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

BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
AND SHRI AMARJIT SINGH, HON'BLE ACCOUNTANT MEMBER

ITA No. 3178/Mum/2024 (A.Y. 2007-08)
ITA No. 3175/Mum/2024 (A.Y. 2008-09)

DCIT (CC)-8(3), Mumbai	vs	63 Moons Technologies Limited CTS No. 256-257, F.T. Tower, Suren Road, Chakala, Andheri, Mumbai-400093. PAN: AAACF 5737 C
(Appellant)		(Respondent)

Present for:
Assessee by : Shri Sukhsagar Syal
Revenue by : Smt. Sanyogita Nagpal, CIT/DR

Date of Hearing : 21.11.2024
Date of Pronouncement : 11.12.2024

O R D E R

PER AMARJIT SINGH, AM:

Both these appeals filed by the Revenue pertaining to A.Y. 2007-08 and 2008-09 are directed against the different order of ld. CIT(A)-50, Mumbai. Both these appeals filed by the Revenue are based on identical issue and similar facts, therefore, for the sake of convenience these appeals are adjudicated together by taking ITA No. 3178/M/2024 as lead case and its finding will be applied mutatis mutandis to the other appeals whereunder it is applicable.

(ITA No. 3178/M/2024 (A.Y. 2007-08)

1. Whether on the facts and under the circumstances of the case and in law, the Hon'ble ITAT was Justified in deleting the disallowance made by the AO without appreciating the fact the proportionate claim of the premium on ZCCBs written during the tenure of Zero-Coupon Convertible Bonds was is in nature of interest?"

2. "Whether on the facts and under the circumstances the case and in Law, the Hon'ble ITAT was justified in deleting disallowance without appreciating the fact that the claim of provision of proportionate premium of Redemption of ZCCB is contingent liability?"

3. "Whether on the facts and under the circumstances of the case and in Law, the Hon'ble ITAT was justified in deleting the disallowance without appreciating the fact that the assessee treating provision of proportionate premium of Redemption ZCCB as capital expenses.?"

4. Whether on the facts and under the circumstances of the case and in Law, the Hon'ble ITAT was justified in deleting the disallowance without appreciating the fact that the claim of premium/ interest cannot be allowed u/s.40(a)(ia) since tax was not deducted at source?

5. Whether on the facts and under the circumstances of the case and in Law, the Hon'ble ITAT, Mumbai has erred in deleting the disallowance u/s 14A of the Income Tax Act, 1961 thereby overlooking the computational procedure laid down in Rule 8D of the IT Rules, 1962 which has to be necessarily followed whenever a disallowance u/s 14A was to be made?"

6. Whether on the facts and under the circumstances of the case and in Law, the Hon'ble ITAT, Mumbai has erred in deleting the disallowance u/s 14A of the Income Tax Act, 1961 from total income on the ground of non-application of mind as a quasi-judicial authority while recording the dissatisfaction as required envisaged u/s.14A of the Act without appreciating the fact that while invoking the provisions of Rule 8D r.w.s 14A in the assessment order the assessing officer has given a detailed reasoning in para 5.4 and also not appreciating the fact that the Hon'ble Supreme Court in the case of MAK Data [(2013) 38 taxmann.com 448 (SC)] has categorically mentioned that the A.O. need not to document his satisfaction in a particular manner and not even in writing form"?

**7. Whether on the facts and under the circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the disallowance on account of claim of ZCCB issue expenses made by the AO for Rs. 15,75,36,929/- without appreciating the fact the conversion of ZCCB into equity shares was certain and therefore the ZCCB issue expenses are capital in nature".*

"8. Whether on the facts and under the circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the disallowance on account of claim of ZCCB issue expenses made by the AO for Rs. 15,75,36,929/- without appreciating the fact that the ZCCB issue expenses is treated as capital expenses in assessee's books of accounts and appropriated from share premium account."

2. **Grounds No. 1 to 4:** The assessee company is engaged in the business of application products, software development services and software consultant etc. The return of income declaring total income of Rs. 21,92,10,943/- was filed on 31.10.2007. Consequent to search action u/s 132 of the Act and in response to notice issued u/s 153A of the Act on 10.12.2007 the assessee filed return of income declaring total income of Rs. 21,92,10,943/- which was revised to Rs. 20,37,42,526/- on 30.01.2009. The assessment u/s 153A r.w.s. 143(3) of the Act was completed on 09.04.2009 and the total income of the assessee was determined at Rs. 46,94,22,687/- after making addition mainly on account of disallowance of accrued interest expenses claimed on Zero Coupon Convertible Bond (ZCCB) and disallowance made u/s 14A r.w. Rule 8D of I.T. Rules. Further facts of the case are discussed while adjudicating the ground of appeal filed by the Revenue.

3. **Ground No. 1 to 4 claim of premium on redemption zero coupon convertible bond:** During the year under consideration the assessee filed an offer document with Singapore Stock Exchange for allotment of 1,00,000 Zero Coupon Convertible Bond (ZCCB) of a face value of US$ 1,000 each for a tenure of five years and to be listed and tradeable on the Singapore Exchange. These bonds were due for maturity at 147.14 per cent of issue price at the time of redemption for which interest has to be accumulated @ 7.875% per annum. The assessee had calculated the proportionate premium on the bond yearly

basis and for the year under consideration claimed proportionate interest amount of Rs. 9,63,05,800/- and same was debited to share premium account in the A.Y. 2007-08. The AO observed that assessee had claimed deduction of such expenses by appropriating out of securities premium account without actually debiting to profit & loss account. Since the assessee has not debited the aforesaid expenses to the P&L A/c therefore assessing officer has disallowed the claim of deduction of Rs. 9,63,05,800/-.

4. Assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee. The relevant extract of the decision of ld. CIT(A) is reproduced as under:

> *"7.6 I have considered the assessment order, submissions filed by the appellants and facts available on record. The Hon'ble ITAT, Mumbai "J" Bench (ITA No. 4775 and 4776/Mum/2016) for the A.Y. 2009-10 and 2010-11 has decided this issue. The relevant Para is reproduce as under:-*
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> *14. Upon careful consideration, we note that in this case, the assessee has claimed premium/interest payable at maturity of Zero Coupon Convertible Bonds(ZCCB) in the revised return of income. In the accounts of the assessee the said amount was debited to the share premium account. But, in the computation of income assesseo claimed the said amourit as deduction from income. For admissibility of this claim the assessee submission is that the claim is for each financial year although payment of premium amount shall be paid at the end of the period. That as per mercantile method of accounting incomo/expense has to be accounted for in the respective accounting period. That the income tax Act does not recognize the concept of deferred income or deferred expenses. That the Assessee is following mercantile methods of accounting. Assessee has also referred to CBDT notifications which confirms that expenses incurred for raising issue of debentures is allowable as revenue expenditure. Further Page No. 45 of CBDT circular No. 56 has been referred for proposition that the provision for amortization is not intended to supersede any other provision in the income tax law under which the expenditure is allowable as a*

deduction against profits. Certain case laws have been referred for the proposition that interest/premium can be claimed in the respective year on pro-rata basis. The decision relied upon are as under:-

1. Madras Industrial Investment Corporation Ltd. vs CIT 225 ITR802(SC)

2. National Engineering Industries Ltd. vs. CIT 12361 TR577(Cal)

3. CIT vs Tungabhadra Industries Ltd. 207 ITR553

4. Taparia Tools, 260 ITR 102(Bom)

Further the submission, as regards the different treatment in books of accounts and income tax computation is that entries made by the assessee in books of accounts are not determinative of the question whether the assessee has earned any profit or suffered any loss. In his regard, decision of Hon'ble Supreme Court in the case of Suttej Cotton Mills (supra) and Kedarnath Jufe Manufacturing Co. Ltd. (supra) have been referred. Further, it has been pleaded that provision of Companies Act as well as Income Tax Act have been duly complied with. It has also been submitted that assessee has incidentally started repaying such ZCCB during the financial year 2009. 10 without conversion of such bonds into equity shares. That this also confirms and strengthens the view point of the assessee that the amount is repaid. Now the AO has rejected the claim firstly on the basis of the plank that amount has not been debited into profit and loss account and has been adjusted in the share premium account. Now this plank of the AO is not sustainable on the touchstone of proposition that accounting entries are not determinative of the true nature of the transaction. The accounting treatment has been given in compliance with the companies Act provisions. There is no claim of any violation in this regard. The claim in income tax Act has to be made as per mercantile system and consistent method accounting. A liability which has been accrued has to be provided and allowed. It is not that liability is allowed only on the payment basis. Following case laws in this regard are relevant, germane and support the case of the assessee.

1. Madras Industrial Investment Corporation Ltd(supra)
2. National Engineering Industries Ltd. (supra)
3. CIT vs Tungabhadra Industries Ltd. (supra)
4. Taparia Tools(supra)

17. Another claim of the authorities below is that liability is contingent as it depends whether the bonds are converted in equity or not. In this regard, the claim of the assessee is that merely because bonds could be converted into shares in certain specified circumstances, it cannot be said that liability to pay is contingent. That liability to pay premium has been incurred the moment funds were raised through bonds. It has further been submitted that even on facts the bonds have not been converted into shares, in this regard various case laws have been referred.

18. The argument of revenue that the amount has not been debited in account is also not sustainable as the assessee has very much been debited in the account to the debit of share premium account. The Companies Act duly permits the same. Hence, the plea that amount is contingent and not debited is not correct, when revenue itself has accepted the debit in this regard of the amount to the share premium account. Revenue authorities cannot take a shifting stand that the amount is correctly accrued and debit to share premium account is correct, but the same is still a contingent amount. The assessee could have very well debited the amount to the profit and loss account, but it has chosen to debit the amount to share premium account in the books, which is also permitted as per Companies Act. No infraction of law in this regard was pointed out. Since revenue has accepted the debit of the premium to share premium account, it is clear that revenue has accepted that redemption premium amount has been accepted as accrued. Nevertheless, the case law in this regard duly support the proposition. In this regard, we may refer to the decision of Hon'ble Bombay High Court in the case of S.M. Holding & Finance (P) Ltd. 264 ITR 370 as under:-

"Both the above appeals raised a common question of law and fact and, therefore, they are heard together and disposed of by this common Judgment, Both the appeals have been preferred by the Department. They concern asst. yrs. 1995-96 and 1996-97, respectively. For the sake of convenience, we reproduce herein the facts in IT Appeal No. 215of 2001. The following question is referred for opinion of this Court:

"Whether, on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal has erred in deleting the addition of Rs. 54,75,000 made on account of 1/5th (1/10th) of premium on the redeemable debentures without considering the fact that no liability had accrued during the year under appeal and it was a contingent liability which

was payable only after the expiry of 10 years and directed the AO to follow the decision of Supreme Court in the case of Madras Industrial Investment Corporation Ltd. v. CIT where facts of the case are different from those of Supreme Court's decision?"

Facts

1. During the assessment year in question, the assessee-company had issued zero interest unsecured redeemable convertible debentures of Rs. 100 each redeemable after 10 years at a premium of 100 per cent. These debentures are redeemable after 10 years from the date of allotment at a premium of 100 per cent. Assessee claimed before the AO a spread over, Assessee claimed that the premium payable by it was Rs. 5,47,50,000 after expiry of 10 years. However, the assesses claimed deduction of Rs. 54,75,000 per annum. The said amount was debited to the P&L a/c for the accounting year ending 31st March, 1995. In the annual report, a footnote was added that premium on zero interest unsecured redeemable debentures of Rs. 100 each was redeemable after 10 years at a premium of 100 per cent. The AO disallowed the asses500's claim for deduction of Rs. 54,75,000. He added back that figure to the income of the assessee on the ground that the liability was not ascertainable during the accounting year ending 31st March, 1995. That, it was a contingent liability. This decision was confirmed by the CIT(A). However, the Tribunal overruled the case of the Department in view of the judgment of the Supreme Court in the case of Madras Industrial Investment Corporation Ltd. v. CIT. Being aggrieved, the Department has come by way of the appeal to this Court.

Arguments

1. None appears for respondent though served.

2. Mr. R.V. Desai, learned counsel appearing for the Department/appellant. submitted that the ratio of the judgment of the Supreme Court in the case of Madras Industrial Investment Corporation (supra) as also the judgment of this Court in the case of Tapatia Tools Ltd. v. Jt CIT(2003) 126 Taxman 544 (Bom) was not applicable as in this case the AO found alteration in the terms of issue of debentures during the life of the issued debentures. Ho submitted that originally the debentures were issued at 2 per cent. which was changed to 0 per cent during the life of issued debentures. That, originally the issued debenture was for 5 years which was changed to 10 years during the

existence of the issued debentures. He submitted that in the case of Madras Industrial Investment Corporation (supra) as also in the case of Taparia Tools Ltd. (supra), there was no discretion vested in the assessee to alter the terms of the issued debentures during the subsistence of the issued debentures whereas in the present case the borrower had the discretion to change the terms of the issued convertible debentures. He, therefore, submitted that during the assessment year in question, there was no ascertainment of liability to the tune of Rs. 54,75,000 and, therefore, the AO was right in disallowing the claim for deduction.

Findings

1. We do not find any merit in the above arguments advanced on behalf of the Department. Firstly, we have gone through the records and proceedings (R & P). In the entire R & P, there is nothing to indicate alterations of terms and conditions during the subsistence of the issued convertible debentures during the assessment year in question. Secondly, in the annual reports of the company and also in the audit reports given by the auditors, it has been certified that zero interest unsecured redeemable convertible debentures of Rs. 100 each redeemable after 10 years at a premium of 100 per cent had been issued during the assessment year in question. There is no reason for us to discard this note of the auditor. Even in the assessment order, no reasons have been given by the AO for discarding this note of the auditors. Lastly, we may point out that even assuming for the sake of argument that the borrower had a discretion to change the terms of the issued debentures, there is nothing in the record to show that during the assessment year in question the borrower had exercised such a discretion. In the absence of factual matrix; we have no option but to confirm the judgment of the Tribunal. In our view, the judgment of this Court in the case of Taparia Tools Ltd. v. Jt CIT(supra) is applicable to this case. In our view, the judgment of the Supreme Court in the case of Madras Industrial Investment Corporation v. CIT(supra) is also applicable.

Order in the circumstances, we answer the above quoted question in the affirmative i.e., in favour of the assessee and against the Department.

1. Accordingly, both the above appeals are disposed of with no order as to costs."

19. We note that in the above case Hon'ble Jurisdictional High Court has duly taken note of Hon'ble Supreme Court decision in the case of Madras Industrial Investment Corporation (supra) and Hon'ble Bombay High Court decision in the case of Taporia Tools Ltd. (supra) and had found no fault even on the ground that the borrower had the discretion to change the terms of the issued debentures. As there was nothing in the record to show that during the assessment year in question, the borrower had exercised such a discretion. In the present case also, there is nothing on record that the borrower had exercised any such discretion. In this view of the matter, the said case law is fully applicable on the facts of the case and the liability on account of debenture redemption premium is liable to be deducted from the income and cannot be treated as contingent liability. Furthermore Mumbai Tribunal in the case of Mahindra and Mahindra ITA No. 8597/Mum/2010 held as under-

"Next ground of appeal is about disallowance of pro rata premium of Rs.5.39 crores payable on redemption of 'Foreign Currency Convertible Bonds (FCCB). As per the AO the bonds were convertible into shares and, therefore, could not be construed as a borrowing, that they increased capital base of the company and that the expenditure incurred was capital in nature.

The AR submitted that FCCB were a form of borrowing that they were shown in the balance sheet under loans that premium payable on redemption was cost of borrowing, that option of conversion of bonds into shares was only with the bond holders, that conversion was a subsequent event which did not change the initial character of the bonds of a debt, that in the event of redemption payment of premium was mandatory, that premium being a cost of borrowing was allowable on time that premium was neither capital nor contingent in nature, that issue of FCCB had been held to be revenue in appellant is own case for the assessment year 1997-98 (ITA/7845/M/2004).DR supported the order of the AO.

20. From the above, it is clear that the amount of debenture redemption premium is accrued and liable to be deducted. Hence, in the background of aforesaid discussion and precedents, we set aside the orders of the authorities below, and decide the issue in favour of the assessee.

7.6.2 The appellant company has also provided the copies of Order of CIT (Appeal) - 56 for the AY 2011-12 and 2012-13 where the above issue towards disallowance of Interest (Premium) on Zero Convertible Coupon Bonds was allowed in favour of Appellant Company following the decision of Hon'ble Income Tax Appellate Tribunal vide ITA No. 7547/7548/Mum/2016 dated on 16th December 2021. Aggrieved to the Order of Ld CIT(A)-56, department had filed appeal before Hon'ble Income Tax Appellate Tribunal, Mumbai for the AY 2011-12 and 2012-13. The Hon'ble Income Tax Appellate Tribunal Mumbai has rejected the grounds of appeal of Revenue vide order 1515/Mum/2022 dated 21st November 2022 for AY 2011-12. The relevant portion of the decision is as under-

"11. The issue arising in ground No. 2, raised in Revenue's appeal, is pertaining to the deletion of disallowance made on account of interest on payment of Zero Coupon Convertible Bands.

12. The brief facts of the case pertaining to this issue are: During the course of assessment proceedings, it was found that the assessee has claimed a deduction on account of interest/premium payable on maturity of Zero Coupon Convertible Bonds raised by the company in financial year 2006-07 to the extent of INR 45,30,80,094 as per revised return of income filed on 23/11/2011. The assessee has claimed such amount as a deduction on the ground that the fiability of payment has already crystallised on accrual basis and although no such interest has been paid such amount may be allowed as a deduction. The AO vide order dated 15/05/2015 passed under section 144C (3) rw section 143 (3) of the Act did not agree with the submissions of the assessee and held that since no amount was debited to the profit and loss account, such expense cannot be claimed as deduction. The AD lurther held that no TDS on such expense was deducted and hence such an amount cannot be allowed as a deduction under section 40 (a)(i) of the Act. Accordingly, the AO made an addition of INR 45,30,80,094 to the total income of the assessee.

13. The learned CIT(A) vide impugned order allowed the appeal filed by the assessee on this issue by following the decision of the coordinate bench of the Tribunal in assessee's own case for the preceding assessment year. Being aggrieved, the Revenue is in appeal before us.

17. The learned DR could not show us any reason to deviate from the aforesaid decision and no change in facts and low was alleged in the

relevant assessment year. Thus, respectfully following the order passed by the coordinate bench of the Tribunal in assessee's own case cited supra, we find no infirmity in the impugned order passed by the learned CIT(A) on this issue. As a result, ground No. 2 raised in Revenue's appeal is dismissed."

7.6.2.2 Similarly the Honble ITAT "D" bench vide order dated 06.01.2023 (1509/Mum/2023) AY 2012-13, decided the issue in favour of appellant following the earlier order for A.Y 2009-10 and A.Y 2010-11.

7.6.3 It can be seen from the above discussion, that the issue pertaining to Interest (Premium) of Zero Coupon Convertible Bonds is covered by decision of the Hon'ble ITAT in appellants own case for A.Y. 2009-10 to A.Y. 2012-13. I find that the AO has denied the deduction as (i) Assessee has not debited such expenses to P&L Account (ii) liability is contingent as it depends whether the bonds are converted in equity or not. All the issue have been discussed by the Hon'ble Tribunal in its order. Since the facts remain the same, respectfully following the decision of the Hon'ble Tribunal, the addition made by the A.O is deleted. The appeal on these grounds is accordingly allowed."

5. Heard both the sides and perused the material on record. During the course of appellate proceedings, the ld. Counsel submitted that identical issue on similar fact has been adjudicated by the ITAT for A.Y. 2009-10 and 2010-11 vide ITA No. 4775 & 4776/M/2016 dated 16.12.2021, vide ITA No. 1515/M/2022 dated 21.11.2022 and ITA No. 1509/M/2022 dated 06.01.2023 in favour of the assessee. We find that the claim of interest expenses on Zero Coupon Convertible Bonds is recurring issue and same has been adjudicated in the case of the assessee itself by the ITAT as per findings reproduced in the order of the ld. CIT(A) as discussed supra in this order. The ld. CIT(A) has also referred the decision relied upon by the assessee in the case of Madras Industrial Investment Corporation vs CIT 225 ITR 822 (SC), Taparia Tools 260 ITR 102 (Bom) and other decisions on the proposition that liability on account of debenture redemption premium is liable to be

deducted from the income and cannot be treated as contingent liability as reproduced above in this order. Since there is no change in the facts or law on this issue during the year under consideration, therefore following the decision of ITAT, we do not find any infirmity in the decision of ld. CIT(A). Accordingly, ground nos. 1 to 4 of the appeal of the Revenue are dismissed.

6. Ground No. 5 to 6: **Erred in deleting disallowance u/s 14A of the Income Tax Act, 1961:** The assessee earned exempt income in the nature of dividend of Rs. 63,60,27,766/-. The assessee had disallowed indirect expenditure to the amount of Rs. 7,33,953/-. However, the assessing officer has computed disallowance @ 0.5% of average value of investment being Rs. 81,19,171/- in accordance with Rule 8D of the I.T. Rule and made total disallowance of Rs. 88,51,124/-.

7. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has deleted the disallowance made by the assessing officer holding that provision of Rule 8D is not applicable for the A.Y. 2007-08. The relevant extract of decision of ld. CIT(A) is reproduced as under:

> *"9.5. I have considered the submissions of the Appellant, assessment order and facts available on record. The provisions of Rule 8D are notified on 24.03.2008 and the same is applicable from the Assessment Year 2008-09 as prospectively as held in the decision of the Apex Court in the case of Essar Teleholdings Ltd. reported in 401 ITR 445. Thus invoking Rule 8D in this case is not correct.*
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> *9.5.2 Further, this issue has also been decided by the Honble ITAT in the appellants own case for the A.Y 2009-10, 2010-11,2011-12 and A.Y 2012-13. The CIT (A) has also decided this issue for the A.Y 2011-12 and A.Y 2012-13. The same is discussed as under-*

1. The Honb'le ITAT Mumbai J Bench vide order no ITA Nos.4755 & 4776/Mum/2016 AY 2009-10 & 10-11 dated 06.12.2021 has decided as under-

27. We note that assessee has given the reasons for expenditure, which as per the assessee is disallowable u/s 14A Assessee has provided the basis of working of disallowance, however, the same has been rejected by the authorities below without cogent reasoning. The AO and Ld. CIT(A) are mentioning that "it is difficult to accept that assessee has incurred only that much of expenditure." This is no reason at all. It is settled law that proper satisfaction is necessary in this regard in rejecting assessee's contentions. In this regard, wo note that Hon'ble Bombay High court in the case of Bombay Stock Exchange 113 taxmann.com 303 has held as under-

"Non-satisfaction with the disallowance offered by the assessee has to be arrived at on the basis of the accounts submitted by the assessee. In this case, the Assessing Officer had not carried out the aforesaid exercise but rejected the disallowance claimed by the assessee only on the ground that it was not in accordance with Rule 8D of the Rules. The application of Rule 8D of the Rules would only arise once the Assessing Officer is not satisfied on an objective criteria in the context of its accounts, that suo motu disallowance claimed by the assessee is not proper.

In fact, the Supreme Court in the case of Maxopp Investment Ltd. v. CIT (2018) 91 taxmann.com 154/254 Taxman 325/402 ITR 640 while upholding the view of the Delhi High Court has held that the Assessing Officer needs to record his non- satisfaction having regard to the suo moto disallowances claimed by the assessee in the context of its accounts. It is only thereafter, the occasion to apply rule 8D of the Rules for apportionment of expenses can arise.

In the present facts, the Tribunal has correctly come to the conclusion that non- satisfaction recorded by the Assessing Officer for rejecting the suo moto disallowances claimed by the assessee is not done as required under section 14(2) of the Act. On facts, the view taken by the Tribunal is a possible view and calls for no interference."

28. We find that facts in the present case are identical and following the precedent, we set aside the order of authorities below. This ground is allowed."

The CIT(A), vide order dated 31.03.2022 for AY2012-13 has held as under-

"5.3 Decision: 1 have carefully gone through the submission of the Appellant as well as the order of the AO As per provision of section 14A, the Assessing officer cannot invoke the provision of Section 144(2) r.w. Rule BD without recording dis-satisfaction towards working of disallowance made by the Appellant Company as per the provision of Section 14A(1) of Income Tax.

During the course of assessment proceedings and appellate proceedings, the AR of Appellant submitted that the Appellant had a dedicated person looking after investment procedures and accounting thereof whereas the Director - Finance, Chief Financial Officer and a Manager were devoting part of their time in decision making. The team was supported with a peon and necessary infrastructure were provided to them. These persons were using the office premises which were on rental basis for part of the year. The Appellant had calculated all expenses in relation to these activities on scientifically proponial basis and arrived at amounts of Rs. 48,79,103/- which were offered for disallowance u/s 14A of IT Act.

This issue is squarely covered by recent decision of Hon'ble Income Tax Appellate Tribunal Mumbai in the case of the Appellant dated 16th December 2021 in ITA no. 4775/4776/Mum/ 2016 for AY 2009-10 and 2010-11. The Hon'ble Tribunal placing reliance on decision of Hon'ble Bombay High Court in the case of Bombay Stock Exchange 113 taxmann.com 303 allowed the appeal of the assessee, holding that proper satisfaction for invoking Rule 8D was not recorded. The decision in the case of Bombay Stock Exchange was recently upheld by Hon'ble Apex Court in the case of PCIT vs Bombay Stock Exchange Ltd (2021) 281 Taxman 365(SC)

III. The above order of CIT(A) was challenged before the ITAT. The Honb'le ITAT Mumbai D bench vide order no 1.T.A. No.1509/Mum/2022/Mum/2022 for A.Y.2012-13 dated 06.01.2023 has held as under-

14. Having heard both the parties and after perusal of the records, we note that the assessee has earned exempt income to the tune of Rs. 41,32,13,283/- and Rs. 8,93,02,757/-: and has made suo-moto disallowance of Rs. 48,79,103/- for earning the exempt income. Taking

note of these facts, the AO show caused the assessee as to why disallowance may not be made by applying Rule 8D. Pursuant to which, the assessee brought to his notice that assessee has invested its own funds for earning the exempt income. Therefore, the AO did not made any disallowance under Rule BD(2)(ii) of the Rules. Even large on the face of it because irrelevant facts not pertaining to of some other cases; and secondly, there is contradiction all though the assessee brought to the notice of the AO the break-up of suo moto disallowance of Rs.48,79,103/-, the AO applied Rule 8D(2) (ii) of the Rules. On perusal of the assessment order on this issue, according to us, firstly there is non-application of mind writ assessee's case has been cut and pasted, which we presume to be that throughout his dissatisfaction recorded from para no. 5.4 to 5.13. Therefore, we are of the considered opinion that the AO has not applied his mind as a quasi-judicial authority while recording dissatisfaction as required envisaged u/s 14A of the Act, before applying methodology as prescribed under Rule 8D of the Rules. Therefore, we cannot uphold the action of AO to have applied Rule 8D(2)(iii) of the Rules without recording satisfaction as required by law and it is settled position of law that before proceeding to apply the methodology prescribed under Rule 8D of the Rules, AO has to record his dissatisfaction about the correctness of the expenditure incurred to earn the exempt income as envisaged under sub-section (2) of section 14 of the Act. Therefore, we note that Ld. CIT(A) has followed the decision of this Tribunal in assessee's own case of AY.2009-10 & AY.2010-11 and has deleted the disallowance made by the AO. In such a scenario, we do not find any infirmity in the order of the Ld. CIT (A) which requires any interference from our side. Therefore, wo dismiss the grounds of appeal of the revenue.

15. In the result, the appeal of the revenue is dismissed."

9.5.3 In this case during the assessment proceedings the appellant has offered the disallowance of expenditure of Rs. 7,33,953/- u/s 14A of the I.T. Act. The appellant claimed that this expenditure relates to the earning of exempt income. In response to the questions raised by the A.O, the appellant submitted that provision of section 14A(2) were introduced with effect from 2007-08 and the rule were not prescribed till 24.03.2008, Hence, rule 8D is not applicable in the appellant case. After considering the submission of the assessee the A.O held in in Para 5.4:

"Disallowance made by the assessee is not acceptable as the expenses intended to be disallowed is not sufficient to cover the expenses that

would genuinely be spend on earning tax free income as compared to the amount of investments made by the assessee hence to derive such expenses Rule 8D is applied. Rule 8D is clarificatory in nature and applicable with retrospective effect. Disallowance works out as under"

Accordingly, the disallowance of Rs. 88,51,124/- was made.

9.5.4 I find that the similar disallowance was made u/s 14A for the A.Y 2009-10, 2010-11, 2011-12 & 2012-13. As discussed above the CIT(A) and Hon'ble ITAT Mumbai has deleted the addition on the ground that the A.O has not applied his mind as a quasi judicial authority while recording dissatisfaction as required u/s 14A. The reasons recorded for the year under consideration and reasons recorded for the A.Y 2009-10, 2010-11, 2011-12 & 2012-13 are identical. The only reason recorded by the A.O is that the disallowance offered by the appellant is not sufficient to cover the expenses that would genuinely be spend for earning exempt income. As the facts are identical, the issue is covered by decision of CIT(A) and Hon'ble ITAT as discussed above. Further, the provisions of Rule BD are not applicable for the A.Y 2007-08.

From the perusal of the balance sheet as on 31.03.2007, it is seen that the total such investments made were of Rs 9186.08 lacs whereas the total noninterest bearing own funds were of Rs 19866.03 lacs. Thus, sufficient own funds were available to make such investments. In the facts of the case, the decision of Hon'ble Bombay High Court in case of CIT v/s Reliance Utility and Power Ltd. (313 ITR 340) and decision of Hon'ble Bombay High Court in case of HDFC Bank Ltd. (366 ITR 505) are applicable.

In view of the above the addition made by the A.O of Rs. 88,51,124/- is deleted. Accordingly, the grounds are allowed."

8. During the course of appellate proceedings before us, the ld. Counsel also submitted that assessing officer has not recorded any satisfaction on the disallowance made by the assessee itself. Further he submitted that ITAT in A.Y. 2009-10 to 2012-13 on similar facts has deleted the addition in the case of assessee that AO has not applied his mind while recording dissatisfaction as required u/s 14A of the Act.

9. Heard both the sides and perused the material on record on the issue of disallowance made u/s. 14A of the Act. In respect of A.Y. 2007-08 the Ld. CIT(A) has rightly held that provision of Rule 8D is not applicable to as the same is applicable prospectively from A.Y. 2008-09. Further the AO has not recorded satisfaction as required u/s 14(2) of the Act regarding the *suo motu* disallowance claimed by the assessee. The ITAT on similar facts and issue for A.Y.2009-10 and A.Y. 2010-11 in the case of the assessee has deleted the disallowance made u/s. 14A of the Act since the AO had not recorded proper satisfaction as envisaged in section 14(2) of the Act as discussed in the findings of the Ld. CIT(A). Since there is no change in the facts of the case from the earlier years, therefore, we do not find any reason to interfere in the decision of ld. CIT(A). Accordingly, ground no. 5 & 6 of the appeal of the Revenue are dismissed.

10. Ground No. 7 & 8: **Disallowance on account of claim of Zero Coupon Convertible Bonds:**

The assessee company incurred expenditure to the amount of Rs. 15,75,36,929/- for issuing of ZCCB the details of which are reproduced as under:

Sl. No.	*Particulars*	*Amount (Rs.)*
1	*Underwriting commission*	*5,97,87,450*
2	*Legal and professional fees*	*2,68,11,521*
3	*Brokerage*	*6,61,39,950*
4	*Audit fees*	*35,50,000*
5	*Printing and stationery expenses*	*2,07,263*
6	*Miscellaneous expenses*	*10,40,745*
	Total	*15,75,36,929*

11. The AO noticed that assessee had not debited such expenses in the books of account and disallowed such expenses from the

computation of income for income-tax purpose. He further observed that amount of expenses has been appropriated from the security premium account therefore same was of the nature of capital expenditure. Accordingly, claim of deduction was not allowed.

12. Assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee. The relevant extract of ld. CIT(A) is reproduced as under:

> *"8.5 I have considered the Assessment order, Submission of the appellant and facts available on record.*
>
> *The appellant had issued Zero Coupon Convertible Bonds to investors outside India in the month of December 2006 and had raised a sum of Rs.434,41,70,000/-. The expenses incurred of Rs.15,75,36,929/- for raising such funds is claimed as deduction. The details of these expenses were submitted before the A.O. The Assessing Officer had disallowed the issue expenses of Zero Coupon Convertible Bonds by holding that the conversion of Bonds into equity of the company is certain and hence the expenditure is a capital expenditure. The next observation of the A.O is that the expenditure is not debited in the profit and loss account and has been appropriated from the securities premium account.*
>
> *8.5.2 The issue is whether the issue expenses are revenue expenses or capital expenses and whether such expenses are allowed as deductions u/s 37 (1) of the I.T. Act. This issue has been decided by the various Tribunals, High Courts and Supreme Court. Some of the decisions are discussed as under-*
>
> *1. Honb'le Rajasthan High court in case of Commissioner of Income-tax, Udaipur v. Secure Meters Ltd. (175 Taxman 567) has held as under-*
>
> *"7. We have gone through the judgment in Brooke Bond India Ltd.'s case (supra), and find, that that was a case where the registration fee to the tune of Rs. 1,50,000 was paid to the Registrar of Companies for increasing share capital of the company, while in the case of India Cement Ltd. (supra), the matter related to the borrowing of Rs. 40 lakhs from a financial institution, which loan was secured by a charge on the fixed assets of the company The Hon'ble Supreme Court in this judgment*

considered various aspects of the matter, including the previous English judgments, and couple of judgments of English Courts, based on English income-tax Act, and proceeded to draw distinction between the Income-tax Law in England, and India, Not only this, the Hon'ble Supreme Court further proceeded to examine number of cases decided by various High Courts like Kerala, Andhra Pradesh, Calcutta, Bombay etc., and had gone to the extent of holding, that some of the judgments were wrongly decided. Then, the Hon'ble Supreme Court proceeded to hold as under-

10. To summarize this part of the case, we are of the opinion that: (a) the loan obtained is not an asset or advantage of an enduring nature: (b) that the expenditure was made for securing the use of money for a certain period; and (c) that it is irrelevant to consider the object with which the loan was obtained."

8. Thus it was held, that the expenditure incurred in procuring the loan was revenue expenditure within section 10(2)(xv) of the old Income-tax Act, which corresponds to section 37 of the present Act. By going through the said judgment it further transpires, that the Hon'ble Supreme Court also proceeded to examine the aspect of purpose of raising loan, and its immediate or subsequent utilization for different purpose, and examined, that even if a loan is raised for purchasing raw material, and after raising the loan the company finds it unnecessary to buy raw material and spends the amount on capital asset, still it cannot be said to be capital expenditure, as it was held, that purpose for which the now loan was required was irrelevant to the question as to whether the expenditure for obtaining loan was revenue or capital expenditure. We are told, that relying on this judgment, many of the High Courts of the country have consistently taken the view, that the expenditure incurred in issuing any debentures, and raising loan on debentures, is admissible, obviously because the debenture is also a loan.

