

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

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
AND SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER**

**ITA No.4446/Mum/2013
Assessment Year: 2009-10**

DCIT, Circle-3(1), Mumbai	Vs.	M/s. Bajaj Hindustan Ltd. Bajaj Bhavan, 2 nd Floor, Jamanalal Bajaj Marg, 226, Nariman Point, Mumbai – 400021. PAN: AAACB 4351 J
(Appellant)		(Respondent)

**ITA No.3714/Mum/2013
Assessment Year: 2009-10**

M/s. Bajaj Hindustan Ltd. Bajaj Bhavan, 2 nd Floor, Jamanalal Bajaj Marg, 226, Nariman Point, Mumbai – 400021. PAN: AAACB 4351 J	vs	ACIT, Range-3(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Kirit Kamdar
Revenue by : Shri S. Srinivasu, CIT, DR

Date of Hearing : 27.06.2024

Date of Pronouncement : 28.08.2024

ORDER

PER AMARJIT SINGH, AM:

These are cross appeals filed by the revenue and assessee against the order of Id. CIT(A) – 5, Mumbai pertaining to A.Y. 2009-10. Both these appeals are adjudicated together by this common order as follows:

2. Fact in brief is that return of income declaring loss of Rs. 167,88,68,996/- was filed on 29.07.2009. The assessee has filed revised

return on 22.03.2011 declaring loss of Rs. 252,04,64,723/-. The return was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued to the assessee. The assessment u/s 143(3) of the Act was completed on 30.11.2011 after making various addition and disallowance, the book profit u/s 115JB of the Act was determined at Rs. 35,13,92,351/-. Further, relevant fact of the case are discussed while adjudicating the ground of appeal filed by the revenue and assessee respectively as follows:

ITA 3714/Mum/2013 (Appeal filed by the Assessee)

Ground No. 1: Disallowance u/s 14A in respect of expenditure attributable earning exempt income:

3. During the course of assessment, the assessing officer noticed that assessee has shown dividend income of Rs. 19,77,752/- and long term capital gain exempt u/s 10(38) of the Act to the amount of Rs. 8,31,83,323/-. The assessing officer had computed disallowance in accordance with Rule 8D of Income Tax Rules, 1962 to the amount of Rs. 29,24,72,987/- and after reducing the suo moto disallowance of Rs. 10,00,000/- made by the assessee, the ld. AO further added the disallowance of Rs. 29,34,72,987/- to the total income of the assessee.

4. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has restricted the disallowance to the extent of Rs. 10,74,43,886/- comprising disallowance of Rs. 90,280,440/- under rule 8D(ii) and disallowance of Rs. 171,73,446/- as per rule 8D(iii) of the Act.

5. During the course of appellate proceedings before us, the ld. Counsel submitted that on similar issue and identical fact the ITAT, Mumbai in the case of the assessee itself for A.Y. 2008-09 vide ITA No. 2059/M/2023 has decided the issue in favour of the assessee.

6. On the other hand, ld. DR supported the order of assessing officer.

7. Heard both the sides and perused the material on record. Without reiterating the fact as discussed above, we have perused the decision of ITAT, Mumbai in the case of the assessee itself for the A.Y. 2008-09 vide ITA No. 2059/M/2023. The relevant extract of the decision is reproduced as under:

“14. From the combined reading of the above provisions, it is clear that for the purpose of application of section 14 r.w.r 8D(2)(iii) the AO has to record reasons as to why he is not satisfied with the correctness of the claim of expenditure by the assessee. We notice that the Hon'ble Bombay High Court in the case of Principal Commissioner of Income Tax v. Godrej & Boyce Mfg. Co. Ltd. [20231 149 taxmann.com 222/292 Taxman 497 (Bombay) has considered a similar issue where it has been held that -

