

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "ए", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" A " BENCH, AHMEDABAD

सुश्री सुचित्रा काम्बले, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

Sl. No(s)	आयकर अपील सं/ ITA No(s)	निर्धारण वर्ष/ Assessment Year(s)	Appeal(s) by :	
			अपीलार्थी / Appellant	प्रत्यर्थी / Respondent
1.	960/Ahd/2016	2012-13	Ananya Finance For Inclusive Growth Pvt. Ltd., 401, Shaan, Opp. M.J. Library, Ashram Road, Ahmedabad - 380 009 (Gujarat) PAN: AAHCA8023D (Assessee)	The Deputy Commissioner of Income Tax, Circle - 1(1)(2), Ahmedabad. (Revenue)
2.	1186/Ahd/2016	2012-13	By Revenue	By Assessee
3.	2275/Ahd/2017	2013-14	By Assessee	By Revenue
4.	2276/Ahd/2017	2014-15	By Assessee	By Revenue
5.	1744/Ahd/2019	2016-17	By Assessee	By Revenue

Assessee by :	Shri Tushar Hemani, Sr. Advocate & Shri Parimalsinh B. Parmar, AR
Revenue by :	Shri H. Phani Raju, CIT-DR & Shri V.K. Mangla, Sr. DR

सुनवाई की तारीख/Date of Hearing : 14/08/2024
घोषणा की तारीख /Date of Pronouncement: 28/08/2024

आदेश/O R D E R

PER MAKARAND V. MAHADEOKAR, AM:

The present appeals have been filed by both assessee and revenue against the orders of the Commissioner of Income Tax (Appeals)-1, Ahmedabad [hereinafter referred to as 'CIT(A)'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] for the respective Assessment Years (A.Y.). Since the issues involved are common, they are decided through a common order.

Facts of the case

2. The assessee is a closely held company and engaged in providing micro credit finance. It was incorporated on 22-04-2009. On 01-04-2010, the micro finance activity Friends of WWB (FWWB), India, a 12A registered trust was transferred to the assessee company. Post such transfer, A.Y. 2011-12 was the first assessment year and the primary and substantial issue in that appeal before Tribunal related to denial of depreciation goodwill/intangible assets. In subsequent years i.e. years considered in this appeal the issues are identical and both assessee and revenue used A.Y. 2011-12 as a reference year in assessment and appellate proceedings.

3. The assessee company filed its return of income for the respective years under consideration as per the dates detailed below. Later the cases were selected for scrutiny and the assessment orders were passed by the Assessing Officer (AO) u/s 143(3) of the Act. The AO disallowed certain claims as detailed below and the assessee preferred appeal before CIT(A) who decided on each issue as detailed below.

Details of returned income, assessment and appeal before CIT(A) are tabulated below:

Particulars	A.Y. 2012-13	A.Y. 2013-14	A.Y. 2014-15	A.Y. 2016-17
Date of filing of return of income	27-09-2012	30-09-2013	30-09-2014	30-09-2016
Returned Income in Rs.	(-) 4,48,79,026/-	(-) 1,75,25,946/-	(-) 7,49,37,184/- Revised to (-) 45,02,67,041/-	Nil
Date of Assessment order u/s 143(3) of the Act	28-01-2015	22-03-2016	24-11-2016	26-11-2018
Assessed Income in Rs.	8,63,16,290/-	3,11,01,162/-	(-) 41,73,69,023/-	NIL
Date of Order of CIT(A)	29-02-2016	31-07-2017	31-07-2017	24-09-219
Nature of Disallowance / Addition in Rs.				
Disallowance of Depreciation on Intangible Assets	5,68,50,000/-	4,26,37,500/-	3,19,78,125/-	1,79,87,695/-
Decision of CIT(A)	Confirmed the disallowance	Confirmed the disallowance	Confirmed the disallowance	Confirmed the disallowance
Disallowance u/s 14A	20,76,038/-	11,81,635/-	4,57,189/-	25,24,619/-
Decision of CIT(A)	Restricted the disallowance to 9,12,638/-	Deleted the disallowance	Deleted the disallowance	Deleted the disallowance

Disallowance of Depreciation on fixed assets	12,07,598/-	9,13,444/- and 12,07,598/-	NIL	NIL
Decision of CIT(A)	Deleted the disallowance	Confirmed the disallowance of 9,13,444/- and deleted the disallowance of 12,07,598/-	NA	NA
Disallowance of Rent Expenses	39,17,868/-	26,29,224/-	4,62,704/-	NIL
Decision of CIT(A)	Deleted the disallowance	Deleted the disallowance	Deleted the disallowance	NIL
Provision for Bad Debts	6,71,43,809/-	NIL	NIL	NIL
Decision of CIT(A)	Deleted the disallowance	NA	NA	NA

4. Aggrieved by the orders of CIT(A), both assessee and revenue are in appeal against the orders of CIT(A) with following grounds of appeal:

A.Y. 2012-13 - Assessee's Grounds in ITA No.960/Ahd/2016

- 1.1 *The order passed u/s.250 on 29.02.2016 for A.Y.2012-13 by CIT(A)-1, Abad upholding the disallowance of claim of depreciation of Rs.5,68,50,000/- and Rs.9,12,638/- u/s.14A of the Act made by AO is wholly illegal, unlawful and against the principles of natural justice.*
- 1.2 *The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the impugned disallowances/additions.*

2.1 *The Ld.CIT(A) has grievously erred in law and on facts in confirming the following additions/disallowances:*

(iii) Depreciation on intangible assets Rs. 5,68,50,000/-

(iv) Disallowance u/s.14A Rs. 9,12,638/-

2.2 *That in the facts and circumstances of the case as well as in law, the Ld.CIT(A) ought not to have upheld the above said disallowances/additions.*

3.1 *The Ld.CIT(A) has erred in upholding that valuation of intangibles was made higher so as to get the benefit of higher depreciation by the appellant. The observations made and conclusion reached by CIT(A) for upholding the disallowance of depreciation of Rs.5,68,50,000/- on intangible assets are not admitted by the appellant to the extent the same are contrary to the facts on record.*

4.1 *The Ld.CIT(A) has erred in upholding that the provisions of section 14A were attracted on account of exempt dividend income of Rs. 9,12,638/- earned by the appellant and further holding the disallowance as computer under Rule-8D*

It is, therefore, prayed that the additions/disallowances upheld by the CIT(A) may kindly be deleted.

A.Y. 2012-13 - Revenue's Grounds ITA No.1186/Ahd/2016

1. *The Ld. CIT(A) has erred in facts and in law in deleting the disallowance made u/s.14A r.w. Rule 8D of the Act of Rs.11,63,400/- out of the total disallowance of Rs.20,76,038/-.*

2. *The ld.CIT(A) has erred in facts and in law in deleting the disallowance of depreciation on fixed assets of Rs.12,07,598/-.*

3. *The Ld.CIT(A) has erred in facts and in law in deleting the disallowance of rent expenses of Rs.24,22,188/- out of the total disallowance made of Rs.39,17,868/-*

4. *The Ld.CIT(A) has erred in facts and in law in deleting the disallowance of provision for debts of Rs.6,71,43,809/-.*

5. On the fact and in the circumstances of the case and in law, the CIT(A) ought to have upheld the order of the Assessing Officer to the extent mentioned above since the assessee has failed to disclose his true income/book profit.

6. The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored to the above extent. The appellant craves, to leave, to amend or alter any ground or add a new ground which may be necessary.

A.Y. 2013-14 - Assessee's Grounds ITA No.2275/Ahd/2017

1.1 *The order passed u/s.250 on 31.07.2017 for A.Y.2013-14 by CIT(A)- 1, Abad upholding the disallowance of claim of depreciation of Rs.4,26,37,500/- made by AO is wholly illegal, unlawful and against the principles of natural justice.*

1.2 *The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the impugned disallowances/additions.*

2.1 *The Ld.CIT(A) has grievously erred in law and on facts in confirming the following additions/disallowances:*

(i) Depreciation on intangible assets Rs. 4,26,37,500/-

2.2 *That in the facts and circumstances of the case as well as in law, the Ld.CIT(A) ought not to have upheld the above said disallowances/additions.*

3.1 *The Ld.CIT(A) has erred in upholding that valuation of intangibles was made higher so as to get the benefit of higher depreciation by the appellant. The observations made and conclusion reached by CIT(A) for upholding the disallowance of depreciation on intangible assets are not admitted by the appellant to the extent the same are contrary to the facts on record. It is, therefore, prayed that the additions/disallowances upheld by the CIT(A) may kindly be deleted.*

A.Y. 2014-15 - Assessee's Grounds ITA No.2276/Ahd/2017

- 1.1 *The order passed u/s.250 on 31.07.2017 for A.Y.2014-15 by CIT(A)- 1, Abad upholding the disallowance of claim of depreciation of Rs.3,19,78,125/- made by AO is wholly illegal, unlawful and against the principles of natural justice.*
- 1.2 *The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the impugned disallowances/additions.*
- 2.1 *The Ld.CIT(A) has grievously erred in law and on facts in confirming the following additions/disallowances:
(i) Depreciation on intangible assets Rs.3,19,78,125/-*
- 2.2 *That in the facts and circumstances of the case as well as in law, the Ld.CIT(A) ought not to have upheld the above said disallowances/additions.*
- 3.1 *The Ld.CIT(A) has erred in upholding that valuation of intangibles was made higher so as to get the benefit of higher depreciation by the appellant. The observations made and conclusion reached by CIT(A) for upholding the disallowance of depreciation on intangible assets are not admitted by the appellant to the extent the same are contrary to the facts on record.
It is, therefore, prayed that the additions/disallowances upheld by the CIT(A) may kindly be deleted.*

A.Y. 2016-17 - Assessee's Grounds ITA No.1744/Ahd/2019

- 1.1 *The order passed u/s.250 on 24.09.2019 for A.Y.2016-17 by CIT(A)- 1, Abad upholding the disallowance of claim of depreciation of Rs.1,79,87,695/- made by AO is wholly illegal, unlawful and against the principles of natural justice.*
- 1.2 *The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the impugned disallowances/additions.*
- 2.1 *The Ld.CIT(A) has grievously erred in law and on facts in confirming the following additions/disallowances:
(i) Depreciation on intangible assets Rs.1,79,87,695/-*

- 2.2 *That in the facts and circumstances of the case as well as in law, the Ld.CIT(A) ought not to have upheld the above said disallowances/additions.*
- 3.1 *The Ld.CIT(A) has erred in upholding that valuation of intangibles was made higher so as to get the benefit of higher depreciation by the appellant. The observations made and conclusion reached by CIT(A) for upholding the disallowance of depreciation on intangible assets are not admitted by the appellant to the extent the same are contrary to the facts on record. It is, therefore, prayed that the additions/disallowances upheld by the CIT(A) may kindly be deleted.*

On the Grounds of Assessee's appeal

7. For the purposes of adjudication, we first take assessee's appeals. The issues involved in these appeals are same across all the years except the quantum hence they are discussed and adjudicated together. As it is evident from the grounds of appeal the effective grounds are only two i.e. Disallowance of Depreciation on the intangibles and Disallowance u/s 14A.

8. We deal with the first effective ground of Depreciation on Intangible including Goodwill. Following are the assessment year-wise disallowances:

Assessment Year	ITA No.	Amount of Disallowance of Depreciation in Rs.
A.Y. 2012-13	960/Ahd/2016	Rs. 5,68,50,000/-
A.Y. 2013-14	2275/Ahd/2017	Rs. 4,26,37,500/-
A.Y. 2014-15	2276/Ahd/2017	Rs.3,19,78,125/-
A.Y. 2016-17	1744/Ahd/2019	Rs.1,79,87,695/-

During the course of hearing the AR stated that the same issue is already decided by the Tribunal against the assessee for A.Y. 2011-12 in ITA No. 959/Ahd/2016 dated 25-08-2022, hence the same is not argued and pressed for.

9. We have considered the decision of the Tribunal in case of A.Y. 2011-12 and noted that the fact and issue involved are the same. For the sake of clarity, it is summarised below -

10. There were three parties involved Ananya Finance for Inclusive Growth Pvt. Ltd.- Assessee company engaged in microfinance activities, Friends of Women's World Banking (FWWB) - A charitable trust involved in microfinance lending, which transferred its Micro Finance Division (MFD) to the assessee and Indian Foundation for Inclusive Growth (IFIG) - A trust that is the holding entity of Ananya Finance and was funded by FWWB. The assessee entered into a Business Transfer Agreement (BTA) with FWWB on April 26, 2010, to acquire its Micro Finance Division for a total consideration of Rs. 45 crores. Out of the Rs.45 crores, Rs.14.68 crores were allocated to the net value of the business, and Rs. 30.32 crores were attributed to intangible assets, including goodwill. The assessee claimed depreciation on intangible assets, including goodwill, which had been acquired through a BTA with FWWB. The AO challenged the valuation, arguing that the assessee failed to substantiate what specific intangible assets were acquired and how their value was determined. The AO found the valuation to be inflated and suggested that the transaction was arranged primarily to claim depreciation benefits rather than reflecting the true market value of the intangible assets. The assessee provided a valuation report that included projections of future business performance, which was used to justify the Rs. 30.32 crores valuation. However, the AO and later the ITAT found that these projections were highly optimistic and not supported by actual business performance, which showed significant losses in subsequent years. The wide gap between

projected profits and actual losses cast doubt on the reliability of the valuation.

11. The AO and subsequently the CIT(A) disallowed the claim, arguing that the transaction was primarily structured to artificially create intangible assets for the purpose of claiming depreciation. They contended that either no intangible assets, including goodwill, were actually transferred, or that they were significantly overvalued, making the claim unjustifiable. The Tribunal agreed with the Revenue, concluding that the assessee failed to substantiate the existence and valuation of the intangible assets, including goodwill. It was determined that the entire transaction appeared to be a colourable device, aimed at creating intangible assets for the sole purpose of claiming depreciation. The Tribunal noted that the real intent behind the transaction was tax avoidance, with the assessee being a subsidiary of FWWB. The funds used for the acquisition were effectively routed from FWWB to the assessee. As the business remained under the control of FWWB, the Tribunal held that no real transfer of intangible assets, such as goodwill, had occurred. Therefore, the assessee's claim for depreciation on these intangible assets was unjustified. The Tribunal upheld the disallowance of the depreciation claim on intangible assets, including goodwill, amounting to Rs.7.58 crores (for A.Y. 2011-12).

12. In the case of assessment years present before, the assessee has claimed depreciation on these intangibles, including good will as tabulated above. Respectfully following the decision for A.Y. 2011-12, we uphold the decision of CIT(A) in disallowing the depreciation on intangibles. Thus, the ground

relating to Depreciation on Intangible including Goodwill in case of all appeals is dismissed.

13. The ground related with disallowance u/s 14A deals with exempt income earned by assessee and expenditure incurred to earn such exempt income. Assessment year-wise details are:

Assessment Year	Exempt Income - Dividend in Rs.	Total Disallowance in Rs.	On Account of Direct Expenses in Rs.	On Account of Interest in Rs.	On Account of Admin Expenses in Rs.
A.Y. 2012-13	9,12,638	20,76,038	0	19,01,038	1,75,000
A.Y. 2013-14	NIL	11,81,635	14,607 (Disallowed by assessee in computation)	10,83,968	97,667
A.Y. 2014-15	NIL	4,57,189	12,359 (Disallowed by assessee in computation)	4,07,132	50,056
A.Y. 2016-17	NIL	25,24,619	0	23,02,382	2,22,237

14. During the course of assessment proceedings, the AO observed that the assessee has made some investments which earned exempt income, therefore the AO applied the Rule 8D of the Income Tax Rules to compute the disallowance under Section 14A. While doing so the AO relied on some

judicial precedents and circular No. 5/2014 dated 11-02-2014 of CBDT which provided for disallowance even when the assessee has not earned any exempt income. On appeal, the CIT(A) reduced the disallowance to the extent of the exempt income earned. This reduction was based on the principle that the disallowance under Section 14A cannot exceed the amount of exempt income earned during the relevant financial year.

15. This issue is also covered by the decision of tribunal in assessee own case for A.Y. 2011-12 in ITA No. 959/Ahd/2016. The assessee, before tribunal, argued that it had sufficient interest-free funds available, which were far in excess of the investments made to earn the exempt income. The assessee relied on judicial precedents that support the position that if an assessee has sufficient interest-free funds, it can be presumed that such funds were used for making investments that yield exempt income, thereby negating the need for disallowance under Section 14A. The assessee placed reliance on -

1. *CIT vs. Reliance Industries Ltd.* - 410 ITR 466 (Supreme Court)
2. *CIT vs. Torrent Power Ltd.* - 363 ITR 474 (Gujarat High Court)
3. *CIT vs. Suzlon Energy Ltd.* - 354 ITR 630 (Gujarat High Court)
4. *CIT vs. Gujarat Power Corporation Ltd.* - 352 ITR 583 (Gujarat High Court)
5. *CIT vs. Reliance Utilities & Power Ltd.* - 313 ITR 340 (Bombay High Court)
6. *Munjil Sales Corporation vs. CIT* - 298 ITR 298 (Supreme Court)

16. The judicial precedents cited by the assessee establish a critical principle regarding the application of Section 14A of the Act. The collective essence of these judicial precedents is that when an assessee demonstrates the availability of sufficient interest-free funds to cover investments that generate exempt income, no disallowance under Section 14A is justified. The ITAT

found these arguments persuasive and ruled in favour of the assessee in case of A.Y. 2011-12.

17. In case of assessment years under consideration, it is observed that the CIT(A) restricted the disallowance to exempt income in case of A.Y. 2012-13 and deleted the disallowance where there was no exempt income. While doing so the CIT(A) noted that the assessee has erred in making disallowance without establishing any nexus between exempt income and expenditure of interest, the Ao failed to appreciate that the assessee was having ample interest free funds at the end of year. The CIT(A) also noted that the assessee is a non-banking financial institution which is exclusively indulged in the business of finance and in the routine course of its business it has to invest in mutual funds for the time being which indecently results in receiving dividend income. He also noted that the assessee was having interest free funds being share capital and reserves & surplus to the tune of Rs. 43.01 Cr as against investment in mutual funds of only Rs.7 Cr. The CIT(A) relied on following judicial precedents while restricting the disallowance to exempt income:

1. *Daga Global Chemicals Pvt. Ltd. (ITA No.5592/Ahd/2012)*
2. *Chudgar Ranchodlal Jethalal (ITA No.245/Ahd/2013)*
3. *Joint Investments Pvt. Ltd. Vs. CIT (ITA 117/2015 – Delhi High Court)*

18. The Departmental Representative (DR) while arguing its own appeal stated that the disallowance towards administrative expenses as specified in Rule 8D(2)(iii) should be upheld.

19. The key issue in this appeal is whether the disallowance under Section 14A, as restricted by the CIT(A), should be upheld or deleted entirely, given that the assessee had sufficient interest-free funds, and the Tribunal had previously ruled in favour of the assessee in A.Y. 2011-12 by deleting the disallowance altogether.

20. We note that in A.Y. 2011-12, the Tribunal deleted the entire disallowance under Section 14A, including the portion restricted to exempt income, on the grounds that the assessee had sufficient interest-free funds available, which were far in excess of the investments made. Regarding the administrative expenses, the Tribunal did not make any explicit decision to separately delete the Rs.1,75,000 disallowed under Rule 8D(2)(iii). The Tribunal relied on several judicial precedents, including those from higher courts such as the Supreme Court, which established that where sufficient interest-free funds exist, it is presumed that the investments in exempt income-generating assets were made from those funds, thus negating any disallowance under Section 14A.

21. The Hon'ble Supreme Court in the decision of Maxopp Investment Ltd. [(2018) 402 ITR 640 (SC)] dealt with the application of Section 14A of the Income Tax Act and Rule 8D of the Income Tax Rules, particularly focusing on the disallowance of expenses related to earning exempt income. The Hon'ble Supreme Court held that the method prescribed under Rule 8D should be applied only when the AO is not satisfied with the correctness of the claim of the assessee regarding the expenditure incurred in relation to exempt income. It was emphasized that the AO must record reasons for any

dissatisfaction before invoking Rule 8D to determine the disallowance under Section 14A. In the present case the AO has not recorded his dissatisfaction and has presumed that the assessee must have incurred administrative expenses to earn the exempt income. The AO while resorting to judicial precedents has failed to appreciate that the assessee company is a non-banking financial institution and investing is a part of routine business transactions. Therefore CIT(A)'s decision to restrict the disallowance to exempt income is not in line with the judicial principles laid down by higher courts.

22. We also note that the CIT(A) acknowledged that the assessee had substantial interest-free funds and as a non-banking financial institution, routinely invested in mutual funds in the ordinary course of business. The CIT(A)'s approach does not fully align with the principle established by higher courts and followed by the Tribunal in A.Y. 2011-12. We recognise that the facts of A.Y. 2012-13 are materially similar to those of A.Y. 2011-12, where the Tribunal had ruled in favour of the assessee by deleting the disallowance under Section 14A completely. The presence of sufficient interest-free funds effectively negates any disallowance under Section 14A.

23. In light of the Tribunal's decision for A.Y. 2011-12 and other judicial precedents, which deleted the entire disallowance under Section 14A, and considering the consistent application of this principle by higher courts, we find it appropriate to delete the disallowance for A.Y. 2012-13 as well. Thus, the grounds of assessee in all appeals relating to disallowance u/s 14A are allowed.

On the Grounds of Revenue's appeal

24. The Revenue, in its ground number 1 of the appeal, challenges the decision of the CIT(A) to delete the disallowance of Rs.11,63,400 out of the total disallowance of Rs.20,76,038 made under Section 14A read with Rule 8D of the Income Tax Rules.

25. The Tribunal had previously dealt with a similar issue in the assessee's case for A.Y. 2011-12 (ITA No. 959/Ahd/2016), where it deleted the entire disallowance under Section 14A. The Tribunal had relied on judicial precedents from higher courts, including the Supreme Court, which established that if an assessee has sufficient interest-free funds to cover investments that generate exempt income, no disallowance under Section 14A is justified. In the present case, the assessee had substantial interest-free funds, amounting to Rs.43.01 crores, which were far in excess of the investments made in mutual funds (Rs. 7 crores) that generated the exempt income. This situation is materially similar to that in A.Y. 2011-12, where the Tribunal ruled in favour of the assessee, leading to the deletion of the disallowance. The DR's argument to uphold the disallowance towards administrative expenses under Rule 8D(2)(iii) was considered. However, given the Tribunal's consistent stance and the judicial precedents that favour the assessee, we find that the disallowance should not be sustained. We conclude that the presence of sufficient interest-free funds negates the need for any disallowance under Section 14A. Therefore, the grounds raised by the Revenue in this appeal are dismissed, and the disallowance under Section 14A for A.Y. 2012-13 is deleted entirely. Following the consistent application

of judicial principles established by higher courts, the revenue's ground is dismissed.

Ground No. 2 of revenue's appeal is pertaining to disallowance of depreciation on fixed assets of Rs.12,07,598/-.

26. During the assessment year under consideration, the Assessing Officer (AO) disallowed depreciation on fixed assets amounting to Rs.12,07,598. This disallowance was based on the precedent set in the assessments for A.Y. 2010-11 and A.Y. 2011-12, where the AO similarly disallowed depreciation on the grounds that the auditor's comments suggested that the details of the date-wise addition of fixed assets were extracted from the fixed asset register rather than directly from the bills. Before CIT(A), the assessee contended that the AO's disallowance was unfounded as the assessee could not locate any such comment in the audit report as cited by the AO. The claim that the auditor did not certify the books on the basis of bills was disputed. The assessee had provided all relevant bills and invoices related to the fixed assets to the AO, which clearly indicated that the assets were indeed purchased and were in the name of the assessee company. The assessee further stated that the AO did not challenge or doubt the actual use of these assets by the assessee and the disallowance was made purely on the assumption carried forward from previous years. The assessee argued that the AO had continued the disallowance based solely on its occurrence in previous years without independently verifying the facts and circumstances of the current year.

27. During the appellate proceedings, the assessee's representative produced all the relevant bills and vouchers pertaining to the fixed assets acquired during the year under consideration. The CIT(A), after verification,

confirmed that all the bills were indeed in the name of the assessee company. The CIT(A) observed a clear distinction between the disallowance made in A.Y. 2010-11 and A.Y. 2011-12 and the claim for depreciation in the current year. The disallowance in prior years was addressed and deleted in the appeals for those years, and the same reasoning applied to the opening Written Down Value (WDV) carried forward to the current year. The CIT(A) concluded that the disallowance of depreciation on fixed assets for the current year was unwarranted. The disallowance related to the opening WDV, based on previous years, had already been deleted in the respective appeals, and the current year's addition to fixed assets was well supported by valid documentation. Accordingly, the CIT(A) deleted the entire disallowance of Rs. 12,07,598 for the assessment year under consideration, allowing the assessee's appeal in full.

28. Before us the AR placed reliance on the following judicial precedents:
1. *Gujarat Narmada Vally Fertilizers Co. Ltd. - [2014] 222 Taxman 30 (Gujarat) where the Hon'ble Gujarat High Court followed the rule of consistency.*
 2. *Hindustan Coca Cola Beverages Pvt. Ltd. - ITA No.6605/Del/2014 (Del) where it was held by the tribunal that once an asset enters into block of asset and depreciation is granted in initial year of claim the same cannot be disturbed in the subsequent years.*
 3. *Bodal Chemicals Ltd. - 180 ITD 313 (Ahd.) where tribunal held that the principle of consistency is to be followed when there is no change in facts and circumstances.*

29. The DR relied on the order of AO and stated that since the AO has not verified the invoices, they should be sent to Ao for verification.

30. We have carefully considered the submissions of both parties, including the reliance placed by the DR on the order of the AO and the request for remanding the matter to the AO for verification of invoices. The AO's disallowance was primarily based on precedents set in the assessments for A.Y. 2010-11 and A.Y. 2011-12, where depreciation was similarly disallowed. However, it is important to note that during the appellate proceedings, the assessee produced all relevant bills and invoices pertaining to the fixed assets acquired during the year under consideration. The CIT(A), after a thorough examination, confirmed that these assets were indeed purchased by the assessee and were in the name of the assessee company.

31. The CIT(A) has coterminous powers with the AO, meaning that he possesses the authority to examine and verify all relevant evidence independently. In this case, the CIT(A) has already scrutinised the invoices and confirmed their validity. Additionally, it was observed that the disallowance made by the AO in prior years had already been deleted in appeals for those years, and the same reasoning applies to the opening WDV carried forward to the current year.

32. Given that the CIT(A) has already conducted a detailed verification of the invoices and found them to be in order, there is no merit in the request to remand the matter back to the AO for further verification. The CIT(A) has rightly deleted the disallowance of Rs.12,07,598/-, as it was unwarranted given the valid documentation supporting the addition to fixed assets during the year and the deletion of the prior disallowance in the opening WDV.

33. In light of the above facts and judicial precedents, we uphold the order of the CIT(A) and dismiss the Revenue's appeal on this ground.

Ground No. 3 of Revenue's appeal relates to disallowance of rent expenses of Rs.24,22,188/- out of the total disallowance made of Rs.39,17,868/-

34. The Revenue has appealed against the deletion of Rs. 24,22,188/- from the disallowance of rent expenses totalling Rs. Rs.39,17,868/- made by the AO. The disallowance was based on the premise that the lease agreement for the premises at the 4th floor of Shaan, Ashram Road, Ahmedabad, was in the name of IFIG and not the assessee. The CIT(A) deleted this disallowance. The CIT(A) meticulously distinguished the rent expenses related to the 1st floor (Rs.14,95,680/-) and the 4th floor (Rs.24,22,188/-). The CIT(A) observed that the rent for the 1st floor had not been contested in previous years and was supported by a lease deed in the name of the assessee. This was a crucial observation as the AO had clubbed the entire rent expense without considering this distinction, leading to an unjustified disallowance. The CIT(A) carefully examined the documentary evidence provided by the assessee, which demonstrated that the 4th floor was occupied and utilized by the assessee for its business. These included payments made by cheque, TDS deductions, and official registrations at the said premises. The CIT(A) acknowledged the no-objection certificate from the landlord, further validating the assessee's claim that the premises were used for business purposes, despite the lease being formally in the name of IFIG. While the AO relied heavily on the disallowance made in earlier years, the CIT(A) demonstrated a more nuanced understanding by distinguishing the current year's facts from those of previous years. The CIT(A) noted that the circumstances regarding the rent for the 1st floor differed from those

previously disallowed, and thus, the same approach could not be uniformly applied without considering the specific facts of the case. The CIT(A) upheld the principles of natural justice by ensuring that the disallowance was not merely a mechanical repetition of earlier years' decisions. Instead, the CIT(A) ensured that the assessee's submissions were thoroughly evaluated on their merits. This approach aligns with the principles of fairness and proper adjudication, ensuring that the assessee's rights were duly considered.

35. The AR relied on the judgment in *Narsingdas Surajmal Properties (P) Ltd. vs. CIT* (127 ITR 221), where the Gauhati High Court held that rent payments could be allowed as deductions even without a registered lease agreement if the premises were actually occupied and used for business purposes. On the other hand, the DR placed reliance on the order of AO.

36. Based on the comprehensive evidence presented by the assessee, the judicial precedent established in the *Narsingdas Surajmal Properties* case (supra), and the lack of any contrary evidence from the AO, we find that the CIT(A) was correct in deleting the disallowance of Rs.24,22,188/-. The AO's decision to disallow the rent expense solely on the basis of the absence of a registered lease agreement was not justified, especially when the actual use and occupancy of the premises by the assessee were substantiated beyond doubt.

37. We, therefore, uphold the decision of CIT(A) to delete the disallowance of Rs.24,22,188/- In the result this ground of appeal raised by the Revenue is dismissed.

Ground No.4 of Revenue's appeal is relating to deletion of disallowance of provision for debts of Rs.6,71,43,809/- by CIT(A).

38. During the assessment proceedings the AO observed that the assessee had debited Rs. 25,04,80,514/- as a provision for non-performing assets (NPA) in its Profit & Loss Account. The AO disallowed the same on the grounds that provisions for expenses are not allowable as per the provisions of the Income Tax Act, 1961. Although the assessee had already disallowed Rs. 18,33,36,705/- while filing the return of income, the AO made a further disallowance of Rs. 6,71,43,809/-.

39. It was noted that the assessee, being a Non-Banking Financial Company (NBFC), is required to comply with the Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007. These norms mandate that NBFCs classify their assets into various categories, such as standard assets, sub-standard assets, doubtful assets, and loss assets, and accordingly make provisions. The CIT(A) observed that the movement in provisions across these categories is a necessary accounting requirement and does not constitute a claim for expenditure in the Profit & Loss Account.

40. The CIT(A) further noted that the assessee had already added back the provision for bad and doubtful debts amounting to Rs. 18,33,36,705/- in its computation of income. The remaining amount of Rs. 6,71,43,809/- was never claimed as an expenditure, and therefore, the AO's disallowance of this amount would result in double taxation, which is impermissible under the Income Tax Act.

41. The AR submitted that the assessee had not claimed the amount of Rs. 6,71,43,809/- as an expenditure in its Profit & Loss Account and, therefore, the question of disallowance did not arise. The AR also reiterated that the assessee, as an NBFC, was bound by the RBI's prudential norms, and the movement of provisions between different asset categories was a compliance requirement and not an actual expense claim.

42. The DR contended that during the A.Y. 2011-12, the assessee had made various provisions on its loan portfolio, which included Rs. 1,98,92,238/- for NPA, Rs. 2,48,16,431/- for standard assets, and Rs. 5,02,86,958/- for other assets. The DR argued that while the provision for NPA was disallowed by the assessee under Section 36 of the Act, in the computation of income, the provisions for standard assets and other assets were not disallowed. The DR further argued that the amounts written back in A.Y. 2012-13 related to standard assets and other assets should not be allowed to be set off against the provision for NPA made in the same year.

43. The DR asserted that since the provisions for standard assets and other assets were not disallowed in the previous year, their write-back in the current year could not be offset against the provision for NPA. Therefore, the AO was justified in disallowing the entire provision for NPA amounting to Rs. 25,04,80,514/- for the financial year 2011-12.

44. The AR rebutted the arguments of the DR by explaining that the financial statements for both A.Y. 2011-12 and A.Y. 2012-13 were prepared in compliance with the prudential norms issued by the Reserve Bank of India

(RBI) applicable to NBFCs. The AR further explained that the provisions for standard assets and other assets, which were written back during A.Y. 2012-13, were not claimed as deductions in the Profit & Loss Account in the previous year. As a result, these amounts were never considered as expenses for tax purposes and, therefore, should not be subject to disallowance when they are written back. The AR also pointed out that the provision for bad and doubtful debts of Rs. 18,33,36,705/- was already disallowed by the assessee while computing the income for A.Y. 2012-13, which negates the possibility of any double deduction. The AR further took us through the financial statements for both A.Y. 2011-12 and A.Y. 2012-13 and clarified the presentation of amounts debited the profit and loss account and Balance Sheet of the assessee.

45. Upon careful consideration of the submissions from both sides, we find that the assessee has correctly followed the prudential norms applicable to NBFCs, as prescribed by the RBI. The provisions for standard assets and other assets were made as part of a statutory requirement and their movement within different asset categories does not constitute a claim for deduction under the Act. We concur with the AR's argument that the write-back of provisions for standard assets and other assets in A.Y. 2012-13 cannot be disallowed because these amounts were never claimed as deductions in the first place. The Tribunal also agrees that the disallowance of the provision for NPA amounting to Rs. 18,33,36,705/- in the current year has already been accounted for by the assessee, and no further disallowance on this account is warranted. The DR's assertion that the entire provision for NPA amounting to Rs. 25,04,80,514/- should be disallowed lacks merit, as it overlooks the fact

that the assessee had already disallowed the relevant portion of the provision in its computation of income. Additionally, the DR's argument regarding the non-disallowance of provisions in the previous year is misplaced, as the provisions in question were not claimed as expenses, therefore, do not attract disallowance. We have verified these amounts from the financial statements and the details are such that the amount debited to Profit and Loss account as "Provisions and Write Offs" is Rs. 18,45,75,322/- which is detailed in Note No. 2.19 as reproduced below:

<i>Provision on standard assets</i>	Rs. (-) 1,68,56,851/-
<i>Provision on non-performing assets</i>	Rs. 25,04,80,514/-
<i>Provision on other assets</i>	Rs. (-) 5,02,86,958/-
<i>Loans written off</i>	Rs. 12,38,617/-
Total	Rs. 18,45,75,322/-

46. Thus, it can be seen that the amount questioned by the DR i.e Rs. 6,71,43,809/- are in fact reversal of previous year's provisions and are credit to profit and loss account and resultant net figure of Rs. 18,45,75,322/- is debited to profit and loss account. In the computation of income, only provision of Rs. 18,33,36,705/- is added back (Rs. 18,45,75,322 amount debited to P and L account less actual write off RS. 12,38,617/-)

47. In light of the above analysis, we find that the AO's action in disallowing the entire provision for NPA amounting to Rs. 25,04,80,514/- was not justified. The CIT(A) rightly deleted the disallowance of Rs. 6,71,43,809/- , and we uphold the CIT(A)'s decision. Thus, this ground of appeal filed by the revenue is dismissed.

48. In the combined result, the appeals filed by assessee are partly allowed and the appeal of revenue is dismissed.

Order pronounced in the Open Court on 28th August, 2024 at Ahmedabad.

Sd/-

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

अहमदाबाद/Ahmedabad, दिनांक/Dated 28/08/2024

PBN/*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-(NFAC)
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad