

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.521/M/2019
Assessment Year: 2008-09**

**ITA No.3682/M/2017
Assessment Year: 2012-13**

**ITA No.522/M/2019
Assessment Year: 2015-16**

M/s. Maharashtra Airport Development Company Ltd., 6 th Floor, World Trade Centre, Tower No.1, Cuffe Parade, Mumbai – 400 005 PAN: AADCM9623M	Vs.	Deputy Commissioner of Income Tax, Circle (3)(2)(1), Room No.608, 6 th Floor, Aayakar Bhawan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

**ITA No.7498/M/2018
Assessment Year: 2008-09**

**ITA No.3704/M/2017
Assessment Year: 2012-13**

**ITA No.7258/M/2017
Assessment Year: 2013-14**

**ITA No.7259/M/2017
Assessment Year: 2014-15**

**ITA No.798/M/2019
Assessment Year: 2015-16**

Dy/Asst. Commissioner of Income Tax-(3)(2)(1), Room No.608/674, 6 th Floor, Aayakar Bhawan,	Vs.	M/s. Maharashtra Airport Development Co. Ltd., 12 th Floor, World Trade Centre, Tower No.1, Cuffe Parade,
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M.K. Road, Mumbai - 400020	Mumbai – 400 005 PAN: AADCM9623M
(Appellant)	(Respondent)

Present for:

Assessee by : Shri Rushabh Mehta, A.R.
Revenue by : Smt Sanyogita Nagpal, D.R.

Date of Hearing : 17 . 01 . 2024

Date of Pronouncement : 15 . 03 . 2024

ORDER**Per Bench:**

Aforesaid cross appeals filed by M/s. Maharashtra Airport Development Company Ltd. and Dy/Asst. Commissioner of Income Tax-(3)(2)(1), Mumbai bearing common question of law and facts pertaining to A.Y. 2008-09, 2012-13, 2013-14 & 2014-15 are being disposed of by way of composite order in order to avoid repetition of discussion.

2. Appellant M/s. Maharashtra Airport Development Company Ltd. (hereinafter referred to as the assessee) and appellant Dy/Asst. Commissioner of Income Tax-(3)(2)(1), Mumbai (hereinafter referred to as the Revenue) by filing aforesaid cross appeals sought to set aside the impugned orders dated 18.10.2018, 27.02.2017, 01.09.2017, 01.09.2017 & 13.12.2018 passed by Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] qua the assessment year 2008-09, 2012-13, 2013-14, 2014-15 & 2015-16 respectively on the grounds inter-alia that :-

Grounds of Assessee

ITA No.521/M/2019 (A.Y. 2008-09)

- “1. That in view of the facts and circumstances of the case the Assessing Officer has erred in law and on facts in assessing the income of the Assessee at Rs. 14,52,17,933/- as against Nil as per return filed by Assessee.
2. That CIT(A)/Assessing Officer has failed to appreciate that interest of Rs.18,45,46,518/- is earned on fixed deposits invested for short period of time and have not been made out of the surplus funds and it has been verified by the AO but he made an error in restricting the amount to Rs. 3,93,27,585/-.
3. That in view of the facts and circumstances of the case the AO/CIT(A) has erred on facts and in law in restricting the treatment as business income to Rs. 3,93,27,585/- as against correct amount of Rs. Rs.18,45,46,518/- of interest of FDR after holding that interest on FDR as business income.
4. That AO/ CIT(A) has erred in taking into account the interest on fixed deposits only at Rs. 3, 93 ,27,585/- (i.e. after netting of interest on borrowings of Rs. $14.52 * 0.19 * 0.631$ / from gross interest on fixed deposits), instead of considering total interest on Fixed Deposit of Rs.18,45,46,518/- as income from business.
5. That Assessing officer has erred in considering Rs. 14,52,17,933/- as income from other sources and thereby not allowing the deduction u/s 80IAB of the Act.
6. The observation and findings of the Assessing Officer are incorrect and are based on surmises and conjectures and cannot be justified by any material on record.
7. On the facts of the case, the Assessing Officer has erroneously calculated tax payable on the assessed income.
8. That the evidence filed and materials available on record have not been properly construed and judiciously interpreted, hence the addition/disallowance made are uncalled for.
9. That interest U / s 234B of the Income Tax Act, 1961 has been wrongly and illegally charged and has been wrongly worked out.
10. The Appellant craves leave to add, to alter to amend the above Ground of Appeal at the time of hearing.”

ITA No.3682/M/2017 (A.Y. 2012-13)

- “1. The CIT (A) has erred in upholding the addition of Rs.5,36,56,368/- received from the Government of Maharashtra in the nature of Grant-

in-aid towards the 'Repairs and Maintenance of Airports on the ground that the receipt is a revenue receipt.

2. The CIT (A) has erred in upholding the addition of Rs.4,38,97,624/- collected towards development charges from various lessees/unit holders in MIHAN area at Nagpur on the ground that the receipt is a revenue receipt.

3. That in view of the facts and in the circumstances of the case, CIT(A) has erred in not appreciating that the Grant in Aid given by state government is for specific purpose and same has been spent for that specific purpose.

4. That in view of the facts and in the circumstances of the case, CIT(A) has erred in not appreciating that the Appellant is a Special Planning Authority appointed under section 40(1)(b) of The Maharashtra Regional and Town Planning Act, 1966 & the development charges collected by virtue of section 1240 of MRTP Act, 1966 is for specific purpose & the same shall be utilized as per the provisions of Section 1241 of MRTP Act, 1966.

5. That the addition/disallowance made are illegal, unjust and bad in law and are based on mere surmises and conjunctures and the same cannot be justified by any material on record hence the entire addition should be deleted. That the additions/disallowances made are also highly excessive.

6. That the evidence filed and materials available on record have not been properly construed and judiciously interpreted, hence the addition/ disallowance made is uncalled for.

7. The Appellant craves leave to add, to alter to amend the above Ground of Appeal at the time of hearing.”

ITA No.522/M/2019 (A.Y. 2015-16)

“1. The CIT (A) has erred in upholding the addition of Rs. collected towards Rs.3,48,60,686/- development charges from various lessees / unit holders in MIHAN area at Nagpur on the ground that the receipt is a revenue receipt.

2. That in view of the facts and in the circumstances of the case, CIT (A) has erred in not appreciating that the Grant in Aid given by state government is for specific purpose and same has been spent for that specific purpose.

3. That CIT (A) has erred in upholding the addition of Rs.22,69,605/- in respect of fire service fee received on the ground that receipt is a revenue receipt.

4. *That in view of the facts and in the circumstances of the case, CIT (A) has erred in not appreciating that the Appellant is a Special Planning Authority appointed under section 40(1)(b) of The Maharashtra Regional and Town Planning Act, 1966 & the development charges collected by virtue of section 124J of MRTP Act, 1966 is for specific purpose & the same shall be utilized as per the provisions of Section 124J of MRTP Act, 1966.*
5. *That the addition / disallowance made are illegal, unjust and bad in law and are based on mere surmises and conjunctures and the same cannot be justified by any material on record hence the entire addition should be deleted. That the additions / disallowances made are also highly excessive.*
6. *That the evidence filed and materials available on record have not been properly construed and judiciously interpreted, hence the addition / disallowance made is uncalled for.*
7. *The Appellant craves leave to add, to alter to amend the above Ground of Appeal at the time of hearing.”*

Grounds of Revenue

ITA No.7498/M/2018 (A.Y 2008-09)

- “1. *Whether on the facts and in the circumstances of the case and in law, the decision of the Ld. CIT(A) is not perverse in stating in para 3.1.4 of his order that the AO has not complied with the Hon'ble ITAT's order also in so far as the Bench's direction on allowing deduction u/s 801AB on interest received on advances given to Contractors amounting to Rs.2,92,88,967/- without appreciating that the directions of Hon'ble ITAT in order dated 27.08.2014 have been duly complied with by the AO in his order giving effect to the ITAT's order dated 24.08.2017 wherein he has considered the said amount as business income and allowed deduction of the same u/s.801AB?*
2. *Whether on the facts and in the circumstances of the case and in law, the decision of the Ld. CIT(A) is not perverse in directing the AO in para 3.1.4 of his order to allow deduction u/s 801AB of the IT Act 1961 to the assessee on interest of Rs.2,92,88,967/- received from Contractors without appreciating that such deduction u / s 801AB had already been allowed to the assessee by the Assessing Officer in his order giving effect to the ITAT's order dated 24.08.2017, thereby resulting in double relief to the assessee?*
3. *The appellant prays that for this and other reasons it is submitted that the order of the CIT(A) on the grounds be set aside and that of the Assessing Officer be restored.*

4. *The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”*

ITA No.3704/M/2017 (A.Y 2012-13)

“1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in holding the income of 0.3, 9,28,138/ being Interest on Advance given to Developers as 'Income from Business' eligible for deduction u/s.801AB of the I.T.Act, 1961 instead of 'Income from Other Sources' as held by the Assessing Officer without appreciating the fact that the said income does not have any nexus with the business of the assessee.

2. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in holding the income of Rs.1,62,44,191/- being Interest on Advance given to Contractors as 'Income from Business' eligible for deduction u/s.801AB of the I.T.Act, 1961 instead of 'Income from Other Sources' as held by the Assessing Officer without appreciating the fact that the said income does not have any nexus with the business of the assessee.

3. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in holding the income of Rs.1,25,95,074/- being Lease Rent received as 'Income from Business' eligible for deduction u/s.801AB of the I.T.Act, 1961 instead of 'Income from Other Sources' as held by the Assessing Officer without appreciating the fact that the said income does not have any nexus with the business of the assessee.

4. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.236,75,00,000/- being Grant-In-Aid received towards land acquisition/ rehabilitation of Project Affected Persons of MIHAN & other projects holding the same as Capital-in-Nature without appreciating the fact that the assessee is a Developer and the land acquired/ developed with the grants in question are part of inventory/work-in-progress, hence revenue in nature. Since grant is received to meet revenue expenses, the receipt is revenue in nature as held by the Apex Court in the case of Sahney Steel & Press Works Ltd., [1997], 228 ITR 253.

5. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the disallowance of Rs. 11,91,580/- u/s.14A r.w.r. 8D without appreciating the fact that the amount of disallowance u/s.14A of the I.T.Act, 1961 has to be computed as per Rule 8D of I.T. Rules, 1962 as held in the order of the Hon'ble High Court in the case of M /s Godrej & Boyce Manufacturing Co. Ltd.

6. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the disallowance of Rs.11,91,580/-

u/s.144 r.w.r. 8D since no dividend income is received without appreciating the fact that section 14A provides for disallowance of expenditure incurred in relation to and not incurred for earning such exempt income which was later clarified in the CBDT Circular No.5 of 2014 dated 11/2 / 2014 laying down the condition that it is not necessary that exempt income should necessarily be included in a particular year's income for the disallowance u/s.14A of the I.T. Act, 1961 to be triggered.

7. *Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the disallowance u/s.14A to the book profit u/s.115JB of the I.T. Act, 1961 ignoring the decisions of the Hon'ble ITAT, Mumbai in the case of M/s. Viraj Profiles Ltd. in ITA No.4439/Mum/2013 dated 21/10/2015 46 ITR(T) 626 (Mumbai - Trib.)/[2016] and in Ferani Hotels Pvt. Ltd. in ITA No.857/Mum/2013 dated 17/11/2014.*

8. *The appellant prays that the order of CIT(A) on the above ground be set aside and that of the Assessing Officer be restored.*

9. *The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."*

ITA No.7258/M/2017 (A.Y. 2013-14)

"1a. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in restoring the issue to the file of the AO with direction to ascertain whether FDs are made out of the surplus funds or out of the borrowed funds of the assessee and ignoring the decision of the Hon'ble Allahabad High Court in the case Triveni Engineering Works Ltd. v/s. CIT (1987), 167 ITR 742 and CIT v/s. H. R. Sugar Factory Pvt. Ltd., 187 ITR 363, in which, the Hon'ble Allahabad High Court had observed that the interest paid on the borrowed capital can be allowed only when loans were utilized in the accounting year for the assessee's own business and part of interest which was related to non-business purpose is not allowable expenditure?

1b Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in restoring the issue to the file of the AO with direction to ascertain whether FDs are made out of the surplus funds or out of the borrowed funds of the assessee and if so, the interest from FDs should be held as business income and should be included while allowing deduction u/s.80IAB of the I.T. Act, 1961?

2. *Whether on the facts and in the circumstances of the case and in law, the . CIT(A) was right in holding that the interest of Rs. 1,97,17,278/- received by the assessee from Developers, on advances, was business income and deduction u/s.80IAB was allowable on the same as per provisions of the I.T. Act, 1961?*

3. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was right in holding that the interest of Rs.2,41,43,233/- received by the assessee from contractors, on advances made to work contract, was business income and deduction u/s.80IAB was allowable on the same as per provisions of the I.T. Act, 1961?

4. Whether on the facts and in the circumstances of the case and in law, the CIT(A) was right in ignoring the decisions of the Hon. Supreme Court in cases of CIT vs. Pandian Chemicals Ltd., 292 Taxman 539, CIT vs. Sterling Foods 104 Taxman 204 and CIT vs. Liberty India Ltd., 183 Taxman 349 wherein it was held that the words "derived from" must be understood as something which has direct or immediate nexus with an industrial undertaking and the words "derived from industrial undertaking" is distinct and different as against 'profits attributable to industrial undertaking and not allow deduction u/s.80IAB of the I.T.Act, 1961 in this case?

5. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the disallowance of Rs.17,83,130/- u/s.14A r.w.r. 8D without appreciating the fact that the amount of disallowance u/s.14A of the I.T. Act, 1961 has to be computed as per Rule 8D of I.T. Rules, 1962 as held in the order of the Hon'ble High Court in the case of M / s Godrej & Boyce Manufacturing Co. Ltd.?

6. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the disallowance of Rs.17,83,130/- u/s.14A r.w.r. 8D since no dividend income is received without appreciating the fact that section 14A provides for disallowance of expenditure incurred in relation to and not incurred for earning such exempt income which was later clarified in the CBDT Circular No.5 of 2014 dated 11/2 / 2014 laying down the condition that it is not necessary that exempt income should necessarily be included in a particular year's income for the disallowance u/s.14A of the I.T. Act, 1961 to be triggered?

7. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance u/s. 14A to the book profit u/s. 115JB of the I.T. Act, 1961 ignoring the decisions of the Hon'ble ITAT, Mumbai in the case of M/s. Viraj Profiles Ltd. in ITA 4439/Mum/2013 dated 21/10/2015 - 46TR(T) 626 (Mumbai - Trib.)/ [2016] and in Ferani Hotels Pvt. Ltd. in ITA No.857/Mum/2013 dated 17/11/2014 ?

8. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs. 236,75,00,000/- being Grant-In-Aid received towards land acquisition/ rehabilitation of Project Affected Persons of MIHAN & other projects holding the same as Capital-in-Nature without appreciating the fact that the assessee is a Developer and the land acquired/ developed with the grants in question

are part of inventory/ work-in-progress, hence revenue in nature. Since grant is received to meet revenue expenses, the receipt is revenue in nature as held by the Apex Court in the case of Sahney Steel & Press Works Ltd., [1997], 228 ITR 253?

9. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in not adjudicating the issue of disallowance of deduction u/s.80IAB of the I.T. Act, 1961 on the merits involved therein on the issues on which disallowance/addition has been made in the assessment order?

10. On the facts and circumstances of the case, the order of the Ld.CIT(A) be set aside and AO's order be restored.

11. The appellant prays that for this and other reasons it is submitted that the order of the CIT(A) on the grounds be set aside and that of the Assessing Officer be restored.

12. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”

ITA No.7259/M/2017 (A.Y. 2014-15)

“1.a Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was right in restoring the issue to the file of the AO with direction to ascertain whether FDs are made out of the surplus funds or out of the borrowed funds of the assessee and ignoring the decision of the Hon'ble Allahabad High Court in the case Triveni Engineering Works Ltd. v/s. CIT (1987), 167 ITR 742 and CIT v/s. H. R. Sugar Factory Pvt. Ltd., 187 ITR 363, in which, the Hon'ble Allahabad High Court had observed that the interest paid on the borrowed capital can be allowed only when loans were utilized in the accounting year for the assessee's own business and part of interest which was related to non-business purpose is not allowable expenditure.

1.b Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was right in restoring the issue to the file of the AO with direction to ascertain whether FDs are made out of the surplus funds or out of the borrowed funds of the assessee and if so, the interest from FDs should be held as business income and should be included while allowing deduction u/s.80IAB of the I.T.Act, 1961.

2. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was right in directing the AO to allow deduction u/s.80IAB of the I.T.Act, 1961 on interest on Fixed Deposits relying on its own decision in the case of the assessee for A.Yrs. 2011-12 & 2012-13 without appreciating the fact that for the year under consideration, the assessee had neither claimed any deduction u/s.80IAB of the I.T.Act, 1961 and nor filed the Form No.10CCB claiming such deduction while filing the return of income.

3a Whether on the facts and in the circumstances of the case the Hon. Income Tax Appellate Tribunal was right in holding that the interest of Rs.2,13,16,880/- received by the assessee from Developers, on advances, was business income and deduction u/s.80IAB was allowable on the same as per provisions of the I.T.Act, 1961?

3b Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was right in directing the AO to allow deduction u/s.80IAB of the I.T.Act, 1961 on interest on advances to Developers relying on the decision in the case of the assessee for A.Y.2008- 09 without appreciating the fact that for the year under consideration, the assessee had neither claimed any deduction u/s.80IAB of the I.T.Act, 1961 and nor filed the Form No.10CCB claiming such deduction while filing the return of income.

4a. Whether on the facts and in the circumstances of the case the Hon. Income Tax Appellate Tribunal was right in holding that the interest of Rs.1,65,85,127/- received by the assessee from contractors, on advances made to work contract, was business income and deduction u/s.80IAB was allowable on the same as per provisions of the I.T.Act, 1961?

4b. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was right in directing the AO to allow deduction u/s.80IAB of the I.T.Act, 1961 on interest on advances to Contractors relying on the decision in the case of the assessee for A.Y.2008- 09 without appreciating the fact that for the year under consideration, the assessee had neither claimed any deduction u/s.80IAB of the I.T.Act, 1961 and nor filed the Form No.10CCB claiming such deduction while filing the return of income.

5. Without prejudice to the fact that the assessee himself has not claimed any deduction u/s.80IAB of the I.T.Act, 1961 and not filed Form No.10CCB; Whether on the facts and circumstances and in law the Hon'ble Tribunal was right in ignoring the decisions of the Hon. Supreme Court in cases of CIT vs. Pandian Chemicals Ltd., 292 Taxman 539, CIT vs. Sterling Foods 104 Taxman 204 and CIT vs. Liberty India Ltd., 183 Taxman 349 wherein it was held that the words "derived from" must be understood as something which has direct or immediate nexus with an industrial undertaking and the words "derived from industrial undertaking" is distinct and different as against profits attributable to industrial undertaking and not allow deduction u/s.80IAB of the I.T.Act, 1961 in this case?

6. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs.12,60,575/- u/s.14A r.w.r. 8D without appreciating the fact that the amount of disallowance u / s 14A of the I.T.Act, 1961 has to be computed as per

Rule 8D of I.T.Rules, 1962 as held in the order of the Hon'ble High Court in the case of M / s Godrej & Boyce Manufacturing Co. Ltd.

7. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs.12,60,575/- u/s.14A r.w.r. 8D since no dividend income is received without appreciating the fact that section 14A provides for disallowance of expenditure incurred in relation to and not incurred for earning such exempt income which was later clarified in the CBDT Circular No.5 of 2014 dated 11/2 / 2014 laying down the condition that it is not necessary that exempt income should necessarily be included in a particular year's income for the disallowance u/s.14A of the I.T.Act, 1961 to be triggered.*

8. *Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the disallowance u/s. 14A to the book profit u / s. 115JB of the I.T.Act, 1961 ignoring the decisions of the Hon'ble ITAT, Mumbai in the case of M/s Viraj Profiles Ltd. in ITA 4439 / Mum / 2013 dated 21/10 / 2015 – 46 ITR(T) 626 [Mumbai-Trib.]/ [2016] and in Ferani Hotels Pvt. Ltd. in ITA No.857 / Mum / 2013 dated 17/11 / 2014.*

9. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.281,26,79,648/- being Grant-In-Aid received towards land acquisition/ rehabilitation of Project Affected Persons of MIHAN & other projects holding the same as Capital-in-Nature without appreciating the fact that the assessee is a Developer and the land acquired/ developed with the grants in question are part of inventory/work-in-progress, hence revenue in nature. Since grant is received to meet revenue expenses, the receipt is revenue in nature as held by the Apex Court in the case of Sahney Steel & Press Works Ltd., [1997], 228 ITR 253.*

10. *Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in not adjudicating the issue of disallowance of deduction u/s.80IAB on the merits involved therein on the issues on which disallowance/ addition has been made in the assessment order and without appreciating the fact that the assessee has not fulfilled the pre-requisite condition of filing Form No.10CCB for claiming deduction u / s .8IAB of the I.T. Act, 1961.*

11. *The appellant prays that for this and other reasons it is submitted that the order of the CIT(A) on the grounds be set aside and that of the Assessing Officer be restored.*

12. *The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”*

ITA No.798/M/2019 (A.Y. 2015-16)

“1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was right in restoring the issue to the file of the AO with direction to ascertain whether FDs are made out of the surplus funds or out of the borrowed funds of, the assessee and ignoring the decision of the Hon'ble Allahabad High Court in the case Triveni Engineering Works Ltd. v/s. CIT (1987), 167 ITR 742 and CIT v/s. H. R. Sugar Factory Pvt. Ltd., 187 ITR 363, in which, the Hon'ble Allahabad High Court had observed that the interest paid on the borrowed capital can be allowed only when loans were utilized in the accounting year for the assessee's own business and part of interest which was related to non-business purpose is not an allowable expenditure?”

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in restoring the issue to the file of the AO with direction to ascertain whether FDs are made out of the surplus funds or out of the borrowed funds of the assessee and if so, the interest from FDs should be held as Business Income and should be included while allowing deduction u/s 801AB of the Income Tax Act 1961?

*3. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was right in directing the AO to allow deduction u/s.801AB of the I.T.Act, 1961 on interest on Fixed Deposits relying on its own decision in the case of the assessee for A.Yrs. 2011-12 without appreciating that for the year under consideration, the assessee had neither claimed any deduction u / s * 0.8IAB of the I.T.Act, 1961 and nor filed the Form No.10CCB claiming such deduction while filing the return of income?*

4. Whether on the facts and in the circumstances of the case the Ld.CIT(A) was right in holding that the interest of Rs.2,13,94,828/- received by the assessee from Developers, on advances, was business income and deduction u / s 80IAB was allowable on the same as per provisions of the I.T.Act, 1961?

5. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was right in directing the AO to allow deduction u/s.801AB of the I.T.Act, 1961 on interest on advances to Developers relying on the decision in the case of the assessee for A.Y.2008-09 without appreciating that for the year under consideration, the assessee had neither claimed any deduction u / s 80IAB of the I.T.Act, 1961 and nor filed the Form No.10CCB claiming such deduction while filing the return of income?

6. Whether on the facts and in the circumstances of the case the Ld.CIT(A) was right in holding that the interest of Rs.15,05,366/- received by the assessee from contractors, on advances made to work contract, was business income and deduction u / s 80IAB was allowable on the same as per provisions of the I.T.Act, 1961?

7. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was right in directing the AO to allow deduction u/s.80IAB of the I.T.Act, 1961 on interest on advances to Contractors relying on the decision in the case of the assessee for A.Y.2008-09 without appreciating that for the year under consideration, the assessee had neither claimed any deduction u/s.80IAB of the I.T.Act, 1961 and nor filed the Form No.10CCB claiming such deduction while filing the return of income?

8. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in directing the AO to verify and compute the deduction u/ s 80IAB of the Act without appreciating the fact that the assessee has not fulfilled the pre- requisite condition of filing Form No.10CCB for claiming deduction u/s.80IAB of the I.T.Act, 1961?

9. Without prejudice to the fact that the assessee himself has not claimed any deduction u/s.80IAB of the I.T.Act, 1961 and not filed Form No.10CCB; Whether on the facts and circumstances and in law the Ld. CIT(A) was right in ignoring the decisions of the Hon. Supreme Court in cases of CIT vs. Pandian Chemicals Ltd.,292 Taxman 539, CIT vs. Sterling Foods 104 Taxman 204 and CIT vs. Liberty India Ltd., 183 Taxman 349 wherein it was held that the words "derived from" must be understood as something which has direct or immediate nexus with an industrial undertaking and the words "derived from industrial undertaking" is distinct and different as against 'profits attributable to industrial undertaking'?

10. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the disallowance of Rs.12,01,617/- u/s.14A r.w.r. 8D without appreciating the fact that the amount of disallowance u / s. 14A of the I.T.Act, 1961 has to be computed as per Rule 8D of I.T.Rules, 1962 as held in the order of the Hon'ble High Court in the case of M / s . Godrej & Boyce Manufacturing Co. Ltd?

11. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs.12,01,617/- u/s.14A r.w.r. 8D since no dividend income is received without appreciating the fact that section 14A provides for disallowance of expenditure incurred in relation to and not incurred for earning such exempt income which was later clarified in the CBDT Circular No.5 of 2014 dated 11/02/2014 laying down the condition that it is not necessary that exempt income should necessarily be included in a particular year's income for the disallowance u/s.14A of the I.T.Act, 1961 to be triggered?

12.Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the disallowance u / s. 14A to the book profit u / s. 115JB of the I.T.Act, 1961 ignoring the decisions of the Hon'ble ITAT, Mumbai in the case of M / s Viraj Profiles Ltd. in ITA

No.4439/Mum/2013 dated 21/10 / 2015 - 4 ITR(T) 626 (Mumbai - Trib.)/[2016] and in Ferani Hotels Pvt. Ltd. in ITA No..857 / Mum / 2013 dated 17/11 / 2014.

13. Whether on the facts and circumstances of the case and in law, the Ld. CIT (A has erred in deleting the addition of Rs.174, 30 ,00,000/- being Grant-In-Aid received towards land acquisition/ rehabilitation of Project Affected Persons of MIHAN & other projects holding the same as Capital-in-nature without appreciating that the assessee is a Developer and the land acquired/ developed with the grants in question are part of inventory/ work-in-progress, hence revenue in nature. Since grant is received to meet revenue expenses, the receipt is revenue in nature as held by the Apex Court in the case of Sahney Steel & Press Works Ltd., [1997], 228 ITR 253?

14(a) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of loss of Rs.76,32,135/- on account of distribution of power and loss of Rs.3,55,42,101/- on account of supply of water on the basis of the details filed before him without appreciating that the details filed were additional evidences which were never filed before the AQ in the assessment proceedings and therefore covered by the provisions of Rule 46A?

14(b) Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the disallowance of loss of Rs.76,32,135/- on account of distribution of power and loss of Rs.3,55,42,101/- on account of supply of water by admitting the details which were additional evidence without calling for report Under Rule 46A of the I.T.Rules, 1962 from the AO and without appreciating that these details were never filed before the AO in the assessment proceedings, thus violating the provisions of Rule 46A?

14(c) Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the disallowance of loss of Rs.7632135/- on account of distribution of power and loss of Rs.3,55,42,101/- on account of supply of water by admitting details which were additional evidence without ascertaining the reasons why these details were never filed before the AO in the assessment proceedings?

15. The appellant prays that the order of CIT(A) on the above grounds be set aside and that of Assessing Officer be restored.

16. The appellant craves leave to amend, alter, delete or add grounds which may be necessary.”

3. Assessee by moving applications under rule 11 & rule 27 of the ITAT Rules sought to raise the additional grounds in its own

appeal for A.Y. 2012-13 & 2015-16 in ITA No.3682/M/2017 & in ITA No.522/M/2019 respectively and in Revenue's appeal to counter the ground Nos.4, 9 & 13 raised by the Revenue in its appeals for A.Y. 2012-13, 2014-15 & 2015-16, which are identical in all the aforesaid assessment years and read as under:

"Without prejudice, in view of the facts and circumstances of the case, the AO/CIT (A) has erred on facts and in law, in not appreciating that the grant received during the year from the state government is capital receipt, not liable to tax, as the assessee is a state by itself or a surrogate of the state or an agent, performing the functions of the state and/or on behalf of the state of Maharashtra"

on the grounds inter-alia that although the assessee has not filed appeal against the order passed by the Ld. CIT(A) allowing the ground of the assessee that addition of grant-in-aid received by the assessee company from state government towards repair and maintenance of airports, which is without prejudice to the findings given by the Ld. CIT(A) while allowing the grounds of the assessee by treating the grant-in-aid received from the state government towards land acquisition etc. as capital receipt and not taxable, nor filed any cross objections against the departmental appeals; that the assessee company is entitled to raise the legal grounds under rule 11 while supporting the findings already returned by the Ld. CIT(A) in favour of the assessee on this ground that Hon'ble Supreme Court in case of National Thermal Power Co. Ltd. (1998) 229 ITR 383 (SC) and Jute Corporation of India vs. CIT (1991) 187 ITR 688 (SC) held that legal ground can be raised by the parties to the litigation at any stage of the legal proceedings.

4. In view of the law laid down by the Hon'ble Supreme Court in case of National Thermal Power Co. Ltd. (supra) we are of the considered view that the assessee is entitled to raise additional

grounds which are otherwise necessary for complete and final adjudication of the issues at hand. Hence, additional grounds raised by the assessee company are allowed.

5. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee company is a state public sector company established by the Government of Maharashtra for the development of airport and Special Economic Zone (SEZ) at various locations in the State of Maharashtra. The assessee company filed its return of income for A.Y. 2008-09, 2012-13, 2013-14, 2014-15 & 2015-16 which were subjected to scrutiny. The Assessing Officer (AO) framed the assessment under section 143(3) of the Income Tax Act, 1961 at the total income of Rs.53,84,14,051/-, Rs.256,16,82,330/-, Rs.292,03,23,910/-, Rs.252,72,72,755/- & Rs.210,97,56,040/- for A.Y. 2008-09, 2012-13, 2013-14, 2014-15 & 2015-16 respectively.

6. The assessee carried the matter before the Ld. CIT(A) by way of filing appeals who has partly allowed the appeals for A.Y. 2008-09, 2012-13 & 2015-16. Feeling aggrieved with the impugned orders passed by the Ld. CIT(A) the assessee company as well as the Revenue have come up before the Tribunal by way of filing present cross appeals.

7. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

Ground Nos.1 & 2 of ITA No.3704/M/2017 for A.Y. 2012-13,
Ground Nos.3 & 4 of ITA No.7258/M/2017 for A.Y. 2013-14,
Ground Nos.4a & 4b of ITA No.7259/M/2017 for A.Y. 2014-15
& Ground Nos.4, 5, 6 & 7 of ITA No.798/M/2019 for A.Y. 2015-
16 of Revenue's appeals

8. The assessee company has filed return of income for A.Y. 2012-13 declaring total loss of Rs.16,70,819/-. The assessee earned interest on the advances received from the developers and contractors to facilitate the execution of work entrusted to them. Declining the contentions raised by the assessee the AO considered the interest received on advances to the developer/contractors under the head "income from other sources" and proceeded to hold that the said income does not have nexus with the business of the assessee, hence not eligible for deduction under section 80IAB.

9. However, the Ld. CIT(A) by following the order passed by the Tribunal in assessee's own case for A.Y. 2008-09 proceeded to hold that "the interest received on advances given to the contractors should be considered as income from business and as such eligible for deduction under section 80IAB.

10. We have perused the order passed by the co-ordinate Bench of the Tribunal in assessee's own case for A.Y. 2008-09 in ITA No.1223/M/2013 which is on the identical facts having been decided in favour of the assessee by returning following findings:

"6. We have carefully perused the orders of the authorities below and also perused the relevant material brought on record before us. The only issue to be decided is whether the FDs was made out of surplus funds of the assessee or out of the borrowings/advances received by the assessee and whether the deposits were made for a short period. We find that this issue has not been considered by the lower authorities on the facts of the case. In our considered opinion, this issue needs to be re-adjudicated by the A.O. We accordingly restore this issue to the file of the A.O. The A.O. is directed to verify whether the FDs have been

made out of surplus funds or out of loans and borrowing of the assessee and whether the FDs were for short period of time. The assessee is directed to file necessary details before the A.O. The A.O. is expected to give a fair and reasonable opportunity of being heard to the assessee.

7. The second issue relates to the interest received by the assessee on advances made by it to its various contractors who are engaged in infrastructure work. We find that an identical issue has been considered by the Hon'ble Gujarat High Court in the case of Nirma Industries, 283 ITR 402 where the Hon'ble Gujarat High Court has held that the interest received on delayed payment by the debtor is to be included in the profit of the industrial undertaking. In the case in hand, there is no dispute that the assessee has received interest from advances made by it to its contractors engaged in infrastructure work, therefore, the interest received by the assessee has to be considered as interest derived from industrial undertaking eligible for deduction u/s 80-IAB of the Act. To sum up, interest amounting to Rs. 2,92,88,967/- being interest on advances to contractors is to be taxed under the head "business income" and interest of Rs. 3,93,27,585/- being interest on FDR has to be decided afresh as per the directions given hereinabove.

8. In the result, the appeal filed by the assessee is allowed in part for statistical purpose."

11. In view of what has been discussed above and following the order passed by the Tribunal in assessee's own case for A.Y. 2008-09 (supra), we are of the considered view that the Ld. CIT(A) has rightly considered interest earned by the assessee company from developers and contractors, being eligible for deduction under section 80IAB. So finding no illegality or perversity in the impugned findings, the grounds raised by the Revenue in Ground Nos.1 & 2 of ITA No.3704/M/2017 for A.Y. 2012-13, Ground Nos.3 & 4 of ITA No.7258/M/2017 for A.Y. 2013-14, Ground Nos.4a & 4b of ITA No.7259/M/2017 for A.Y. 2014-15 & Ground Nos.4, 5, 6 & 7 of ITA No.798/M/2019 for A.Y. 2015-16 are hereby dismissed.

Ground No.3 of ITA No.3704/M/2017 for A.Y. 2012-13 (Revenue's appeal)

12. The assessee company has received an amount of Rs.1,25,95,074/- as lease rent and claimed the same for deduction under section 80IAB of the Act, which is disallowed by the AO on the ground that the said income does not have any nexus with the business of the assessee. However, the Ld. CIT(A) overturned the findings returned by the AO holding that lease rent income received by the assessee is an income from business and eligible for deduction under section 80IAB of the Act by returning following findings:

“5.7.1 This ground relates to treating Lease Rental, Lease Premium and Rental Income received from Central Facility Building of the appellant aggregating to Rs. 1,25,95,074/- as income not derived from development of SEZ. Similar issue was decided by me in appellant's appeal for AY 2011-12 in Appeal no. CIT(A)-8/IT-186/14- 15 with the following observations:

"It is the most essential business activity of the appellant to operate the SEZ and derive income from leasing out parts of it to eligible persons for eligible activities, with the approval of Govt. of India and inconformity with SEZ policy. The AO has failed to explain why this essential component of the appellant's business does not have nexus with its stated business activity as approved by Govt. of India. A considerable amount of public money in form of Government grant has been invested in the company to generate infrastructure to promote eligible industries.

If income from this activity is not considered as business income then it is beyond comprehension what other part would constitute its business income. Therefore, this ground of appeal is allowed. AO is directed to treat lease/rent of Rs. 2,04,90,596/- as business income and eligible for purpose of deduction u/s 80 IAB."

5.7.2 Therefore, this ground of appeal is allowed. The assessing officer is directed to treat lease/rent of Rs. 1,25,95,074/- as business income and eligible for purpose of deduction u/s 80 IAB. This ground is allowed."

13. Bare perusal of the findings returned by the Ld. CIT(A) goes to prove that this issue is no longer res-integra having already been decided by the Tribunal in assessee's own case in A.Y. 2010-11 & 2011-12 whereby income derived by the assessee from the lease rental has been held to be eligible as business income for the purpose of deduction under section 80IAB of the Act. So finding no illegality or perversity in the impugned findings ground No.3 raised by the Revenue is hereby dismissed.

Ground Nos.1 & 3 raised by the assessee in ITA No.3682/M/2017 for A.Y. 2012-13 (Assessee's appeal)

14. The assessee company also received an amount of Rs.5,36,56,368/- from Government of Maharashtra in the nature of grant in aid towards the repair and maintenance of airports, which the Ld. CIT(A) has treated as the revenue receipt. This issue is no longer res-integra having already been decided by the Tribunal in favour of the assessee in its own case for A.Y. 2010-11 in ITA No.3072/M/2014 by returning following findings:

“19. On appraisal of the facts and circumstances, we find that the assessee has been treated as agent of Government and the income of the assessee if any was treated as income of the Government which stand deposited in the consolidated fund of the State. The assessee placed reliance upon the decision of Kolkata High Court in case of Prl. CIT Vs. The State Fisheries Development Corporation ITA No. 19 of 2017 with GA 413 of 2017 in which the grant has been treated as capital receipt. The similar view has been taken by the Delhi High Court in case titled as CIT Vs. Handicrafts and Handlooms Exports Corporation of India Limited cited as (2014)360 ITR 130 (Delhi). The instant case also Maharashtra Government release the grant in favour of assessee for the repairs and maintenance of airports . It is if any capital in nature and is not liable to be considered as revenue in nature. Taking into account all the facts and circumstances and by relying upon the above mentioned law, we are of the view that the grant in sum of Rs.1 crores released by Government of Maharashtra on account of repairs and maintenance of airports is not liable to be treated as income of the assessee being in the nature of capital receipt.”

15. So following the order passed by the co-ordinate Bench of the Tribunal ground Nos.1 & 3 of assessee's appeal for A.Y. 2012-13 are decided in favour of the assessee.

Ground Nos.5, 6 & 7 raised by the assessee in ITA No.3682/M/2017 for A.Y. 2012-13 (Assessee's appeal)

16. Ground Nos.5, 6 & 7 of A.Y. 2012-13 of assessee's appeal are general in nature, hence the same are not required any adjudication.

Ground Nos.4, 9 & 13 in ITA No.3704/M/2017, ITA No.7259/M/2017 & ITA No.798/M/2019 for A.Y. 2012-13, 2014-15 & 2015-16 respectively of Revenue's appeals

&

Ground No.9 of ITA No.7259/M/2017 for A.Y. 2014-15 & Ground No.13 of ITA No.798/M/2019 for A.Y. 2015-16 of Revenue's appeals

Additional ground No.1, 2 & 3 raised by the assessee in ITA No.3682/M/2017 for A.Y. 2012-13 (Assessee's appeal); Additional ground No.1, 2 & 3 raised by the assessee in ITA No.7258/M/2017 for A.Y. 2013-14 (Revenue's appeal); Additional ground No.1, 2 & 3 raised by the assessee in ITA No.7259/M/2017 for A.Y. 2014-15 (Revenue's appeal);

17. The assessee company MADC received an amount of Rs.2,36,75,00,000/- in A.Y.2012-13, Rs.281,26,79,648/- in A.Y.2014-15 & Rs.174,30,00,000/- in A.Y.2015-16 on behalf of Government of Maharashtra for the purpose of Grant-in-aid for the rehabilitation of Project Affected Persons (PAP) and for infrastructure development of airports in notified area.

18. The AO treated the grant-in-aid as income of the assessee and made addition thereof to the total income of the assessee company.

19. However, the Ld. CIT(A) by thrashing the issue in the light of the full bench decision of the Hon'ble Kerala High Court in case of CIT vs. Ruby Rubber Works Ltd. (1999) 178 ITR 181 overturned the findings of AO by holding that the amount of Rs.2,36,75,00,000/- (A.Y. 2012-13) being the grant-in-aid towards land acquisition/rehabilitation of PAP and other projects as capital in nature. However, both the Revenue as well as the assessee have challenged these findings by filing cross appeals.

20. The Ld. D.R. for the Revenue challenging the impugned findings returned by the Ld. CIT(A) deleting the addition of Rs.2,36,75,00,000/- (for A.Y. 2012-13) being grant-in-aid received by the assessee towards land acquisition/rehabilitation of PAP by holding the same as capital in nature on the ground that the assessee company is a developer and the land acquired/developed by the grants in question are part of inventory/work in progress, hence revenue in nature and relied upon the decision rendered by Hon'ble Apex Court in case of Sahney Steel & Press Works Ltd. (1997) 228 ITR 253.

21. However, on the other hand, the Ld. A.R. for the assessee challenging the impugned findings in holding grant-in-aid received by the assessee company as capital in nature contended inter-alia that since the grant-in-aid held by the assessee company for payment of compensation towards purchase of land to the land owner, rehabilitation of the PAP and for infrastructure development

of airports in the notified area the same is not income of the assessee company; that the assessee company being a state is executing the work of development of airports, repair and maintenance of airports as an arm of the state and relied upon the decision rendered by the Hon'ble Bombay High Court in case of Percival Joseph Pereira vs. The Special Land Acquisition (Writ Petition No.1211 of 2009) and the decision rendered by the Tribunal in assessee's own case for A.Y. 2010-11 in ITA No.3072/M/2014.

22. In order to decide the issue in controversy we would decide if the assessee company is a state while executing the work of development of airports, repair and maintenance of airports as an arm of the state.

23. Undisputedly the assessee company was incorporated as a company under the Companies Act, 1956 by the Government of Maharashtra as a special purpose company to develop multi model international hub airport at Nagpur and aviation infrastructure in the State of Maharashtra in order to provide regional air connectivity and operationalising certain government schemes. It is also not in dispute that the assessee company was formed with equity participation from various government companies namely CIDCO, MIDC, NIT, MSRDC, SICOM & NMC which are owned and controlled by Government of Maharashtra; that the entire management and functional control of the assessee company is that of Chief Minister of Government of Maharashtra and all other board persons are senior officers of the State Government of Maharashtra; that grant-in-aid was received by the assessee

company from Government of Maharashtra in order to carry out statutory functions and its activities are for the development of the state in general and for the benefit and welfare of the general public in particular; that it is also not in dispute that the assessee company is appointed by the State Government as a special planning authority under section 40(IB) of the Maharashtra Regional Town Planning (MRTP) Act, 1966; that it is also not in dispute that the assessee company being a special planning authority is required to carry out the work of development and disposing of land in the notified area as an agent of the state.

24. In the backdrop of the aforesaid undisputed facts, we are of the considered view that the assessee company being a wholly owned company of the State of Maharashtra to carry out/execute the work of development of land acquisition, development of airports, repair and maintenance of airports etc. as an arm of the state, thus an instrumentality of the state for the following reasons:

- i) that the assessee company being a special planning authority is carrying out its activities as an agent of the Government of Maharashtra as per section 113 of the MRTP Act.
- ii) that the assessee company as a special planning authority is constituted to carry out the work of developing and disposing of land in the notified area as an agent of the State Government.
- iii) that under section 114(2) of the MRTP Act the assessee company is empowered to exercise its power only after obtaining consent and only in the manner as directed by

the Statement Government and cannot function independently.

iv) that all the development proposals of the assessee company are sent to the state government for approval as required under section 115 of the MRTP Act.

v) that the assessee company is required to submit the timely reports/returns etc. to the state government from time to time as required under section 155 of the MRTP Act.

vi) that under section 160 of the MRTP Act a state government can dissolve the special planning authorities and upon dissolution its properties, the liabilities, undischarged functions shall get transferred to the state government.

vii) that as per sub-section 3A of section 113 of MRTP Act any corporation/company or subsidiary company which is into the work of developing and disposing of land in the area of a new town is an agent of the state government. Sub section 3A of section 113 of the Act reads as under:

“(3A) Having regard to the complexity and magnitude of the work involved in developing any area as a site for the new town, the time required for setting up new machinery for undertaking and completing such work of development, and the comparative speed with which such work can be undertaken and completed in the public interest, if the work is done through the agency of a corporation including a company owned or controlled by the State or a subsidiary company thereof, set up with the object of developing an area as a new town, the State Government may, notwithstanding anything contained in sub-section (2), require the work of developing and disposing of land in the area of a new town to be done by any such corporation, company or subsidiary company aforesaid, as an agent of the State Government; and thereupon, such corporation or company shall, in relation to such area, be declared by the State

Government, by notification in the Official Gazette, to be the New Town Development Authority for that area.”

viii) that the co-ordinate Bench of the Tribunal in case of City and Industrial Development Corporation of Maharashtra Ltd. vs. ACIT (2012) 25 taxmann.com 333 (Mum.) while deciding the identical issue in case of City and Industrial Development Corporation (CIDCO) which is also a subsidiary company under the control and supervision of State Government into business of construction of residential and commercial structures as well as development of infrastructure in towns and any development project completed by the CIDCO was held to be an agent of the state government. And as such its income cannot be assessed as business income in the hands of the CIDCO.

ix) that like CIDCO the assessee company is also wholly owned company of State of Maharashtra which is into land acquisition, development of airports, repair and maintenance of airports and as such receiving of grant-in-aid from Government of Maharashtra by the assessee company being an agent of the state is not assessable to tax.

x) that Hon'ble Bombay High Court in Writ Petition No.1211 of 2009 (supra) vide its order dated 07.11.2009 held that “acquisition of land on behalf of the state government at the cost of state government by CIDCO appointed as new town development authority under sub section 3A of section 113 is doing the work of developing and disposing of the land in the area as an agent of the state government. So the

appointment of CIDCO being under section 3A of section 113 of the MRTP Act the CIDCO acts as an agent of the state government”.

xi) that when we apply the ratio of the decision rendered by Hon’ble Bombay High Court in case of Percival Joseph Pareira (supra) to the case at hand the assessee company is also appointed as a town planning authority under sub section 3A of section 113 of MRTP Act for acquisition of land for development of airports, repair and maintenance of airports and for rehabilitation of the project affected persons (POP), for infrastructure development of airports in the notified area as an agent of the state. The assessee company carries out all the activities for and on behalf of the state government and after development and completion of the project the entire property vests in the state government. The entire control over the assessee company is of state government being exercised through the officer of the state government. In these circumstances the assessee company is an agent of the state not assessable to tax. As such grant-in-aid received by the assessee company from the Government of Maharashtra for land acquisition, development of airports, repair and maintenance of airports etc. is not a capital receipt as has been held by the Ld. CIT(A) rather the assessee company has performed these functions as an agent of the state and as such not assessable to income tax.

xii) that the assessee company has been formulated with a specific purpose i.e. to acquire the land for development of

airports, repair and maintenance of airports etc. for which it receives grant-in-aid from the state of Maharashtra which is not taxable under Income Tax Act.

xiii) that it is however brought on record and candidly admitted by the Ld. A.R. for the assessee that other income derived by the assessee company from its project is not claimed as exempt.

xiv) that the contention of the Ld. D.R. for the Revenue that when the assessee company itself is paying taxes on its business income the grant-in-aid received by the assessee on which profit is to be earned is also business income is not sustainable in view of what has been discussed in the preceding paras.

xv) that even Article 289(1) of the Constitution of India itself says about the income from trade etc. but the grant-in-aid received by the assessee company from State of Maharashtra for the purpose of land acquisition, development of airports, repair and maintenance of airports is not a trade activity, hence not taxable to the income tax.

25. In view of what has been discussed above, we are of the considered view that the Ld. CIT(A) has erred in treating the grant-in-aid received by the assessee company from State of Maharashtra as capital receipt rather utilization of the grant-in-aid by the assessee company for acquisition of land, development of airports, repair and maintenance of airports is the statutory functions of the assessee company as an agent of the State of Maharashtra, hence,

not assessable to tax under Income Tax Act. So the Ground Nos.4, 9 & 13 in ITA No.3704/M/2017, ITA No.7259/M/2017 & ITA No.798/M/2019 for A.Y. 2012-13, 2014-15 & 2015-16 respectively of Revenue's grounds and ground No.9 of ITA No.7259/M/2017 for A.Y. 2014-15 & ground No.13 of ITA No.798/M/2019 for A.Y. 2015-16 of Revenue are dismissed and ground Nos.1 & 3 and additional ground No.1, 2 & 3 raised by the assessee in ITA No.3682/M/2017 for A.Y. 2012-13 (Assessee's appeal), additional ground No.1, 2 & 3 raised by the assessee in ITA No.7258/M/2017 for A.Y. 2013-14 (Revenue's appeal), additional ground No.1, 2 & 3 raised by the assessee in ITA No.7259/M/2017 for A.Y. 2014-15 (Revenue's appeal) of assessee's grounds are allowed.

Ground Nos.2 & 4 and Additional ground No.1 in ITA No.3682/M/2017 & Ground Nos.1, 2 & 4 and additional ground No.1 in ITA No.522/M/2019 (both assessee's appeals) for A.Y. 2012-13 & 2015-16 respectively

26. The assessee company received an amount of Rs.4,38,97,624/- and Rs.3,48,60,686/- on account of development charges levied by the assessee company under section 124J of Maharashtra Regional Town Planning (MRTP) Act, 1966. The Ld. CIT(A) by passing impugned order held the receipt on account of development charges as business receipt and liable to be taxed by returning following (of A.Y. 2012-13) findings:

“5.9.9 Now coming to amount of Rs. 4,38,97,624/- shown at Sr. No. c) in the table above, as stated, these are development charges levied by the appellant u / s 124J of Maharashtra Regional and Town Planning Act. It is noted that once again this amount has not been given in the form of a grant for capital outlay by Government of Maharashtra. One of the stated business objectives of the appellant is to develop and maintain townships schemes, industrial parks etc., and any earning from engaging in such activity is relatable to business and, therefore, is business receipt. The fact that MRTPA empowers the appellant

company to levy charges at prescribed rates from users of infrastructure facilities in its jurisdiction does not change the nature of such receipt. These charges are similar to lease rentals/usage charges that owner of any infrastructure would collect from its clients. Even the fact that charges collected should be used only for acquisition and development of any land in any plan or scheme under MRTPA does not alter the nature of the receipt.”

27. As discussed in the preceding paras the assessee company is a special planning authority appointed by the Government of Maharashtra under MRTP Act. We have perused section 124A of MRTP Act, which empowers the assessee company to levy development charges for use of land/building or development of land/building, which shall be utilized only for the purpose of acquisition or development of land reserved for any of the public purposes specially for any plan or scheme under the Act and for providing public amenities and maintenance/improvement thereof. It is also an admitted fact on record that the assessee company is maintaining a separate development fund account shown in capital reserves to hold these funds and is not a beneficiary of these funds. Periodic reports as required by the state government are being sent by the assessee company as required under section 155(1) of MRTP Act.

28. We are of the considered view that as discussed in the preceding paras 21 to 24 the assessee company is held to be a state only for the purpose of receiving grant-in-aid from the state government as a special planning authority and collecting the development charges from various lessees/unit holders in 'Multi-Model International Passenger and Cargo Hub Airport at Nagpur' (MIHAN) area are to be used for development of the land acquired by the assessee company with the grants-in-aid provided by the

state government and as such is also a statutory function. Because without developing the land purchases with grant-in-aid received from the state government, which ultimately vests in the state government the purpose of providing public amenities as prescribed under the scheme of the Act cannot be fulfilled. In these circumstances, the Ld. CIT(A) has erred in treating these development charges which are inextricably linked to the development of the project under the scheme, akin to the lease rental/usage charges. So the findings returned by the Ld. CIT(A) are hereby set aside and the AO is directed to delete the addition made by the AO and confirmed by the Ld. CIT(A). Hence, Ground Nos.2 & 4 and Additional ground No.1 in ITA No.3682/M/2017 & Ground Nos.1, 2 & 4 and additional ground No.1 in ITA No.522/M/2019 (both assessee's appeals) for A.Y. 2012-13 & 2015-16 respectively are hereby allowed.

Ground Nos.5, 6 & 7 of ITA No.3704/M/2017 for A.Y. 2012-13 of Revenue's appeal;

Ground Nos.5 & 6 of ITA No.7258/M/2017 for A.Y. 2013-14 of Revenue's appeal;

Ground Nos.6 & 7 of ITA No.7259/M/2017 for A.Y. 2014-15 of Revenue's appeal;

Ground Nos.10, 11 & 12 of ITA No.798/M/2019 for A.Y. 2015-16 of Revenue's appeal;

29. Undisputedly facts of all the ground raised qua the years under consideration are identical in which the AO by invoking the provisions contained under section 14A read with rule 8D made additions, which have been deleted by the Ld. CIT(A) on the ground that the AO has mechanically applied the provisions

contained under rule 8D without noticing the fact that there is no exempt income and own funds of the assessee are far more than the investment made by the assessee during the years under consideration.

30. It is admitted fact on record that during the years under consideration no exempt income has been earned by the assessee and assessee's own interest free surplus funds are more than the investment made during the years under consideration. Identical issue has already been decided in favour of the assessee in its own case for A.Y. 2010-11 & 2011-12. By now it is a settled principle of law that when there is no exempt income earned by the assessee during the year under consideration no disallowance can be made under section 14A read with rule 8D. Reliance in this case is placed on decisions rendered by Hon'ble Delhi High Court in case of PCIT vs. Era Infrastructure (India) Ltd. (2022) 141 taxmann.com 289 (Delhi). Similarly when there is no disallowance under the normal provisions no disallowance under section 14A read with rule 8D under MAT provisions is sustainable as has been held by Hon'ble Bombay High Court in case of CIT vs. M/s. Bengal Finance & Investments Pvt. Ltd. in Income Tax Appeal No.337 of 2013 order dated 10th February 2015.

31. So in view of the matter finding no illegality or perversity in the impugned findings returned by the Ld. CIT(A) deleting the addition made by the AO under section 14A read with rule 8D in A.Y. the Ground Nos.5, 6 & 7 of ITA No.3704/M/2017 for A.Y. 2012-13, Ground Nos.5 & 6 of ITA No.7258/M/2017 for A.Y. 2013-14, Ground Nos.6 & 7 of ITA No.7259/M/2017 for

A.Y. 2014-15 and Ground Nos.10, 11 & 12 of ITA No.798/M/2019 for A.Y. 2015-16 of Revenue's appeals are hereby dismissed.

Ground Nos.1a & 1b of appeal Nos.7258 & 7259/M/2017 for A.Y. 2013-14 & 2014-15 respectively of Revenue's appeals & Ground Nos.1, 2 & 3 of ITA No.798/M/2019 for A.Y. 2015-16 of Revenue's appeals

32. During the years under consideration the assessee has earned interest on fixed deposits made with various banks and these fixed deposits were not made out of surplus funds. The AO, declining the contentions raised by the assessee that the impugned interest on fixed deposits is inextricably linked to the main business activity of the company so as to treat the same as business income, proceeded to classify the same as income from other sources.

33. However, the Ld. CIT(A) by following his own order passed in A.Y. 2011-12 & 2012-13 in assessee's own case directed the AO to verify the "dates of receipts of grants and advances received from long term lease of land and correlate receipts of dates of fixed deposits to the extent verify and correlate to receipt of the grant/advances from the business activities and as such interest be included for claiming deduction under section 80IAB of the Act". The Ld. A.R. for the assessee contended that this issue has been decided by the co-ordinate Bench of the Tribunal in assessee's own case for A.Y. 2008-09 in ITA No.1223/M/2013.

34. We have perused the order (supra) passed by the co-ordinate Bench of the Tribunal which is on identical issue. The operative part of the order is extracted for ready perusal as under:

“6. We have carefully perused the orders of the authorities below and also perused the relevant material brought on record before us. The only issue to be decided is whether the FDs was made out of surplus funds of the assessee or out of the borrowings/advances received by the assessee and whether the deposits were made for a short period. We find that this issue has not been considered by the lower authorities on the facts of the case. In our considered opinion, this issue needs to be re-adjudicated by the A.O. We accordingly restore this issue to the file of the A.O. The A.O. is directed to verify whether the FDs have been made out of surplus funds or out of loans and borrowing of the assessee and whether the FDs were for short period of time. The assessee is directed to file necessary details before the A.O. The A.O. is expected to give a fair and reasonable opportunity of being heard to the assessee.”

35. In view of the order passed by the co-ordinate Bench of the Tribunal, we remit this issue back to the AO to decide as per the directions given by the co-ordinate Bench of the Tribunal after due verification by providing opportunity of being heard to the assessee. So ground No.1a & 1b of appeal Nos.7258 & 7259/M/2017 for A.Y. 2013-14 & 2014-15 respectively of Revenue's appeals and Ground Nos.1, 2 & 3 of ITA No.798/M/2019 for A.Y. 2015-16 of Revenue's appeals are decided against the revenue.

Ground No.3 in ITA No.522/M/2019 for A.Y. 2015-16 (Assessee's appeal)

36. During the year under consideration the assessee company has received fire service fee of Rs.22,69,605/- to be applied for the purpose of maintaining fire brigade to comply with the provisions of section 25 of chapter VII of the Maharashtra Fire Prevention & Life Safety Measures (MFPLSM) Act, 2006. The AO as well as the Ld. CIT(A) by declining the contentions raised by the assessee company that the assessee company is to manage a property by taking various measures as per section 114 of the MRTP Act and

section 11 of MFPLSM Act, 2006 empower MADC to levy fire service fees on various unit holders within the area of its jurisdiction and the said amount is credited separately to the MIHAN development fund account, the AO as well as the Ld. CIT(A) has treated the same as revenue in nature.

37. We are of the considered view that when the fire services fee is to be applied for the purpose of maintaining fire brigade which is also mandatory for the assessee company to maintain in compliance to section 25 of chapter VII of MFPLSM Act, 2006, section 11 of the MFPLSM Act, 2006 also empowers the assessee company to levy fire services fee on all owners of various buildings within the area of its jurisdiction, the same cannot be treated as receipt of revenue in nature. Since the entire project was being executed by the assessee as a stated owned company fire services fees which was not received in the ordinary course of business and was strictly applied for the purpose of maintaining fire brigade is like development charges collected by the assessee company and as such is inextricably linked with the success of airport project being executed by the assessee company on behalf of the state government and as such it cannot be treated as income. So the same is ordered to be treated as revenue in nature as claimed by the assessee. So ground No.3 in ITA No.522/M/2019 for A.Y. 2015-16 of assessee's appeal is allowed.

Ground Nos.5 to 7 in ITA No.522/M/2019 for A.Y. 2015-16 (Assessee's appeal)

38. Ground Nos.5 to 7 are general in nature, hence need no discussion and adjudication in specific.

Ground Nos.5 & 10 in ITA No.7259/M/2017 for A.Y. 2014-15 of Revenue's appeal

&

Ground Nos.8 & 9 of ITA No.798/M/2019 for A.Y. 2015-16 of Revenue's appeal

39. These grounds have become infructuous as the Ld. A.R. for the assessee contended and has also recorded in the synopsis provided to the Bench that the AO has granted deductions claimed by the assessee under section 80IAB post giving effect order passed by the Ld. CIT(A), without filing of form No.10CCB. Consequently aforesaid grounds are dismissed having been become infructuous.

Ground Nos.14a, 14b & 14c in ITA No.798/M/2019 for A.Y. 2015-16 of Revenue's appeal

40. The AO made disallowance of Rs.76,32,135/- and Rs.3,55,42,101/- pertaining to loss in respect of power distribution and water supply activities respectively. However, the Ld. CIT(A) has deleted the disallowance made by the AO by returning following findings:

“3.10.4 As per the appellant's submission, the Multi- Modal International Hub Airport at Nagpur (MIHAN) promoted by MADC, has assured unit holders in MIHAN world class infrastructure which inter alia includes uninterrupted power supply at very reasonable rates & dual water supply system where the water is retreated and supplied for domestic and non- domestic consumption. Hence, expenditure incurred for distribution of Power & supply of water is part of the revenue modal of MIHAN project.

3.10.5 With a view to provide an efficient, uninterrupted supply of power in the MIHAN area, appellant selected Abhijeet Group as a venture partner for the development of a coal based power plant. AMNEPL was created as a joint venture with the Abhijeet group, wherein the appellant holds 26% of the Issued Equity Capital in AMNEPL. A concession agreement ("The Agreement") was executed between MADC and AMNEPL on 07.11.2007 pursuant to the competitive bidding process.

3.10.6 Further, for some reason as given in the submission filed by the appellant, there arose a dispute between MADC and AMNEPL which resulted in AMNEPL stopping supplying power to MIHAN SEZ area. Therefore, in response to the petition filed by appellant dated 11.03.2014 before MERC, MERC directed the MSEDCL to start supply power to consumers.

3.10.7 Further, MADC has obtained deemed distributors license from Maharashtra Electricity Regulatory Commission (MERC) which is mandated to promote competition, efficiency and economy in the power sector and to regulate traffic of power generation, transmission and distribution and to protect the interests of the consumers and other shareholders. MADC after getting the license, started purchasing power through IEX from 22.11.2014 on a day-ahead basis and supplied power to the consumers in MIHAN SEZ area. Since, traffic determination for electric supply is done by MERC, MERC ruled that the traffic approved for the respective consumer categories of MSEDCL would be the ceiling traffic for the MIHAN SEZ area. MADC purchased electricity IEX & Llyods during 2014-15. However, while distributing powers to consumers, there are transmission, distribution & scheduling losses. As per the appellant and the details filed, the energy received is 9.62 Million unit (MU) and energy supplied is 6.90 MU, therefore nearly 2.72 MU loss of energy on account of transmission, distribution & Scheduling loss is there.

3.10.7 I find that the appellant has submitted the copy of lease agreement along with other documentary evidence placed on record in support of the claim that the expenditure incurred is a part of revenue model of MIHAN project and has also submitted very detailed explanation in respect of power distribution loss factually as well as logically which has also been discussed by me in the above paras. Determining tariff for the units of electricity is not at the sole discretion of the appellant. Therefore, practically speaking, the selling cost cannot be controlled by the appellant. Further, due to emergency situation, there was no option other than to purchase of electricity at the cost sold by the respective suppliers. Also, the energy loss such as transmission, distribution & scheduling losses cannot be ruled out which will further reduce the revenue from selling electricity. Therefore, I am of the view that addition on account deficit of Rs.76,32,135/- in respect of power distribution activity has no merits and has to be deleted.

3.10.8 With respect to deficit in water supply activity, the appellant has submitted that the MADC has developed infrastructure of dual water supply system of 91 MLD capacity (per day) where the water is retreated & supplied for domestic & Non domestic consumption. Total water demand considering evaporation losses is 71MLD. MADC has reserved water quota at Wadgaon Dam situated at 40 Km (approx.) from MIHAN area. Also, MADC has appointed M/s Veolia Water (1)

Pvt Ltd for operation & comprehensive maintenance & management of water supply & sewage system, for which a fixed cost irrespective of utilized capacity, of Rs.2,92,74,100/- for the maintenance contract has been incurred. Also, cost of Rs.71,79,513/- for the annual maintenance contracted awarded to M/s Veolia Water(1) Pvt Ltd. has been incurred.

3.10.9 As per the submissions, actual water utilized is 4.41 MLD which is 6.15% of the reserved quota of 71.67 MLD. At Wadgaonreservoir, water pumped in from reservoir is 3.88 MLD, out of which 3.70 MLD received at treatment plant in MIHAN and out of which 1.64 MLD is billed since there is losses of water in transit besides unmetered supply to village Khapri & project affected rehabilitated area at Khapri, Chinchbhavan. Summarising the above, I agree with the contentions of the appellant and I find that merely because the appellant has the deficit in respect of water supply, it does not mean that it is an income on the hand of the appellant. First of all, the appellant has not fully utilized the installation capacity of water supply which has become the main cause of losses. If the sales are low, then, automatically your profit decreases/ losses increase as the raw material purchases have been underutilized. However, certainly cost has been incurred to procure the same. It is the simplest concept in term of any business or accounting. Further, there are other expenses which further lower the profit. It is not the intention on the part of the any prudent businessman to sell less product deliberately or anything like that so as to decrease its own profit. Also, in the instant case, the appellant is a Government of Maharashtra Company. So, the credibility of accounting cannot be doubted. Therefore, I am of the view that addition on account of deficit of Rs.3,55,42,101/- in respect of water supply activity has no merits at all and deserves to be deleted. It is felt that as far as these two additions are concerned, the AO has tried to step into the shoes of the appellant company, that too, a Government of Maharashtra one, the credibility of whose accounts are one notch above the private ones.

3.10.9 In view of the above discussion, additions on account of deficit of Rs.76,32,135/- and Rs.3,55,42,101/- in respect of Power distribution and Water supply activity respectively are deleted. These grounds of appeal are allowed.”

41. We have perused the order passed by the Ld. CIT(A) who has duly thrashed the facts in the light of the copy of lease agreement along with other documentary evidence placed on record by the assessee and reached the conclusion that the expenditure incurred by the assessee on providing power distribution and water supply activities is a part of the Revenue model of MIHAN project and has also perused the record and explanation in respect of power

distribution loss and water supply activities. The Ld. CIT(A) has also considered the losses due to water evaporation.

42. It is also not in dispute that no company will deliberately decrease its profit. Main cause as brought on record by the assessee has been duly perused by the Ld. CIT(A) for loss on account of distribution of water is underutilization of water supply which led to low sale and it has increased the losses. It is also not in dispute that sometimes a purchaser has no option except to purchase the electricity at the higher cost and there has to be energy loss due to transmission distribution and scheduling losses. Similarly so far as water losses are concerned it is a proved fact on record that the assessee has not fully utilized the installation capacity of water supply which has become the main cause of losses for which cost has to be incurred to procure the same. Moreover, when the AO has not disputed the books of account disallowance merely on the basis of surmises is not sustainable. So we find no illegality or perversity in the impugned findings returned by the Ld. CIT(A), hence ground No.14a, 14b & 14c in ITA No.798/M/2019 for A.Y. 2015-16 of Revenue's appeal are decided against the Revenue.

ITA No.521/M/2019 for A.Y. 2008-09 of Assessee's appeal & ITA No.7498/M/2018 for A.Y 2008-09 of Revenue's appeal

43. Apart from raising 9 grounds as per form No.36 the assessee company has moved an application for raising additional grounds in its own appeal which are as under:

"1) On facts and circumstances of the case, the Order Giving Effect to the ITAT order (dt. 27-08-2014) passed u / s 143(3) r.w.s. 254 dt. 24-08-2017 by the ld. Assessing Officer is barred by limitation, void ab initio, invalid and bad in law.

2) *Without prejudice, on facts and circumstances of the case, the Id. Assessing Officer has erred in law in not allowing set off of unabsorbed depreciation against the assessed income.*

3) *Without prejudice, on facts and circumstances of the case, the Id. Assessing Officer has erred in law in not increasing / restating the "Work in Progress" to the extent of addition of interest income of Rs. 14,52,17,933/- made by the Id. Assessing Officer under the head 'Income From Other Sources' which was reduced by the assessee from Capital Work in Progress in its Balance Sheet.*

General

4) *The above grounds of appeal are without prejudice to one another and the original grounds of appeal and the appellant craves leave to add, alter, amend, delete or modify any of the above grounds of appeal."*

44. The assessee company by moving an application sought to raise the additional grounds on the ground that the same are purely legal grounds and can be raised at any stage of the proceedings and relied upon the decisions rendered by Hon'ble Supreme Court of India in case of National Thermal Power Co. Ltd. (1998) 229 ITR 383 (SC) and in the case of Jute Corporation of India Ltd. vs. CIT 187 ITR 688.

45. Bare perusal of the grounds goes to prove that these are purely legal grounds and as per the law laid down by the Hon'ble Supreme Court in case of National Thermal Power Co. Ltd. (supra) and Jute Corporation of India Ltd. (supra) the legal grounds can be raised at any stage of the appellate proceedings and hence the same are allowed.

46. Since the additional grounds raised by the assessee company goes to the root of the case the Bench has decided to dispose of the

additional ground No.1 first before going into the grounds raised on merits.

47. It is contended by the Ld. A.R. for the assessee that qua assessment year 2008-09 in the first round of litigation the Tribunal has passed an order dated 27.08.2014 in ITA No.1223/M/2013 for A.Y. 2008-09 whereby issue as to earning interest of Rs.39327585/- being interest on fixed deposits was ordered to be decided afresh as per findings given as under:

“6. We have carefully perused the orders of the authorities below and also perused the relevant material brought on record before us. The only issue to be decided is whether the FDs was made out of surplus funds of the assessee or out of the borrowings/advances received by the assessee and whether the deposits were made for a short period. We find that this issue has not been considered by the lower authorities on the facts of the case. In our considered opinion, this issue needs to be re-adjudicated by the A.O. We accordingly restore this issue to the file of the A.O. The A.O. is directed to verify whether the FDs have been made out of surplus funds or out of loans and borrowing of the assessee and whether the FDs were for short period of time. The assessee is directed to file necessary details before the A.O. The A.O. is expected to give a fair and reasonable opportunity of being heard to the assessee.”

48. Undisputedly the AO has passed an order giving effect to the order dated 27.08.2014 (supra) passed by the Tribunal on 24.08.2017 i.e. after a period of about three years.

49. Before proceeding further we would like to advert to relevant section 153(3) & section 153(5) which prescribe time limit for completion of assessment, reassessment and recomputation and to “pass order giving effect” to an order passed under section 250 or section 254 or section 260 or section 262 or section 263 or section 264. For ready perusal relevant provision is extracted as under:

“153. Time limit for completion of assessment, reassessment and recomputation

(3) Notwithstanding anything contained in user-sections (1) and an order Nof fresh assessment for fresh order under section 92CA, as the cue may be,] in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment, [or an order under section 92CA as the case may be,] may be made at any time before the expiry of nine months from the end of the financial year in which the order under section 254 received by the Principal Chief Commissioner or Chief Commissioner or 10 [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be,] or, as the case may be, the order under section 263 or section 264 is passed by the "[Principal Chief Commissioner of Chief Commissioner or Principal Commissioner or Commissioner, as the case may be]:

(5) Where effect to an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 is to be given by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] wholly or partly, otherwise than by making a fresh assessment or reassessment [or fresh order under section 92CA, as the case may be,], such effect shall be given within a period of three months from the end of the month in which order under section 250 or section 254 or section 260 or section 262 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, the order under section 263 or section 264 is passed by the [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be]"

50. In all eventualities the AO is required to pass the order within a period of nine months/three months as the case may be which the AO has failed to pass. Even it is not the case of the Revenue that their case falls under proviso 1 & 2 to section 153(5) of the Act nor any explanation has been brought on record. When the AO was required to pass the order giving effect to the order passed by the Tribunal within a period of three months from the end of the month in which order under section 250, 254, 260 or section 262 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner as the case may be the assessment order passed by the AO after a period of about three years is barred by limitation, void, ab-initio and bad in law.

51. So the additional ground No.1 raised by the assessee is allowed. When the appeal filed by the assessee is allowed on technical ground the assessment order passed by the AO being barred by limitation, void, ab-initio and bad in law the cross appeal filed by the Revenue is also not maintainable in the eyes of law and as such is liable to be dismissed. When the additional ground No.1 raised by the assessee is allowed the Bench has decided not to go into the merits by deciding other grounds.

52. Resultantly, the appeals filed by the assessee bearing ITA No.521/M/2019 for A.Y. 2008-09, ITA No.3682/M/2017 for A.Y. 2012-13 & ITA No.522/M/2019 for A.Y. 2015-16 are allowed and the appeals filed by the Revenue bearing ITA No.7498/M/2018 for A.Y. 2008-09, ITA No.3704/M/2017 for A.Y. 2012-13, ITA No.7258/M/2017 for A.Y.2013-14, ITA No.7259/M/2017 for A.Y.2014-15 & ITA No.798/M/2019 for A.Y.2015-16 are hereby dismissed.

Order pronounced in the open court on 15.03.2024.

Sd/-
(MS. PADMAVATHY S)
ACCOUNTANT MEMBER

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 15.03.2024.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.