In the present case, the assessee had earned an exempt income of Rs. 84,30,37,423/- from shares and mutual funds and submitted a computation of inadmissible expenditure u/s 14A amounting to Rs. 13,66,635/-. The assessee claimed that the disallowance made u/s 14A was as per the books of account attributable to earning of exempt income. On a perusal of the assessment order we find that there is no discussion by the AO with regard to the computation of inadmissible expenditure made by the assessee forming part of the return of income. Further, the AO has not recorded any satisfaction that the working of inadmissible expenditure u/s 14A is incorrect with regard to the books of account of the assessee. The provision us 14(2) does not empower the AO to apply Rule 8D straightaway without considering the correctness of the assessee's claim in respect of expenditure incurred in relation to the exempt income. We agree with the view of the ITAT that in the present case the AO has neither examined the claim in respect of expenditure incurred in relation to exempt income of the assessee nor has recorded any satisfaction with regard to the correctness of assessee's claim with reference to the books of account. Consequently, the disallowance made by applying the Rule 8D is not only against the statutory mandate but contrary to the legal principles laid down. In our view too, the CIT (A) has rightly deleted the addition made on account of interest expenditure as the assessee had sufficient interest free surplus fund to make the investment and the ITAT has rightly deleted the disallowance made by the AO u/s 14A r.w Rule 8D. Consequently we hold that the interest

expenditure cannot be disallowed u/s 14A r.w. Rule 8D(2)(ii) under any circumstances.

15. In assessee's case from the perusal of the findings as extracted earlier it is clear that the AO before rejecting the suo-moto disallowance has not given any specific error in the computation of suo-moto disallowance but has made a general observation that certain indirect expenses ought to have been incurred by the assessee. We further notice that the AO has not brought anything on record to factually state that the computation of disallowance made by the assessee is not correct. Therefore, the enhanced disallowance made without recording satisfaction cannot be sustained. Therefore considering the facts and circumstances of the case and the decision of the jurisdictional High Court, we hold that the disallowance made u/s 14A should be restricted to the suo-moto disallowance of Rs. 10 lakhs as claimed by the assessee and the enhanced disallowance by the CIT(A) is hereby deleted. This ground of the assessee is allowed.

Subsidy under New Sugar Promotion Policy to be treated as Capital in nature -Ground No.2(a) & (b)."

8. We find that the issue contested in this ground of appeal is squarely covered by the decision of ITAT in the case of the assessee itself as elaborated above therefore following the aforesaid decision this ground of the appeal of the assessee is allowed.

Ground no. 2: Considering the incentive in the form of reimbursement/exemption amounting to Rs. 322,38,755/- and the exemption from collection and deposit from payment of Value Added Tax (VAT) and Central Sales Tax (CST) aggregating to Rs. 10,03,27,783/-:

9. During the course of assessment, the AO noticed that assessee has claimed Rs. 32,28,38,755/- as capital receipt under New Sugar Industry Promotion Policy 2004 announced by the state government of Uttar Pradesh not eligible to Income Tax. During the course of assessment, the assessee has furnished details of various incentives given under the New Sugar Industry Promotion Policy 2004. However,

the assessing officer has treated the same as revenue income on the basis of earlier years and added to the total income of the assessee.

10. The ld. CIT(A) following the decision of CIT(A) for A.Y. 2008-09 dismissed the appeal of the assessee.

11. During the course of appellate proceedings before us, the ld. Counsel submitted that identical issue on similar fact in the case of the assessee itself for A.Y. 2007-08 and 2008-09 has been decided in favour of the assessee by the ITAT, Mumbai.

12. On the other hand, ld. DR supported the order of ld. CIT(A).

13. Heard both the sides and perused the material on record. Without reiterating the fact as discussed above with the assistance of ld. Representative, we have perused the decision of ITAT vide ITA No. 5058/M/2012 for A.Y. 2007-08 dated 12.01.2023, the relevant extract of the decision is reproduced as under:

“18. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above the assessee is a public limited company engaged in in the manufacturing of sale of sugar. It has set up new sugar plant under the new Sugar Industry Promotion Policy, 2004 announced by the State Government of Uttar Pradesh in the year 2004 for the development and growth of sugar industry in the State of Uttar Pradesh as per the copy of policy placed in the paper book from page no. 125 to 226. Under the object of the New Sugar Industry Policy, 2004 it is stated that from the sugar industry of Uttar Pradesh revenue of more than Rs.400 crores is earned by State and Central Government through purchase tax and excise duty. This industry lead to social and economic development of the area in which the industry is located by establishing new sugar mills. There will be increased in the capital and there will be also increased in the revenue for the state in few years. Capital of Rs.2000 crores is required for setting up mills in private sector with capacity of 1 lakh tcd. For this purpose state will have to provide economic concession special packages to industrialists for few years. Hence, the well planned Sugar Industry Promotion Policy is required which attract industrialists from private sector to set up sugar industry in

the state. In the New Industries Policy 2004 for capital subsidy, following special incentives will be considered for a period of 10 years from the date of establishment over and above the facilities provide:

- | | |
|---|--|
| 1. Entry Tax on sugar | 2. VAT on Molasses |
| 2. Administrative charge on Molasses | 4. Stamp duty & Registration fees on land |
| 5. Purchase tax on cane (Exemption/Reimbursement) | 6. Reimbursement of Transportation cost (Cane/Sugar) |
| 7. Reimbursement of society Commission | 7. Reimbursement of State Cess (Excise Share) |

The scheme and benefit received were given in the submission made by the assessee during the course of assessment are reproduced as under:

“BHL made a capital investment in excess of Rs.500 crores for commissioning various new sugar plants, distilleries and co-generation plants at several location in the state of UP and commenced production before 31' March, 2008.

In terms of the Policy and Notifications issued therein, BHL was granted Eligibility Certificate for five years vide letter dater dated 31' October 2005 on investing in excess of Rs.350 crores under first stage The eligibility was extended upto ten years on investing in excess of Rs.500 crores under second sage vide letter dated 31 January, 2001 Accordingly, BHL has been availing various benefits under the policy:

The various benefits under the Policy can be classified into the following-

A. Subsidy and exemptions of capital nature, which includes:-

- i. 10% subsidy on Hexed Capital Investment*
- ii. Exemption from payment of registration charges on land.*
- iii. Exemption from payment of stamp duo on land.*

B. Exemption from collection and deposit which includes:

- i. Exemption from payment of UPT7 (now vat) and CST on sale of molasses.*
- ii. Zero rate of Administrative charges on molasses produced by such Units*
- iv. Exemption from payment of entry tax on sale of non levy sugar produced by such units.*

C. Other reimbursements and exemptions, which includes:-

- i. Reimbursement of society commission on cane purchase.*
- ii. Reimbursement of freight subsidy on sugar transportation.*
- iii. Reimbursement of freight subsidy on transport of sugar cane.*
- v. Exemption from payment of purchase tax on sugarcane.*

In the return of income, the aforesaid incentives granted under the polity were not excluded while computing the total income.

In this regard, it is submitted by BHL that the various incentives envisaged under the Policy are in the nature of the capital receipts and accordingly, not liable to tax. It is further submitted that the following incentives ought to be allowed as a deduction while computing then total income.

1. The receipt of the 10% capital subsidy and exemption of registration charges and stamp duty as mentioned in 'A' above ought not to be reduced from the cost of assets under section 43(1) of the Act.
2. The following notional amount of incentives referred in 'B' above are in the nature of capital receipts and ought to be reduced while computing the total income.

Incentives	Rs.
Exemption from payment of UP7T9nowvvat) and CST on sale of molasses	1,901,637
Zero rate of Administrative Charges on molasses produced by such units	30,215,867
Exemption from payment of entry tax on sale of non leg sugar produced by such	36,852,585
Total	68,970,08

4. The incentives in the form of exemptions and reimbursements referred to in 'C' above amounting to Rs.560,779,698 are in the nature of capital receipts not eligible to tax and accordingly, ought to be excluded from the total In this connection on behalf of BHL, we wish to make the following submissions:-

The Government of UP introduced the now Sugar Industry Promotion Policy, 2004, inter alia, with the avowed objective of promotion of establishment of new sugar factories in the private sector to speed up industrialisation of the State. The preamble to the Policy states the proposed objectives as follows.

"to attract private investment in the field of the Cane Development and sugar industry by establishing sugar mills in private sector to augment the industrial Development in the State.

Under the Polig, now sugar factories are given incentives. The period/ quantum of various concessions/ incentives have been linked to the amount of fresh investment made for the establishment of the new sugar mill, although the incentives are to be disbursed after the establishment of the unit. The salient fatures of the background note to the polig are reproduced hereunder-

"Why new Sugar Industa Promotion Polity needed?"

The total number of sugar factories working in the State is 101 having a total cane crushing capacity of 3 96 lacs TCD out of which 22 sugar mills are under State Sugar Corporation, 27 in Cooperative Sector and 52 sugarmills are established in private sector. It is

clear from the basis of the average of the last 5 years that all these sugar factories are able to crush only 41.04% of the total cane produced in the state and the rest is consumed in Gur khandsari. Seed Juice, fodder and chewing.

Percentage of Consumption of Cane in UP

	Sugar Mills	Other consumption
Average of 1999-00 to 2003-04		58/96%
Consumption of Cane %	48.85%	51.15%

It is this clear that in UP there is a availability of sugarcane which can be used as raw material by the sugar mills, however, due to the sickness of the sugar mills belonging to the State Sugar Corporation and stagnation in the expansion of the production capacity of the sugar mills belonging to the Co-operative sector and due to the lack of availability of the requisite capacity in the sugar mills belonging to the private sector, gradually the State's sugar industry is lagging behind. The sugarcane farmers have to sell their produce to the Handsari/Gur Industry at quite low prices, as a result of which, on the one hand farmers are not able to get adequate price for their produce, on the other hand, contribution to the programmes for the development of the rural areas and welfare of the common people is mostly negligible.

Demand and supply of sugar in the country by 2010-11

It is estimated that in the year 2010-11 the country's total population would be approximately 120.75 crores. Due to the increase in the country's per capita average consumption of sugar, till 2010-11, 276.02 lakh tonnes of sugar would be needed for internal consumption. For the target of taking the State's contribution in the country's sugar production from 28.06% in the year 2002-03 to 30% in the year 2010-11, in the State approximately 75 lakh tonne sugar would have to be produced. It is estimated that there would be substantial increase in the country's average per capita consumption of sugar and in order to satisfy this increase demand the country's two big sugar producing States UP and Maharashtra would have to come forward. Since in Maharashtra the percentage utilization of sugarcane for producing sugar is at the maximum possible, therefore, UP is the only State when by increasing the drawal percentage of sugarcane, the increased demand for sugar in the country can be met. Keeping in view the State's limited financial resources, the sick condition of the mills belonging to the Corporation, stagnation in the mills of the Co-operative sector and the inability of the mills in the private sector to completely utilize the sugarcane produced, the need is being felt for encouraging the private sector to invest funds for setting up sugar mills which are of global standards, having sugarcane crushing capacity of 5000 TCD or more. In order to meet the domestic consumption of sugar at 6%

GDP growth rate, it would be required to set up mills having approximately one lakh tonne per day capacity and thus create additional capacity. The requirement of sugarcane for this increased capacity can be met by increasing the current drawal percentage of sugarcane from 5 to 7% It must also be clarified that at which ever place a new sugar mill is set up the sugarcane area of that place increases as a result of which there is no possibility of difficulty in sugarcane supply for the increased capacity.

In view of the above, in order to establish new sugar mills in the State the only option is to attract industrialists in the private sector, since in view of the lack of lands the possibility of setting up mills in the Government or the Co-operative sector is negligible in order to set up new sugar mills in the private sector having capacity of one lakh tonnes per day, investment of approximately Rs 2000 crores would be needed. For creating that additional capacity, in the initial years the State Government would be required to provide special economic promotion to the industrialists in the form or special packages.”

On the perusal of the aforesaid policy the purpose/ rational behind disbursement of subsidy/ incentive under the Polig and the primary considerations, intention and the objective sought to be achieved by the Polig are summarized as under-

- 1. Private investment in sugar industry for augmenting the industrial development in the State.*
- 2. Give boost top Sugar Industry which was the only industry in the State dedicated 100% to rural economy, pproipen 0 and development*
- 3. Increase in sugar production to utilizes the vast cane area in the State.*
- 4. Protection of financial interests of cane farmers.*
- 5. Rapid rural development and increase in revenues of the Government.*
- 6. Generation of employment opportunities.”*

“19. In terms of the New Promotion Policy of Sugar Industry of Uttar Pradesh Government the assessee company was granted eligibility certificate for 5 years vide letter dated 31.10.2005 on investing in excess of Rs.350 crores under first stage. The eligibility was extended up to 10 years of investing in excess of Rs. 500 crores under 2nd stage. Therefore various benefit under the policy were availed by the assessee as discussed supra in this order. After referring the various clause of the new industry policy the assessee submitted that the various incentives given under the policy were in the nature of capital receipts. The assessee submitted that incentives granted under the policy were in the nature of

the capital receipts. In this regard, we have perused the various judicial pronouncements referred by the counsel in the case of CIT Vs. Ponni Sugar & Chemical Ltd. (2008) 174 taxman 87 (SC) it is held that the test is that the character of receipt in the hands of the assessee has to be determined with respect to the purpose for which the subsidy is given. In other words in such cases one has to apply purpose test. The point of time at which the subsidy is paid is not relevant. The form of subsidy is immaterial. In the case of Everest Industries Ltd. Vs. Joint CIT (2018)19 taxman.com 330 (Mumbai Tribunal) held that sale tax incentive received by the assessee was considered as capital receipt by the A.O same was not required to be reduced from cost of assets for purpose of computing depreciation.

In the case of CIT Vs. Shri Balaji Alloys & Other (2016) 181 CTR (SC) 459 held that excise refund and interest subsidy received by the assessee in pursuance of incentive announced and sanctioned by the Government of India is capital receipt. In the case of Shri Balaji Alloys Vs. CIT (2011) 198 taxman.com 122 (Jammu & Kashmir), it is held that amount of excise refund and interest subsidy received by industrial unit in pursuance of incentives announced in terms of new industrial policy for accelerated industrial development in the State of J & K would be capital receipt in the hands of such Industrial Unit. In the case of CIT Kolhapur Vs. Chaphlekar Brothers Pvt. Ltd. (2017) 88 taxman.com 178 (SC) held that where object of respective subsidy schemes of state of Maharashtra provided for exemption to multiplexes from entertainment duty for a period of 3 years remission for further period of 2 years was to encourage development of Multiple Theatre Complexes, incentive would be held to be capital in nature and not revenue receipts. In the case of ACIT Vs. Gems Electrotech Ltd. (2016) 71 taxman.com 101 (Ahd Tribunal) wherein held that sale tax and excise duty subsidy received by the assessee for purpose of industrialization was capital receipt. In the case of PCIT Vs. Capgemini India (P) Ltd. (2018) 90 taxmann.com 409 (Bombay) held that grant received by assessee from state govt. in shape of allotment of land for purpose of granting employment for over 3000 people, was to regarded as capital receipts. The ld. Counsel has also furnished similar judicial pronouncements of ITAT Benches. The assessee has also demonstrated that subsidy was granted for setting up sugar industry in general and not for acquisition of any asset, therefore, same also not to be reduced from the cost of asset. The assessee has demonstrated from the material as referred above and furnished before the lower authorities that various incentives were granted under the New Sugar Industry Promotion Policy 2004 for the purpose of development and growth of sugar industry in the state and same has to be considered as capital in

nature. Therefore, after considering the facts and judicial findings on the issue as discussed supra, we find the decision of ld. CIT(A) is not justified therefore the ground of appeal of the assessee is allowed.

14. We find this recurring issue is squarely covered by the earlier decision of the ITAT in the case of the assessee itself as discussed above therefore following the decision of ITAT this ground of appeal of the assessee is allowed.

Ground no. 4: Claim of deduction of expenditure u/s 115JB in respect of reserves of construction of molasses storage tanks:

15. The ld. CIT(A) held that deduction of reserve for molasses tank will not be allowable after referring the decision of CIT(A) for A.Y. 2007-08 in assessee's case relying upon the decision of Hon'ble Supreme Court in the case of CIT vs Ambur Cooperative Sugar Mills Ltd. (269 ITR 398) (SC). During the course of appellate proceedings before us, the ld. Counsel contended that similar issue on identical fact has been decided by the ITAT, Mumbai in favour of the assessee vide ITA No. 5058/M/2012 for A.Y. 2007-08. We have perused the above referred decision of the ITAT and the relevant extract of the decision as reproduced as under:

"22. Heard both the sides and perused the material on record. The assessee has claimed deduction in respect of the reserves for construction of molasses storage tanks in the computation of book profit u/s 115JB of the Act. It is also submitted that expenditure allowed under normal provision of the Act also to be allowed for the purpose of computation of book profit u/s 115JB of the Act. In this regard, we have perused the judicial pronouncements relied upon by the ld. Counsel in the case of CIT Vs. New Horizon Sugar Mills Pvt. Ltd. (2000) 269 ITR 397 (SC) the Hon'ble Supreme Court held that amount set apart towards molasses storage reserve fund is to be excluded from assessee's total income. The Hon'ble jurisdictional High Court of Bombay in the case of Somaiya Organo & Chemical Ltd. Vs. CIT (2017) 79 taxman.com 431 (Bom) held that amount transferred out of profit of loss account to storage fund for molasses and alcohol account to meet the statutory requirement was an

admissible deduction in working out business income. The Hon'ble High Court of Madras in the case of CIT Vs. Madurantakam Cooperative Sugar Mills ltd. (2004) 138 taxman.com 150 held that provision made for molasses storage fund is allowable deduction. Further, the Hon'ble Madras High Court in the case of CIT Vs. Kothari Sugar & Chemical Ld. (2000) 242 ITR 456 (Mad) held that amount set apart by assessee for credit to molasses storage fund is allowable deduction. The Hon'ble High Court of Madras also in the case of CIT Vs. Salem Cooperative Sugar Mills Ltd. (1997) 95 taxman.com 325 (Mad) held that amount transferred to Molasses Storage Fund for providing adequate storage facility could not be included in assessee's total income. We also find merit in the submission that expenditure allowable under normal provision of the Act ought to be allowed for the purpose computation of book profit u/s 115JB of the Act. The ld. Counsel has placed reliance on the following judicial pronouncements:

- “(a) Ankit Metal & Power Ltd (2019) 109 taxmann.com 93 (Calcutta High Court)*
- (b) Shree Cement Limited (ITA No. 86 of 2014) (Rajasthan High Court)*
- (c) Metal and Chromium Plater (P) Ltd. (2019) 415 ITR 123 (Madras High Court)*
- (d) Batliboi Limited (ITA No. 5428/Mum/2015) (Mumbai Tribunal)*
- (e) Deegee Orchards Pvt. Ltd. (ITA No. 4613/Mum/2016) (Mumbai Tribunal)*

In the light of the above facts and finding we find the decision of ld. CIT(A) in not allowing the claim of the assessee in respect of amount diverted to the statutory reserve for construction of molasses is not justified, therefore, we direct the Assessing Officer to exclude the aforesaid amount while computing book profit u/s 115JB of the Act. Therefore, this ground of appeal of the assessee is allowed.

16. We find this is recurring issue based on similar facts, therefore following the decision of the ITAT of earlier year in the case of the assessee as discussed above this ground of appeal is allowed.

Ground no. 3: Adding an amount to the extent of Rs. 10,74,43,886/- in respect of disallowance u/s 14A while computing the book profit u/s 115JB of the Act:

17. The ld. CIT(A) at para 10.7 of his order directed the assessing officer to compute the book profit u/s 115JB of the Act by adding the

disallowance made u/s 14A of the Act while making computation of book profit.

18. Heard both the sides and perused the material on record, we find that ITAT Special Bench in the case of ACIT vs Vireet Investment Pvt. Ltd. (ITAT, Delhi) (Special Bench) 82 taxman.com 415 held that disallowance made u/s 14A is not to be added while computing book profit u/s 115JB of the Act. Therefore, following the decision of ITAT Special Bench as referred above, this ground of appeal is allowed.

Additional ground of appeal: Incentive received under the New Sugar Industry Promotion Policy to be reduced while computing book profit u/s 115JB because of being nature of capital receipt:

19. We do not find any merit in this ground of appeal of the revenue, following the decision of the ITAT Mumbai in the case of the assessee of earlier years as discussed supra in this order. We have adjudicated the ground no. 2 of the assessee holding that incentive received under the New Sugar Industry Promotion Policy, 2004 of Uttar Pradesh Government are of the nature of capital receipt, therefore we direct the assessing officer to reduce the same while computing the book profit u/s 115JB of the Act.

ITA No. 4446/M/2013

Ground no. 1: The ld. CIT(A) erred in allowing relief of Rs. 18,50,29,101/- u/s 14A r.w.r. 8D(2)(ii) and 8D(2)(iii):

20. Heard both the sides on this issue and for the reason discussed while adjudicating ground no. 1 in the appeal of the assessee vide ITA No. 3714/M/2013 this ground of the appeal of the revenue stand dismissed.

Ground no. 2 of the revenue: Adding the amount disallowed u/s 14A in computing the book profit u/s 115JB of the Act:

21. Heard both the sides and perused the material on record. In view of the decision of ITAT, Special Bench in the case of Vireet Investment as already discussed while adjudicating the ground no. 3 in the appeal of the assessee above in this order we do not find any merit in this ground of appeal of the revenue. Therefore, applying the reason mentioned while adjudicating ground no. 3 of the appeal of the revenue this ground is also dismissed.

Ground no. 3: The ld. CIT(A) erred in holding that the club entrance fees of Rs. 13,23,600/- as revenue in nature:

22. During the year assessee has paid an amount of Rs. 13,23,600/- to Mumbai Cricked Association towards corporate membership, the AO has disallowed the club entrance fees treating the same as not revenue in nature. However, the ld. CIT(A) has allowed the claim of club entrance fees by treating the same as business expenditure u/s 37(1) of the Act after relying upon the following judicial pronouncements:

- i. CIT vs Nestle India Ltd. (296 ITR 682 (Del)*
- ii. Gujarat State Export Corporation Ltd. vs CIT (209 ITR 649)(Guj)*
- iii. DCIT vs America Securities India (P) Ltd. (136 TTJ 441)*

23. Heard both the sides and perused the material on record on this issue. Before us, the ld. Counsel has also referred the decision of the Hon'ble Bombay High Court in the case of Swiss Re Services India (P) Ltd. (2023) 156 taxmann.com 56 (Bombay) on the proposition that club entrance fees would be a revenue expenditure because it had been incurred wholly and exclusively for the purpose of business and not toward capital account but for the smooth running of business. Considering the above facts and findings, we do not find any reason to

interfere in the decision of Id. CIT(A), therefore, this ground of revenue is dismissed.

Ground No. 4: Allowing the relief of Rs. 79,11,26,251/- by holding that the gain on revaluation of FCCB and ECB is capital in nature:

24. The Id. CIT(A) held that provision of foreign exchange gain written back aggregating to Rs. 79,11,26,251/- was on account of capital expenditure and the same to be excluded while computing the total income.

25. Heard both the sides and perused the material on record. We find that similar issue on identical fact has been restored to the file of assessing officer by the ITAT Mumbai in the appeal of the assessee for A.Y. 2007-08 vide ITA No. 5058/M/2012. Similarly, we restore this issue to the file of assessing office for deciding the same after verification/examination of the material as directed by the ITAT for A.Y. 2007-08. Therefore, this ground of appeal is allowed for statistical purposes.

Ground No. 5: The Id. CIT(A) erred in holding that actual provision relating to foreign exchange amounting to Rs. 79,11,26,251/- is no longer required to be taken into account for computation of book profit u/s 115JB of the Act:

26. Since, we have restored the issue of foreign exchange gain to the file of the assessing officer for deciding the same afresh after verification and examination of the relevant material as discussed above while adjudicating ground no. 4 of the revenue, therefore, this ground of appeal of the revenue at this stage become infructuous and same stand dismissed.

Ground no. 6: The ld. CIT(A) erred in deleting the addition of Rs. 5,89,19,364/- u/s 115JB:

27. Since we have restored the issue of foreign exchange to the file of the assessing officer for deciding afresh after verification and examination of relevant material, therefore, this ground become infructuous and same stand dismissed.

28. In the result, appeal of the assessee is allowed and appeal of the revenue is partly allowed for statistical purposes.

Order pronounced in the open court on 28.08.2024.

Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated: 28.08.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

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By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai