

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH
HEARING THROUGH: HYBRID MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 748/Chd/2023
निर्धारण वर्ष / Assessment Year : 2010-11

The DCIT Circle-4, Ludhiana	बनाम	M/s Rockman Industries Limited A-7, Focal Point, Ludhiana
स्थायी लेखा सं. / PAN NO: AAACR7866E		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं. / ITA NO. 177/Chd/2024
निर्धारण वर्ष / Assessment Year : 2013-14

The Asst. CIT Circle-4, Ludhiana	बनाम	M/s Rockman Industries Limited A-7, Focal Point, Ludhiana
स्थायी लेखा सं. / PAN NO: AAACR7866E		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं. / ITA NO. 817/Chd/2023
निर्धारण वर्ष / Assessment Year : 2014-15

The DCIT Circle-4, Ludhiana	बनाम	M/s Rockman Industries Limited A-7, Focal Point, Ludhiana
स्थायी लेखा सं. / PAN NO: AAACR7866E		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं. / ITA NO. 818/Chd/2023
निर्धारण वर्ष / Assessment Year : 2015-16

The DCIT Circle-4, Ludhiana	बनाम	M/s Rockman Industries Limited A-7, Focal Point, Ludhiana
स्थायी लेखा सं. / PAN NO: AAACR7866E		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं. / ITA NO. 794/Chd/2023
निर्धारण वर्ष / Assessment Year : 2016-17

The DCIT Circle-4, Ludhiana	बनाम	M/s Rockman Industries Limited A-7, Focal Point, Ludhiana
स्थायी लेखा सं. / PAN NO: AAACR7866E		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं. / ITA NO. 795/Chd/2023
निर्धारण वर्ष / Assessment Year : 2017-18

The DCIT Circle-4, Ludhiana	बनाम	M/s Rockman Industries Limited A-7, Focal Point, Ludhiana
स्थायी लेखा सं. / PAN NO: AAACR7866E		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं. / ITA NO. 796/Chd/2023
निर्धारण वर्ष / Assessment Year : 2018-19

The DCIT Circle-4, Ludhiana	बनाम	M/s Rockman Industries Limited A-7, Focal Point, Ludhiana
स्थायी लेखा सं. / PAN NO: AAACR7866E		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं. / ITA NO. 84/Chd/2024
निर्धारण वर्ष / Assessment Year : 2020-21

The DCIT Circle-4, Ludhiana	बनाम	M/s Rockman Industries Limited A-7, Focal Point, Ludhiana
स्थायी लेखा सं. / PAN NO: AAACR7866E		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Satish Kumar Bansal, F.C.A
राजस्व की ओर से/ Revenue by : Smt. Kusum Bansal, CIT, DR
सुनवाई की तारीख/ Date of Hearing : 27/08/2024
उद्घोषणा की तारीख/ Date of Pronouncement : 25/11/2024

आदेश / Order

PER BENCH :

All the above appeals are filed by the Revenue against the separate order of the Ld. Commissioner of Income Tax Appeals for different Assessment Years wherein few issues are common, few issues are admixtures. However, we have dealt with each income tax appeals for each assessment years separately as below. All the appeals were heard together in respect of each Assessment Years sequentially and consequently each appeals are being disposed off by this consolidated order.

I. ITA No. 748/Chd/2023 For A.Y. 2010-11

1. This is an appeal which is filed by the **Revenue** in terms of Section 253 of the Income Tax Act, 1961 (hereinafter referred to as Act) before this Tribunal. The Revenue is aggrieved by the order bearing No. ITBA/NFAC/S/250/2023-24/1056753913(i) dt. 04/10/2023 dt. 04/10/2023 of Ld. CIT(A) which is hereinafter referred to as the "**impugned order**". The impugned order is passed in the first appellate proceedings u/s 250(6) of the Act. The first appellate proceedings were conducted under section 246A of the Act.

2.

Factual Matrix Proceedings before Ld. AO

2.1 The assessee filed its return of income on 06/01/2012 showing income of Rs. 21,67,28,910/-. The assessee is engaged in manufacturing of Auto Parts and Washing Machine Parts.

2.2 The assessment in this case was completed u/s 143(3) on 18/03/2013 at an assessed income of Rs. 26,09,88,806/-. This order became subject matter of the proceedings u/s 263 of the Act by an order dt. 28/03/2015 (enhanced the income by Rs. 4,27,33,531/-).

2.3 The assessee being aggrieved by the order dt. 28/03/2015 under section 263 filed an appeal before this Tribunal who by an order dt. 08/09/2017 in **ITA No. 569/Chd/2015** (M/s Rockman Industries Ltd. Ludhiana Vs. PCIT-2, Ludhiana) vide para 7 thereof set aside the "issue of enhancement on account of reallocation

of expenses between the exempt and non exempt units of the assessee" and by virtue of **Para 12 thereof** referred back the issue of verification of expenses relating to project written off" to the file of assessing officer.

2.4 Therefore, a notice u/s 143(2) r.w.s 254 dt. 05/03/2018 was issued and served upon the assessee on 06/03/2018.

2.5 A notice under section 142(1) dt. 19/11/2018 alongwith detailed questionnaire was issued and served upon the assessee on 20.11.2018.

2.6 We reproduce below Para 7 and 13 of order of this Tribunal (supra)

" 7. We have considered the rival contentions and have also gone through the impugned order of the PCIT. We find that the Ld. PCIT has not discussed in detail about the submissions and details is given by the assessee. He has simply allocated the expenses on the basis of turnover of the units. Whereas the plea of the Ld. Counsel for the assessee is that the assessee has furnished all the relevant details and evidences which were required to be examined by the Ld. PCIT before enhancing the income of the assessee on this issue. Considering the above submissions of the Ld. Counsel for the assessee, in our view, the issue is required to be examined in detail. Therefore we set aside the issue relating to the additions / enhancement by the Ld. PCIT and restore the matter on this issue back to the file of the AO with a direction to examine in detail all the expenses allocated by the assessee towards each unit and then to decide the issue afresh in accordance with law after giving proper opportunity to the assessee to represent its case."

Note: In brief order of PCIT under section 263 of Act was set aside back to the Ld. AO with directions as aforesaid.

" 13. It is made clear that the AO has to examined only as to whether the expenses claimed by the assessee were relating to the " abundant project" and whether the same was paid in lieu of the services rendered by the parties in relation to that project. However the legal proposition relating to the admissibility of the expenses will remain applicable as originally applied by the AO following the decision of the Hon'ble High Court in case of CIT Vs. Vardhman Spinning & General Mills(supra)"

2.7

Re-allocation of common expenses

On the issue of allocation of expenses PCIT had identified following expenses in his order u/s 263 dt. 28/03/2015 which needed to be allocated on the basis of turnover between the Ludhiana and that the Haridwar units of the assessee which had a turnover ratio of 37:63.

(i) Administrative expenses on Director's remuneration, commission to Director, Directors meeting fee, Director's travelling expenses, Auditor's remuneration and advertisement and publicity.

(ii) Misc. expenses which include legal and professional charges, general administrative expenses, general expenses others, domestic travelling and foreign travelling.

2.8 That in pursuance of the directions of this Tribunal (supra) the assessee was asked to provide details regarding allocation of these expenses. The assessee submitted a reply dated 29/11/2018 which is reproduced below:

29th November 2018

Deputy Commissioner of Income Tax,
Rishi Nagar,
Circle - V, Ludhiana.

Dear Sir,

Reg: M/s. Rockman Industries Ltd.
Assessment proceedings for AY 2010-11

With reference your honour's notice dated 19.11.2018, it is submitted as under:

1. Note on Project writte off – SURVAM IT Park PROJECT along with details of the revenue expenses Rs. 69224195/- incurred on the project, which was written off in

FY 2009-10 are enclosed. Copies of professional charges bills and ledger accounts in this regard are also enclosed. However the Hon' I TAT has held as under:-

It is made clear that the assessing officer has to examine only as to whether the expenses claimed by the assessee were relatable to the abundant project and whether the same was paid in lieu of the services rendered by the parties in relation to that project. However, the legal proposition relating to the admissibility of the expenses will remain applicable as originally applied by the Assessing officer following the decision of Hon'ble High Court in the case of "CIT Vs. Vardhman Spinning & General Mills"(supra).

2. The details of the expenses under the head administrative expenses, auditor's expenses and the miscellaneous expenses bifurcated between Ludhiana which is non exempt unit and Haridwar which is tax exempt unit is attached. The details pointed out by Pr. CIT in his order u/s 263 is as under:

Sr. No.	Expenses	Ludhiana Unit	Haridwar Unit.
	Administrative Exp.		
1.	Director's remuneration, perks and contribution	Rs. 89,32,928/-	Rs. 20,63,094/-
2.	Commission to director	Rs. 370,00,000/-	Rs. 100,00,000/-
3.	Director's meeting fee	Rs. 1,55,000/-	-
4.	Director's traveling exp.	Rs. 76,18,403/-	Rs. 7,62,965/-
	Auditor's Remuneration		
5.	For Statutory Audit	Rs. 1,75,000/-	Rs. 1,25,000/-
6.	For Tax Audit	Rs. 50,000/-	-
7.	As advisor in respect of taxation matters	Rs. 1,00,000/-	-
8.	Advertisement and Publicity	Rs. 2,95,311/-	
	TOTAL	Rs. 5,43,26,642/-	Rs. 1,29,51,059/-

In this regard it is submitted that at Ludhiana Unit, there are more than 100 parts which are being manufactured whereas in Haridwar Unit, only 21 number of parts are being manufactured. Haridwar unit was set up in A. Y. 2009-10 and was fully operational. The management had to give more time to Ludhiana unit being more number of parts being manufactured and complexity involved therein. The affairs at Ludhiana unit were managed by Sh. Suman Kant Munjal, hence his remuneration and commission was booked at Ludhiana unit whereas Mr. Ujjwal Munjal was managing the affairs of both Ludhiana and Haridwar, hence 50% of his remuneration and commission was booked at Haridwar unit and 50% in Ludhiana unit.

Like-wise Directors meeting fee was booked in the respective plants where meetings took place. As Registered Office of the company is at Ludhiana and all meetings were held here, accordingly expenses of Directors meeting fee was booked in Ludhiana. Similarly Director's Travelling expenses were booked on actual basis as per requirement of the plants for which travelling was undertaken. Statutory Audit fee was booked at Rs. 1.75 lac at Ludhiana H.O. (Rs. 1.25 lac for Ludhiana plant and Rs. 0.50 lac for Manesar plant) and 1.25 for Haridwar plant. Tax audit and taxation matter were booked at Head office at

Ludhiana. Similarly Advertisement & Publicity is also plant specific being minor amount of Rs. 2.95 lacs as there is no need of advertisement to Haridwar unit since all the products are being supplied to M/s. Hero Moto Corp only from Haridwar unit.

Similarly details under Misc. Expenses pointed out by Pr. CIT in his order u/s 263 is as under:

Expenses	Ludhiana	Haridwar
Legal, Prof & Consultation Charges	Rs. 10,617,374	Rs. 3,025,968
Gen Admin Exp	Rs. 7,709,887	Rs. 2,214,061
Gen Exp Others	Rs. 8,52,144	Rs. 40,05,038
Domestic Traveling & Convey- other	Rs. 3,840,407	Rs. 1,104,566
Foreign Traveling exp-others	Rs. 4,770,256	Rs. 1,023,622
TOTAL	Rs. 277,90,068/-	Rs. 113,73,255/-

Regarding Legal and Professional charges it is submitted that these are plant specific expenses. Copies of ledger accounts of both units and copies of some major bills of Ludhiana unit in this regard are enclosed.

Regarding General Admin Expenses, it is submitted that these are plant specific expenses. Copy of ledger account of Ludhiana unit specifying nature of expenses in this regard is enclosed. Nature of major expenses in Ludhiana is casual work wages, driver salary, security expenses etc. which are plant specific only. The employees are covered under different schemes of Govt and the necessary records have been maintained by respective units. Many times inspections and Audit were carried out by Govt agencies of those units.

Regarding General Expenses it is submitted that these are also Plant specific as these are more in Haridwar at Rs. 40.05 lacs against 8.52 lacs in Ludhiana.

Regarding Domestic Travelling Expenses, it is submitted that these are plant specific expenses. Copy of ledger account of Ludhiana unit specifying nature of expenses in this regard is enclosed. All expenses are TA bills and taxi bills of Ludhiana employees only. In Haridwar unit main personnel expenses are of labour only and managerial staff is very less as compared to Ludhiana unit which is also the Regd. Office of the company. Accordingly employees of Ludhiana unit undertake travelling on account of company's business which is booked in this unit. Similarly travelling expenses of Haridwar unit is booked in that unit only which is comparatively less. The staff of each unit knows the working of its unit and not the working of other units to carry out the work of different units.

Regarding Foreign Travelling Expenses, it is submitted that these are plant specific expenses. Copy of ledger account of Ludhiana unit specifying nature of expenses in this regard is enclosed.

In Haridwar unit there is no new project and whatever drawings once approved by M/s. Hero Moto Corp Ltd. are used and are not required to make any

changes. Haridwar unit is mainly supplying its products to M/s. Hero MotoCorp Ltd. only. On the other hand in Ludhiana unit there are other projects also like manufacturing of four wheeler parts for world renowned car manufacturers, understanding with foreign parties and discussion on R&D is required to enter the new market for which the employees of Ludhiana unit had to undertake foreign travelling.

Hope your honour will find the same in order, in case any further information or clarification is required same may be intimated.

Thanking You

Yours faithfully,

(Anil Gupta)

C.A.

2.9 That the reply of the assessee was considered. However it cannot be denied by the assessee that the expenses above are indeed of common utility to the **company as a whole** and therefore need to be **apportioned on basis of turnover ratio**.

2.10 That as per the assessee the following allocation of expenses has been made under the head Administrative expenses.

Sr. No.	Expenses	Ludhiana Unit	Haridwar Unit.	Consolidated
	Administrative Exp.			
1.	Director's remuneration, perks and contribution	8932928	2063094	10996022
2.	Commission to director	37000000	10000000	47000000
3.	Director's meeting fee	155000		155000
4.	Director's traveling exp.	7618403	762965	8381368
	Auditor's Remuneration			0
5.	For Statutory Audit	175000	125000	300000
6.	For Tax Audit	50000		50000
7.	As advisor in respect of taxation matters	100000		100000
8.	Advertisement and Publicity	295311		295311
	TOTAL	5,43,26,642	1,29,51,059	6,72,77,701

However if the same **are not allocated on the basis of turnover** the following pictures emerges:

Sr. No.	Expenses	Ludhiana Unit (37%)	HaridwarUnit. (63%)	Consolidated
	Administrative Exp.			
1.	Director's remuneration, perks and contribution	6927494	4068528	10996022
2.	Commission to director	29610000	17390000	47000000
3.	Director's meeting fee	97650	57350	155000
4.	Director's traveling exp.	5280262	3101106	8381368
	Auditor's Remuneration	0	0	0
5.	For Statutory Audit	189000	111000	300000
6.	For Tax Audit	31500	18500	50000
7.	As advisor in respect of taxation matters	63000	37000	100000
8.	Advertisement and Publicity	186046	109265	2953111
	TOTAL	4,23,84,952	2,48,92,749	6,72,77,701

2.11

Misc. Expenses

That as for the misc. expenses common in nature. It is seen that the assessee has claimed expenditure on the following heads as under:

5.1 As for the misc expenses common in nature, it is seen that the assessee has claimed expenditure on the following heads as under:

Expenses	Ludhiana	Haridwar
Legal, Prof & Consultation Charges	Rs. 10,617,374	Rs. 3,025,968
Gen Admin Exp	Rs. 7,709,887	Rs. 2,214,061
Gen Exp Others	Rs. 8,52,144	Rs. 40,05,038
Domestic Traveling & Convey- other	Rs. 3,840,407	Rs. 1,104,566
Foreign Traveling exp-others	Rs. 4,770,256	Rs. 1,023,622
TOTAL	Rs. 277,90,068	Rs. 113,73,255

2.12 That Ld. AO has observed that this allocation of expenses is not in consonance with the ratio of turnover between the 80IC & other units. Turnover in Haridwar unit is 63% of total turnover, whereas the **apportionment of the**

general administration expenses and domestic travelling expenses is at variance with this proportion . Therefore the assessee was asked to explain why these allocations may not be adjusted to bring line with turnover percentage. The reply of the assessee is already reproduced supra.

2.13 That the Ld. AO has in para 5.3 of his assessment order has held and observed as under:

Misc. Expenses	Ludhiana	Haridwar	Consolidated
Legal, Prof & Consultation Charges	10,617,374	3,025,968	13,643,342
Gen Admin Exp	7,709,887	2,214,061	9,923,948
Gen Exp Others	852144	4005038	4,857,182
Domestic Traveling & Convey-other	3,840,407	1,104,566	4,944,973
Foreign Traveling exp-others	4,770,256	1,023,622	5,793,878
TOTAL	2,77,90,068	11373255	39,163,323

Misc. Expenses	Ludhiana (37%)	Haridwar (63%)	Consolidated
Legal, Prof & Consultation Charges	5048D37	8595305	13643342
Gen Admin Exp	3671861	6252087	9923948
Gen Exp Others	1797157	3060025	4857182
Domestic Traveling & Convey-other	1829640	3115333	4944973
Foreign Traveling exp-others	2143735	3650143	5793878
TOTAL	1,44,90,430	2,46,72,893	3,91,63,323

2.14 The Ld. AO in assessment order at para 5.4 has held that

" 5.4 Therefore the expenses in the **Haridwar unit stand enhanced** by the following amounts:

1.	Administrative expenses = 2,48,92,749/- - 1,29,51,059	= 1,19,41,690/-
2.	Misc. Expenses = 2,46,72,893 – 1,13,73,255	= <u>1,32,99,638/-</u>
	Total	= 2,52,41,328

2.15 The Ld. AO in para 5.5 of the assessment order dt. 30/12/2018 has finally held as under basis aforesaid:-

“Therefore in pursuance of the directions of the Hon'ble ITAT. the common expenses allocated between the exempt and non-exempt units have been examined and an enhancement of expenditure relating to the exempt unit of the assessee at Haridwar is made by an amount of Rs. 2,52,41,328/-. Accordingly claim of deduction u/s 80IC of the assessee stands reduced by this amount.”

2.16 Final figure emerges as under:-

<i>“ 8. Income assessed u/s 143(3) dated 18/03/2013</i>	<i>= Rs. 26,09,88,806/-</i>
<i>Add: addition on account of reduced deduction u/s 80IC =</i>	<i><u>Rs. 2,52,41,328/-</u></i>
<i>Total Income</i>	<i>Rs. 28,62,30,134/-“</i>

2.17 The aforesaid assessment order of Ld. AO is dt. 30/12/2018.

Proceedings before CIT(A)

3. The assessee being aggrieved by the aforesaid assessment order prefers first appeal in terms of Section 246A of the Act before CIT(A) who by the impugned order dt. 04/10/2023 has allowed the appeal of the assessee by placing reliance on the decision and order of this Tribunal in Assessee's own case in ITA No. 1264/Chd/2018 dt. 20/08/2020.

Proceedings before this Tribunal

4. **The Revenue being aggrieved by the impugned order** has filed an appeal before this Tribunal and in Form No. 36 has raised following grounds of appeal which are as under:

1. *That the Ld. CIT(A), NFAC, New Delhi has erred in deleting the additions reducing the deduction u/s 80IC.*

2. *That the Ld. CIT(A), NFAC, New Delhi has erred in deleting the expenses and not appreciating the fact that the AO has used apportionment method with respect to the Ludhiana and Haridwar Unit.*

3. ***The Ld. CIT(A), NFAC, New Delhi has relied upon Hon'ble ITAT, Chandigarh order No. 1264/Chd/2018 dated 20.08.2020 and directed the Assessing Officer to follow the same. But the said order has been challenged by the department and an appeal against the said order has been filed in the Hon'ble Punjab and Haryana High Court that whether Hon'ble ITAT was justified in deleting the bifurcation of R&D Expenses among two units and consequent reduction of 80IC deduction in eligible unit.***

4. *That the appellant craves leave to add or amend any ground of appeal before it is finally disposed off.*

Record of Hearing

5. The hearing in the matter took place before this Tribunal on 14/08/2024 and 27/08/2024 when both Ld. AR of the assessee and Ld. DR on behalf of Revenue appeared before us. They were heard on merits of their respective cases. Both the parties were treated equally and equal opportunity was afforded to them. The Ld. DR repeated and reiterated that in the impugned order the apportionment methodology adopted by the Revenue has been given a very convenient "go by" by the Ld. CIT(A) without any sufficient and / or justifiable cause, in so far as Ludhiana and Haridwar unit is concerned. It was contended that Ld. CIT(A) in the impugned order ought not to have placed reliance on order and decision of this Tribunal in assessee's own case in ITA No. 1264/Chd/2018 A.Y. 2012-13 dt. 20/08/2020 as the Revenue has challenged the same in the High Court of Punjab & Haryana High Court by filing an appeal and that the same is pending hearing and final disposal. In the said appeal it is contended by the Revenue in the High Court that whether this Tribunal was justified in deleting the bifurcation of R&D expenses among two units and consequent reduction of 80IC deduction in eligible unit ? Per contra the Ld. AR

has placed on record of this Tribunal a paper book containing pages 1 to 22 wherein copy of orders of this Tribunal and that of Delhi Bench are enclosed along with a comparative chart for all years. The Ld. AR has also placed on record a short synopsis too on 22/08/2024 to assist this Tribunal. It was interalia contended by the Ld. AR of the Assessee that Revenue's approach in filing the present appeal alongwith other 7 appeals is wrong as while it is true that an appeal is filed in Hon'ble Punjab & Haryana High Court by Revenue against the ITAT order for A.Y. 2012-13, in ITA No. 1264/Chd/2018 but this Tribunal's order is **not stayed by the High Court**. It was further contended that impugned order is legal and proper. It ought not to be set aside as the impugned order is just, fair and proper. There are no reasonable ground to be interfered with it. **The reallocation of amount expended towards two broad category i.e; (a) Administrative expenses and (b) Miscellaneous expenses incurred by assessee in respect of their two separate manufacturing unit one situated at Ludhiana (non exempt) and other situated at Haridwar (exempted) are in real terms. They are not sham and make believe arrangements to evade taxes. Separate books of accounts are maintained for each unit one at Ludhiana and another at Haridwar. Unit wise information was filed in which no error has been pointed out by the Revenue at any stage of proceedings either before Ld. AO or before CIT(A). It is not the case of the Revenue that the transactions related to one unit has been debited to another unit. The books of accounts for each unit is separately maintained and which are not doubted or rejected by the Revenue at any stage of proceedings.**

The unit wise accounts of both receipt and expenses are all genuine. It was contended that if amount is expended as an expense which are allowable that expense is appropriated only towards that unit where it is expended and not otherwise. Basis this it would be wrong and incorrect to apply the analogy of apportionment of expenses basis turnover of the units. The turnover of each unit whether exempted or not are different as different goods are manufactured and produced at two separate unit. There are no commonality of expenses it differs from one unit to another. It was finally contended that principle of consistency and continuity should be applied as has been done in their own cases i.e; ITA No. 1264/Chd/2018 and ITA No. 1264/Chd/2018 (supra). It was prayed that Revenue appeal be dismissed.

6. Observations, Findings and Conclusions

6.1 We now examine legality validity and propriety of the impugned order which is challenged before **us by the Revenue**.

6.2 We observe that core argument of the Revenue is that the Ld. CIT(A) ought not to have set aside the assessment order of Ld. AO dated 30/12/2018 for A.Y 2010-11 as the Ld. AO has correctly used the “**Apportionment Methodology**” basis turnover of two units i.e; Ludhiana (non exempt) and Haridwar (exempt). We disagree with the contention and argument of the Revenue for more than are reason. First and foremost one is that assessee perse

is one corporate entity having two units one at Ludhiana (non exempt) and other at Haridwar (exempt). Both the units accounts are maintained separately. There is no admixture of one account with that of other. This is undisputed position or rather admitted position. Unit at Haridwar admittedly is an exempted unit(80IC) whereas unit at Ludhiana is non exempted unit(non 80IC). In each unit separate goods are manufactured. In so far as Haridwar unit is concerned 21 number of parts are being manufactured. In Haridwar units almost all the products are supplied to M/s Hero Moto Corp Ltd. All drawing are approved by M/s Hero Motocorp Ltd. Mr. Ujjwal Munjal is managing the affairs of both Ludhiana and Haridwar units consequently 50% of his remuneration and commission was booked at Haridwar unit and 50% in Ludhiana unit. In so far as Ludhiana unit is concerned more than 100 parts are being manufactured. The affairs of Ludhiana unit are being managed by Shri Sumankant Munjal hence his remuneration and commission are booked at Ludhiana. The corporate office of assessee is at Ludhiana. The management has to give more time to Ludhiana Unit as more number of parts are being manufactured and complexity involved at Ludhiana unit is more. The Directors meeting fee was booked in the respective plants where the meeting took place. Registered office of the assessee company being at Ludhiana and all meeting were held there, accordingly expenses of Directors meeting fee was booked at Ludhiana. Similarly Director's Travelling expenses are booked on actual basis as per the requirement of plants for which Travelling is undertaken. Tax audit and taxation

matters are booked at Head Office at Ludhiana. Advertisement and publicity expenses are plant specific. **There is no need of much advertisement at Haridwar as Haridwar unit caters only to M/s Hero Moto Corp Ltd.**

The Legal and the professional charges are plant specific general administrative expenses **are plant specific**. General expenses **are plant specific**. Domestic Travelling expense **are plant specific**. The staff of each unit knows the working of its unit and not the working of other units to carry out work of different units. Foreign travel expenses too **are plant specific**.

6.3 Basis above which are all contained in letter dated 29/11/2018 (supra) we observe and hold that a detailed explanation is given by the assessee company as a Corporate entity with regard to broad head (A) Administrative expenses (B) Miscellaneous expenses. The explanation offered by the assessee is logical and plausible. We hold that lower authority before ordering addition of Rs. 2,52,41,328/- (Reducing deduction u/s 80IC) to assessed income of Rs. 26,09,88,806/- ought to have examined this explanation extensively on merits as the explanation given was accompanied with the evidences in support. The Ld. AO however has failed to do this exercise. No flaw had been found either in explanation or evidences produced. Hence we hold that account's of each unit is just, fair and proper and cannot be discarded in the absence of any tangible material on record.

6.4. We have minutely perused the Tribunal order in assessee company's own case in **ITA No. 1264/Chd/2018 dt. 20/08/2020 and so also in ITA No. 569/Chd/2015 dt. 08/09/2017.**

In so far as allocation of expenses under the head Director's meeting fee, audit fee, are concerned it has been held (supra) that since these expenses are relating to all the units (both units) the expenses under these heads should be allocated for both the two units in equal proportion the Ld. CIT(A) in impugned order has rightly followed this dictum and we find no infirmity in the order of the Ld. CIT(A).

6.5 With regard to Misc. expenses we hold that there is nothing brought on record that the same are relatable to any other unit. Consolidated amount claimed by the assessee company under this head is rightly allowed by Ld. CIT(A).

6.6 We basis above direct Ld. AO to recompute / recalculate for A.Y. 2010-11 Director's meeting fee of Rs. 1,55,000/- and Auditor's remuneration of Rs. 4,50,000/- by bifurcating the same in equal proportion between both the units for recomputing deduction u/s 80IC. In over all perspective we reject the methodology adopted by Revenue in Ld. AO's order and upheld the direction and order of Ld. CIT(A) in para 5.6 of the impugned order.

Order

7. In the foregoing we upheld the order of Ld. CIT(A) and dismiss the appeal of the Revenue with direction as per aforesaid.

8. This appeal of the Revenue is partly allowed for statistical purposes.

II. ITA No. 177/Chd/2024 A.Y. 2013-14**Brief factual Matrix**

9. The assessment for the A.Y. 2013-14 in this case was completed u/s 143 (3) of the Income Tax Act, 1961 on 08/03/2016 at income of Rs. 25,27,80,365/-. The assessment was completed giving deduction u/s 80IC of the Income Tax Act, 1961 to the extent of Rs. 96,81,41,078/- against the claim of the assessee of Rs. 1,04,45,13,879/- in the return of income.

9.1 The A.O. during the assessment proceedings noticed that the R&D expenses were claimed for Ludhiana Unit (which was not an eligible unit for deduction u/s 80IC) but no R&D expenses were claimed for Haridwar Unit (eligible unit for deduction u/s 80IC). The AO concluded that R&D expenses were to be apportioned among the two unit in proportion to the turnover and bifurcated the R&D expenses in the ratio of 24:76 among Ludhiana and Haridwar Unit. Consequently the claim of deduction u/s 80IC of the Income Tax Act, 1961 was reduced.

9.2 It transpired later that the assessee had claimed deduction u/s 80IC of Rs. 1,04,45, 13,879/- wrongly. While calculating the eligible profit, deduction was claimed on Misc. Income of Rs. 65,59,819/- which was not to be included for calculating deduction u/s 80IC.

9.3 Thereafter, the case was selected under scrutiny on the following reason.

9.4 Failure on the part of the assessee to correctly compute deduction u/s 80IC.

10. That several opportunities were given to the assessee to reply but not a single reply to several notice(s) were ever received. Consequently it was recorded by the Ld. AO that assessee does not have any to say in support in respect of **excess deduction** claimed u/s 80IC resulting escape assessment of Rs. **65,59,819/-**. Hence in the absence of documentary proof/evidence relating to excess claim of deduction an amount of **Rs. 65,59,819/-** was added back in the income of the assessee under the head of Income from business or profession.

11. Assessee income was accordingly computed as under:

Total income as per order u/s 143(3)	Rs. 25,27,80,365/-
Addition:	<u>Rs. 65,59,819/-</u>
Total assessed income	Rs. 25,93,40,184/-

12. That the aforesaid assessment order of Ld. AO to bear No. ITBA/AST/S/147/2021-22/ 1041622251(1) dt. 26/03/2022 which was passed under section 147 r.w.s 144/144B of the Act.

13. That the assessee company being aggrieved by the aforesaid assessment order prefers first appeal before Ld. CIT(A) who by the order bearing **No. ITBA/NFAC/S/250/2023-24/1059109232(1) dt. 27/12/2023** has allowed the appeal and has in para 6.6 and 7 has held as under:

6.6. *In view of the same and respectfully following the judgment of the Hon'ble ITAT's in the appellant own case the A.O. is directed to recompute the deduction u/s 80IC of Income Tax Act as directed in the Hon'ble ITAT's decision in ITA No. 1264/CHD/2018 dated 20/08/2020. **The Grounds of appeal filed by the appellant are allowed.***

7. The appeal is allowed.

The above order is hereinafter referred to as "**impugned order**"

14. The Revenue being aggrieved by the impugned order has filed an appeal before this Tribunal and interalia has raised following grounds of appeal in Form No. 36:

- 1. That the Ld. CIT (A) NFAC New Delhi has erred in deciding that the disallowances of deduction claimed U/s 80IC done by the Assessing officer is against the law and facts of the case.*
- 2. That based on the facts and circumstances of the case the Ld. CIT (A) is not justified in deleting disallowance of **misc.other expenses and consequent reduction of 801C deduction.***
- 3. That the Appellant craves, leave for permission to add, amend, or alter any ground of appeal at the time of hearing.*

Record of Hearing

15. The hearing in the matter took place before this Tribunal on 14/08/2024 and 27/08/2024 when both the Ld. AR for the assessee and Ld. DR for Revenue appeared before us. **The Ld. DR** supported the order of Ld. AO and interalia

contended that Ld. CIT(A) has wrongly allowed the appeal of the assessee by passing the impugned order and prayed for setting aside the same on ground that disallowance of deduction claimed u/s 80IC done by Assessing Officer is not against law and facts of the case further that based on the facts and circumstances of the case the Ld. CIT(A) is not justified in deleting disallowance of Miscellaneous / other expenses and consequent reduction of 80IC deductions.

16. Per contra Ld. AR of the assessee has contended before us that Ld. AO for purpose of calculation of deduction under section 80IC ought not to have reduced **“cash discount earned on the purchases” made for the purpose of manufacturing which was recorded under the head “miscellaneous income” at Rs. 65,59,819/- for purpose of calculation of deduction u/s 80IC.** It was contended before us by Ld. DR of Revenue that ground no. 4 before the Ld. CIT(A) when the assessee was in the first appeal was “that the Ld. AO has wrongly computed the deduction u/s 80IC at Rs. 961581259/- by not allowing the deduction u/s 80IC on the miscellaneous income credited to the profit & loss account. That the Ld. AO has wrongly ignored the decision of Hon'ble ITAT relevant for A.Y. 2012-13. Therefore now the impugned order of CIT(A) should be set aside as the said ground No. 4 of assessee was wrong and bad in law save and except this nothing else was contended by the Ld. DR on merits.

17.

Observations, Findings & Conclusions

17.1 We now examine the legality, validity and the propriety of the impugned order.

17.2 We observe that it is a recorded fact in the impugned order that during the reassessment proceedings, the assessee had claimed the deduction u/s 80IC on the profit of Haridwar unit. The NFAC has reduced the deduction on account of "cash discount earned" on the purchases made for the purpose of manufacturing by separately recording as income as "cash discount" which was clubbed under the head "Miscellaneous Income" instead of reducing the same from cost of material, to calculate the actual cost of material for closing stock. The assessee company had obtained the cash discount on the purchases of raw material required for manufacturing of items by making early payment. The cash discount earned is directly related to the cost of material used for manufacturing and had a direct link for the profit derived by an undertaking as required u/s 80IC. In this particular case, if the "cash discount" is reduced from the cost of purchases, even than the gross total income of the assessee would remain the same. The purchases against which the cash discount has been earned having direct link with the purchases was procured to manufacture or produce the article on which the deduction u/s 80IC had been allowed. It is an income derived by an undertaking from the business carried on by it. A cash discount is a reduction in the amount of an invoice that the seller allows the buyer. The guidance note on terms used in financial statement published by institute of Chartered Accountants defines the "cash discount" as under:

"A reduction granted by supplier from the invoice price in consideration of immediate payment or payment within the stipulated period."

17.3 This income has been shown as part of "profit and gain of business" and that the same has been accepted as such in past years too. There is no dispute that it is not a "business income" nor the same has been assessed as "income from other sources". The "Income from other sources" can only be considered if the income is not assessable under the other "heads of income".

17.4 Moreover this point has already been considered by the Ld. AO while framing the assessment u/s 143(3) (supra) and has accepted the assessee's contention by not reducing from the profit for the purpose of deduction u/s 80IC.

17.5 In view of what is stated in Para 8.2, 8.3 and 8.4 with regard to the issue in hand and in view of judgment of jurisdictional High Court reported in case of CIT Vs. Metalman Auto (P) Ltd. reported in (2011) 11 taxmann.com 51/19 Taxman 149(Mag)(P&H)-wherein it has been held that deduction is allowable in respect of miscellaneous receipts, rebate / discounts and balance written off etc which are incidental to profits and gains derived from eligible business and couple of other orders / decisions / judgement of other High Courts too enumerated in the impugned order we do not find any justifiable and plausible argument is canvassed by Revenue in appeal on meritorious grounds to dislodge the impugned order. Further assessee has placed reliance on decision of this Tribunal that too in there own case in ITA No. 1264/Chd/2018 dt. 20/08/2020 for

A.Y. 2012-13 wherein following is held and that the same is reproduced in the impugned order:

" the weighted deduction of 200% in relation to the expenses incurred on Research & Development as per the provisions of section 35 (2AB) of the Act is given with the intention on the Government to boost up the Research & Development facility in India. Therefore, the allocation of expenses incurred on R &D activity for the purpose of reducing the weighed deduction, in our view, is not justified. The reduction of 80IC deduction in this case, on similar grounds, in our view is not justified. However, so far as the allocation expenses under the head director meeting fee, audit fee are concerned, these expenses, in our view, are relating to all the units and the expense under these heads should be allocated for all the units in equal proportion.

So far as the Misc. expenses are concerned, there is nothing brought on record that the same are relatable to any other unit. In view of this, we set aside the order of the lower authorities in allocating the R & D expenses and Misc. expenses of the R&D Unit at Ludhiana to other unit. However, the expenses under the heads, directors meeting and audit fee are to be allocated in a full proportion to all units. This issue is accordingly decided partly in favour of the assessee."

17.6 Basis above we upheld the finding of Ld. CIT(A) in the impugned order which are as follows:

"6.6. In view of the same and respectfully following the judgment of the Hon'ble ITAT's in the appellant own case the A.O. is directed to recompute the deduction u/s 80IC of Income Tax Act as directed in the Hon'ble ITAT's decision in ITA No. 1264/CHD/2018 dated 20/08/2020. The Grounds of appeal filed by the appellant are allowed.

7. The appeal is allowed.

17.7 In the result Revenue appeal is dismissed as same is devoid of any merits.

III. ITA No. 817/Chd/2023 A.Y. 2014-15

Brief Relevant Factual Matrix limited to controversy

18. The assessee filed its return of income for A.Y 2014-15 on 28/11/2014 showing income of Rs. 84,30,10,720/- which was initially processed u/s 143(1). Subsequently the case was selected for scrutiny through CASS.

19. A notice u/s 143(2) dt. 28/08/2015 was issued and served upon the assessee on 09/09/2015.

20. Notice u/s 142(1) dt. 04/01/2016 alongwith detailed questionnaire was issued and served upon the assessee on 15/01/2016. Matter was attended.

21. The assessee is engaged in the manufacturing of auto parts and washing machine parts.

22. **Disallowance U/s 14A**

22.1 That the assessee in his balance sheet has shown investment of Rs. 14,86,93,289/- and Rs. 43,28,44,686/- as on 31/03/2013 and 31/03/2014 respectively the income from which does not or shall not form part of total income.

22.2 That the assessee has during the year under consideration has incurred and claimed financial cost of Rs. 4,97,26,846/-.

22.3 That the expenditure incurred in relation to the investment was required to be added back to the income of the assessee as per section 14A of the I.T. Act, 1961.

22.4 That the Assessee was provided opportunity vide order sheet entry dated 12/12/2016 to explain why disallowance u/s 14A in the respect of the expenditure in relation to the investment may not be made.

22.5 That the assessee in relation in his reply dated 22/12/2016 submitted working of disallowance already done by him in the computation of income which is reproduced below:

"Regarding disallowance u/s 14A read with Rule 8D, it is submitted that the assessee company has already disallowed a sum of Rs. 1,85,53,26/- in the computation of income which is as per Section 14A read with Rule 8D. The calculation of same is given in Annexure 15 to TAR."

22.6 That the reply of the Assessee has been considered and that the same is untenable. The assessee's working of disallowance u/s 14A r.w. Rule 8D is not accepted as it is not clear from the working that which interest had been taken for disallowance. Since the assessee has not given any direct nexus between the funds used for investment or any other specific expenditure whole of the interest expenditure qualified for working of disallowance. The assessee has also not provided any documents to prove the nexus of flow of funds. The funds are of mixed nature and hence whole of the interest is taken for working of disallowance u/s 14A r.w. Rule 8D. The provisions of Section 14A take into account old investments as well as new for calculation of disallowance as per Rule 8D. Thus, the fact that old investments are outstanding does not matter for calculation of disallowance u/s 14A. Moreover the assessee has not contested the addition made on this issue in previous assessment years.

22.7 Further in the assessment order dt. 29/12/2016 the Ld. AO n para 4.8 to 4.13 has observed as under:

4.8 *Whether to invest or not to invest and whether to retain the investments or to liquidate the same are very strategic decisions which the management is*

called upon to take. These are mind-boggling decisions and top management is involved in taking these decisions. This decision-making process is very complicated and requires very careful analysis. For the purpose of making investment at thereafter control of investment as well as purchase, sale of shares, assessee has used its office and its staff. This activity is intermingled with its other activities. Moreover, the assessee has to keep track of various dividend incomes declared the invested companies and also to keep track of the dividend income having been regularly received by the assessee. This activity itself calls for considerably management attention.

In the absence of separate accounts by way of which the management and administrative expenditure could be segregated, there is no dispute and there cannot be any doubt that some expenditure is incurred for making or earning, the income from dividend. In case of mixed accounting the expenditure is not identifiable as such, which directly related to earning of dividend but that cannot be a ground to say that no expenditure is incurred for earning dividend income on that no expenditure could be related to that income.

4.9 The appellant has not shown any direct nexus of borrowed funds with any particular income or expenditure. This is therefore apparent that there was a mixed use of borrowed funds and it is not possible to link the borrowed funds with any particular income or receipt. In these circumstances, the only logical inference is that there was a mixed use of interest bearing funds and that some of the funds were used for investments in business while a part of the funds was used towards investment.

4.10 As such Rule 8D(ii) is attracted in the appellant's case. As discussed above the appellant has not been able to prove that the investments in relation to earning exempt income were made only out of interest free funds and no amount of borrowed funds were used towards this purpose. The mere fact that there was surplus interest free funds does not mean that interest bearing funds were not used. This claim of the appellant is therefore not correct. Therefore, having regard to the accounts of the appellant the claim of the appellant with regard to the expenditure incurred in relation to income which does not form part of total income is not correct. In these circumstances, as provided in section **14A(2)** the expenditure incurred in relation to income which does not form part of **total income has** to be determined in accordance with Rule 8D read with section 14A.

4.11 Also, in light of Section 14A(3), which says that disallowance needs to be calculated as per Rule 8D even if the assessee claims that no expenditure has been incurred, the contention of the assessee is not acceptable. As has already been discussed in detail earlier, rule 8D bifurcates expenses into direct and indirect expenses as in rule 8D(ii). If expenses could be directly attributed to the exempt income then there would have been no need to statutorily bifurcate the expenses into direct and indirect.

4.12 Again, the main point to be highlighted in this case is that, to take care **of a** situation where there is a mixed use of borrowed funds, the legislature has

provided for Rule 8D(ii). If the provisions of section 14A are interpreted in a way to mean that only expenses directly relating to earning exempt income are to be disallowed u/s 14A and expenses of the nature of interest on borrowings which are not directly attributable to any particular income or receipt are not covered. It would be contrary to the purpose and intention of section 14A and would make Rule 8D(ii) redundant. Such an interpretation is therefore not correct.

4.13 Accordingly, disallowance u/r 8D is computed as under:-

(i) The amount of expenditure directly relating to income which does not form part of total income;

(ii) Interest during the previous year which is not directly attributable to any particular income or receipt:

A = amount of expenditure by way of interest other than the amount of interest included in cl. (i) incurred during the previous year = 42343582

B (the average of value of investment, income from which does not or shall not form part of the total income as appearing in the balance sheet of the assessee. on the first day and the last day of the previous year) = 290768987

Investment, Income from which does not or shall not form part of the Total Income		
As Appearing in The Balance Sheet of The Assessee		Average Value
On The First Day of The Previous Year	On the Last Day of The Previous Year	
148693289	432844686	290768987

C(the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year) = 8460561292

Total Assets as appearing in the Balance Sheet of the assessee		
As Appearing in The Balance Sheet of The Assessee		Average Value
On The First Day of The Previous Year	On the Last Day of The Previous Year	
7255979082	9665143502	8460561292

interest during the previous year which is not directly attributable to any particular income or receipt

$A \times B / C = 1455246$

(iii) an amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the

total income as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year.

$$= 0.5\% \times B = 1453845$$

Thus a total of Rs. 29,09,091/- is to be disallowed u/s 14A of the I.T. Act wherein Rs. 18,55,326/- has already been made by the assessee.

Less: Already disallowed = 18,55,326/-

Total disallowance of Rs. 10,43,765/- is therefore being made u/s 14A of the I.T. Act, 1961.

22.8 That since the assessee was aggrieved by the aforesaid assessment order of Ld. AO dt. 29/12/2016 they preferred an appeal before Ld. CIT(A) on ground no. 2 which was that the Ld. DCIT has wrongly disallowed a sum of Rs. 2909091/- under section 14A and added back "Rs. 10,43,765/-" u/s 14A to the returned income after subtracting the suo motu disallowance of Rs. 18,55,326/-. The 1st appeal on ground No. 2(a) was that the Ld. DCIT failed to record proper satisfaction and established the nexus of interest relating to investment whose income is not chargeable to tax.

22.9 The calculation of disallowance under section 14A is as under:

<i>Particulars</i>	<i>As per Assessee</i>	<i>As per AO</i>
<i>Interest</i>	<i>1855326</i>	<i>1455246</i>
<i>Indirect expenses</i>	<i>0</i>	<i>1453845</i>
<i>Total</i>	<i>1855326</i>	<i>2909091</i>
<i>Net addition</i>		<i>1043765</i>

22.10 That the Ld. CIT(A) has recorded as under in respect of above contention of assessee which is reproduced below:

3 *No dividend has been received by the assessee company during the year nor there is any exempt income.*

4. While filing its return, the assessee has suo motu made a disallowance of interest at Rs. 1855326/- based on the case laws available at that time. However, during discussion, a request was made for not disallowing any interest as there was no nexus of funds borrowed and investment made.

However, as emphasized above, the assessee does not have any interest that is attributable to investment yielding exempt income. The Hon'ble Supreme Court in the case of CIT v/s Reliance Industries Ltd, 410 ITR 466 (SC), has held that -

"where interest free funds available with the assessee are sufficient to meet investments, then the presumption can be made that the investment was out of interest free funds and no disallowance of interest can be made."

5. The shareholder fund as on 31/3/2013 is at Rs. 456.47 crores and Rs. 553.57 crores as on 31/3/2014, whereas the total investments as on 31/3/2014 is at Rs. 43.28 crores only, which is mainly in subsidiary company from which no Dividend is received.

6. Copy of Balance Sheet is enclosed herewith.

7. None of the investments have been made out of borrowings nor any nexus had been established by the Ld. A.O. The investment outstanding is much less than the interest free capital fund available with the company. Even the profit as per books before depreciation and tax is at Rs. 174.93 crores which is sufficient enough to absorb the total investments.

8. The borrowing outstanding of Ludhiana Unit from banks is only in respect of business of the company.

9. The assessee company having two main units at Ludhiana & Haridwar. All investments are appearing at Ludhiana Unit. The payment of interest at Haridwar unit is directly linked with the business carried on by the assessee company.

10. The Hon'ble ITAT in an appeal filed by the department in the applicant's case in Assessment Year 2009-10 on this issue in ITA No. 1593/chd/2017 dated 16/4/2019 has held as under:-

"Regarding interest under Rule 8D(2)(ii).

We have gone through the facts of the case. We find that the assessee had sufficient own funds available for investment in the equity and mutual funds. The details are given in the table as under:-

The investments and the financial position of the assessee is as under-

Investments	31/03/2008	31/03/2009
Investment in Equity Mutual Funds	27,38,84,429	10,07,33,096
Own Funds	31/3/2008	31/3/2009
Capital	15,15,63,640	15,15,63,640
Reserves	111,62,00,432	121,19,07,985
Total	126,77,64,072	136,34,71,625
Income of the year		
Income as per P&L Account	19,17,03,490	10,95,35,851

Claim of depreciation Total	7,02,08,335	16,14,73,763
Total	26,19,11,875	27,10,09,614

Since, it could be clearly decipherable from the table that the assessee has got sufficient own funds, we hereby hold that no disallowance under Rule 8D(2)(ii) is required and decline to interfere in the order of the Ld. CIT(A).

In respect of the disallowance of interest u/s 14A, for the purpose of disallowance of expenses under Rule 8D(2) (iii), the Hon'ble IT AT at Para 6 has held as under:-

"We have heard the arguments of both the sides and fully support the decision of the Ld. CIT(A) on this issue. However, keeping in view the judgment in the case of Vireet Investments Pvt. Ltd in ITA no. 502/DEL/2012 dated 16/6/2017, we hereby direct the AO to compute the disallowance taking into consideration the dividend yielding investments only."

We have heard the arguments of both the sides and fully support the decision of the Ld. CIT(A) on this issue. However, keeping in view the judgment the case of Vireet Investments P Ltd in ITA No. 502/DEU2012 dated 16/6/2017, we hereby direct the AO to compute the disallowance taking into consideration the dividend yielding investments only."

11. In AY 2010-11, the Hon'ble ITAT followed its order of AY 2009-10.

12. In AY 2012-13, the AO had made the disallowance only under Rule 8D(2)(iii). The Ld CIT(A) in her appeal no 37/IT/CIT(A)-II/Ldh/15-16 dated 9/8/2018 partially allowed the relief to assessee company at para 6.2 of his order. The department had filed an appeal before Hon'ble ITAT in ITA no. 1264/chd/2018. The Hon'ble IT AT had decided the issue vide order 20/8/2020 and held at para 4 as under:-

13. "At the outset, the Ld. Counsel for the assessee has submitted that while computing the disallowance on account of administration expenses incurred for earning of tax exempt income, the Ld. Assessing Officer had taken into account all the investments made by the assessee, whereas, as per the settled position of law for calculating the disallowance of administrative expenses u/s 14A read with Rule 8E(2)(iii), only the investments yielding dividend income had to be considered. The Ld. Counsel in this respect has relied upon the decisions of the Hon'ble Delhi high court in the case of Joint Investments Private Limited vs CIT ITA No. 117/2015 dated 25.02.2015 and further in the case of 'ACB India Limited vs ACIT ITA No. 615/2014 dated 24.03.2015, wherein, it is held that for computing the average value u/s 14A of the Act read with rule 8D(2)(iii), only the investment yielding non-taxable income have to be considered and not the entire investment. In view of this, the Assessing Officer is directed accordingly to consider only the investments yielding tax exempt income for computation of disallowance under Rule 8D(2)(iii) of the I.T. rules."

Thus from the above, it is clear that the disallowance of interest was made in AY 09-10, 10-11 & 12-13 made by the Ld. A.O had been deleted and the orders of Hon'ble ITAT have been accepted by the department.

13. Reference may be made to the following where it has been held that in the absence of any exempt income no disallowance u/s 14A can be made:-

(i) PCIT v/s Oil Industry Development Board, 262 Taxman 102 (SC), where it is held that -

"in the absence of any exempt income, no disallowance can be made."

The Hon'ble Supreme Court has confirmed the decision of Hon'ble Delhi Court and the same case reported in 103 Taxman.com 325 in ITA no. 197/2018 dated 16/2/2018.

- (ii) PCIT v/s Caraf Builders & Constructions P Ltd, [2019] 414 ITR 122 (Del)
- (iii) PCIT v/s Mcdonald India P Ltd, [2019] 101 Taxman.com 86 (Del)
- (iv) PCIT v/s Vardhman Chemtech P Ltd, 261 Taxman 233 (P&H)
- (v) PCIT v/s GVK Project & Technical Services Ltd (2019), 106 Taxman.com 181 (SC)
- (vi) Biocon Ltd v DCIT (Karn), 431 ITR 326

14. Even **no satisfaction has been recorded** by the Ld. A.O. in establishing the nexus borrowing and investment, as held by Hon'ble Apex Court in the of Maxopp Investment Ltd.

Based on the above facts decision of Hon'ble ITAT in assessee's own case, decisions of Hon'ble Supreme Court and following the consistency, the disallowance of interest u/s 14A may be deleted, as the facts are same as of early years.

Indirect expenses under Rule 8D(2) (iii)

15. The assessee has not disallowed any expenses in the computation of taxable income.

16. The Ld. A.O. had not recorded any satisfaction but disallowed a sum of Rs. 1453845/-.

17. There is no investment on which dividend or any exempt income has been earned.

18. Following the orders of Hon'ble ITAT Chandigarh, as mentioned above for AY 2009-10, 2010-11 & 2012-13, in assessee's own case and by following the consistency, the disallowance made may kindly be deleted.

In view of the above, it is prayed that no disallowance may be called for as no satisfaction has been recorded.

22.11 The Ld. CIT(A) in the impugned order has held as under:

4.2.1 Vide ground Nos. 2 of appeal, the appellant has challenged the action of the Assessing Officer in making addition of Rs. 10,43,765/- in this case on account of disallowance u/s 14A. The reason for making the impugned addition "was that the assessee company has made investment and claimed financial cost of Rs. 4,97,26,846/-. The Assessing Officer is of view that the disallowance u/s 14A is to be made in respect of the expenditure in relation to the investment.

4.2.2 The appellant in its submission has placed reliance on the decision of the Hon'ble ITAT in its own case in ITA No.1593/Chd/2017 dated 16/04/2019 for AY 2009-10. The Hon'ble ITAT in this judgment has observed as under>

"The assessee has got sufficient own funds available investment in the equity and mutual funds. ----- we hereby hold that no disallowance under Rule 8D(2)(ii) is required."

4.2.3 The appellant has also cited the judgment of the Hon'ble ITAT Chandigarh in its own cases in ITA No. 590/chd/2018 A.Y. 10-11 and ITA No. 1264/chd/2018 a.Y. 12-13 dated 20/8/2020 wherein the Hon'ble ITAT has accepted the contention of the appellant and directed to consider only the investments yielding exempt income for calculating the disallowance u/s 14 A.

4.2.4 The appellant has also relied upon the judgment of the Hon'ble Supreme Court in the case of Oil Industry Development Board (2019), held as under:-

4.2.5 In view of the same and respectfully following the judgments of the Hon'ble ITAT's in the appellant own cases for A.Y. 09-10, 10-11 and 12-13 and also the Hon'ble Supreme Court in the case of Oil Industry Development Board (2019), the ground nos. 2 filed by the appellant are allowed and the AO is directed to delete the addition u/s 14A of the appellant, if the appellant does not have any exempt income during the year.

22.12 That the Revenue being aggrieved by the findings as recorded by Ld. CIT(A) has preferred an appeal before us and has raised ground No. 2 as under in above factual context:

" 2. That based on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding CBDT Circular No. 5/2014 dt. 11/02/2014 to be illegal whereas Circular No. 5 of 2014 propounds that section 14A is triggered for disallowance of expenditure incurred which is relatable to tax exempt income even though no tax exempt income under the Act has been earned during a particular year."

Record of Hearing on ground 2 before Tribunal

22.13 The Ld. DR has repeated and reiterated that Section 14A is triggered for disallowance of expenditure which is relatable to tax exempted income even though no tax exempted income under the act has been earned during a particular year. Reliance was placed on section 14A which deals with the expenditure incurred in relation to income not includible in total income. The Ld.

AR in respect of Ground No. 2(supra) have submitted in writing by way written submission as under:

1. The calculation of disallowance made by the Ld. AO is as under:

Particulars	Amount
Under Rule 8D(2)(ii)	1455246
Under Rule 8D(2)(iii)	1453845
Total	2909091

2. The investments and the financial position of the assessee is as under:-

Investments	31/3/2014	31/3/2013
Investment in securities/mutual funds	432844686	148693289
Own funds		
Share Capital	151563640	151563640
Reserve & Surplus	5384210759	4413162088
Total	5535774399	4564725728

3. As no dividend income/exempt income has been earned by the assessee during the year, therefore there is no investment which have yielded exempt income, no disallowance is called for.

4. The CIT(A) has relied upon the submissions placed before him and deleted the above disallowance in view of the above facts and the decision of the Hon'ble ITAT for AY 2009-10, 2010-11 & 2012-13.

5. Since own funds of the assessee are sufficient for making the investments, no disallowance under Rule 8D(2)(ii) is called for. Similarly there is no investment yielding any exempt income during the year, therefore none of the investments to be considered for calculating average investments under Rule 8D(2)(iii) and therefore no disallowance is called for.

23. Findings & Conclusions in respect of Ground No. 2 (supra)

23.1 We basis above premises set out hereinabove and after examining and hearing the rival contentions of parties are of the view that there is no infirmity in the findings and decision of Ld. CIT(A) in so far as above ground No. 2 is concerned. The Ld. CIT(A) has rightly relied upon the decision of this Tribunal in

Assessee's own case in ITA No. 1593/Chd/2017 dt. 16/04/2019 for A.Y. 2009-10 wherein the Hon'ble ITAT on their judgment has correctly observed as under:-

" The assessee has got sufficient own funds available investment in the equity and mutual fundswe hereby hold that no disallowance under Rule 8D(2)(ii) is required."

We also note from ITAT Chandigarh Benches decision in the assessee's own case in ITA No. 590/Chd/2018 A.Y. 2010-11, and ITA No. 1264/Chd/2018 A.Y 2012-13 dt. 20/08/2020 wherein the Hon'ble ITAT Chandigarh Benches has accepted the contention of the assessee and directed to consider only the investments yielding exempt income for the purpose of calculating the disallowance u/s 14A.

23.2 We also hold that the Ld. CIT(A) in his impugned order has rightly held that in view of the judgment of Hon'ble Supreme Court of India in case of Oil Industry development board case has held that " In the absence of any exempt income, no disallowance can be made."

23.3 We therefore find no infirmity in the findings in respect of ground no. 2 and reject the appeal of the Revenue on ground no. 2.

24. **Ground No. 3 : Disallowance u/s 36(i)(iii)**

24.1 The Revenue in appeal before us at Ground no. 3 which reads "that based on the facts and circumstances of the case the Ld. CIT(A) is not justified in deleting disallowance done u/s 36(i)(iii) of the Act. The assessee before CIT(A) in 1st appeal had raised in ground no. 3 that the Ld. DCIT has wrongly calculated

the interest at Rs. 9,53,68,105/-(net) by wrongly applying the interest @ 12% on the additions made to fixed assets and CWIP which were for the purpose of business. 3(b)- That the LD. DCIT has failed to establish any nexus of amount borrowed and invested in any fixed assets and CWIP. 3(c)- that the Ld. DCIT has wrongly presumed that the total additions made under these heads is out of borrowed funds. 3(d) that the Ld. DCIT has wrongly not accepted the company's argument that the interest free surplus funds available with the company is much more than the additions made in these assets. The Assessee ineralia contended before Ld. CIT(A) which is recorded in the impugned order as under:

1. The Ld. A.O. calculated the interest @12% on estimated basis on CWIP, Capital Advances and additions to Plant & Machinery at Rs. 96853125/- whereas the appellant company had already capitalized the interest at Rs. 1485020/- by adopting the interest @0.18% for which calculation was filed with the AO based on the total interest paid and the net assets owned by the company, as per view at that time.

2. The assessee company had not borrowed any funds for acquiring the assets which are appearing under the head 'Capital Work-in-progress' but used its own interest free funds to create such assets.

3. The Reserve & Surplus as on 31/3/2014 is at Rs. 553.57 crores which is much higher than the principle amount on which interest has been calculated by the Assessing Officer u/s 36(1)(iii) proviso.

4. The Hon'ble ITAT in assessee's own case in Assessment Year 2009-10 in ITA No. 1593/chd/2017 dated 16/7/2019 & IT A No. 590/chd/2018 for AY 2010-11 deleted the addition on the facts that the assessee company has got sufficient own funds and has not borrowed any amount on which interest been paid for acquiring Capital Assets, as mentioned in Para 9. Copy of a consolidated IT AT Order for both the years as mentioned is enclosed herewith.

5. In AY 12-13, the disallowance made u/s 36(1) (Hi) by the Ld. AO at Rs. 5780990/-, which has been deleted as per para 7.2 of CIT (A) order. The department has accepted this issue and no appeal on this issue was filed before the Hon'ble IT AT. The Grounds of Appeals filed by the department has been mentioned in IT A T's Order which is attached herewith.

6. As mentioned above, there is no borrowing for this purpose nor any nexus has been established. The profit of the company as per books before depreciation and taxes is at Rs. 174.93 crores. Thus even the internal accruals is much more than the amount considered by the Ld. AO for calculating this disallowance.

7. The free funds available with the assessee company as on 31/3/2013 at Rs. 456.47 crores & Rs. 553.57 crores as on 31/3/2014.

8. The Ld. A.O. has not established any nexus for capitalization of interest with the amount borrowed & total payment made for Plant & Machinery & CWIP. He has presumed that the total payment made for acquisition of these assets including advances are out of borrowings only. The total addition was for the business purposes. Reference may be made to the decision of Hon'ble Supreme Court in the case of CIT v/s Reliance Industries Ltd, 410ITR 466 (SC), has held that -

"where interest free funds available with the assessee are sufficient to meet investments, then the presumption can be made that the investment was out of interest free funds and no disallowance of interest can be made."

9. The assessee company had already capitalized the interest at Rs. 1485020/- suomotto in the books of account, which has been increased by the Ld. A.O. while calculating the capitalization of interest.

10. If your honour held that the interest is to be capitalized as per proviso to section 36(1)(iii), then the addition should be considered separately while computing the income of Haridwar Unit for allowing the deduction u/s 80IC.

24.2 The LD. CIT(A) basis above in para 4.3 & 4.3.1 has held as under in the impugned order:

"4.3 In its ground of appeal nos. 3 and 4 the appeal has assailed the action of AO in making addition u/s 36(l)(iii) of Rs. 9,53,68,105/-. The Assessing Officer was of the view that the interest expense on assets which have not been put to use for business purposes cannot be allowed as revenue expenses in view of provision of section 36(1)(iii) of the Act and needs to be capitalized. On the Other hand, the assessee company has submitted that the assessee company has not borrowed any funds for acquiring the assets which have been shown under the head 'capital work in progress' but used its own interest free funds to create such assets. The assessee company has also relied on the decision of the Hon'ble ITAT in its own case in ITA No.1593/Chd/2017 dated 16/04/2019 for AY 2009-10. The Hon'ble ITAT in this judgment has observed as under:-

"On careful consideration of the rival contentions, I find a lot of force in the contentions of the learned AR of the assessee company as far as the availability of interest free funds with the assessee company for acquiring/creating-----
----- as the assessee company has shown assets under the head 'Capital Work in Progress' at Rs. 147,74,84,081/- which are yet to be used for business purposes cannot be said to be justified and as such the addition of RS. 2,12,98,089/- made by the Assessing Officer on account of capitalization of interest expenses is, therefore, direct to be deleted."

4.3.1 Respectfully following the judgments of the Hon'ble ITAT's in the appellant own cases for A.Y. 09-10, 10-11 and 12-13 respectively, the addition of Rs. 9,53,68,105/- made by the Assessing Officer in this case by invoking provision of section 36(1)(iii) of the Act is directed to be deleted on the basis of above judgments. In the result, the ground Nos. 3 and 4 of appeal taken by the assessee company is allowed. "

24.3 The Ld. AR in his written submission has contended as under:

1. The Hon'ble ITAT in the assessee's own case for AY 2009-10 has held that the assessee has sufficient own funds and has not borrowed any money on which interest has been paid and accordingly confirmed the order of CIT(A). **Page 8**

Similarly, the Hon'ble ITAT has confirmed deletion of disallowance u/s 36(l)(iii) in AY 2010-11. **Page 8**

2. The assessee company had not borrowed any funds for acquiring the assets appearing under the head 'CWIP' and used its own interest free funds. The interest free funds available as on **31/3/2014 is at Rs. 553.57 crores** which is much higher than the principal amount on which interest has been calculated by the AO u/s 36(l)(iii).

3. The Ld. AO has not established any nexus for capitalization of interest with amount borrowed and total payment made for plant and machinery and CWIP. Reliance may be placed on the decision of the Hon'ble Supreme Court in the case of CIT v Reliance Industries Ltd 410 ITR 466 (SC) where it has been held that -

"where interest free funds available with the assessee are sufficient to meet investments, then the presumption can be made that the investment was out of interest free funds and no disallowance of interest can be made."

4. The assessee company has suo motu capitalized interest at Rs. 1485020/- in the books of accounts by following Accounting Standards.

5. The Ld. CIT(A) at para 4.3.1 following the judgment of Hon'ble ITAT in the appellants own case of AY 09-10, 10-11 & 12-13 had deleted the addition made by the AO.

Findings & Conclusions in respect of Ground No. 3 (supra)

24.4 We basis above premises laid down and after examining and hearing the rival contentions are of the considered view that there is no legal infirmity or

otherwise in the finding of Ld. CIT(A) impugned order and that his findings and observations are plausible in accordance with law. Revenue has failed to establish and canvass any grounds on merits to dislodge the findings. The Ld. CIT(A) has dislodged addition of Rs. 9,53,68,105/- made by Ld. AO on meritorious grounds that the assessee company has not borrowed any funds for acquiring the assets but used its own interest free funds to create such assets. We thus restrain ourself to interfere with findings of Ld. CIT(A) on this ground no. 3 as Revenue has failed to justify on merits and have not placed any arguments. Revenue has failed in assailing the impugned order on any tangible materials. Precedent decisions of this Tribunal (supra) are correctly applied and Revenue has failed to distinguish the same.

24.5 We therefore find no infirmity in the finding in respect of ground no. 3 and reject the appeal of the Revenue on this ground.

25. **Ground no. 4 relating to deduction u/s 80IC(supra) R&D expenses**

25.1 That revenue in appeal before us at ground no. 4 which read that the based on the given facts and circumstances the Ld. CIT(A) is not justified in deleting the bifurcation of R&D expenses and Misc./ other expenses among two units and consequent reduction of 80IC deduction is eligible unit. That the assessee before CIT(A) in 1st appeal in ground no. 5 had raised that the Ld. DCIT has wrongly presumed and considered the R&D expenses incurred for Ludhiana unit only for apportionment between Ludhiana, and Haridwar unit at Rs.

34496291/- on turnover basis instead of actual expenses relating to Ludhiana unit only, (b) that the Ld. DCIT has wrongly apportioned R&D expenses to Haridwar unit at Rs. 24,83,37,330/- instead of Rs. NIL as the R&D Work was done for plant at Ludhiana. (C) that the DCIT has wrongly presumed that the expenses on "R&D" work was also conducted for Haridwar unit without any nexus (d) that the Ld. DCIT has wrongly calculated the deduction u/s 80IC at Rs. 358675315/-. The assessee interalia had contended before the Ld. CIT(A) which is recorded in the impugned order as under:

1. The assessee company had established unit at Haridwar in earlier years to which deduction u/s 80IC at Rs. 36,35,75,535/- was claimed on the profits of Haridwar Unit.

The Ld. Assessing Officer has allowed the deduction at Rs. 35,86,75,315/- Thus the deduction had been reduced by Rs. 49,00,220/- (363575535-358675315) while calculating the Total Income.

2. The assessee company has maintained books of accounts on mercantile basis and all the expenses has been incurred by the respective unit for their business purposes.

3. Both these units are independent on account of source of supply of Raw Material, Bank transactions, staff, different items being manufactured, different suppliers / buyers, different PF/ ESI account, different TAN account, different CFO/ independent set up etc.

4. The Ld. A.O. has not pointed out any instance where expenses of one Unit has been recorded as an expenses of another unit particularly to increase the profit of Haridwar Unit for claiming higher deduction u/s 80IC.

5. The Ld. A.O. considered the following expenses debited in the books of Ludhiana Unit as proportionately belonging to Haridwar Unit on turnover basis without any nexus:-

Particulars	Ludhiana Unit	Haridwar Unit	Total
R&D Expenses	34496291	0	34496291
Total	34496291	0	34496291

The above expenses have been apportioned by the Ld. AO on turnover basis as under:-

Particulars	Ludhiana Unit	Haridwar Unit	Total
R&D Expenses	9658961	24837330	34496291

All other expenses have been accepted as such.

R&D Expenses

6. During the assessment proceedings, the assessee has explained the purpose of R&D expenses incurred by the company which has been reproduced in Assessment Order at Para 6.3 as under:-

"Regarding R&D activities it is submitted that as per earlier years, the assessee company at its Ludhiana Unit is carrying on R&D activities where more than 100 different parts are being manufactured. At Haridwar Unit only few parts are being manufactured for the Hero Moto Corp. The plant of Haridwar Unit was set up at the end of Assessment Year 2009-10. The assessee company has maintained its books of accounts on the computer on SAP system in which the R&D Unit is separately identified.

All the expenses incurred for this R & D unit is being directly booked under this head. The detail of expenses booked, head wise, is enclosed. The company had maintained all the vouchers. On of latest techniques used by automobile cos, the co had to had R&D center to meet their requirements and to avoid the competitions amongst the suppliers.

The R&D is a continuous process and is as per the requirement of the buyer for the development of their parts. Many times the company is able to develop the design and parts for the buyers and sometimes developed parts are accepted or rejected. The R&D department keeps on trying in development of the parts in the competitive market of automobile industry. The company has maintained complete record of R&D activities. The activity of R&D had been carried on the products being manufactured at Ludhiana as different products are being manufactured not only for one buyer but also for different buyers. However some of development made by R & D is enclosed.

The objective of R&D unit is to develop the dies and new parts for automobile companies as per their requirement. During the year the co had carried out the R&D in the following areas.

- 1) Designing.
- 2) Tools and dies
- 3) New chain development
- 4) Assembly shop
- 5) Raw Material
- 6) HDPC Area.

During the year the company done the research in Heat Treatment Process for better strength and better wear resistance along with other activities on parts being manufactured at Ludhiana only.

The company also continuously developing the old parts being supplied to the parties to avoid the competition from other competitors who are in line to supply the material to our buyers on account of better technology. The objective of this Unit also includes

- Development & improvement of production processes
- To reduce production time
- To improve quality

- To develop of alternative materials for existing products
- To develop the products to increase strength
- To develop the material to reduce the weight
- To develop the parts with a view to reduce the noise while in-operation

The old Unit of the company is situated at Ludhiana where the R&D Centre is also established. The company is manufacturing different parts for different suppliers whereas in Haridwar Unit only specific parts are being manufactured for Hero MotoCorp Ltd as per their design. Even the plant & machinery established at Haridwar Unit was the latest in technique, since it was established in 2009. There is no requirement of any R&D for the products being manufactured there as the parts are being manufactured as per specification of the company and cannot change any design. Therefore there is no need for any R&D there. There being less suppliers at Haridwar, the company had to supply more quantities by which the turnover is higher. At Ludhiana there are more parts with less quantities i.e. the turnover is less."

7. The assessee company has established R&D in Ludhiana only, as the numerous items are being manufactured since long for the two wheeler companies/ cycle companies / open market and export of parts for the four wheelers. To remain in the competitive market, the assessee company continued its R&D process and keep developing with innovations. On account of this R&D, the business of assessee company is growing from year to year.

8. The Ld. A.O. has not pointed out any expenditure which has been incurred on the development of any part of Haridwar Unit nor established any nexus between the parts manufactured & R&D activities carried out by Haridwar Unit.

9. The assessee company has started its unit at Haridwar mainly for supply of parts to Hero Motocorp Ltd, who has established their New Unit there.

10. The detail of R&D expenses incurred is enclosed herewith.

11. The detail of employees to whom salary and wages has been paid is enclosed. All such employees are duly registered and appearing in the books of Ludhiana Unit & attendance sheet is also marked at Ludhiana Unit. TDS is also deducted on salary payment made by Ludhiana Unit and not Haridwar Unit.

12. The Ld. A.O. has also made the remarks that "but is it believable that the Haridwar Unit started functioning without any technical help or transfer of knowledge from the older unit."

13. It is a fact that for establishing of Haridwar Unit, the company has put all his knowledge and experience in setting up the unit at Haridwar for which no R&D was required nor any such expenditure was claimed. R&D expenses were incurred for development of products and not building & plant & machinery for establishing the Unit.

14. The assessee company has carried out R&D mainly on parts which are being manufactured without the specification of the buyer and to remain in the competitive market.

15. The Hon'ble ITAT Chandigarh Bench in the assessee's own case in AY12-13 in ITA No. 1264/CHD/2018 dated 20/8/20 has held as under-

"In the above said order, the Coordinate Bench of the Tribunal has categorically observed that the weighted deduction of 200% in relation to the expenses incurred on Research & Development as per the provisions of section 35(2AB) of the Act is given with the intention of the Government to boost up the Research & development facility in India. Therefore, the allocation of expenses incurred on R&D activity for the purpose of reducing the weighted deduction, in our view, is not justified. The reduction of 80IC deduction in this case, on similar grounds, in our view is not justified. However, so far as the allocation expenses under the head directors meeting fee, audit fee are concerned, these expenses, in our view, are relating to all the units and the expenses under these heads should be allocated for all the units in equal proportion.

So far as the Misc. expenses are concerned, there is nothing brought on record that the same are relatable to any other unit. In view of this, we set aside the order of the lower authorities in allocating the R&D expenses and misc. expenses of the R&D Unit at Ludhiana to other unit. However, the expenses under the heads, director meeting and audit fee are to be allocated in a full proportion to all units. This issue is accordingly decided partly in favour of the assessee."

Therefore in view of the above, as the R&D expenditure appearing in the books & claimed may be accepted.

25.2 The Ld. CIT(A) in the impugned order basis above in para 4.4, 4.4.1, 4.4.2

has held as under:

4.4 Vide ground Nos. 5 of appeal, the appellant has challenged the action of the Assessing Officer in restricting the claim of the assessee company under section 80IC of the Act to Rs. 35,86,75,315/- as against claim of the assessee at Rs. 36,35,75,535/- by reallocating the expenses claimed by the assessee company. The reasons for restricting the claim under section 80IC of the Act have been given in detail in the assessment order. The main reason for making the impugned addition was that the 'R&D expenses' as well as expenses under the heads directors meeting fee, Audit fee and miscellaneous expenses of all the units of the assessee company, in the opinion of the Assessing Officer, had benefited each unit and as such these expenses should also be reallocated on the basis of turnover or respective units of the assessee company.

4.4.1 The appellant in his submission has placed reliance on the decision of the Hon'ble ITAT in its own case in ITA No. 1264/CHD/2018 dated 20/08/2020 for AY 2012-13. The Hon'ble ITAT in this judgment has observed as under:-

"the weighted deduction of 200% in relation to the expenses incurred on Research & Development as per the provisions of section 35 (2AB) of the Act is given with the intention on the Government to boost up the Research & Development facility in India. Therefore, the allocation of expenses incurred on R &D activity for the purpose of reducing the weighed deduction, in our view, is not justified. The reduction of 80IC deduction in this case, on similar grounds, in our

view is not justified. However, so far as the allocation expenses under the head director meeting fee, audit fee are concerned, these expenses, in our view, are relating to all the units and the expense under these heads should be allocated for all the units in equal proportion.

So far as the Misc. expenses are concerned, there is nothing brought on record that the same are relatable to any other unit. In view of this, we set aside the order of the lower authorities in allocating the R & D expenses and Misc. expenses of the R&D Unit at Ludhiana to other unit. However, the expenses under the heads, directors meeting and audit fee are to be allocated in a full proportion to all units. This issue is accordingly decided partly in favour of the assessee."

4.4.2 In view of the same and respectfully following the judgment of the Hon'ble ITAT's in the appellant own case the A.O. is directed to recompute the deduction u/s 80IC of Income Tax Act as directed in the Hon'ble ITAT's decision in ITA No. 1264/CHD/2018 dated 20/08/2020. The Ground nos. 5 of appeal filed by the appellant are allowed.

25.3 The Ld. AR in his written submissions dt. 22/08/2024 has contended as below before us:-

1. Claim u/s 80IC made by the assessee - 364256035
Claim u/s 80IC allowed by the AO - 358675315
2. The R&D expenses claimed by the assessee –

Expenses	Ludhiana Unit	Haridwar Unit	Total
R&D Expenses	34496291	0	34496291

3. Expenses Allocated by AO-

Expenses	Ludhiana Unit	Haridwar Unit	Total
R&D Expenses	9658961	24837330	34496291

* Refer Page 48

4. Facts mentioned by CIT(A) in his order. Page 61- 6 4
5. Decision by CIT(A) at para **4.4.1 & 4.4.2 at** **Page 70**
6. The Ld. CIT(A) directed to re-compute the deduction u/s 80-IC of the Act as directed by the Hon'ble ITAT in A.Y.2012-13. The Hon'ble ITAT in para 7 Page 17 of P.B has mentioned as under:-

"In view of the above, the action of the lower authorities in allocating the expenditure of R&D Unit to the 80IC eligible unit at Dehradun cannot be held justified, hence the said action of the AO is set aside.

In the above said order, the Coordinate Bench of the Tribunal has categorically observed that the weighted deduction of 200% in relation to the expenses

incurred on Research & Development as per the provisions of section 35(2AB) of the Act is given with the intention of the Government to boost up the Research & Development facility in India. Therefore, the allocation of expenses incurred on R&D activity for the purpose of reducing the weighed deduction, in our view, is not justified. The reduction of 80IC deduction in this case, on similar grounds, in our view is not justified. However, so far as the allocation expenses under the head directors meeting fee, audit fee are concerned, these expenses, in our view, are relating to all the units and the expenses under these heads should be allocated for all the units in equal proportion."

7. The expenses under following heads considered for proportionate disallowance by the Ld. AO in different years -

Assessment Year	Particulars
2010-11	(i) Administration expenses (ii) Miscellaneous expenses
2011-12	Allowed as claimed
2013-14	Miscellaneous income (cash discount earned)
2014-15	R&D expenses
2015-16	(i) R&D expenses (ii) Administration expenses (iii) Miscellaneous expenses
2016-17	(i) R&D expenses (ii) Miscellaneous expenses
2017-18	Allowed as claimed
2018-19	Allowed as claimed

26. Findings & Conclusions in respect of ground no. 4 (supra) i.e; deductions u/s 80 IC R&D Expenses

26.1 We basis above premises laid down by us and after examining and hearing the rival contentions are of the considered view that there is no legal infirmity or otherwise in the finding of Ld. CIT(A) impugned order and that findings and conclusions drawn are valid and proper and in accordance with law. Revenue has failed to dislodge the impugned order either on merit or on any legal submission. We hold that claim u/s 80IC of the assessee of Rs. 364256035 is rightly made. Before us nothing is canvassed to dislodge the same.

Precedent decision of this Tribunal are correctly followed by CIT(A) in the impugned order.

26.2 We therefore find no infirmity in the impugned order in respect of Ground No. 5 (**before us ground no. 4**) and reject the appeal of Revenue on this ground too.

27. In overall analysis we hold that the legality, validity and propriety of impugned order in respect of Grounds 2,(2a), 3 & 4 (supra) cannot be dislodged on the basis of reasons given in the impugned order with which we respectfully subscribe to.

28. Appeal of the Revenue is dismissed and order of CIT(A) is upheld as passed.

IV. ITA No. 818/Chd/2023 for A.Y. 2015-16

29. For purpose of disposal of above appeal facts in ITA No. 817/Chd/2023 A.Y 2014-15 are identical and parimateria save and except the A.Y hence ITA No. 817/Chd/2023 A.Y 2014-15 is considered as lead case and our findings and conclusions therein will apply **mutatis mutandis** to facts and circumstances of this case. Accordingly impugned order bearing no. ITBA/NFAC/S/250/2023-24/1057315664(1) dt. 25/10/2023 for A.Y 2015-16 is upheld as passed by Ld. CIT(A) and appeal of the Revenue is dismissed.

30. In result, appeal of the Revenue is dismissed.

V. ITA No. 794/Chd/2023 For A.Y. 2016-17

31. For purpose of disposal of above appeal facts in ITA No. 817/Chd/2023 A.Y 2014-15 are identical and parimateria save and except the A.Y hence ITA No. 817/Chd/2023 A.Y 2014-15 is considered as lead case and our findings and conclusions therein will apply mutatis mutandis to facts and circumstances of this case. Accordingly impugned order bearing no. ITBA/NFAC/S/250/2023-24/1057095518(1) dt. 16/10/2023 for A.Y 2016-17 is upheld as passed by Ld. CIT(A) and appeal of the Revenue is dismissed.

VI. ITA No. 795/Chd/2023 For A.Y. 2017-8

32.

Brief Factual Matrix

32.1 That the assessee company is engaged in the business of manufacturing of auto parts and auto chains.

32.2 That during the year under consideration, the non current investment of the assessee company stands at Rs. 11,79,40,00,000/- whereas on the other hand the company has paid a sum of Rs. 85,00,000/- as interest expense.

32.3 The legislative intent is to allow only that expenditure which is relatable to earning of income and therefore it follows that the expenses which are relatable to earnings of exempt income have to be considered for disallowance, irrespective of the fact whether any such income has been earned during the financial year or not. The Central Board of Direct Taxes, vide Circular No.05/2014

dated 11.02.2014, in exercise of its powers under section 119 of the I.T.Act, clarified that Rule 8D read with section 14A of the Act provides for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income. Investment decisions are very complex in nature. They require substantial market research, day-to-day analysis of market trends and decisions with regard to acquisition, retention and sale of shares at the most appropriate time. It is therefore not correct to say that exempt income can be earned by incurring no or nominal expenditure. It is difficult to accept that a company can earn substantial dividend income without incurring any expenses, whatsoever, including management or administrative expenses as investment decisions are generally taken in the meetings of the Board of Directors for which administrative expenses are incurred. The term "expenditure" occurring in section 14A would take in its sweep not only direct expenditure but also all forms of expenditure regardless of whether they are fixed, variable, direct, indirect, administrative, managerial or financial. As such I am not satisfied with the claim made by the assessee that no expenditure has been incurred, in relation to income which does not form part of the total income under the Act for the year under consideration. Sub-section (1) of Section 14A provides in unequivocal terms for not allowing deduction in respect of expenditure incurred by the assessee in relation to exempt income and sub-section (2) lays down the mechanism for determining such amount of expenditure incurred in relation to exempt income in accordance with method as prescribed under Rule 8D

wherein the method of working out the disallowance has been provided. Reliance in this regard is placed on the decision of Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg.Co.Ltd. Vs DCIT &Anr., reported in 234 CTR (Bom) 1 (2020).

32.4 In this regard, the disallowance to be made u/s.14A is calculated as per Rule 8D of the Income Tax Rules. It is clarified here that though Rule 8D has been inserted by the Finance Act, 2006 w.e.f. 01.04.1962. Therefore, the corresponding disallowance is being worked out as per Rule 8D of the Income Tax Rules and same is computed as under:

1.	<i>Expenditure directly relating to income which does not form part of total income.</i>		
			Rs.85,00,000/-
1.	<i>An amount equal to one percent of average Of opening and closing investment</i>	Opening	1064,69,00,000/-
		Closing	1179,40,00,000/-
			2244,09,00,000/-
			2244,09,00,000 = 1122,04,50,000/-
	1% of Rs. 1122,04,50,000/-		Rs.11,22,04,500/-
	Amount disallowable =Rs.85,00,000+ Rs.11,22,04,500		Rs.12,07,04,500/-

Therefore, an amount of Rs.12,07,04,500/- is being added to the income of the assessee. Hence, I am satisfied that the assessee company has under reported income is in consequence of any misreported thereof for which the penalty provisions of section 270A(9) of the IT. Act are being proposed to be initiated separately.

32.5 After discussion, the income of the assessee is recomputed as under:

Total income	Rs. 153,65,65,490/-
Addition as discussed in para-7 above	Rs. 12,07,04,500/-
Total assessed income	Rs.165,72,69,990/-

32.6 The aforesaid assessment order of Ld. AO bears No. ITBA/AST/S/143(3)/2021-22/1032349899(1) dt. 12/04/2021 u/s 143(3) of the Act.

32.7 That the assessee company being aggrieved by the aforesaid assessment order dt. 12/04/2021 preferred first appeal u/s 246A of the Act before Ld. CIT(A) and interalia has raised following grounds of appeal in Form No. 35:

1. The Ld. AO has wrongly assessed the total income at Rs. 1657269990/- against the returned income of Rs. 1536565490/- thereby making an addition of Rs. 120704500/-u/s 14A.

2. The Ld. AO has wrongly disallowed a sum of Rs. 120704500/- under section 14A read with Rule 8D being 1 percent of the average of opening and closing investment of the assessee instead of calculating the same at 1 percent of the annual average of the monthly average of investments, income from which does not form part of total income and Rs. 85 lakhs of other borrowing cost.

2(b) The Ld. AO has wrongly considered the wrong figures of opening and closing investments in the body of assessment order at Rs.1064.69 crores and 1179.40 crores respectively against correct the opening investment as per the audited balance sheet at Rs. 96.59 crores and closing investment at 218.06 crores respectively. Which has also been considered by the assessee company for calculating the disallowances u/s 14A.

3. The Ld. AO has failed to consider the disallowance calculated by the assessee company in the tax audit report and computation of taxable income at Rs. 645833/- based on the amended Rule 8D applicable from the year under consideration without recording proper satisfaction.

4. The Ld. AO has wrongly considered other borrowing cost at Rs. 8500000/- for the disallowance whereas the company total investment outstanding as on 31/3/2017 was at Rs. 218.06 crores against which the company has the shareholders fund at the year end at Rs. 873.78 crores.

5. Alternatively, the Ld. AO has failed to consider the facts that the exempt income earned by the assessee during the year was only 2842340/- which is much less the disallowance u/s 14A made by him.

6. The Ld. AO has failed to calculate the MAT credit u/s 115JB and considered the credit available to the company while creating the demand on the above addition.

7. The appellant craves leave for reserving the right to amend, modify or add any ground (s) of appeal at any time or during the hearing of appeal.

8. That the order is bad in law and on facts.

32.8 That the Ld. CIT(A) in the impugned order dt. 16/10/2023 has held as under in respect of above grounds urged by the assessee which are as under:

"6. Decision

6.1 The ground of appeal 1 is general so is not being commented upon.

6.2 The appellant in its grounds of appeal 2, 3, 4 and 5 has assailed the action of AO in making addition to its returned income after recalculating the disallowance u/s 14A. The same are being taken together for the sake of convenience and to avoid repetition. From perusal of the available records, assessment order, rectification orders and submission of the appellant it has been found that the income assessed u/s 143(3) dated 12/04/2021 had been adopted at Rs. 165,72,69,990/- against the returned income of Rs. 153,65,65,490/-. The appellant in its appeal has assailed the AO for making an addition of Rs. 12,07,04,500/- u/s 14A of the Income Tax Act.

6.2.1 In between the appellant has also filed a rectification request to the concerned AO on 28.02.2022. The AO has passed an order u/s 154 of the IT Act vide dated 23.03.2022 in which he has deleted the addition of Rs. 85,00,000/- being observed that the borrowing cost of Rs. 85,00,000/- was not directly related to investment yielding exempt income and the assessee company has total share-holders funds itself Rs. 873,78,00,000/- which was way higher than the investment.

6.2.2 Further the AO has also recalculated the addition u/s 14A of Rs. 1,50,86,167/- from 12,07,04,500/- mentioning that the then AO had erroneously taken the opening and closing balance of "total assets" as reflected in the balance sheet. Rather opening and closing of only those investments which had the potential of generating tax free income.

6.3 The appellant in its submission has placed reliance on the decision of the of the Hon'ble ITAT in its own case in ITA No.1593/Chd/2017 dated 16/04/2019 for AY 2009-10. The Hon'ble ITAT in this judgment has observed as under:-

"The assessee has got sufficient own funds available investment in the equity and Mutual funds _____we hereby hold that no disallowance under Rule 8D(2)(ii) is required."

6.3.1 The appellant has also cited the judgment of the Hon'ble ITAT Chandigarh in its own cases in ITA No. 590/chd/2018 A.Y. 10-11 and ITA No. 1264/chd/2018 dated 20/8/2020 wherein the Hon'ble ITAT has accepted the contention of the appellant and directed to consider only the investments yielding exempt income for calculating the disallowance u/s 14 A.

6.3.2 The appellant has also placed reliance on the decision of Hon'ble Supreme Court in the case of South Indian Bank Ltd Civil Appeal no. 9606 of 2011 dated 09.09.202 held as under:-

"The aforesaid discussion and the cited judgments advise this Court to conclude that the proportionate disallowance of interest is not warranted, under section 14A of Income Tax Act for investments made in tax free bonds/securities which yield tax free dividend and interest to assessee banks in those situations where, interest free own funds available with the assessee exceeded their investment. With this conclusion, we unhesitatingly agree with the view taken by the learned ITAT favoring the assessee."

6.4 In view of the same and respectfully following the judgments of the Hon'ble ITAT's in the appellant own cases for A.Y. 09-10, 10-11 and 12-13 and also the Hon'ble Supreme Court in the case of South Indian Bank Ltd, the grounds no. 3 and 5 filed by the appellant are allowed and the AO is directed to consider the judgments of ITAT in the appellants own case as cited above and the judgment of Hon'ble Supreme Court in the case of M/s South Indian Bank Ltd. vs. CIT for calculating the disallowance u/s 14 A. However, it is pertinent to mention here that ground nos. 2 and 4 raised by the appellant have already been rectified (reduced to Nil) u/s 154 r.w.s 143(3) of the IT Act by the AO vide order dated 23.03.2022 hence the same is dismissed as infructuous.

7. Appeal is partly allowed.

32.9 That the Revenue being aggrieved by the impugned order of CIT(A) dt. 16/10/2023 has preferred appeal u/s 253 before this Tribunal and has raised following grounds of appeal in Form 36 which are as under:-

1. That the Ld. CIT (A) NFAC New Delhi has erred in deciding that the disallowance done by the Assessing officer is against the law and facts of the case.

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) is justified in holding CBDT Circular No. 5/2014 dated 11.02.2014 to be illegal whereas Circular No. 5 of 2014 propounds that section 14A is triggered for disallowance o expenditure incurred which is relatable to tax exempt income even though no tax-exempt income under the Act has been earned during a particular year.

3. Whether section 14A (I) of the Income Tax Act, 1961 would stand attracted even if the tax-exempt income is not actually earned during a

particular year subject to expenditure related to such income having been incurred during the year.

4. Whether CBDT Circular No. 05 of 2015 is illegal and not in consonance with legislative intent behind Section 14A and the charging section 4 and 5 of the Income Tax Act, 1961 which lay down that total income under the Act would include income from all sources whether 'received', 'deemed to be received', 'accrued' or 'deemed to be accrued'.

5. That the appellant craves leave to add or amend any ground of appeal before it is finally disposed off.

Record of hearing

33. The hearing before this Tribunal took place on 14/08/2024 and 27/08/2024 when both the parties i.e; Ld. DR for and on behalf of the Revenue appeared before us and Ld. AR for and on behalf of the assessee corporation. The Ld. DR relied upon the grounds of appeal but had no tangible argument to dislodge the findings of Ld. CIT(A) made in the impugned order. The Ld. AR submitted a written argument dt. 22/08/2024 which are reproduced below:

All grounds are related to disallowance u/s 14A.

1. **The Ld. A.O. calculate the disallowance under Rule 8D(2)(ii), originally at Rs 12,07,04,500/- and subsequently rectified at Rs.1,50,86,167/- by considering all the investments irrespective of yielding any exempt income or not.**

2. Rule 8D(ii) was substituted w.e.f. 2/6/2016 relevant for AY 2017-18 which reads as under:-

"The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely:-

(i) the amount of expenditure directly relating to income which does not form part of total income; and

(ii) an amount equal to one per cent of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income."

3. According to the Rule 8D(2)(ii), the monthly average of investment yielding exempt income is to be considered for computing the disallowance. The

assessee calculated the disallowance u/s 14A at Rs. 645833/- by 1% of the annual average of the monthly averages of value of investments yielding exempt income filed along with Income Tax return and mentioned in Tax Audit Report. The calculation was made as under:- **Para 7 page 16**

The investments outstanding on which exempt income earned

Month	Opening balance	Closing Balance	Monthly average
April	-	0	-
May	-	26,00,00,000	13,00,00,000
June	26,00,00,000	-	13,00,00,000
July	-	18,00,00,000	9,00,00,000
August	18,00,00,000	23,50,00,000	20,75,00,000
September	23,50,00,000	-	11,75,00,000
October	-	-	-
November	-	-	-
December	-	-	-
January	-	-	-
February	-	8,00,00,000	4,00,00,000
March	8,00,00,000	4,00,00,000	6,00,00,000
Yearly Average	-	-	6,45,83,333
1% of yearly average		6,45,833	
Total disallowance		6,45,833	

4. The Ld. CIT(A) at para 6.3.1 of his order at page 14 of his order has mentioned as under:-

"The appellant has also cited the judgment of the Hon'ble ITAT Chandigarh in its own cases in ITA No. 590/chd/2018 A.Y. 10-11 and ITA No. 1264/chd/2018 dated 20/8/2020 wherein the Hon'ble ITAT has accepted the contention of the appellant and directed to consider only the investments yielding exempt income for calculating the disallowance u/s 14 A.

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5. Facts has been mentioned in CIT(A) order at Para 1 to 22. **Page 15 to 19**

6. The Ld. CIT(A) at Para 6.4 (page 21) had directed to consider the judgment of Hon'ble ITAT in the appellant's own case for calculating the disallowance u/s 14A by considering the average investments which have yielded the exempt income only.

Findings & Conclusions

34. We have carefully perused the papers and proceedings of the case. We have examined and heard the rival submissions of the parties.

34.1 We basis above are of the considered view that Revenue has not been successful enough to assail the impugned order of Ld. CIT(A) factually as well as legally. We find no legal infirmity in the impugned order of Ld. CIT(A) and accordingly upheld the same. We hold that Ld. CIT(A) has rightly followed the precedent laws and in particular the orders of Chandigarh Bench of this Tribunal in assessee's own case in ITA No. 1593/Chd/2017 dt. 16/04/2019 for A.Y. 2009-10 wherein this Hon'ble ITAT has observed as under:

"The assessee has got sufficient own funds available investments in equity and mutual funds.....we hereby hold that no disallowance under Rule 8D(2)(ii) is required."

In assessee's own case this Tribunal in ITA No. 590/Chd/2018 for A.Y. 2010-11 and ITA No. 1264/Chd/2018 dt. 20/08/2020 has further accepted the contention of the assessee corporation and has directed the Revenue to consider only the investments yielding exempt income for calculating the disallowance under section 14A.

The assessee has also rightly placed reliance on decision of Hon'ble Supreme Court of India in case of South India Bank Ltd. wherein following is held

" The aforesaid discussion and cited judgment advise this Court to conclude that the proportionate disallowance of interest is not warranted, under section 14A of Income Tax Act for investments made in tax free bonds / securities which yield tax free dividend and interest to assessee banks in those situations where, interest free own funds available with the assessee exceeded their investments. With this conclusions, we unhesitantly agree with the view taken by the Id. ITAT favouring the assessee"

34.2 We hold that Ld. CIT(A) has correctly held in para 6.4 which we repeat and reiterate once again as under:

"6.4 In view of the same and respectfully following the judgments of the Hon'ble ITAT's in the appellant own cases for A.Y. 09-10, 10-11 and 12-13 and also the Hon'ble Supreme Court in the case of South Indian Bank Ltd, the grounds no. 3 and 5 filed by the appellant are allowed and the AO is directed to consider the judgments of ITAT in the appellants own case as cited above and the judgment of Hon'ble Supreme Court in the case of M/s South Indian Bank Ltd. vs. CIT for calculating the disallowance u/s 14 A. However, it is pertinent to mention here that ground nos. 2 and 4 raised by the appellant have already been rectified (reduced to Nil) u/s 154 r.w.s 143(3) of the IT Act by the AO vide order dated 23.03.2022 hence the same is dismissed as infructuous."

35. In the result Revenue appeal does not survive and is dismissed.

VII ITA No. 796/Chd/2023 for A.Y. 2018-19

36. For purpose of disposal of this appeal facts in ITA No. 795/Chd/2023 A.Y. 2017-18 are similar, identical and parimateria save and except the A.Y. hence ITA No. 795/Chd/2023 A.Y. 2017-18 is considered as lead case and our findings and conclusions therein will apply mutatis mutandis to the facts and circumstances of this case. Accordingly impugned order bearing No. ITBA/NFAC/S/250/2023-24/1057077498(1) dt. 16/10/2023 for A.Y 2018-19 is upheld as passed by Ld. CIT(A) and the appeal of the Revenue is dismissed.

37. In result appeal of the Assessee is dismissed.

VIII ITA NO. 84/Chd/2024 For A.Y 2020-21

38. In this appeal Revenue has assailed the CIT(A) order bearing no. ITBA/NFAC/250/2023-24/1058407470(1) dt. 01/12/2023 which is hereinafter referred to as impugned order on the following grounds:

1. That the Ld. CIT (A), NFAC New Delhi has erred in deciding that the disallowances done by the Assessing Officer is against the law and facts of the case.

2. That, based on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in holding CBDT Circular No.5/2014 dated 11.02.2014 to be illegal whereas Circular No. 5 of 2014 propounds that section 14A is triggered for disallowance of expenditure incurred which is relatable to tax exempt income even though no tax-exempt income under the Act has been earned during a particular year.

3. That the Ld. CIT(A) has erred on facts and law ignoring the distinction between provision of section 36(l)(va) r.w.s 43V and provisions of section 36(l)(va) r.w.s 2(24)(x) of the Income Tax Act, 1961, which clearly provide for different treatment. While the delay payment of employer's contribution is allowable if found before the filing of return wherever employee's contribution is disallowed for once and all if payment is delay beyond the prescribed time.

4. That the Hon'ble Supreme Court of India vide its order sated 12.10.2022 in Civil Appeal No. 2833 of 2016 in the case of Checkmate Services Pvt. Ltd. Vs. Commissioner of Income Tax-1 has interpreted all the relevant provision of section 36(l)(va) and section 4313 of the Income Tax Act, 1961 and decided the issue in favour of Revenue.

5. That the Appellant craves, leave for permission to add, amend, or alter any ground of appeal at the time of hearing.

39. Broadly speaking the Revenue has challenged the impugned order of Ld. CIT(A) on two counts (i) Disallowance u/s 14A (ground no. 2) (ii) Disallowance u/s 36(i)(va)(ground no. 3 & 4).

40. In so far as disallowance u/s 14A is concerned the Ld. AO had disallowed u/s 14A read with Rule 8D(2)(ii) sum of Rs. 1,92,97,586/- on new investments made at 1,92,97,58,600/- during the year which have not yielded any exempt income. That the company had not earned any dividend income during the year and therefore there is no investment which yielded the exempt income.

41. That the Ld. CIT(A) in respect of disallowance u/s 14A has recorded as below in the impugned order:

1. The assessee company had not made any disallowance u / s 14A in the computation of taxable income on the basis of "No Exempt Income earned" during the year.

2. The Ld AO has not brought any income on record which is in the exempt nature to which the provisions of section 14A would apply.

3. During the assessment proceedings the assessee brought to the knowledge of Assessing unit vide letter dated 17/12/21 at para 11 which reads as under

"Detail of investments made at Rs.51,50,00,000/- during the year with dates of purchase is attached. The source of investments is internal accruals. As per Balance Sheet, share capital and reserve & Surplus are much more than the value of total investments (opening and new purchases) made as on 31.03.2020 and no part of the borrowed funds have been utilized for the purpose of investments.

As already explained in previous letter that during the year under consideration, the assessee company has received no income which is exempt. Hence provisions of section 14A are not applicable."

4. Also letter dated 2/12 / 21 at the end of para 3 reads as under:-

"During the year under consideration, the assessee company has received no income which is exempt. Hence provisions of section 14A are not applicable."

5. Subsequently vide letter dated 11/8 / 22 uploaded by ack 423765221110822 mentioning at the below para 4 as under-

"As already explained in the previous letter that during the year under consideration the assessee company has received no income which is exempt. Hence provisions of section 14A are not applicable."

6. The particulars of the above letters has been reproduced in the body of assessment order at para 7.

7. The assessment unit has made the disallowance u/s 14A on the basis that the revenue has filed an SLP before the Supreme Court which is pending.

8. As on date all the decisions mentioned by him are in favour of the assessee that no disallowance is required to be made when there is no exempt income.

9. As per the Audited Financials, the total investment made by the company and outstanding as on 31/3 / 20 is at Rs. 210.29 crores whereas the total equity including Reserve & Surplus as on 31/3 / 20 and 31/3 / 19 is as under:-

Particular	31/3/2019	31/3/2020
Reserve & Surplus	1053.67 Cr.	1084.66 Cr.

10. Thus the assessee's own available funds is much more and this fact that the assessee has utilized its own funds have already been confirmed by the Hon'ble ITAT while deciding the appeal for AY 2009-10, 10-11 & 12-13. Copies of which are already been filed for the appeals pending before your honour for the AY 14-15 & 15-16 etc.

11. The reliance is also made on the decision of Hon'ble Supreme Court in the case of CIT v Reliance Industries Ltd 410 ITR 466.

12. Reference may kindly be made to the following decisions where similar view has been taken that where there is no exempt income earned, no disallowance is called for.

(i) CIT v/s Corrttech Energy P Ltd, 223 Taxmann 130 (Guj)

(ii) CIT v Winson Textile Industries Ltd, 319 ITR 204 (Pb.)

(iii) Principal Commissioner of Income-tax-1, Chandigarh v. Vardhman Chemtech (P.) Ltd [2019] 102 taxmann.com 132 (Punjab & Haryana).is 6. (iv) Delhi International Airport (P) Ltd, [2022] 144 Taxmann.com 80 (Del)

13. As held by Hon'ble Delhi High Court in the case of M / s Era Infrastructure India Ltd 141 taxman.com 289 that the amendment brought in by the Finance Act 2022 to Section 14A by inserting a non obstante clause and explanation will take effect from 1/4 / 22 AY 2022-23.

14. Even if there is a Circular, once the law is disclosed by the High Court/Supreme Court, the same is to be followed. Refer M / s Hindustan Aeronautics Ltd v CIT, 110 Taxmann 311 (SC).

15. The Hon'ble Supreme Court in the case of M / s Chettinad Logistics P Ltd, [2018] 95 Taxmann.com 250 (SC) dismissed SLP against High Court ruling that Section 14A cannot be invoked where no exempt income was earned by the assessee in relevant assessment year.

16. Since no exempt income has been earned during the year, the provision of Section 14A not to be applied.

42. The Ld. CIT(A) in the impugned order has held as under:

6.4 Vide ground Nos. 4 and 5 of appeal, the appellant has challenged the action of the Assessing Officer in making addition of Rs. 1,92,97,586/- in this case on account of disallowance u/s 14A. The reason for making the impugned addition was that the assessee company has increased its investment during the year of Rs. 51,50,00,000/-. The Assessing Officer was of the view that the disallowance u/s 14A is to be made in respect of the expenditure in relation to the investment.

6.4.2 The appellant in its submission has placed reliance on the decision of the Hon'ble ITAT in its own case in ITA No.1593/Chd/2017 dated 16/04/2019 for AY 2009-10. The Hon'ble ITAT in this judgment has observed as under:-

"The assessee has got sufficient own funds available investment in the equity and mutual funds.-we hereby hold that no disallowance under Rule 8D(2)(ii) is required."

6.4.3 The appellant has also cited the judgment of the Hon'ble ITAT Chandigarh in its own cases in ITA No. 590/chd/2018 A.Y. 10-11 and ITA No. 1264/chd/2018 A.Y. 12-13 dated 20/8/2020 wherein the Hon'ble ITAT has accepted the contention of the appellant and directed to consider only the investments yielding exempt income for calculating the disallowance u/s 14 A.

6.4.4 The appellant has also relied upon the judgment of the Hon'ble High Court of Punjab and Haryana in the case of Vardhman Chemtech (P.) Ltd., held as under:-

"Section 14A provides for disallowance of expenditure in relation to income not 'includible' in total income."

6.4.5 In view of the same and respectfully following the judgments of the Hon'ble ITAT's in the appellant own cases for A.Y. 09-10, 10-11 and 12-13 and also the Hon'ble High Court of Punjab and Haryana in the case of Vardhman Chemtech (P.) Ltd.), the ground nos. 4 filed by the appellant are allowed and the AO is directed to restrict the addition to the extent of exempt income earned during the year and delete the same if there is no exempt income during the year. The ground of appeal 4 and 5 are allowed for statistical purpose.

43. In so far as disallowance u/s 36(1) (va) is concerned the assessee company had filed the tax return showing loss of Rs. 37,05,71,039/- whereas the total income determined by Ld. AO is of Rs. 34,45,38,284/-. The loss is reduced by Rs. 2,60,32,755/-.

43.1 That the disallowance made u/s 36(1) (va) is Rs. 37,85,915/-.

43.2 That there are other disallowance on account of depreciation of Rs. 29,49,254/- and disallowance u/s 14A is of Rs. 1,92,97,586/-. The aggregate comes to Rs. 2,60,32,755/-.

43.3 That the working of payment made after the due date of respective acts has been given by Ld. CIT(A) at page 28 of the impugned order/ paper book according to which Rs. 665906/- are made after the due date.

43.4 That a sum of Rs. 445094/- of EPF which was due on 15/09/2019 was deposited on 16/09/2019 being Sunday on 15/09/2019. As per general clauses Act, the due date will be next working day if due date is holiday thus the payment made on 16/09/2019 to be treated with due date.

43.5 That the Ld. CIT(A) in the impugned order has considered the entire issue at para 6.1 to 6.2.5 and has decided the issue in para 6.2.6 by giving the direction to verify the date of payment of EPF and ESI by the assessee company and if such payments have made before filing of return the same to be allowed. However as per the judgment of Hon'ble Supreme Court of India in case of M/s Checkmate Services Pvt. Ltd. Vs. CIT reported in 329 CTR(SC)1, the disallowance to be made for payments made after the due dates under respective acts except the payment of Rs. 44,50,94/- of EPF which has been paid before the due date by copying general clauses act. Thus the amount to be disallowed is **Rs. 220812** (665906-445094).

43.6 The Ld. CIT(A) in respect **of two broad issues (supra)** in so far as disallowance u/s 14A is concerned has held as under while allowing the ground of the assessee company in para 6.4.5 of impugned order and has directed the Ld. AO to restrict the addition to the extent of exempt income earned during

the year and **delete the same if there is no exempt income during the year**. This ground is allowed for statistical purpose.

43.7 That the Ld. CIT(A) in so far **as other broad issue of payment of ESI/EPF are** concerned has in para 6.2.6 has held that “Respectfully following the judgment of Hon'ble Court's as mentioned above, the AO is directed to verify the date of payment of employees contribution of PF and ESI by the appellant and if such payments have been made **before the date of filing of return give the benefit of the same to such extent**. The ground of appeal 2 is allowed for statistical purpose”.

Findings & Conclusions

44. In view of the premises laid down by us in respect of two broad proposition on under disallowance u/s 14A and other of disallowance u/s 36(1)(v)(a) we find no serious infirmity with the findings of Ld. CIT(A) except in respect of disallowance u/s 36(1)(v)(a) as we in view of the judgment of Hon'ble Supreme Court of India in case of Checkmate Service Pvt. Ltd. (supra) are of the considered view that if payment are not made within due date prescribed under the respective act like ESI/EPF then such payment are to be disallowed the due date of filling of return and payment before due date of return are insignificant / immaterial. Hence the Ld. AO should not give any weightage to due date of filing of return but see whether the ESI/EPF/ other statutory dues in labour welfare measures dues, are paid on or before due relevant date under

respective acts or not and nothing beyond that. We clarify that if last due date happens to be a Sunday the Ld. AO should see that whether the amounts of ESI/EPF are paid on next working day keeping in view provisions of general clauses Act.

In so far as disallowance u/s 14A is concerned we sustain the finding of Ld. CIT(A) made in the impugned order. We hold that decisions of this Tribunal as recorded in para 6.4,6.4.2,6.4.3,6.4.4 and 6.4.5 are correctly made. The binding judicial precedents on Ld. CIT(A) is /are correctly followed. We do not see any justification to add anything more to already well reasoned and meritorious finding. The Ld. DR has failed to bring on any submissions to dislodge the findings of Ld. CIT(A) either legally or otherwise.

44.1 In the result order of CIT(A) is sustained as passed and the appeal of the Revenue is partly allowed for statistical purposes.

45. From the above discussion, appeal wise decision / order are as under:

Sr. No.	ITA No. & Assessment Year	Party Name	decision / order
1	ITA No. 748/Chd/2023 A.Y. 2010-11	DCIT, C-4, Ludhiana Vs. M/s Rockman Industries Limited	Partly allowed for Statistical purposes
2	ITA No. 177/Chd/2024 A.Y. 2013-14	Asst. CIT, C-4, Ludhiana Vs. M/s Rockman Industries Limited	Dismissed
3	ITA No. 817/Chd/2023 A.Y. 2014-15	DCIT, C-4, Ludhiana Vs. M/s Rockman Industries Limited	Dismissed
4	ITA No. 818/Chd/2023 A.Y. 2015-16	DCIT, C-4, Ludhiana Vs. M/s Rockman Industries Limited	Dismissed
5.	ITA No. 794/Chd/2023 A.Y. 2016-17	DCIT, C-4, Ludhiana Vs. M/s Rockman Industries Limited	Dismissed

6.	ITA No. 795/Chd/2023 A.Y. 2017-18	DCIT, C-4, Ludhiana Vs. M/s Rockman Industries Limited	Dismissed
7.	ITA No. 796/Chd/2023 A.Y. 2018-19	DCIT, C-4, Ludhiana Vs. M/s Rockman Industries Limited	Dismissed
8.	ITA No. 84/Chd/2024 A.Y. 2020-21	DCIT, C-4, Ludhiana Vs. M/s Rockman Industries Limited	Partly allowed for Statistical purposes

Order pronounced in the open Court on 25/11/2024.

Sd/-
विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-
परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

AG

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar