

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'H' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.1554/Mum/2021
(Assessment Year :2016-17)**

M/s. Infrastructure Leasing and Financial Services Limited The IL & FS Financial Centre Plot C-22, G Block Bandra Kurla Complex Bandra East Mumbai – 400 051	Vs.	Addl. Joint / Deputy / Asst. Commissioner of Income Tax National e-Assessment Centre, Delhi
PAN/GIR No.AAACI0989F		
(Appellant)	..	(Respondent)

Assessee by	Shri Bhupal Rapelli
Revenue by	Shri Anoop Hiwase
Date of Hearing	23/01/2024
Date of Pronouncement	31/01/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against final assessment order passed u/s.143(3) r.w.s. 144C(13) for the A.Y.2016-17 passed in pursuance of directions given by the DRP vide order dated 30/03/2021.

2. In various grounds of appeal assessee has raised following grounds:-

1	<i>AO / TPO erred in making TP adjustment in respect of specified domestic transaction (SDT) of Rs. 4,40,73,916 without considering that no adjustment is warranted as clause (i) of Section 92BA of the Act is omitted from statute.</i>	2-4
2	<i>AO/TPO erred in making TP adjustment in respect of advisory service charges paid to its related party i.e. IL&FS Infrastructure Development Corporation Limited</i>	5 to 8
3	<i>AO/TPO erred in making addition of INR 1,64,00,000/- on account of payment of commission expenses to non- executive directors</i>	9 to 15
4	<i>AO / TPO has erred in disallowing an amount of INR 593,63,45,000/- under section 14A of the Act</i>	16
5	<i>AO/TPO has erred in disallowing an amount of INR 592,90,63,345/- under section 14A to the book profits u/s.115JB of the Act</i>	17
6	<i>Addition of income on toll roads of Rs.77,64,000</i>	18
7	<i>Disallowance of depreciation on printers, routers, scanners and computer software amounting to Rs.59,32,663</i>	19
8	<i>Disallowance of brought forward losses and unabsorbed depreciation of Rs.27,77,31,728</i>	20
9	<i>Disallowance of MAT credit u/s 115JAA</i>	21
10	<i>Disallowance of deduction of education cess and secondary and higher education cess amounting to Rs.6,55,87,421</i>	22

3. In so far as ground No.2-15 are concerned, they relate to transfer pricing adjustment in respect of specified domestic transactions for advisory services charge paid to its related parties i.e. IL & FS Infrastructure Development Corporation

Limited and on account of payment of commission expenses to non-executive Directors. Assessee is one of the leading infrastructure development and finance companies and is also involved in infrastructure projects. Assessee has reported various specific domestic transactions, however, with respect to transaction of advisory fees paid to IIDC, the Id. TPO noted that during the year under consideration payment towards advisory services has been made to IIDC in connection with CII smart city initiative i.e. development of smart cities. As per the mandate letter submitted by the assessee, IL & FS is paying the monthly retainership fee on the basis of employee cost and overheads plus a margin of 10% and consideration paid by IL & FS to IIDC was Rs.2,76,73,916/-. The Id. TPO on the examination of the mandate letter dated 05/08/2015 by IIDC to the assessee wherein it was stated that the Chairman IL&FS is heading the CII National Mission on Smart Cities and the Vice Chairman IL&FS is also a member of the mission. It further stated that IIDC is assisting the Chairman and the Vice Chairman in their efforts to lead this initiative and is acting as their Secretariat. In this regard, a Show cause Notice dated 16/10/2019 was issued requesting the assessee to show cause as to why the transaction of advisory services paid by IL&FS to IIDC should not be benchmarked by using other method and treated as NIL?

4. In response, the assessee vide letter dated 23/10/2019 submitted on 24/10/2019 is summarized as under:-

- That partnering with the Central Government will enhance the brand value of the IL&FS Group
- That IIDC offers end to end solutions to its clients from project conceptualization to its completion and it includes program management consultancy, project development, bid process management and policy evaluation. For this IIDC has raised man hour invoices for leasing for CII Smart city programme.
- That payment of Rs. 2.76 crores is merely a token for enhancing the value of ILFS brand in the market

5. However, the ld. AO rejected assessee's submissions and held that there is no benefit derived from this transaction by the assessee company and there is no business connection between the assessee company and IIDC in this transaction and has forcefully fitted the demand in the name of brand value, accordingly, the entire project fees paid to IIDC of Rs.2,76,73,916/- has been adjusted by treating the payment as 'Nil'.

6. Further, with regard to commission expenses, the ld. TPO noted that assessee has paid commission expenses to Non-Executive Director to S.B Mathur, Micheal Pinto, Harish Engineer and Jairthith Rao of Rs. 31,00,000 each and Rs. 40,00,000 to K.C Bhargava(OM). In this regard the assessee was requested to show cause as to why the ALP on the entire commission expenses should not be benchmarked as Nil by using other method in absence of any additional benefit being

derived by the assessee from such payments, as even otherwise the Directors are being regularly remunerated. In response, the assessee made submissions vide letter dated 23/10/2019 stating that these Non-executive and independent directors are in various internal committees of the Company and thereafter submitted copies of the Board Resolution appointing them to such committees.

7. However, the ld. TPO did not accept the assessee's submissions and held that in the Board resolution there is no mention of additional commission to be paid to these directors to discharge of its functions. *Secondly*, the appointments are administrative and routine in nature against which payment of Rs.31 lakhs each to every person does not arise in any business, accordingly, he made adjustment of Rs.1,64,00,000/-. One of the issues raised before the ld. TPO was that since SDT provisions have been omitted from the statement, therefore, no adjustment should be made, the ld. TPO had rejected his conditions stating that it was prevalent during the year under consideration i.e.A.Y.2016-17.

8. Even the ld. DRP has rejected the assessee's contention by following the decision of ITAT Mumbai Bench in the case of Firemenich Aromatics (India) vs. ACIT in ITA No.348/Mum/2014 wherein the Tribunal has considered the judgment of Hon'ble Karnataka High Court in the case of in the case of PCIT vs. Texport Overseas (P) Ltd. (2020) 114 taxmann.com 568.

9. We have heard both the parties and also perused relevant observation and the finding of the ld. DRP as well as ld. TPO with regard to applicability of SDT for making any kind of TP adjustment. Undisputedly, the provision getting into SDT in clause 92BA(i) has been omitted from the statute by the Finance Act, 2017 w.e.f. 01/04/2017. The assessee's contention before us is that, once the provision itself has been omitted from the statute, the entire reference in transfer pricing adjustment itself is invalid. Ld. Counsel has referred to various decisions of Tribunal as well as the judgment of the **Hon'ble Karnataka High Court in the case of PCIT vs. Texport Overseas (P) Ltd. (2020) 114 taxmann.com 568.**

10. On the other hand, ld. DR submitted that this provision has been omitted w.e.f. 01/04/2017, therefore, the same is applicable from A.Y.2017-18 onwards and it would be still relevant for A.Y.2016-17. We find that in the case of M/s. Hind Aluminium Industries Pvt. Ltd in ITA No.1904/Mum/2023, this Tribunal has dealt with exactly similar issue which is reproduced hereunder:-

9. We have heard rival submissions and also perused the relevant finding given in the impugned order as well as judgments which have been relied upon by the parties. It is an undisputed fact that the reference to the ld. TPO with respect to specified domestic transaction was made under clause (i) of Section 92BA which was brought in the statute by the Finance Act 2012, however, has been omitted from the statute of the Finance Act 2017 w.e.f. 01/04/2017. The case of the assessee is that once omission has been made without the said clause, it is deemed that the said clause was never part of the Act

wherein as the case of the department is that the omission was brought by the amendment by the Finance Act 2017 w.e.f. 01/04/2017. Therefore, the reference at that point of time was valid. This issue has been discussed by the Hon'ble Karnataka High Court in the case of PCIT vs. Texport Overseas (P) Ltd. wherein the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court in the case of Kolhapur Canesugar Works Ltd vs. Union of India supra have held that once the statute has omitted clause (i) of Section 92BA by the Finance Act, 2017, the resultant fact is that it had never been enacted and to be considered as a law and it never existed. However, the ld. DR referred to various judgments of the Apex Court including the judgment of Hon'ble Supreme Court in the case of Shri Bhagwati Steel Rolling vs. Commissioner of Central Excise. This exact issue has been dealt in detail in the case of Yorkn Tech Pvt. Ltd., wherein Tribunal has observed and held as under:-

7. We have heard the rival submissions and also perused the relevant facts arising out from the records on the legal issue raised by the ld. counsel. It is an undisputed fact that the SDT for purchase of office space as inventory was by way of Slump Sale of a going concern w.e.f. 28th March, 2016. The assessee's case was selected for scrutiny on 21.07.2017 and reference to the TPO was made for determination of Arm's Length Price of SDT after seeking approval of PCIT on 29.11.2018. The core argument of the ld. counsel is that, once the reference which has been made under clause (i) of Section 92BA, itself has been omitted from the statute, therefore, it is deemed that the said clause was never part of the Act and any proceedings commenced under the omitted provision cannot be enforced or action can be taken thereafter. In support, the judgment of Hon'ble Karnataka High Court has been relied upon in the case of **PCIT vs. Textport Overseas Pvt. Ltd., reported in (2020) 114 taxmann.com 568 (Karnataka)** and catena of ITAT Judgments cited supra, the relevant text of which have already been incorporated above. The Finance Act 2017 has omitted SDT whereby any expenditure in respect of which payment has been made or has to be made to a person referred to in clause (b) of sub-Section (ii) of Section 40. It has been omitted w.e.f. 01.04.2017. This precise issue had come up for consideration before the Hon'ble Karnataka High Court wherein the Hon'ble High Court have

held that when clause (i) of Section 92BA have been omitted by the Finance Act, 2017 w.e.f. 01.04.2017 from the statute, the resultant effect is that, it had never been passed and to be considered as a law never been existed and therefore order of TPO u/s.92BA could be invalid and bad in law, While coming to this conclusion the Hon'ble High Court has referred and relied upon the judgment of Hon'ble Supreme Court in the case of **Kolhapur Canesugar Works Ltd. & Anr. v. Union of India & Ors., (2000) 2 SCC 536.**

8. Though, this judgment of **PCIT vs. Textport Overseas Pvt. Ltd** (supra) clearly clinches the issue in favour of the assessee and will apply mutatis mutandis in the present appeal also. However, we deem fit to deal with the relevant law on this point. The amendment made in the Act which has the effect of omitting a clause from the statute has to be read in light with Section 6 of the General Clauses Act. As per section 6 of the General Clauses Act, if an amendment for omission has a provision therein that pending proceedings shall continue then such a proceeding will continue. However, in the absence of any such provision in the statute or in the rule, the pending proceeding will lapse. Section 6 and 6A of the General Clauses Act for sake of ready reference are reproduced herein below:-

"6 Effect of repeal. Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or

punishment may be imposed as if the repealing Act or Regulation had not been passed.”

[6A. Repeal of Act making textual amendment in Act or Regulation.—Where any [Central Act] or Regulation made after the commencement of this Act repeals any enactment by which the text of any [Central Act] or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

*9. Ergo, for the purpose of present issue involved, clause (a) of Section 6 of the General Clauses Act is applicable which provides that the effect of the repeal shall not revive anything not in force or existing at the time of repeal takes effect. Section 6A provides that where any Act or Regulation repeals any enactment by which the text of any Act or Regulation is amended by express omission and unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal. There is absolutely no saving clause while omitting (i) of Section 92BA by the Finance Act, 2017. The Constitutional Bench of **Hon’ble Supreme Court in the case of Kolhapur Canesugar Works Ltd. & Anr. v. Union of India & Ors., (2000) 2 SCC 536** has observed and held as under:*

“37. The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute-book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions of Section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in section 6 or in special Acts may modify the position. Thus the operation or repeal or deletion or to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same

contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonable inferred that the intention of the legislature is that the pending proceedings shall not continue but fresh proceedings for the same purpose may be initiated under the new provision.”

10. Thus, if a provision or statute is unconditionally omitted without any saving clause in favour of the pending proceedings, all actions must stop where such an omission is found, especially when action has been taken after the provision has been omitted. During the course of argument a reference was made to the judgment of Hon’ble Supreme Court in the case of **Fiber Boards (P) Ltd., Bangalore v. Commissioner of Income Tax, Bangalore, (2015) 10 SCC 333** and **Shree Bhagwati Steel Rolling v. Commissioner of Central Excise (2016) 3 SCC 643** to canvass the point that the earlier judgments of Constitutional Bench in the case of **Rayala Corporation Pvt. Ltd., 1970 SCR 1 (69)** and **Kohlapur Cane Sugar [supra]** have been not followed or have been overruled. First of all, nowhere the Hon’ble Apex Court in both the judgments have overruled earlier two judgment of the Constitutional bench of the Hon’ble Apex Court rather they have explained it in detail and went on to held that the word repealed in both section of 6A and Section 24 of General Clauses Act would include repeals by expression ‘omission’ and the expression ‘delete and omission’ are used interchangeably.

11. However, it would be apposite to understand the judgments relied upon in terms of their facts and ratio and thereafter apply the same to the facts of the appellant. In the case of *Fibre Boards (P) Ltd. Bangalore v. Commissioner of Income Tax, Bangalore, (supra)* the appellant had an industrial unit at Thane which was a notified urban area.

With a view to shift its industrial undertaking from an urban area to a non-urban area, it sold its land, building and plant and machinery situated at Thane and earned capital gain and claimed exemption under section 54G. Chapter XXII-B of the Income Tax Act, prior to 1.4.1988, contained section 280ZA which when read with the definition of “urban area” in section 280Y(d) and notification dated 22.9.1967 issued under section 280Y(d) by which Thane had been declared to be an urban

area for the purpose of Chapter XXII- B, gave to a person who shifted from an urban area to another area, a tax credit certificate with reference to the tax payable by the company on income-tax chargeable under capital gains and would be given relief accordingly. The Appellant contended that section 54G was inserted on 1.4.1988 and at the same time section 280ZA was omitted and that therefore Section 24 of the General Clauses Act would be attracted to the notification dated 22.09.1967. That notification would inure to the benefit of the appellant for the purpose of claiming exemption under Section 54G. Section 280Y (d) which was omitted with effect from 1990, had been so omitted because it had been rendered redundant with the omission of section 280ZA. The revenue relied upon *Rayala Corporation (P) Ltd.* 1970 SCR (1) 639 and *M.R. Pratap v. Director of Enforcement, New Delhi*, (1969) 2 SCC 412 which was followed in *Kolhapur Canesugar Works Ltd. & Anr. v. Union of India & Ors.*, (2000) 2 SCC 536 and argued that an "omission" would not amount to "repeal" and that since the present case was concerned with the omission of Section 280ZA, section 24 of general clauses act would have no application as it only applied to 'repeals' and not 'omissions', and also that it saved rights that were given by subordinate legislation, and as the notification dated 22.9.1967 did not by itself confer any right on the appellant, section 24 of the General Clauses Act would not be attracted.

11.1 The Apex Court in the case of *Fibre Boards (supra)* was of the view that there is no need for the later enactment to state in express terms that an earlier enactment has been repealed by using any particular set of words or form of drafting but that if the legislative intent to supersede the earlier law is manifested by the enactment of provisions as to effect such supersession, then there is in law a repeal notwithstanding the absence of the word 'repeal' in the later statute. Repeals may take any form and so long as a statute or part of it is obliterated, such obliteration would be covered by the expression "repeal" in Section 6 of the General Clauses Act. All that is required is that an intention to abrogate the enactment or portion in question should be clearly shown.

11.2 The Apex Court held that the idea of omitting section 280ZA and introducing Section 54G on the same date was to do away with the tax credit certificate scheme together with the

prior approval required by the Board and to substitute the repealed provision with the new scheme contained in Section 54G. Once Section 280ZA is omitted from the statute book, section 280Y (d) having no independent existence would for all practical purposes also be “dead”. On this reasoning, the Apex Court decided in favour of the appellant by holding that omission of section 280ZA and its re-enactment with modification in section 54G, section 24 of the General Clauses Act would apply, and the notification dated 22.9.1967 would be continued under and for the purposes of Section 54G.

11.3 The Apex court while rendering its decision in the aforesaid case held that in Rayala Corporation, what fell for decision was whether proceedings could be validly continued on a complaint in respect of a charge made under Rule 132A of the Defence of India Rules, which ceased to be in existence before the accused were convicted in respect of the charge made under the said rule. It stated that once it is held by the constitution bench in Rayala that section 6 itself would not apply, it would be wholly superfluous to further state that on an interpretation of the word “repeal”, an “omission” would not be included and therefore the second so-called ratio of the Constitution Bench in Rayala Corporation cannot be said to be a ratio decidendi at all and is really in the nature of obiter dicta. The Apex Court was of the opinion that the word “repeal” in both section 6 and section 24 would include repeals by express omission. An implied repeal is covered by the expression “repeal” and repeals may take any form and so long as a statute or part of it is obliterated, such obliteration would be covered by the expression “repeal” in section 6 of the General Clauses Act. The Apex Court also stated that there is no reference to Section 6A of the General Clauses Act in either of these Constitution Bench judgments (Rayala Corp (supra) and Kolhapur Canesugar Works Ltd. (supra)) and the absence of any reference to section 6A, therefore, again undoes the binding effect of these two judgments on an application of the ‘per incuriam’ principle.

*12. Same view has been reiterated by the Hon’ble Supreme Court in the case of **Shree Bhagwati Steel Rolling v. Commissioner of Central Excise, (2016) 3 SCC 643**. In this case, the appellant took a rolling mill on lease from 1997 to 2000 and manufactured rerolled non-alloyed steel products. On*

1.9.1997 the compounded levy scheme was introduced by insertion of section 3A of the Central Excise Act. The appellant opted for the aforesaid scheme under Rule 96ZP of the Central Excise Rules. When the lease expired, the appellant surrendered its registration certificate on 1.6.2000. Section 3A was omitted in 2001. On 19.8.2005 notice was issued to the appellant demanding interest for delayed payment of central excise duty under section 3A of the Central Excise Act for the period 1997 to 2000.

12.1 The question framed before the Hon'ble High Court was whether "omission" of the compounded levy scheme in 2001 wipes out the liability of the assessee for the period during which the scheme was in operation. The Hon'ble High Court held that on omission of section 3A, the liability of the assessee was not wiped out.

12.2 The appellant contended that there is a fundamental distinction between "repeal" and an "omission", in the case of a "repeal" the statute is obliterated from the very beginning whereas in the case of an "omission" what gets omitted is only from the date of "omission" and not before. This being the case, it is clear that things already done in the case of an "omission" would be saved. However, a "repeal" without a savings clause like section 6 of the General Clauses Act would not so save things already done under the repealed statute. He further argued that "repeal" is normally used when an entire statute is done away with, as opposed to an "omission" which is applied only when part of the statute is deleted. The appellant further contended that section 6A which was relied upon in Fibre Board's case did not state that an "omission" would be included within the expression "repeal", but that if section 6A were carefully read, an "omission" would only be included in an "amendment" which, under the section, can be by way of omission, insertion or substitution. Therefore, it is fallacious to state that section 6A would lead to the conclusion that "omissions" are included in "repeals" and for various reasons Fibre Boards requires a relook and ought to be referred to a larger Bench of three Judges. The appellant further contended that the true ratio decidendi of the Constitution Bench decision in Rayala Corporation is that an "omission" cannot amount to a "repeal".

12.3 *The revenue supported the judgment in the Fibre Board's case.*

12.4 *The Apex Court held that when section 6 of the General Clauses Act speaks of the repeal of any enactment, it refers not merely to the enactment as a whole but also to any provision contained in any Act and if a part of a statute is deleted, section 6 would nonetheless apply. The Apex court referred to Fibre Board (supra) wherein it is stated that the expression "omission" is nothing but a particular form of words evincing an intention to abrogate an enactment or portion thereof. It was held that the expression "delete" and "omit" are used interchangeably, so that when the expression "repeal" refers to "delete" it would necessarily take within its kin an omission as well. It was further held that there is no substance in the argument that "repeal" amounts to an obliteration from the very beginning, whereas an "omission" is only in futuro.*

12.5 *The Apex Court was of the view that when the court referred to section 6A in Fibre Board's case and held that section 6A shows that a repeal can be by way of an express omission, obviously what was meant was that an amendment which repealed a provision could do so by way of an express omission. Hence section 6A undisputedly leads to the conclusion that repeal would include repeal by way of an express omission. The Apex Court arrived at the conclusion that an "omission" would amount to a "repeal" for the purpose of Section 24 of the General Clauses Act. Since the same expression, namely, "repeal" is used both in Section 6 and Section 24 of the General Clauses Act, the construction of the said expression in both sections would, therefore, include within it "omissions" made by the legislature.*

12.6 *The Court was also of the view that merely because the Constitution Bench in case of Rayala Corporation referred to a repeal not amounting to an omission this would not undo the effect of decision in Fibre Board's case and the statement of the law in Rayala Corporation is no longer the law declared by the Hon'ble Supreme Court after the decision in the Fibre Board's case. Fibre Board (supra) is a recent judgment which clarifies the law in holding that an omission would amount to a 'repeal'.*

13. The converse view of the law led to an omitted provision being treated as if it never existed, as section 6 of the General Clauses Act would not then apply to allow the previous operation of the provision so omitted or anything duly done or suffered thereunder. Nor may a legal proceeding in respect of any right or liability be instituted, continued or enforced in respect of rights and liabilities acquired or incurred under the enactment so omitted. Hence, section 6 would apply to omission of section 3A.

14. Further, it is a very well recognized rule of interpretation of statutes that where a provision of an Act is omitted by an Act and the said Act simultaneously re-enacts a new provision which substantially covers the field occupied by the repealed provision with certain modification, in that event such re-enactment is regarded having force continuously and the modification or changes are treated as amendment coming into force with effect from the date enforcement of the re-enacted provision.

15. The issue for consideration before us is clause (i) of Section 92BA which has been omitted from 01.04.2017 and there is no re-enactment with modification or any Saving Clause in any other Sections of the Act. Thus, without any Saving Clause or similar enactment, then it has to be held that Clause (i) of Section 92BA did not come into operation whenever any action has been taken especially after such omission. Accordingly, we hold that no Transfer Pricing Adjustment can be made on a domestic transaction which has been referred to by the Assessing Officer after the omission of the said clause by the Finance Act, 2017 even though transaction has undertaken in the Assessment Year 2016-17.

10. The aforesaid decision has been followed by various Tribunals and now it is well settled that once a provision in the statute has been omitted without any saving clause in the Act, then, it is treated that if provisions does not exist when such provisions are challenged before the Court and the aforesaid decision of the Tribunal, the ratio and principle laid down by the Constitutional Bench as well as subsequently, judgments referred by the ld. DR has been discussed in detail, therefore, following the same ratio we hold that in view of the exemption of Section 92BA(i) will lead to inference that in so far as any

reference to the ld. TPO for SDT in Section 92BA(i) is invalid and no transfer pricing adjustment can be made on such SDT. Accordingly, the cross objection of the assessee is allowed and consequently, the appeal of the Revenue is dismissed.

11. Thus, we hold that once SDT provisions has been omitted from the statute, then even for A.Y.2016-17, no TP adjustment can be made under SDT. Accordingly, ground Nos.2-15 is treated as allowed.

12. Next issue relates to disallowance u/s.14A of Rs.593,63,45,000/-.

13. The brief facts are that assessee is a core investment company for non-banking financial services and its main business is lending and investing in good companies. The assessee had shown exempt income of Rs.495,05,32,509/-. The assessee had suo-moto disallowed Rs.211,45,48,825/- u/s.14A. The assessee had worked out the disallowance by taking investment which has yielded dividend income and has moved those investments which have not yielded any exempt income. However, the ld. AO proceeded to claim the disallowance u/s.14A r.w.r. 8D of Rs. 593,63,45,000/- and after taking into account the disallowance of Rs.211.45 Crores finally made disallowance of Rs.382,17,96,175/-. After relying upon CBDT Circular 5/2014 dated 11/02/2014. Before us ld. Counsel submitted that in so far as assessee suomoto disallowance under Rule 8D(2)(i), there is no dispute. However, with regard to disallowance of interest under Rule 8D(2)(ii), he submitted that assessee had huge

surplus funds and therefore, in view of the decision of the Hon'ble Supreme Court in the case of CIT vs. South Indian Bank Ltd. reported in 130 taxmann.com 178, no disallowance of interest can be made. However, in so far as disallowance under Rule 8D(2)(iii) is concerned, the only condition of the assessee is that no disallowance should be made with respect to investment which had not yielded any exempt income. Thus, it has been submitted that this issue is covered in favour of the assessee by the decision of the Tribunal in assessee's own case right from A.Y.2008-09 to 2012-13. Accordingly, the contention of the assessee is upheld that only exempt yielding investment should be worked out for the purpose of disallowance which has been done by the assessee. Accordingly, the disallowance made by the ld. AO over and above suomoto disallowance offered by the assessee is deleted.

14. Next issue pertains to disallowance made by the ld. AO u/s.14A in book profit u/s.115JB. This issue now stands covered by the series of judgments including of Special Bench in the case of Vireet Investments Pvt. Ltd in Income Tax Appeals No. 502 of 2012 and judgment of Hon'ble Delhi High Court in the case of PCIT vs. Bhushan Steel Ltd in ITA No.593,594 of 2015. Accordingly, disallowance u/s.14A in the book profit is deleted.

15. In ground No.18, the issue regarding the addition of income of toll roads has not been pressed, accordingly, the same is dismissed as not pressed.

16. In so far as ground No.19 relating to disallowance of depreciation on printers, routers, scanners and computer software amounting to Rs.59,32,663/-, it has been submitted that ld. DRP had allowed this issue in favour of the assessee that assessee is eligible for depreciation of Rs.60,000/-. However, ld. AO has not followed direction of the ld. DRP. Accordingly, the disallowance made by the ld. AO is deleted and 60% of claim of depreciation on these items are upheld.

17. In so far as issue No.8 & 9 i.e. ground no.20 & 21, it has been stated that this issue is purely academic and consequential and therefore, same does not require any adjudication and as far as disallowance of MAT credit u/s.115JAA, the ld. AO to examine the claim of MAT credit and allow in accordance with law.

18. Lastly, with regard to disallowance of education cess, the same has not been pressed.

19. In the result, appeal of the assessee is partly allowed.

Order pronounced on 31st Jan, 2024.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 31/01/2024
KARUNA, sr.ps

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai