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

SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 3676/MUM/2009
(Assessment Year: 2005-06)

Tata Industries Limited, Bombay House, 24, Homi Mody Street, Fort, Mumbai - 400001 [PAN: AAACT4058L]	.....	**Appellant**
Additional Commissioner of Income Tax, Range – 2(3), Mumbai, Room No. 555, Aayakar Bhavan, Maharshi Karve Road, Mumbai – 400020	Vs	**Respondent**

Appearance

For the Appellant/Assessee	:	Ms. Aarti Vissanji Ms. Aastha Shah
For the Respondent/Department	:	Shri P.C Chhottary

Date

Conclusion of hearing	:	14.03.2024
Pronouncement of order	:	07.06.2024

O R D E R

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 26/03/2009, passed by the Ld. Commissioner of Income Tax (Appeals)-, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2005-06, whereby the Ld. CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 28/12/2007, passed under Section 143(3)(ii) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Assessee has raised the following revised grounds of

appeal:

> *"1. The CIT(A) erred in confirming the disallowance of gross interest expenditure of Rs. 70,26,64,011/- and Rs. 14,09,00,000/- out of Head Office expenses towards administrative expenses under the provisions of Section 14A and in applying Rule 8D of the Income-tax Act, 1961 ('the Act'). It is humbly prayed that in computing the total income under the Chapter IV of the Income Tax Act, the disallowance in respect of expenditure incurred in relation to exempt dividend income to be computed in terms of Sec. 14A in the facts and circumstances of this year, should be restricted to the amount of Rs. 6,88,73,913/- being the exempt dividend income received during the year and offered in the Income Tax Return, for the purpose of computing income from "business or profession and also for computing the adjusted book profit u/s. 115JB of the Act.*
>
> *2 The CIT(A) erred in confirming the disallowance of expenditure of Rs.1,57,65,808/- incurred as brokerage expenses for the purpose of computing income from Business or Profession.*
>
> *3. The CIT(A) erred in confirming the disallowance of expenditure of Rs. 14,82,902/- incurred as Debenture Issue expenses for the purpose of computing Income from Business or Profession*
>
> *4. The CIT(A) erred in confirming an addition of Rs. 57,534/- and Rs. 27,20,110/- as Guarantee Commission received from Tata Teleservices Limited.*
>
> *5 The CIT(A) erred in confirming the disallowance of legal & Professional fees of Rs.1,47,88,487/- paid by the Appellant, for the purpose of computing income from Business or Profession."*

3. The relevant facts in brief are the Assessee filed return of income for the Assessment Year 2005-06 on 31/10/2005, declaring total loss of INR 2,99,16,019/-. The case of the Appellant was selected for scrutiny, the Assessing Officer

completed the assessment under Section 143(3) of the Act vide order, dated 28/12/2007, assessing total income of the appellant at INR 79,08,78,040/- after making, inter alia, following addition/disallowances:

(a) Disallowance of gross interest expenditure of INR.70,26,64,011/- and administrative expenses of INR.14,09,00,000/- invoking the provisions of Section 14A of the Act and Rule 8D of the Income Tax Rules, 1962

(b) Disallowance of brokerage expenses of INR. 1,57,65,808/-

(c) Disallowance of Debenture Issue Expenses of INR.14,82,902/-

(d) Addition of INR 57,534/- and INR 27,20,110/- in respect of the Guarantee Commission Income

(e) Disallowance of Legal & Professional fees of INR.1,47,88,487/-

3.1. Being aggrieved the appellant carried the issue in appeal before the CIT(A). However, the CIT(A) decline to give any relief on the above issues. Agreeing with the Assessing Officer, the CIT(A) dismissed the grounds raised by the Appellant challenging the above additions/disallowances made by Assessing Officer vide order dated 26/03/2009.

3.2. Being aggrieved, the Appellant carried the issue in appeal before the Tribunal. The Appellant thereafter filed additional/supplementary grounds of appeal. However, vide letter dated 19/01/2024, the Appellant restricted the challenge to the revised grounds of appeal reproduced in paragraph 2 above which are taken up hereinafter in seriatim.

Ground No. 1

4. Ground No. 1 raised by the Appellant pertains to disallowance

under Section 14A of the Act while computing taxable income under normal provisions of the Act as well as while computing the 'Book Profits' for the purpose of Section 115JB of the Act.

4.1. The relevant facts in brief are that during the assessment proceedings, the Assessing Officer noted that the Appellant had earned dividend income as well as Long Term Capital Gains income which was exempt from tax. Therefore, the Appellant was asked to furnish details of suo moto disallowance of INR 37,44,33,000/- made by the Assessing Officer under Section 14A of the Act. Vide letter dated 17/12/2007, the Appellant furnished the required details and submitted that only interest expenditure has been considered while computing disallowance under Section 14A of the Act. Thereafter, vide Letter dated 17/12/2007, the Appellant, on a without prejudice basis, submitted that total value of investments in respect of which dividend income has been received was INR 47.43 Crores as against the total investment of INR 1,803.77 Crores. Therefore, it was contended that the disallowance under Section 14A of the Act be restricted to INR 47.43 Crores only.

4.2. The Assessing Officer noted that vide Letter, dated 14/12/2007, the Appellant had furnished detailed break-up its activities wherein it was stated that for the relevant previous year total Head Office Expenses stood at INR 84.35 Crore which included interest of INR 70.26 Crores. The Assessing Officer noted that the Appellant had borrowed funds of INR 1,013.10 Crores and held investments of INR 1,781.04 Crores. According to the Assessing Officer there was direct nexus between borrowed funds and investment since the Appellant was involved in making investments in ventures and companies promoted by it. According to the Assessing Officer, by claiming deduction for

interest under Section 36(1)(iii) of the Act, the Appellant had indirectly admitted that entire interest expenditure was related to borrowing which had resulted in investment. Therefore, the Assessing Officer disallowed entire interest expenditure of INR 70.26 Crores. Further, the Assessing Officer also disallowed the balance Head Office Expenses of INR 14.09 Crores holding that the same were also incurred for the purpose of making investments yielding tax exempt income. Thus, the Assessing Officer computed disallowance of INR 84.35 Crores *[as against INR 37.44 Crores computed by the Appellant]* under Section 14A of the Act for the purpose of computation of income under normal provisions of the Act as well as for the purpose of computation of 'Book Profit' under Section 115JB of the Act.

4.3. In appeal before the CIT(A), the Appellant reiterated its submission made before Assessing Officer and in addition submitted that the Assessing Officer had made disallowance adopting methodology different from the methodology previously adopted by the Assessing Officer in the preceding assessment years which was upheld by the first appellate authority/CIT(A). The CIT(A) agreed with the view taken by the Assessing Officer and confirmed the disallowance of entire interest expenses of INR 70.26 Crores. As regards the disallowance of balance Head Office Expenses of INR 14.09 Crores, the CIT(A) directed the Assessing Officer to compute the quantum of disallowance by following provisions contained in Rule 8D of the Income Tax Rules, 1962 [for short '**IT Rules**']. However, while concluding the CIT(A) recorded that '*this ground, therefore is decided against the appellant'*.

4.4. Being aggrieved the Appellant has carried the issue in appeal before us. In the Original Grounds of Appeal filed by the

Appellant along with memorandum of appeal, the Appellant had taken a number of grounds in relation to this disallowance under Section 14A of the Act. However, vide letter dated, 19/01/2024, the Appellant filed revised grounds wherein the Appellant restricted its claim. As per revised grounds the Appellant had primarily pleaded that the disallowance under Section 14A of the Act should be restricted to INR 6,88,73,913/- being amount of exempt income earned by the Appellant during the relevant previous year

4.5. The Learned Authorised Representative for the Appellant submitted that in identical facts and circumstances in the case of the Appellant for the Assessment Year 2004-05, the Tribunal has, vide order dated 20/07/2016, passed in ITA No. 4894/Mum/2008 [181 TTJ 600 (Mumbai - Trib)] decided this issue raised in Ground No. 1 in favour of the Appellant by restricting the disallowance under Section 14A of the Act to the amount of exempt income.

4.6. However, the Learned Special Counsel for the Revenue appearing before us vehemently insisted that the issue required reconsideration. Learned Special Counsel for Revenue relied on written submission dated 04/02/2024 and 17/11/2021 and extracts of judicial precedents reproduced therein. Reliance was also placed on the following judgments/decisions: (a) Everplus Securities & Finance Vs Deputy Commissioner of Income Tax: 2006 285 ITR 112 (Delhi); (b) ACIT Range 10(1) Vs Citicorp Finance India Limited: 2008 300 ITR 398 (Mumbai)' (c) CIT Vs. Amrita Ben R Shah: 238 ITR 777; and (d) CIT Vs KS Venkatasubbiah Reddiar: 221 ITR 18.

4.7. We have given thoughtful consideration to the rival submissions

and perused the material on record including the various judicial precedents cited by both the sides.

4.8. On perusal of the assessment order for the Assessment Year 2005-06, we find that the Assessing Officer had made disallowance under Section 14A of the Act. No disallowance was made under Section 36(1)(iii) of the Act. Therefore, the observations made by the Assessing Officer in the context of Section 36(1)(iii) of the Act as well as the submission made by both the sides on this issue as well as the judicial precedents related thereto do not require our consideration. Having recorded as aforesaid, we taken note of the submission advanced by the Learned Revenue Counsel that while claiming deduction for expenses the Appellant had itself claimed that there was direct nexus between the interest income and investment made in companies to acquire controlling interest. On the basis of the aforesaid, it was submitted by the Ld. Revenue Counsel that entire amount of interest was correctly disallowed by the AO and CIT(A) by invoking provisions of Section 14A of the Act since the entire interest expense was incurred in relation to earning exempt dividend and capital gains income. The Learned Special Counsel for the Revenue had vehemently contended that the theory of appropriation of expenses could not be applied in the facts of the present case. Reliance in this regard was placed on the judgment of the Hon'ble Supreme Court in the case of **Maxopp Investment Ltd. v. CIT: (2012) 347 ITR 272**. We have given thoughtful consideration to the submissions advanced by the Learned Revenue Counsel, and in our view, the same are devoid of merit as explained hereinafter.

4.9. The appeal before us pertains to Assessment Year 2005-06. In

the case of **Maxopp Investment Limited Vs. Commissioner of Income Tax, New Delhi**, while deciding a batch of appeals, it was held by the **Hon'ble Delhi High Court, vide order dated 18.11.2011** passed in **ITA No. 687/2009 & ors**, that the provision of Section 14A of the Act inserted by virtue of the Finance Act, 2001 would come into retrospective effect from 01/04/1962. However, Rule 8D would apply prospectively from the Assessment Year 2007-08 onwards. As regards prior periods, in absence of any prescribed method, the assessee was free to adopt a reasonable and acceptable method. However, before doing so the Assessing Officer was first required to reject the claim/computation of the assessee giving cogent reasons before adopting any method to determine the quantum of disallowance under Section 14A of the Act. The relevant extract of the judgment of the Hon'ble Delhi High Court reads as under:

> *"Questions*
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> *2. Since, across these appeals, there were some minor differences in language insofar as the admitted and/or proposed questions were concerned, it was agreed that the following substantial questions of law would, in general, cover all the cases before us:*
>
> *1. Whether expenditure (including interest paid on funds borrowed) in respect of investment in shares of operating companies for acquiring and retaining a controlling interest therein is hit by section 14A of the Income tax Act, 1961 inasmuch as the dividend received on such shares does not form part of the total income?*
>
> *2. Whether the provisions of sub-section (2) and sub-section (3) of section 14A inserted by the Finance Act, 2006 with effect from 01/04/2007, would apply retrospectively to all pending proceedings?*
>
> *3. Whether Rule 8D inserted by the Income -tax (Fifth Amendment) Rules, 2008 with effect from 24/03/2008 was procedural in nature and hence would apply retrospectively to all pending proceedings?*

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5. *As regards Question 1, it has been contended on behalf of the assessees that holding of shares for acquiring and retaining control of operating companies amounts to business and, consequently, dividend income on such shares is in the nature of business income. It was further submitted that the intention behind acquiring such shares was not to earn dividend but to acquire and retain a controlling interest in the operating companies. Dividend was merely incidental. It was thus contended that the interest paid on the funds borrowed to acquire such shares was allowable as a business expenditure as it was not directed at earning dividend income, which was incidental.*

The law prior to insertion of Section 14A

12. *Prior to the introduction of section 14A in the said Act, the position in law was as laid down by the Supreme Court in CIT v. Maharashtra Sugar Mills Ltd: 82 ITR 452 (SC) and Rajasthan State Warehousing Corporation v. CIT: 242 ITR 450 (SC).*

In Maharashtra sugar Mills Ltd (supra) the assessee's business comprised of two parts, namely, (1) cultivation of sugar cane and (2) the manufacture of sugar. The revenue had contended that as the income from the cultivation of sugar cane, being the result of an agricultural operation, was not exigible to tax, therefore, any expenditure incurred in respect of that activity was not deductible. The Supreme Court repelled this contention in the following manner:

> *"This contention proceeds on the basis that only expenditure incurred in respect of a business activity giving rise to income, profit or gains taxable under the Act can be given deduction to and not otherwise. We see no basis for this contention. To find out whether the deduction claimed is permissible under the Act or not, all that we have to do is to examine the relevant provisions of the Act. Equitable considerations are wholly out of place in construing the provisions of a taxing statute. We have to take the provisions of the statute as they stand. If the amount claimed is permissible under the Act then the same has to be deducted from the gross profit. If it is not permissible under the Act, it has to be rejected. As mentioned earlier, it is not disputed that the cultivation of sugar-cane and the manufacture of sugar constituted one single and indivisible business. Section 10(2) says that profits under section 10(1) in respect of a business*

should be computed after deducting the allowances mentioned therein. One of the allowances allowed is that mentioned in section 10(2)(xv) which says that any expenditure laid out or expended wholly an exclusively for the purpose of such business shall be deducted as an allowance. The mandate of section 10(2) (xv) is plain and unambiguous. Undoubtedly, the allowance claimed in this case was laid out or expended for the purpose of the business carried on by the assessee. The fact that the income arising from a part of that business is not exigible to tax under the act is not a relevant circumstance." (Emphasis supplied)

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14. *Thus, prior to the introduction of section 14A in the said Act, the law was that when an assessee had a composite and indivisible business which had elements of both taxable and non-taxable income, the entire expenditure in respect of the said business was deductible and, in such a case, the principle of apportionment of the expenditure relating to the non-taxable income did not apply. However, where the business was divisible, the principle of apportionment of the expenditure was applicable and the expenditure apportioned to the 'exempt' income or income not exigible to tax, was not allowable as a deduction.*

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16. *As observed by the Supreme Court in the case of CIT v. Walfort Share and Stock Brokers P Ltd: 326 ITR 1 (SC), the insertion of section 14 A with retrospective effect reflects the serious attempt on the part of Parliament* ***not*** *to allow deduction in respect of any expenditure incurred by the assessee in relation to income, which* ***does not*** *form part of the total income under the said act against the taxable income. The Supreme Court further observed as under:-*

".. In other words, section 14 A clarifies that expenses incurred can be allowed only to the extent that they are relatable to the earning of taxable income. In many cases the nature of expenses incurred by the assessee may be relatable partly to the exempt income and partly to the taxable income. In the absence of section 14A, the expenditure incurred in respect of exempt income was being claimed against taxable income. The mandate of section 14A is clear. It desires to curb the practice to claim deduction of expenses incurred in relation to exempt income against taxable income and at the same time avail of the tax incentive by way of an exemption of exempt income

without making any apportionment of expenses incurred in relation to exempt income…"

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"in relation to"

19. *Let us examine the expression "in relation to". Mr Vohra had referred to the Supreme Court decision in **Madhav Rao Scindia v. Union of India: AIR 1971 SC 530** where, in paragraph 134, it is observed as under:-*

> *".. The expression "provisions of this Constitution relating to" in article 363 means provisions having a dominant and immediate connection with: it does not mean merely having a reference to."*

20. *According to Mr Vohra, the expression "in relation to" appearing in section 14A of the said Act has to be considered in similar light. He submitted that the expenditure incurred must have a dominant and immediate connection with the exempt income. Thus, according to him, since the shares were acquired for the purpose of acquiring and retaining control of the operating company, the expenditure in respect of such acquisition of shares would not have a dominant and immediate connection with the dividend income, which was merely incidental. As such, Mr Vohra submitted, the expenditure could not be disallowed under section 14 A of the said act.*

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24. *We do not agree with the submission of the learned counsel appearing on behalf of the assessees that a narrow meaning ought to be ascribed to the expression "in relation to" appearing in section 14A of the said act. The context does not suggest that a narrow meaning ought to be given to the said expression. <u>It is pertinent to note that the provision was inserted by virtue of the Finance Act, 2001 with retrospective effect from 01/04/1962. In other words, it was the intention of Parliament that it should appear in the statute book, from its inception, that expenditure incurred in connection with income which does not form part of total income ought not to be allowed as a deduction</u>. The factum of making the said provision retrospective makes it clear that Parliament wanted that it should be understood by all that from the very beginning, such expenditure was not allowable as a deduction. Of course, by introducing the proviso it made it clear that there was no intention to reopen finalized assessments prior to the assessment year*

beginning on 01/04/2001. Furthermore, as observed by the Supreme Court in Walfort (supra), the basic principle of taxation is to tax the net income, i.e., gross income minus the expenditure and on the same analogy the exemption is also in respect of net income. In other words, where the gross income would not form part of total income, it's associated or related expenditure would also not be permitted to be debited against other taxable income.

Scope of sub-sections (2) and (3) of Section 14A

29. *Sub-section (2) of Section 14 A of the said Act provides the manner in which the Assessing Officer is to determine the amount of expenditure incurred in relation to income which does not form part of the total income. However, if we examine the provision carefully, we would find that the Assessing Officer is required to determine the amount of such expenditure only if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under the said Act. In other words, the requirement of the Assessing Officer embarking upon a determination of the amount of expenditure incurred in relation to exempt income would be triggered only if the Assessing Officer returns a finding that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. Therefore, the condition precedent for the Assessing Officer entering upon a determination of the amount of the expenditure incurred in relation to exempt income is that the Assessing Officer must record that he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. Sub-section (3) is nothing but an offshoot of sub-section (2) of Section 14A. Sub-section (3) applies to cases where the assessee claims that no expenditure has been incurred in relation to income which does not form part of the total income under the said Act. In other words, sub-section (2) deals with cases where the assessee specifies a positive amount of expenditure in relation to income which does not form part of the total income under the said Act and sub-section (3) applies to cases where the assessee asserts that no expenditure had been incurred in relation to exempt income. In both cases, the Assessing Officer, if satisfied with the correctness of the claim of the assessee in respect of such expenditure or no expenditure, as the case may be, cannot embark upon a determination of the amount of expenditure in accordance with any prescribed method, as mentioned in sub-section (2) of Section 14A of the said Act. It is only if the Assessing Officer is not satisfied with the correctness of the claim of the assessee, in both cases, that the Assessing Officer gets*

jurisdiction to determine the amount of expenditure incurred in relation to such income which does not form part of the total income under the said Act in accordance with the prescribed method. The prescribed method being the method stipulated in Rule 8D of the said Rules. While rejecting the claim of the assessee with regard to the expenditure or no expenditure, as the case may be, in relation to exempt income, the Assessing Officer would have to indicate cogent reasons for the same.

Rule 8D

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39. It is, therefore, clear that sub-sections (2) and (3) of Section 14A were introduced with prospective effect from the assessment year 2007-08 onwards. However, sub-section (2) of Section 14A remained an empty shell until the introduction of Rule 8D on 24.03.2008 which gave content to the expression "such method as may be prescribed" appearing in Section 14A(2) of the said Act

How is Section 14A to be worked for the period prior to the introduction of Rule 8D?

41. Sub-section (2) of section 14A, as we have seen, stipulates that the Assessing Officer shall determine the amount of expenditure incurred in relation to income which does not form part of the total income "in accordance with such method as may be prescribed". Of course, this determination can only be undertaken if the Assessing Officer is not satisfied with the correctness of the claim of the assessee in respect of such expenditure. This part of section 14A(2) which explicitly requires the fulfillment of a condition precedent is also implicit in section 14A(1) [as it now stands] as also in its initial avatar as section 14A. It is only the prescription with regard to the method of determining such expenditure which is new and which will operate prospectively.

In other words, section 14A, even prior to the introduction of sub-sections (2) & (3) would require the assessing officer to first reject the claim of the assessee with regard to the extent of such expenditure and such rejection must be for disclosed cogent reasons**. It is then that the question of determination of such expenditure by the assessing officer would arise. The requirement of adopting a specific method of determining such expenditure has been introduced by virtue of sub-section (2) of section 14A. **Prior to that, the

***assessing was free to adopt any reasonable and acceptable method**..” (Emphasis Supplied)*

4.10. On perusal of above, it can be seen that the Hon’ble Delhi High Court had, after examining the legislative history, noted that prior to introduction of Section 14A of the Act in case of indivisible businesses, which had elements of both taxable and non-taxable income, the entire expenditure in respect of the said business was deductible and, in such a case, the principle of apportionment of the expenditure relating to the non-taxable income did not apply. However, where the business was divisible, the principle of apportionment of the expenditure was applicable and the expenditure apportioned to the ‘exempt’ income was not allowable as a deduction. Thus, what was required to be examined whether expenditure resulted in, both, exempt and taxable income. The submissions advanced by the Ld. Revenue Counsel were based upon the presumption that the interest income, in the facts of the present case, resulted in tax exempt dividend income only. Reliance was placed by the Learned Revenue Counsel on the judgment of the Hon’ble Supreme Court in the case of Maxopp Investment Limited (supra) to support the contention that entire interest income should be disallowed as dominant purpose theory had been rejected by the Hon’ble Supreme Court. We are not in agreement with the aforesaid submission advanced on behalf of the Revenue. The Hon’ble Supreme Court had rejected the contention of the assessee that in a case where the dominant purpose was not to earn exempt income (but to hold controlling stake), no part of interest expenditure could be disallowed under Section 14A of the Act. It our view, it is incorrect to conclude that the Hon’ble Supreme Court had held that in a case where dominant purpose theory is rejected entire amount of interest

expenses would have to be necessarily disallowed. No preposition of law or observation to this effect finds mention in the aforesaid judgment of the Hon'ble Supreme Court. At this juncture it would be pertinent to refer to the judgment of Hon'ble Supreme Court in the case of **Maxopp Investment Limited** (Supra) wherein it was held as under:

> *"29. Basing their case on the aforesaid principles, it was argued that when the shares were acquired, as part of promoter holding, for the purpose of acquiring controlling interest in the company, the dominant object is to keep control over the management of the company and not to earn the dividend from investment in shares. Whether dividend is declared/earned or not is immaterial and, in either case, the assessee would not liquidate the shares in investee companies. Therefore, no expenditure was made 'in relation to' the income i.e. the dividend income and, therefore, Section 14A would not be attracted. In this hue, it was submitted that Section 14A was to be accorded plain and grammatical interpretation meaning thereby mandating and requiring a direct and proximate nexus/link between the expenditure actually incurred and the earning of the exempt income. It was also argued that even if contextual/purposive interpretation is to be given, that also called for direct and proximate connection between the expenditure incurred and earning of dividend. According to the learned counsel appearing for the assessees, the legislative intention behind inserting Section 14A in this statute was to exclude both, viz. the receipts which are exempt under the provisions of the Act as well as expenditure actually incurred 'in relation thereto' from entering into the computation of assessable income, so as to remove the double benefit to the assessee (i) in the form of exempt income, on which no tax is leviable; and (ii) providing deduction in respect of expenditure actually incurred which directly resulted in the earning of exempt income by the assessee.*
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> *30. Mr. K. Radhakrishnan, learned senior counsel appearing for the Revenue, on the other hand, made a fervent plea to accept the view taken by the Delhi High Court. He submitted that the objective behind insertion of Section 14A of the Act*

manifestly pointed out that expenditure incurred in respect of income earned, which is exempted from tax, has to be disallowed. He also pointed out that this message was eloquently brought out by this Court in Walfort Share & Stock Brokers (P.) Ltd. case (supra). Otherwise, argued the learned senior counsel, the assessee will get double benefit, one, in the form of exemption from income tax insofar as dividend income is concerned and other by getting deduction on account of expenditure as well. He, thus, submitted that expression 'in relation to' had to be given expansive meaning in order to sub-serve the purpose of the said provision. He also emphasised that literal meaning of Section 14A of the Act pointed towards that and that was equally the purpose behind the insertion of Section 14A as well.

31. *We have given our thoughtful consideration to the argument of counsel for the parties on both sides, in the light of various judgments which have been cited before us, some of which have already been taken note of above.*

32. *In the first instance, it needs to be recognised that as per section 14A(1) of the Act, deduction of that expenditure is not to be allowed which has been incurred by the assessee "in relation to income which does not form part of the total income under this Act". Axiomatically, it is that expenditure alone which has been incurred in relation to the income which is includible in total income that has to be disallowed. If an expenditure incurred has no causal connection with the exempted income, then such an expenditure would obviously be treated as not related to the income that is exempted from tax, and such expenditure would be allowed as business expenditure. To put it differently, such expenditure would then be considered as incurred in respect of other income which is to be treated as part of the total income.*

33. *There is no quarrel in assigning this meaning to section 14A of the Act. In fact, all the High Courts, whether it is the Delhi High Court on the one hand or the Punjab and Haryana High Court on the other hand, have agreed in providing this interpretation to section 14A of the Act. The entire dispute is as to what interpretation is to be given to the words 'in relation to' in the given scenario, viz. where the dividend income on the shares is earned, though the dominant purpose for subscribing in those shares of the*

investee company was not to earn dividend. We have two scenarios in these sets of appeals. In one group of cases the main purpose for investing in shares was to gain control over the investee company. Other cases are those where the shares of investee company were held by the assessees as stock-in-trade (i.e. as a business activity) and not as investment to earn dividends. In this context, it is to be examined as to whether the expenditure was incurred, in respective scenarios, in relation to the dividend income or not.

34. *Having clarified the aforesaid position, the first and foremost issue that falls for consideration is as to whether the dominant purpose test, which is pressed into service by the assessees would apply while interpreting Section 14A of the Act or we have to go by the theory of apportionment. We are of the opinion that the dominant purpose for which the investment into shares is made by an assessee may not be relevant. No doubt, the assessee like Maxopp Investment Limited may have made the investment in order to gain control of the investee company. However, that does not appear to be a relevant factor in determining the issue at hand. Fact remains that such dividend income is non-taxable.* ***In this scenario, if expenditure is incurred on earning the dividend income, that much of the expenditure which is attributable to the dividend income has to be disallowed and cannot be treated as business expenditure. Keeping this objective behind Section14A of the Act in mind, the said provision has to be interpreted, particularly, the word 'in relation to the income' that does not form part of total income. Considered in this hue, the principle of apportionment of expenses comes into play as that is the principle which is engrained in Section 14A of the Act.*** *This is so held in Walfort Share & Stock Brokers (P.) Ltd., relevant passage whereof is already reproduced above, for the sake of continuity of discussion, we would like to quote the following few lines therefrom.*

> *"The next phrase is, "in relation to income which does not form part of total income under the Act". It means that if an income does not form part of total income, then the related expenditure is outside the ambit of the applicability of section 14A..*

** ** **

The theory of apportionment of expenditure between taxable and non-taxable has, in principle, been now widened under section 14A."

35. *The Delhi High Court, therefore, correctly observed that prior to introduction of Section 14A of the Act, the law was that when an assessee had a composite and indivisible business which had elements of both taxable and non-taxable income, the entire expenditure in respect of said business was deductible and, in such a case, the principle of apportionment of the expenditure relating to the non-taxable income did not apply. The principle of apportionment was made available only where the business was divisible. It is to find a cure to the aforesaid problem that the Legislature has not only inserted Section 14A by the Finance (Amendment) Act, 2001 but also made it retrospective, i.e., 1962 when the Income Tax Act itself came into force. The aforesaid intent was expressed loudly and clearly in the Memorandum explaining the provisions of the Finance Bill, 2001.* ***We, thus, agree with the view taken by the Delhi High Court, and are not inclined to accept the opinion of Punjab & Haryana High Court which went by dominant purpose theory. The aforesaid reasoning would be applicable in cases where shares are held as investment in the investee company, may be for the purpose of having controlling interest therein. On that reasoning, appeals of Maxopp Investment Limited as well as similar cases where shares were purchased by the assessees to have controlling interest in the investee companies have to fail and are, therefore, dismissed****.*

36. *There is yet another aspect which still needs to be looked into. What happens when the shares are held as 'stock-in-trade' and not as 'investment', particularly, by the banks? On this specific aspect, CBDT has issued circular No. 18/2015 dated November 02, 2015.*

37. *This Circular has already been reproduced in Para 19 above. This Circular takes note of the judgment of this Court in Nawanshahar case wherein it is held that investments made by a banking concern are part of the business or banking. Therefore, the income arises from such investments is attributable to business of banking falling under the head*

'profits and gains of business and profession'. On that basis, the Circular contains the decision of the Board that no appeal would be filed on this ground by the officers of the Department and if the appeals are already filed, they should be withdrawn. A reading of this circular would make it clear that the issue was as to whether income by way of interest on securities shall be chargeable to income tax under the head 'income from other sources' or it is to fall under the head 'profits and gains of business and profession'. The Board, going by the decision of this Court in Nawanshahar case, clarified that it has to be treated as income falling under the head 'profits and gains of business and profession'. The Board also went to the extent of saying that this would not be limited only to co-operative societies/Banks claiming deduction under Section 80P(2)(a)(i) of the Act but would also be applicable to all banks/commercial banks, to which Banking Regulation Act, 1949 applies.

38. *From this, Punjab and Haryana High Court pointed out that this circular carves out a distinction between 'stock-in-trade' and 'investment' and provides that if the motive behind purchase and sale of shares is to earn profit, then the same would be treated as trading profit and if the object is to derive income by way of dividend then the profit would be said to have accrued from investment. To this extent, the High Court may be correct. At the same time, we do not agree with the test of dominant intention applied by the Punjab and Haryana High Court, which we have already discarded. In that event, the question is as to on what basis those cases are to be decided where the shares of other companies are purchased by the assessees as 'stock-in-trade' and not as 'investment'. We proceed to discuss this aspect hereinafter.*

39. *In those cases, where shares are held as stock-in-trade, the main purpose is to trade in those shares and earn profits therefrom. However, we are not concerned with those profits which would naturally be treated as 'income' under the head 'profits and gains from business and profession'. What happens is that, in the process, when the shares are held as 'stock-in-trade', certain dividend is also earned, though incidentally, which is also an income. However, by virtue of Section 10 (34) of the Act, this dividend income is not to be included in the total income and is exempt from*

tax. This triggers the applicability of Section 14A of the Act which is based on the theory of apportionment of expenditure between taxable and non-taxable income as held in Walfort Share & Stock Brokers (P.) Ltd. case. ***Therefore, to that extent, depending upon the facts of each case, the expenditure incurred in acquiring those shares will have to be apportioned****.*

40. *We note from the facts in the State Bank of Patiala cases that the AO, while passing the assessment order, had already restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in Rule 8D of the Rules and holding that section 14A of the Act would be applicable. In spite of this exercise of apportionment of expenditure carried out by the AO, CIT(A) disallowed the entire deduction of expenditure. That view of the CIT(A) was clearly untenable and rightly set aside by the ITAT. Therefore, on facts, the Punjab and Haryana High Court has arrived at a correct conclusion by affirming the view of the ITAT, though we are not subscribing to the theory of dominant intention applied by the High Court. It is to be kept in mind that in those cases where shares are held as 'stock-in-trade', it becomes a business activity of the assessee to deal in those shares as a business proposition. Whether dividend is earned or not becomes immaterial. In fact, it would be a quirk of fate that when the investee company declared dividend, those shares are held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits. The situation here is, therefore, different from the case like Maxopp Investment Ltd. where the assessee would continue to hold those shares as it wants to retain control over the investee company. In that case, whenever dividend is declared by the investee company that would necessarily be earned by the assessee and the assessee alone. Therefore, even at the time of investing into those shares, the assessee knows that it may generate dividend income as well and as and when such dividend income is generated that would be earned by the assessee. In contrast, where the shares are held as stock-in-trade, this may not be necessarily a situation. The main purpose is to liquidate those shares whenever the share price goes up in order to earn profits. In the result, the appeals filed by the Revenue challenging the judgment of the Punjab and Haryana High*

Court in State Bank of Patiala also fail, though law in this respect has been clarified hereinabove.

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

4.11. On perusal of the above it is clear that even after rejecting the dominant purpose theory, the Hon'ble Supreme Court restricted the disallowance to the amount of exempt income even after rejecting the dominant purpose theory. In our view, it can be said that the disallowance under Section 14A of the Act to the extent of exempt income was found to be reasonable basis for making disallowance under Section 14A of the Act by the Hon'ble Supreme Court in the case of Maxopp Investment Ltd (supra). Entire submission advanced on behalf of the Revenue are premised upon the incorrect understanding that the rejection of dominant purpose theory lead to an automatic conclusion that interest expenditure were incurred 'solely' for the purpose of earning exempt income. Further, in the present case, on perusal of the computation of assessed income as per the Assessment Order *[at page 32 & 33 of 33]*, it is clear that the assessed income of INR 79,08,78,040/- consisted of long term capital gains income of INR 46,45,01,048/- on which tax of INR 4,64,50,105/- was computed by the Assessing Officer. The Appellant had claimed exemption under Section 10(34) of the Act in respect of dividend income of INR 6,88,73,913/-. This has

not been taken into consideration by the Assessing Officer as well as CIT(A). The finding returned by the Assessing Officer that entire amount of interest expenditure of INR 70.26 Crores and balance expenses of INR 14.09 Crores have been incurred solely for the purpose of making investment in share for obtaining controlling stake in companies is based upon the computation submitted by the Assessee vide letter dated 14/12/2007. Even if it is presumed that entire borrowed funds were utilized for making investments, what portion of the investment made from borrowed capital resulted in taxable long term capital gains income cannot be identified in the facts of the present case. Thus, it can be concluded that interest expenditure resulted in taxable income/gains as well as exempt dividend and capital gains income. Therefore, we reject the contention of the Revenue that the theory of appropriation is not applicable in the facts on the present case. Further, as per the above said judgment of the Hon'ble Delhi High Court and Hon'ble Supreme Court, Section 14A of the Act, even prior to the amendment/insertion of sub-sections (2) & (3) by the Finance Act 2001, required the assessing officer to first reject the computation of the suo moto disallowance made by the assessee by giving cogent reason before adopting a method to compute the amount of disallowance under Section 14A of the Act. In our view, the reasons given by the Assessing Officer and the CIT(A) for rejecting the computation of the Appellant were based upon incorrect understanding of the legal position as well as the relevant facts.

4.12. We note that in identical facts and circumstances, after taking into consideration all the contentions advanced on behalf of Revenue, the Tribunal had, in the case of the Assessee for the Assessment Year 2004-05 **[ITA No. 4894/Mum/2008, dated**

20/07/2016 reported in 181 TTJ 600 (Mumbai - Trib)], decided identical issue in the favour of the Assessee holding as under:

" *22. Since the assessee has not contested the applicability of section 14A of the Act in relation to the exempt dividend income received by it, hence we do not deem it necessary to deliberate on the contentions raised by the Ld. DR regarding the purpose and object of insertion of section 14 A of the Act. Even no dispute has been raised by the assessee regarding the concept of net exempt income vs. gross receipts/gross dividend receipt. Hence, we do not deem it necessary to go into further discussion in this respect. Even no controversy has been raised by the assessee as to whether the expenditure incurred on the funds used for making strategic investments made in group companies/subsidiaries for business purposes for having control over them can be subjected to the disallowance u/s. 14A of the Act. Under the circumstances, it is undisputed that certain disallowance of expenditure is attracted in relation to exempt dividend income earned by the assessee during the year.*

Now, the question before us as to what should be the quantum of such a disallowance and what method should be adopted to calculate the expenditure incurred in relation to exempt income for the purpose of disallowance*.*

23. The contention of the Ld. DR in this respect is that since the entire investments were long term, made for the purpose of having control in the management of subsidiaries/group companies, hence the entire interest expenditure was incurred in relation to exempt dividend income and therefore the AO has rightly disallowed the entire interest expenditure.

24. On the other hand, the Ld. AR, has placed strong reliance upon the decision of the Hon'ble Delhi High Court in the case of Joint Investments (P.) Ltd. (supra) and of the Hon'ble Punjab & Haryana High Court in the case of Empire

Package (P.) Ltd. (supra) to contend that disallowance u/s. 14 A cannot exceed the exempt income earned during the year.

25. *We have heard the learned representatives of both the parties and have also gone through the records on this issue. It is pertinent to mention here that assessment year involved in this case is AY-2004-05. Sub-section (2) of section 14A stipulates that the Assessing Officer shall determine the amount of expenditure incurred in relation to income which does not form part of the total income "in accordance with such method as may be prescribed". However such a method has been prescribed in Rule 8D of the Income Tax rules. It may be further observed that in the case of Godrej & Boyce Mfg. Co. Ltd. (supra) the Hon'ble Bombay High Court has held that Rule 8D r. w. s. 14A(2) is not arbitrary or unreasonable but can be applied only if the assessee's method is not satisfactory. It has been further held that Rule 8D is not retrospective and applies from A.Y. 2008-09.* ***For the years for which Rule 8D is not applicable and in the event of that the AO is not satisfied with the explanation/working given by the assessee, disallowance under section 14A has to be made on a reasonable basis****. Almost similar view has been expressed by Hon'ble Delhi High Court in the case of Maxopp Investment Ltd. v. CIT [2012] 347 ITR 272/[2011] 203 Taxman 364/15 taxmann.com 390. Hence, the rule 8 D of the Income Tax Rules is not applicable for the Assessment year under consideration. Disallowance under section 14 A, thus, can be made on some reasonable basis for the year under consideration and not under rule 8 D as held by the Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. (supra).*

26. *It may be further observed that this is not a case where no exempt income was received by the assessee despite making investments.* ***The assessee admittedly has earned a substantial tax exempt dividend income of Rs. 6.16 Crores during the year. Even otherwise, it is also not the case of the Revenue that the exempt income earned by the assessee is very less or negligible. It is also not disputed by the AO that the***

assessee being an investment & finance company and a promoter of new companies and having interest in the business of these companies has made the investments for business purposes for having control over these subsidiary and associated companies. Under such circumstances the different co-ordinate benches of this Tribunal have observed that in such cases certain percentage of exempt income can constitute a reasonable estimate for making disallowance for the years earlier to assessment year 2008-09. The Hon'ble Bombay High Court in the case of CIT v. Godrej Agrovet Ltd. [IT Appeal No. 934 of 2011, dated 8-1-2013] has upheld the order of the Tribunal directing the AO to restrict the disallowance to the extent of 2% of the total exempt income earned by the assessee*.*

27. ***Even otherwise, the entire interest expenditure cannot be attributed to earning of exempt dividend income only. Even an investor normally does not invest merely for earning of dividends. It also takes into consideration the possibility of rise in price of shares which may result into taxable capital gains also****. The Hon'ble Delhi High Court in the case of Joint Investments (P.) Ltd. (supra) has held that section 14 of the Act or rule 8D cannot be interpreted so as to mean that the entire tax exempt income of the assessee is to be disallowed. That the window for disallowance is indicated in Section 14A and is only to the extent of disallowing expenditure incurred by the assessee in relation to the tax exempt income. This proportion or portion of the tax exempt income surely cannot swallow the entire amount of tax exempt income. Similar view has been taken by the Hon'ble Punjab & Haryana High Court in the case of Empire Package (P.) Ltd. (supra)*

The Hon'ble Delhi High Court in the case of Cheminvest Ltd. v. CIT [2015] 378 ITR 33/234 Taxman 761/61 taxmann.com 118, wherein also the assessee had made strategic investments in subsidiaries/Group Companies for retaining control over them but has not received any dividend income from such investments, has held that

section 14A will not apply if no exempt income is received or receivable during the relevant previous year and that the expression 'does not form part of the total income', in section 14A of the Act envisages that there should be an actual receipt of income which is not included in the total income during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income.

Almost identical issue has been taken by the Hon'ble Allahabad High Court in the case of CIT v. Shivam Motors (P.) Ltd. [2015] 55 taxmann.com 262/230 Taxman 63; by the Hon'ble Gujarat High Court in the case of CIT v. Corrtech Energy (P.) Ltd. [2015] 372 ITR 97/[2014] 223 Taxman 130/45 taxmann.com 116 and by the Hon'ble Bombay High Court in the case of CIT v. Delite Enterprises [IT Appeal No. 110 of 2009, vide order dated 26-2-09.

28. The ld. DR has not pointed out any contrary decision to the above proposition.

29. ***In view of the overall facts and circumstances of the case, as discussed above, and in the light of the above decisions of the higher courts, which are otherwise binding on this Tribunal, we are of the view that disallowance u/s. 14 A in this case cannot exceed than the tax exempt income earned by the assessee during the year.***

30. xx xx

31. Respectfully following the above decisions of higher courts and that of co-ordinate benches of the tribunal, we direct the AO to restrict the disallowance u/s. 14A to the extent of exempt income earned by the assessee during the year."

4.13. There is nothing on record, to persuade us to take a view different from the above view taken by the Co-ordinate Bench of the Tribunal in the case of the Assessee for the Assessment Year 2004-05. Accordingly, accepting the contention of the Appellant we restrict the amount of disallowance under Section 14A of the

Act to INR 6,88,73,913/- being the amount of exempt income earned by the Appellant for the relevant previous year. As regards, the disallowance of INR 14.09 Crores, we find that the CIT(A) had directed the Assessing Officer to compute the disallowance in terms of Rule 8D of the IT Rules. It is settled legal position that Rule 8D of the IT Rules would not apply to Assessment Year 2005-06 having been held to be prospective in operation. Therefore, the aforesaid directions issued by the CIT(A) are set aside. Further, we have already restricted the disallowance to INR 6,88,73,913/- being amount of exempt income, and therefore, no further disallowance for administrative/other expense is warranted. Accordingly, the addition of INR 14.09 Crores is deleted.

4.14. In view of the above Ground No. 1 raised by the Appellant is allowed.

Ground No. 2

5. Ground No. 2 raised by the Appellant pertains to disallowance of brokerage commission expenses of INR 1,57,65,808/- made by the Assessing Officer and sustained by the CIT(A).

5.1. During the assessment proceedings, the Appellant was asked to provide the purpose for which the brokerage was paid and the details thereof. Vide Submissions, dated 20/12/2007, the Appellant provided party-wise break-up and submitted that the brokerage charges of INR 1,57,65,808/- *(out of the total brokerage expenses of INR 1,59,57,483/-)* were incurred for obtaining Term Loans and Inter-Corporate Deposits. The funds raised were utilised for the business of the Appellant which consisted of promoting new companies and to acquire share capital as investments, and therefore, the deduction for

brokerage expenses was claimed as revenue expenses. However, the Assessing Officer was not convinced. The Assessing Officer made disallowance of brokerage expenses of INR 1,57,65,808/- holding the same to be capital in nature. However since the entire Head Office Expenses catering to investment related activity *(which included aforesaid brokerage charges)* were already disallowed by the Assessing Officer, no further addition was made in the computation of income to avoid double disallowance.

5.2. In appeal before the CIT(A), the Appellant contended that the disallowance was made by the Assessing Officer on account of conjuncture and surmise. However, the CIT(A) declined to grant any relief to the Appellant observing that similar disallowance made in the preceding assessment year was upheld by the first Appellate Authority.

5.3. Being aggrieved by the order passed by the CIT(A) on this issue, the Appellant preferred appeal before the Tribunal.

5.4. After hearing both the sides and on perusal of record it emerges that, in identical facts and circumstances, the Tribunal had decided identical issue in favour of the Appellant in appeals pertaining to the Assessment Year 2004-05 *[ITA No. 4894/Mum/2008, dated 20/07/2016 reported in 181 TTJ 600 (Mumbai - Trib)]* and 2007-08 *[ITA No.6440&6750/Mum/2014, dated 10/11/2017 reported in 168 ITD 340 (Mumbai)].* The relevant extract of the decision of the Tribunal in the case of the Appellant for the Assessment Year 2004-05 which has been followed in the Assessment Year 2007-08 reads as under:

> *"33. Ground No. 6:*
>
> *During the year under consideration, the assessee had paid processing fees for acquiring the term loans from the Banks.*

The assessee claimed the said fees as business expenditure. The AO however, held that the loan funds were used for making investments in group companies and for promoting new companies hence the processing fees paid was capital expenditure. The ld. DR while relying upon the provisions of section 2 (28) of the Act has contended that the interest includes processing fees also.

34. We have already held in the earlier paragraphs of this order that the assessee being an investment & finance company and a promoter of new companies and having interest in the business of these companies has made the investments for business purposes for having control over these subsidiary and associated companies, hence, in the light of the proposition of law laid down by the Hon'ble Bombay High court in the case of Phil Corpn. Ltd. (supra), Hon'ble Delhi High Court in the case of Eicher Goodearth Ltd. (supra) and the Hon'ble Supreme Court in S.A. Builders (supra), no interest disallowance is attracted u/s. 36(iii) of the Act. On the same analogy, the processing fees paid by the assessee for obtaining such loans is also allowable as business expenditure. More over the issue is covered with the decision of the Hon'ble Supreme Court' in the case of India Cements Ltd. v. CIT [1966] 60 ITR 52, wherein the Supreme Court held that the expenditure in raising loans or issuing debentures would be revenue in nature, irrespective of whether the borrowing is a long term or short term one. This issue is accordingly decided in favour of the assessee."

5.5. Respectfully following the above decisions of the Tribunal in the case of the Appellant, we delete the disallowance of INR 1,57,65,808/- made by the Assessing Officer in respect of brokerage charges. Thus, Ground No. 2 raised by the Appellant is allowed.

Ground No. 3

6. Ground No. 3 raised by the Appellant pertains to disallowance of Debenture/Bond Expenses of INR 14,82,902/- made by the Assessing Officer and sustained by the CIT(A).

6.1. During the assessment proceedings, the Assessing Officer noted

that the Appellant had debited debenture and bond issue expenses of INR 14,82,902/- under the 'Head Office Expenses'. Vide notice dated 26/12/2007, issued under Section 142(2) of the Act the Appellant was required to explain the allowability of the aforesaid expense. In response, vide letter dated 28/12/2007, the Appellant submitted that the same were in the nature of normal business expenses incurred during the course of its business and therefore, allowable as deduction. However, the aforesaid explanation did not find favour with the Assessing Officer. As a result, the Assessing Officer made disallowance of debenture and bond issue expenses amounting to INR 14,82,902/-. While doing so the Assessing Officer referred to the details filed during the assessment proceedings for the Assessment Year 2004-05 and observed that the Appellant had claimed deduction for similar expenses incurred towards raising Non-Convertible Debentures (NCDs) having a term spreading over two assessment years. In the assessment proceedings for the Assessment Year 2004-05 the deduction claimed by the Appellant was disallowed as the expenses involved benefit of enduring nature and spreading over 2 assessment years. Further, it was observed by the Assessing Officer that the connection fees and connectivity charges were not connected with the relevant previous year and therefore, no deduction could be allowed for the same. It would be pertinent to note that no disallowance was in the computation of income since the Assessing Officer had disallowed entire Head Office Expenses.

6.2. In appeal before the CIT(A), it was explained by the Appellant that all the expenditure under consideration including the connection and connectivity charges pertained to the relevant previous year. It was also clarified that for the Assessment Year 2004-05, the Assessing Officer had allowed deduction for

proportionate expenses. However, the CIT(A) declined to grant any relief. The CIT(A) noted that the Appellant had claimed deduction for upfront fee on NCDs and brokerage paid for arranging NCDs. The aforesaid expenses result in benefit of enduring nature of the Appellant since the terms of NCDs spreads over 2 years. For the Assessment Year 2004-05, only proportionate deduction was allowed whereas for the relevant previous year the Appellant was claimed deduction for entire amount.

6.3. Being aggrieved, the Appellant has carried the issue in appeal before us.

6.4. We have considered the rival submissions and perused the material on record. The Assessing Officer has placed reliance on the assessment proceedings for the Assessment Year 2004-05. We note that in appeal for the Assessment Year 2004-05, the Tribunal has, vide order dated 20/07/2016, passed in ITA No. 4894/Mum/2008 [181 TTJ 600 (Mumbai - Trib)] accepted the claim for deduction for upfront fee and brokerage expenses paid for issuance of NCDs holding as under:

> **"***35. Ground No. 7:*
>
> *Ground No. 7 relates to the issue of disallowance of expenditure in the shape of upfront fees and brokerage etc. paid for issuing the non-convertible debentures. The AO concluded that since the term of the debentures was spread over two years, hence benefit arrived at by the assessee was of enduring nature spread over two years. The AO therefore calculated the expenses pertaining to the year under consideration and disallowed the remaining expenses.*
>
> *36. We find that this issue is also covered with the decision of the Hon'ble Supreme Court' in the case of India Cements Ltd. (supra), wherein the Supreme Court held that the expenditure in raising loans or issuing debentures would be*

revenue in nature, irrespective of whether the borrowal is a long term or short term one. It was held that the act of borrowing money was incidental to the carrying on of business, the loan obtained was not an asset or an advantage of enduring nature, the expenditure was made for securing the use of money for a certain period and it was irrelevant to consider the object with which the loan was obtained. This issue is accordingly decided in favour of the assessee."

6.5. In view of the above decision of the Tribunal, we hold that the Appellant is entitled to deduction for upfront fee and brokerage charges as claimed by the Appellant. Further, we find that the averment made by the Appellant that all the expenses (including the connection fee and connectivity charges) pertained to the relevant previous year, has not been examined by the Assessing Officer or the CIT(A). While the finding returned by the Assessing Officer are not supported by any factual or legal basis, the CIT(A) has not dealt with the issue. Despite referring to letter dated 28/12/2007, the CIT(A) has confirmed the disallowance by merely placing reliance on the observations made by the Assessing Officer in the assessment order. Keeping in view the aforesaid, we delete the disallowance of INR 14,82,902/- made by the Assessing Officer. Ground No. 3 raised by the Appellant is allowed.

Ground No. 4

7. Ground No. 4 raised by the Appellant pertains to addition of Guarantee Commission Income of INR 57,534/- *[27,20,110/- less 26,62,576/-]* and INR 27,20,110/- made by the Assessing Officer and confirmed by the CIT(A).

7.1. The facts relevant for adjudication of the ground under consideration are that during the assessment proceedings the

Assessing Officer noted that as per the Tax Deduction at Source (TDS) Certificates the Appellant has earned Guarantee Commission Income of INR 1,63,10,466/- during the relevant previous year from Tata Tele Services Ltd [for short '**TTSL**'] whereas the Appellant had only offered to tax Guarantee Commission Income of INR 80,43,000/-. Hence the Appellant was asked to reconcile the same. Vide letter dated 14/12/2007, the Assessee furnished ledger account showing receipt of aggregate guarantee commission income aggregating to INR 80,42,905/-. Thereafter, the Appellant submitted letter, dated 26/12/2007, contending as under:

"As per the TDS certificate attached to the Return of Income it has been shown that Tata Teleservices has deducted tax as under-

	Date of payment/ credit	Amount paid/ credited (Rs)	Tax Deducted at source (Rs)
(a)	01-04-2004	54,89,917	2,81,358
(b)	30-06-2004	53,80,329	2,75,742
(c)	30-09-2204	27,20,110	1,42,207
(d)	31-12-2004	27,20,110	1,42,207

xx xx

In respect of Serial No. (c) the assessee has charged TTSL Rs.26,62.576. Whereas TTSL has credited Rs.27,20,110 being amount payable to the assessee. In respect of serial No.(d) we have to state that no amount is receivable from TTSL and the said credit has been wrongly given by TTSL in its books."

7.2. However*, the Assessing Officer rejected the above submission and made addition of INR 27,77,644/- is treated as Income from Other Sources observing as under:*

"The explanation of the Assessee is not acceptable. It is seen from the TDS Certificate that:

a. xx xx

b. With reference to Sr. 'c' above. the assessee has contended that the amount actually charged to TTSL was Rs.26,62,576/- and the excess credit by Rs. 57,534/- is wrongly given in the books of TTSL. However the assessee has not been able to substantiate the claim with evidences and the evidence (in the form of TDS certificate) available is not in its favour

c. with reference to Sr. 'd' above, the assessee has contended that the said amount was not receivable from TTSL and that the said credit was wrongly given in the books of TTSL. However the assessee has not been able to substantiate the claim with evidences and the evidence (in the form of TDS certificate) available is not in its favour

I hereby add the balance income of Rs.82,67,561/- to its income. Accordingly Rs.57,534/- and Rs. 27,20,110/- totaling to Rs.27,77,644/- is treated as Income from Other Sources."

7.3. In appeal preferred by the Appellant before CIT(A) on this issue, the CIT(A) declined to grant any relief. As a result the Appellant is now in appeal before us on this issue.

7.4. We have considered the rival submission and perused the material on record.

7.5. We note that the Appellant had claimed that Guarantee Commission Income to the extent of INR 27,20,110/- [INR.57,534/- and INR.27,20,110] was never credited in the accounts nor was the same received by the Appellant. In support the Appellant had filed ledger account and debit notes. Whereas the Assessing Officer and the CIT(A) had relied upon the TDS Certificates furnished by the Appellant while making the additions. On perusal of material on record we find that neither the Appellant had filed any confirmation from TTSL nor had the Assessing Officer called for any information/detail from TTSL in this regard despite the fact that the Appellant had taken a

position that no such income had accrued or was received. Therefore, in view of the aforesaid facts we deem it appropriate to remand this issue back to the file of the Assessing Officer for de-novo adjudication as per law. Accordingly, the addition of INR 27,20,110/- made by the Assessing Officer is set aside with the aforesaid directions. It is clarified that the Appellant would be granted a reasonable opportunity of being heard as per law and shall be at liberty to furnish such documents as it may deem fit to support its contention *[including letter, dated 25/02/2024, issued by TTSL placed on record by the Appellant vide Letter, dated 14/03/2024]*. Thus, Ground No. 4 raised by the Appellant is allowed for statistical purposes.

Ground No. 5

8. Ground No. 5 raised by the Appellant pertains to disallowance of Legal & Professional Fee Expenses of INR 1,47,88,487/- made by the Assessing Officer which was confirmed by the CIT(A).

8.1. The relevant facts in brief are that during the assessment proceedings the Assessing Officer noted that the Appellant has claimed deduction for Legal & Professional Fee Expenses [for short '**Legal Expenses**'] aggregating to INR 1,47,88,487/- consisting of the following

Nature of Expense	Purpose	Amount (INR)
Project Alternative Medicine	Evaluation of Project	2,248,096
Project ATM	Legal Fees	26,700
Project Avestha Gen	Legal/Prof. Fees	1,96,700
Project Falcon	Idea Cellular: Reimbursement of expenses like out pocket, etc of STT transaction	1,17,47,257
Project Kadoorie	Prof. Fee - Tata Sons Ltd	1,28,934

Tata Johnson Controls	Valuation Report	4,40,800
	Total	1,47,88,487

8.2. The Appellant was asked to show-cause as to why the Legal Expenses should not be disallowed as being capital in nature. In response, the Appellant vide Letter, dated 28/12/2007, submitted that Appellant is engaged in the business of promoting new ventures/companies during which it needs to evaluate viability of the new proposed ventures and since the above expenses have been incurred in the course of its business, deduction for the same should be allowed.

8.3. However, after examining the details of the Legal Expenses the Assessing Officer observed that same were incurred in relation to creation of a new activity/venture. Further, the Appellant had not provided complete details in relation to certain Legal Expenses. According to the Assessing Officer the Legal Expenses were pre-operative in nature. The Assessing Officer observed that the Legal Expenses were not incurred in connection with the current operating established business wings or for running of the day to day business. The Assessing Officer disallowed deduction for the Legal Expenses amounting to INR 1,47,88,487/- holding same to be capital in nature.

8.4. Being aggrieved, the Appellant carried the issue in appeal before the CIT(A). After examining the details of Legal Expenses, the CIT(A) agreed with the Assessing Officer and confirmed the disallowance of Legal Expenses observing that the Assessing Officer had rightly concluded that the aforesaid expenses were not incurred for its existing business; and that it was clear that the Appellant had not expanded current activities (but for

creating new business). Thus, the CIT(A) declined to delete the disallowance made by the Assessing Officer in respect of Legal Expenses holding that the Appellant had not disputed the fact that the aforesaid expenses were incurred for new projects and business ventures.

8.5. Being aggrieved the Appellant is now in appeal before us on this issue.

8.6. Before us, the Learned Authorised Representative for the Appellant reiterated the position taken before the authorities below. It was submitted that the business of the Appellant was promoting new companies & ventures and therefore, the legal and professional fee expenses incurred by the Appellant were in the nature of revenue expenditure. Per Contra the Learned Revenue Counsel reiterated the position taken by the Assessing Officer and the CIT(A).

8.7. We have considered the rival submission. The contention of the Appellant is that the Legal Expenses were incurred as part of business activity of promoting & controlling new businesses, and therefore, should be allowed as revenue expenditure. On the other hand, the contention of the Revenue is that the Legal Expenses, admittedly, having been incurred for new projects were pre-operative and capital in nature and therefore, correctly disallowed by the Assessing Officer & CIT(A). On perusal of record, we note that the Appellant has taken a position that the legal and professional fee expenses were incurred for promoting new projects/ventures. During the course of hearing reliance was placed by the Learned Authorised Representative for the Appellant on the decision of the Tribunal in the case of Appellant for the Assessment Year 2004-05 *[ITA No. 4894/Mum/2008,*

dated 20/07/2016 reported in 181 TTJ 600 (Mumbai - Trib)] and 2007-08 *[ITA No.6440&6750/Mum/2014, dated 10/11/2017 reported in 168 ITD 340 (Mumbai)]* to contend that deduction for legal and professional fee expenses should be applied following the same principles. However, we do not find any merit in the aforesaid contention. The principles on which deduction for interest expenditure and/or deductions for expenses incurred for raising loan/capital have been allowed to the Appellant cannot be applied for considering the allowance or otherwise of the deduction for Legal Expenses in view of the specific provision contained in Section 36(1)(iii) of the Act and the definition of 'interest' as contained in Section 2(28A) of the Act. The claim for deduction for Legal Expenses is not supported by any specific provision and has been made under Section 37 of the Act. Further, in our view, the Legal Expenses cannot be regarded as revenue in nature even if it is presumed that the activity of promoting & controlling new businesses constitutes a business activity. At best, the new projects can be considered as par with extension of the existing undertaking or setting up of new undertaking, the expenses related to which are to be amortized in terms of Section 35D of the Act. As observed by the CIT(A), there is no material on record to controvert the findings returned by the Assessing Officer/CIT(A). Further, the judicial precedents cited by the Appellant before the CIT(A) were not applicable to the facts of the present case. The Legal Expenses claimed as deduction before us are not expenses pertaining to unsuccessful projects which were written off during the relevant previous year. Thus, in the facts and circumstances of the present case we are not inclined to interfere with the concurrent findings returned by the Assessing Officer and the CIT(A). Ground No. 5 raised by the Appellant is, therefore, dismissed.

9. In result, the present appeal preferred by the Assessee is partly allowed.

Order pronounced on 07.06.2024.

Sd/-	***Sd/-***
(Om Prakash Kant)	**(Rahul Chaudhary)**
Accountant Member	**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 07.06.2024
Alindra, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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