IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH MUMBAI

BEFORE: SMT MS. PADMAVATHY S, ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

ITA No. 2662/MUM/2024
(**Assessment Year : 2018–19**)

BSE Limited Phiroze Jeejeebhoy Towers, 25th Floor, Dalal Street, Fort, Mumbai-400001.	Vs.	Commissioner of Income-tax(Appeals) National Faceless Assessment Centre (NFAC), Delhi.
PAN/GIR No. AACCB6672L		
(Appellant)	..	**(Respondent)**

&

ITA No. 2440/MUM/2024
(**Assessment Year : 2018–19**

Asst. Commissioner of Income-tax Circle-2(1)(1), Room no. 575, 5th Floor, Aayakar Bhavan, M.K. Road, Mumbai- 400020.	Vs.	BSE Limited 25th Floor, PJ Tower, Dalal Street, Fort, Mumbai-400001.
PAN/GIR No. AACCB6672L		
(Appellant)	..	**(Respondent)**

Assessee by	Shri. Niraj Sheth, & Ms. Niyati
Revenue by	Shri. S Srinivasu CIT DR & Shri. Ashok Kumar Ambastha, Sr. AR
Date of Hearing	**29/11/2024**
Date of Pronouncement	**02/12/2024**

आदेश / O R D E R

PER SUNIL KUMAR SINGH:

The facts of both the appeals are common and issues arising are from the common impugned order. Therefore, both the appeals are being decided by this common order for the sake of convenience and brevity. The facts, only in ITA No. 2662/MUM/2024 are being narrated as under:

ITA No. 2662/MUM/2024

1. This assessee's appeal has been preferred against the impugned order dated 13.03.2024 passed in Appeal no. NFAC/2017-18/10088804 by the Ld. Commissioner of Income–tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-Tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment year [A.Y.] 2018-19, wherein assessee's appeal has been partly allowed.
2. The brief facts, according to the material on record are that the appellant assessee is a leading stock exchange of the country, which has been incorporated to facilitate, promote, assist, regulate and manage in the public interest, dealings in security of all kinds and to provide specialised, advanced and automated and modern facilities for trading, clearing and settlement of securities with a high standard of integrity and honor and ensure trading in the transparent, fair and open manner. Assessee e-filled it's return of income on 29.10.2018, declaring total income of Rs. 1426135040/- under normal

provisions of the Act and deemed total income of Rs. 4866353858/- u/s. 115JB of the Act on 31.03.2019. Assessee filed revised return, declaring a total income of Rs. 1426135110/- under normal provisions of the Act and a deemed total income of Rs. 4866353858/- u/s. 115JB of the Act. The case was selected for complete scrutiny under CASS. Statutory notices u/s. 143(2) and 142(1) of the Act were issued and served upon the assessee. Assessee submitted details through ITBA portal. After considering the submissions of the assessee, learned assessing officer made additions of Rs 17,83,25,426/- u/s. 14A of the Act, disallowed Rs.3,83,99,537/- as Investor Service Fund (ISF), disallowed Rs. 19,35,782/- as club entrance fees and subscriptions and disallowed interest of Rs.2,22,377/- u/s. 201(1A) r.w.s 206 C(7) debited to P&L account.

3. Aggrieved, assessee filed an appeal before learned CIT(A) who partly allowed assessee's appeal, confirming disallowance of Rs. 178325426/- worked out under rule 8D of the IT Rules 1962 but rejected assessee’s plea of adjustments of the amount u/s. 14A while calculating book profit u/s. 115JB of the Act, but for statistical purposes. However, learned CIT(A) deleted the disallowance of set aside amount of Rs. 3,83,99,537/- to Investor's Service Fund (ISF) u/s. 37(1) of the Act. Learned CIT(A), further deleted disallowance of club entrance fees and subscriptions of Rs. 19,35,782.
4. Aggrieved by the impugned order passed by learned CIT (A), assessee has raised the following grounds in this appeal:

"1)

a) Whether on the facts of the case and in law, the Learned Commissioner of Income Tax (Appeals) at National Faceless Appeal Centre (CIT(A), NFAC) was justified in confirming the action of the Learned Assessing Officer at National Faceless Assessment Centre (ld. A.O. at NaFAC) of disallowance of Rs. 17,83,25,426/-u/s.14A r.w.r 8D of the Income Tax Act, 1961 at net level (Gross amount Rs. 19,27,98,132/-less Rs. 1,44,72,705/-suo-moto disallowed by the appellant u/s 14A "as expenditure attributable to earning income") as against the amount of Rs. 1,44,72,705/- already disallowed by the appellant in their return of income scientifically.

b) Whether on the facts of the case and in law, the Learned CIT(A), NFAC was justified in confirming the disallowance u/s 14A r.w.r. 8D made by the Id. A.O. at NaFAC without giving regard to the accounts of the appellants, without arriving at satisfaction as to incorrectness of the claim of the appellants and summarily rejecting the working of the Appellant amounting to Rs 1,44,72,705/- The learned CIT(A), NFAC failed to consider that the satisfaction which was to be recorded by the Id. A.O. at NaFAC has to be clear and on an objective basis without any reference to Rule 8D of Income Tax Rules, 1962.

c) Whether on the facts of the case and in law, the Learned CIT(A), NFAC was justified in not following the previous orders passed by Hon'ble Income Tax Appellate Tribunal (TAT) for AYs 2007-08 to 2009-10 which were upheld by Hon'ble Bombay High Court as well as orders passed by Commissioner of Income Tax (Appeals) for AYs 2011-12 to 2015-16 relying on the decisions of Hon'ble ITAT in the appellant's own case on the same facts.

d) Whether on the facts of the case and in law, the Learned CIT(A), NFAC was justified in rejecting the fact, that the appellant had worked out the disallowance u/s.14A by adopting a rational, objective and scientific method and therefore provisions of section 14A(2)/(3) of Income Tax Act, 1961 are not applicable. Your appellant submits that the method adopted by the appellant is valid method accepted by appellate authorities in the past.

2) Without prejudice to the above grounds, the Learned CIT(A), NFAC failed to consider Ground no 5 "Without prejudice to the above, Adjustments of expenses of Rs. 17,83,25,426/- u/s 14A while calculating book profit u/s 115]B of the Income Tax Act, 1961."

3) The Learned CIT(A), NFAC erred in directing the assessing officer to recalculate the Interest u/s.234C after giving effect to his order. Your appellants submits that interest u/s. 234C has to be charged on the basis of returned income. As per the return of income filed by your appellants interest u/s.234C comes to Rs. Nil since taxes paid were higher than tax payable, whereas as per the Tax Computation Form, interest u/s.234C is charged at Rs. 2,23,29,352/-. Therefore interest u/s.234C is chargeable only on the basis of returned income and deserves to be cancelled on the facts and circumstances of the case."

5. Perused the records and heard learned representative for the assessee and learned DR for the revenue.

6. At the very outset it is pertinent to mention that learned representative for the assessee has not pressed aforestated ground no.3. Hence, ground no.3 stands dismissed as not pressed.
7. The following points are to be determined under appeal:
   i) Whether the disallowance of Rs.17,83,25,426/- as expenditure attributable to the exempt income in respect of profits earned by the assessee from investments, is tenable under law?
   ii) Whether the disallowance of Rs.17,83,25,426/- is required to be added in the book profit of the assessee u/s. 115JB of the Act for the purpose of Minimum Alternate Tax (MAT) liability?
8. As regards the first point for determination under appeal, learned AR has submitted that the assessing officer has not categorically recorded his non-satisfaction with respect to the correctness of the method of disallowance arrived at by the appellant. Further submitted that learned CIT(A) was not justified in not following the previous common order dated 02.06.2016 passed by ITAT in ITA NO. 8095/2010, 4408/2012 & 1836/2013 for A.Ys 2007-08 to 2009-10 respectively in appellant's own case. It is further submitted that Hon'ble Bombay High Court has upheld ITAT order for A.Y. 2008-09. The first appellate authority has also relied ITAT orders for A.Ys. 2011-12 to 2015-16 in the appellant's own case. Prayed to delete the said addition confirmed by impugned order.

9. Learned DR has supported the impugned order.

10. The appellant assessee submitted before learned assessing officer that no other expenses have been incurred which are related to the exempt income except expenses of Rs. 1,44,72,705/-, which are incurred on the staff of treasury department on the basis of area occupied by treasury department on proportionate basis. Learned assessing officer was, however not satisfied and observed vide paras 5.3 and 5.4 of the assessment order dated 10.09.2021 as under:

> *"5.3 It is pertinent to mention here that assessee has not maintained separate accounts for investments vis-à-vis the sources. For bifurcation of indirect expenses, the assessee has simply used proportionate floor area occupied by the treasury section, salary paid to employees of treasury section and exempt income, which is incorrect and unscientific. The expenditure cannot be bifurcated on the basis of floor area, salary paid to employees of treasury section and exempt income. Their treasury is not an isolated unit and even the common areas will be used by the treasury. So, the method adopted by the assessee is not a rational/logical basis and the accuracy of the same cannot be ascertained. It is an ad-hoc estimation and correctness of the same is doubtful / unscientific.*
> *5.4 In view of the above discussion, the working of disallowance made by the assessee is not found to be satisfactory. The expenditure incurred cannot be exactly ascertained from the books of accounts and the submissions made. Thus, the calculation mechanism provided in Rule 8D of I.T. Rules, 1962 needs to be applied for working out the quantum of disallowance u/s.14A of the Income Tax Act, 1961. The working of disallowance u/s. 14A r/w rule 8D is as under……."*

11. The aforesaid observations of learned assessing officer were treated by learned CIT(A) as AO's non-satisfaction recorded before adopting the method as provided under rule 8D of the IT rules 1962.

12. It is pertinent to mention that, co-ordinate bench of this Tribunal in assessee's own case vide aforesaid common order dated 02.06.2016 in ITA Nos. 8095/M/2010 for A.Y. 2007-08, 4408/M/2012 for A.Y. 2008-09 and in ITA No. 1836/M/2013 for A.Y. 2009-10, vide para 4, 5 & 6 held as under:

"4. At outset, the Id. counsel of the assessee submitted before us that in assessee's own case for immediately preceding year in ITA No.7586/Mum/2010 for AY-2006-07 dated 30.10.2015, the Tribunal, on exactly identical facts deleted the disallowance on the issue of non-recording of satisfaction and also on merits by observing as under:

2. "7. We have considered the submissions of the parties, perused the orders of the authorities below and the material available on record. As far as application of rule 8D is concerned, at the outset, it is to be held that in view of the decision of the Hon'ble Jurisdictional High Court in Godrej & Boyce Mfg. Co. Ltd. (supra) and of Hon'ble Delhi High Court in Maxopp Investment Ltd. (supra), said rule will not be applicable to the impugned assessment year as it will apply prospectively and with effect from assessment year 2008-09. Therefore, it cannot be made applicable for disallowance of expenditure under section 14A, for the impugned assessment year. That being the case, the very basis for disallowance of expenditure by the Assessing Officer would not survive. Even otherwise also, if for the sake of argument, it is accepted that rule 8D will apply for the impugned assessment year, the Assessing Officer has to apply it after complying to the condition of section 14A(2). Therefore, at this stage, it is necessary to examine whether the Assessing Officer while assuming jurisdiction under section 14A, has recorded his satisfaction regarding correctness of assessee's claim having regard to its books of account. Though, the learned Departmental Representative has raised a preliminary objection against taking up this issue, but, we do not find such objection acceptable for the following reasons. On going through the submissions made by assessee before the first appellate authority as well as the grounds raised before us, we are of the opinion that the issue raised emanates from the assessment order as well as the order of the learned Commissioner (Appeals) and is covered under ground no.1, raised before us. Having held so, we will now examine whether the Assessing Officer has validly invoked the provisions of section 14A. It is the contention of the learned Counsel for the assessee that in terms with section 14A(2), the Assessing Officer must record a satisfaction that claim of expenditure by the assessee with reference to its books of account for earning exempt income is not correct. Though, recording of satisfaction as provided in sub-section (2) was brought to statute by Finance Act, 2006, w.e.f. 1 April 2007, and applicable for assessment year 2007-08, but, as held by Hon'ble Delhi High Court, in Maxopp Investment Ltd. (supra), even prior to introduction of sub-section (2) to section 14A, the Assessing Officer is required to record his satisfaction regarding correctness of assessee's claim. In the present case, on a perusal of the assessment order, it is very much clear that the Assessing Officer has not recorded any such satisfaction regarding the correctness of assessee's claim with regard to its books of account. On reading of the assessment order, it is patent and obvious that the Assessing Officer has rejected assessee's computation of disallowance under section 14A, simply for the reason that it is not in terms with the method prescribed under rule 8D. In view of the aforesaid, we have no hesitation in holding that satisfaction recorded by Assessing Officer with regard to correctness of assessee's claim is without valid reasons. Now, coming to the merits of the disallowance worked out by the assessee as well as the Assessing Officer, it is observed that the assessee has worked out the disallowance by taking Into consideration the direct expenditure relating to salary paid to three employees in-charge of treasury department and interest expenditure of Rs.6,11,913 and Rs. 2,62,158 respectively. As far as

indirect expenditure of Rs.63,78,70,998, debited to the Profit & Loss account, the assessee has allocated expenditure of 7,20,993, for earning exempt income by taking into consideration the area occupied by the treasury department. As far as the disallowance worked out by the Assessing Officer is concerned, it is noticed that the Assessing Officer has no dispute with regard to direct expenses as he has accepted the amount worked out by the assessee. Only in respect of indirect expenses, the Assessing Officer has applied rule 8D(2)(iii) by making disallowance of 0.5% of the total average investment. In our view, the disallowance of indirect expenses made by the Assessing Officer cannot survive firstly because rule 8D(2)(iii) is not applicable for the impugned assessment and secondly, when the Assessing Officer accepts the direct expenses relating to salary paid to three employees of the treasury department and also the interest expenditure, he cannot consider such method applied to be unreasonable when it comes to indirect expenses. Moreover, the method adopted by the assessee for allocation of indirect expenses by taking into consideration the total area occupied by treasury section cannot be considered to be totally unacceptable, as the Tribunal has accepted such method in some other cases. A reference in this regard can be had to the decision of the Tribunal, Mumbai Bench, in Voltas Ltd. (supra). In view of the aforesaid, we do not see any reason to uphold the disallowance of indirect expenses made by the Assessing Officer by applying a provisions of rule 8D(2)(iii). However, there is no dispute to the fact that the assessee did incur certain expenses towards earning the exempt income. In fact, the assessee has also accepted this factual position and has submitted a working before the Assessing Officer computing the disallowance under section 14A of the Act at Rs.15,95,064. The judicial precedents on the issue including the decision of the Hon'ble Jurisdictional High Court in Godrej & Boyce Mfg. Co. Ltd. (supra) are also unanimous while holding that though rule 8D would not apply prior to assessment year 2008-09, but a reasonable disallowance can be made under section 14A. After considering the facts of the present case, we are of the opinion that the disallowance made by the assessee under section 14A amounting to Rs.15,95,064, is reasonable. We, therefore, direct the Assessing Officer to restrict the disallowance to that amount. In view of our decision as above, the issue raised by the assessee in ground no.2(iii) becomes redundant. Grounds are partly allowed.

5. The Id. Counsel for the assessee, in view of the above facts, stated that in the present year also there is no satisfaction recorded by the AO for the reasons that the assessee himself has made out disallowance of the amount as noted by the AO in his assessment order at page 1 amounting to Rs.28,28,635/-. The Id. counsel for the assessee took us through para 5.2 of the assessment order and stated that the AO has simply applied the decision of the Special Bench of the Tribunal in the case of Daga Capital Management Pvt. Ltd(supra) and has not recorded any satisfaction in this year also.

6. When this facts were confronted to the Ld.Sr.DR, whether the AO has recorded satisfaction in this year. The Ld.Sr.DR took us through on the same para 5.2 and 5.3 as referred by the Id. AR also, but we find that there is no such satisfaction recorded by the AO for rejecting the disallowance claimed by the assessee and correctness of the same. We find that this issue now stands covered in favour of the assessee and against the revenue by the Tribunal decision in assessee's own case for the assessment year 2006-07 (supra), and even otherwise on the issue of satisfaction, the

Hon'ble Kolkata Bench of the Tribunal in the case of REI Agro Ltd. v. Deputy Commissioner of Income-tax, Central Circle-XXVII, Kolkata [2013] 35 taxmann.com 404 (Kolkata- Trib.) has held that no disallowance u/s 14A can be made if satisfaction is not recorded with reference to the correctness of the action of the assessee. This order of Kolkata Tribunal was affirmed by Hon'ble Calcutta High Court in in the case of CIT V/s REI Agro Ltd in GA No.3022 of 2013 in ITA No.161 of 2013 dated 23.3.2013. Even otherwise Rule 8D will not apply for the relevant assessment l.e. assessment year 2007-08, the year under consideration as held by Hon'ble Bombay High Court in the case of Godrej & Boyce Manufacturing Co. Ltd. 328 ITR 81. In view of the facts and circumstances of the case that there is no satisfaction recorded by the AO about the correctness of the accounts of the assessee for making disallowance u/s 14A of the Act, no further disallowance can be made by the AO. Accordingly, we reverse the orders of the lower authorities on this issue. This issue of assessee 's appeal is allowed."

13. It is worth mentioning that the learned assessing officer, did not approve assessee's method of calculating the allocated expenditure for earning exempt income by taking into consideration the area occupied by the treasury department etc. The facts of the case decided vide order dated 15.10.2019 by Hon'ble Bombay High Court in ITA No. 1017/2017 against aforesaid ITAT order for A.Y. 2008-09, are similar. Hon'ble High Court found the said non-satisfaction recorded by the learned assessing officer, as not tenable u/s. 14A(2) of the Act and dismissed revenue's appeal.

14. In view of the aforesaid, order passed by the co-ordinate bench of this Tribunal in assessee's own case and approved by Hon'ble Jurisdictional Bombay High Court, vide above referred order dated 15.10.2019, we hold that the suo-moto disallowance of Rs. 1,44,72,705/- made by assessee u/s. 14A of the Act is reasonable. Learned assessing officer is directed to restrict the disallowances to that extent only. The aforesaid first point is determined in favour of the assessee and against the revenue accordingly.

15. The second point of determination, is with regard to the adjustments of disallowance of Rs.17,83,25,426/-, worked out u/s. 14A of the Act r/w rule 8D of the IT rules for the purpose of section 115JB of the Act.

16. Section 115 JB of the Act reads as under:

"115JB. (1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the Ist day of April, [2012], is less than 49 [eighteen and one-half per cent] of its book profit, [such book profit shall be deemed to be the total income of the assesse and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of [eighteen and one-half per cent]]:

Provided that for the previous year the relevant to the assessment year commencing 1st day of April, 2020, the provisions of this sub-section shall have affect asat for the words "eighteen and one-hall per cent occurring at both the or after place the words "fifteen per cent had been substituted.]

(2)Every assessee,-

(a) …… ...

(b) ……..

Provided ……..

Provided further……

Explanation [1]. For the purposes of this section, "book profit" means the profit] as shown in the [statement of profit and loss for the relevant previous year prepared under sub-section (2), as increased by-

(a) ……

(b) ….....

(c) ….....

(d) …....

(e) ……

(f)The amount or amounts of expenditure relatable to any income to which [section 10 (other than the provisions contained in clause (38) thereof) or [*] section 11 or section 12 apply; or]

……"

17. A three member special bench of ITAT Delhi in ITA no. 502 of 2012, Assistant Commissioner of Income–tax, Circle 17(1), New Delhi V. Vireet Investment (P) Ltd, vide order dated 16.06.2017, reported in (2017) 82 taxmann. Com 415(Delhi Trib.)(Special bench), has elaborately dealt with the matter in respect of the applicability of section 115JB (2) r.w.s. 14A of

the Act r/w rule 8D of the Rules. The Hon'ble special bench framed the following question for determination:- "Whether the expenditure incurred to earn exempt income computed u/s. 14A could not be added while computing book profit u/s. 115JB of the Act." Hon'ble special Bench, after discussing at length, answered the above referred question in favour of assessee by holding that "the computation under clause (f) of explanation 1 to section 115JB (2) is to be made without resorting to the computation as contemplated u/s. 14A r/w rule 8D of the Income Tax Rules 1962." Similarly, coordinate bench of ITAT Mumbai in ITA no. 1028/MUM/2017, Deputy Commissioner of Income Tax–3(3)(1) V Radha Madhav Investments Limited, for A.Y. 2013-14, vide para 5.8 of the order dated 27.07.2018 held as under:

> *"5.8 So far as adjustment of disallowance u/s 14A in computation of book profit u/s 115JB is concerned, we find that the matter stood squarely in assessee's favour by the cited judgment of Delhi Tribunal (Special Bench) rendered in ACIT Vs. Vireet Investment (P.) Ltd. [82 Taxmann.com 415]. Upon perusal of the same, we find that Special Bench, after considering two contrary decision of Hon'ble Delhi High Court titled as CIT Vs. Goetze (India) Ltd. [2014 361 ITR 505] & PCIT Vs. Bhushan Steel Ltd. [ITA 593/2015 dated 29/09/2015], took the view favorable to the assessee in terms of ratio of decision of Hon'ble Supreme Court rendered in CIT Vs. Vegetable Products Limited [1973 88 ITR 192]. The decision in PCIT Vs. Bhushan Steel Ltd., in turn, placed reliance on the decision of Hon'ble Supreme Court rendered in Apollo Tyres Ltd. Vs. CIT [255 ITR 273] which held that the Assessing Officer did not have the jurisdiction to go behind the net profit shown in the Profit & Loss Account except to the extent provided in Explanation to Section 115J. Similar view has been expressed by our jurisdictional Bombay High Court rendered in CIT Vs. JSW Energy Limited [2015 60 Taxmann.com 303], CIT v. Essar Teleholdings Ltd. [ITA No. 438 of 2012, dated 07/08/2014] & CIT Vs. Bengal Finance & Investments Pvt. Limited [ITA No. 337 of 2013 dated 10/02/2015). Therefore, respectfully following the catena of judgment in assessee's favour, we hold that adjustment of disallowance u/s 14A was not required to be made in Book Profits for the purpose of Section 115JB. The ground of assessee's appeal stands allowed to that extent."*

18. In view of the decisions rendered by special bench in Vireet(Supra) and coordinate bench in Radha Madhav (Supra), we hold that the adjustment of disallowance u/s.14A of the Act r/w rule 8D of the IT rules, was not required to be made in the book profit for MAT liability by resorting to section 115JB of the Act. This second point is accordingly determined in favour of the assessee and against the revenue. The assessee's appeal is thus liable to be allowed accordingly.

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(**Assessment Year : 2018–19**)

19. This revenue's appeal has been preferred against the same aforesaid impugned order dated 13.03.2024, raising following grounds:

"1. The Ld. CIT(A) has erred in holding that the unutilized part of the fund would never be the part of the reserve of the assessee, even after its existence despite the fact that assessee has not followed the SEBI's Circular dated 12.10.1992 wherein mandated that set aside fund at least 20% of the listing fees received for Investors' Service Fund.
2. The Ld. CIT(A) has erred in allowing the disallowance u/s 37(1) of the unutilized funds of ISF despite the Ld. CIT(A)'s own findings that the utilization of the fund is mandatory for purpose of investors education, which is directly related to the business activity of the assessee.
3. The Ld. CIT(A) has erred in holding that the unutilized part of the fund would never be the part of the reserve of the assessee, even after its existence despite the fact that set aside fund cannot be allowed as deductible business expenditure unless it was actually spent during the year for the purpose of business.
4. The Ld. CIT(A) erred in holding that the AO had not brought into record any instances which could indicate that the subscriptions to the above clubs were meant for personal purposes of directors or shareholders of the assessee despite the fact that AO has raised the point and giving findings that it is not specified or clarified as to how these amounts were incurred in connection with its business activities.
5. The Ld. CIT(A) erred in holding that the AO had not brought into record any instances which could indicate that the subscriptions to the above clubs were meant for personal purposes of directors or shareholders of the assessee despite the fact that AO has raised the point that no corresponding instances were cited by the assessee to prove how these expenditure contributed to the augmentation of its business.

20. On the basis of aforesaid grounds, the following points are to be determined under the revenue's appeal:

i) Whether learned CIT(A) has erred in deleting the disallowance of Rs. 3,83,99,537/- to Investors Service Fund (ISF), which is 20% of the listing fees received for Investors Service Fund (ISF)?

ii) Whether learned CIT(A) erred in deleting the disallowance of club entrance fees and subscriptions amounting to Rs. 19,35,782/-?

19. We shall, first take up first point for determination. Assessee's claim for this disallowance is based on SEBI's circular no. ref.SE/10118 dated 12.10.1992. Appellant assessee's claim is that the contribution to ISF is being made by it since the year 1992 onwards and has been claimed as expense u/s. 37 of the Act. The said claim has been allowed and accepted by the department in the past. There is no change in the fact and circumstances as compared to earlier years. The year wise details from A.Y. 2006-2007 to 2015-16 have been tabulated in the impugned order. The relevant paras 6.3 and 6.4 of the impugned order read as under:

> *"6.3 Before adjudicating the issue on merit, it is felt pertinent to mention the relevant part of the SEBI circular on this issue vide Ref SE/10118 dated October 12, 1992, as under.*
>
> *II. Investor Services Fund of Stock Exchanges i. The stock exchange shall set aside at least 20% of the listing fees received for ISF for providing services to the investing public. ii. In order to have better management and control on the contributions and utilization of ISF corpus, supervision of the same will rest with the Regulatory Oversight Committee. iii. The amount in ISF of the stock exchanges and any interest generated from this ISF shall be utilized for the purpose as stated in the table below: SN Particulars Utilization 1 ISF a) ISF can be utilized only for promotion of investor education and investor awareness programmes through seminars. lectures, workshops, publications (print and electronic media), training programmes etc. aimed at enhancing*

securities market literacy and promoting retail participation in securities market; b) At least 50% of the corpus should be spent at Tier II & Tier III cities; c) Cost of training of arbitrators; d) In any other manner as may be prescribed or permitted by SEBI in the interest of investors; e) ISF shall not be charged against expenses incurred for Page 11 of 18 sending SMS and E-mails as per provisions of the SEBI circular no. CIR/MIRSD/15/2011 dated August 02, 2011. 2 Interest on ISF Interest received on ISF shall be ploughed back to ISF. III. Miscellaneous i. If a stock exchange or a depository is wound up or derecognized or exits, then the balance in the IPF and/or ISF lying un-utilised with the stock exchange and depository shall be transferred to Investor Protection and Education Fund of SEBI in terms of SEBI (Investor Protection and Education Fund) Regulations, 2009. The funds shall be utilised for purposes of Investor education, awareness, research, etc

6.4 A perusal of the above circular makes it clear that the appellant is required to contribute 20% of its revenue from a particular source to the above referred fund. This is mandatory on the part of the appellant by virtue of an overriding title caste upon by the regulatory body SEBI. The circular also enumerates the manner in which those funds are to be utilized which primarily for the promotion of investor education and investor awareness program through seminars, lectures, workshops, publications, training programs etc. for enhancing securities market literacy. This circular further mentions that if the appellant is wound up or derecognized then the balance in the above fund lying unutilized would be transferred to a similar fund of SEBI. From the above facts it is clear that

1. The contribution to the funds is mandatory by an overriding title

2. The utilization of the fund is mandatorily for the purpose of investors education, which is directly related to the business activity of the appellant.

3. The unutilized part of the fund would never be the part of the reserve of the appellant, even after is existence."

20. The aforesaid SEBI's circular depicts the manner in which such funds are to be utilized primarily for the promotion of investor education and investor awareness programme. Through seminars, lectures, workshops, publications, training programmes, etc. for enhancing securities market literacy. According to this circular, in case the assessee company is wound up or derecognized, than the balance in the above fund lying unutilized could be transferred to the similar funds of SEBI. Learned CIT(A) has thus rightly held that the

contribution and utilization of the funds is mandatory for aforesaid purposes, which are directly related to the business activity of the appellant, hence allowable u/s. 37(1) of the Act. The aforesaid first point is accordingly determined against the revenue and in favour of the assessee.

21. The second point under consideration in this revenue's appeal, is in respect of the disallowance of club entrance fees and subscriptions of Rs. 19,35,782/-. From the perusal of the records, it transpires that the assessing officer disallowed the above expenditure on the ground that the such expenses are not specified or clarified to be linked with assessee's business activities and further on the basis, that the appellant's auditor has qualified such expenses as being personal in nature as shown in column no. 21a of the audit report submitted in form 3CD. However, learned CIT(A) has concluded that appellant is a leading stock exchange of the country and it, not only provides a platform for shares or stock trading but also maintains a detailed infrastructure and system for investors, literacy as well as their financial production. We find that learned CIT(A) has rightly observed that learned assessing officer has failed to bring on record any instance which could indicate that the subscriptions to the aforesaid clubs were meant for personal purposes of directors or shareholder of the appellants company. Further, that the auditors of the appellant did not report this amount in the column of personal expense in form 3CD of report but the prescribed column of expenses on club etc, which is only for

the reporting purposes. Learned CIT(A) has thus rightly deleted the aforesaid additions. The aforesaid second point is accordingly determined against the revenue and in favour of the assessee. The revenue's appeal is liable to be dismissed.

22. In the result, assessee's appeal ITA No. 2662/MUM/2024 is allowed. Learned assessing officer to take follow-up action as directed hereinabove. The revenue's appeal, ITA No. 2440/MUM/2024 is dismissed. Let the copy of this order be also placed on the records of revenue's appeal, ITA No. 2440/MUM/2024.

Order pronounced on 02.12.2024.

Sd/-	**Sd/-**
(MS. PADMAVATHY S)	**(SUNIL KUMAR SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 02/12/2024
Anandi Nambi, *Steno*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy// BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai