12 <sup>th</sup> Floors, Hansalaya, 15, Barakhamba Road, New Delhi.	<u>बनाम</u> Vs.	DCIT (LTU) NBCC Plaza, Pushp Vihar, Sector-III, New Delhi.
PAN No. AAACD2281K		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

आ.अ.सं./I.T.A Nos.4447/Del/2014

निर्धारणवर्ष/Assessment Year:2009-10

DCIT (LTU) NBCC Plaza, Pushp Vihar, Sector-III, New Delhi.	<u>बनाम</u> Vs.	Dalmia Cement (Bharat)Ltd. (Now known as M/s Dalmia Bharat Sugar & Industries Ltd.) 11 <sup>th</sup> & 12 <sup>th</sup> Floors, Hansalaya, 15, Barakhamba Road, New Delhi.
		PAN No. AAACD2281K
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

आ.अ.सं./I.T.A Nos.4393/Del/2014

निर्धारणवर्ष/Assessment Year:2009-10

Dalmia Cement (Bharat)Ltd. (Now known as M/s Dalmia Bharat Sugar & Industries Ltd.) 11 <sup>th</sup> & 12 <sup>th</sup> Floors, Hansalaya, 15, Barakhamba Road, New Delhi.	<u>बनाम</u> Vs.	DCIT (LTU) NBCC Plaza, Pushp Vihar, Sector-III, New Delhi.
PAN No. AAACD2281K		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

आ.अ.सं./I.T.A Nos.4572/Del/2014

निर्धारणवर्ष/Assessment Year:2010-11

DCIT (LTU) NBCC Plaza, Pushp Vihar, Sector-III, New Delhi.	<u>बनाम</u> Vs.	Dalmia Cement (Bharat)Ltd. (Now known as M/s Dalmia Bharat Sugar & Industries Ltd.) 11 <sup>th</sup> & 12 <sup>th</sup> Floors, Hansalaya, 15, Barakhamba Road, New Delhi.
		PAN No. AAACD2281K
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

आ.अ.सं./I.T.A Nos.4394/Del/2014

निर्धारणवर्ष/Assessment Year:2010-11

Dalmia Cement (Bharat)Ltd. (Now known as M/s Dalmia Bharat Sugar & Industries Ltd.) 11 <sup>th</sup> & 12 <sup>th</sup> Floors, Hansalaya, 15, Barakhamba Road, New Delhi.	<u>बनाम</u> Vs.	DCIT (LTU) NBCC Plaza, Pushp Vihar, Sector-III, New Delhi.
PAN No. AAACD2281K		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

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आ.अ.सं./I.T.A Nos.5677/Del/2016  
निर्धारणवर्ष/Assessment Year:2011-12

DCIT (LTU) NBCC Plaza, Pushp Vihar, Sector-III, New Delhi.	<u>बनाम</u> <b>Vs.</b>	Dalmia Cement (Bharat)Ltd. (Now known as M/s Dalmia Bharat Sugar & Industries Ltd.) 11 <sup>th</sup> & 12 <sup>th</sup> Floors, Hansalaya, 15, Barakhamba Road, New Delhi.
		<b>PAN No. AAACD2281K</b>
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

आ.अ.सं./I.T.A Nos.5019/Del/2016  
निर्धारणवर्ष/Assessment Year:2011-12

Dalmia Cement (Bharat)Ltd. (Now known as M/s Dalmia Bharat Sugar & Industries Ltd.) 11 <sup>th</sup> & 12 <sup>th</sup> Floors, Hansalaya, 15, Barakhamba Road, New Delhi.	<u>बनाम</u> <b>Vs.</b>	DCIT (LTU) NBCC Plaza, Pushp Vihar, Sector-III, New Delhi.
<b>PAN No. AAACD2281K</b>		
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

<b>Assessee by</b>	<b>Shri R.M. Mehta, CA</b>
<b>Revenue by</b>	<b>Shri T. James Singson, CIT DR &amp; Shri Vivek Kumar Upadhyay, Sr.DR</b>

सुनवाईकीतारीख/ Date of hearing:	23.08.2023
उद्घोषणाकीतारीख/Pronouncement on	14.11.2023

आदेश /O R D E R

PER C.N. PRASAD, J.M.

All these appeals are filed by the Revenue and Assessee for the assessment years 2008-09 to 2011-12 against different orders of the Ld. Commissioner of Income Tax (Appeals).

2. First we take up the appeals of the Revenue and Assessee for the AY 2008-09. The grounds of appeal of the Revenue are as under:

1. *“On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition of Rs.98,71,544/- made by AO on account of disallowance of remuneration paid to various filed/sales organizers.*
2. *On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition of Rs.14,88,247/- made by AO on account of disallowance of temple maintenance and pooja expenses.*
3. *On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition of Rs.11,50,341/- made by AO on account of disallowance of expenditure reimbursed by the assessee to staff recreation clubs.*
4. *On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition of Rs.7,76,24,000/- made by AO on account of disallowance of deduction claimed u/s 80IA.*
5. *On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition of Rs.28,04,91,224/- made by AO on account of disallowance of power charges paid to M/s KPPL.*
- 5.1 *On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition of Rs.28,04,91,224/- made by AO on account of disallowance of power charges paid to M/s KPPL on the basis of acceptance of the report of income tax inspector Tricny (submitted in the course of enquiries got conducted by him during the course of appellate proceedings for AY 2007-08) without affording opportunity to the AO.*

6. *On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in reducing the addition of Rs.21,59,00,000/- to Rs.4,34,43,268/- made by AO under normal provisions on account of disallowance u/s 14A r.w. Rule 8D.*

6.1 *On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in reducing the addition of Rs.21,59,00,000/- to Rs.4,34,43,268/- made by AO u/s 115JB on account of disallowance u/s 14A r.w. Rule 8D.”*

The grounds raised by the Assessee in its appeal are as under:

1. *“That on facts and in circumstances of the case, the Ld.CIT(Appeals) has erred in partially upholding the action of the AO in making the disallowance u/s 14A of the Income Tax Act, 1961 despite the fact that the AO has not recorded his satisfaction on the amount of suo-moto disallowance made by the appellant which as per law he was required to do.*
2. *That on facts and in circumstances of the case, the Ld.CIT(Appeals) has erred in holding that the suo-moto disallowance of Rs.20,00,000/- made by the appellant company u/s 14A of the Income Tax Act, 1961 in its return of income is without any reasonable basis.*
3. *That on facts and in circumstances of the case, the Ld.CIT(Appeals) has grossly erred in upholding the disallowance made u/s 14A of the Income Tax Act, 1961 to the extent of Rs.4,14,43,268/- (net of suo-moto disallowance of Rs. 20 lacs made by the appellant).*
4. *That the Ld.CIT(Appeals), while determining the amount of disallowance u/s 14A of the Income Tax Act, 1961 has failed to appreciate that:*
  - (i) *Entire amount of interest paid by the assessee company in an amount of Rs.112,91,43,235/- has been incurred on the term loans and other borrowings made by the assessee company for the purpose of its business of manufacture of*

*commodities and no portion of the same was to be disallowed.*

- (ii) The AO has not brought anything on record to support his contention that borrowed funds of the company had been diverted for purposes of making investments in shares and securities and thus certain amount of interest is liable to be disallowed u/s 14A of the Income Tax Act, 1961; and*
  - (iii) Investment in unquoted equity shares of subsidiary companies, which are made for purpose of strategic investment, and investment in equity shares of other companies on which no dividend was received also needs to be excluded while computing disallowance under Rule 8D read with Section 14A of the Act; and*
- 5. That on the facts and in the circumstances of the case, the Ld.CIT(Appeals) has grossly erred in confirming the disallowance of Rs.4,14,43,268/- u/s 14A for the purpose of computation of book profit us/ 115JB of the Act.*
  - 6. That on the facts and in the circumstances of the case, the Ld.CIT(Appeals) has grossly erred in holding that the payment of Rs.5,06,011/- on account of advertisement issued in newspapers requesting warrant holders to convert their warrants, which were issues in earlier years, into equity shares of the company is in nature of capital expenditure.*
  - 7. That on the facts and circumstances of the case and in law, the appellant is entitled to a deduction of Rs.43,23,650/- on account of payment to AP TRANSCO for spares and supervision charges in connection with laying of Transmission Line in the light of the finding recorded by the Ld.CIT(Appeals) in his order for AY 2009-10 that “such liability had clearly crystallized in FY 2007-08”, relevant to AY 2008-09.”*

3. Ground No.1 of grounds of appeal of the Revenue is with regard to deletion of addition made on account of disallowance of remuneration paid to various fields/sales organizers while completing the assessment by the Assessing Officer.

4. Ld. Counsel Shri R.M. Mehta appearing for the assessee at the outset submits that all the grounds of appeal of the Revenue are decided by the Tribunal in assessee's own case in the earlier assessment years and the copies of the orders of the Tribunal are placed in the paper book. The Ld. Counsel inviting our attention to the decision of the Tribunal in assessee's own case for the AY 2007-08 in ITA No.4166/Del/2014 dated 03.08.2021 which is the order for immediately preceding assessment year, submits that ground no.1 is decided in assessee's favour in para 62 page 35 of the order. The Ld. DR fairly submits that the issue has been decided in favour of the assessee in earlier assessment year.

5. Heard rival contentions, perused the orders of the authorities below and the order of the Tribunal in assessee's own case for the AY 2007-08 and find that the issue has been decided in favour of the assessee by dismissing the ground of Revenue, observing as under:

*“62. We first deal with the appeal of the Ld. Assessing Officer. Ground no.1 is with respect to the disallowance*

*of Rs.9,447,701/- of remuneration paid to various field sales organizers. This issue is identical to ground no.1 of the appeal of the Ld. Assessing Officer for AY 2006-07 wherein we have confirmed the order of the Ld.CIT(A) deleting the above disallowance wherein the Ld.CIT(A) relied upon the order of the coordinate bench in assessee's own case for earlier years and the Ld. Departmental Representative could not point out any major difference in the facts and circumstances of the case. Therefore, for the similar reasons we dismiss the ground no.1 of the appeal of the Ld.AO."*

6. Following the order of the Tribunal in assessee's own case for the earlier assessment years, we dismissed ground no.1 of grounds of appeal of the Revenue.

7. Ground No. 2 & 3 of grounds of appeal of the Revenue are in respect of deletion of addition on account of disallowance of temple maintenance and puja expenses as well as amount paid to staff recreation clubs. We find that the issues in these two grounds were also decided in favour of the assessee by the Tribunal in para 63 page 35 of the Tribunal as under:

*"63. Ground no.2 and 3 are with respect to the deletion of the disallowance by the Ld.CIT(A) with respect to the temple maintenance and Pooja expenses as well as amount paid to staff recreation clubs. This is identical to ground no.2 raised by the assessee for AY 2006-07 wherein the Ld.CIT(A) deleted the above disallowance relying upon the decision of the coordinate bench in assessee's own case for earlier years. There are no changes in the facts and circumstances of the case pointed out before us. As the issue is squarely covered in favour of the assessee by the decision of the coordinate*

*bench which is been relied upon by the Ld.CIT(A), we do not find any infirmity in his order in deleting the above disallowance. Accordingly, ground nos. 2 & 3 of the appeal are dismissed.”*

8. Facts being identical following the said order, we dismissed ground no. 2 & 3 of grounds of appeal of the Revenue.

9. Ground No.4 of grounds of appeal of the Revenue is in respect of deletion of addition made on account of disallowance of deduction claimed u/s 80IA of the Act. On going through the order of the Tribunal, we find that identical issue has been decided in favour of the assessee at para 64 page 36 of the Tribunal, wherein the Tribunal held as under:

*“64. Ground no.4 of the appeal of the assessee is with respect to the allowance of deduction u/s 80IA of the Income Tax Act of Rs.84,941,000/- disallowed by the Ld. Assessing Officer but allowed by the Ld.CIT(A) following the decision of the coordinate bench in assessee’s own case in AY 2006-07. This ground is identical to the ground no.3 of the appeal of the Ld. Assessing Officer for AY 2006-07. While deciding this issue for AY 2006-07 we found that the Ld.CIT(A) allowed the claim of the assessee made on the decision of the coordinate bench in assessee’s own case, similar is the fact in this year in this ground. As the issue squarely covered in favour of the assessee by the decision of the coordinate bench in assessee’s own case, respectfully following the same we direct the Ld. Assessing Officer to allow the claim of the assessee u/s 80IA of the Income Tax Act, we confirm the order of the Ld.CIT(A) and dismiss ground no.4 of the appeal.”*

10. Facts being identical we sustain the order of the Ld.CIT(A) and reject ground no. 4 of grounds of appeal of the Revenue.

11. Ground no.5 and 5.1 of grounds of appeal of the Revenue is in respect of deletion of addition made on account of disallowance of power charges paid to M/s KPPL. We find that this issue was also decided in assessee's favour by the Tribunal in para 65 at page 36 of the order observing as under:

*“65. Ground nos. 5 & 5.1 with respect to the deletion of the disallowance of power charges paid by the assessee to Messer's Keshav Power Ltd. amounting to Rs.273,742,954/-. Now the argument of the Ld.AR is that the Ld.CIT(A) has accepted the report of the income tax inspector without affording any approach and the Ld.AO in the matter. We find that the issue is identical to the issue in the case of the assessee for AY 2006-07 wherein we have held that the assessee has paid power charges to Keshav Power Ltd. based on the validly executed power purchase agreement. The assessee has also shown that in earlier years the consumption of power purchased from Keshav Power Ltd. has resulted into substantial benefit to the assessee. It is also demonstrated that the rates paid to Keshav Power Ltd. are comparable and beneficial to the assessee. The issue has been decided in the favour of the assessee for AY 2006-07 and the Ld. DR fairly agreed that there is no change in the facts and circumstances of the case. This ground of appeal is identical to ground no.2 of the appeal of the assessee wherein we have held that the power charges paid by the assessee to Keshav Power Ltd. are allowable as deduction to the assessee. In view of this we do not find any reason to deviate from our decision for AY 2006-07. Accordingly, ground no.5 of the appeal of the Ld.AO is dismissed.”*

12. Facts being identical following the order of the Tribunal in assessee's own case, we sustain the order of the Ld.CIT(A) and reject ground no.5 and 5.1 of grounds of appeal of the Revenue.

13. Ground No. 6 & 6.1 of the Revenue's appeal are in respect of partly deletion of disallowance made u/s 14A read with Rule 8D while computing the income under normal provisions of the Act as well as while computing the book profits u/s 115JB of the Act. The assessee in its appeal in grounds 1 to 5 of the grounds of appeal also challenged the order of the Ld. CIT(Appeals) in partly sustaining the disallowance made u/s 14A read with Rule 8D while computing the income under normal provisions of the Act as well as book profits u/s 115JB of the Act.

14. The ld. Counsel for the assessee placing reliance on the decision of the Hon'ble Supreme Court in the case of South Indian Bank Ltd. Vs. CIT (438 ITR 31) submits that if investments in securities/shares etc. are made out of common funds and if such interest free common funds available with assessee are more than the investments made no disallowance u/s 14A is warranted. Ld. Counsel for the assessee referring to balance sheet as on 31.03.2008 submits that the assessee has share capital, reserve and surplus to the extent of Rs.11,471.43 million as against the investments of

Rs.6,138.27 million and, therefore, since the assessee has interest free surplus funds much more than the investments, the presumption is that the investments are met out of interest free funds available with the assessee and applying the ratio of the decision of the Hon'ble Supreme Court in the case of South Indian Bank Ltd. Vs. CIT (supra) there cannot be any disallowance u/s 14A of the Act.

15. Ld. DR supported the orders of the authorities below.

16. Heard rival contentions, perused the orders of the authorities below and the decision of the Hon'ble Supreme Court. We find considerable force in the submissions of the Ld. Counsel for the assessee. In the case of South Indian Bank Ltd. Vs. CIT (supra) the Hon'ble Supreme Court held as under:

*“14. We have heard Mr. S. Ganesh, Mr. S.K. Bagaria, Mr. Jehangir Mistri and Mr. Joseph Markose, learned Senior Counsel appearing for the appellants. Also heard Mr. Vikramjit Banerjee, learned Additional Solicitor General and Mr. Arijit Prasad, learned Senior Counsel on behalf of the respondent/Revenue.*

*15. The appellants argue that the investments made in bonds and shares should be considered to have been made out of interest free funds which were substantially more than the investment made and therefore the interest paid by the assessee on its deposits and other borrowings, should not be considered to be expenditure incurred in relation to tax free income on bonds and*

*shares and as a corollary, there should be no disallowance under Section 14A of the Act. On the other hand, the counsel for the revenue refers to the reasoning of the CIT(A) and of the High Court to project their case.*

*16. As can be seen, the contention on behalf of the assessee was rejected by the CIT(A) as also by the High Court primarily on the ground that the assessee had not kept their interest free funds in separate account and as such had purchased the bonds/shares from mixed account. This is how a proportionate amount of the interest paid on the borrowings/deposits, was considered to have been incurred to earn the tax-free income on bonds/shares and such proportionate amount was disallowed applying Section 14A of the Act.*

*17. In a situation where the assessee has mixed fund (made up partly of interest free funds and partly of interest-bearing funds) and payment is made out of that mixed fund, the investment must be considered to have been made out of the interest free fund. To put it another way, in respect of payment made out of mixed fund, it is the assessee who has such right of appropriation and also the right to assert from what part of the fund a particular investment is made and it may not be permissible for the Revenue to make an estimation of a proportionate figure. For accepting such a proposition, it would be helpful to refer to the decision of the Bombay High Court in Pr. CIT v. Bombay Dyeing and Mfg. Co. Ltd<sup>2</sup> where the answer was in favour of the assessee on the question, whether the Tribunal was justified in deleting the disallowance under Section 80M of the Act on the presumption that when the funds available to the assessee were both interest free and loans, the investments made would be out of the interest free funds available with the assessee, provided the interest free funds were sufficient to meet the investments. The resultant SLP of the Revenue challenging the Bombay High Court judgment was dismissed both on merit and on delay by this Court. The merit of the above proposition of law of the Bombay High Court would now be appreciated in the following discussion.*

18. In the above context, it would be apposite to refer to a similar decision in Commissioner of Income Tax (Large Tax Payer Unit) Vs. Reliance Industries Ltd<sup>3</sup> where a Division Bench of this Court expressly held that where there is finding of fact that interest free funds available to assessee were sufficient to meet its investment it will be presumed that investments were made from such interest free funds.

19. In HDFC Bank Ltd. Vs. Deputy Commissioner of Income Tax<sup>4</sup>, the assessee was a Scheduled Bank and the issue therein also pertained to disallowance under Section 14A. In this case, the Bombay High Court even while remanding the case back to Tribunal for adjudicating afresh observed (relying on its own previous judgment in same assessee's case for a different Assessment Year) that, if assessee possesses sufficient interest free funds as against investment in tax free securities then, there is a presumption that investment which has been made in tax free securities, has come out of interest free funds available with assessee. In such situation Section 14A of the Act would not be applicable. Similar views have been expressed by other High Courts in CIT Vs. Suzlon Energy Ltd.<sup>5</sup>, CIT Vs. Microlabs Ltd.<sup>6</sup> and CIT Vs. Max India Ltd.<sup>7</sup> Mr. S Ganesh the learned Senior Counsel while citing these cases from the High Courts have further pointed out that those judgments have attained finality. On reading of these judgments, we are of the considered opinion that the High Courts have correctly interpreted the scope of Section 14A of the Act in their decisions favouring the assessees.

20. Applying the same logic, the disallowance would be legally impermissible for the investment made by the assessees in bonds/shares using interest free funds, under Section 14A of the Act. In other words, if investments in securities are made out of common funds and the assessee has available, non-interest-bearing funds larger than the investments made in tax-free securities then in such cases, disallowance under Section 14A cannot be made.”

17. The ratio of this decision squarely applies to the facts of the assessee's case. On perusal of the balance sheet as on 31.03.2008, we see that the assessee was having share capital/reserve and surplus to the extent of Rs.11,471.43 million as against investments of Rs.6,138.27 million. Therefore, since the assessee was having sufficient interest free funds to meet the investments no disallowance is warranted u/s 14A read with Rule 8D(2)(ii) while computing the income under the normal provisions of the I.T. Act.

18. The Ld. Counsel further submitted that the Assessing Officer has not recorded any satisfaction for not agreeing with the apportionment of expenditure made by the assessee in respect of earning dividend income, wherein the assessee *suo moto* disallowed Rs.20 lakhs in its computation of income. Ld. Counsel therefore submits that in the absence of recording of satisfaction by the AO in not accepting the *suo moto* disallowance there cannot be any disallowance u/s 14A of the Act. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. Vs. CIT (402 ITR 640). A perusal of the assessment order shows that even though AO notes that the assessee has made *suo moto* disallowance of Rs.20 lakhs he has not recorded any dissatisfaction on the *suo moto* disallowance made by the assessee

in its return of income. It is evident from the assessment order that the assessee explained how it has calculated the expenditure relatable to earning dividend income i.e. 20 lakhs and made *suo moto* disallowance. However, without recording any satisfaction by the AO as to how the *suo moto* disallowance made by the AO is insufficient or inadequate to meet the expenditure attributable for earning dividend income the AO proceeded to apply Rule 8D, placing reliance on the decision of the Spl. Bench of ITAT Delhi in the case of Chem Invest Ltd. Vs. ITO.

19. We observed that Maxopp Investment Ltd. Vs. CIT (supra) the Hon'ble Supreme Court held as under:

*“41. Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, the Court made it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO.”*

20. The ratio of this decision applies to the facts of the case of the assessee for the assessment year under consideration. Thus, following the said decision, we hold that there cannot be any

disallowance u/s 14A read with Rule 8D while computing the income under normal provisions of the Act by the AO in the absence of recording any satisfaction as to why the *suo moto* disallowance made by the assessee is incorrect. Ground nos. 1 to 4 of assessee's appeal are allowed and ground no.6 of Revenue's appeal is dismissed.

21. Coming to disallowance made u/s 14A read with Rule 8D while computing the book profits u/s 115JB of the Act, we find that the issue is squarely covered by the decision of the Hon'ble Spl. Bench of Delhi Tribunal in the case of ACIT Vs. Vireet Investments Pvt. Ltd. (165 ITD 27), wherein it has been held that the computation under clause (f) of Explanation 1 to section 115JB(2) is to be made without resorting to the computation as contemplated u/s 14A read with Rule 8D of the Income Tax Rules, 1962. Thus, respectfully following the Spl. Bench decision, we restore the issue of disallowance u/s 14A while computing the book profits u/s 115JB to the AO with a direction to decide the issue afresh in the light of the decision of the Spl. Bench of Delhi Tribunal in the case of ACIT Vs. Vireet Investments Pvt. Ltd. (supra). Ground no.5 of assessee's appeal and ground no.6.1 of Revenue's appeal are allowed for statistical purpose.

22. The only ground left for adjudication in assessee's appeal is in respect of disallowance of expenditure incurred on advertisement in newspapers requesting the Debenture warrant holders to convert their warrants to equity shares of the company, whether such expenditure is capital or Revenue in nature.

23. Brief facts are that during the assessment proceedings the AO noticed that there is increase in paid up capital of the assessee during the current assessment year and the assessee was required to furnish details and also the expenses incurred. The assessee submitted that it had incurred Rs.5,15,725/- on account of advertisement, postage expenses in the process of converting the warrants to share capital. The AO disallowed Rs.5,15,725/- treating the said expenditure as capital expenditure holding that the said amount has been incurred on increase in share capital. Before the Ld.CIT(A) the assessee contended that during the financial year 2001 the assessee had issued debentures along with convertible warrants. It was contended that the holders of the warrants were entitled to their warrants converted into equity shares on the expiry period of 7 years from the date of allotment thereof i.e. 11.09.2001 or earlier at the decision of the board by giving two months notice by way of public advertisement in newspapers. Therefore, it was

contended that as per the terms of such offer the company decided to call upon the warrant holders to subscribe for the equity shares of the company and in that process Rs.5,06,011/- was incurred on advertisement in newspapers and Rs.9,714/- was incurred towards expenditure on postage for dispatch of the share certificates, post the conversion of warrants into equity shares of the company. Therefore, it was contended that it was only routine expenditure and is in Revenue in nature. However, the Ld.CIT(A) upheld the action of the AO in so far as the advertisement expenditure of Rs.5,06,011/- as capital in nature and allowed the postage expenses of Rs.9,714/- as Revenue expenditure. Before us, the Ld. Counsel for the assessee reiterated the submissions made before the lower authorities. Ld. DR strongly supported the orders of the Ld.CIT(A).

24. Heard rival submissions, perused the orders of the authorities below. In this case the debenture warrants were issued in the year 2001 and these warrants were converted into equity shares during the assessment year under consideration i.e. 2008-09. The assessee incurred expenditure of Rs.5,06,011/- towards advertisement in newspapers for conversion of warrants to equity share capital. This expenditure is related to the process of increase in share capital by conversion of debenture warrants to shares. The Ld.CIT(A) following

the decision of the Hon'ble Supreme Court in the case of CIT Vs. Broke Bond India Ltd. (225 ITR 798) held that such expenditure is capital in nature. The Hon'ble Supreme Court in the case of CIT Vs. Broke Bond India Ltd. (supra) held that the expenditure incurred by a company in connection with issue of shares with a view to increase a share capital is directly related to the expansion of capital base of the company and expenditure is capital expenditure. In the circumstances, we hold that the Ld.CIT(A) has rightly applied the ratio of the decision of the Hon'ble Supreme Court in the case of Broke Bond India Ltd. Vs. CIT (supra) in holding that the advertisement expenditure is capital in nature. Thus, we sustain the order of the Ld.CIT(A) and reject the ground no.6 of grounds of appeal of the assessee.

25. Though the assessee has raised ground no.7 in respect of deduction on account of payment to AP TRANCO in connection with laying of transmission towers and lines this ground is not emanating either from the assessment order or from Ld.CIT(Appeals) order for the assessment year under consideration i.e. 2008-09. Therefore, there is no need for adjudication of this ground for the AY 2008-09.

26. In the result, appeal of the Revenue and appeal of the assessee are partly allowed as indicated above.

**ITA No.4447/Del/2014 (AY 2009-10 - Revenue's appeal) & ITA No.4393/Del/2014 (AY 2009-10 - Assessee's appeal)**

27. Now we take up the appeals of the Revenue as well as the assessee for the AY 2009-10. The grounds of appeal of the Revenue are as under:

1. *“On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition of Rs.1,08,98,151/- made by AO on account of disallowance of remuneration paid to various filed/sales organizers.*
2. *On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition of Rs.21,78,540/- made by AO on account of disallowance of temple maintenance and pooja expenses.*
3. *On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition of Rs.9,46,669/- made by AO on account of disallowance of expenditure reimbursed by the assessee to staff recreation clubs.*
4. *On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition of Rs.5,05,57,000/- made by AO on account of disallowance of deduction claimed u/s 80IA.*
5. *On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition of Rs.26,85,48,223/- made by AO on account of disallowance of power charges paid to M/s KPPL.*
- 5.1 *On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition of Rs.26,85,48,223/- made by AO on account of disallowance of power charges paid to M/s KPPL on the basis of acceptance of the report of income tax inspector Trichy*

*(submitted in the course of enquiries got conducted by him during the course of appellate proceedings for AY 2007-08) without affording opportunity to the AO.*

6. *On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in reducing the addition of Rs.26,39,00,000/- to Rs.6,29,49,703/- made by AO under normal provisions on account of disallowance u/s 14A r.w. Rule 8D.*
- 6.1 *On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in reducing the addition of Rs.26,39,00,000/- to Rs.6,29,49,703/- /- made by AO u/s 115JB on account of disallowance u/s 14A r.w. Rule 8D.*
7. *On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition of Rs.6,54,59,535/- made by AO on account of disallowance of expenditure in relation to laying of transmission towers & lines treating the same as capital expenditure.*
8. *On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition of Rs.10,00,519/- made by AO on account of disallowance of depreciation claim by the assessee @60% on UPS and Printers instead of 15%.”*

The grounds of appeal of the assessee are as under:

1. *“That on facts and in circumstances of the case, the Ld.CIT(A) has erred in partially upholding the action of the AO in making the disallowance u/s 14A of the Act despite the fact that the AO has not recorded his satisfaction on the amount of suo-moto disallowance made by the appellant which as per law he was required to do.*
2. *That on the facts and in the circumstances of the case, the Ld.CIT(A) has erred in holding that the suo-moto disallowance of Rs.30,00,000/- made by the appellant company u/s 14A of the I.T. Act, 1961 in its return of income is without any reasonable basis.*

3. *That on the facts and in the circumstances of the case, the Ld.CIT(A) has erred in upholding the disallowance made u/s 14A of the I.T. Act, 1961 to the extent of Rs.5,99,49,703/- (net of suo-moto disallowance made by the appellant).*
4. *That the Ld.CIT(Appeals), while determining the amount of disallowance u/s 14A of the Income Tax Act, 1961 has failed to appreciate that:*
  - (i) *Entire amount of interest paid by the assessee company in an amount of Rs.142,13,562/- has been incurred on the term loans and other borrowings made by the assessee company for the purposes of its business of manufacture of commodities and no portion of the same was to be disallowed.*
  - (ii) *The Assessing Officer has not brought anything on record to support his contention that borrowed funds of the company had been diverted for purposes of making investments in shares and securities and thus certain amount of interest is liable to be disallowed u/s 14A of the I.T. Act.*
  - (iii) *Investment in unquoted equity shares of subsidiary companies, which are made for purpose of strategic investment, and investment in equity shares of other companies on which no dividend was received also needs to be excluded while computing disallowance under Rule 8D read with Section 14A of the Act.*
5. *That on the facts and in the circumstances of the case, the Ld.CIT(A) has erred in confirming the disallowance of Rs.5,99,49,703/- u/s 14A for the purpose of computation of book profit u/s 115JB of the Act.*
6. *That on the facts and in the circumstances of the case, the Ld.CIT(A) has erred in treating the advance payment of Rs.43,23,650/- to AP TRANSCO as “prior period expenditure” under alleged belief that liability thereof*

*was crystallized in FY 2007-08 relevant to AY 2008-09 and which cannot be allowed in the current year but should have been claimed in AY 2008-09.”*

28. The ground nos. 1 to 4 of grounds of appeal of the assessee and ground no.6 of grounds of appeal of the Revenue are in respect of disallowance made u/s 14A read with Rule 8D while computing the income under normal provisions of the IT Act. These grounds are similar to ground nos. 1 to 4 of assessee's appeal and ground no.6 of Revenue's appeal for the AY 2008-09. While disposing off the appeal for the AY 2008-09, we have held that since the share capital and reserve and surplus are more than the investments there cannot be any disallowance u/s 14A read with Rule 8D(2)(ii). Further we have also held that in the absence of recording any satisfaction by the AO in not accepting the *suo moto* disallowance made by the assessee there cannot be any disallowance u/s 14A read with Rule 8D of the Act in view of the decision of the Hon'ble Supreme Court in the case of Maxopp Investments P. Ltd. (402 ITR 640). As the facts are similar for the assessment year under consideration the decision taken therein shall apply *mutatis-mutandis* to the appeal for the AY 2009-10. Ground nos. 1 to 4 of the assessee's appeal are allowed and ground no.6 of the Revenue's appeal is dismissed.

29. Similarly, ground no.5 of grounds of appeal of the assessee and ground no.6.1 of grounds of appeal of the Revenue are similar to ground no.5 and ground no.6.1 of Revenue's appeal for the AY 2008-09. In respect of these grounds while disposing of this appeal for the AY 2008-09, we have held that the issue is decided by Delhi ITAT Spl. Bench in the case of Vireet Investments P. Ltd. (supra) and we have restored the issue to the file of the AO to decide in the light of the decision of Spl. Bench. The decision taken therein shall apply *mutatis-mutandis*. Ground no.5 of grounds of appeal of the assessee and ground no.6.1 of Revenue's appeal are allowed for statistical purpose.

30. Ground nos. 1 to 5 of Revenue's appeal are similar to the ground nos.1 to 5 of the appeal for the AY 2008-09. These grounds i.e. 1 to 5 for AY 2008-09 have been decided in favour of the assessee while disposing of the appeal for the AY 2008-09 following the decision of the Tribunal in assessee's own case for the AY 2007-08. Facts being identical, the decision taken therein shall apply *mutatis-mutandis* to the grounds raised by the Revenue for the appeal for AY 2009-10 also. Ground nos. 1 to 5 of grounds of appeal of the Revenue for AY 2009-10 are dismissed.

31. Ground no.7 of grounds of appeal of the Revenue is in respect of deletion of addition on account of disallowance of expenditure in relation to laying of transmission towers and lines treating the same as capital expenditure.

32. Brief facts are that the AO while completing the assessment noticed that the assessee debited expenditure of Rs.6,54,59,535/- to profit and loss account on account of laying transmission towers and lines from sub-station to plant site of the assessee. The assessee was required to explain as to why the said expenditure incurred should be allowed as Revenue expenditure. The assessee submitted that it had expanded its cement manufacturing capacity by setting up a cement plant at Village Chinnalor Mela District Kadapa, Andhra Pradesh and Village Govind Puram, district Ariyalur in Tamil Nadu. The assessee submitted that accordingly it had applied for HT Electrical connection with Electricity Department in order to obtain electricity to run its plant. The assessee submitted that it had made payments to AP TRANSCO for supply of electrical energy and the payments comprises of development charges and line laying charges. Thus, the assessee contended that it had incurred Rs.6,97,83,185/- as development charges/laying transmission lines and towers for extending EHT supply for

expansion of existing cement business of the company. The assessee also contended that the said expenditure though has been capitalized in the books it has been claimed as Revenue expenditure in the computation of income for the reason that by incurring the said expenditure the company has not created any new asset nor received any new enduring benefit. It was also contended that the company does not have any ownership on the said assets and the expenditure was pre forced incurred in connection with business to be run from these plants and the expenditure is in the nature of Revenue for expansion of existing business and therefore is Revenue expenditure allowable u/s 37(1) of the Act. Assessee placed reliance on the decision of the Hon'ble Supreme Court in the case of Kedarnath Jute Manufacturing Co. Ltd. Vs. CIT (82 ITR 363) for the proposition that the accounting treatment in the books of account would made no difference to make its claim in as much as the claim is allowable as Revenue expenditure. Reliance was also placed on the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Saw Pipes Ltd. (300 ITR 34). However, the AO did not accept the claim of the assessee. The AO placing reliance on the decision of the Mumbai Bench in the case of Aditya Birla Nuvo Ltd.

Vs. ACIT (12 taxman.com 25) treated the expenditure incurred by the assessee as capital in nature.

33. On appeal, the Ld.CIT(Appeals) allowed the claim of the assessee to the extent of Rs.6,54,59,535/-.

34. Before us, the Ld. Counsel for the assessee reiterated the submissions made before the lower authorities. The Ld. Counsel further submitted as under:

**A) Facts**

The Assessee company which was already engaged in the business of manufacture of cement, had applied for the supply of high tension power for its plants under construction at Kadapa (AP) and Ariyalur (Tamil Nadu).

In terms of the guidelines of the respective state Electricity Boards, the assets created through the expenditure incurred by the company were to be property of the said Boards.

**a) Case of the Assessee**

1. The setting up of the cement plants, represented an expansion of its existing business of manufacture of cement.

2. A total sum of Rs.6,97,83,185/- was expended on the laying of the towers and transmission lines, and the assets created as a result thereof were to be the property of the respective Electricity Boards.

3. That the expenditure had been incurred in connection with the existing business/its expansion and therefore clearly of a revenue nature and hence allowable u/s 37 of the IT Act 1961 ("the Act").

It also needs to be mentioned as a fact that the assessee had capitalized the expenditure but claimed it as a deduction on revenue a/c while computing its income.

Reliance was placed on the judgements of the Supreme Court in Kedarnath Jute Mfg. Co Ltd. vs CIT (1971) 82 ITR 363 (SC) and Sutlej Cotton Mills Ltd. vs CIT (1979) 116 ITR 1 (SC) for the proposition, that entries in the books of accounts were not determinative of the nature of expenditure incurred. 10/18

In support of the submissions made the assessee company relied on numerous decisions adverted to in Para 12.2 of the Assessment Order.

**b) Per the AO (Paras 11 to 12.5 of the Assessment order)**

The AO sought to distinguish the Judgements relied upon by the Assessee vide Para 12:4 of the order, more so of the jurisdictional High Court in the case of CIT vs Saw Pipes Ltd. (2008) 300 ITR 35 (Delhi) on the ground, that in that case, the expenditure was incurred after the new unit had been set up, whereas in the case of the assessee the expenditure was incurred prior to the set up.

On the alternative argument of the assessee, that depreciation be allowed if the expenditure was to be treated as capital in nature, the AO opined that since the assessee was not the owner of the assets, the claim on account of depreciation was not maintainable.

**c) Before the Ld. CIT(A)**

The submissions made before the AO were reiterated but drawing attention to the fact that inadvertently the expenditure had been short claimed to the extent of Rs.43,23,650/- and the revised claim made before the AO was not looked into, in spite of requisite evidence being filed.

Vide Para 7:5 of the order, the Ld. CIT(A) held the expenditure to be on revenue account following the judgement of the jurisdictional High Court in CIT vs Saw Pipes Ltd. supra.

As regards the claim to the extent of Rs.43,23,650/-, the Ld. CIT(A) admitted the same but held the same to be a liability which had crystallized in the FY 2007-08 i.e. the assessment year 2008-09. Treating the same as "prior period expenditure" for the assessment year 2009-10, he rejected the claim.

**d) Before the Hon'ble ITAT**

The assessee supports the order of the Ld. CIT(A) in respect of the relief allowed to the extent of Rs.6,54,59,535/- reiterating the submissions made at the stage of the first appeal. In addition to the judgement of the Hon'ble Delhi High Court in the case of CIT vs Saw Pipes Ltd. supra, the assessee relies on the following:-

(1) Sarabhai Chemicals (P) Ltd. vs. CIT  
(1981) 127 ITR 74 (Guj.)

(2) CIT vs Gujarat Mineral Development Corporation  
(1981) 132 ITR 377 (Guj.)  
affirmed by the Supreme Court in  
(2001) 249 ITR 787 at 788 (SC)

(3) (1990) 182 ITR 497 (Cal.)

(4) (1985) 151 ITR 726 (Pun.)

**e) Claim of Rs.43,23,650/-**

The amount was expended in assessment year 2008-09 but shown as an advance being the payment made to AP Transco. The revised claim was made in assessment year 2009-10 being consolidated with the payment of Rs.6,54,59,535/- but as the Ld. CIT was of the view that the liability crystallized in assessment year 2008-09, the assessee has raised the issue by means of Ground No. 7 for the said assessment year in ITA No.4338/Del/2014. The following submissions are made for consideration, without prejudice to each other.

(1) The claim was allowable in the assessment year 2009-10, being part of the combined expenditure on the laying of the towers and transmission lines.

(2) It is allowable in the assessment year 2008-09 as the Ld. CIT(A) has held it to be a liability crystallizing in the said year.

35. Ld. DR supported the orders of the authorities below.

36. Heard rival submissions, perused the orders of the authorities below. The Ld.CIT(A) considering the submissions of the Assessee and the averments in the assessment order partly allowed the claim in favour of the assessee following the decision of the Delhi High Court in the case of CIT Vs. Saw Pipes Ltd. (supra) observing as under:

*“7.5 Regarding the Ground No.7(a), relating to expenditure incurred on laying transmission line and tower, I find that the appellant company is already engaged in the business of manufacturing of cement. During the year it had applied for electricity connection for supply of high tension power to its plants under construction at Kadapa and Ariyalur. Evidently, in terms of the guidelines of AP TRANSCO and TNEB, the assets created through such expenditure were not to be the property of the appellant company. The appellant company was in the same business of manufacturing of cement and the underlying objective for setting up new plants at Kadapa and Ariyalur was to ensure expansion of its existing business. Under the circumstances, the facts of the case of the appellant are not different from the case of CIT vs. Saw Pipes Ltd. (Supra), and CIT vs. Dart Mfg. India Pvt. Ltd. (Supra), in which the judicial High*

*Court had clearly held that the expenditure incurred on expansion of business is revenue in nature. I do not agree with the contention of the AO that the facts in the appellant's case are materially different from Saw Pipes Ltd. case.*

*7.5.2 Regarding the revised enhanced claim, which was filed before the Ld. AO of Rs. 6,97,83,185/- against the claim of Rs.6,54,59,535/- made in the return of income, I find that the Ld. AO had taken no cognizance of the same in the impugned order. Therefore, the revised claim was not examined on merit. Keeping in view the decision of Hon'ble Supreme Court in the case of CIT vs. NTPC Ltd. 229 ITR 383 (SC), as an appellate authority, I admit the revised claim under this head for due consideration on merit, for rendering natural justice to the appellant. The Ld. Counsel furnished before me the details of expenses incurred for laying the transmission lines, which were paid to AP TRANSCO and TNEB, I find the appellant had made a claim of Rs.6.54 Crores in respect of the payment that were made during the current year only. The appellant had incurred an amount of Rs.43,23,650/- in the immediately preceding previous year, which is shown as opening balance in the current year. The appellant has pleaded that since the aforesaid amount of Rs. Rs.43,23,650/- was in the nature of advance, the same was allowable in the current year, the year in which liability for such expenses had crystallized.*

*7.5.3 On careful consideration of the agreement of the appellant with AP TRANSCO and TNEB, I find that the appellant was required to make payment in terms of the said agreement, which required it to make payment of aforesaid amount of Rs. Rs.43,23,650/- to the contractor for AP TRANSCO towards spare parts and supervision charges'. As the entire work of laying the transmission lines was to be executed by the AP TRANSCO / TNEB and the appellant had no role in the said civil construction, it cannot be held that such liability could have been crystallized only when the transmission line started operation. As I have separately held that the expenses incurred on laying on transmission lines were revenue in nature, following the decision in the case of Saw Pipe*

*Ltd. (Supra), such liability could have been allowed in the year in which it had crystallized and cannot be carried forward and added to the expenditure incurred during the current year.*

*On perusal of the appellant's agreement with AP TRANSCO, it is evident that the liability had crystallized in the immediately previous year when the appellant was required to pay charges for spare parts and supervision charge to the contractor to the AP TRANSCO. Since the appellant follows mercantile 'system of accounting', such liability had clearly crystallized in the FY 2007-08 itself and therefore, the appellant could have made such claim in the AY 2008-09. However, for the current year, such a liability is 'prior period expenditure' in nature, which cannot be allowed in the current year. The appellant's plea that the payment was made to the contractor of TNEB and not to the AP TRANSCO is of no relevance in ascertaining the nature.*

*In view of this, the claim of the appellant to allow enhance claim of Rs. 6,97,83,185/- is not acceptable. As I have already allowed this ground in favour of the appellant, the appellant gets relief of Rs.6,54,59,535/- only, which is the amount of addition made by the AO on this ground.”*

37. On careful perusal of the order of the Ld.CIT(A), we observe that the claim of the assessee for the expenditure in respect of laying transmission line and tower was allowed as Revenue expenditure following the decision of the Delhi High Court in the case of CIT Vs. Saw Pipes Ltd. (supra) and the decision in the case of CIT Vs. Dot Manufacturing India Pvt. Ltd.

38. In the case of CIT Vs. Saw Pipes Ltd. (supra) the assessee was in the business of manufacturing pipes and had three running units.

The assessee incurred service charges of Rs.52 lakhs to the electricity board for running service line for the purpose of the fourth unit in the process of expansion of business. The assessee claimed this amount as Revenue expenditure whereas the AO held that the benefit derived by the assessee was of enduring nature and therefore was a capital expenditure. The Hon'ble Delhi High Court held as under:

*"10. Our attention has been drawn to [Hindustan Times Ltd. v. CIT](#) [1980] 122 ITR 977, which is a decision rendered by a Division Bench of this Court. In that case, the assessed was getting supplies of direct current from the Municipal Committee to work its machines in its business premises. The cables were replaced at the instance of the assessed by alternating current and for this purpose, the assessed had paid some amount to the Municipal Committee being the cost of laying cables which belonged to the Municipal Committee. The Tribunal held that the expenditure incurred was of a capital nature but this view was upset by this Court. The Division Bench was of the view that the word "enduring" has a special significance. It adopted the view expressed by the House of Lords in *IRC v. Canon Co.* (1968) 45 Tax Cases 18 (HL), at p. 74 that what matters is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be capital in nature. "If the advantage consists merely in facilitating the assessed's trading operations or enabling the management and conduct of the assessed's business to be carried on more efficiently and profitably, leaving the fixed capital untouched, the expenditure will be on revenue account even though the advantage may endure for an indefinite future."*

*11. Insofar as the present case is concerned, we find that the decision of this Court is clearly applicable to the*

*facts of the case. The admitted position is that the service lines did not belong to the assessed but belonged to MSEB and were laid so as to enable the assessed to conduct its business more efficiently, which may perhaps be an enduring advantage, but intended to enable the assessed to carry on its business more efficiently and profitably leaving the fixed capital untouched.*

12. Reference has also been made to [CIT v. Excel Industries Ltd.](#) [1980] 122 ITR 995 (Bom) wherein the same principle was adopted and it was held that though the service lines were laid for the benefit of the assessed being the property of the Gujarat Electricity Board, that did not mean that the assessed had acquired any capital asset or an enduring benefit or advantage and the object of making the payment was purely one of commercial expediency. On this basis, it was held that the payment made to the Gujarat Electricity Board towards the cost of laying the overhead service lines constituted revenue expenditure and was an allowable deduction.

13. Our attention has also been drawn to [CIT v. Madras Auto Service \(P\) Ltd.](#) [1998] 233 ITR 468, wherein the Supreme Court summarized the law as laid down in [Assam Bengal Cement Co. Ltd. v. CIT](#) in the following words:

*“1. Outlay is deemed to be capital when it is made for the initiation of a business, for extension of a business, or for a substantial replacement of equipment.*

*2. Expenditure may be treated as properly attributable to capital when it is made not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade.... If what is got rid of by a lump sum payment is an annual business expense chargeable against revenue, the lump sum payment should equally be regarded as a business expense, but if the lump sum payment brings in a capital asset, then that puts the business on another footing altogether.*

3. *Whether for the purpose of the expenditure, any capital was withdrawn, or, in other words, whether the object of incurring the expenditure was to employ what was taken in as capital of the business. Again, it is to be seen whether the expenditure incurred was part of the fixed capital of the business or part of its circulating capital."*

14. *The decision of the Supreme Court proceeded on the basis, as has been recorded in the judgment, that the expenditure of demolishing and reconstructing the building was incurred by the assessed itself but the asset in question did not belong to the assessed. On that basis, it was held that the only advantage which the assessed derived by spending the money was that it got a lease of the new building and from the business point of view, it also got a benefit of reduced rent. It was, therefore, held that the High Court had rightly considered this as obtaining a business advantage and, therefore, the expenditure would be a revenue expenditure.*

15. *Insofar as the case that we are dealing with is concerned, it is correct that the assessed had spent an amount of about Rs. 52 lakhs towards laying of service lines but the cables did not belong to the assessed but belonged to MSEB and, therefore, applying the ratio laid down by the Supreme Court, the benefit that the assessed got was of a commercial nature and a business advantage. Consequently, the expenditure incurred by the assessed should be treated as a revenue expenditure.*

16. *The issue whether the assessed started a new business or not should not detain us for long because the admitted position is that the assessed is one entity for the purposes of taxation although it may have more than one unit. In the instant case, the assessed has four units. [In Veecumsees v. CIT \[1996\] 220 ITR 185 \(SC\)](#), the assessed ran two businesses, that is, one being a jewellery business and the second being exhibition of cinematographic films. The Supreme Court held that even though the two ventures were distinct from each other, but insofar as the assessed was concerned, there was only one business being carried out by the assessed in the*

*sense that it was a composite business of the assessed that of running a jewellery business and that of running a business of exhibition of cinematographic films.*

17. Similarly, in CIT v. Modi Industries Ltd. (No.3) [1993] 200 ITR 341 (Delhi) , the assessed was carrying on the manufacture of various commodities like sugar, vanaspati, soaps, paints and varnish, torch and lantern, etc. It started manufacturing a new commodity, that is, special alloy wire and billets. This was held by this Court to be an extension of the same business because there was a common fund utilized by the assessed and what was done by the assessed was only to start manufacturing a new item altogether. It was held to be an extension of the existing business and not the start of a new business.”

39. The ratio of the decision applies to the facts of the assessee’s case, thus, we sustain the order of the Ld. CIT(Appeals) and reject ground no.7 of Revenue’s appeal.

40. With respect to the claim of Rs.43,23,650/- as part of payment made to AP TRANSCO for the purpose of laying service lines, we observe that the Ld.CIT(A) held that the said expenditure was crystallized in the FY 2007-08 relevant to the AY 2008-09 and, therefore, cannot be allowed as deduction in the current assessment year i.e. 2009-10. Since, we have held that the said expenditure is Revenue expenditure allowable as deduction u/s 37(1) of the Act the claim of the assessee for deduction of this amount should be considered in the AY 2008-09 as the liability is held to be crystallized in the said assessment year. Thus, we direct

the AO to consider the claim of the assessee in the AY 2008-09. Ground no.6 of appeal of the assessee is allowed for statistical purpose.

41. Coming to ground no.8 of the grounds of appeal of the Revenue in respect of deletion of disallowance of depreciation on UPS and printers, we find that the issue is covered in favour of the assessee by the Hon'ble Delhi High Court in the case of CIT Vs. BSES Yamuna Powers Ltd. which decision was applied by the Ld.CIT(A) in holding that claim for depreciation allowance at 60% on UPS & printers is held to be justified. We see no infirmity in the order passed by the Ld.CIT(A). Ground no.8 of grounds of appeal of the Revenue is dismissed.

ITA No.4572/Del/2014 (AY 2010-11 - Revenue's appeal) & ITA No.4394/Del/2014 (AY 2010-11 - Assessee's appeal)

42. The Revenue raised the following grounds of appeal:

1. *"On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition of Rs.78,53,575/- made by AO on account of disallowance of remuneration paid to various filed/sales organizers.*
2. *On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition of Rs.19,91,029/- made by AO on account of disallowance of temple maintenance and pooja expenses.*

3. *On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition of Rs.9,88,896/- made by AO on account of disallowance of expenditure reimbursed by the assessee to staff recreation clubs.*
4. *On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition of Rs.3,65,08,000/- made by AO on account of disallowance of deduction claimed u/s 80IA.*
5. *On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition of Rs.27,80,81,494/- made by AO on account of disallowance of power charges paid to M/s KPPL.*
- 5.1 *On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition of Rs.27,80,81,494/- made by AO on account of disallowance of power charges paid to M/s KPPL on the basis of acceptance of the report of income tax inspector Tricny (submitted in the course of enquiries got conducted by him during the course of appellate proceedings for AY 2007-08) without affording opportunity to the AO.*
6. *On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in reducing the addition of Rs.29,76,59,761/- to Rs.6,05,65,481/- made by AO under normal provisions on account of disallowance u/s 14A r.w. Rule 8D.*
- 6.1 *On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in reducing the addition of Rs.29,76,59,761/- to Rs.6,05,65,481/- made by AO u/s 115JB on account of disallowance u/s 14A r.w. Rule 8D.*
7. *On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition of Rs.3,72,126/- made by AO on account of disallowance of depreciation claimed by assessee @60% instead of@15% on UPS & Printers.”*

8. *On the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition of Rs.10,00,519/- made by AO on account of disallowance of depreciation claim by the assessee @60% on UPS and Printers instead of 15%.”*

The assessee raised the following grounds:

1. *“That on facts and in circumstances of the case, the Ld.CIT(A) has erred in partially upholding the action of the AO in making the disallowance u/s 14A of the Act despite the fact that the AO has not recorded his satisfaction on the amount of suo-moto disallowance made by the appellant which as per law he was required to do.*
2. *That on the facts and in the circumstances of the case, the Ld.CIT(A) has erred in holding that the suo-moto disallowance of Rs.50,00,000/- made by the appellant company u/s 14A of the I.T. Act, 1961 in its return of income is without any reasonable basis.*
3. *That on the facts and in the circumstances of the case, the Ld.CIT(A) has erred in upholding the disallowance made u/s 14A of the I.T. Act, 1961 to the extent of Rs.5,55,65,481/- (net of suo-moto disallowance made by the appellant).*
4. *That the Ld.CIT(Appeals), while determining the amount of disallowance u/s 14A of the Income Tax Act, 1961 has failed to appreciate that:*
  - (i) *Entire amount of interest paid by the assessee company in an amount of Rs.166,35,10,812/- has been incurred on the term loans and other borrowings made by the assessee company for the purposes of its business of manufacture of commodities and no portion of the same was to be disallowed.*

- (ii) *The Assessing Officer has not brought anything on record to support his contention that borrowed funds of the company had been diverted for purposes of making investments in shares and securities and thus certain amount of interest is liable to be disallowed u/s 14A of the I.T. Act.*
- (iii) *Investment in unquoted equity shares of subsidiary companies, which are made for purpose of strategic investment, and investment in equity shares of other companies on which no dividend was received also needs to be excluded while computing disallowance under Rule 8D read with Section 14A of the Act.*

5. *That on the facts and in the circumstances of the case, the Ld.CIT(A) has erred in confirming the disallowance of Rs.5,55,65,481/- u/s 14A for the purpose of computation of book profit u/s 115JB of the Act.”*

43. Ground nos. 1 to 5.1 of grounds of appeal of the Revenue are identical to the grounds 1 to 5.1 for AY 2009-10 and facts being identical, the decision taken therein shall apply *mutatis - mutandis* to the appeal for AY 2010-11.

44. Ground no.7 and 8 of grounds of appeal of Revenue is identical to ground no.8 for AY 2009-10. Facts being identical, decision taken therein shall apply *mutatis - mutandis* to the appeal for AY 2010-11.

45. Ground nos.6 and 6.1 of Revenue's appeal and ground nos.1 to 5 of assessee's appeal are identical to ground nos.6 and 6.1 of Revenue's appeal and ground nos.1 to 5 of assessee's appeal for AY

2009-10 and facts being identical the decision taken therein shall apply *mutatis - mutandis* to the AY 2010-11.

ITA No.5677/Del/2016 (AY 2011-12 - Revenue's appeal) & ITA No.5019/Del/2016 (AY 2011-12 - Assessee's appeal)

46. The Revenue raised the following grounds of appeal:

1. *“On the facts and circumstances of the case and in law, Ld.CIT(A) has erred in deleting the addition of Rs.84,691/- made by the AO on account of disallowance of expenditure reimbursed by the assessee to staff recreation clubs.*
2. *On the facts and circumstances of the case and in law, Ld.CIT(A) has erred in deleting the addition of Rs.73,024/- made by the AO on account of disallowance of temple maintenance and pooja expenses.*
3. *On the facts and circumstances of the case and in law, Ld.CIT(A) has erred in deleting the addition of Rs.1,63,98,000/- made by the AO on account of disallowance of deduction claimed u/s 80IA.*
4. *On the facts and circumstances of the case and in law, Ld.CIT(A) has erred in directing the AO to re-work the disallowance made by the AO at Rs.84,17,000/- under the normal provisions on account of disallowance u/s 14A r.w. Rule 8D.”*

The assessee raised the following grounds:

1. *“(A) That on the facts and in the circumstances of the case the Ld.CIT(Appeals) has grossly erred in law in holding that for computing disallowance u/s 14A of the Act, only interest on term loans and debentures need to be excluded for the purpose of disallowance under Rule 8D(2)(ii) even though net owned funds of*

*the appellant were far in excess of investments in shares/mutual funds.*

*(B) That the Ld.CIT(A) has grossly erred in law in not accepting the contentions of the appellant that the strategic investments made in subsidiary companies and in shares of companies from which no dividend was received are to be excluded while computing the value of average investment under Rule 8D(2)(ii).*

*(C) Without prejudice to above, the Ld.CIT(A) has erred in law in holding that disallowance u/s 14A should be higher of Rs.18 lacs, disallowance made in the tax return by the appellant or amount computed after giving relief in the CIT(A) order.*

- 2. That any relief due to the company in consequence of the foregoing grounds.*
- 3. That the above grounds of appeal are without prejudice to one another.”*

47. Ground nos. 1 to 3 of Revenue's appeal are identical to ground nos.2, 3 and 4 for AY 2009-10. Facts being identical, decision taken therein shall apply *mutatis - mutandis* to the appeal for AY 2011-12.

48. Ground no.4 of grounds of appeal of the Revenue and ground no.1 of grounds of appeal of the assessee are identical to ground nos.6 of Revenue's appeal and ground nos.1 to 4 of assessee's appeal for AY 2009-10. Facts being identical the decision taken therein shall apply *mutatis - mutandis* to the AY 2011-12. We order accordingly.

49. In the result, appeals of the Revenue for AY 2009-10 to 2010-11 and appeals of the assessee for AY 2009-10 to 2010-11 are partly allowed as indicated above. The appeal of the Revenue for AY 2011-12 is dismissed and the appeal of the assessee for AY 2011-12 is allowed.

Order pronounced in the open court on 14.11.2023

**Sd/-  
(M BALAGANESH)  
ACCOUNTANT MEMBER**

**Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER**

Dated: 14.11.2023

*\*Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT  
(DR)/Guard file of ITAT.

**By order**

**Assistant Registrar, ITAT: Delhi Benches-Delhi**