

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
“G” BENCH MUMBAI  
BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT  
MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIALMEMBER**

**ITA No. 1694/MUM/2023  
(A.Y. 2013-14)**

Sicom Ltd, Solitaire Corporate Park, Bldg No.04, Chakala, Andheri(E), Mumbai-400093.	Vs.	Dy Commissioner of Income Tax Circle 3(3)(1), 6 <sup>th</sup> Floor, Room No. 609,Aayakar Bhavan, Maharishi Karve Road, Mumbai- 400020.
स्थायी लेखा सं./जीआइआर सं. <b>PAN/GIR No. AAACS5524J</b>		
(अपीलार्थी/ <b>Applicant</b> )		(प्रत्यर्थी/ <b>Respondent</b> )

**ITA No. 2036/MUM/2023  
(A.Y. 2013-14)**

Dy Commissioner of Income Tax Circle 3(3)(1), 6 <sup>th</sup> Floor, Room No. 609,Aayakar Bhavan, Maharishi Karve Road, Mumbai- 400020.	Vs.	Sicom Ltd, Solitaire Corporate Park, Bldg No.04, Chakala, Andheri(E), Mumbai-400093.
स्थायी लेखा सं./जीआइआर सं. <b>PAN/GIR No. AAACS5524J</b>		
(अपीलार्थी/ <b>Applicant</b> )		(प्रत्यर्थी/ <b>Respondent</b> )

Applicant by	Shri.Rajan Vora &Shri Nikhil Tiwari.AR
Respondent by	Shri.Kishore Dhule.CIT- DR

सुनवाई की तारीख/Date of Hearing	04.09.2023
घोषणा की तारीख/Date of Pronouncement	20.11.2023

**ORDER****PER PAVAN KUMAR GADALE, JM:**

The cross appeal is filed by the revenue and the assessee against the order of the National Faceless Appeal Centre (NFAC)/CIT(A) passed u/sec 143(3) and U/sec 250 of the Act.

2. We shall take up ITA No. 1694/MUM/2023 as a lead case and facts narrated. The assessee has raised following grounds of appeals.

*I. Disallowance of notional Interest of Rs. 48,84,000/- under section 36(1)(iii) of the Act on Loan given to subsidiary*

General Ground

*1. erred in confirming the action of Ld AO in disallowing the notional interest of Rs 48,84,000/- on the ground of interest free advance were given to subsidiary company (i.e. SICOM Realty Pvt. Ltd) out of interest bearing funds,*

*2. erred in not following the judicial discipline by not following the directions of Hon'ble ITAT in Appellant's own case for AY 2009-10 wherein the Hon'ble Tribunal has allowed deduction of interest on loan given to subsidiary under Section 36(1)(ii) of the Act and the same loan continued in the present year.*

Sufficient own funds available

*3. erred in confirming action of the Ld. AO in disallowing notional interest of Rs. 48,84,000/- under section 36(1)(ii) of the Act on the ground that interest bearing funds were advanced to subsidiary company (i.e. SICOM Realty Pvt. Ltd) without charging any interest without appreciating that appellant had sufficient own funds,*

Commercial expediency for giving interest free advance

4. erred in not appreciating the fact that the appellant is in the business of project financing and advances were given to subsidiary which was wholly and exclusively for the purpose of business, thereby notional interest cannot be disallowed on such advances,

II. Disallowance under section 14A of the Act in respect of dividend income exempt under section 10(34) of the Act

5. erred in confirming total disallowance of Rs. 15.94 Crore (consisting of interest expense of Rs. 15.03 crore and admin expenses of Rs. 0.92 crore) under Section 14A rwr 8D of the Rules as against Rs. 0.87 crore suo moto disallowed by the Appellant,

No satisfaction recorded

6. erred in incorrectly confirming Rule 8D disallowance to the facts of the case without giving any reasons with regard to the dissatisfaction to suo-motu disallowance made under section 14A of the Act in the return of income;

Interest expense disallowance

7. erred in confirming the disallowance for interest expenditure of Rs. 15.03 crore under Section 14A of the Act, without appreciating the facts that no borrowed funds were used for the purpose of making investment which could yield exempt income.

8. erred in not following the judicial discipline of following the Hon'ble ITAT order in Appellant's own case for AY 2002-03, AY 2007-08 and AY 2008-09 (ie year after insertion of Rule 8D) wherein the Hon'ble Tribunal has held that interest expense cannot be disallowed under Section 14A of the Act,

9. erred in not appreciating the fact that the Ld. CIT(A) in AY 2004-05 to AY 2007-08 and Assessing Officer in AY 2009-10 to AY 2012-13 have themselves allowed the interest expenditure under Section 14A of the Act which has been accepted by Department in AY 2004 to AY 2005-06 and also upheld by the Hon'ble ITAT in AY 2007-08;

Administrative expense disallowance

10. erred in confirming disallowance on account of administrative expense of Rs. 0.92 crore (0.5% of average value of investment) considering it as reasonable expenditure incurred for earning exempt income without appreciating the fact that the Appellant has already made suo-moto disallowance of such reasonable expense of Rs. 0.87 crore:

11 without prejudice to the above, disallowance if any, under Section 14A of the Act. should be restricted to 1% of dividend income received during the year.

III. Interest under section 234B of the Act

12. erred in levying interest under section 234B of the Act;

IV. Initiation of penalty proceeding under section 271(1)(c) of the Act

13. erred in initiating penalty proceeding under section 271(1)(c) of the Act;

The appellant craves, to consider each of the above grounds of cross objections without prejudice to each other and craves, leave to add, alter, delete or modify all or any of the above grounds of cross objections.

2(a). The assessee has raised the Additional Grounds Of Appeal as under:

On the facts and in the circumstances of the case, the Appellant wishes to raise the following additional ground of appeal which is independent of the other grounds of appeal

Only those Investments from which exempt income earned should be considered for computing disallowance under section 14A

14. erred in considering the total investments instead of only those investments from which exempt income is eared during

*the year while computing disallowance under Section 14A of the Act read with Rule 8D(iii) of the Income Tax Rules, 1962,*

*Disallowance under section 14A cannot exceed exempt income*

*15. Without prejudice to the grounds raised in original appeal and above grounds, the disallowance, if any upheld under Section 14A of the Act should be restricted to the amount of the exempt income earned by the Appellant during the year;*

*Disallowance under section 14A should be restricted to 1% of administrative expenditure*

*16. Without prejudice to the grounds raised in original appeal and above grounds, the disallowance, any upheld under Section 14A of the Act should be restricted to 1% of administrative expenditure. 16*

*17. erred in not following judicial principle laid down by the Hon'ble Tribunal in Appellant's own case for AY 1999-00 2000-01, 2001-02, 2002-03 and 2007-08,*

*The Appellant craves, to consider the above ground of appeal without prejudice to each other and craves leave to add, alter, modify or delete all or any of the above grounds of appeal.*

3. The brief facts in the case that, the assessee company is engaged in the business of project finance, leasing, Merchant banking, investment and trading in shares, financial services and advisory business. The assessee has filed the return of income for the A.Y.2013-14 on 29.11.2013 disclosing the total income of Rs. 345,00,71,130/- under the normal provisions of the Income Tax and under the provisions of 115JB of the Act of Rs. 376,02,36,393/-. Subsequently, the case was selected for scrutiny and notice u/sec 143(2) and

U/sec142(1) of the Act along with questionnaire was issued. In compliance to notice, the Ld.AR of the assessee appeared from time to time and filed the information and details. The Assessing Officer (A.O) on perusal of the financial statements and information found that (i) the assessee has claimed expenditure being provision for diminution in the value of stock in trade of Rs. 200.33 lacs and called for the explanations. Whereas the assessee has filed the explanations on 10.03.2016 but the Assessing Officer found that the assessee has not submitted the reasons for the claim, hence made disallowance of provision (ii) The Assessing Officer found that the assessee has received dividend income of Rs 2,70,93,000/- and has claimed exempted u/sec 10(34) of Act and the assessee has suo-moto made disallowance of Rs.87,18,140/- towards earning of exempt income. Whereas, the Assessing Officer on perusal of the financial statements found that the assessee has incurred interest expenditure of 608,57,96,000/- and has not disallowed the proportionate interest expenses and a show cause notice was issued for invoking provisions u/sec 14A r.w.r.8D of IT Rules. Whereas the assessee has filed details on 10.03.2016 mentioning that in the assesses own case, the Hon'ble Tribunal for AY:2008-09 has dismissed the appeal of the revenue on the ground of disallowance of proportionate interest. Whereas the AO found that the revenue has not accepted the ITAT decision and filed appeal before the Honble High court. The A.O has invoked the provisions

and computed disallowance U/sec14A r.w.r 8D(2)(ii)&(iii) of the IT Rules of Rs.1594,82,826/- and after setoff of suo moto disallowance of Rs.87,18,148/-, the balance amount of Rs.1507,64,678/- was added to the income. Similarly, AO has made addition of disallowance U/sec14A r.w.r 8D(2)(ii)&(iii) of the IT Rules in computing book profits u/sec115 JB of the Act. (iii) the A.O found that the assessee has obtained interest bearing loans and interest expenditure was claimed in the profit and loss account. Whereas the assessee has disclosed interest free advance/loan of Rs,407,00,000/- in the financial statements to a in the name of subsidiary M/s. Sicom Reality Pvt Ltd. The A.O. is of view that the assessee on one hand has taken interest bearing loans and claiming interest expenditure and on the other hand has utilized the funds providing interest free advances/loans to its subsidiary and the A.O has issued show cause notice for the proportionate disallowance applying the market rate of interest@12% on Rs.407,00,000/-and worked out the disallowance of Rs.48,84,000/- dealt at Page 6 Para 6.3 of the order as under :

*“6.3. The assessee was asked to submit the show cause as to why proportionate interest should not be disallowed of the interest free loans given. In response, on 10.03.2016, the assessee simply submitted an internal correspondence stating that... the funds released by SICOM to SRPL will be interest free...” The assessee could not submit any clarification as to why the proportionate interest expense on this account should not be disallowed. In absence of any proper explanation and also considering the interest bearing funds which was subsequently given to M/s. SICOM Realty Pvt. Ltd., without*

*charging any interest, the interest expenditure to the extent of interest free advances is not allowable u/s.36(1)(iii) of the Act. Further, addition on the same ground was also made in earlier years also. From the submission of the assessee, it is seen that the interest @ 14.50% per annum is charged by the assessee on the loan given by it to its sister concern M/s. SICOM Investment & Finance Ltd. (SIFL). Accordingly, the interest attributable to such advances by considering minimum market rate of interest, as charged in earlier years, @ 12%, which works out to 48,84,000 (12% of 407,00,000) is not allowable as the same was not incurred for the purpose of business.”*

4.(iv) the Assessing Officer found that, the assessee has offered the income/receipts as per the books of accounts and whereas there is a difference in the Form.No.26AS and the reconciliation was called for the difference amount. The A.O was not satisfied with the partial information submitted and made addition of difference amount of Rs.14,17,330/- and (v) the Assessing Officer on perusal of the computation of income found that the assessee has claimed deduction U/sec36(1)(viii) of the Act on special reserve of Rs.5,34,36,006/-,Whereas the claim has to be reworked due to additions and disallowances and computed revised claim U/sec36(1)(viii) of the Act and finally assessed the total income of Rs. 362,43,32,307/- under normal provisions of income tax and Rs.393,10,34,071/- under the provisions of section 115JB of the Act and passed the order u/sec 143(3) of the Act dated 23.03.2016

5. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). In the Appellate Proceedings, the CIT(A)

has considered the grounds of appeal, statement of facts, findings of the A.O and submissions of the assessee. The CIT(A) on the disputed issue of provision for diminution in the value of stock in trade of Rs. 200.33 lacs claimed by the assee has granted relief relying on the assessee own case at Page 8 Para 6 & 7 of the order as under:

*“6. The above detailed submission has been examined. Regarding the issue of claim of diminution in the value of stock in trade, there is a recent decision in the case of Ashok Leyland Finance Ltd versus DCIT 146 taxmann.com 340 (Madras High Court) (2023). In this case, there was a claim of deduction by this NBFC, of the diminution in the value of investment made in shares of two unlisted companies, which did not have a market value as they were not traded in stock market- were merely investments- and not in stock-in-trade, the same was disallowed - Held in favour of Revenue.*

*Further, in this case of Ashok Leyland, it was also observed that government securities could not be easily encashed and can be utilized only when certain contingencies arise and thus, these also cannot be considered to be 'Circulating Capital' or 'Stock-in-trade'- Thus, not considered stock-in-trade.*

*However, since in appellant's own case for AY 2009-10, the Hon'ble ITAT and for AY 2007-08, the Hon'ble High Court have allowed provision for diminution in the value of Investment, respectfully following the same decision, the AO is directed to allow the said claim, however, subject to verifying the extent allowable after applying the principle as held in the case of Ashok Leyland Finance Ltd discussed above, by excluding such instances of investments, if any, which do not fall in definition of /or form part of stock-in-trade, as per law.*

*7. Accordingly, this ground of appeal is allowed for statistical purposes.”*

6. On the second disputed issue of disallowance U/sec14A r.w.r 8D(2)(ii)&(iii) of the IT Rules of Rs.1594,82,826/- and after setoff of suo moto disallowance of Rs.87,18,148/-

, the balance amount of Rs.1507,64,678/- was added to the income by the A.O. The CIT(A) has considered the submissions of the assessee referred at Page 9 to 17 Para 8 of the order and finally the CIT(A) has sustained the disallowance observing at Page 18 Para 9 to 11 of the order read as under:

*“9. Regarding the issue of disallowance under section 14A, the appellant was asked to establish the extent of expenditure debited for earning exempt and regular income. The AO examined the financial statement and arrived at the conclusion and after his satisfaction invoked rule 8D for determining the said expenditure for investment, which may earn tax-free income.*

*The appellant has made detailed submission including citing its own case for AY 2008-09 by Hon'ble ITAT, however, fact of the case on this issue in each year has to be seen, which keep on changing depending upon nature and extent of investments. As far as department's stand is concerned, the department has not accepted the decision. In fact, over a period of time, the position has changed with the amendment by the Finance act.*

*Section 14A was inserted by the Finance Act, 2001 with retrospective effect from 1st April 1962 to provide that expenditure incurred in relation to exempt income shall not be allowed as a deduction while computing total income.*

*The Finance Act, 2006 further amended this section to provide that in the cases where the Assessing Officer is not satisfied with the correctness of the disallowance claim made by the assessee, the amount of disallowance shall be computed in accordance with the prescribed methodology. For this purpose, CBDT has prescribed Rule 8D in the Income-tax Rules, 1962 to prescribe the methodology for computing the disallowance under section 14A.*

*10. Now, further latest amendments have been brought vide Finance Act, 2022 in Section 14A:*

*1st Amendment:*

*In sub-section (1) of the said section to provide that notwithstanding anything to the contrary contained in this Act, for the purpose of computing the total income, no deduction shall be allowable in respect of expenditure incurred in relation to income which does not form part of the total income.*

*The first amendment is with regard to insertion of non-obstante clause to Section 14A(1). Due to which, this sub-section would have overriding effect over any other provision containing contrary view as against this provision.*

*2nd Amendment:*

*Inserted the Explanation to the said section to clarify that notwithstanding anything to the contrary contained in this Act, the provisions of the said section shall apply and shall be deemed to have been always*

*applied in a case where the income, not forming part of the total income, has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not form part of the total income.*

*Many a times, especially in big cases, it happens that major proportion of expenditure takes place in one particular financial year, and corresponding income is generated in some other year, in which not much or no expenditure incurred. Such situations create anomaly in taxation and thus, income and expenditure cannot be collated.*

*Vide second amendment, an explanation has been inserted to section 14A. It is clarificatory in nature. By inserting the explanation, revenue has clarified that expenditure incurred for earning such exempt income during the year is liable to be disallowed, even in case when no corresponding exempt income is received or accrued to the assessee in such year.*

*Thus, AO arrived at figure of Rs.15,02,99,311 plus 0.5% of average value of investment at Rs.91,83,515 totaling to Rs.15,94,82,826 as per Rule 8D for disallowance under section 14A. After giving adjustment to Suo-moto disallowance of Rs.87,18,148 made by the appellant, the disallowance restricted at Rs. 15,07,64,678/- is held to be justified and is confirmed.*

*Further, reliance is placed on latest decision in the case of H.T. Media versus PCIT, (High Court of Delhi) November, 2022 decision in 145 taxmann.com 219 held when ad-hoc disallowance under section 14A - offered by assessee was rejected and disallowance was computed as per Rule 8D, no substantial question of law arises. Similarly, reliance is placed on decision in the case of Tamilnad Mercantile Bank Ltd versus ACIT 135, taxmann.com 304 (Madras) (2022) where disallowance computed by assessee was not in accordance with methodology prescribed under rule 8D, no interference was called for.*

*Further, in PCIT vs, BSE Limited 129, taxmann.com 87 (SC) (2021), it was held that prior to working out disallowance under section 14A, the AO must record a conclusion that he is not satisfied with Suo-moto disallowance by the assessee - Here in the case of appellant, the AO has detailed in the assessment order, why he arrived at the conclusion for invoking Rule 8D r.w.s 14A.*

*11. Hence, in view of above position, the disallowance of Rs 15,07,64,678 (net amount) made by the AO is sustained and this ground of appeal is dismissed.”*

7. Further, the CIT(A) on the proportionate disallowance by the A.O applying the market rate of interest@12% on Rs.407,00,000/-and worked out the disallowance of Rs.48,84,000/-. The CIT(A) has considered the detailed submissions of the assessee dealt at Page 21 to 28, Para 12 of the order. Whereas the CIT(A) was not satisfied with the explanations and information and confirmed the disallowance observing at Page 28 Para 13 &14 of the order as under:

*“13. The AO had been very reasonable, that despite appellant having failed to justify the interest free advances made to its sister concern, SICOM Realty Pvt Ltd (SRPL) engaged in the reality business, of Rs.4.07 crore as against availing interest bearing loan from another sister concern, engaged in*

*investment related business@ 14.50% per annum, he restricted the disallowance @ 12% only.*

*The appellant contended that it gave loan to SRPL due to commercial expediency and for business purpose. The business of appellant is distinct and it is a NBFC and there was no necessity to route funds from M/s Sicom Investment and Finance Ltd via appellant, to yet another sister concern, M/s Sicom Realty Private Limited (SRPL) and debit heavy interest expenses @ 14.50% without proving any business purpose. Even, the land project of MMRDA mentioned by the appellant could not materialize subsequently. Further, the appellant has not been able to prove that same was out of surplus fund available. The appellant has also relied on judicial pronouncements. In the case of Yenepoya Resins & Chemicals versus DCIT 116 taxmann.com 457 (Karnataka High Court) (2020)- the assessee deliberately reduced its taxable income through discounting LC against sale bills issued to sister concerns instead of collecting proceeds, bore interest burden of sister concern, it was held that said arrangement could not be considered as business prudence and deduction claimed by assessee on account in interest paid /debited-was not allowable under section 36 (1)(iii).*

*Similar view was held in the cases of*

*Elmer Havell Electrics vs CIT, 148 taxman 57 (Delhi High Court) (2005)*

- *CIT vs V.I. Baby & Co 123 Taxmann.com 894(Kerala HC)*
- *ACIT vs Auto lite (India) Ltd 81 taxmann.com 436 (Jaipur-ITAT) (2017)*
- *ACIT vs Mafatial S. Bafna 1 SOT 162 (Mum)(2004) Asia Investments P Ltd Vs ACIT 91 taxmann.com 431 (ITAT Mum)(2018)*
- *Crescent Organics P Ltd Vs DCIT 49 taxmann.com 128 (Bom HC)- (finance expenses)-(2014).*

*14 Besides, the AO has held that such interest bearing funds were without any benefits and hence, in view of above discussion, addition of Rs 48,84,000 made by the AO is sustained and this ground of appeal is dismissed.”*

8. The CIT(A) on the addition of provision for diminution in the value of stock in trade of Rs. 200.33 lacs in computing book profits under section 115JB of the Act. The CIT(A) considered the assessee submissions and granted relief dealt at Page 36 Para19 of the order as under:

*“19. This ground of appeal has been accepted by the department in earlier year and in view of above submission & case laws relied and also the recent decision in the case of DCIT, Kolkata vs Peerless General Finance and Investment Co. Ltd 126 taxmann.com 79 (Kol -ITAT) (2021) Provision for diminution in value of investment, having been written off, could not be added to book profit under section 115JB. Similarly, held in the case of PCIT vs Torrent (P) Ltd 108 taxmann.com 375 (Guj. HC) 2019. In view of above position, this ground of appeal is allowed”.*

9. The CIT(A) dealt on addition of disallowance U/sec14A r.w.r 8D(2)(ii)&(iii) of the IT Rules in computing book profits u/sec115 JB of the Act and the submissions of the assessee . Further the CIT(A) has relied on the judicial decisions and granted relief observing at Page 36&37 Para 20& 21 of the order as under:

*“20 Ground 23: Addition to book profit under section 115JB of the Act on account of 14A of the Act of Rs.15,07,64,678/-*

*In this regard, the appellant submitted that;*

*1 "The learned AO has added back the disallowance under section 14A read with rule 8D, expenses of Rs. 15,07,64,678/- while computing the Book Profit u/s. 115JB of the Act.*

2. In this regard, the Appellant submits that adjustment cannot be made in the book profit under section 115JB of the Act for the items which are not mentioned specifically in the explanation to section 115JB of the Act, relying on the decision of Apollo Tyres Ltd. Vs. CIT (255 ITR 273) (SC).

3. At the outset, the Appellant wishes to place reliance on the decision of Hon'ble Tribunal in Appellant's own case for AY 2012-13 in. ITA 1998/M/2017 dated 14 November 2018 wherein the Hon'ble Tribunal, relying on the Special Bench ruling in case ACIT vs Vireet Industries Pvt. Ltd. (188 TTJ 1) has been held that computation of adjusted book profit, provisions of sub-section (2) and (3) of section 14A cannot be imported into clause (f) of the Explanation to section 115JA of the Act.

4. Similar view has also been taken by Courts/ Tribunal in following cases.

Hon'ble Bombay High Court in case of, CIT vs. JSW Energy Ltd., [2015] 60 taxmann.com 303 (Bombay) - Hon'ble Delhi High Court in Pr. CIT V Bhushan Steel Ltd. ITA No.593/2015 Hon'ble Mumbai Tribunal in case of Laqshya Media Limited (ITA 7340/Mum/2017) AY 2013-14.

Hon'ble Calcutta High Court in the case of CIT VS. Jayshree Tea Industries Ltd. in GO No.1501 of 2014 (ITAT No.47 of 2014) dated 19.11.14

1. In view of the above, it is respectfully submitted that no addition under section 115JB of the Act is warranted for amount disallowed under section 14A of the Act.

### Decision

21. This ground is accepted in view of decision of the Hon'ble Supreme Court in the case of PCIT vs. Atria Power Corporation Ltd 142 taxmann.com 413 (SC) (2022) & ACIT vs Geometric Software Solution Co Ltd 140 taxmann.com 647 (Mum ITAT) (2022).

Hence, it is accepted that no addition u/s 115JB of the Act is warranted for amount disallowed u/s 14A of the Act. This disallowance u/s 14A rwr 8D has been sustained under the regular provisions in this order (supra). Hence, this ground of appeal is allowed.”

10. Whereas the CIT(A) has granted relief in other grounds of appeal and partly allowed the assessee appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

11. At the time of hearing, the Ld.AR submitted that the Ld.CIT(A) has erred in sustaining the addition of the proportion disallowance of Rs.48,84,000/- applying the market rate of interest@12% U/sec36(1)(iii) of the Act on the interest free advances/ loan to the subsidiary company. The Ld.AR emphasized that the interest free loan is provided from surplus funds/own funds available on commercial expediency and interest bearing funds are not utilized for providing advance and further in the assessee own case for the earlier year, the claim was allowed . The Ld.AR submitted that the CIT(A) has erred in sustaining the disallowance U/sec14A r.w.r 8D(2)(ii)&(iii) of the IT Rules of Rs. of Rs.1507,64,678/-, though the A.O has not recorded satisfaction on the incorrectness of claim and Further the Ld.AR relied on the additional ground of appeal, that only investments which yield exempt income should be considered in computing disallowance U/sec14A r.w.r 8D(2)(ii)&(iii) of the IT rules .The Ld.AR substantiated the submissions with synopsis, factual paper book and judicial decisions and prayed for allowing the appeal. Per contra, the Ld.DR supported the order of the Ld.CIT(A) on the disputed issues and submitted that the revenue has filed the cross appeal.

12. We have heard the rival submissions and perused the material on record. The Ld.AR submitted that the CIT(A) has erred in confirming the addition of notional interest overlooking the facts and submissions in the proceedings. Whereas the AO has estimated the deemed/ notional interest based on the market rate of interest charged. The Ld.AR relied on the judicial decisions in support of surplus funds availability and the investments/ funding is considered out of surplus funds. The contentions of the Ld. AR that the assessee has filed substantial information, evidences in support of claim. Whereas the interest free loan is provided from surplus funds/own funds available on commercial expediency and interest bearing funds are not utilized for providing advance and further in the assessee own case for the earlier year, the claim was allowed. The assessee is in the business of project financing and the Loan is given to 100% subsidiary company of the assessee wholly and exclusively for the purpose of business. The Ld.AR explained the facts and business participation of the assessee, the transactions of subsidiary company and MMRDA. The Ld.AR submitted that in the assessee own case for A.Y.2009-10, the Honble Tribunal has granted the relief on this disputed issue of notional interest estimated on the interest free loan provided to the subsidiary company are out of surplus funds. Further the Ld.AR demonstrated the reserves and surplus available in the F.Y.2008-09, when the loan was provided and the current position in F.Y.2012-13. The

Ld.AR relied on the following judicial decisions substantiating the claim that the loan is provided out of surplus funds and commercial expediency.

*(a) No disallowance under section 36(1)(iii) of the Act when loans are given out of own surplus funds:*

- *Copy of Hon'ble Tribunal Order in Appellant's own case for AY 2009-10 (ITA No.42/M/2020) dated 27 August 2021)*
- *South India Bank vs CIT (2021) (130 Taxmann.com 178) (SC)*
- *PCIT vs Shapoorji Pallonji & Co Ltd (2020) (423 ITR 220) (Bombay HC) affirmed by Hon'ble Supreme Court in (2022) (141 taxmann.com 509)(SC)*
- *CIT vs Reliance Utilities and Power Limited (2009) (313 ITR 340)(Bombay HC)*
- *Ashita Janani vs ITO (ITA No. 1842/Mum/2020) dated 28 March 2022*
- *Wanbury Ltd vs DCIT (ITA No. 2587/Mum/2019) dated 25 April 2022*

*(b) No disallowance under section 36(1)(iii) of the Act when loan given to subsidiary due to commercial expediency and for business purpose of the Appellant:*

- *S.A. Builders Ltd vs CIT (2007) (288 ITR 1) (SC)*
- *PCIT vs V.S. Dempo Holding Pvt Ltd (2021) (130 taxmann.com456)*
- *(Bombay HC)*
- *Macrotech Developers Ltd vs DCIT (ITA No.5021, 5022/Mum/2019) dated 23 May 2022*
- *Deepak Shah vs ACIT (ITA No. 7032/Mum/2019) dated 22 December 2021.*

13. We find the Honble Tribunal in the assessee own case in ITA. No.42/Mum/2020 for A.Y.2009-10 dated 27-08-2021 has dealt on the similar addition of notional interest sustained by the CIT(A) and deleted the addition observing at Page 4 Para 6 to 9 of the order read as under:

6. We have heard the ld. Authorized Representative for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the ld. A. R to drive home his aforesaid contention. As is discernible from the orders of the lower authorities, the assessee company which is a NonBanking Finance Company (NBFC) engaged in the business of finance such as project finance, leasing, merchant banking, investments and trading in shares, financial services and advisory business, had during the year under consideration given an interest advance of Rs.6.57 crores to its 100% subsidiary company viz. Sicom Realty Pvt. Ltd. (SRPL). Observing, that the assessee which had raised interest bearing funds had diverted the same to the aforesaid extent for giving of interest-free advance to SRPL, the CIT was of the view that the A.O while framing the assessment had erred in not disallowing the assessee's claim for deduction of the corresponding interest under Sec. 36(1)(ii) of the Act. Backed by his aforesaid conviction the CIT called upon the assessee to explain that as to why the order passed by the A.O u/s 143(3), dated 30.11.2011 being erroneous and prejudicial to the interest of the revenue on the aforesaid aspect be not set aside in exercise of the powers vested with him u/s 263 of the Act. As the reply filed by the assessee did not find favour with the CIT, therefore, he vide his order passed under Sec 263 of the Act, dated 03.03.2014, inter alia, on the aforesaid aspect set-aside the order that was passed by the A.O u/s 143(3), dated 30.11.2011, with a direction to him to frame a fresh assessment. In the backdrop of the aforesaid direction of the CIT, the A.O vide his order passed u/s 143(3) r.w.s 263, dated 12.03.2015 disallowed the interest pertaining to the interest-free advance of Rs.6.57 crore that was given by the assessee to its subsidiary company, viz. SRPL and worked out a disallowance of Rs.78,84,000/-. On appeal, the CIT(A) upheld the disallowance of the assessee's claim for deduction of interest expenditure of Rs.78,84,000/- made by the A.O.

7. Before us, the assessee had assailed the disallowance of the aforesaid interest expenditure u/s 36(1)(iii) of the Act, inter alia, for the reason that the assessee had sufficient self-owned funds to have sourced the aforementioned interest-free advance of Rs.6.57 crore that was given to its subsidiary company. On a

*perusal of the records, we find that the assessee had summarized the details of owned funds, borrowed funds, and advances that were made by the assessee on 31st March, 2009, as under:*

*It is stated by the assessee that though there had been an increase in the borrowed funds, loans and advances during the year under consideration, ITA No.42/Mum/2020 A.Y. 2009-10 M/s SICOM LTD. Vs. DCIT, Circle- 3(3)(1) 6 however, there had also been an increase in the owned funds of the assessee by an amount of Rs.70.92 crores which was more than sufficient for sourcing the interest-free advance of Rs.6.57 crore that was given to its sister concern, viz. SRPL.*

*8. Admittedly, the fact that the assessee had sufficient owned funds to source the interest-free advance of Rs.6.57 crore that was given to its subsidiary company is not in dispute. The controversy involved in the present appeal hinges around the aspect, that as per the department if an assessee had borrowed certain funds on which liability to pay interest is being incurred; and on the other hand had advanced certain amounts to its sister concern or other third parties without charging any interest and without any business purpose, then, the proportionate interest correlating to the amount so advanced without charging any interest was liable to be disallowed u/s 36(1)(iii) of the Act. We are of a strong conviction that the aforesaid view taken by the lower authorities is absolutely misconceived and in fact misplaced. In our considered view, if there be interest-free funds available with an assessee which are sufficient to meet its interest free investments; and at the same time the assessee had raised interest bearing loans, then, the presumption would be that the investments in question were made by the assessee from the interest-free funds so available with it. Our aforesaid view is fortified by the judgment of the Hon`ble High Court of Bombay in the case of CIT vs. Reliance Utilities & Power Ltd. (2009) 313 ITR 340 (Bom). In its aforesaid order the Hon`ble High Court had observed that in case if the assessee had advanced interest-free amounts out of its mixed funds i.e interest free and interest bearing funds lying in common pool, then, the presumption would be that the amount so advanced was from the interest-free funds available with the*

assessee company. For the sake of clarity the observation of the Hon`ble High Court is culled out as under:

“10. If there be interest-free funds available to an assessee sufficient to meet its investments and at the same time the assessee had raised a loan it can be presumed that the investments were from the interest-free funds available, in our opinion the Supreme Court In *Fast India Pharmaceutical Works Ltd. (supra)* had the occasion to consider the decision of the Calcutta High Court in *Woolcombers of India Ltd. (supra)* where a similar issue had arisen. Before the Supreme Court it was argued that it should have been presumed that In essence and true character the taxes were paid out of the profits of the relevant year and not out of the overdraft account for the running of the business and in these circumstances the appellant was entitled to claim the deductions. The Supreme Court noted that the argument had considerable force, but considering the fact that the contention had not been advanced earlier it did not require to be answered. It then noted that in *Wootcomber's case (supra)* the Calcutta High Court had come to the conclusion that the profits were sufficient to meet the advance tax liability and the profits were deposited in the overdraft account of the assessee and in such a case it should be presumed that the taxes were paid out of the profits of the year and not out of the overdraft account for the running of the business. It noted that to raise the presumption, there sufficient material and the assesses had urged the contention before the High Court. The principle therefore would be that if there are funds available both interest-free and/or loans taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds were sufficient to meet the investments, in this case this presumption is established considering the finding of fact both by the CIT(A) and Tribunal.” Also, the Hon`ble High Court of Bombay in the case of *CIT-2, Mumbai, Vs. HDFC Bank Limited (2014) 366 ITR 503 (Bom)*, had observed, that where the assessee`s funds and other non-interest bearing funds were more than the investments made in tax free securities, then, it would have to be presumed that the investments so made by the assessee were out of the interest-free funds available with it. Accordingly, in the backdrop of the aforesaid settled position of law, we are unable to persuade

*ourselves to subscribe to the view taken by the lower authorities who had disallowed the assessee's claim for deduction of the interest expenditure under Section 36(1)(iii) of the Act, for the reason, that as the assessee was in receipt of interest bearing funds, therefore, it was to be presumed that the interest-free funds given by it to its subsidiary company, viz. SRPL were out of such interest bearing funds. We, thus, not finding favor with the view taken by the lower authorities set-aside the order passed by the CIT(A), to the extent he had upheld the disallowance of the assessee's claim for deduction of interest expenditure of Rs.78,84,000/- u/s 36(1)(iii) of the Act.*

*9. Resultantly, the appeal filed by the assessee is allowed in terms of our aforesaid observations.*

14. We find the facts in the present case, are similar and identical as discussed in the above judicial decision. Accordingly, we follow the judicial precedence and set-aside the order of the CIT(A) on this disputed issue of charging notional interest and direct the Assessing officer to delete the addition and allow these grounds of appeal in favour of the assessee.

15. On the second disputed issue, that the CIT(A) has erred in sustaining the disallowance U/sec14A r.w.r 8D(2)(ii)&(iii) of the IT Rules though the A.O has not recorded satisfaction on the incorrectness of claim and Further the Ld.AR relied on the additional ground of appeal, that only investments which yield exempt income should be considered in computing disallowance U/sec14A r.w.r.8D(2)(ii)&(iii) of the IT rules. The Ld.AR contentions are that the CIT(A) has overlooked the additional evidences, availability of own funds with the assessee and

the investments are made out of surplus and own funds. Further the Ld.AR submitted that in the assessee own case for A.Y.2008-09, the Honble Tribunal has restored the issue to the file of the assessing officer with the directions. The revenue authorities also has not considered the administrative expenditure incurred by the assessee while computing the disallowance under Sec14A r.w.r 8D(2)(ii)&(iii) of the I T rules. The Ld.AR made submissions on the alternative propositions and relied on the following judicial decisions in support of surplus funds availability and the investments/ funding is considered out of surplus funds and other alternative propositions.

*(a) own funds are higher than investments made, it's a presumption that investment are made out of won funds*

- *Copy of Hon'ble Tribunal Order in Appellant's own case for AY 2008-09 (ITA No. 1394/Mum/2012) dated 05 August 2015*
- *Copy of Hon'ble Bombay High Court in Appellant's own case in (ITA No. 1374 of 2016) dated 22 January 2019*
- *PCIT vs Shapoorji Pallonji & Co Ltd (2020) (423 ITR 220) (Bombay HC) affirmed by Hon'ble Supreme Court in (2022) (141 taxmann.com 509)(SC)*
- *CIT vs Reliance Utilities and Power Limited (2009) (313 ITR 340)(Bombay HC)*
- *South India Bank (130 Taxmann.com 178) (SC)*
- *ACIT vs NIIT Technologies Ltd (2021) (123 taxmann.com 135) (Delhi ITAT)*

- *DCIT vs Hira Ferro Alloys Ltd (2018) (90 taxmann.com 430) (Raipur ITAT)*

*(b) Disallowance under section 14A read with rule 8D cannot exceed 1 percent of exempt income.*

- *Mahindra Homes Pvt. Ltd. (ITA No. 2179 & 1008/Mum/2021) dated 30 September 2022*

- *The Hongkong & Shanghai Banking (ITA No. 3857/Mum/2006 and ITA No. 4565/Mum/2009) dated 27 November 2019*

*(c) Only investments from which exempt income is earned should be considered for computing disallowance under section 14A of the Act.*

- *Hon'ble Tribunal in Appellant's own case for AY 2009-10 in (ITA No. 740/Mum/2013) dated 4 July 2019*

- *ACB India Ltd (ITA 615/2014) dated 24 March 2015 (Delhi HC)*

- *Vireet Industries Pvt. Ltd. (188 TTJ 1) (Delhi ITAT SB) affirmed by Hon'ble Delhi High Court in (ITA No. 243 & 247/2018) (CM Appl No. 7362 & 7365/2018)*

- *ITO vs Archway Investment Company Ltd (ITA. No. 3822/Mum/2018, ITA No. 6654/Mum/2017) dated 8 April 2021*

- *ACIT vs NIIT Technologies Ltd (2021) (123 taxmann.com 135) (Delhi ITAT)*

*Nadathur Estates Pvt Ltd vs ACIT (ITA Nos.267 & 268/Bang/2018) dated 3 May 2019 affirmed by Hon'ble Karnataka High Court in (ITA No.247 of 2020) dated 3 June 2021*

*(d) Disallowance under section 14A of the Act cannot exceed exempt income*

- *PCIT vs Caraf Builders & Constructions Pvt Ltd (2019) (101 taxmann.com 167) (Delhi HC) SLP/Dismissed rejected in (2019) (112 taxmann.com 322) (SC)*

- *PCIT vs Ajit Phatarphekar (2020) (429 ITR 319) (Bombay HC)*

- *ITO vs Moderate Leasing & Capital Services Ltd (ITA No. 2279/Del/2015) dated 31 January 2018*

- *Nadathur Estates Pvt Ltd vs ACIT (ITA Nos.267 & 268/Bang/2018) dated 3 May 2019 affirmed by Hon'ble Karnataka High Court in (ITA No.247 of 2020) dated 3 June 2021*

*(e) Disallowance under section 14A should be restricted to 1% of administrative expenditure.*

- *Hon'ble Tribunal in Appellant's own case for AY 1999-00 (ITA No. 5094/Mum/2004), AY 2000-01 (ITA No. 6586/Mum/2005), AY 2001-02 (ITA No. 6587/Mum/2005), AY 2002-03 (ITA No. 6588/Mum/2005) dated 22 May 2013*

- *Hon'ble Tribunal in Appellant's own case for AY 2007-08 (ITA No.8055/Mum/2010) dated 15 January 2014 affirmed by Hon'ble Bombay High Court in (ITA No.25/Mum/2015) dated 8 June 2017*

*(f) Satisfaction to be recorded by Ld Assessing Officer as to the incorrectness of the claim of the Assessee that no expenditure has been incurred for earning exempt income*

- *Godrej & Boyce Manufacturing Company Ltd vs DCIT (2017) (394 ITR 449) (SC)*

- *Maxopp Investment Limited vs CIT (2018) (402 ITR 640) (SC)*

- *PCIT vs Godrej & Boyce Manufacturing Company Ltd (2023) (292 Taxman 497) (Bombay HC)*

- *Wanbury Ltd vs DCIT (ITA No. 2587/Mum/2019) dated 25 April 2022*

- *Vinay Bhasin vs ACIT (ITA No. 6904/Del/2017) dated 27 August 2020.*

16. We find the Honble Tribunal in the assessee own case in ITA.NO.1394&2057/Mum/2012 for A.Y.2008-09 dated 05-08-2015 has dealt on the sustainment of the disallowance U/sec14A by the CIT(A) and restored the

issue to the file of the Assessing Officer observing at Page 8 Para 8 to 12 of the order read as under:

"8. In addition to the above case laws, the learned Counsel also relied on the assessment orders of the subsequent years, i.e., A.YS 2009-10, 2010-11 and 2011-12 in the assessee's own case, wherein, no disallowance has been made by the Assessing Officer. It is also seen that in the assessment order passed under section 143(3), for the assessment year 2009-10, the Assessing Officer has passed a speaking order, accepting the claim of the assessee that no borrowed funds were used for these shares and, therefore, no disallowance was called for. The relevant portion of the assessment order for the year 2009-10 is reproduced herein below, for the sake of ready reference:-

*"The interest expenses of the assessee are majority on account of secured loan and from adjustment loans from Government of Maharashtra and on Bonds. These details are available in Schedule 14 of the Profit & Loss account, On an examination of bank cash flow, it is seen that no borrowed funds is diverted for investment In shares resulting in tax free income. In the circumstances, I am of the opinion that the interest expenses need not be considered for the purpose of computing disallowance u/r 8D."*

9. Further, the learned CIT(A) has mentioned in his order that during the year under consideration, the assessee has not invested its borrowed funds in respect of the shares which are held as investment. The learned CIT(A) has relied upon the judgment of the Hon'ble Jurisdictional High Court in CIT v/s Reliance Utilities and Power Ltd, 313 ITR 340 (Bom.), wherein it was held that if there were funds available, both interest free and over draft and/or loans taken, then a presumption would arise that investment would be out of interest free funds generated, or available with the bank. Relying on this judgment of the Hon'ble Jurisdictional High Court, the learned CIT(A) has given a factual finding that the assessee had sufficient funds of its own to meet the investment and no borrowed funds were diverted for the purpose of making investment. This factual finding has not been rebutted before us by the learned Departmental Representative. Therefore, in

*view of the aforesaid decision of the Hon'ble Jurisdictional High Court in Reliance Utilities Pvt. Ltd. (supra) and other case laws relied upon by the learned Counsel and the facts and evidences placed before us, we are of the view that no interference is called for in the order of the learned CIT(A) in deleting the disallowance of interest of 7,87,70,940, made by the Assessing Officer in the assessment order. Thus, the grounds raised by the Revenue are dismissed.*

*10. In the result, Revenue's appeal stands dismissed.*

*We now take up the assessee's appeal.*

*11. With regard to Ground nos.1 to 6 raised by the assessee, wherein, the assessee has contested the disallowance of proportionate expenses of 51,29,704, sustained by the learned CIT(A), it was alternatively argued by the learned Counsel that in any case, the disallowance was excessive, keeping in view the facts of the case. It has been argued by the learned Counsel that the disallowance needs to be worked out again, for the reason that no disallowance under section 14A can be made on the strategic investments made in the subsidiaries. The second contention of the learned Counsel is that no disallowance under section 14A, can be made with respect to the shares held as stock-in-trade. In support of this proposition, the learned Counsel relied on the following case laws:-*

- 1. Excel Industries Ltd. Vs. DCIT (ITA no. 1067/Mum/2012 dated 02 January 2015) (Mumbai Tribunal)*
- 2. M/s JM Financial Limited (ITA NO. 4521/Mum/2012 dated 26 March 2014) (Mumbai Tribunal) (Page No.231-241)*
- 3. EIH Associated Hotels Ltd (ITA No 1503/Mds/2012) dated 17 July 2013 (Chennai Tribunal) (Page No.243-260)*
- 4. HSBC securities & Capital Markets (ITA No.3186/M/2008) dated 18 March 2011 (Page No. 261-264)*
- 5. Zensar Technologies (ITA No. 4538/M/2005) dated 15 December 2010 (Page No. 265-275)*
- 6. Balchandra S Sule (ITA No, 3684/M/2005) dated 29 October 2010 (Page No.277-279)*

7. *Garware Wall Ropes Limited (ITA No.5408/Mum/2012) dated 15 January 2014 (Page No. 281-288)*

2) Disallowance under section 14A not apply to shares held as stock in trade:

*DCIT Vs. India Advantage Securities Ltd (ITA NO. 6711/Mum/2011 dated 14 September 2012) (Mumbai Tribunal) (Bombay HC Dismissed the department appeal vide its order no. ITA 1131 of 2013 dated 17 March 2015) (Page No. 289-299)*

*CCI Ltd. Vs. JGIT (2012) 250CTR 291 (Kar. HC) (Page No.301-303) Ganjam Trading Co. Pvt. Ltd (ITA no. 3724/Mum/2005 dated 20 July 2012). (Page No.305-320)*

*12. At Page 169 of the paper book filed by the assessee, a re-working has been given by the learned Counsel, indicating that if the disallowance is worked out keeping in view the above contentions, then the disallowance can be sustained only at 13,80,088. It is seen that though these contentions were not raised by the assessee before the authorities below, undisputedly, in many cases, these contentions have been accepted by the various Benches of the Tribunal. Therefore, respectfully following the cases laws cited above, we set aside the order passed by the learned CIT(A) and restore the issue to the file of the A.O. for verification of the facts as narrated by the learned Counsel and to then accordingly adjudicate this issue afresh. Needless to say that the assessee should also be given adequate opportunity of hearing to put forth all the details and evidences as may be considered appropriate by the assessee in support of its contentions. Thus, grounds no.1 to 6 are allowed for statistical purposes.”*

17. Subsequently, the Revenue has filed an appeal against the order of the Honble Tribunal for the A.Y.2008-09 before the Honble Hight Court of Bombay, Income Tax Appeal No. 1374 of 2016 -Principal Commissioner of Income Tax Vs. M/s Sicom Limited and was dismissed vide order dated 22-01-2019 observing as under:

“1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 5th August, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). This Appeal relates to Assessment Year 2008-09.

2. The Revenue urges the following question of law for our consideration:

"Whether on the facts and in the circumstances of the case and in law the Tribunal has erred in deleting the disallowance on account of proportionate interest of Rs.7,87,70,940/- u/s 14A r.w.r. 8d(2) (ii) without considering the fact that the amount of disallowance u/s 14A has to be computed as per Rule 8D of the Income Tax Rules, 1961?"

3. The respondent-assessee is a non-banking finance company. In its return of income for the Assessment Year 2008-09 the respondent claimed an income of Rs.52.40 lakhs as exempt dividend income and made a suo-moto disallowance of Rs.52,934/- being the expenditure incurred for earning exempt income. However, in the assessment proceedings the Assessing Officer held that the subject Assessment Year 2008-09 the disallowance of expenditure to earn exempt income has to be made under Section 14-A of the Act r/w Section 8D(2)(ii) of the said Rules. Thus, making disallowance of expenditure to the extent of Rs.8.39 crores in the aggregate inter-alia consisting of proportionate disallowance of interest paid to the extent of Rs.7.87 crores in the Assessment Order dated 26th November, 2010.

4. Being aggrieved with the Assessment Order dated 26 November, 2010 to the extent of disallowance of proportionate interest paid of Rs.7.87 crores, the respondent preferred an appeal to the Commissioner of Income Tax (Appeals) (CIT(A)). By an order dated 20th December, 2011 the CIT(A) deleted the disallowance made under Section 14A of the Act on account of the proportionate interest paid on borrowed funds to the extent of Rs.7.87 crores.

5. Being aggrieved with the order of the CIT (A) on the above account, the revenue filed an appeal before the Tribunal. The impugned order of the Tribunal on facts found that the investments made in shares which resulted in exempt income was out of its own funds and not out of borrowed funds. The impugned order of the Tribunal upheld the reliance by the

*CIT(A) upon the decision of this Court in case of CIT v/s Reliance Utilities and Power Ltd., to delete the addition made by the Assessing Officer. This is in the above case, this Court held that where funds available are both interest-free and interest-bearing then presumption is that investment in shares would be out of interest-free funds. Thus, dismissed the revenue's appeal.*

*6. We find that on facts both the CIT (A) as well as Tribunal have rendered a concurrent finding that the investment made in shares which gave rise to exempt income was made out of its own funds and not out of borrowed funds i.e. interest bearing funds. In such a case this Court in CIT Vs. HDFC bank' has in identical circumstances held that the principle laid down in Reliance Utilities and Power Ltd. (supra) would equally apply while computing the disallowance under Section 14A of the Act. Thus, no fault can be found with the impugned order dated 5th August, 2015 of the Tribunal.*

*7. In the above view, the question as proposed does not give rise to any substantial question of law. Thus, no entertained.”*

18. Whereas on the issue of computation of disallowance U/sec14A r.w.r 8D(2)(ii)&(iii) of the I T Rules, the Honble Tribunal in the Assessee own case for A.Y.2009-10 in ITA No 740/Mum/2013 order dated 4-07-2019 has considered the facts that only investments which yield exempt income should be considered for computing the disallowance under sec14A r.w.r 8D(2)(ii)&(iii) of the I T Rules and restore the issue with the directions to the file of the Assessing Officer at Page 8 Para 4.1 to 4.3 of the order read as under:

*“4.1 Before us, the Ld. counsel of the assessee submits that provisions of section 14A have no application to the appellant's case for the following reasons:*

*1. That, there was no direct expense incurred in respect of such income; and/or*

2. That, since the appellant is carrying on indivisible business of financing, no part of common costs incurred for the business as a whole can be allocated on a national or proportionate basis towards such exempt income; and/or

3. That, since substantial portion of dividend income pertains to shares held as stock-in-trade by the appellant sale whereof gives rise to taxable business income in hands of the appellant.

Further, it is stated that (i) the AO cannot invoke Rule 8D of the Rules, without recording the satisfaction on the correctness of the expenditure suo motu disallowed by the assessee, (ii) only investment from which exempt income earned should be considered for computing disallowance u/s 14A, (iii) no disallowance u/s 14A can be made on strategic investment made in subsidiaries, (iv) disallowance u/s 14A does not apply to shares held as stock-in-trade, (v) disallowance u/s 14A cannot exceed exempt income and (vi) as the assessee is assessed under normal provisions of the Act, no disallowance u/s 14A should have been made while computing book profit u/s 115JB of the Act.

In support of the above propositions, the Ld. counsel relied on the decision in *H.T. Media Ltd.* (ITA No. 548/2015) (Del HC), *Smartchem Technologies* (ITA No. 7014/M/2013) dated 23 June 2017, *Ashish Jhunjunwala* (88 CCH 470) (Cal HC) dated 8 January 2014, *Cheminvest Ltd.* (ITA No. 749/2014) dated 2 September 2015 (Del HC), *Sarabhui Holding Pvt. Ltd. v. ACIT* (ITA No. 2328/Ahd/2012 dated 11 April 2014) (Ahmedabad Tribunal), *CIT v. Lakhani Marketing* (ITA No. 970/2008 dated 02.04.2014) (Punjab and Haryana High Court), *Uma Polymers Ltd.* (ITA No. 3329/Mum/2015) dated 03 March 2017 (Mum), *Vireet Investments Pvt. Ltd.* (50 CCH 145) (Del Trib) (SB), Tribunal order in appellant's own case (ITA No. 1349/Mum/2012) (AY 2008-09) dated 5 August 2015, *Oriental Structure* (ITA No. 605/2012) dated 15 January 2013 (Del HC), *DCIT v. India Advantage Securities Ltd.* (ITA No. 6711/Mum/2011 dated 14 September 2012) (Mumbai Tribunal) (Bom HC) dismissed the department appeal vide its order no. ITA 1131 of 2013 dated 17 March 2015), *CCI Ltd. v. JCIT* (2012) 250 CTR 291 (Kar HC), *Ganjam Trading Co. Pvt. Ltd.* (ITA No. 3724/Mum/2005 dated 20 July 2012), *M/s Everest Kanto Cylinder Ltd. v. ACIT* (ITA No. 7073/Mum/2012 dated 25 September 2014) (Mumbai Tribunal), *Reliance*

*Industrial Infrastructure Ltd. (ITA No. 69 & 70/Mum/2009) dated 5 April 2013 (Mumbai Tribunal).*

*4.2 On the other hand, the Ld. DR submits that in the case of Maxopp. Investment Ltd. v. CIT (2018) 91 taxmann.com 154 (SC), it is held that dominant purpose for which investment into shares is made by assessee may not be relevant as section 14A applies irrespective of whether shares are held to gain control or as stock-in-trade.*

*4.3 We have heard the rival submissions and perused the relevant materials on record. In the instant case, as recorded by the AO at para 5 of the assessment order, he has pointed out the assessee that in the light of the decision of the Hon'ble Bombay High Court in Godrej & Boyce Mfg. Co. Ltd., the disallowance has to be made as per Rule 8D from assessment year 2008-09 onwards.*

*In Vireet Investment Pvt. Ltd. (supra), the Special Bench of the Tribunal has held interalia that (i) computation under clause (f) of Explanation 1 to section 115JB(2), is to be made without resorting to computation as contemplated under section 14A read with rule 8D; (ii) only those investments are to be considered for computing average value of investment which yielded exempt income during year.*

*As mentioned earlier, in Maxopp. Investment Ltd. (supra), the Hon'ble Supreme Court has held interalia that (i) only expenses proportionate to earning exempt income could be disallowed u/s 14A; (ii) the dominant purpose for which investment into shares is made by assessee may not be relevant as section 14A applies irrespective of whether shares are held to gain control or as stock-in-trade.*

*In view of the above decisions which are relevant to the instant case, we set aside the order of the Ld. CIT(A) and restore the matter to the file of the AO to recomputed the disallowance u/s 14A r.w. Rule 8D for the normal computation by following the decision in Vireet Investment Pvt. Ltd. (supra) and Maxopp. Investment Ltd. (supra). We direct the assessee to file the relevant documents/evidence before the AO.*

19. We find the facts in the present case, are similar and identical as discussed in the above judicial decisions.

Accordingly, we follow the judicial precedence and set-aside the order of the CIT(A) on this disputed issue and restore the entire disputed issues to the file of the Assessing officer on the similar directions to adjudicate afresh on merits and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information. Accordingly, allow the grounds of appeal of the assessee for statistical purposes.

20. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

21. We shall take up the revenue appeal ITA No. 2036/M/2023 the revenue has raised the following grounds of appeal.

*Whether on the facts and circumstances of the case and in law, particularly after confirming the disallowance of Rs. 15,07,64,678/- u/s. 14A, the Ld. CIT(A) is justified in deleting the addition of same disallowance to the Book profit uls. 115JB by relying on the decision of the Hon'ble Supreme Court in the case of PCIT vs. Atria Power Corporation Ltd. wherein the Hon'ble Supreme Court had only dismissed the SLP of the Department without going into merits of the issue?*

*2. Whether on the facts and circumstances of the case and in law, the Ld. CIT is justified in deleting the above addition to Book profit uls. 115JB by relying on the decision of Hon'ble Supreme Court in the case of PCIT vs. Atria Power Corporation Ltd. without appreciating that this decision was in the context of deciding the jurisdiction of PCIT to invoke the revision proceedings u/s. 263 on this issue which was debatable at that point of time*

*3. The appellant craves leave to add, amend and/ or vary the grounds of Appeal before or during the course of hearing*

22. The Ld.DR submitted that the CIT(A) has erred in deleting addition of disallowance U/sec14A of the Act, in computing book profits u/s.115JB relying on dismissal of SLP of the Revenue by the Hon'ble Supreme Court. Whereas the Ld.AR submitted that the Ld.CIT(A) has relied on the decisions of the Hon'ble Supreme court, Hon'ble High Court and Hon'ble Tribunal and has granted the relief to the Assessee. And the Ld.AR on this disputed issue supported the order of the CIT(A).

23. We have heard the rival submissions and perused the material on record. The sole disputed issue envisaged by the Ld.DR that the Ld.CIT(A) has erred in deleting addition of disallowance U/sec14A of the Act, while computing the book profits and u/sec115JB of The Act. Whereas the CIT(A) has dealt on addition of disallowance U/sec14A r.w.r 8D(2)(ii)&(iii) of the IT Rules in computing book profits u/sec115 JB of the Act, the assessee submissions and the judicial decisions and granted relief observing at Page 37 Para 21 of the order as under:

*“21. This ground is accepted in view of decision of the Hon'ble Supreme Court in the case of PCIT vs. Atria Power Corporation Ltd 142 taxmann.com 413 (SC) (2022) & ACIT vs Geometric Software Solution Co Ltd 140 taxmann.com 647 (Mum ITAT) (2022).*

*Hence, it is accepted that no addition u/s 115JB of the Act is warranted for amount disallowed u/s 14A of the Act. This disallowance u/s 14A rwr 8D has been sustained under the regular provisions in this order (supra). Hence, this ground of appeal is allowed.”*

The Ld.AR relied on the submissions made before the CIT(A) and Judicial decisions in support of relief granted to the assessee.

- *Vireet Industries Pvt. Ltd (188 TTJ 1) (Delhi ITAT SB) affirmed by Hon'ble Delhi High Court in (ITA No. 243 & 247/2018) (CM Appl No.7362 & 7365/2018)*
- *CIT vs JSW Energy Ltd (2015) (60 taxmann.com 303) (Bombay HC) SLP Dismissed/Rejected in (2016) (68 taxmann.com 244)(SC)*
- *ACIT vs Geometric Software Solutions Co Ltd (2022) (140 taxmann.com 647) (Mumbai ITAT)*
- *ITO vs Archway Investment Company Ltd (ITA. No. 3822/Mum/2018, ITA No. 6654/Mum/2017) dated 8 April 2021*
- *Mahindra Homes Pvt. Ltd. (ITA No. 2179 & 1008/Mum/2021) dated 30 September 2022*
- *PCIT vs Atria Power Corporation Ltd (2022) (142 taxmann.com 413) (SC) SLP dismissed against (2022) (142 taxmann.com 412) (Karnataka HC)*

24. We find that the CIT(A) has relied on the decisions of the Hon'ble Supreme Court, the Honble High Court and the Hon'ble Tribunal and has deleted the addition of disallowance U/sec14A of the Act, in computing book profits u/s.115JB of the Act. Whereas in the assessee appeal, on the issue of computation of disallowance U/sec14A r.w.r 8D(2)(ii)&(iii) of the I T Rules relying on the decision in the own case for A.Y.2009-10 in ITA,No,740/Mum/2013 order dated 4-07-2019 and also considering the facts that only investments which yield exempt income should be considered for computing the disallowance under sec14A r.w.r 8D(2)(ii)&(iii) of the I T Rules, the matter was restored with the directions to the

file of the Assessing Officer. Since the issue of computation of disallowance u/sec14A r.w.r8D(2)(ii)&(iii) of IT Rules is restored to the file of the Assessing Officer with specific directions as discussed above paragraph. We considered it appropriate to restore this disputed issue in the revenue appeal also to the file of the Assessing Officer to recompute the disallowance u/sec14A of the Act and exclude the disallowance in computing the book profits U/sec115JB of the Act. Accordingly, the grounds of appeal are allowed for statistical purposes.

25. In the result, the appeal filed by the assesee is partly allow for statistical purpose and the appeal filed by the revenue is allowed for statistical purposes.

Order pronounced in the open court on 20.11.2023.

Sd/-  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 20/11/2023

Mrs.Urmila

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER,

*ITA . No. 1694/MUM/2023 & 2036/MUM/2023  
SICOM LTD.*

(Dy./Asstt.Registrar)ITAT,  
Mumbai