9. At this stage it was contended by the learned counsel for the revenue, that a distinction should be drawn between the convertible, and non-convertible debentures, inasmuch as if the debenture is converted into shares, then it partakes the character of capital, and in that event, the expenditure would not be revenue expenditure, and would be capital expenditure. Learned counsel for the assassee informs, that though it has not come on record so far, but as a matter of fact the debentures issued were of convertible nature. Then, the leamed counsel for the assessee argued, relying upon the judgment of Calcutta High Court, in CIT v. East

India Hotels Ltd. [2001] 252 ITR 860, that the expenditure incurred, even in raising loan by convertible debenture would also be admissible as revenue expenditure. The Calcutta High Court had adopted the reasoning, that conversion of debentures results into repayment of loan, and issuance of shares. This is one aspect of the matter. In our view, the other more important aspect of the matter is, that the Hon'ble Supreme Court in India Cement Ltd.'s case (supra) has clearly excluded this aspect from consideration, by holding, that it is irrelevant to consider the object, with which the loan was obtained. Admittedly the debentures when issued is a loan, and therefore, whether it is convertible, or non-convertible, does not militate against the nature of the debenture, being loan, and therefore, the expenditure Incurred would be admissible as revenue expenditure."

II. Honb'le Delhi High Court in case of CITVs Havells India Ltd (21 taxmann.com 476) has held as under-

25. The Revenue is in appeal. The main contention on its behalf is that the position should be seen not only with reference to time at which the debentures are issued but the fact that at a future point of time they were to be converted in shares should also be taken note of in order to judge the allowability of the expenditure incurred in connection with the debenture issue. It was submitted that on the facts of the present case, the debentures were to be converted within a period of 15 months, that is on or before 12.6.2006, and that the assessee company had even fixed the price at which the shares would be issued upon conversion of the debentures, and that oven the issue of bonus shares had been finalized at the time of the debenture issue and all these facts clearly showed that the issue was in truth and effect only an issue of share capital It was accordingly contended that the judgments of the Supreme Court cited supra were squarely applicable.

26. It is well settled that expenditure incurred in connection with the issue of debentures or obtaining loan is revenue expenditure. Reference in this connection may be made to the leading judgment of the Supreme Court in India Cements Ltd. v. CIT [1965] 60 ITR 52 The question before us however, is whether it is a debenture issue or an issue of share capital involving the strengthening of the capital base of the company. Though it prima facie appears that there are sufficient facts to indicate that what was contemplated was an issue of shares to the Mauritius Company under the Investor Agreement which would result in

strengthening of the assessee capital base, having regard to the judgments cited on behalf of the assessee, in which it has been held that despite indications to the effect that the debentures are to be converted in the near future into equity shares, the expenditure incurred should be allowed as revenue expenditure on the basis of the factual position obtaining at the time of the debenture issue, we are not inclined to take a different view. The following cases have been cited on behalf of the assessee in support of the view that even in such a situation the expenditure is allowable as revenue expenditure: -

(1) CIT v. East India Hotels Ltd. [2001] 252 ITR 860/119 Taxman 235 (Cal.)

(ii) CIT v. ITC Hotels Ltd. [2011] 334 ITR 109/[2010] 190 Taxman 430 (Kar.)

(i) CIT v. South India Corpn. (Agencies) Ltd. [2007] 290 ITR 217/154 Taxman 249 (Mad.)

(iv) CIT v. First Leasing Co. of India Ltd. [2008] 304 ITR 67 (Mad.)

27. In addition to the above judgments, we also have the judgment of the Rajasthan High Court (supra) against which the Special Leave Petition filed by the Revenue was dismissed. Having regard to the predominant view taken in the above judgments, in which the judgment of the Supreme Court in India Cement Ltd. (supra) has been noticed, we are inclined to uphold the view taken by the Tribunal that the expenditure is revenue in nature. Accordingly, we answer the substantial question of law in favour of the assessee and against the revenue.

III. Honb'le Karnataka High Court in vase of CIT Vs ITC Hotels(190 Taxman 430) has held as under-

After hearing the learned counsel for the parties, we have come across a Judgment of the Rajasthan High Court in CIT v. Secure Meters Ltd. [2008] 175 Taxman 567 (Raj.). Jodhpur Bench of High Court judicature of Rajasthan considering the various aspects has come to the conclusion that even if the debenture were to be converted into share at a later date, the expenditure incurred on such convertible debenture has to be treated as a revenue expenditure. The order of the Jodhpur Bench was taken up

before the Hon'ble Supreme Court in Special Leave Appeal CC 10548/2009. The Hon'ble Apex Court has dismissed the SLP.

6. Therefore, we are of the view that the point raised in this appeal has been decided in view of the dismissal of the SLP by the Hon'ble Apex Court.

7. Following the aforesaid decision, we are of the view that even if the debenture has to be converted into a share at a later date, the expenditure so incurred for collection of debenture has to be treated as revenue expenditure.

8. Accordingly, we do not see any merits in this appeal. The substantial question of law framed has to be answered against the revenue.

IV. The Honb'le Supreme Court in case of CIT Vs India Cements Ltd (60 ITR 52) has held as under-
"A loan obtained cannot be treated as an asset or advantage for the enduring benefit of the business of the assessee. A loan is a liability and has to be repaid and, it is erroneous to consider a liability as an asset or an advantage. The nature of the expenditure incurred in raising a loan would not depend upon the nature of purpose of the loan. A loan may be intended to be used for the purchase of raw material when it is negotiated, but the company may, after raising the loan, change its mind and spend it on securing capital assets. Therefore, the purpose for which the new loan was required was irrelevant to the consideration of the question whether the expenditure for obtaining the loan was the revenue expenditure or capital expenditure.

Hence (a) the loan obtained was not an asset or advantage of an enduring nature; (b) the expenditure was made for securing the use of money for a certain period and (c) it was irrelevant to consider the object with which the loan was obtained. Consequently, in the circumstances of the case, the expenditure was revenue expenditure within section 10(2)(xv)

In a reference, the High Court must accept the findings of fact made by the Tribunal and it is for the person who has applied for a reference to challenge those findings first by an application under section 66(1). If he has falled to file an application under section 66(1) expressly raising the question about the validity of the finding of fact he is not entitled to urge

before the High Court that the findings are vitiate for one reason or the other.

In the result, the expenditure in question was not in the nature of capital expenditure and was laid out or expended wholly or exclusively for the purpose of the assessoe's business."

V. The Honb'le Bombay High Court in case of Reliance Natural resources Ltd Vs PCIT (111 taxmann.com 413)

"Re. Question (a):-

(1)The impugned order of the Tribunal while dismissing the Revenue's appeal on the above issue, had placed reliance upon the decision of the Delhi High Court in CIT v. Havells India Ltd. (2012) 21 taxmann.com 476/208 Taxman 114/[2013] 352 ITR 376 and Rajasthan High Court in CIT v. Secure Meters Ltd. (2008) 175 Taxman 567/[2010] 321 ITR 611.

(i) It is an agreed position between the parties that this issue raised heroin now stands concluded in favour of the Respondent-Assessee and against the Revenue by the decision of this Court in CIT v. Faze Three Ltd., (Income Tax Appeal No. 1761 of 2014, dated 16-3- 2017]. In the above case, this Court placed reliance upon the decision of the Rajasthan High Court in Secure Meters Ltd., (supra) and the Delhi High Court in Havells India Ltd., (supra) to hold that the expenses incurred on issue of FCCB is an expense for raising a loan, therefore. the expense is revenue in nature, It observed that the Revenue has not shown any reasons as to why this Court should take different view in this case from the view taken by the various High Courts in the country on an identical issue.

(iii) In view of the above, the question as framed does not give rise to any substantial question of law."

It is held that even if the debenture has to be converted into a share at a later date, the expenditure so incurred for collection of debenture has to be treated as revenue expenditure. Respectfully following the decision of the Apex Court and Jurisdictional High Court, the disallowance made towards issue expenses of ZCCB of Rs. 15,75,36,929/- is deleted. Accordingly, these grounds are allowed."

13. During the course of appellate proceedings before us, the ld. Counsel placed reliance on the decision of the Hon'ble Bombay High Court and decision of Hon'ble Supreme Court in the case of PCIT vs Reliance Natural Resources Ltd. (2022) 137 taxmann.com 61 (SC) and supported the order of ld. CIT(A).

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

15. Heard both the sides and perused the material on record. The Ld. CIT(A) has referred the judicial pronouncement of Hon'ble High Courts as reproduced supra in this order on the proposition that expenditure incurred in connection with the issue of debentures or obtaining loans is revenue expenditure. We have also perused the decision of Hon'ble Supreme Court in the case of Reliance Natural Resources Ltd. (supra) wherein it is held that expenses incurred on issue of Foreign Currency Convertible Bonds was an expense for raising a loan. Following the decision of the Hon'ble Supreme Court and the decision of various Hon'ble High Courts as referred in the findings of Ld. CIT(A) reproduced supra in this order, we do not find any error in the decision of ld. CIT(A). Accordingly, Grounds No.7 and 8 of appeal of revenue are dismissed.

ITA No. 3175/M/2024 (A.Y. 2008-09)

> *"1. Whether on the facts and under the circumstances of the case and in law, the Hon'ble ITAT was Justified in deleting the disallowance made by the AO without appreciating the fact the proportionate claim of the premium on ZCCBs written during the tenure of Zero-Coupon Convertible Bonds was is in nature of interest?"*
>
> *2. Whether on the facts and under the circumstances the case and in Law, the Hon'ble IT'AT was justified in deleting disallowance without*

appreciating the fact that the claim of provision of proportionate premium of Redemption of ZCCB is contingent liability?"

3. Whether on the facts and under the circumstances of the case and in Law, the Hon'ble ITAT was justified in deleting the disallowance without appreciating the fact that the assessee treating provision of proportionate premium of Redemption ZCCB as capital expenses.?"

4. Whether on the facts and under the circumstances of the case and in Law, the Hon'ble ITAT was justified in deleting the disallowance without appreciating the fact that the claim of premium/ interest cannot be allowed. u/s.40(a)(ia) since tax was not deducted at source?

5. Whether on the facts and under the circumstances of the case and in Law, the Hon'ble ITAT, Mumbai has erred in deleting the disallowance u/s 14A of the Income Tax Act, 1961 thereby overlooking the computational procedure laid down in Rule 8D of the IT Rules, 1962 which has to be necessarily followed whenever a disallowance u/s 14A was to be made?"

6. Whether on the facts and under the circumstances of the case and in Law, the Hon'ble ITAT, Mumbai has erred in deleting the disallowance u/s 14A of the Income Tax Act, 1961 from total income on the ground of non-application of mind as a quasi-judicial authority while recording the dissatisfaction as required envisaged u/s.14A of the Act without appreciating the fact that while invoking the provisions of Rule 8D r.w.s 14A in the assessment order the assessing officer has given a detailed reasoning in para 5.4 and also not appreciating the fact that the Hon'ble Supreme Court in the case of MAK Data ((2013) 38 taxmann.com 448 (SC)) has categorically mentioned that the A.O. need not to document his satisfaction in a particular manner and not even in writing form?"

16. **Grounds of Appeal Nos.1 to 4:** Since on similar issue and on identical facts, we have dismissed the grounds of appeal of Revenue in respect of proportionate claim of the premium on ZCCB vide ITA No. 3178/M/2024 as adjudicated supra in this order. Applying the findings of the same therefore 1 to 4 grounds of appeal are also dismissed.

17. **Grounds of Appeal No. 5 to 6:** Vide ITA No. 3178/M/2024, we have dismissed the similar grounds of appeal 5 to 6 in respect of disallowance made u/s 14A following the decisions of ITATs for recording satisfaction of the AO as prescribed u/s 14(2) of the Act. Applying those findings mutatis mutandis these grounds of appeal of the Revenue are dismissed.

18. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the open court on 11.12.2024

Sd/-	**Sd/-**
(SAKTIJIT DEY) **VICE PRESIDENT**	**(AMARJIT SINGH)** **ACCOUNTANT MEMBER**

Mumbai: 11.12.2024
Biswajit, Sr. P.S.

Copy to:

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

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai