

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 398/Ind/2014 (AY: 2009-10)

M/s. Treasure World Developers Pvt. Ltd, Through Office of the Official Liquidator, High Court of Bombay, Bank of India Building, 5 th Floor, M.G. Road, Indore (PAN: ABOPB0352F)	<u>बनाम/</u> Vs.	ACIT 4(1), Indore
(Assessee/Appellant)		(Revenue/Respondent)

ITA No. 439/Ind/2014 (AY: 2009-10)

ACIT 4(1), Indore	<u>बनाम/</u> Vs.	M/s. Treasure World Developers Pvt. Ltd, Through Office of the Official Liquidator, High Court of Bombay, Bank of India Building, 5 th floor, M.G. Road, Indore (PAN: ABOPB0352F)
(Revenue/Appellant)		(Assessee/Respondent)

Assessee by	None
Revenue by	Shri Ram Kumar Yadav, CIT-DR

Date of Hearing	25.06.2024
Date of Pronouncement	27.06.2024

आदेश / O R D E R

Per Vijay Pal Rao, JM:

These Cross Appeals are directed against the order dated 28.3.2014 of CIT(A) for the Assessment Year 2009-10. After filing the appeal by the assessee initially one Mr. Manjit Sachdeva, Advocate used to appear on behalf of the assessee however, after the company was wound up by the order dated 13.11.2017 of the Hon'ble High Court, Mumbai in company petition No.487 of 2014 and the Official Liquidator was appointed, the counsel of the assessee withdrew his authority to represent the assessee. Therefore notices were issued to the Official Liquidator of the assessee company but there was no response to the repeated notices issued by the Tribunal. Then the notices were also served through the A.O as per the report available on record. The A.O has finally submitted the report dated 10.06.2014 which is as under:



कार्यालय सहायक आयकर आयुक्त- 4(1) इंदौर

आयकर भवन, इंदौर

F.No:ACIT 4(1), Ind/ITAT-Treasure World/2024-25

Dated: 10.06.2024

To,

The Commissioner of Income Tax (DR),
ITAT, Indore

Madam/Sir,

Sub: - Appeal proceedings in the case of Appeal No. 398 and 439/Ind/2014
AY 2009-10 Assessee- M/s Treasure World Developers Pvt. Ltd C/o Office of
Official Liquidator, High Court of Bombay, Bank of India Building, 5th Floor, MG
Road, Mumbai- regarding

Ref: Letter CIT(DR)/ITAT/IND/2024-25/25 dated 23/04/2024 & 5/06/2024

Kindly refer to the afore referred letter on the subject.

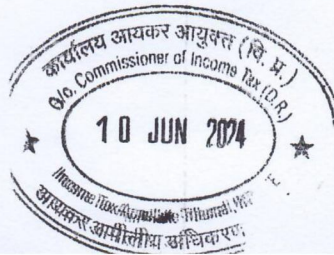
This is to humbly submit that M/s Treasure World Developers Pvt. Ltd has been
directed to be wound up vide order of the Honble High Court, Mumbai in Company Petition
No. 487 of 2014 vide order dated 13/11/2017. The Official Liquidator, High Court of
Mumbai has been appointed as Provisional Liquidator.

Copy of the hearing notice issued by the Hon'ble ITAT, Indore dated 21-03-2024
was sent by Speed Post to the Official Liquidator, Mumbai vide tracking No.
EI865418141IN which has been delivered on 14.04.2024.

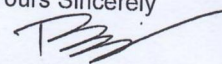
Information gathered from NCLT Online portal show that there are no proceeding
in the case pending before the NCLT, Indore

Efforts were made to contact the Official Liquidator, High Court of Mumbai but no
response was received as to the status of the proceedings with them. A letter has again
been sent to Official Liquidator, High Court of Mumbai on 3-06-2024 (also by e-mail at
ol-mumbai-mca@nic.in, but no reply has been received.

Submitted for kind persual and necessary directions, please.



Yours Sincerely


Biju Thomas
ACIT 4(1), Indore

2. Accordingly the Bench proposed to hear and dispose off these Cross Appeals ex-parte. Section 178 of Income Tax Act mandates the Liquidator of any company which is being wound up, within 30 days after he has become the Liquidator shall give notice of his appointment to the A.O who is entitled to assess the income of the company. Sub Section (3) of Section 178 further casts an obligation on the liquidator that he shall not without leave of the Principal Chief Commissioner or Chief Commissioner part with any of the assets of the company or the properties in his hands until he has been notified by the Assessing Officer under sub-section (2) of Section 178. Rule 26 of ITAT Rules 1963 stipulates as under:

26. Continuation of proceedings after the death or insolvency of a party to the appeal - Where an assessee whether he be an appellant or the respondent to an appeal dies or is adjudicated insolvent or in the case of a company being wound up, the appeal shall not abate and may, if the assessee was the appellant, be continued by, and if he was the respondent be continued against, the executor, administrator or other legal representative of the assessee or by or against the assignee, receiver or liquidator, as the case may be:

Therefore the proceedings before this Tribunal will continue even after the assessee dies or is adjudicated insolvent or in case the company being wound up and the appeal shall not abate provided the assessee files a revised form-36 duly filled up gives revised name of party duly verified in the manner as required by

Rule 47 of I.T rules 1962. In the case in hand the official Liquidator has not taken any step even to file the revised Form 36. Since there is a cross appeal therefore, the A.O has filed the revised Form 36 in the appeal filed by the Department and hence the particulars of the parties specifically of the assessee are taken from the revised Form 36 filed by the A.O.

3. The assessee as well as the Department has raised following grounds of appeal in the Cross Appeals:

Grounds of Appeal filed by the Assessee:

Ground No.1:

On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in confirming the disallowance of Rs. 6,48,13,356 u/s 14A on account of interest expenses proportionately attributable to earning the exempt income fr investments. The appellant prays that the disallowance of Rs. 6,48,13,356 may kindly deleted as the same is bad in law.

Ground No.2:

Without prejudice to the above ground, the Hon'ble CIT(A) has erred in considering amount of Rs 36.45 crores relating to share application money pending allotment wh calculating the total investment amount for calculation of disallowance to be made interest expense towards investment.

The appellant craves leave to add, omit or alter grounds of appeal before or during t hearing of the appeal.

Grounds of appeal filed by the Revenue

3. Restricting the addition made u/s. 14A of Rs. 13,88,07,439/- to Rs. 6,48,13,356/- and thereby providing relief of Rs. 7,39,94,083/-. That in the facts and circumstances of the case, the learned CIT(A) erred in appreciating the fact that the AO had made the addition as per the working given by the assessee during the course of assessment proceedings.

4. The appellant reserves the right to add, amend or alter the ground of appeal on or before the date, the appeal is finally heard for disposal.

3. Thus the solitary common issue has been raised in these Cross Appeals is regarding the disallowance made by the A.O u/s 14A of the I.T. Act to the tune of Rs.13.88 crores which was restricted by CIT(A) to Rs.6.48 crores. Thus both the assessee as well as revenue are aggrieved by the impugned order of CIT(A) and filed these appeals. The Ld. DR has submitted that the assessee has made investment of Rs.135 crores in the shares of subsidiary companies as well as other companies. The assessee has claimed interest expenses of Rs.17.71 crores in the Profit & Loss account and major portion of the investment has been found out of the borrowed funds. The Ld. DR has submitted that the A.O has given details of capital and surplus figure reported by the assessee as well as fund borrowed which shows that as on 31.03.2009 the assessee was having a total non interest bearing fund of Rs.83.53 crores and

borrowed fund of Rs.298.83 crores against which the assessee has made investment of Rs.135.46 crores in the shares, Rs.2.70 crores in the fixed assets and Rs. 357.36 crores used for current assets and loan and advances. All these figures are compared with the preceding year gives a clear picture that the assessee has used borrowed fund for investment made in the shares of subsidiaries and other companies. The Ld. DR has then referred to the reply of the assessee before the A.O and submitted that the assessee itself admitted that the interest expenditure to the tune of Rs.12,01,08,567/- is directly attributable to the exempt income and hence the A.O has rightly made the disallowance of Rs.12,01,08,567/- on account of interest expenditure under Rule 8D(2)(i) and Rs.1,40,50,474/- under rule 8D(2)(ii) and Rs.46,40,398/- under rule 8D(2)(iii) being 5% of average value of investment.

4. Ld. DR stated that the CIT(A) has granted relief to the assessee and deleted the addition in respect of the investment made in the shares of subsidiary company on the ground that the major part of the borrowed fund has been used for business purpose and

therefore Section 14A of the Act is not attracted to the extent of expenditure incurred for business purpose. He has submitted that this issue of investment made in subsidiary company is covered by the **Hon'ble Supreme Court in case of Maxopp Investment Ltd Vs. CIT 402 ITR 640.** He has relied upon the order of A.O. Since nobody appeared on behalf of the assessee therefore, we do not have any privilege to hear the argument of the assessee.

5. We have considered the submissions of the CIT-DR and carefully perused the orders of the A.O as well as the impugned order of CIT(A). The A.O has given the details of availability of funds and investment made by the assessee in various assets including the shares in the subsidiary and other companies as under:

	31/03/2009(Rs. In crores)	01/04/2008 (Rs. In crores)
Capital and Surplus	82.53	82.60
Borrowings	298.83	173.87

3.2 The position of deployment of funds is as under:

	31/03/2009(Rs. In crores)	01/04/2008 (Rs. In crores)
Investments	135.46	50.14
Fixed Assets	2.70	0.54
Current Assets, Loans, Advances	367.36	207.04

These details given by the A.O are not disputed as these are extracted from the books of accounts of the assessee and particularly the balance sheet of the assessee. Even if it is presumed that the assessee has utilised its own non interest bearing fund for investment in shares then only Rs.32,40,00,000/- is available as there was already an investment in shares of Rs.50.14 crores as on 31.03.2008/01.04.2008. The assessee has filed the reply dated 21.12.2011 which is reproduced by the A.O at Page No. 4 and 5 of the assessment order as under:

"We have received your notice F.No.ACIT-2(1)/IND/Scru/TWDPL/2011-12 dated 16/12/2011 regarding the amount of interest expenditure disallowance u/s.14A and computed on the basis of Rule 8D of I.T. Rules at Rs.5,61,89,263/-. In this regard we are submitting wherewith the computation of interest expenditure disallowance u/s. 14A on the basis of Rule 8D of I.T. Rules at Rs. 91,19,988/-, marked as Annexure-1.

Further we would like to clarify/justify our computation of interest expenditure disallowance u/s.14A on the basis of Rule 8D of I.T. Rules as under-

Interest expenditure disallowance as per Rule-8D(2)(ii)

A. *Amount of interest expenditure Rs. 17,71,63,088/-*

As against the interest expenditure of Rs. 17,71,63,088/-, we would like to clarify that the interest paid on bank overdraft and cash credits at Rs.4,04,04,340/-, interest on inter corporate deposit at Rs.1,48,60,898/- and loan processing fees & charges at Rs. 17,89,283/- total aggregating to Rs.5,70,54,521/- is to be reduced from the total interest expenditure of Rs. 17,71,63,088/- at this relates to the working capital requirement of the company and not for the investment in shares. Thus the balance amount of interest expenditure of Rs. 12,01,08,567/- is related to debentures and is directly attributable to investment other than that no interest has been

incurred which is directly attributable to any income or receipt not forming part of the total income.

B. Average value of investment, income from which does not form part of the total income Rs.92,80,79,696/-

As against the average value of investment of Rs.92,80,79,698/-, we would like to clarify that the investment as on 01.04.2008 at Rs.50,14,78,065/- which was invested out of our Equity Funds and not from the borrowed funds. Whereas the investment as on 31.03.2009 at Rs. 1,35,46,81,328/-, we have invested Rs. 78,87,13,576/- out of our Equity Funds and only Rs 56,69,67,752/- is out of the borrowed funds. Hence the average value of investment works out to Rs.28,29,83,876/-."

Thus it is clear from the reply of the assessee that it claimed investment in shares from borrowed fund of Rs. 56.69 crores and proportionate interest expenditure attributable to the investment in the shares. The A.O then calculated the disallowance under Rule 8D(2) as under:

Interest expenditure disallowable as per Rule-8D(2)(ii)

A = Amount of interest expenditure other than the amount of expenditure included in Rule 8D(2)(i)

= Rs. 17,71,63,088 (-) 12,01,08,567 = Rs. 5,70,54,521/-

B = Average value of Investment, income from which does not form part of the total income.

= Average of (Rs. 50,14,78,065/- and Rs. 135,46,81,328/-)

= Rs 92,80,79,696/-

C = Average value of assets as on the 1st day and last day of the previous year.

= Rs. 376,64,92,862/-

Amount disallowable under Rule-8D(2)(ii) A X B/C

= Rs. 1,40,58,474/-

Amount disallowable under Rule-8D(2)(iii) = 0.5% of the average value of Investment, income from which does not form part of the total income.

= 0.5% of average of (Rs. 50,14,78,065/- and Rs. 135,46,81,328/-).

= Rs. 46,40,398/-

Therefore, the amount of interest disallowable u/s 14A computed on the basis of rule 8D comes to Rs. 13,88,07,439/- (Rs.12,01,08,567 + Rs.1,40,58,474 Rs. 46,40,398).

6. On appeal the CIT(A) has granted substantial relief to the assessee and restricted the disallowance to the tune of Rs. 6.48 crores as against the total disallowance of Rs. 13.88 crores made by the A.O u/s 14A of the Act in para 4 to 18 of the order held as under:

"4. I have seen the assessment order, the grounds of appeal and the submissions of appellant.

5. The appellant is engaged in development of shopping malls, residential and commercial projects and hospitality. The appellant has invested into various subsidiaries who are engaged in development of shopping malls, hospitality, residential and commercial projects.

6. This year appellant has made investment of Rs. 135.46 Crores in shares of subsidiary companies and other companies whereas last year investment was of Rs. 50.14 Crore. There is an addition of Rs. 85.32 Crores in this year. As against this share capital and reserve and surplus have remained at same figure as last year, i.e., Rs. 1,00,00,100/- and Rs.81.53 Crores respectively. In view of these facts, it is absolutely clear that interest bearing secured loan of Rs. 47.53 Crores has gone substantially into such investment in shares, because such secured loan till 31.03.2008 was only Rs. 45.21 Lakhs. Even interest bearing unsecured loans have gone up from Rs. 173.42 Crores last year to Rs. 251.29 Crores this year, which is addition to interest bearing unsecured loan of Rs. 77.87 Crores. Hence there is no doubt that interest bearing funds have gone into shares of subsidiary and other companies.

7. The investment in shares of subsidiary and other companies is not a business object of appellant. This is because purchase and sale of shares not included in object clause in Memorandum and Article of Association. cause of this appellant has itself shown acquisition of such shares der the head "investments" and not under the head "Stock in trade".

8. On investment in such shares appellant is going to earn only dividend come, which has been made exempt under the income tax act. This year appellant has earned dividend income of Rs. 1,20,370/-. In case of Cheminvest Ltd. [2007] 317 ITR (AT) 86 (Delhi) [SB] it was held that crest expenditure was incurred by assessee for borrowings for the purpose of investment in shares. Irrespective of whether or not there was yield of dividend on the shares purchase, the interest incurred was relatable to earning of dividend on the shares purchased. The dividend come being exempt from the tax by virtue of section 10(34) of the Income Tax Act, the

interest paid on borrowed capital utilized in purchase of shares, being the expenditure incurred in relation to dividend income not forming part of assessee's total income, could not be allowed as a deduction. There was no chargeable income against which it could be allowed against any other taxable income in as much as the interest so aid was not relatable to earning of taxable income.

9. Even the issue raised by appellant of business expediency in present case for investing in shares of subsidiary companies also cannot be upheld For the reason given in preceding paras. Such investment in shares would lead to availability of finance to such companies, which may boost business of those companies but what appellant company gets in return is only the dividend income on such investment, which is exempt u/s 10(34) of the Income Tax Act and hence interest on borrowed funds used in investment of such shares has gone towards earning of exempt dividend income and therefore deduction of the same cannot be allowed, against taxable income.

10. The decision in case of Cheminvest Ltd. (Supra) also went to state that prior to introduction of section 144, an expenditure both u/s 36 and 57 was allowable to an assessee without the requirement of earning or receipt of income, such a condition could not be imported when it comes to disallowance of the same expenditure u/s 14A of the Income Tax Act. Section 14A has supervening effect over other provisions of the Act, therefore, even if expenditure was allowable under any provision of the Act, it has to suffer the disallowance because of the overriding effect of section 14A of the Act.

11. The other argument of appellant that netting of interest may be allowed because though appellant has interest expense of Rs. 17.71 Crores it has interest income of Rs. 10.37 Crore, is also explained in the decision of Cheminvest Ltd. (Supra) wherein it is said that legislature has used expression "expenditure" in relation to income which does not form part of total income in section 14A. This expression "in relation to" is wide enough to include in its sweep expenditure both "for making or earning income" and "incurred wholly and exclusively for the purpose of business carried on by assessee". Hence such definition enlarges scope of such interest expenditure which can be disallowed u/s 14A. There is no scope for netting off u/s 14A of the Income Tax Act, because here disallowance is of interest on borrowed funds used to earn dividend income and interest income is either business income or income from other sources, which does not in any way fall under provisions of section 14A.

12. Even Apex Court in case of Walfort Share and Stock Brokers P. Ltd. [2010] 326 ITR 1 (SC) has held that basic principle of taxation is to tax net income. This principle applies even for the purpose of section 14A and expenses towards non-taxability income must be excluded. Once a proximate cause of disallowance is established which is the relationship

of the expenditure with income which does not form part of total income - a disallowance has to be effected. In this case it was further stated that section 14A(1) is enacted to ensure that only expenses incurred in respect of earning taxable income are allowed.

13. The aforesaid discussion now leads us to only one conclusion that since appellant has made substantial investment of Rs. 135.46 Crores in shares of subsidiary and other companies mainly from borrowed funds, therefore, a disallowance of such interest expenses u/s 14A of the Income Tax Act has to be upheld in the present case. The only issue now is to find out the correct amount of such disallowance.

14. For this purpose we have to see as to how much interest expense out of Rs. 17.71 Crores is gone towards business needs and how much is gone towards investment. According to appellant's submission dated 30.08.2013, out of aforesaid interest expenses, interest expense of Rs. 4.04 Crore was paid on bank overdraft and cash credit, interest of Rs. 1.46 Crore was paid on inter corporate deposit and Rs. 17.89 lakhs is paid towards loan processing fees. As a result appellant claimed that a total of interest expense of Rs. 5,70,54,521/- relates to working capital requirement of appellant. Almost entire secured loan of Rs. 47.53 Crores is taken by appellant during the year under consideration. But in this year the turnover of appellant has gone up from nil last year to Rs. 137.16 Crores. Appellant is involved in business of development of shopping malls, residential and commercial projects, which is capital intensive. Hence interest expenses on bank overdraft and cash credit account, bank loan, inter-corporate deposit, loan processing charges, bank charges etc. of Rs. 5.70 Crores as claimed by appellant to be a pure business expense, against which no specific objections were raised by AO, is held as business expense.

15. Balance amount of Rs. 12,01,08,567/- of interest has gone towards interest on debentures issued by appellant to ICICI Ltd. from whom amount of Rs. 149.99 Crores is taken in AY 2008-09 and debentures issued to M/s Phoenix Mills Ltd. from whom Rs. 100 Crores is taken in AY 2009-10. As a result total of this comes at Rs. 249.99 Crore. Objective for raising such funds through issue of debentures was not furnished but orally it was told that both ICICI Ltd. and Phoenix Mills Ltd. were interested in joining hands in various projects developed by appellant and its subsidiary companies. However, it is seen that most of this amount was invested in mutual funds namely "HDFC cash management fund saving plan" and "Reliance short term fund" (total around Rs. 83 Crore and rest of it went into purchase of shares and repayment of loans).

16. It is claim of appellant that Rs. 85 Crores was received by the appellant in AY 2008-09 from holding company Entertainment World Developers P. Ltd. towards share application money between 12.04.07 and 16.08.07, and

it was use in investment in shares of subsidiary and oth companies. On examination of balance sheet of appellant it is seen th such share capital is only Rs. 1 Crore and Rs. 81.63 Crores is shown received in "security premium account". Since the investment in shares. done by appellant on 22.08.2007 and thereafter in last year, appellant ha not submitted bank account and appellant has done huge transaction hence at best investment made in August' 2007 could be taken as ma out of such share premium received. That only explained investment shares of Rs. 37 Crores as per details provided by appellant in submissä dated 30.08.2013. This leaves an investment of Rs. 13 Crores fre interest bearing funds in AY 2008-09 out of total investment of Rs. 50.Crores.

17. Now if come back to AY 2009-10, investments are shown at Rs. 135. Crores. We can remove from this investment of Rs. 37 Crores made out share premium received in last year. That leave us with investment of Rs. 98.46 Crores which is made out of borrowed funds as there being no other funds except borrowed funds in this year. In this amount we have to a Rs. 36.45 Crores as the amount of share application money pending allotment which is also made out of borrowed funds. This brings us back to total investment of Rs. 134.91 Crores which is made out of bearing funds of a total of Rs. 249.99 Crores received form ICICI Ltd Phoenix Mills Ltd. on issue of debentures. The total amount of interest paid on this is Rs. 12.01 Crores, which can be easily bifurcated on pro-rata basis to find out interest expense towards investments :-

Interest expense towards investment = Total Intt. X Investment

amount from such loan

Total loan amount

= $\frac{12.04 \text{ Crore} \times 134.91 \text{ Crores}}{249.99 \text{ Crores}}$

= Rs. 6,48,13,356/-

18. Hence the amount of disallowance u/s 14A of Income Tax A restricted to Rs. 6,48,13,356/- in place of Rs. 13,88,07,439/-. As a r appellant gets a relief of Rs. 7,39,94,083/-.

Thus the CIT(A) has not accepted the contention of the assessee regarding business expediency for investment made in the

share of subsidiary companies. This issue is now covered by the judgment of Hon'ble Supreme Court in the case of **Maxopp.**

Investment Ltd V/s CIT (supra). The Hon'ble Supreme Court has held in para 33 to 34 as under:

"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 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 assesseees 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 assesseees 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 [Section 14A](#) 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 and

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](#)..

xxx xxx xxx The theory of apportionment of expenditure between taxable and non-taxable has, in principle, been now widened under [section 14 A](#)."

7. We further note that the CIT(A) has considered all the relevant factual details regarding the interest expenditure incurred by the assessee for business purposes and only the balance amount which was taken into consideration for making disallowance u/s 14A of the Act. It was noted that the interest on the loan was taken for specific purpose including the interest expenditure on bank or cash credit amount, bank loan, inter co-operative deposit etc was expended purely for the business purpose. Further substantial interest was paid towards debenture issued to the ICICI Ltd and the said amount was paid to M/s Phoenix Mills Ltd and also used for investment in mutual funds, in shares and repayment of loans. The CIT(A) has considered the amount of share application received by the assessee as non interest bearing fund available with the assessee and then arrived to the figure of Rs. 134.91 crores as borrowed funds utilised for investment in shares. Hence, in the

facts and circumstances of the case when the CIT(A) has given a factual finding of borrowed funds utilised by the assessee for investment in shares and then restricted the disallowance u/s 14A against which no contrary fact or record has been produced before us by the Department. Accordingly, in the facts and circumstances as discussed above we do not find any error or illegality in the impugned order of CIT(A) and the same is upheld.

In the result both the Cross Appeals are dismissed.

Order pronounced in the open court on 27.06.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore

दिनांक/ Dated 27.06.2024
Dev/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore