IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA Nos. 4315 and 4316/MUM/2007
Assessment Years: 2002-03 and 2003-04

ITA Nos. 3861 and 3862/Mum/2009
Assessment Years: 2004-05 and 2005-06

ITA Nos. 5033/Mum/2010, 5442/Mum/2011, 2868/Mum/2012
Assessment Years: 2006-07 to 2008-09

ITA Nos. 2093, 5885, 2609, 2610 and 4983/Mum/2017
Assessment Years: 2009-10 to 2013-14

ITA Nos. 2665 and 2666/Mum/2024
Assessment Years: 2014-15 and 2015-16

ITA Nos. 1890, 1891, 1892, 1893 and 3717/Mum/2023 and
Assessment Years: 2016-17 to 2020-21

ITA Nos. 4313 and 4314/Mum/2010,
ITA Nos. 2866 and 2867/Mum/2012
Assessment Years: 2002-03, 2003-04, 2005-06 and 2006-07

HDFC Bank Ltd. (Merged entity Housing Development Finance Corporation Ltd.) HDFC Bank House, Senapati Bapat Marg, Delisle Road, S.O Mumbai - 400013 (PAN : AAACH0997E)	Vs.	Addl. CIT/ACIT/DCIT, Mumbai
(Appellant)		**(Respondent)**

ITA Nos. 4161 and 4162/Mum/2007
Assessment Years: 2002-03 and 2003-04

ITA Nos. 3785 and 3788/Mum/2009
Assessment Years: 2004-05 and 2005-06

ITA No. 5707/Mum/2010
ITA No. 5005/Mum/2011
ITA No. 2326/Mum/2017
Assessment Years: 2006-07, 2007-08 and 2009-10

ITA Nos.5673, 2861, 2862, 4217 and 5110/Mum/2017
Assessment Years: 2010-11 to 2013-14

ITA Nos. 2980 and 2979/Mum/2024
Assessment Years: 2014-15 and 2015-16

ITA Nos. 2049, 2046, 2047, 2048/Mum/2023
Assessment Years: 2016-17 to 2019-20

ITA No. 2597/Mum/2024
Assessment Year: 2020-21

Addl. CIT/ACIT/DCIT, Mumbai	Vs.	HDFC Bank Ltd. (Merged entity Housing Development Finance Corporation Ltd.), HDFC Bank House, Senapati Bapat Marg, Delisle Road, S.O Mumbai - 400013 (PAN : AAACH0997E)
(Appellant)		**(Respondent)**

Present for:

Assessee : Shri Nitesh Joshi, Advocate and
Shri Ninad Patade, CA

Revenue : Shri Biswanath Das, CIT DR

Date of Hearing : 19.11.2024
Date of Pronouncement : 28.01.2025

O R D E R

PER BENCH:

All these captioned 42 appeals filed by both, assessee and revenue are against the orders of Ld. CIT(A) passed against the assessment/penalty order by Addl.CIT/ACIT/DCIT, Mumbai. Consolidated details of these appeals are tabulated below:

Sr. No.	ITA No.	Order of CIT(A)		Assessment order			Assess-ment year	Appeal by
		No.	Date	Passed by	Date	Passed u/s.		
1.	4315/Mum/2007	CIT(A)-1/IT/210/04-05/32	10.03.2005	Addl. CIT Range 1(1), Mumbai	31.1.2005	143(3)	2002-03	Assessee
2.	4161/Mum2007	CIT(A)-1/IT/210/04-05/35	10.03.2005	Addl. CIT. Range 1(1), Mumbai	31.01.2005	143(3)	2002-03	Revenue
3.	4316/Mum/2007	CIT(A)-1/IT/62/05-06/76	26.04.2005	Addl. CIT, Range 1(1), Mumbai	23.03.2005	143(3)	2003-04	Assessee
4.	4162/Mum/2007	CIT(A)-1/IT/62/05-06/77	23.03.2007	Addl. CIT, Range 1(1), Mumbai	23.03.2005	143(3)	2003-04	Revenue
5.	3861/Mum/2009	CIT(A)-I/IT/276/05-06/399 & 400	23.03.2009	Addl CIT, Range 1(1), Mumbai	31.01.2006	143(3)	2004-05	Assessee

6.	3785/Mum/2009	CIT(A)-I/IT/276/05-06/399 & 400	23.03.2009	Addl. CIT, Range 1(1), Mumbai	31.01.2006	143(3)	2004-05	Revenue
7.	3862/Mum/2009	CIT(A)-I/IT/148/07-08/397 & 398	31.03.2009	Addl. CIT, Range 1(1), Mumbai	17.12.2007	143(3)	2005-06	Assessee
8.	3788/Mum/2009	CIT(A)-I/IT/148/07-08/397 & 398	31.03.2009	Addl. CIT, Range 1(1), Mumbai	17.12.2007	143(3)	2005-06	Revenue
9.	5033/Mum/2010	CIT(A)-1/IT-323/09-10	25.03.2009	Addl. CIT, Range 1(1), Mumbai	24.12.2008	143(3)	2006-07	Assessee
10.	5707/Mum/2010	CIT(A)-1/IT-568/09-10	25.03.2010	Addl. CIT, Range 1(1), Mumbai	24.12.2008	143(3)	2006-07	Revenue
11.	5442/Mum/2011	CIT(A)-1/IT-568/09-10	01.02.2010	Addl. CIT, Range 1(1), Mumbai	23.12.2009	143(3)	2007-08	Assessee
12.	5005/Mum/2011	CIT(A)-1/IT-568/09-10	01.02.2011	Addl. CIT, Range 1(1), Mumbai	23.12.2009	143(3)	2007-08	Revenue
13.	2868/Mum/2012	CIT(A)-1/IT-747/2010-11	08.02.2012	Addl. CIT, Range 1(1), Mumbai	10.12.2010	143(3)	2008-09	Assessee
14.	2093/Mum/2017	CIT(A)-2/IT-131/2011-12	06.02.2016	Addl. CIT, Range 1(1), Mumbai	21.12.2011	143(3)	2009-10	Assessee
15.	2326/Mum/2017	CIT(A)-2/IT-131/2011-	06.12.2016	Addl. CIT, Range 1(1), Mumbai	21.12.2011	143(3)	2009-10	Revenue
16.	5885/Mum/2017	CIT(A)-2/IT-91/2012-13	27.06.2017	DCIT, Range 1(1), Mumbai	22.02.2013	143(3)	2010-11	Assessee
17.	5673/Mum/2017	CIT(A)-2/IT-91/2012-13	27.06.2017	DCIT, Range 1(1), Mumbai	22.02.2013	143(3)	2010-11	Revenue

18.	2609/Mum/2017	CIT(A)-2/IT-124/2013-14	31.01.2017	DCIT, Range 1(1), Mumbai	19.02.2014	143(3)	2011-12	Assessee
19.	2861/Mum/2017	CIT(A)-2/IT-124/2013-14	31.01.2017	DCIT, Range 1(1), Mumbai	19.02.2014	143(3)	2011-12	Revenue
20.	2610/Mum/2017	CIT(A)-2/IT-156/2015-16	31.01.2017	ACIT, Range 1(1), Mumbai	17.03.2015	143(3)	2012-13	Assessee
21.	2862/Mum/2017	CIT(A)-2/IT-156/2015-16	31.01.2016	ACIT, Range 1(1), Mumbai	17.03.2015	143(3)	2012-13	Revenue
22	4983/Mum/2017	CIT(A)-2/IT-11/2016-17	20.04.2017	DCIT, Range 1(1)(2), Mumbai	25.02.2016	143(3)	2013-14	Assessee
23.	5110/Mum/2017	CIT(A)-2/2/IT-11/2016-17	20.04.2017	DCIT, Range 1(1)(2), Mumbai	25.02.2016	143(3)	2013-14	Revenue
24.	4217/Mum/2017	ITBA/NFAC/S/250/2023-24/1055384587(1)	24.08.2023	DCIT- 1(1(2), Mumbai	30.03.2018	143(3) r.w.s. 250	2013-14	Revenue [Appeal against order giving effect, passed u/s. 143(3) r.w.s. 250]
25.	2666/Mum/2024	ITBA/APL/S/250/2023-24/1062378628(1)	11.03.2024	DCIT, Range 1(1)(2), Mumbai	26.02.2018	143(3) r.w.s. 144C(3)	2014-15	Assessee
26	2980/Mum/2024	ITBA/APL/S/250/2023-24/1062378628(1)	11.03.2024	DCIT, Range 1(1)(2), Mumbai	26.02.2018	143(3) r.w.s. 144C(3)	2014-15	Revenue
27	2665/Mum/2024	ITBA/APL/S/250/2023-24/1062378628(1)	11.03.2024	DCIT, Range 1(1)(2), Mumbai	26.02.2018	143(3) r.w.s. 144C(3)	2015-16	Assessee

28	2979/Mum/2024	ITBA/APL/S/250/2023-24/1062363228(1)	11.03.2024	DCIT, Range 1(1)(2), Mumbai	15.02.2019	143(3) r.w.s. 144C(3)	2015-16	Revenue
29	1890/Mum/2023	ITBA/NFAC/S/250/2022-23/1051775042(1)	31.03.2023	DCIT (TP)-2(1)(1), Mumbai	23.12.2019	143(3)	2016-17	Assessee
30	2049/Mum/2023	ITBA/NFAC/S/250/2022-23/1051775042(1)	31.03.2023	DCIT(TP)-2(1)(1), Mumbai	23.12.2019	143(3)	2016-17	Revenue
31	1891/Mum/2023	ITBA/NFAC/S/250/2022-23/1051775738(1)	31.03.2023	DCIT-1(1)(2), Mumbai	28.12.2019	143(3)	2017-18	Assessee
32	2046/Mum/2023	ITBA/NFAC/S/250/2022-23/1051775738(1)	31.03.2023	DCIT-1(1)(2), Mumbai	28.12.2019	143(3)	2017-18	Revenue
33	1892/Mum/2023	ITBA/NFAC/S/250/2022-23/1051778098(1)	31.03.2023	National Faceless Assessment Centre, Delhi	28.09.2021	143(3) r.w.s. 144B	2018-19	Assessee
34	2047/Mum/2023	ITBA/NFAC/S/250/2022-23/1051778098((1)	31.03.2023	National Faceless Assessment Centre, Delhi	28.09.2021	143(3) r.w.s. 144B	2018-19	Revenue
35	1893/Mum/2023	ITBA/NFAC/S/250/2022-23/1051780215(1)	31.03.2023	National Faceless Assessment Centre, Delhi	28.09.2021	143(3) r.w.s. 144B	2019-20	Assessee

36	2048/Mum/2023	ITBA/NFAC/S/250/2022-23/1051780215((1)	31.03.2023	National Faceless Assessment Centre, Delhi	28.09.2021	143(3) r.w.s. 144B	2019-20	Revenue
37	3717/Mum/2023	ITBA/NFAC/S/250/2023-24/1055381637(1)	24.08.2023	Assessment Unit	28.09.2022	143(3) r.w.s. 144B	2020-21	Assessee
38	2597/Mum/2024	ITBA/NFAC/S/250/2023-24/1055381637(1)	24.08.2023	Assessment Unit	28.09.2022	143(3) r.w.s. 144B	2020-21	Revenue
39	4313/Mum/2010	CIT(A)-I/IT-378/2009-10	09.03.2010	DCIT, Range 1(1), Mumbai	30.03.2009	271(1)(c)	2002-03	Assessee [Appeals against Penalty Order passed u/s. 271(1)(c)]
40	4314/Mum/2010	CIT(A)-I/IT-374/2009-10	09.03.2010	DCIT, Range 1(1), Mumbai	30.03.2009	271(1)(c)	2003-04	
41	2866/Mum/2012	CIT(A)-I/IT-682/2010-11	06.02.2012	DCIT, Cir-1(1), Mumbai	08.10.2010	271(1)(c)	2005-06	
42	2867/Mum/2012	CIT(A)-I/IT-731/2010-11	07.02.2012	DCIT, Cir-1(1), Mumbai	08.10.2010	271(1)(c)	2006-07	

2. Except for appeals mentioned at Sr. Nos. 24 and 39 to 42 in the above table, all the appeals arise out of assessment orders passed u/s. 143(3) of the Income-tax Act, 1961 ('the Act') for assessment years 2002-03 up to 2020-21. Since, similar issues are arising in several years, before dealing with each of the issues, reference is made in a tabular form to the ground numbers where the said issue is arising in all the concerned assessment years.

2.1. There are delays in filing seven appeals, details of which are tabulated below. Petition for condonation of delay is placed on record. Upon perusal of the same and hearing both sides, we deem it fit to

condone the delay on the ground that there was sufficient cause for the said delay. Accordingly, we take up the appeals for adjudication.

Sr. No.	ITA No.	Assessment year	Appeal by	No. of days delay
1.	2980/Mum/2024	2014-15	Revenue	18
2.	2979/Mum/2024	2015-16	Revenue	18
3.	2049/Mum/2023	2016-17	Revenue	1
4.	2046/Mum/2023	2017-18	Revenue	1
5.	2047/Mum/2023	2018-19	Revenue	1
6.	2048/Mum/2023	2019-20	Revenue	1
7.	2597/Mum/2024	2020-21	Revenue	214

2.2. General facts common for dealing with these appeals are that Housing Development Finance Corporation Ltd. got amalgamated with HDFC Bank Ltd. vide order dated 17.03.2023 passed by ld. National Company Law Tribunal (NCLT) with effective date of 01.07.2023. Accordingly, name of the assessee is noted as HDFC Bank Ltd. (successor to Housing Development Finance Corporation Ltd.) for which necessary revision has been made in Form 36/ Form 36A placed on record. Assessee is a housing finance institution set up in 1977 with main object of providing loans for purchase or construction of residential houses in India. It is regulated by National Housing Bank, which is a wholly owned subsidiary of Reserve Bank of India (RBI) and satisfies all conditions stipulated by the National Housing Bank. Business activities of assessee include leasing and providing loans for the purposes other than for purchase or construction of residential houses. Assessee, for the purpose of providing housing loans, mobilizes bonds from public and also secures loans from various international agencies.

2.3. Facts and submission for each issue is taken from the first year in which the respective issue arose for the sake of brevity and avoiding duplicity. Our observations and findings on each of the issue arrived at for the first year shall apply *mutatis mutandis* in respect of other years wherever applicable except when there is variation on fact or applicable law, for which specific observation and finding is given for that specific year. For this, tabulation is done on each of the issue, spread over their respective assessment years, where the grounds have been raised on that issue and presented while dealing with each of the said issue.

2.4. We have heard both the parties at length with hearings spread over several days and perused the material placed on record including tabulated details, synopsis, detailed written submissions, judicial precedents and paper books. We place on record our appreciation, both for the ld. Counsels for the assessee and the ld. CIT DR for their effective representations in assisting the Bench to take up this voluminous bunch of 42 appeals spread over 19 assessment years involving multiple issues. Submissions made by both the parties are dealt by us while adjudicating the respective issues. Therefore, the same are not narrated separately for the sake of brevity and to avoid repetition.

2.5. After careful perusal of multiple grounds of appeals including sub-grounds as well as additional grounds filed by both, the assessee and revenue, in all these 42 appeals spread over 19 assessment years, the essence of the same is encapsulated in the form of 25 "issues to be adjudicated" on these appeals, which are listed below for adjudication:

I. Quantum of deduction to be allowed u/s. 36(1)(viii) of the Act:
    a. Deduction w.r.t. the three categories of income.

b. Deduction w.r.t. allocation of expenditure between income eligible for deduction u/s 36(1)(viii) and other income.

c. Deduction in respect of interest received from NTPC Limited as profits derived by a financial corporation including a public company from the business of providing long term finance for development of infrastructure facility in India.

d. Deduction in respect of interest income earned from securitization of debt or such interest income earned by virtue of holding of Pass-Through Certificates (PTC) of Securitization Trusts where the underlying debts would otherwise qualify as long-term finance for development of housing in India.

II. Disallowance u/s. 14A of the Act.

III. Increasing the book profits computed u/s. 115JB by the amount disallowed u/s. 14A of the Act.

IV. Discount on grant of stock options (ESOP/ESOS) to employees.

V. Computation of amount eligible for deduction u/s. 80M of the Act.

VI. Deduction of income by the amount credited to lease equalisation account.

VII. Assessment of amount withdrawn from reserve created under section 36(1)(viii).

VIII. Disallowance of entrance fees and subscriptions paid to clubs.

IX. Exemption u/s. 54EC in respect of capital gains arising on depreciable assets.

X. Disallowance of FCCB issue expenses.

XI. Set-off of short-term capital loss.

XII. Income from India Value Fund.

XIII. Addition on account of receipts as per the ITS details not found recorded in the books of account of assessee.

XIV. Capital gains in respect of sale of property.

XV. Additional claim of the Assessee with regard to inadvertent *suo-moto* disallowance made during the course of the assessment proceedings.

XVI. Refund of excess dividend distribution tax (DDT).

XVII. Transfer pricing adjustment in respect of specified domestic transactions (SDT) covered by section 40A(2)(b).

XVIII. Disallowance of year-end provisions.

XIX. Increasing the book profit computed u/s. 115JB by the amount disallowed as year-end provisions.

XX. Deduction in respect of expenditure incurred on Employee Stock Option Scheme ('ESOS').

XXI. Deduction of provision for bad and doubtful debts u/s. 36(1)(viia) of the Act.

XXII. Deduction of bad debts u/s. 36(1)(vii) of the Act.

XXIII. Addition of interest income on income-tax refund.

XXIV. Dropping penalty proceeding initiated u/s. 270A of the Act.

XXV. Penalty imposed u/s.271(1)(c) on disallowance on deduction u/s.36(1)(viii)

3. Relevant grounds for each of the assessment years, both in the case of appeals by assessee and by Revenue for each of the issue is tabulated while dealing with that issue (including additional grounds, if any). We will deal with these above listed issues seriatim which will cover the grounds raised by both, the assessee and the Department in their respective appeals (including additional grounds, if any) for covering relevant assessment years, taken together.

I. Quantum of deduction to be allowed u/s. 36(1)(viii) of the Act:

4. Issues arising on this aspect of the matter are bucketed under four categories which are as under:

a. Whether assessee is entitled to deduction u/s. 36(1)(viii) of the Act in respect of:
   i. Profits derived from housing loan for a period less than five years;
   ii. Profits derived from loans given for non-residential purposes; and
   iii. Profits derived from temporary deployment of funds by way of treasury operations.

b. Whether ld. AO/CIT(A) is justified in allocating the entire expenditure towards interest on foreign currency borrowing and provisions for contingency towards income eligible for deduction u/s. 36(1)(viii). Further, whether is it justified in allocating other administrative expenses in *adhoc* ratio of 80:20 between income eligible for deduction u/s. 36(1)(viii) and other income.

c. Whether assessee is entitled to deduction u/s. 36(1)(viii) of the Act in respect of interest received from NTPC Limited as profits derived by a financial corporation including a public company from the business of providing long term finance for development of infrastructure facility in India.

d. Whether assessee is entitled to deduction u/s. 36(1)(viii) of the Act in respect of interest income earned from securitization of debt or such interest income earned by virtue of holding of PTCs of Securitization Trusts where the underlying debts otherwise

qualify as long-term finance for development of housing in India.

5. With respect of issues at Sr. No. 4(a) and 4(b) referred above, the assessment years in which the said issues arose including the respective grounds of appeal in the appeals both, by assessee and by revenue, are tabulated below:

Assessment year	Ground No. in appeals by Assessee	Ground No. in appeals by Revenue
2002-03	1	-
2003-04	1	-
2004-05	3	-
2005-06	3	-
2006-07	1	-
2007-08	1	-
2008-09	1.1 to 1.5 & 1.7 to 1.10	-
2009-10	1.1 to 1.5	-
2010-11	1.1 to 1.3 & 1.5 to 1.6	-
2011-12	1.1 to 1.3 & 1.5 to 1.6	-
2012-13	1.1 to 1.3 & 1.5 to 1.6	-
2013-14	1.1 to 1.3 & 1.5 to 1.6	-
2014-15	1.1 to 1.3	-
2015-16	1.1 to 1.3	-
2016-17	1.1 to 1.3 & 1.5 to 1.6	-
2017-18	1.1 to 1.3 & 1.5 to 1.6	-
2018-19	1.1 to 1.3 & 1.5 to 1.6	-

2019-20	1.1 to 1.3 & 1.5 to 1.6	-
2020-21	2.1 to 2.3 & 2.5 to 2.6	-

5.1. In the return filed for Assessment Year 2002-03 on 30.10.2002 reporting total income at Rs.280,52,78,320/-, assessee determined income from housing finance at Rs.401,20,50,141/- by claiming deduction u/s.36(1)(viii) @ 40% of the said amount at Rs.160,48,20,056/-. For the two streams of income mentioned at Sr. No.4(a)(i) and (ii) i.e., profits derived from housing loans for a period less than 5 years and profits derived from loans given for non-residential purposes, deduction was not claimed in the computation of total income but was made by way of a separate note below the computation of total income. In the said note, it was stated that profits derived from the 'business of long-term finance' includes income earned on housing loans for residential purposes for a period of less than 5 years which amounts to Rs.33,92,56,891/- and for non-residential housing loans amounting to Rs.165,07,33,573/- and fee income amounting to Rs.13,37,12,633/-. Business of assessee is predominantly that of providing long term finance for residential purpose. In the course of carrying on such business, assessee also gives finance for a period of less than 5 years as well as for non-residential housing. In the said note, assessee claimed that the aggregate of Rs.212,37,03,097/- for the aforesaid three items should be included in the figure of "income from housing finance" for the purpose of deduction u/s.36(1)(viii). In the same note, assessee also claimed that interest earned on deployment of funds raised for its business on account of statutory compliances required in the business of housing finance and interest on loans to builders is also profit derived from "business of long-term finance". For the third stream of income at sr. no.4(a)(iii) of profits derived from

temporary deployment of funds by way of treasury operations, deduction for the same was claimed in the computation of total income.

5.2. In the course of hearing before us, ld. Counsel for the assessee pointed out that issue relating to quantum of deduction available to the assessee u/s.36(1)(viii) by taking into consideration interest income on loans given for residential purposes for a period of less than five years, interest income on loans for non-residential purposes and interest /discount, etc. income from temporary deployment of funds in treasury operations have already been dealt and decided by the Co-ordinate Bench of ITAT, Mumbai in assessee's own case for Assessment Year 1998-99 in ITA No.552/Mum/2004 dated 12.01.2024 as amended by order dated 24.07.2024 in MA No.115/Mum/2024. This order was followed in the Assessment Year 1999-2000 in ITA No.7532/Mum/2004, dated 05.07.2024 (with undersigned Accountant Member being its author). In this respect, ld. Counsel submitted that issue relating to interest income from housing finance for residential purposes for a period of less than 5 years and interest / discount, etc., income on temporary deployment of funds have been held in favour of the assessee by holding the same to be eligible in computing the profit eligible for deduction u/s. 36(1)(viii). However, issue relating to interest income from housing finance for non-residential purposes is held against the assessee and not eligible for computing the eligible profit for deduction u/s.36(1)(viii).

5.3. Further, ld. Counsel on the issue relating to interest income held on temporary deployment of funds in investments and treasury operations for computing eligible profit for deduction u/s.36(1)(viii) submitted in respect of allocation of various expenses that interest paid on foreign currency borrowings ought to be allocated between income

eligible for claiming deduction u/s.36(1)(viii) and income not so eligible. For other expenses also, he submitted that these should be allocated in the same ratio as finally determined after giving effect to the findings of the Tribunal with respect to characterization of income from eligible business and those from ineligible business. On this also, he referred to the findings given by the Co-ordinate Bench in assessee's own case for Assessment Year 1998-99 and 1999-2000 (supra), wherein direction had been given to the ld. Assessing Officer to re-compute the profits eligible for deduction u/s.36(1)(viii) and thereafter allocation be done.

5.4. In the aforesaid two orders of the Co-ordinate Bench for Assessment Year 1998-99 and 1999-2000, it was observed and held that section 36(1)(viii) grants deduction in respect of profits derived from "business of providing long term finance". The word "business of" is of wider import, which cannot be restricted to profits from each transaction of lending long term housing finance. Granting loans for a period less than five years and otherwise cannot be regarded as two different businesses of the assessee nor as a source of income other than business. Reference was also made to paragraph 26 of circular no.717, dated 14.08.1995 issued by CBDT, wherein it is clarified that amendments brought in Section 36(1)(viii) were with a view to deny deduction in respect of income arising from other business activities and sources other than business. Co-ordinate Bench had also taken note of the circumstances in which loans for a period less than five years are given, viz., such loans granted to individuals who are of an advanced age or their age of retirement from employment does not justify a loan for a period more than five years; also loans given to builders for execution of housing projects which at the inception cannot be for a period of more than five years though in this respect when a flat is sold and the buyer borrows loan from the assessee then to that extent loan

initially granted to the builder gets substituted by the loan to the buyer of the flat, hence fulfilling the requirement of loan given for a period of more than five years. Further, it was observed that business of assessee comprises of raising funds from various sources, inviting applications for grant of housing loans, scrutinising such applications based on identified criteria and if found fulfilling the same, then disbursal of loans followed by recovery of the loan so granted by way of equated monthly instalments. Same source of funds and infrastructure is used by the assessee for both, loans given for period of less than five years and for more than five years. Hence, the two cannot be regarded as two different businesses undertaken by the assessee.

5.5. On the aspect of profit derived from loans granted for non-residential purposes, Co-ordinate Bench had held that such income would not qualify for deduction u/s.36(1)(viii) since main purpose of allowing deduction is to encourage financial corporations/approved public companies to lend for construction or purchase of residential houses. In respect of profits from temporary deployment of funds by way of treasury operations, Co-ordinate Bench accepted the factual position of there always being a gap between raising of funds and its deployment in the business of housing finance. Pending utilisation of such funds in the business of housing finance. Assessee deploys the same towards treasury operations which gives rise to income held as forming part of income derived from business of providing long term housing finance eligible for deduction u/s.36(1)(viii). The said claim is restricted by the assessee to income from current investments and is not claimed in respect of income from securities/debentures held as permanent investment.

5.6. For the issue at Sr. no.4(b) towards allocation of entire interest cost on foreign currency borrowing and provisions for contingencies, the Co-ordinate Bench had given the direction to make the allocation towards the income which would be eligible and ineligible in the ratio as finally determined after giving effect to the findings arrived by it with respect to characterisation of income from eligible and ineligible business. Similar direction was given for allocation of administrative expenses against the ad-hoc ratio of 80:20 applied by the ld. Assessing Officer.

5.7. In the above paragraphs, the observations and findings of the Co-ordinate Bench in assessee's own case for Assessment Year 1998-99 and 1999-2000 (supra) have been recapitulated which applies to the present set of facts in the appeals before us on the issues listed at Sr.No.4(a) and 4(b). From the perusal of the said orders of the Co-ordinate Bench, we note that facts and circumstances are similar in the present cases before us and there is no material change in the applicable law and thus, applies squarely. The said orders have extensively dealt with all the issues before us as stated above and have considered the submissions made by the ld. Counsel of the assessee as well as by the ld. CIT, DR. We do not find anything more to add on to the elaborate discussions made therein and the findings so arrived at. The relevant observations and findings are not extracted as a reproduction to avoid duplicity and for the sake of brevity.

5.8. On the aforesaid issues at Sr. No.4(a), specific to Assessment Year 2014-15 and 2015-16, it is brought to our knowledge that ld. CIT(A) had allowed the claim of the assessee by following the order of Co-ordinate Bench for Assessment Year 1998-99 (supra) and Revenue did not come up in appeal before the Tribunal on these issues by raising specific

grounds. We have perused Form 36 filed by the Revenue for these two years in ITA No.2980/Mum/2024 and 2979/Mum/2024 to take note of the fact of no such ground raised by the Revenue, specific to the issues stated above. This state of affair strengthens the submissions made by the assessee about Revenue accepting the claim of the assessee.

6. With respect to the issue referred in paragraph 4(c) hereinabove, i.e., dealing with the Assessee's claim for deduction u/s. 36(1)(viii) of the Act on interest income derived by it from NTPC Limited, the assessment years in which the said issue is arising including the relevant grounds of appeal are as tabulated as under:

Assessment year	Ground No. in Assessee's appeal	Ground No. in Revenue's appeal
2008-09	1.6	-
2009-10	-	1
2010-11	-	1
2011-12	-	1
2012-13	-	1
2013-14	-	1
2014-15	-	3
2015-16	-	3
2018-19	-	1
2019-20	-	1
2020-21	-	3

6.1. Assessee had lent its funds to NTPC Ltd. for the development of infrastructure facility in India. The said loan was given in Assessment Year 2001-02. In this respect, upto Assessment Year 2006-07, assessee

had claimed interest income from the said investment as exempt u/s. 10(23G) which was granted and not in dispute. The said section was omitted w.e.f. 01.04.2007 subsequent to which i.e., Assessment Year 2007-08 onwards, claim was made u/s. 36(1)(viii) of the Act. For Assessment Year 2008-09, ld. Assessing Officer denied the claim of the assessee *inter alia* holding that assessee has only one reportable segment of housing finance business. Thus, the special reserve created and maintained by it u/s.36(1)(viii) is only in respect of business of providing long term finance for development of housing in India. According to him, assessee is not engaged in providing long term finance for infrastructure facility in India and therefore loan given to NTPC Ltd. does not qualify as a loan given for development of infrastructure facility, thereby disallowing the claim.

6.2. In this respect, assessee contended that it has fulfilled the requirement of creation of special reserve with respect to profits derived from long term finance for development of housing as well as development of infrastructure facility in India. In aggregation, deduction claimed is restricted to special reserve so created in the year. According to the assessee, it qualifies as a "specified entity" for the purpose of clause (a) of Explanation to section 36(1)(viii), falling within sub-clause (vi) as "any other financial corporation including a public company". It also submitted that NTPC Ltd., was given loan for development of infrastructure facility in India which falls in sub-clause (iii) of clause (b) of Explanation below the said provision.

6.3. It was brought to the knowledge of the Bench that ld. CIT(A) in para 4.5 has noted that "*Following the reasoning of my predecessor, the disallowance u/s.36(1)(viii) is confirmed. Ground No.1 is dismissed."* For the reasoning of predecessor, reference is made to the appellate order

for Assessment Year 2007-08 which is also reproduced in para 4.4. by the ld. CIT(A). On perusal of reproduction from the appellate order of 2007-08, it is noted that ld. Assessing Officer was directed to allow the deduction to the assessee on profit (income) derived by the assessee on infrastructure loan given. Thus, it appears that ld. CIT(A) while giving finding in appeal for Assessment Year 2008-09, under a mistaken observation, had confirmed the disallowance though the basis given is the reasoning of his predecessor who has in fact, allowed the claim of the assessee. It is also brought on record that Revenue had not come up in appeal for Assessment Year 2007-08 in respect of allowance granted by the ld. CIT(A) on the claim so made by the assessee. Furthermore, reference was made to first appellate order for Assessment Year 2009-10, wherein on identical issue, ld. CIT(A) in para 6.4, again after reproducing the findings of the predecessor had held that "*Following the reasoning of my predecessor, the disallowance u/s.36(1)(viii) is confirmed. But I direct the A.O. to allow deduction to the appellant on profit derived on infrastructure loan given. Ground No.1 is partly allowed."* Thus, the inadvertent mistake so committed in Assessment Year 2008-09 was made good in Assessment Year 2009-10 by allowing the deduction on profit derived on the infrastructure loan given on the basis of the same reasoning given by the predecessor. This claim of the assessee has been allowed up to Assessment Year 2014-15 on identical basis.

6.4. We have perused the observations and findings of ld. CIT(A) in respect of Assessment Year 2007-08 which is reproduced by the ld. CIT(A) in his order for Assessment Year 2008-09 and 2009-10. Ld. CIT(A) has noted that deduction u/s.36(1)(viii) is permitted on infrastructure loan also and has allowed the claim. Also, it is an admitted position that Revenue has not contested this allowance by ld.

CIT(A). Accordingly, we allow the claim of the assessee on this aspect for Assessment Year 2008-09 in order to rectify an inadvertent conclusion drawn of disallowing the claim, though referring to the reasoning of the predecessor as the basis. In respect of claim for Assessment Year 2009-10 to 2014-15 for which Revenue is in appeal, the same stands dismissed in view of our finding given hereinabove for Assessment Year 2008-09. Further, this issue has been raised by the Revenue in its appeals for Assessment Year 2015-16 and Assessment Year 2018-19 to 2020-21 though this issue is not involved in the impugned assessment orders or first appellate orders for the said Assessment Years. Having perused the orders in this respect for the said Assessment Years, the grounds so raised by the Revenue in its appeal for Assessment Year 2015-16 and 2018-19 to 2020-21 are dismissed as not arising in the present appeals.

7. With respect to the issue as referred to in paragraph 4(d) hereinabove, being grant of deduction u/s. 36(1)(viii) of the Act in respect of interest arising from securitization of debt or such income earned by virtue of holding of PTCs of Securitization Trusts, the assessment years including the relevant grounds are tabulated below:

Assessment year	Ground No. in Assessee's appeal	Ground No. in Revenue's appeal
2010-11	1.4	-
2011-12	1.4	-
2012-13	1.4	-
2013-14	1.4	-

2014-15	Additional ground of appeal raised vide letter dated 20.09.2024	-
2015-16	Additional ground of appeal raised vide letter dated 20.09.2024	-
2016-17	1.4	-
2017-18	1.4	-
2018-19	1.4	-
2019-20	1.4	-
2020-21	2.4	-

7.1. For Assessment Year 2014-15 and 2015-16, assessee took up the issue stated at Sr. No.4(d) by submitting additional grounds vide application furnished on 20.09.2024. According to the assessee, it was by mistake that the said issue was not taken up in the grounds of appeal filed in Form 36 even though, this issue has been considered by the ld. Assessing Officer in the assessment order. Claim of deduction in respect of income arising from securitisation transaction forms part of return of income which has been considered by ld. Assessing Officer and ld. CIT(A) and therefore is not in the nature of new issue raised for the first time. On the additional grounds so raised by the assessee, ld. CIT DR placed on record a report from the ld. Assessing Officer who objected on the its admissibility by placing reliance on the decision of Hon'ble Supreme Court in the case of Goetze India Ltd. vs. CIT [2006] 284 ITR 323 (SC) since assessee did not file its revised return of income for this claim.

7.2. We have perused the material placed on record before us and note that deduction of income arising from securitisation transaction forms part of return of income filed by the assessee. Authorities below have considered the same while adjudicating on the issue. It is an inadvertent mistake on the part of assessee for not including a ground of appeal on this issue in Form 36 filed by it. Assessee claims its deduction by way of taking up additional grounds before us, which in our view is admitted for adjudication since Hon'ble Supreme Court in the case of Goetze India Ltd. (supra) has stated that "*nothing impinges on the power of the appellate authorities to entertain such a claim of the assessee*". Thus, additional grounds raised by the assessee are admitted for adjudication.

7.3. First year on this issue is Assessment Year 2010-11. Assessee had included income from Pass Through Certificate-B (PTC-B) securitisation and securitised debt being income from business from long term finance and claimed deduction u/s.36(1)(viii). Assessee has securitised long term housing loans from its pool of retail housing loans which constitute its receivables and a portion of loan portfolio securitised is retained were from interest is earned. In consideration of such securitisation, assessee received discounted value of the future receivables together with interest. The surplus received by it over the principal amount of the loan represented net present value of interest on the housing loans so securitised. Assessee claimed deduction in respect of such surplus. It is claimed that share of assessee in the loan portfolio is represented by PTC which has the loans as underlying asset. Similarly, assessee has also invested in loans originating from other housing finance companies yielding income, categorised 'Income from securitised debt". It is claimed that these assets have residential loans as underlying assets and therefore the same has been considered for arriving at qualifying amount for deduction u/s.36(1)(viii).

7.4. Ld. Assessing Officer in this respect held that such income does not have immediate nexus with the business of long-term finance for housing purpose and thus, claim of assessee does not fulfil the condition of income being derived from the eligible business. He thus, disallowed the claim in this respect which was confirmed by ld. CIT(A).

7.5. We note that similar issue had come up before the Co-ordinate Bench of ITAT, Chennai in the case of DCIT vs. AIG Home Finance India Ltd. [2011] 13 taxmann.com 168 (Chny), wherein securitisation income was held to be an income from business of long-term housing finance eligible for deduction u/s.36(1)(viii). It is a fact on record that assessee is engaged in eligible business and its receivables are in respect of loans granted for housing purposes, part of which has undergone securitisation arrangement. In this respect, risk continues to remain with the assessee since in the event of default by the borrowers, it is assessee who is responsible to make good the default to banks. The securitisation amount represents nothing but interest on housing loans which is discounted to the present net value. Hence, this surplus of securitisation amount is the income of the assessee from long term housing loans disbursed by it for which it has received its discounted present value. Further, income earned by the assessee through PTC-B securitisation also represents loans originating from other housing finance companies, who also have their underlying assets in the form of long-term housing finance. In the given set of facts and in view of the decision of Co-ordinate Bench (supra), we allow the claim of deduction u/s.36(1)(viii) on the aspect stated at Sr. No. 4(d) above, including raised by way of additional grounds.

II. Disallowance u/s. 14A of the Act.

8. The said issue is arising both in the assessee and the Revenue's appeals, where, the details of the assessment years including the respective grounds in the appeal are tabulated below:

Assessment year	Ground No. in Assessee's appeal	Ground No. in Revenue's appeal
2002-03	2 & 3	1 & 2
2003-04	3	1
2004-05	1 & 2	1
2005-06	1 & 2	1
2006-07	2	-
2007-08	2	1
2008-09	2.1 & 2.2	-
2009-10	2.1 & 2.2	2 to 4
2010-11	2.1 & 2.2	2 to 4
2011-12	2.1 & 2.2	2 to 6
2012-13	2.1 & 2.2	2 to 6
2013-14	2.1 & 2.2	2 to 6
2014-15	2.1 & 2.2	4 to 8
2015-16	2.1 & 2.2	4 to 8
2016-17	2.1 & 2.2	1 to 3
2017-18	2.1 & 2.2	1
2018-19	2.1 & 2.2	-
2019-20	2.1 & 2.2	-
2020-21	1.1 & 1.2	-

8.1. Appeals before us, both by the assessee and Revenue on the issue of disallowance u/s.14A covers the entire range of 19 Assessment Years from 2002-03 to 2020-21. To delve on the issue, we will take up the entire range of Assessment Years in two parts, viz., first from Assessment Year 2002-03 to 2007-08 which relates to period prior to introduction of Rule 8D of Income-Tax Rules, 1962 (the Rules) and second from Assessment Year 2008-09 to 2020-21 which is post introduction of Rule 8D.

8.2. We first take up appeals relating to period prior to introduction of Rule 8D of the Rules, i.e. Assessment Year 2002-03 to 2007-08. During AY 2002-03 assessee earned income by way of dividend from companies and units of mutual funds which during the year under consideration was exempt u/s. 10(33) and interest on tax free bonds which was exempt u/s. 10(15)/10(23G) of the Act. Details relating to investments which yielded such exempt income and the interest free funds available with the assessee by way of Share capital and Reserves and surplus is tabulated below:

Assessment year	Investments yielding tax free income (Rs. in crores)	Owned funds available being share capital and Reserves and Surplus (Rs. in crores)
2002-03	1,733.19	2,702.84
2003-04	3,002.00	3,044.00
2004-05	847.24	3,393.79
2005-06	759.31	3,833.10
2006-07	3,876.33	4,468.33
2007-08	3,666.23	5,551.39

8.3. Ld. Assessing Officer proceeded on the basis that the said investments have been proportionately made out of owned and borrowed funds and worked out a disallowance of interest expenditure of Rs. 76,82,17,444/-. Administrative expenditure has also been proportionately allocated. Similar findings can be found in the assessment orders for other years. Ld. CIT(A) consistently held that no part of interest expenditure could be disallowed u/s. 14A of the Act for which Revenue is in appeal before us. However, for disallowance towards administrative expenditure, ld. CIT(A) granted partial relief. For AY 2006-07, both, ld. AO and ld. CIT(A) applied the provisions of rule 8D for the purposes of making disallowance u/s. 14A of the Act. For AY 2007-08, ld. Assessing Officer applied the provisions of Rule 8D for which ld. CIT(A) held that rule 8D does not apply for AY 2007-08 and directed the ld. AO to compute disallowance u/s. 14A in the light of decision of Hon'ble jurisdictional High Court of Bombay in the case of Godrej & Boyce Mfg. Co. Ltd. v/s. DCIT [2010] 328 ITR 81 (Bom).

8.4. Since, we are dealing with the disallowance made u/s.14A for the period prior to the introduction of Rule 8D, we refer to the orders of Co-ordinate Bench in assessee's own case for Assessment Year 1998-99 and 1999-2000 wherein similar issue has been dealt with. It has been held that no disallowance could be made on account of interest expenditure in view of assessee having sufficient owned funds, details of which are already tabulated above. It is a settled position of law that when sufficient owned funds are available then the presumption is that such investments have been made out of the same and not out of borrowed funds. Contradictory stand taken by the ld. Assessing Officer has also been noted by the Co-ordinate Bench where, while computing

the net income, both from the business of long-term finance for residential housing and income claimed exempt, ld. Assessing Officer has adopted contradictory position for the purpose of allowing deduction u/s.36(1)(viii) and exemption u/s.10, by not allocating any interest expense towards exempt income which resulted into the amount of total interest expenditure allocated from the two said sources exceeding the total interest. Ld. CIT(A) in his appellate order for Assessment Year 2002-03 has taken note of this contradiction in para 4.2 and para 4.4. Further, while deciding the first appeal for Assessment Year 1999-2000, ld. CIT(A) has held that once the Assessing Officer himself admitted the fact of not allocating any interest cost to earn exempt income, then there is no justification for making disallowance u/s.14A towards interest cost.

8.5. In the given set of undisputed and verifiable facts, whereby owned funds i.e., share capital and reserves and surplus available with the assessee far exceeded the amounts invested in securities yielding tax free income and in view of the decision of Co-ordinate Bench in assessee's own case for Assessment Year 1998-99 and 1999-2000, no interest cost needs to be disallowed against the exempt income.

8.6. With respect to disallowance of other expenses/administrative expenses, ld. Assessing Officer worked out pro-rata allocation of such expenses of Rs.3,69,73,987/-, relating to exempt income which the ld. CIT(A) confirmed. It is important to note that no *suo moto* disallowance is made by the assessee u/s. 14A while computing its total income and the period being dealt is prior to rule 8D brought on the statute. In absence of any prescribed methodology for computing the disallowance u/s.14A, the approach had been to resort to reasonableness of

expenditure incurred for earning the exempt income. Such approach of reasonableness has been the bone of contention between the Revenue and the assessee for the purpose of disallowance u/s.14A. In this respect, Co-ordinate Bench by adopting the approach of reasonableness in absence of any prescribed methodology (as in rule 8D) in its order for Assessment Year 1998-99 and 1999-2000 had directed the ld. Assessing Officer to reallocate these expenses based on actual ratio of investments yielding exempt income to the total average assets for the relevant Assessment Years. There being no material change in facts and applicable law, we, following the aforesaid decisions, direct the ld. Assessing Officer to allocate other expenses based on the stated ratio (directed to be re-computed) for all the years prior to introduction of Rule 8D, i.e., Assessment Year 2002-03 to 2007-08. Accordingly, grounds raised by both assessee and revenue are partly allowed.

9. Now, we take up this issue for the period relating to post introduction of Rule 8D, i.e., for Assessment Year 2008-09 to 2020-21. For this, we refer to details pertaining to Assessment Year 2008-09. Assessee has made *suo moto* disallowance of Rs.27,30,44,277/- u/s.14A towards exempt income earned during the year, details of which is tabulated below:

Particulars	Rs. in crore
a) Amount of expenditure directly related to exempted income	Nil
b) Interest expenditure excluding the one directly relating to housing activities (Interest expenditure * Average value of investments yielding tax free income/Average value of total assets) = (924.78 * 1,210.03/74,995.92)	14.92
c) Amount equal to 0.4% of average value of investments yielding exempt income (opening value of investment + closing value of investment)/2 = 0.4% * (4,057.46 + 2,132.75)/2	12.38
Total	27.30

9.1. For the purpose of justifying the aforesaid *suo moto* disallowance, assessee submitted before the ld. Assessing Officer that said disallowance has not been made in accordance with the method prescribed u/r 8D since the said rule is not binding on the assessee but on the ld. Assessing Officer only if, he is not satisfied with the method adopted by the assessee. In order to justify the said *suo moto* disallowance computed by the assessee, it gave the following explanations, which is extracted below as reproduced in the impugned assessment order from page 40 onwards:

> *I.12. The Corporation has incurred an interest expense of Rs 5,142.87 crore during the captioned AY. It may be noted that out of the said expenditure, Rs 4,137.74 crore was incurred towards foreign and domestic borrowings. These borrowing have been made for the purpose of housing finance exclusively. The same is evident from the fact that in past assessment orders the AO has specifically stated that the domestic and foreign borrowing have been made for the purpose of housing finance. In view of*

the fact that the borrowing have been specifically made for the purpose of housing finance, and the interest on such borrowing have been allocated to housing finance for the purpose of computing deduction under section 36(1)(viii), it can be said that the same should be excluded while computing disallowance under section 144 of the Act. Accordingly, the Corporation has excluded interest amounting to Rs 4,137.74 crore while computing disallowance under section 14A of the Act.

I.13. It is submitted that the balance interest expenditure amounting to Rs 1,005.13 is towards public deposits. It may be noted that as per Section 298 of the National Housing Bank ('NHB') Act, 1987, housing finance companies ('HFC') holding public deposits are required to maintain liquid assets equal to 12.5% of their public deposits in the manner prescribed under the Act. HFCs failing to maintain the prescribed level of liquid assets are liable for penal interest as per the Act.

I.14. It is submitted that the investment to maintain liquid assets is to be made in unencumbered approved securities. These approved securities may yield tax free interest or taxable income, however, since investments in such securities are mandatory, the same needs to be excluded while computing disallowance under section 14A of the Act.

I.15. In this regard we place reliance on the judgement of Hon'ble Cochin Tribunal in the case of State Bank of Travancore v. ACIT (318 ITR 171). In the instant case the assessee has derived tax-free interest from bonds and such instruments subscribed for maintaining the Statutory Liquidity Ratio (SLR) as prescribed by the Reserve Bank of India (RBI). The Assessing Officer made disallowance under section 144 in respect of such tax free interest. It was observed that the assessee - bank was statutorily bound to maintain the SLR norms as directed by the RBI from time to time. The tax-free bonds and instruments subscribed by the assessee - bank also qualified pari passu with cash and bullion for the purpose of acknowledging towards SLR. Accordingly, it was held as under;

"The assessee has subscribed to the tax-free bonds not for the purpose of earning tax- free income as such but for meeting its statutory obligation of maintaining the required SLR. Therefore, any expenditure incurred by the assessee for investing in bonds, even for tax-free, are expenses incurred for the purpose of carrying on of its business. The expenses, if at all were expenses, they were incurred not for earning tax-free income but for maintaining the required SLR. The tax-free interest is only an incidence on fulfilment of SLR requirements. Therefore, we are of the considered view that section 144 has no application in this case".

I.16. In view of the above, the Corporation has worked out a ratio and Interest calculation as under:

Rs in Crore

Nature of Deposits	2007-08	2006-07	Average	Ratio	Interest	Interest after SLR
Exempt from maintaining SLR	4,032.85	3,770.88	3,901.87	36.05%	362.34	362.34
Not exempt from maintaining SLR	7,245.38	6,598.15	6,921.77	63.95%	642.79	562.44
	11,278.23	10,369.03	10,823.63		1,005.13	**924.78**

I.17. On perusal of the aforesaid table it is observed that the interest expenditure to be taken into consideration for computing disallowance under section 144 is Rs 924.78 crore.

I.18. We would now like to proceed with the calculation of investments yielding tax free income. It may be noted that the average investments yielding tax free income for the captioned AY amounts to Rs 3,095.11 crore. However, the said amount includes average investment amounting to Rs 1,189.79 crore made in subsidiaries. It may be noted that the intention to invest in subsidiaries is to have control on it, rather than earning dividend income from it. Accordingly, the same has been excluded from the average investments yielding tax free income for the purpose of computing disallowance under sectionn14A read with rule 8D of the Rules.

I.19. Further, it is submitted during the AY 2008-09 the Corporation invested in HDFC's Bank an amount of Rs 1,390.10 crore out of the proceeds of the preferential issue of the Corporation. Accordingly, the average of the amount invested ie 695.05 crore (ie. 1,390.10/2) is also excluded from the average value of investments yielding tax free income.

I.20. Accordingly, the average value of investments yielding tax free income is considered at Rs 1,210.27 crore (ie Rs 3,095.11-- Rs 1,189.79-Rs 695.05) for computing disallowance under section 144 read with rule 8D of the Rules.

I.21. It is further submitted that the Corporation has considered 0.4% of average value of investments yielding tax free income in view of the fact that the administrative expenses of the Corporation itself ranges from 0.35% to 0.45% of the average total assets. The same is evident from page 39 of Annual Report of AY 2008-09 wherein since 2005 the graph of administrative expenses to average total assets is continuously decreasing, being 0.37% in year 2008. It may be noted that the Corporation is an efficiently managed company and thus the percentage of operating expenses to the total assets is as low as 0.37% in the year 2008. Considering this fact, it will be unreasonable to disallow 0.5% of

average value of investments yielding tax free income as prescribed under Rule 8D(ill) of the Rules. Accordingly, the Corporation has disallowed 0.4% of average value of investments yielding tax free income. It may be noted that the Corporation has included the average value of investment made by the Corporation in its subsidiaries, HDFC Bank, etc in order to compute disallowance as per Rule 8D(iii) of the Income Tax Rules, 1962.

I.22. Accordingly, the Corporation has worked out the disallowance under section 14A of the Act, at Rs 27.30 crore.

I.23. Without prejudice to the above, it is submitted that if the disallowance is calculated in accordance with section 144 read with Rule 8D, then it would result into excess allocation of interest expenditure. The same has been explained as under:

The total interest expenditure incurred during the AY 2008-09 amounts to Rs 5.142.88 crore. It is submitted that if disallowance is made in accordance with section 144 of the Act read with Rule 8D, then it would amount to Rs 227.72. The working of the same is shown as under:

Particulars	*Rs in crore*
a) The amount of expenditure directly related to exempted income	*Nil*
b) Interest expenditure which is not directly related to exempted income (Interest expenditure Average value of investments yielding tax free income/Average value of total assets) *= 5,142.88 * 3,095.11/ 74,995.92)*	*212.24*
c) Amount equal to 0.5% of avg value of investments (opening value of investment + Closing value of investment)/2 *= 0.5% * (4,057.46+2,132.75)/2*	*15.48*
Total	*227.72*

1.25 On perusal of the above table it is observed that if Rule 8D is applied then on claiming an exemption of Rs 72.39crore in respect of dividend and interest on tax free bonds, the Corporation would have to bear a total disallowance of Rs 227.72 crores by way of 14A disallowance. Thus, the Corporation is infact losing by claiming exemption. If the Corporation had not claimed exemption then there would not be any disallowance as per section 144. It may be noted that the intent of the law is never to give exemption so that the assessee loses more than what he has gained by claiming exemption. Accordingly, it is submitted that the Corporation should not be put in a condition worse than it was had it not claimed the exemption benefits.

1.26 Further it is also submitted that if disallowance is made in accordance with section 144 read with Rule SD, then the total interest expenditure allocable/ disallowable would amount to Rs 5,355.12 crore (ie Rs 5,142.88 crore + Rs 212.24 crore).. whereas the Corporation has incurred a total

interest expenditure of Rs 5,142.88 crore This implies that the Corporation would have to bear additional disallowance in respect of interest expenditure, which is certainly not reasonable. Accordingly, disallowance cannot be computed in accordance with section 144 read with Rule 8D, in view of the fact that it would lead to additional disallowance.

1.27 Considering the above it is submitted that the method adopted by the Corporation is a reasonable one, and accordingly should be accepted by the Assessing officer in computing the disallowance under section 144 of the Act.

9.2. Ld. Assessing Officer considered the above submissions made by the assessee and observed that assessee by making *suo moto* disallowance had accepted that expenditure has been incurred towards earning exempt income. Thus, the question before him is on ascertaining the quantum of such expense which should be disallowed u/s.14A. He did not accept the contention of the assessee that Rule 8D is not applicable in the given case by listing as many as 11 reasons for his non acceptance as contained in para 4.3 (a) to (k) of his order which is extracted below:

a) The Rule SD has been framed according to provisions of Sub-Sec. 2 & 3 of Section 14A of the Income Tax Act

b) The Sub-Sec 2 & 3 of Section 14A are the procedural provisions for disallowance of the expenditure in relation to income not forming part of the total income. The sub-section provides the procedure for making the disallowance u/s 14A

c) The Hon'ble ITAT Special Bench, Mumbai in the case of Daga Capital Management Pvt. Ltd. & Others in 119 TTJ 289/117 ITD 269 has held that disallowance under section14A read with rule 8D is attracted also in cases where no dividend or exempt income is actually earned. Hon'ble ITAT has held that it is not necessary that the investments should yield dividends in the relevant year which is in line with the words "shall not form part of total income in rule 8D. Hence, all investments like shares and mutual funds, whether quoted or unquoted, income from which does not or shall not form part of total income have to be considered within the meaning of clauses (i) and (iil) of rule 8D(2). Therefore, the assessee's argument that it is suffering disallowance higher than the exempt income is not acceptable as there would be certain years where the disallowance of expenses would be much lower than the exempt dividends/Income.

d) The assessee co. has not proved any nexus between investment in shares and its own funds. Therefore, it can be reasonably inferred that investment in shares has been made both out of its own funds and its borrowed funds.

e) The Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. vs. DCIT, Range10(2), Mumbai (234CTR1) has held that dividend Income and income from mutual funds falling within the ambit of Section10(33) of the Income Tax Act 1961, as was applicable for Assessment Year 2002-03 is not includible in computing the total income of the assessee. Consequently, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to such income which does not form part of the total income under the Act, by virtue of the provisions of Section 14A(1);

f) It has also held that the provisions of sub sections (2) and (3) of Section 14A of the Income Tax Act 1961 are constitutionally valid and the provisions of Rule 8D of the Income Tax Rules as inserted by the Income Tax (Fifth Amendment) Rules 2008 are not ultra vires the provisions of Section 14A, more particularly sub section (2) and do not offend Article 14 of the Constitution.

g) The Hon'ble court has also declared that the provisions of Rule 8D of the Income Tax Rules which have been notified with effect from 24 March 2008 shall apply with effect from Assessment Year 2008-09 and even prior to Assessment Year 2008-09, when Rule 8D was not applicable, the Assessing Officer has to enforce the provisions of sub section (1) of Section 14A. For that purpose, the Assessing Officer is duty bound to determine the expenditure which has been incurred in relation to income which does not form part of the total income under the Act. The Assessing Officer must adopt a reasonable basis or method consistent with all the relevant facts and circumstances after furnishing a reasonable opportunity to the assessee to place all germane material on the record.

h) Further, it is pertinent to mention here that the Id CIT(A) in his order for the A.Y.2006-07 has upheld the disallowance u/s 14A r.w.s.8D in toto. Earlier for the A.Y.2005-06, the Id.CIT(A) had upheld the disallowance under Rule 8D in principle. However as regards disallowance of interest as per clause (ii) of Rule 8D, he held that no disallowance of interest could be made as the entire interest had been attributed to the business of housing finance. The facts of the present year are different. Interest of Rs.5142.88 crores has been attributed both to the housing finance activities and other activities, out of which an amount of Rs.3053.29 crores has been allocated to housing finance business. The remaining Interest is allocable to other activities including Investments generating exempt Income. Thus, interest has been incurred in relation to such investments also and Rule 8D is applicable. Once Rule 8D is applicable, the entire Interest of Rs.5142.88 and total assets have to be considered.

i) The assessee's argument that if disallowance of interest is made on the basis of Rule8D(2)(il),it will amount to a disallowance higher than the Interest is not correct as such disallowance on the basis of ratio of average of
dividend yielding Investments to the total assets would be much lower than the total interest as computed later.

j) The assessee's contention that Investments in subsidiaries or other Investments should not be considered for specific reasons is not correct as under Rule 8D all investments yielding/likely to yield exempt dividends have to be considered. The assessee's stand in applying percentage lower than than 0.5% prescribed under Rule SD(2)(1) is not correct as the rule does not specify any exceptions where a lower percentage can be adopted.

k) The assessee's working of interest to be allocated in relation to the Income not forming part of the total income based only on interest payable on public deposits and that too after excluding a hypothetical part attributable to SLR Is not correct as the entire interest is not attributable to any particular source of income and in such cases the entire interest has to be considered for the purpose of allocation as per Rule SD(2)(ii). In any case rule SD does not envisage disallowance of entire interest claim but only a reasonable part attributable to the investments is not admissible,

I am therefore, not satisfied with the correctness of the claim of the expenditure made by the assessee in relation to income which does not form part of total income under the Act. The procedure for determining the expenditure has been prescribed in Rule 8D to the Income Tax Rules and the expenditure to be disallowed as per section 14A read with rule 8D is worked out accordingly. In view of the discussion above all investments which have yielded or shall yield exempt dividend Income including all equity shares and preference shares of Indian companies and dividend oriented mutual funds are considered.

9.3. On the above points of dis-satisfaction, ld. Counsel for the assessee furnished the counters, reiterating that ld. Assessing Officer has to make reference to the manner in which disallowance has been *suo moto* made by the assessee and then give reasons as to why the method so adopted does not meet the requirement of law. It was emphasised that the method which has been found reasonable by Co-ordinate Bench in assessee's own case, cannot simultaneously be regarded as not satisfactory. In this respect, ld. Counsel urged that position with respect to disallowance of administrative expenditure should continue to be adopted in the period, post Rule 8D introduction since the Co-ordinate Bench of ITAT has found it to be reasonable for the purpose of making disallowance. Ld. Counsel also emphasised that only when there is recording of objective dissatisfaction by the ld. Assessing Officer on the *suo moto* disallowance made by the assessee, Rule 8D can be invoked for the purpose of computing the disallowance. According to him, Assessing Officer has to record a dissatisfaction which must be on an objective basis. Such dissatisfaction, as recorded by ld. Assessing Officer can be subjected to judicial scrutiny by the appellate forum. On this line of contention, it was pressed by the ld.

Counsel that whether the *suo moto* disallowance made by the assessee can be held to be not satisfactory when the manner in which the disallowance by ld. Assessing Officer made for the years under consideration was found to be reasonable by the Co-ordinate Bench in assessee's own case for Assessment Years 1998-99 to 2001-02.

9.4. Reliance was placed on the decision of Hon'ble Jurisdictional High Court of Bombay in the case of PCIT vs. Tata Capital Ltd. [2024] 161 taxmann.com 557 (Bom), wherein it was observed in para 7 by placing reliance on its another decision in the case of PCIT vs. JSW Energy Ltd. [2023] 153 taxmann.com 208 (Bom) that "*The most fundamental requirement is the Assessing Officer should record his dissatisfaction with the correctness of the claim of the assessee in respect of the expenditure and to arrive at such dissatisfaction, he should give cogent reasons."* In para 11, it was observed that *"The Assessing Officer has not expressed his satisfaction in the way it should have been. The Assessing Officer does not say he is not satisfied and why he is not satisfied. There are no reasons given.*" Ld. Counsel thus, pointed out that Hon'ble Court dismissed the appeal of the Revenue by holding that no substantial question of law arises and gave a finding that "*Though the Assessing Officer has stated that assessee's explanation is not acceptable, he has not given reasons why it was not acceptable to him.....The most fundamental requirement, therefore, is the Assessing Officer should record his dissatisfaction with the correctness of the claim of assessee in respect of the expenditure and to arrive at such dissatisfaction, he should give cogent reasons."*

10. We first take up the aspect of allocation of interest which does not relate to any specific activity but is forming part of common borrowing needs for the purpose of disallowance u/s.14A. In this respect, details of investment yielding exempt income and owned funds available with the assessee for the purpose of making such investments is tabulated below:

Assessment year	Investments yielding tax free income (Rs. in crores)	Owned funds available being share capital and Reserves and Surplus (Rs. in crores)
2008-09	3,095.11	11,947.34
2009-10	8,870.58	13,137.39
2010-11	8,589.56	15,197.65
2011-12	8,930.80	17,316,51
2012-13	9,131.32	19,017.58
2013-14	9,053.99	25,000.00
2014-15	9,163.21	27,955.19
2015-16	9,030.55	30,969.97
2016-17	8,887.85	34,121.06

10.1. From the factual position tabulated above, it is evident that assessee had sufficient owned funds from which investments were made, yielding tax-free income. By following consistency on this aspect of the issue, we hold that no disallowance is warranted towards interest allocation which does not relate to any specific activity but forms part of common borrowing since assessee had sufficient owned funds. We

also place our reliance on the decision of Hon'ble Supreme Court in the case of South Indian Bank vs. CIT [2021] 438 ITR 1 (SC).

10.2. There are incidents in Assessment Years 2010-11 to 2013-14 where assessee has incurred interest expenditure directly relatable to earning of exempt income being interest on zero coupon non-convertible debentures since these were used for the purpose of making investment in shares of HDFC Bank Ltd. Assessee on this aspect has candidly submitted that disallowance of such direct interest expenditure be upheld. Accordingly, disallowance of interest expenditure to this extent is sustained, being direct in nature.

10.2.1. However, specific to Assessment Year 2011-12, it is pleaded by the assessee that the aggregate amount of disallowance be restricted to exempt income earned during the year, since disallowance otherwise so computed exceeds, the exempt income earned. On this plea, it is a settled position of law that disallowance u/s.14A cannot exceed the exempt income earned by the assessee during the year. Hence, the plea so made is accepted and we direct the ld. Assessing Officer to restrict the disallowance to the extent of exempt income earned in Assessment Year 2011-12. The factual position with respect to exempt income and disallowance u/s.14A for this year is tabulated as under for ease of reference.

Exempt income earned during the year		Disallowance made by the AO u/s 14A	
Dividend	225,39,21,967	Rule 8D(2)(i)	313,59,07,682
Capital gains	55,46,81,454	Rule 8D(2)(ii)	517,18,20,270
		Rule 8D(2)(iii)	43,92,65,575
TOTAL	280,86,03,421	TOTAL	874,69,93,527
(refer paragraph 4.1 on page 22 of the Assessment Order for AY 2011-12)		(refer page 46 of the Assessment Order for AY 2011-12)	
		Disallowance only considering Rule 8D(2)(i) and 8D(2)(iii)	
		Rule 8D(2)(i)	313,59,07,682
		Rule 8D(2)(iii)	43,92,65,575
TOTAL	280,86,03,421	TOTAL	357,51,73,257

10.3. On the aspect of disallowance of administrative expenses, ld. Assessing Officer has invoked provisions of Rule 8D(2)(iii). He observed that stand of assessee in applying percentage lower than 0.50% prescribed under Rule 8D(2)(iii) is not correct as the Rule does not specify any exception whereby a lower percentage can be adopted. Assessee, while computing *suo moto* disallowance has considered 0.40% of average value of investments, yielding tax-free income. According to the assessee, its administrative expenses range from 0.35% to 0.45% of the average total assets which is corroborated by annual report for Assessment Year 2008-09 wherein since year 2005, graph of administrative expenses to average total assets is on a decreasing trend, being 0.37% in the year 2008. It thus, claimed that it is un-reasonable on the part of ld. Assessing Officer to disallow @ 0.50% of average value of investment yielding tax-free income u/r. 8D(2)(iii).

10.4. To delve on the above aspect of disallowance relating to administrative expenses, it is important to take into account provisions contained in section 14A(2) and Rule 8D(1). On bare perusal of the two provisions, we note the important phraseology contained therein is, viz., *"having regard to the accounts of the assessee of a previous year"* which signifies that it is incumbent upon the Assessing Officer to arrive at his satisfaction about the correctness of the claim of expenditure made by the assessee by *"having regard to the accounts of the assessee of a previous year"*. Before us, ld. Counsel for the assessee has asserted that action of ld. Assessing Officer for disallowing administrative expenditure by applying Rule 8D(2)(iii) is not justified owing to non-recording of objective satisfaction, more particularly, when assessee had made a *suo moto* disallowance. He placed reliance on the decision of Tata Capital Ltd. (supra). We have perused the said decision and extracted its relevant portions in above paragraphs. In this decision, ld. Assessing Officer had merely stated that assessee's explanation is not acceptable without giving any reasons as to why it is not acceptable. In the present case before us, ld. Assessing Officer has listed as many as 11 reasons justifying his stand of applying Rule 8D though in the context of administrative expenses, he has merely noted that the said Rule does not specify any exception where a lower percentage than 0.50% can be adopted. Hence, applicability of this decision is distinguished.

10.5. On the 11 reasons listed by ld. Assessing Officer for justifying his stand on applying Rule 8D, ld. Counsel of the assessee has submitted his rejoinder explaining how they are not relevant for the purpose of making the disallowance. The same is extracted below for reference.

"d. The discussion on recording of dis-satisfaction by the AO is in paragraph 4.3 at pages 44 to 46 of his order. Therein, he has given (11 reasons running from paragraph (a) to (k). In paragraph (a), reference has been made to framing of Rule 8D in accordance with the provisions of sub-sections (2) and (3) of section 14A. In paragraph (b), sub-sections (2) & (3) of section 14A have been referred to as procedural provision. The assertions in paragraphs (a) and (b) hereinabove, have no relevance. In paragraph (c), reference has been made to decision of the Special Bench of the Tribunal in the case of Daga Capital Management Pvt. Ltd. and Ors. (2009) 117 ITD 169 (Mumbai SB) for the proposition that disallowance as per Rule 8D should be made in respect of the entire investments and cannot be restricted to only those investments which have yielded exempt income during the year. It is submitted that the said decision does not lay down this proposition. The question before the Special Bench was "Whether the provisions of section 14A of the Act are applicable with respect to dividend income earned by the Assessee engaged in the business of dealing in shares and securities, on the shares held as stock-in-trade and when earning of such dividend income is, therefore, incidental to trading in shares". In paragraph (d) thereof, it is alleged that the Assessee has not proved any nexus between investment in shares and its owned funds. This has no relevance to the administrative expenditure and the issue relating to allocation of interest expenditure on common funds stands concluded in its favour. In paragraph (e), reference has been made to the judgment of the Bombay High Court in Godrej and Boyce Manufacturing Co. Ltd v. DCIT 234 CTR 1 for the proposition that disallowance u/s. 14A is to be made in respect of dividend income and income from mutual funds falling within the ambit of section 10(33) of the Act. This proposition is not in dispute as the Assessee has suo moto made a disallowance of the administrative expenditure in this respect. In paragraph (f), the aforesaid judgment of the Bombay High Court has been relied upon for the proposition that provisions of sub-sections (2) and (3) of section 14A and Rule SD of the Rules are constitutionally valid. It is submitted that this position is again not disputed by the Assessee. However, it has no relevance to the requirement of recording of dis-satisfaction by the AO. In this regard, while upholding the constitutional validity of Rule 8D in paragraphs 57 and 58 at page 29 of the Report, the High Court has emphasized that recording of dis-satisfaction by the AO is a statutory safeguard against any arbitrary exercise of powers by the AO. That the AO should record reasons for his conclusion with respect to such dis-satisfaction. Further such dis-satisfaction recorded by the AO could be subject to judicial scrutiny by the appellate forum. This position has been followed by the Bombay High Court in PCIT v. Tata Capital Ltd. (2024) 298 Taxman 714 (Bombay) (copies separately handed over at the time of hearing). In paragraph (g), referring to the aforesaid judgment of Godrej & Boyce (supra) it has been observed that prior to AY 2008-09 i.e. Rule 8D becoming applicable, the AO must adopt a reasonable basis or method for computation of such disallowance. In the present case, it is submitted that the method for computation of disallowance which has been found by the Tribunal to be reasonable for AYs prior to AY 2008-09 cannot be regarded as non-satisfactory from AY 2008-09. In paragraphs (h) and (i), observations have been made to the effect that entire interest incurred by an Assessee has to be taken into account for the purposes of application of Rule 8D which has no relevance to the issue under consideration. With respect to allocation of administrative expenditure, in paragraph (j), which is the only place where there is any reference to the allocation of administrative expenditure, it is observed that "the Assessee's stand in applying percentage lower than 0.5% prescribed under Rule 8D(2) (iii) is not correct as the rule does not specify any exception where a lower percentage can be adopted". This observation overlooks

that the primary responsibility for making the disallowance u/s. 14A is on the Assessee. In a case where the Assessee has suo moto made a disallowance, the AO can invoke the provisions of Rule 8D for the purposes of computation of such disallowance only when there is recording of an objective dis-satisfaction to such suo moto disallowance by him. Lastly, in paragraph (k), reference has again made to working of interest disallowance which again has no relevance to the present discussion. The CIT(A) in paragraph 5.3 at pages 10 and 11 of his appellate order, has simplicitor observed that such dis-satisfaction as recorded by AO meets with the requirement of section 14A(ii) of the Act."

10.6. It is noted that primary responsibility for making disallowance u/s.14A is on the assessee while computing its total income and reporting the same in the return of income filed by it. In the present case, assessee has *suo moto* made disallowance, *inter alia*, for administrative expenses by applying a percentage lower than the prescribed percentage of 0.50% in Rule 8D(2)(iii) which is based on its audited financial statements reported in annual report for each year whereby administrative expenses of the assessee range from 0.35% to 0.45% of the average total assets. For the purpose of adopting percentage lower than the prescribed one, it is corroborated with and linked to its financial, in other words, to its books of accounts. On this claim made by the assessee, the onus was on the ld. Assessing Officer to satisfy himself about the correctness of this claim by verifying the factual data and then proceed to invoke Rule 8D(2)(iii) to resort to prescribed percentage of 0.50% for the purpose of making disallowance. In the 11 reasons listed by ld. Assessing Officer, there is no whisper as to the correctness of the claim made by the assessee of adopting a lower percentage than the prescribed one, except at one place where he mentioned that the Rule does not specify any exception to adopt a lower percentage. Mandatory condition required u/s.14A(2) r.w.r.8D(1) of *"having regard to the accounts of the assessee of a previous year"* remained to be fulfilled by the ld. Assessing Officer before invoking Rule 8D(2)(iii) to alter the percentage adopted by the assessee and apply the prescribed percentage of 0.50%. Accordingly, we hold that ld. Assessing

Officer has erred in invoking the provisions of Rule 8D for making disallowance of administrative expenses in absence of recording of objective satisfaction "*having regard to the accounts of the assessee*" and therefore, the disallowance u/s.14A is to be restricted to the amount of *suo moto* disallowance made by the assessee. It is important to note that the finding arrived here for these Assessment Years is not on the same footing of "reasonableness" applied in Assessment Years prior to introduction of Rule 8D but for non-recording of objective satisfaction "*having regard to the accounts of the assessee*" for rejecting the *suo moto* disallowance made by the assessee. Accordingly, grounds raised by both assessee and revenue are partly allowed.

10.7. The above finding arrived at by us is fortified by the decision of Hon'ble Supreme Court in the case of *Maxopp Investment Ltd. vs. CIT(A) [2018] 402 ITR 640 (SC)* while emphasising on aspect of recording of satisfaction by the ld. Assessing Officer for which it observed as under:

> *"41. Having regard to the language of section 14A(2) of the Act, read with rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the Assessing Officer needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the Assessing Officer was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, the nature of the loan taken by the assessee for purchasing the shares/ making the investment in shares is to be examined by the Assessing Officer*
> [emphasis supplied by us by underline]

10.7.1. Further, Hon'ble Supreme Court in *Godrej & Boyce Manufacturing Company Ltd. v. DCIT, [2017] 394 ITR 449 (SC)*, observed as under:

> *"37. We do not see how in the aforesaid fact situation a different view could have been taken for the Assessment Year 2002-2003. Sub-sections (2) and (3) of*

Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. Whether such determination is to be made on application of the formula prescribed under Rule 8D or in the best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in the Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It is only thereafter that the provisions of Section 14A(2) and (3) read with Rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable."
[emphasis supplied by us by underline]

10.7.2. We also find that Hon'ble jurisdictional High Court of Bombay in the case of *CIT v. M/s Asian Paints Ltd., in ITA No. 1564 of 2016*, vide order dated 06.04.2019, for Assessment Year 2008-09, while dismissing the appeal filed by Revenue held that in absence of recording of satisfaction in terms of section 14A(2) of the Act, invocation of Rule 8D is not permissible. Relevant findings of the Hon'ble Court, are reproduced as under:-

"4. Regarding question no.(c) :-

(a) In its return of income, the respondent made a suo-moto disallowance of Rs.15.21 lakhs being the expenditure incurred to earn exempt income under Section 14A of the Act. The Assessing Officer disregarded the same and proceeded to disallow an amount of Rs. 1.10 crores under Section 14A of the Act read with Rule 8D of the Rules as expenditure incurred to earn exempt income. Thus, adding Rs.1.10 crores to the income of the respondent.

(b) Being aggrieved, the respondent filed an appeal to the CIT(A) but without success.

(c) On further appeal, the impugned order of the Tribunal while allowing the appeal held that before invoking the provisions of Rule 8D of the Income Tax Rules, the Assessing Officer has to record his non satisfaction with the suo moto disallowance of expenditure made towards earning exempt income by the respondent. This exercise not having been carried out by the Assessing Officer before applying Rule 8D of the Income Tax Rules, the disallowance of expenditure to earn exempt income cannot be sustained.

(d) This issue is no longer res integra as the Apex Court in Godrej & Boyce Mfg. Co. Ltd. v. Dy. CIT, 394 ITR 449 decided the issue in favour of the respondent. In

the above case, the Supreme Court has while considering the issue of disallowing of expenditure incurred to earn exempt income observed as under

"Whether such determination is to be made on application of the formula prescribed under rule 8D or in best judgment of the Assessing Officer, what the law postulates is the requirement of a satisfaction in Assessing Officer that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. It only thereafter that the provisions of section 14A (2) and (3) read with rule 8D of the Rules or a best judgment determination, as earlier prevailing, would become applicable."

Thus, Rule 8D of the Rules cannot be invoked where the suo moto disallowance made by the respondent assessee is not found to be satisfactory by the Assessing Officer having regard to the accounts of the assessee, In the absence of recording the aforesaid fact of non- satisfaction in terms of Section 14A(2) of The Act, invocation of Rule 8D is not permissible.

(e) Therefore, in view of the above decision of the Apex Court, this question also does not give rise to any substantial question of law. Thus, not entertained."

14. Since, in the present case, no proper satisfaction has been recorded by the ld. Assessing Officer in terms of the provisions of section 14A(2) of the Act, having regard to the accounts of the assessee, about the correctness of the claim of the assessee in respect of expenditure incurred in relation to exempt income, respectfully following the aforesaid decisions, we do not find any reason for upholding the disallowance made by the AO under section 14A read with Rule 8D of the Rules. Accordingly, the same is directed to be deleted. As a result, ground no. I raised in assessee's appeal is allowed."
[emphasis supplied by us by underline]

10.8. In any event, in addition to the aforesaid findings, owing to settled position of law, ld. Assessing Officer is directed to take into account investments which have actually yielded exempt income during the year for the purpose of making disallowance u/s.14A. For this purpose, we draw our force from the decision of Hon'ble Special Bench of ITAT in the case of *ACIT vs. Vireet Investments Pvt. Ltd. [2017] 82 taxmann.com 415 (Del Trib) (SB).*

III. Increasing the book profits computed u/s. 115JB by the amount disallowed u/s. 14A of the Act.

11. This issue arises in the following appeals:

Assessment year	Ground No. in Assessee's appeal	Ground No. in Revenue's appeal
2014-15	-	6 to 8
2015-16	-	6 to 8
2016-17	-	3
2017-18	-	1

11.1. All the appeals on the aforesaid issues are by the Revenue since, ld. CIT(A) by following the decisions of Hon'ble High Court held that amount disallowed u/s.14A r.w.r. 8D cannot be added to the book profit computed u/s.115JB. Facts relating to the issue under consideration are undisputed. We note that grounds raised by the Revenue are no longer *res integra* as held in plethora of decisions that disallowance made u/s.14A r.w.r.8D under the normal provisions of the Act cannot be read into the provisions of Section 115JB for computing book profit since there is no express provision in clause (f) of Explanation 1 to Section 115JB to this effect. Few of the decisions on the stated issue relied upon are as under:

i. CIT vs. Gokaldas Images (P.) Ltd [2020] 122 taxmann.com 160 (Kar)
ii. CIT vs. Alembic Ltd. [Tax Appeal No. 1249 (Guj.) of 2014, dated 20.07.2016]
iii. CIT vs. Bengal Finance & Investment (P.) Ltd. [Tax Appeal No. 337 (Bom.) of 2013, dated 10.02.2015]

iv. ACIT vs. Vireet Investments (P.) Ltd [2017] 82 taxmann.com 415 (Delhi Trib.) (SB)

v. 360 One WAM Ltd. vs. ACIT [ITA No. 574/Mum/2024 and Ors. dated 09.08.2024]

11.2. Considering the facts on record, relevant provisions of the Act and the judicial precedents, we do not find any infirmity in the findings of ld. CIT(A) and thus dismiss the grounds raised by the Revenue on this issue.

IV. Discount on grant of stock options to employees.

12. This issue arises in the following appeals:

Assessment year	Ground No. in Assessee's appeal	Ground No. in Revenue's appeal
2002-03	4	-
2003-04	5	-
2004-05	4	-
2005-06	4	-

12.1. Assessee had granted stock options to its employees during the year in accordance with the provisions of Companies Act, 1956 r/w guidelines of the Securities and Exchange Board of India (SEBI). Discount allowed to the employees for acquiring the shares as per the said scheme (being the difference between the market value of shares on the date of grant and the issue price) has been amortised over the vesting period. The pro-rata discount as relatable to Assessment Year 2002-03 is Rs.2,59,47,193. Though, the said amount stood disallowed in the computation of total income, it was claimed as a deduction by

way of notes forming part of the same. There is no discussion with respect to this issue in the assessment order for AY 2002-03. However, ld. CIT(A) upheld the denial of deduction by holding that the said expenditure claimed by the assessee as a deduction is capital in nature since it relates to issue of shares.

12.2. At the outset we note that aforesaid issue is covered by the order of Co-ordinate Bench of ITAT Mumbai in assessee's own case for Assessment Years 2000-01 and 2001-02 in ITA Nos. 337 and 724/Mum/2005, dated 05.07.2024 (undersigned Accountant Member being its author) wherein claim of the assessee has been allowed after considering the judicial precedents listed below:

i. CIT vs. Biocon Ltd. 430 ITR 151 (Kar.)
ii. Biocon Ltd. vs. DCIT [2013] 144 ITD 21 (Bang) (SB)
iii. PVR Ltd. vs. CIT [2022] 145 taxmann.com 331 (Del)

12.3. In view of the above, there being no material change in the facts and applicable law, ground taken by the assessee is allowed.

V. Computation of amount eligible for deduction u/s. 80M of the Act.

13. This issue arises in the following appeals:

Assessment year	Ground No. in Assessee's appeal	Ground No. in Revenue's appeal
2003-04	2	2

13.1. For the year under consideration i.e., AY 2003-04, dividend income received from shares was chargeable to tax in the hands of the assessee who is entitled to claim deduction u/s. 80M of the Act.

13.2. Deduction u/s. 80M is allowed on net dividend income i.e. after reducing the income by the expenses relating to it and there is no dispute with respect to this principle on account of judicial precedent laid out by Hon`ble Apex Court in the case of CIT v. Distributors (Baroda) Pvt. Ltd. 155 ITR 120. Dividend income has always been included under the head 'income from other sources' u/s.56(2) of the Act. Accordingly, the net dividend income as contemplated u/s.80M has to be computed by allowing deduction in respect of expenditure as permissible u/s.57(iii). This is further supported by provisions of section 80AB which provides that deductions to be made are with reference to the nature of income included in the gross total income, in accordance with the provisions of the Act. Thus, for computing the amount of net dividend income eligible for deduction u/s.80M, gross dividend is to be reduced by any expenditure laid out or expended wholly and exclusively for the purpose of making or earning such income, not being in the nature of capital expenditure as provided in section 57(iii).

13.3. Ld. Assessing Officer by relying on section 80AB of the Act and judgment of Distributors (Baroda) Pvt. Ltd. (supra) and on the basis of pro-rata allocation of administrative expenses made in the course of impugned assessment while computing profits eligible for deduction u/s. 36(1)(viii) of the Act, allocated a sum of Rs.7,15,62,874/- as administrative expenditure incurred for earning dividend income. Apart from this, he also allocated interest expenses of Rs.197,76,49,299/- worked out based on weighted average cost of shares. On computation, since the income from dividend got converted into a loss, he did not grant any deduction u/s. 80M of the Act. In first appeal, ld. CIT(A) held that no part of interest expenditure is allocable for dividend income

earned by the assessee since investments made by the assessee yielding such dividend income were made out of owned funds including reserves and surplus. For administrative expenditure, he held that dividend income constituted 52.83% of total exempt income. Hence, 52.83% of Rs.4,71,18,529/- i.e., Rs.2,48,94,051/- was treated as expenditure incurred for dividend income earned by the assessee. He thus, allowed deduction u/s. 80M on the net dividend of Rs.94,23,38,245/-. Accordingly, Revenue is in appeal in respect of exclusion of interest expenditure while calculating income eligible for deduction u/s. 80M, and assessee is in appeal in respect of eligible amount of deduction reduced by pro-rata allocation of administrative expenses.

13.4. On the stated position of law and under the given set of facts as enumerated above, we have already held in the above paragraphs while dealing with disallowance u/s. 36(1)(viii) and 14A on the interest component relating to the investments in shares which yielded dividend income have been made out of owned funds and therefore, no part of such interest expenditure is allocable on this account. Our observations and findings on this aspect are not repeated here as already dealt elaborately in the above paragraphs.

13.5. With respect to allocation made towards administrative expenditure by the ld. Assessing Officer, the said amount has been determined by applying a pro-rata proportion to the income which would qualify for deduction u/s. 36(1)(viii) and other income which for which ld. CIT(A) has given partial relief. For such an action of pro-rata allocation, we refer to the provisions of Section 57(iii) and find that ld. Under the said section, Assessing Officer has no power to bifurcate on pro-rata basis and deduct a part of it from the gross dividend income. There is no scope for any estimation of expenditure and hence no scope

for allocation of notional expenditure. The deductions contemplated are the expenditure laid out or expended wholly and exclusively for the purpose of making or earning the said dividend income, thereby referring to actual expenditure. Further, from reading of section 80AB, we note that it is not open for the Assessing Officer to deduct expenditure attributable to income under one head from the income under another head. Before us, nothing has been brought on record by the Revenue to demonstrate identifiable expenditure actually incurred for the purpose of making or earning the said dividend income. Accordingly, keeping the aforesaid provisions of the Act in juxtaposition, authorities below are not justified in reducing the qualifying amount of income eligible u/s.80M by making pro-rata allocation towards administrative expenditure. Thus, grounds taken by the Revenue are dismissed and those by the assessee are allowed.

13.6. Our findings are fortified by the following decisions:

i) CIT vs. Mahendra Sobhagchand Shah, 203 ITR 178 (Bom)

ii) CIT vs. United Colleries Ltd., [1993] 203 ITR 857 (Cal)

iii) CIT vs. Modern Terry Towels Ltd., 357 ITR 750 (Bom)

VI. Deduction of income by the amount credited to lease equalization account.

14. This issue arises in the following appeals:

Assessment year	Ground No. in Assessee's appeal	Ground No. in Revenue's appeal
2003-04	4	-

14.1. Fact of the matter is that assessee credited an amount of Rs.48,04,720/- to its profit and loss account based on consistent practice followed by it towards lease equalisation account. According to the assessee, lease equalisation account is relevant only for the purpose of accounting which is based on method of accounting followed by it year on year basis which has no bearing on the tax profits for the year. For the debit balance in lease equalisation account, assessee regularly considered it as a disallowable item and added back to its profit before tax for computing total income in the earlier years. In the year under consideration, balance in the lease equalisation account is a credit balance at the year end. For this credit balance, assessee reduced the same from the profits while computing total income for the year. However, ld. Assessing Officer denied the claim of the assessee for such a reduction which was confirmed by ld. CIT(A).

14.2. Ld. Counsel referred to the first appellate order for Assessment Year 2002-03 on the same issue wherein the matter had been set aside to the file of ld. Assessing Officer, owing to rectification application pending before him in this respect. Ld. Assessing Officer was directed to decide the rectification application after verification of facts. In the year under appeal before us, i.e., Assessment Year 2003-04, ld. CIT(A) has relied upon the first appellate order for Assessment Year 2002-03 but denied the claim of assessee of reducing the taxable income by the amount credited to lease equalisation account. Considering the facts as stated above, for the purpose of consistency, we find it appropriate to remand this issue back to the file of ld. Assessing Officer for reconsideration as directed by ld. CIT(A) in Assessment Year 2002-03. Accordingly, ground raised by the assessee is allowed for statistical purposes.

VII. Assessment of amount withdrawn from reserve created u/s. 36(1)(viii).

15. This issue arises in the following appeals:

Assessment year	Ground No. in Assessee's appeal	Ground No. in Revenue's appeal
2004-05	-	2
2006-07	-	3
2007-08	-	3

15.1. On this issue, ld. Assessing Officer noted that assessee had withdrawn a sum of Rs.50 Crores from Special Reserve No. 1 towards "provisions for contingency" as reported in Schedule II of the balance sheet for the year under consideration. According to him, Section 36(1)(viii) speaks only of special reserve created under that section without making any distinction between reserve created before the amendment introduced by the Finance Act, 1997, in the said section effective from 01.04.1998 and reserve created post amendment. By referring to section 41(4A) according to which, withdrawal from the special reserve created and maintained by the assessee is chargeable to tax as income of the previous year in which such amount is withdrawn, sum of Rs.50 Crores was added to the total income of the assessee.

15.2. It is noted that an amendment was brought into section 36(1)(viii) w.e.f. 01.04.1998 whereby assessee alongwith creation of reserve was also required to maintain the said reserve. A corresponding amendment was also brought to section 41(4A) which reads as under:

> *"41(4A). where a deduction has been allowed in respect of any special reserve created and maintained under clause (viii) of sub-section (1) of Section 36, any amount subsequently withdrawn from such special reserve shall be deemed to be the profits and gains of business of profession and accordingly be chargeable*

to income-tax as the income of the previous year in which such amount is withdrawn."

15.3. Pursuant to the aforesaid amendments, assessee designated the special reserve created up to 31.03.1998 as "Special Reserve No. I Account". The special reserve created from 01.04.1998 onwards is designated as "Special Reserve No. II Account". For this, a reference is made to Schedule 2 of the balance sheet as at 31.03.2004, relevant to Assessment Year 2004-05 under our consideration. The same is extracted below:

Schedule 2
RESERVES AND SURPLUS [Notes 17 (ii), 20 and 21]

	Rupees	As at March 31, 2004 Rupees	As at March 31, 2003 Rupees
SPECIAL RESERVE No. I			
Opening Balance	194,35,24,700		234,35,24,700
Less : Transfer to Provision for Contingencies	50,00,00,000		40,00,00,000
		144,35,24,700	194,35,24,700
SPECIAL RESERVE No. II			
Opening Balance	829,95,00,000		605,95,00,000
Add : Transfer from Profit and Loss Account	230,00,00,000		224,00,00,000
		1059,95,00,000	829,95,00,000
GENERAL RESERVE			
Opening Balance	944,13,82,685		765,14,75,067
Add : Transfer from Debenture Redemption Reserve	—		20,00,00,000
	944,13,82,685		785,14,75,067
Add : Transfer from Profit and Loss Account	242,18,97,314		158,99,07,618
		1186,32,79,999	944,13,82,685
SECURITIES PREMIUM			
Opening Balance	818,39,05,598		893,71,76,615
Add : Received during the year	46,73,77,716		12,82,60,495
	865,12,83,314		906,54,37,110
Less : Utilised during the year	120,73,91,129		88,15,31,512
		744,38,92,185	818,39,05,598
EMPLOYEE STOCK OPTION OUTSTANDING			
Opening Balance	1,94,71,877		2,35,21,716
Add : Net Charge for the year	1,07,20,237		48,29,651
	3,01,92,114		2,83,51,367
Less : Options exercised	1,58,14,947		88,79,490
		1,43,77,167	1,94,71,877
CAPITAL REDEMPTION RESERVE			
Opening Balance	—		50,00,00,000
Less : Utilised for Issue of Bonus Shares	—		50,00,00,000
		—	—
SHELTER ASSISTANCE RESERVE			
Opening Balance	10,63,44,275		9,57,14,379
Add : Transfer from Profit and Loss Account	4,00,00,000		4,00,00,000
	14,63,44,275		13,57,14,379
Less : Utilised during the year	3,95,74,576		2,93,70,104
		10,67,69,699	10,63,44,275
CAPITAL RESERVE		4,13,875	4,13,875
		3147,17,57,625	2799,45,43,010

15.4. On the above stated facts, claim of the assessee is that amended provisions will apply only to the special reserve created from 01.04.1998 which is designated as “Special Reserve No.II Account”. Any withdrawal from “Special Reserve No.I Account” which was created upto 31.03.1998 cannot be subjected to tax under the amended provisions. On appeal before the ld. CIT(A), the said claim was accepted by placing reliance on the decision of Hon'ble High Court of Kerala in the case of Kerala Financial Corporation vs. CIT, [2003] 261 ITR 708 (Ker), wherein the Hon'ble Court held that amendments were prospective and would be applicable for Assessment Year 1998-99 and thereafter and also that the same cannot be applied for the Assessment Years prior thereto. It thus, held that deduction which has been allowed in respect to amounts transferred to special reserve u/s.36(1)(viii) prior to amendment and which amounts were subsequently withdrawn should not be subjected to tax. Before us, Revenue is in appeal on the relief so granted by ld. CIT(A).

15.5. From the audited financial statements of the assessee as extracted above, it is an admitted fact that assessee has bifurcated the creation of special reserve required u/s.36(1)(viii) owing to the amendment brought in the said section along with corresponding amendment u/s.41(1A) which are effective from Assessment Year 1998-99. Assessee had explained this aspect before the ld. Assessing Officer by clarifying that special reserve had been created over the years out of the profits and “Special Reserve No. I Account” relates to amount which had been transferred up to financial year 1997-98. Thus, it is not as though assessee has surreptitiously transferred any amount nor it is a case of Revenue that transfer of such fund from the special reserve was in any manner contrary to any law. In view of these facts and judicial

precedent, we do not find an infirmity in the conclusion drawn by the ld. CIT(A) granting relief to the assessee. Hon'ble Jurisdictional High Court of Bombay in the case of CIT vs. LIC Housing Finance Ltd. [2014] 52 taxmann.com 164 (Bom) while dealing on similar issue noted its concurrence on the view expressed by the Hon'ble Kerala High Court (supra) and which was quoted with approval by Hon'ble Delhi High Court in the case of CIT vs. IFCI Ltd. [2011] 12 taxmann.com 268 (Del). Accordingly, ground raised by the Revenue is dismissed.

VIII. Disallowance of entrance fees and subscription paid to clubs.

16. This issue arises in the following appeals:

Assessment year	Ground No. in Assessee's appeal	Ground No. in Revenue's appeal
2004-05	-	3
2005-06	-	2
2006-07	-	1
2007-08	-	2
2009-10	-	5
2010-11	-	5
2011-12	-	7
2012-13	-	7
2013-14	-	7
2014-15	-	9 & 10
2015-16	-	9 & 10
2016-17	-	4
2017-18	-	2
2018-19	-	4
2019-20	-	4
2020-21	-	4 & 5

16.1. Assessee has claimed deduction u/s. 37(1) towards club entrance fees and subscription to enable the benefit of such facility to its employees. According to the assessee, such expenditure has been incurred for the purpose of its business. However, ld. Assessing Officer by making a distinction between entrance fees and annual subscription paid to the clubs, has made the disallowance on the ground that it is in the nature of capital expenditure, not covered by section 37(1). Ld. CIT(A) allowed the claim of assessee by following the decision of Hon'ble Jurisdictional High Court of Bombay in the case of Otis Elevator Company (India) Ltd. vs. CIT [1992] 195 ITR 682 (Bom).

16.2. In this respect, we note that though entrance fee is a one-time payment, regular payment of annual subscription is an essential condition for continuance of such club membership. Thus, unless such annual subscription is paid, there is no enduring benefit to the assessee. Accordingly, it cannot be treated as capital expenditure. Decision of Hon'ble Jurisdictional High Court of Bombay in the case of Otis Elevators (supra) was considered and followed by Hon'ble High Court of Punjab and Haryana in the case of CIT v. Groz Beckert Asia Ltd. [2013] 31 taxmann.com 155 (P&H), wherein it allowed the deduction of expenditure by holding it as not capital in nature. Relevant extract from the said decision is as under:

> *"16. In the present case, the nature of the expenditure incurred by the assessee cannot be said to be a capital expenditure. The second test culled down in Assam Bengal Cement Co. Ltd.'s case (supra) is that expenditure should bring into existence an asset or an advantage for the enduring benefit of a trade. In the present case, the corporate membership of Rs.6 lacs was for a limited period of 5 years. The corporate membership was obtained for running the business with a view to produce profit. Such membership does not bring into existence an asset or an advantage for the enduring benefit of the business. It is an expenditure incurred for the period of membership and is not long lasting. By subscribing to the membership of a club, no capital asset is created or comes into existence. By such membership, a privilege to use facilities of a club alone, are conferred on the assessee and that too for a limited period. Such expenses*

are for running the business with a view to produce the benefits to the assessee. Consequently, it cannot be treated as capital asset. Therefore, the reasoning given by Delhi, Bombay and Gujarat High Courts in respect of members of Clubs is based upon correct enunciations of the principles of law as delineated above in the judgments of the Supreme Court."
[emphasis supplied by us by underline]

16.2. In the given set of facts and respectfully following the decisions of Hon'ble High Courts (supra), we do not find any infirmity in the findings arrived at by ld. CIT(A). Claim made by the assessee is thus, allowed. Grounds raised by the Revenue in this respect are dismissed.

IX. Exemption under section 54EC in respect of capital gains arising on depreciable assets.

17. This issue arises in the following appeals:

Assessment year	Ground No. in Assessee's appeal	Ground No. in Revenue's appeal
2006-07	-	2

17.1. Assessee had claimed deduction of Rs.54,49,21,366/- u/s. 54EC in respect of short-term capital gains arrived at u/s. 50 of the Act on transfer of depreciable capital asset which was held for a period of more than 36 months. After calling for justification from the assessee, ld. Assessing Officer held that deduction u/s.54EC is available where capital gain arises on transfer of long-term capital asset. According to him in the present case, capital gain against which assessee has claimed deduction u/s.54EC is deemed to be capital gain arising from transfer of short-term capital asset u/s.50, he thus, denied the said claim of deduction.

17.2. Ld. CIT(A) directed the ld. Assessing Officer to grant exemption of Rs.54,49,21,366/- u/s.54EC as claimed by the assessee by following the decision of Hon'ble Jurisdictional High Court of Bombay in the case of CIT vs. Ace Builders (P) Ltd., [2005] 281 ITR 210 (Bom) and in the case of CIT vs. Assam Petroleum Industries Pvt. Ltd. [2003] 262 ITR 587 (Gau) of Hon'ble High Court of Guwahati. The essence of the aforesaid decisions is that fiction created in section 50(1) and (2) is restricted only to the mode of computation of capital gains contained in Section 48 and 49 and does not apply to other provisions, since fiction created by the legislature has to be confined to the purpose to which it is created. Also, that section 54E does not make any distinction between depreciable assets and non-depreciable assets. Benefit of section is available to the assessee irrespective of the fact that computation of capital gains is done either u/s.48 and 49 or u/s. 50. Legal fiction created by the statute is to deem capital gain as short-term capital gain and not to deem the asset as short-term capital asset. Therefore, it cannot be said that section 50 converts long-term capital asset into a short-term capital asset.

17.3. Facts on record on the above issue are undisputed as already stated above. The issue in hand is in respect of addressing the position of law for the claim made by the assessee u/s.54EC on capital gain which has been deemed to be a short-term capital gain u/s.50 of the Act. Ld. CIT(A) granted the relief by following the decision of Hon'ble Jurisdictional High Court of Bombay in the case of Ace Builders (supra) as well as Assam Petroleum Industries Pvt. Ltd. (supra) by Hon'ble High Court of Guwahati. Before us, ld. Counsel for the assessee placed reliance on the decision of Hon'ble Supreme Court in the case of CIT vs. V.S. Dempo Company Ltd. [2016] 74 taxmann.com 15 (SC), wherein by referring to the decision of Hon'ble High Court of Bombay in Ace

Builders (Supra), the Hon'ble Apex Court held its view in agreement with the view taken by the Hon'ble High Court of Bombay. Accordingly, appeal by the Revenue was dismissed. The moot point concluded in the said decision is that assessee is entitled to exemption u/s.54E in respect of capital gains arising on transfer of a capital asset on which depreciation has been allowed. It may be noted that deduction u/s.54E is *pari-materia* to the one u/s.54EC, both requiring the assessee to make investment in specified asset/certain bonds within a period of six months after the date of transfer of the asset on which capital gain arises. In the present case, it is a claim made by assessee u/s.54EC and thus, the aforesaid decision of the Hon'ble Supreme Court covers the case of the assessee in its favour. Respectfully following the same, ground raised by the Revenue is dismissed.

X. Disallowance of FCCB issue expenses.

18. This issue arises in the following appeals:

Assessment year	Ground No. in Assessee's appeal	Ground No. in Revenue's appeal
2007-08	3	-

18.1. During the relevant year, assessee had incurred expenses of Rs.8,66,200/- in connection with issue of Foreign Currency Convertible Bonds (FCCB) for which deduction was claimed as revenue expenditure. However, ld. Assessing Officer held that FCCBs are convertible into shares and therefore, the said expense is in fact for issue of shares and thus, disallowed the same, treating it as capital expenditure. Ld. CIT(A) justified the view taken by ld. Assessing Officer.

18.2. Before us, ld. Counsel for the assessee submitted that at the time of issue of the security i.e., FCCB was in the nature of a bond and not an equity share. Accordingly, expenditure incurred should be allowed as revenue expenditure on the basis of factual position existing at the time of issue of the impugned security. Reliance was placed on decision of Hon'ble Jurisdictional High Court of Bombay in the case of PCIT vs. Reliance Natural Resource Ltd. [2019] 111 taxmann.com 413 (Bom), wherein it was held that expense for issuing FCCB is an expense for raising loan hence, revenue expenditure. For this finding, Hon'ble Court referred to its own earlier decision in the case of CIT vs. Faze Three Ltd., in ITA No.1761 of 2014 dated 16.03.2017, wherein it was observed in para 4(ii) that "*even if the FCCB are convertible into equity at a later date, yet on the date of its issue, it is a loan. Therefore, expenditure incurred thereon is revenue in nature."* Reliance was also placed on the decision of Hon'ble Rajasthan High Court in the case of CIT vs. Secure Meters Ltd., [2010] 321 ITR 611 (Raj) and Hon'ble Delhi Court in the case of CIT vs. Havells India Ltd., [2013] 352 ITR 376 (Del).

18.3. On the given set of facts and judicial precedents discussed above, Revenue could not submit any reason as to why a different view on this issue should be taken as taken by various Hon'ble High Courts. Accordingly, respectfully following the above referred judicial precedents including that of Hon'ble Jurisdictional High Court of Bombay, ground raised by the assessee is allowed.

XI. Set-off of short-term capital loss.

19. This issue arises in the following appeals:

Assessment year	Ground No. in Assessee's appeal	Ground No. in Revenue's appeal
2007-08	4	-
2008-09	3	-
2010-11	-	7
2011-12	-	8

19.1. During the year, assessee reported its income under the head 'capital gains' which included short term capital gains/loss on shares/units of mutual funds, details of which is tabulated as under:

		Tax rate	Rs.
A.	Mutual Funds (STT not paid)	33.66%	38,76,36,426
B.	Venture funds (STT not paid)	33.66%	4,09,20,928
C.	Preference shares (loss) (STT not paid)	33.66	(2,00,000)
	Total gain (STT not paid)		42,83,57,354
D.	Equity shares (loss) (STT paid)	11.22%	(21,44,94,984)
	Short term Capital Gain (STT not paid)	33.66%	21,38,62,370
E.	Equity shares (STT paid)	11.22%	5,43,17,485
F.	Mutual funds (STT paid)	11.22%	1,10,10,067
	Short term Capital Gain (STT paid)	11.22%	6,53,27,552

19.2. From the above table, it is noted that there are certain gains which have been subjected to securities transaction tax (STT) and there are others, which are not. Those gains in respect of which STT has been paid are liable to be taxed at the rate of 11.22% u/s.111A of the Act whereas other gains which are not subjected to STT are taxed at regular rate of 33.66%. The bone of contention between the assessee and revenue is in respect of setting off STT paid short term capital loss against non STT paid short term capital gains, since this non STT-paid gain is subjected to tax at a higher rate of 33.66%. According to the ld. Assessing Officer and as confirmed by ld. CIT(A), only the balance loss of STT paid short term capital loss could be set off against the non STT paid short term capital gain. Ld. Assessing Officer has first adjusted capital loss against that part of capital gain which is subject to a lower rate of tax and then the balance remaining against the one which is subject to regular rate of tax.

19.3. In this context, reference is made to provisions of section 70(2) which provides for set off of loss from one source against income from another source under the same head of income. Sub-section (2) of section 70 reads as under:

> *"(2) Where the result of the computation made for any Assessment Year under section 48 to 55 in respect of any short-term capital asset is a loss, the assessee shall be entitled to have the amount of such loss set off against the income, if any, as arrived at under a similar computation made for the Assessment Year in respect of any other capital asset."*

19.4. From the above, it is noted that assessee is entitled to set off short term capital loss against the income arrived at under a similar computation made for the Assessment Year in respect of any other capital asset. The phraseology used "the assessee shall be entitled"

evidently gives the assessee an option as to decide on giving preference for set off of the short-term capital loss. Such an exercise of option by the assessee if results into higher benefits in terms of saving in tax as per law, the same cannot be denied. Ld. Assessing Officer has observed that it is an extreme case of tax planning which is not permissible as the proper way to tax such gains would be to first treat gains taxable at the special rate as a separate block and then set off losses under that block, if any, against another rate block. He thus, re-computed the short-term capital gain on shares/mutual funds to arrive at a net figure of Rs. 27,91,89,922/-, as short-term capital gain taxable at a rate of 33.66%, being non-STT paid.

19.5. On a specific query by the Bench on the use of the phrase "under a similar computation made for the Assessment Year" u/s. 70(2), we noted that income under the head 'capital gains' is determined as per section 45 to 55A. Section 48 provides for the computation mechanism for computing income chargeable under the head 'capital gains' which is to be computed by deducting from the full value of consideration received or accruing as a result of transfer of capital asset, expenditure incurred wholly and exclusively in connection with such transfer and the cost of acquisition of the asset along with the cost of any improvement, if any. Computation of capital is thus, governed by section 48. As against this, rates of tax for charging the capital gain so computed is governed by section 111A falling in Chapter XII, which provides for determination of tax in certain special cases. The said chapter provides for a particular rate of tax to be applied on the incomes covered under the specific sections, individually.

19.6. In the given case before us, computation of short-term capital gain/loss whether subject to STT or not, is to be done as prescribed in

section 48 which deals with "mode of computation" of income under the head 'capital gains'. Once the capital gain is computed u/s.48, it is then subjected to specific rate of tax as individually applicable to each of the section in which such income shall fall under chapter XII. From the plain reading of section of 111A, we note that it only provides for rate of tax payable by the assessee and does not deal with computation of the said income.

19.7. Considering the discussion above, we are of the view that assessee has the choice about setting off of short-term capital loss from one set of transaction against any other short-term capital gain irrespective of higher benefit accruing to the assessee on account of chargeability at a lower rate of tax. Accordingly, we uphold the stance of the assessee that short-term capital loss of Rs.21,44,94,984/- is to be set off against the short-term capital gains of Rs.42,83,57,354/- which was chargeable to tax at 33.66%. Ground taken by the assessee is allowed and the one by Revenue is dismissed.

XII. Income from India Value Fund.

20. This issue concerns ground no.5 of appeal by the assessee for Assessment Year 2008-09.

20.1. Issue is on account of difference of Rs.20,67,561/- (STT not paid) between the amount of profit on sale of investments reflected in the books of accounts of the assessee for the year under consideration at Rs.1,56,11,972/- as against the amount of long-term capital gain reported by the assessee in its return of income at Rs.1,35,44,411/-. According to the ld. Assessing Officer, assessee has not discharged its onus of explaining the said difference, which according to him was on account of cost incurred by the fund in relation to such income and the

relevant investments in respect of which assessee had not passed entries in the books of account.

20.2. Brief facts in the present case are that India Value Fund had distributed an amount of Rs.3,95,97,144 in relation to divestment of its investment in DQ Entertainment Ltd. After reducing the cost of investment of Rs.2,02,15,532 and expenses incurred by the Fund of Rs.58,37,201, profit being capital gains chargeable in the hands of the assessee was computed at Rs.1,35,44,411. Computation details as per Form 64 for this as provided by India Value Fund vide letter dated 15.10.2010 is extracted below which also states that the said amount would be chargeable to tax as long-term capital gains on sale of shares (without STT):

Particulars	Date	Amount (Rs.) (to the extent of HDFC's share)
Gross Sales Proceeds	Dec 18, 2007	43,322,663
Less : Carry		3,725,519
Amount Distributed		39,597,144
Less : Cost of acquisition and Expenses		
Cost of DQ Investment	July 1, 2004	20,215,532
Fund Expenses	Various	5,837,201
Profit		**13,544,411**

India Value Fund – Scheme A

Name	PAN	Circle/Ward Special Range where assessed to Income-tax	Total amount paid (Rs.)
Housing Development Finance Corporation limited	AAACH0997E	Range 1 (1)	39,597,144

Amount paid under 'Short term capital gains/ loss'-on sale of shares (without STT) (Rs.)	Amount paid under 'Long term capital gains'- on sale of shares (without STT) (Rs.)	Amount paid as dividend (Rs.)	Other income such as interest etc. paid (Rs.)
Nil	13,544,411	0	0

20.3. Based on the above, assessee had reported the said amount as long-term capital gains in its return of income.

20.4. It is submitted that assessee had *inter-alia* invested in Venture Capital Fund being 'India Value Fund-Scheme-A'. As per sub-section (1) of section 115U of the Act, any income accruing or arising to or received by a person out of investment made *inter-alia* in a venture capital fund shall be chargeable to income-tax in the same manner as if it were the income accruing or arising to or received by such person, had he made investment directly in the venture capital undertaking. Therefore, pass through status is available to the income which should be taxed in the hands of the Investor and not the Venture Capital Fund. In this regard, sub-section (2) thereof mandates that the person responsible for crediting or making payment on behalf of the venture capital fund shall furnish to the person who is liable to tax in respect of such income, a statement giving details of the nature of the income paid or credited during the previous year along with such other relevant details as may

be prescribed. The said information is to be provided in Form No. 64 as per Rule 12C of the Rules. Sub-section (3) thereof treats such income paid or credited by the Venture Capital Fund to be of the same nature and in the same proportion.

20.5. Admittedly, it is a fact on record that assessee has reported long-term capital gain of Rs.1,35,44,411/- from India Value Fund in its return of income though, it has accounted for a profit of Rs.1,56,11,972/- on sale of investments relating to India Value Fund, giving rise to difference of Rs.20,67,561/- owing to what is accounted and that reported, which the ld. Assessing Officer has added in the hands of the assessee. According to the assessee, the difference is on account of cost incurred by India Value Fund for which assessee had not passed certain entries in its books of account. Assessee has reported the income as certified by India Value Fund in terms of Form 64 which is not in dispute. However, for the difference, assessee has expressed its inability to explain the same owing to passage of time. In the given set of facts and circumstances, what the assessee has returned is the correct amount of income as communicated by India Value Fund and nothing contrary has been placed on record to dis-prove the same except for the entry in the books of account. Income really accruing or arising to or received by the assessee as contained in section 115U(1) is of Rs.1,35,44,411/- as long-term capital gain duly substantiated by communication received from India Value Fund as prescribed in Form 64.

20.6. While addressing the issue in hand, reference is made to the decision of Hon'ble Supreme Court in the case of Taparia Tools Ltd [2015] 55 taxmann.com 361 (SC) wherein it noted in para 19 that, "*It has been held repeatedly by this Court that entries in the books of*

accounts are not determinative or conclusive and the matter is to be examined on the touchstone of provisions contained in the Act" It further held in para 20 as, *"At the most, an inference can be drawn that by showing this expenditure in a spread over manner in the books of accounts, the assessee had initially intended to make such an option. However, it abandoned the same before reaching the crucial stage, inasmuch as, in the income tax return filed by the assessee, it chose to claim the entire expenditure in the year in which it was spent/paid by invoking the provisions of Section 36(1)(iii) of the Act. Once a return in that manner was filed, the AO was bound to carry out the assessment by applying the provisions of that Act and not to go beyond the said return. There is no estoppel against the Statute and the Act enables and entitles the assessee to claim the entire expenditure in the manner it is claimed."* [emphasis supplied by us by underline]

20.7. Considering these facts and the judicial precedent, we delete the addition of Rs.20,67,561/- made by the ld. Assessing Officer on this account. Ground raised by the assessee is allowed.

XIII. Addition on account of receipts as per the ITS details not found recorded in the books of account of assessee.

21. This issue arises in the following appeals:

Assessment year	Ground No. in Assessee's appeal	Ground No. in Revenue's appeal
2008-09	6	-
2010-11	-	6

21.1. Ld. Assessing Officer took note of various transactions for the relevant year as available on Income-tax Department system data base collected from various sources like Annual Information Return (AIR) and TDS returns and called for reconciliation of the same with the books of account of the assessee. Following transactions in table below, remained to be reconciled which were reported on the PAN of assessee, totalling to Rs.39,47,368/- and are added to the total income of the assessee as unaccounted receipts.

Transaction Date	Name and address of Filer-the person who reported the transaction with the assessee	Transaction Amount (Rs.)
17-05-2007	Naresh Thakurdas Wadhwani,Mangal Murti Developers Office No.9,Umed Bhavan,Canara Bank Building,Pimpri,Pune-411018	39326
30-08-2007	The Tata Power Co.Ltd.,Block B,5th Floor,Corporate Centre,34,Sant Tukaram Road,Carnac Bunder,Mumbai-09	8042
31-03-2008	Steel Authority of India Ltd.,Ispat Bhavan,Lodhi Road,New Delhi-110003	39,00,000
	Total	39,47,368

21.2. In the assessee's appeal for Assessment Year 2008-09, ld. CIT(A) confirmed the said addition. However, similar nature of addition was deleted by the ld. CIT(A) in appeal for Assessment Year 2010-11 for which Revenue is in appeal.

21.3. In respect of addition for Assessment Year 2008-09, for the substantive amount of Rs.39 lakhs appearing against Steel Authority of India Ltd. (SAIL), assessee had furnished a copy of letter dated 03.02.2011 before the ld. CIT(A) which did not find favour with the assessee. In the said letter, SAIL confirmed that a sum of Rs.39 lakhs was estimated as a liability which was accounted for and provided in its books of accounts for the year ended on 31.03.2008 and applicable TDS

was done. Against this estimation, assessee had not raised any bills for the relevant year which were done in parts only in the subsequent years. For the appreciation of correct factual position, contents of the letter from SAIL are extracted below:

> *"Subject: Reference to your letter dated 14th January 2011 regarding details of transaction entered into as on 31.03.2008*
>
> *This has reference to your letter dated 14th January 2011 seeking information regarding Tax Deduction of Rs. 441870/- on professional/technical services of Rs.39,00,000 (Thirty Nine Lakhs only) credited to your name and as appearing in our TDS return for the quarter ended on 31 March 2008.*
>
> *Our Estate Department had requested you to carry out the valuation of our various properties located at various Plants, Mines, and Branches located all over India during the year ended on 31 March 2008. The Accounts Department seeks information from all its departments to provide information for work assigned and carried out for which bills are yet to be received, so that their liability can be provided in accounts for the purposes of Closing of Accounts. It needs no elaboration that companies are required to follow Mercantile/Accrual method of Accounting.*
>
> *HDFC took up the process of valuation during the year ended on 31st March, 2008, but had not submitted its report and bills etc. The estate department had sent an estimated liability of Rs.39 lakhs on an approximate value of the lands & buildings held by the company, for the work assigned during the year ended on 31st March, 2008. Accordingly, the liability of Rs.39 lakhs was provided in its accounts for the year ended on 31st March, 2008 on your account.*
>
> *You are already aware that TDS has to be deducted and deposited at the time of credit or payment whenever is earlier. HDFC had submitted partial bills in August/September 2008 aggregating to Rs.9,43,386 for such valuation. These were paid by RTGS Dated 11.09.2008 for Rs.836500/- then. However, the persons releasing the payment not being aware of the earlier provision, paid it after deducting TDS of Rs. 106,886/--*
>
> *HDFC had submitted further bills dated 30th January 2010 aggregating to Rs.8,94,752 for valuation carried out by it on various dates between January 2008 to October 2008. Since the bills related to a very old period, proper enquiries were made for verification of facts. The payment for Rs.8,94,752 was released in December 2010 without deduction of TDS since it was already provided for on 31st March 2008 and necessary TDS was already deposited at that time.*
>
> *The balance amount of liability is being finalised by our Estate Department in consultation with HDFC Ltd.*
>
> *Hope that this clarifies the position to you."*

21.4. On the above stated factual position, against which nothing has been brought on record by the Revenue, assessee claims that no addition can be made solely based on information available on ITS/AIR. Reliance is placed on the judicial precedents including by Co-ordinate Bench of ITAT, Mumbai in the case of ANS Law Associates vs. ACIT in ITA No.5181/Mum/2012, wherein it was held as under:

> *"It has been held time and again by this Tribunal that the additions made solely on the basis of AIR information are not sustainable in the eyes of the law. If the assessee denies that he is in receipt of income from a particular source, it is for the AO to prove that the assessee has received income as the assessee cannot prove the negative. Reliance can be placed in this respect on the decision of the Tribunal in the case of "DCIT vs. Shree G Selva Kumar in ITA No. 868/Bang/2009 decided on 22.10.10 and another case in the case of "Aarti Raman vs. DCIT in ITA No. 245/Bang/2012 decided on 05.10.12."*

21.5. On the above facts, we note that assessee had discharged its onus by reconciling substantial amount of ITS/AIR data with its books of account. We note that no addition can be made solely on the basis of ITS/AIR information, more particularly when assessee denies receipt of such income and for which the onus lies on the Assessing Officer to prove that assessee in fact received such income. Accordingly, considering the facts on record and the material placed before us as well as judicial precedents relied upon, we hold that addition made by the ld. Assessing Officer on the basis of ITS/AIR information is not sustainable. The same is deleted. Ground taken by the assessee is allowed and that by the Revenue is dismissed.

XIV. Capital gains in respect of sale of property.

22. This issue is raised vide ground of appeal no. 3 by the assessee in appeal for AY 2010-11.

22.1. Brief facts relating to this issue are as below:

a. Assessee acquired Tower-XIV consisting of ground plus 4 upper floors admeasuring 1,44,637.48 sq. ft. and terrace admeasuring 20,369.47 sq. ft. (aggregating to 1,65,006.95 sq. ft.) at Magarpatta City, Hadapsar, Pune vide Articles of Agreement dated 28.12.2005. At that time, the consideration paid for acquiring the property was Rs.30,00,00,000/- @ Rs. 1,863 per sq. ft.

b. Assessee granted a lease of the aforesaid premises by a deed of lease dated 04.09.2006 to John Deere India Pvt. Ltd. (JDIPL) with effective date of 09.12.2005. Lease term was fixed at an initial period of four and half years with the sole option of the lessee to renew the lease for further additional period/terms of three years each. Clause 15 of the said lease deed gave an option to the lessee to purchase the property as a whole at any time during the period of lease. At the time of commencement of lease, the purchase cost was fixed at Rs. 2,335/- per sq. ft. which was to be increased by 5%, compounded annually. Clause 15 of the lease deed is extracted below:

"15 OPTION TO PURCHASE

The Lessee shall have the sole option to purchase the Property as a' whole at any time during the length of the Deed. The purchase cost shall be without stamp duty and Registration charges payable to the Government but shall include the plant and machinery such as DG Sets A.C. units, elevators, etc. installed in the building.

Purchase cost at the commencement of lease-2335 Rs/square feet

Beyond the first year or part thereof, the purchase cost shall stand increased by 5% (Five percent) compounded annually.

At the exercise of the purchase option, the Lessor shall adjust the Security Deposit against the Purchase Price.

However, in the event of the Lessor obtaining a bank loan against the security of the Property, the Lessor shall satisfy the Lessee prior to the Lessee purchasing the Property that the entire loan along with any interest accruing from it have been duly paid to the bank and that the title of the Property is clear of all encumbrances, liens, charges or any imputations whatsoever. The Lessor shall obtain and provide to the Lessee a certificate from the bank indicating that there are no further liabilities or dues arising from the said bank loan. In the event of any failure to make payment of the said bank loan by the Lessor, the Lessee shall have the right to make the payment to the bank on behalf of the Lessor and deduct the same, including interest thereon if any, paid to the bank, from the sale consideration payable to the Lessor for the purchase of the Property.

In the event the Lessee exercises the Option to Purchase, the external maintenance of the Property would be carried out by the Promoter on the terms and conditions entered and otherwise to be mutually decided between the Parties hereto."

c. Based on the above clause, assessee worked out the purchase cost per sq. ft. as tabulated below:

Price as of	Opening price Rs. per sq. ft.	Escalation	No. of days	Price applicable Rs. per sq. ft.
09.12.2005	2,335.00	0%	-	2,335.00
09.12.2006	2,335.00	5%	p.a.	2,451.75
09.12.2007	2,451.75	5%	p.a.	2,574.34
09.12.2008	2,574.34	5%	p.a.	2,703.05
09.12.2009	2,703.05	5%	304	2,815.62

d. By Deed of Assignment dated 09.10.2009, assessee transferred the said property to John Deere India Pvt. Ltd. (JDIPL) for a consideration of Rs.47,14,67,550/-.

e. The aforesaid sale consideration was worked out at Rs.46,45,96,868/- (being Rs.2815.62 x 1,65,006.96 sq. ft.). In addition to this amount, assessee was reimbursed an amount of

Rs.68,70,679/- which it had paid towards customs duty in respect of capital goods forming part of the assets installed at the said property. Thus, totalling to Rs.47,14,67,550/- (Rs.46,45,96,868/- + Rs.68,70,679/-).

f. Assessee reported long-term capital gain on this transfer of the said property in its return of income computed as under:

Particulars	Amount (in Rs.)
Sale price (date of sale - 09.10.2009)	47,14,67,550
Cost price (date of purchase - 28.12.2005)	31,06,70,580
Add: Indexation u/s. 48 of the Act	8,43,87,381
Less: Adjusted cost	39,50,57,961
Long-term capital gain	7,64,09,589

g. In the course of assessment proceedings, assessee obtained a valuation report from a government registered valuer, valuing the said property at Rs.46,45,96,868/-. The said valuation was derived by the Valuer based on clause 15 of the Lease Deed, as extracted above, where assessee granted an option to the lessee for purchasing the said property and the formula for determination of the sale consideration was also fixed therein at the time of granting the option to purchase.

h. In the assessment order, ld. Assessing Officer invoked the provisions of section 50C of the Act and assessed the long-term capital gain by adopting the stamp duty value of Rs.60,45,25,000 as the full value of consideration. In the said order, he also recorded that a reference was made by him to the

ld. District Valuation Officer (DVO) on 18.02.2013. However, since the assessment was getting time barred and the valuation report from the ld. DVO had not been received, he adopted the stamp duty value as the full value consideration. By the time the matter came up for hearing before ld. CIT(A), ld. DVO had determined the fair market value of the said property at Rs.51,79,13,000/- vide his valuation report dated 21.06.2016. Based thereon, ld. CIT(A) gave partial relief of Rs.8,66,12,000/- to the assessee for which Revenue is not in appeal.

22.2. Before us, it was submitted that the third proviso to section 50C provides for an exception, according to which, where the value adopted or assessed or assessable by the stamp valuation authority does not exceed 105% of the consideration received or accruing as a result of transfer, the consideration so received or accruing as a result of the transfer shall be deemed to be the full value of consideration. The said threshold of 105% was increased to 110% by the Finance Act, 2020 w.e.f. 01.04.2021. Assessee further submitted that the said amendment is curative and declaratory in nature and hence shall apply retrospectively. Assessee placed reliance, in this regard, on the following decisions of Co-ordinate benches wherein it is held that third proviso to section 50C(1) of the Act being curative and declaratory is retrospective in nature:

i. Maria Fernandes Cheryl vs. ITO [2021] 187 ITD 738 (Mum)
ii. Rajpal Mehta HUF vs. ACIT [2024] 159 taxmann.com 1587 (Mum)
iii. Chandra Prakash Jhunjhunwala vs. DCIT [2020] 181 ITD 185 (Kol)
iv. Amprapali Cinema vs. ACIT [2021] 196 ITD 36 (Del)

22.3. Thus, applying 110% to the consideration received of Rs.47,14,67,550/- the value comes to Rs.51,86,14,305/- which is higher than the value of Rs.51,79,13,000/- determined by ld. DVO. We note that in the third proviso to Section 50C, comparison has to be made between the value adopted or assessed by the stamp valuation authority and 110% of the consideration received or accruing as per sub-section (2) of the said section. However, once the matter is referred to ld. DVO and valuation is arrived at, the value as determined by the ld. DVO would be relevant for the purposes of the said section. Accordingly, consideration as received by assessee falls within the range as permitted by the third proviso to section 50C. Consideration of Rs.47,14,67,550/- as received by it is deemed to be the full value of consideration. Long term capital gain computed by the assessee, as tabulated above, is thus, accepted and ground raised by the assessee on this issue is allowed.

XV. Additional claim of the Assessee with regard to inadvertent *suo moto* disallowance made during the course of the assessment proceedings.

23. This issue arises in the appeal filed by Revenue for Assessment Year 2010-11 vide ground of appeal no. 8.

23.1. In this respect, assessee claims that it made an erroneous disallowance of Rs.11.75 Crores u/s.14A of the Act on account of interest expenses on Zero Coupon Bonds raised for its housing finance business. Claim of the assessee is that funds received out of Zero Coupon Bonds were utilised for the business of housing finance and not for making investments, yielding exempt income which was inadvertently disallowed *suo moto* u/s.14A. In order to rectify the said inadvertent mistake, assessee claimed this as a deduction before the ld.

Assessing Officer, who rejected it by stating that this claim is made after the expiry of the time allowed for filing revised return. However, ld. CIT(A) allowed the said claim. Assessee placed reliance on the decision of Hon'ble Supreme Court in the case of Goetze India Ltd. (supra).

23.2. In the given set of facts, dispute is only in respect of allowability of the claim made by assessee when made before the Assessing Officer without filing the revised return. We are in agreement with the view arrived at by ld. CIT(A), since Hon'ble Supreme Court in the case of Goetze India Ltd. (supra) has stated that "*nothing impinges on the power of the appellate authorities to entertain such a claim of the assessee*". Accordingly, ground raised by the Revenue is dismissed.

XVI. Refund of excess dividend distribution tax.

24. This issue arises in the following appeals:

Assessment year	Ground No. in Assessee's appeal	Ground No. in Revenue's appeal
2011-12	-	9
2012-13	-	8
2013-14	-	8

24.1. In the present case, assessee paid excess dividend distribution tax (DDT) of Rs.11,59,82,950/- for AY 2011-12 and claimed refund of the same in its return of income. There is similar excess DDT paid for AY 2012-13 and 2013-14 also. In Assessment Year 2011-12, assessee received dividend of Rs.83,73,25,003/- from its subsidiaries. Assessee in reference to the provisions prescribed in section 115-O(1A), computed the amount of DDT payable by it, tabulated as under:

Particulars	Amount (in Rs.)
Dividend declared by assessee during the year	1047,42,46,908
Less: Dividend received from subsidiaries reduced in terms of section 115-O(1A) of the Act	*(83,73,25,003)*
Dividend subject to DDT in terms of section 115-O(1) of the Act	963,69,21,905
Tax at 15% on above	144,55,38,286
Add: Surcharge at 7.5% on above	10,84,15,371
Add: Education cess at 3% on tax and surcharge	4,66,18,610
Total tax (including surcharge and cess)	160,05,72,270
DDT paid on 27.07.2010	171,65,55,220
DDT refund due and claimed	11,59,82,950

24.2. On completion of the impugned assessment, claim of refund of excess DDT paid by the assessee was ignored against which assessee went in appeal before the ld. CIT(A), who after considering the provisions of the Act, fact of the case and judicial precedent in the case of Torrent India Pvt. Ltd., vs. CIT [2013] 35 taxmann.com 300 (Guj) by Hon'ble Gujarat High Court, directed the ld. Assessing Officer to refund the excess DDT paid by the assessee. Aggrieved, Revenue is in appeal before the Tribunal.

24.3. Revenue in its ground of appeal has referred to section 115-O(4) which does not permit the grant of any excess DDT. Provisions in sub-section (4) provides that DDT paid by the company shall be treated as final payment of tax and no further credit thereof shall be claimed by the company or by any other person in respect of the amount of DDT so paid. Here, it is important to note that the amount of DDT paid by the company referred in this sub-section (4) is the amount paid in

accordance with provisions contained in sub-section (1) which is subjected to reduction as provided in sub-section (1A). Revenue has misconstrued the provisions of sub-section (4), since assessee has paid DDT in excess of what is chargeable under the Act and has claimed refund for the excess so paid. Conditions stipulated in sub-section (4) applies on the correct amount of DDT which is chargeable under the Act and deposited by the assessee providing finality to the amount so paid. Such conditions cannot be applied to the excess paid by the assessee as dealt by provisions in section 237 of the Act according to which if any person satisfies the Assessing Officer that amount of tax paid by him or on his behalf or treated as paid by him or on his behalf for any Assessment Year exceeds the amount with which he is properly chargeable under the Act for that year, he shall be entitled to a refund of the excess amount. Further, substantively, when law confers benefit on the assessee under statute, it cannot be taken away by the authority on mere technicalities. In this regard, reference is made to Article 265 of the Constitution of India in terms of which it is a settled position of law that no tax can be levied / recovered without the authority of law.

24.4. In this respect, we also refer to the provisions of section 115-O(1A) which provides that the amount referred to in sub-section (1) shall be reduced by amount of dividend received by the domestic company during the year, if such dividend is received from its subsidiary and the subsidiary has paid the applicable DDT. It is important to note that receipt of dividend of Rs.83,73,25,003/- from the subsidiaries is not in dispute as to fulfilment of conditions prescribed u/s.115-O(1A). In the given set of facts and applicable provisions of the Act, as discussed above, as well as drawing force from the decision of Torrent India Pvt. Ltd. (supra), we do not find any infirmity in the findings arrived at by ld. CIT(A) of directing the ld. Assessing Officer to grant refund of the

excess DDT paid by the assessee. Accordingly, ground raised the Revenue is dismissed.

XVII. Transfer pricing adjustment in respect of specified domestic transactions covered by section 40A(2)(b).

25. This issue arises in the following appeals:

Assessment year	Ground No. in Assessee's appeal	Ground No. in Revenue's appeal
2014-15	-	1 & 2
2015-16	-	1 & 2

25.1. Facts in respect of this issue are that assessee had entered into Specified Domestic Transactions (SDT) with its Associated Enterprise (AE) namely HDFC Sales Pvt. Ltd. (HSPL) who had provided personnel to the assessee for performing various front-office and back-office activities. Assessee had paid salary cost and management fees to HSPL for the same. A reference was made to ld. Transfer Pricing Officer (TPO) by the ld. Assessing Officer for determination of Arms' Length Price (ALP) for the aforesaid SDTs. Ld. TPO suggested transfer pricing adjustment while determining ALP for the reference made to him. Aggrieved, assessee went in appeal before the ld. CIT(A), who held that the impugned transactions fell within clause (i) of section 92BA which defined SDTs which has been omitted by the Finance Act, 2017 w.e.f. 01.04.2017. On submissions made the assessee, he held that when the said clause stands omitted, the impugned transactions cannot be subjected to transfer pricing adjustment. Thus, the adjustments made by ld. TPO and added by the ld. Assessing Officer were deleted.

25.2. We note that there is no dispute in respect of impugned transactions falling within the definition of SDT under clause (i) of section 92BA, prior to its omission. Since the said provision has been omitted by the Finance Act, 2017, it has to be treated as if it never existed on the statute. This position stands accepted by the Hon'ble Court of Karnataka in the case of Texport Overseas Pvt. Ltd. [2020] 114 taxmann.com 568 (Kar). Similar view has been taken by various Co-ordinate Benches, some of which are listed below:

i. Shree Sai Smelters (I) Ltd. vs. ACIT [2020] 118 taxmann.com 350 (Gau)
ii. Raipur Steel Casting India (P) Ltd. vs. PCIT [2020] 117 taxmann.com 944 (Kol)
iii. Ammann India (P.) Ltd. vs. ACIT [2022] 134 taxmann.com 10 (Ahd)
iv. Softel Overseas Pvt. Ltd. vs. ACIT (ITA No. 1942/Kol/2019)

25.3. Considering the facts on record and the judicial precedents listed above, we find no infirmity in the findings arrived at by the ld. CIT(A) on this issue. Accordingly, grounds taken by the Revenue are dismissed.

XVIII. Disallowance of year-end provisions.

26. This issue arises in the following appeals:

Assessment year	Ground No. in Assessee's appeal	Ground No. in Revenue's appeal
2014-15	-	11
2015-16	-	11
2016-17	-	5
2017-18	-	3
2018-19	-	5

26.1. In respect of this issue, ld. Assessing Officer during the course of assessment proceedings, on examination of tax audit report in Form-3CD noted qualification remark given by the tax auditor on clause 21(b) relating to amounts inadmissible u/s.40(a). The said note is reproduced below for ready reference:

> *"Note. Considering the diverse nature and the volume of transactions in respect of which tax is deductible at source on payments covered by the provisions of Section 40(a) of the Income-tax Act, 1961, in the case of the Corporation, the disclosure given in this clause is based on the exceptions noted in the course of verification by the auditors in accordance with the Auditing Standards generally accepted in India, which include test checks and the concept of materiality. The Corporation has represented that there are no exceptions for reporting under this clause.*
>
> *In the opinion of the Corporation, year-end provisions for expenses are made on the basis of Management's best estimates determined on an aggregate level and not at the level of individual payees, which are reversed at the beginning of the next year are not liable for deduction of tax at source as such provisions are made only for the purpose of preparation of annual financial statements in accordance with applicable accounting principles/standards."*

26.2. Ld. Assessing Officer raised a query on the above, against which assessee submitted that provision for expenses amounting to Rs. 1,64,95,500/- was made at the end of the year in respect of expenditure pertaining to previous year ending on 31.03.2014 and accounted for in accordance with accounting policies consistently followed year on year basis. Details of expenses for which provision was made is listed below:

Expense Head	Amount (Rs.)
Office Maintenance	40,85,000
Advertisement Expenses - Others	39,01,000
Loan Processing Expenses - Other Than Manpower Supply	27,52,500
Professional Fees	10,32,000

Business Development Expenses	9,45,000
Printing & Stationery	7,53,000
Loan/Deposit Maintenance Expenses - Post Disbursement	6,04,000
Credit Rating Fees	5,50,000
Postage Expenses	5,19,000
Staff Welfare Expenses	4,28,600
Custody & Depository Charges	3,02,000
Security Charges	1,75,000
Repairs & Maintenance - Others	1,73,000
Sarfaesi Expenses	87,000
External Manpower Supply Expenses - Others	57,200
Repairs & Maintenance - Buildings	57,000
Computer Expenses	37,000
Motor Car Expenses	30,000
General Office Expenses	7,200
Grand Total	1,64,95,500

26.3. Assessee explained that it follows mercantile system of accounting and makes provision for various expenses at the year-end which are necessary since assessee had already availed the services/received the supplies. The said provisions are made on the basis of reasonable estimates or on the basis of past trends in order to present true and fair state of financial position and the same are in accordance with generally accepted accounting practices. Assessee further explained that precise amount and identity of the vendor/service provider is not known at the

time of making of provisions and there are occasions where actual invoices are pending to be received though services/supplies have been rendered. These provisions are written back in the first month of the next financial year. On receipt of actual invoices, these expenses are accounted for and paid/credited subject to appropriate deduction of tax at source. There is a neutralising effect for these year-end provisions for expenses since a reversal entry at the beginning of the year on the same account is made in the books of account, though with varying amounts. By placing reliance on certain judicial precedents, assessee submitted that TDS mechanism cannot be applied until identity of the person in whose hands it is includible as income, can be ascertained.

26.4. However, ld. Assessing Officer held that provisions made towards expenses represents pure ad-hoc provisions made at the end of the year which are contingent in nature. He thus, disallowed the same and added it to the total income. Ld. CIT(A) in first appeal deleted the additions so made. Ld. CIT(A) held that none of the provisions made represents ad-hoc provisions or are in respect of any unascertained liability. According to him, assessee is regularly following the practice of year end provision for various expenses, which is reversed on 1st April of next year and that expenses are considered on the basis of actual payment in the subsequent year. He placed reliance on the decision of Co-ordinate Bench of ITAT Mumbai in the case of DCIT vs. HDFC Sales Pvt. Ltd., in ITA No. 852/Mum/2019, dated 18.09.2020 for Assessment Year 2015-16 which is a HDFC group company. We take note of the findings of the Co-ordinate Bench from the said decision, reproduced as under:

> *7. We have considered the rival submission of both the parties and carefully gone through the orders of lower authorities. We have also deliberated on various case laws cited by Id. Representative of the parties. The AO disallowed the provision of expenses by taking view that the provisions made by assessee are adhoc provisions made at the end of the year. These provisions are contingent in nature*

and have to be disallowed in computing the income. The Id. CIT(A) granted relief to the assessee by taking view that the assessee is regularly following the practice of making provision for various expenses for the month of March, which is reversed on 1" April of next year and that expenses are considered on the basis of actual payment in the subsequent year. The Id. CIT(A) also concluded that these provision cannot be held to be contingent expenditure as the expenditure have already been incurred and the provision has been made on certain basis for each head of expenses so that the accounts adopted by assessee represent a true and fair affairs of business and is with consistent of accounting standard. The ld. CIT(A) also held that the assessee incurred actual expenses of Rs. 10.46 crore against the provision of Rs. 10.24 crore. The Id. CIT(A) also relied upon the decision of Delhi High Court in Triveni Engineering & Industries Ltd. (supra). On the issue of non-deduction of TDS, the Id. CIT(A) agreed with the submission of assessee that no disallowance can be made under section 40(a)(ia) as the scheme of TDS proceed on the assumption that the person whose liability is to pay income knows the identity of beneficiary or recipient of the income and that amount of payment should be exactly quantified. The operative part of the order of Id CIT(A) is extracted below;

"6. Decision: I have considered the AO's order, the submissions of the appellant and the details filed. I find that the appellant is regularly following this practice of making provisions for various expenses for the month of March, which is then reversed on the 18t of April, next year and the expenses are considered on the basis of actual payment in the subsequent year. The provision has been made, for the expenses incurred for which invoices/full details were not received till the end of the month i.e. 318t of March, by considering the average one month expense. I am inclined to agree with the appellant's submission that these provisions cannot be held to be contingent expenditure since the expenditure have already been incurred and the provision has been made on a certain basis for each head of expense so that the account adopted by the appellant represent a true and, fair view of the state of affairs of the business, consistent with the accounting standards. In this regard, it is noted that the actual expenses incurred was Rs. 10,46,13,017/as against the provision of Rs. 10,24,36,819/-, Further, it is not a case where the expenditure would accrue on the happening of some subsequent event. In this regard, reliance is placed on the decision in the CIT Vs. Triveni Engineering and Industries Ltd. (2011) 196 Taxman 94 Delhi High Court.

6.1 1 find that the AO has also required the appellant to explain whether TDS was deducted on such provisions and if not, whether such provisions have been disallowed in the computation of income. In this regard, the appellant has submitted that no disallowances can be made in the context of Sec. 40(a)(ia) of the Act since the scheme of TDS proceeds on the assumption that the person whose liability is to pay an income knows the identity of the beneficiary or the recipient of the income. Further, the amount of payment should also be exactly quantified. I am inclined to agree with the above submission of the appellant in the light of the decision of Mumbai ITAT in the case of Aditya Birla Nuvo Vs. DCIT (ITA No.8427/Mum/2010) dated 17.09.2014.

6.2 In view of above discussion, I find that the addition made by the AO, by treating the provisions of Rs. 10,24,36,819/-, as contingent in nature is not justified and the same is hereby deleted.

8. Before us the ld. DR for the revenue in his submissions vehemently submitted that the projected estimation of the provisions of expenses is projected purely on estimation and that there is mismatch of projected figures of expenses and the actual expenses incurred on various counts, which we have recorded above. Second contention of the Id. DR for the revenue is that no TDS was made on such provisions. The Id. DR for the revenue also relied on the decisions of Ahmedabad Tribunal in Hardik Jigishbhai Desai (supra) and the decision of Cochin Tribunal in Abad Builders (P.) Ltd. (supra). In Hardik Jigishbhai Desai (supra), the assessee debited the provision of commission expenses to the Profit & Loss Account without making TDS. The Assessing Officer disallowed the expenses by taking view that debiting the commission expenses resulted in deduction of profit and TDS should have been made on such expenses. The Id. CIT(A) confirmed the disallowance made by Assessing Officer. On appeal before the Tribunal, the disallowance was maintained. In the said case, the recipient of commission was identifiable. However, fact of the present case is quite different. The assessee made provision with regard to 31 different items. The Assessing Officer has not brought any fact on record that recipient were certain or identifiable. The assessee has made provision in the last month the Financial Year only on the basis of estimation of earlier month of the Financial Year. The Assessing Officer has not examined whether the provision made for the month of March 2015 was not a reliable estimate on account of past obligations. Similarly, in case of Abad Builders (P.) Ltd. (supra), the Assessing Officer made disallowance under section 40(a)(ia) as the assessee has not made TDS on provision of sundry creditor. The assessee claimed deduction of the same amount in subsequent AY. The Id. CIT(A) confirmed the disallowance by taking view that the assessee cannot claim double deduction of a very same amount on which assessee deducted and paid TDS. In the said case, the recipient was identifiable and the assessee has not pleaded that such obligation was a result of past events. We may further reiterate that in both the case law relied by Id. DR for the revenue a recipient was identifiable, however, in the case in hand, no such recipient were identifiable, moreover, the provisions were made for multiple purposes. The assessee made provision of Rs. 10.24 crore and ultimately made expenses of Rs. 10.46 crore, which clearly demonstrate that assessee made the provision after due diligence which cannot be said to be an adhoc provision.

9. In view of the aforesaid discussions, we do not find any merit in the grounds of appeal raised by revenue; hence we affirm the order passed by ld CIT(A). In the result Ground No.1 of appeal is dismissed.

26.5. In the given set of facts and judicial precedent referred above, we do not find any reason to interfere with the findings arrived at by the ld. CIT(A). Accordingly, ground raised by the Revenue is dismissed.

XIX. Increasing the book profits computed u/s. 115JB by the amount disallowed as year-end provisions.

27. This issue arises in the following appeals:

Assessment year	Ground No. in Assessee's appeal	Ground No. in Revenue's appeal
2014-15	-	Additional ground of appeal raised vide letter dated 22.10.2024
2015-16	-	Additional ground of appeal raised vide letter dated 22.10.2024
2016-17	-	6
2017-18	-	4
2018-19	-	6

27.1. Ld. Assessing Officer made an addition of Rs.1,64,95,500/- towards year-end provisions while computing book profit u/s.115JB since he held these provisions as contingent in nature and had made the addition to the total income under the normal provisions of the Act. On this in first appeal, ld. CIT(A) had allowed the claim of the assessee by holding that these are ascertained liabilities which are paid on actual basis in subsequent year and therefore no addition is warranted while computing book profit u/s.115JB. For Assessment Year 2014-15 and 2015-16, Revenue raised this issue by way of filing additional ground which it had inadvertently missed to take up in Form 36. Since nothing

new on record is to be furnished on this issue, we admit the additional grounds so raised for adjudication.

27.2. We note clause(c) of explanation 1 to Section 115JB which provides that amount set aside to provisions made for meeting liabilities, other than ascertained liabilities are to be added for computing book profit under the said section. Thus, what can be added is provision for unascertained liabilities i.e., liabilities contingent in nature. In the present case, provision for expenses made by the assessee at the year-end are on a reasonable estimate basis having regard to past trends for which consistent accounting practice has been adopted by way of creating a provision at the year end and reversing the same on the first day of the next financial year so as to reflect true and fair state of affairs since assessee follows mercantile system of accounting. Such a practice has been followed by the assessee, year on year basis in terms of generally accepted accounting practices. This issue has already been dealt with above whereby provision for expenses has been allowed negating the stance taken by ld. Assessing Officer of treating it as contingent liability. Accordingly, in the given set of facts and detailed discussion made hereinabove, we do not find any infirmity in the findings arrived at by ld. CIT(A) in this issue. Accordingly, grounds raised by the Revenue, including that by way of additional grounds are dismissed.

XX. Deduction in respect of expenditure incurred on Employee Stock Option Scheme ('ESOS').

28. This issue arises in the following appeals:

Assessment year	Ground No. in Assessee's appeal	Ground No. in Revenue's appeal
2013-14	Additional ground of appeal raised vide letter dated 13.09.2024	1
2014-15	-	12
2015-16	-	12
2016-17	3	7 & 8
2017-18	3	5 & 6
2018-19	3	7 & 8
2019-20	3	5
2020-21	-	6

28.1. Assessee granted stock option to its eligible employees under its ESOS. Upon exercise of the option, difference between the market price and the issue price is taxed as perquisite in the hands of the employee u/s.17 of the Act read with Rule 3 of the Rules. Assessee claimed ESOS expenditure being incurred wholly and exclusively for the purpose of its business since it forms part of compensation cost to its employees, allowable u/s.37(1) of the Act. On this account, assessee made appropriate disclosure in its audited financial statements. Assessee also submitted that on exercise of options, its employees were taxed on the perquisite value arising therefrom. Ld. CIT(A) held that ESOS deduction is allowable only when the discount offered is taxable as perquisite in

the hands of employees and is subjected to TDS as applicable. He placed reliance on the decision of Co-ordinate Bench in the case of HDFC Bank Ltd. vs. DCIT [2015] 155 ITD 765 (Mum) for allowing the claim of assessee. He also took note of the fact about relief granted by ld. CIT(A) in assessee's own case for Assessment Years 2013-14, 2016-17 to 2020-21.

28.2. In so far as this claim is concerned, the following would be relevant:

i. For Assessment Year 2013-14, this issue is raised by way of filing an additional ground before the Tribunal on 13.09.2024. Additional ground was permitted to be filed by the assessee since claim made in this ground was raised originally in the appeal filed against "order giving effect" assessment made by the ld. Assessing Officer. Revenue is in appeal before the Tribunal against the "order giving effect" assessment in ITA No.4217/Mum/2023 wherein the issue contested is in respect of expenditure incurred on ESOS. The scope of making assessment for giving effect to the appellate order is limited to the findings arrived at in the said appeal. Assessee had, for the first time, raised this claim before the ld. CIT(A) while contesting on the assessment made pursuant to "order giving effect" which in our considered view does not fall within the scope of assessment made for giving effect to the first appeal. Since, appeal against the original assessment made u/s. 143(3) is also before us, assessee sought liberty to raise its claim by filing additional ground in this appeal in ITA No.4983/Mum/2017. Since, we have already held for allowing the assessee to raise the additional claim in view of finding of Hon'ble Supreme Court in the case of Goetze India Ltd.

(Supra), additional ground raised by the assessee herein is admitted for adjudication.

ii. For Assessment Year 2014-15 to 2017-18, the said issue was raised as additional grounds of appeal filed before the ld. CIT(A).

iii. For Assessment Year 2018-19 to 2020-21, the said issue was raised in the course of assessment proceedings itself before the ld. Assessing Officer.

28.3. This issue is no longer *res integra* as has been dealt by Co-ordinate Bench in the case of HDFC Bank Ltd. (supra) with similar view taken by Hon'ble Special Bench, ITAT, Bangalore in the case of Biocon Ltd., vs. DCIT [2013] 144 ITD 21 (Bang)(SB), the same having been approved by Hon'ble Court of Karnataka reported in CIT vs. Biocon Ltd. [2021] 430 ITR 151 (Kar).

28.4. Considering the facts on record and the judicial precedents relied upon, claim made by the assessee by way of additional ground is allowed in respect of Assessment Year 2013-14. However, based on our reasoning given while admitting the additional ground raised by the assessee for Assessment Year 2013-14 in ITA No.4983/Mum/2017, being the original assessment u/s.143(3) whereby we have observed that the scope of assessment for giving effect to the appellate order is limited to the extent of finding arrived at in the appeal, ground contested by Revenue is to be allowed. In other words, on the claim of expenditure towards ESOS expenditure, assessee gets a relief in its appeal against the original assessment made u/s. 143(3) by way of additional ground in ITA No.4983/Mum/2017 and at the same time its claim made in the assessment pursuant to giving effect to the appellate order is rejected, while allowing the appeal of the Revenue. For other years as tabulated

above, grounds raised by the Revenue are dismissed and those by assessee are allowed.

XXI. Deduction of provision for bad and doubtful debts u/s. 36(1)(viia) of the Act.

29. This issue arises in the following appeals:

Assessment year	Ground No. in Assessee's appeal	Ground No. in Revenue's appeal
2018-19	-	2
2019-20	-	2
2020-21	-	2

29.1. In respect of this issue, assessee in its books of account had made a provision for bad and doubtful debts of Rs.652,35,70,210/- and capped the deduction towards the same to 5% of its total income of Rs.9659,77,24,048/- i.e. Rs.482,98,86,202/- u/s.36(1)(viia)(d) of the Act in its computation of income for Assessment Year 2018-19. Assessee claimed this deduction based on amendment made by Finance Act, 2016, w.e.f. Assessment Year 2017-18 by which a new clause (d) was inserted to section 36(1)(viia) permitting Non-Banking Finance Company (NBFC) to claim such a deduction, assessee being a housing finance company falling within the meaning of NBFC assigned to it in section 45-I(f) of Reserve Bank Act, 1934. Assessee had claimed this deduction in the preceding Assessment Year 2017-18, being the first year of such a claim on account of amendment being effective from Assessment Year 2017-18 which was allowed by the ld. Assessing Officer in the assessment completed u/s.143(3) vide order dated 28.12.2019. This fact for Assessment Year 2017-18 is verifiable from

para-7 of the said order wherein total income of the assessee is computed by the ld. Assessing Officer *interalia* allowing claim towards provisions for bad and doubtful debts u/s. 36(1)(viia) of Rs.308,51,14,016/-.

29.2. From the perusal of order for Assessment Year 2018-19, we note that it is not in dispute that assessee is eligible to claim deduction u/s.36(1)(viia)(d). Ld. Assessing Officer disallowed the claim by observing that "*no details whatsoever have been placed on record as to what were the records maintained like provisions for bad and doubtful debts, what were the balances brought on from the earlier years, etc. and etc.".* He also observed that "*assessee did not bring any new things/facts on the record. Further, during the course of VC, the assessee discussed and explained this issue but they reiterated same thing as discussed in earlier reply, nothing new were brought on record.*" On appeal by the assessee, ld. CIT(A), after taking into account the provisions of section 36(1)(viia)(d), facts of the case and material on record, allowed the claim.

29.3. We take note of the relevant provisions of the Act in respect of claim made by the assessee and are extracted for ease of reference.

> *"The relevant extract of the section 36(1)(viia) is as follows:*
>
> *"Other deductions.*
>
> *36. (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28-*
>
> *(viia) in respect of any provision for bad and doubtful debts made by-*
>
> *(d) a non-banking financial company, an amount not exceeding five per cent of the total income (computed before making any deduction under this clause and Chapter VI-A).*
>
> *Explanation. For the purposes of this clause-*
> *(vii) "non-banking financial company" shall have the meaning assigned to it in clause (1) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);"*

29.4. From the above, we note that Section 36(1)(viia) provides for deduction in respect of provision for bad and doubtful debts made by a bank, a public financial institution, state financial corporation, state industrial investment corporation, etc. As per the provisions of section 36(1)(viia)(d) of the Act,

i. deduction is available to NBFC;
ii. deduction is available in respect of provision for bad and doubtful debts;
iii. deduction is limited to lower of the following:
    - actual provision for bad and doubtful debts, or
    - 5% of total income computed before making any deduction under this clause and Chapter VIA

29.5. For this purpose, NBFC shall have the meaning assigned to it in section 45-1(f) of the Reserve Bank of India Act, 1934 (refer Explanation (vii) to section 36(1)). The said definition reads as follows:

> "*non-banking financial company means-*
>
> *a financial institution which is a company;*
>
> *a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner,*
>
> *such other non-banking institution or class of such institutions, as the Bank may, with the previous approval of the Central Government and by notification in the Official Gazette, specify."*

29.6. Assessee being a Housing Finance Company, is a NBEC which is regulated by National Housing Bank and is exempted from the requirement of registration with RBI. In this regard, RBI has clarified as under.

> *"In terms of Section 45-1A of the RBI Act, 1934, no Non-banking Financial company can commence or carry on business of a non-banking financial*

institution without a) obtaining a certificate of registration from the Bank and without having a Net Owned Funds of 25 lakhs (Two crore since April 1999). However, in terms of the powers given to the Bank, to obviate dual regulation, certain categories of NBFCs which are regulated by other regulators are exempted from the requirement of registration with RBI viz. Venture Capital Fund/ Merchant Banking companies/ Stock broking companies registered with SEBI, Insurance Company holding a valid Certificate of Registration issued by IRDA, Nidhi companies as notified under Section 620A of the Companies Act, 1956, Chit companies as defined in clause (b) of Section 2 of the Chit Funds Act, 1982, Housing Finance Companies regulated by National Housing Bank, Stock Exchange or a Mutual Benefit company."
[emphasis supplied by us by underline]

29.7. In view of the amendment made by the Finance Act, 2016 and RBI clarification, new section 36(1)(viia)(d) of the Act becoming applicable to the Housing Finance Company, assessee gets the eligibility for claiming deduction under the said amended section. Assessee having regards to the Prudential Norms as prescribed by National Housing Bank (NHB), made provision for bad and doubtful debts in its books of account of Rs. 652,35,70,210/- and capped the deduction towards provision for bad and doubtful debts to 5% of its total income Rs. 9659,77,24,048/- i.e. Rs. 482,98,86,202/- u/s.36(1)(viia)(d) of the Act in its computation of income. During the course of assessment, assessee filed the basis of computation of deduction amount of Rs. 482,98,86,202/-. Ld. Assessing Officer rejected the said claim on the basis that no details have been placed on record as to what were the records maintained like provision for bad and doubtful debts, what were the balances brought on from the earlier years etc.

29.8. In this respect, assessee referred to Note No. 39.5.4 – 'Movement of NPA' from its Annual Report for the year under consideration, which was already on record. According to the assessee, information as alleged to be requiring corroboration on this issue already formed part of the assessment records. In the given set of facts and provisions of law as discussed above and also on perusal of material on record, we do not

find any infirmity in the findings arrived at by ld. CIT(A). Ground raised by Revenue is dismissed.

XXII. Deduction of bad debts u/s. 36(1)(vii) of the Act.

30. This issue arises in the following appeals:

Assessment year	Ground No. in Assessee's appeal	Ground No. in Revenue's appeal
2018-19	-	3
2019-20	-	3
2020-21	-	1

30.1. In respect of this issue, assessee in its computation of income for Assessment Year 2018-19 had claimed a deduction of Rs.56,16,84,279/- u/s. 36(1)(vii), towards bad debts written off which was disallowed by the ld. Assessing Officer by observing that assessee had not provided the ledger accounts creating a disability for him to examine the genuineness of the claim. Ld. Assessing Officer also observed that no clarification was provided on the distinction between the two deductions, i.e., one claimed u/s.36(1)(viia)(d) and the other claimed u/s.36(1)(vii).

30.2. Ld. CIT(A) after going through the provisions of the Act relating to this issue and documents provided by the assessee in respect of sample parties, since volume being large with 624 parties/individuals having bad loans, directed the ld. Assessing Officer to verify the claim and allow bad debts written off to the extent same could be linked to the provisions created up to 31.03.2016. For assessee failing to do so in enabling the said examination, ld. Assessing Officer was further directed to adjust

the bad debts written off against section 36(1)(viia)(d) account. While giving the said direction, ld. CIT(A) arrived at a view that bad debts written off during Assessment Year 2018-19 should be allowed if the same is out of provisions created upto 31.03.2016 as well as if the same was never claimed as a deduction. In absence of fulfilment of this requirements, bad debts written off should be adjusted against credit balance in the account relating to section 36(1)(viia)(d) and claim of bad debt should be allowed when the bad debts exceed the credit balance in the account created in respect of deduction u/s.36(1)(viia)(d).

30.3. On the above issue, we first take note of the relevant provisions of the Act.

i. Section 36(1)(vii) provides that any bad debt or part thereof which is written off as irrecoverable, shall be allowed as deduction while computing the taxable income of the assessee. It gives a benefit to the assessee to claim a deduction on any bad debt or part thereof, which is written off as irrecoverable in the accounts of the assessee for the previous year. The provisions of section 36(1)(vii) of the Act are subject to the provisions of section 36(2) of the Act.

ii. Section 36(2) lays down various conditions regarding the allowability of bad debts under section 36(1)(vii). It is obligatory upon the assessee to prove that its case satisfies the ingredients of section 36(1)(vii) on the one hand and that it satisfies the requirements stated in section 36(2) of the Act on the other.

iii. The proviso to section 36(1)(vii) does not, in absolute terms, control the application of this provision as it comes into operation only when the case of the assessee is one which falls squarely under section 36(1)(viia). The proviso to section 36(1)(vii) provides

that for an assessee, to which section 36(1)(viia) of the Act applies, deduction under said clause (vii) shall be limited to the amount by which the bad debt written off exceeds the credit balance in the provision for bad and doubtful debts account made under section 36(1)(viia) of the Act.

iv. Clause (v) of section 36(2) of the Act provides that the assessee, to which section 36(1)(viia) of the Act applies, should debit the amount of bad debt written off to the provision for bad and doubtful debts account made under section 36(1)(viia) of the Act.

30.4. In terms of the above provisions, assessee submitted that provisions of Sections 36(1)(vii) and 36(1)(viia) of the Act are distinct and independent items of deduction and operate in their respective fields. Bad debts written off other than those for which the provision is made under clause (viia), will be covered under the main part of Section 36(1)(vii) (for which provision was created till 31.03.2016), while the proviso to section 36(1)(vii) will operate in cases under clause (viia) so as to limit the deduction to the extent of difference between the debt or part thereof written off in the previous year and credit balance in the provision for bad and doubtful debts account made under clause (viia).

30.5. Accordingly, based on the FIFO method, bad debts of Rs. 56,16,84,279/- written off should be first adjusted against the opening balance of Rs. 2695,34,05,782/- in 'Provision for bad and doubtful debts Account' which was never claimed as a deduction by assessee in the past and once this balance is exhausted, the provision created under section 36(1)(viia) of the Act should be utilized.

30.6. As already noted, ld. Assessing Officer disputed the claim of bad debts written off under section 36(1)(vii) for Assessment Year 2018-19 on the basis that no ledger accounts of the concerned parties have been placed on record which otherwise could have been examined for ascertaining the genuineness of the claim. In this regard, ld. Counsel asserted that assessee did submit the details to the ld. Assessing Officer (NFAC) vide letter dated 27.09.2021 against Point 4 towards a reply to his show cause notice. Out of 624 parties, details of sample parties submitted to the ld. Assessing Officer (NFAC) are extracted as under:

Loan Account No.	Name of the Borrower	Amount Written off (in Rs.)	Reference
609205426	Chaurasia Shashank	60,47,867	Annexure7-1a
607981017	Sawant Amit Kamalakant	50,86,767	Annexure7-1b
604674097	Borgohain Bolin	70,11,117	Annexure7-1c
612923033	Santhosh Kumar Cl	71,80,726	Annexure7-1d
606296050	Somashekar Channappa	50,99,651	Annexure7-1e
605886768	Naveen Kumar	79,40,682	Annexure7-1f
367152553	Dr. Ramesh Srinivasaiah Saligram	90,93,928	Annexure7-1g
5360196670	Tempus Infra Projects Private Limited	9,63,90,976	Annexure7-1h
Various Loan Accounts	Vikram Bakshi Group	24,62,30,970	Annexure7-11
609161380	Manish Bhargav	46,74,967	Annexure7-1j
	Total	39,47,57,651	

30.7. In respect of ledger accounts of the concerned parties mentioned above, it is asserted by the assessee that data submitted of sample parties written off aggregates to Rs. 39,47,57,651/- which comes to nearly 70% of total cases amounting to 56,16,84,279/-, which ld. Assessing Officer did not consider. Assessee thus, claims for its allowance on the following assertions:

i. Party-wise details submitted of bad debts cases written off was filed during the course of assessment proceedings but the same were not considered by the ld. Assessing Officer.

ii. As per section 36(1)(vii) of the Act, while computing the business profit, an assessee is entitled to avail the deduction with respect to bad debts written off in the books if the following conditions are being fulfilled:-
   a. debt in question must be written off as irrecoverable in the books of accounts for the relevant previous year and
   b. amount of the debt must be taken into account while computing the income either during the previous year or during the earlier years.

30.8. We have perused the observations and findings of both, ld. CIT(A) and ld. Assessing Officer vis-à-vis submissions made by the assessee, elaborately discussed above. Considering the same, we do not find any reason to interfere with the observations and direction given by ld. CIT(A) to the ld. Jurisdictional Assessing Officer (JAO) for verification as noted by him in para 12.4 of his order, details of which are already discussed above. Accordingly, ground taken by Revenue is dismissed.

XXIII. Addition of interest income on income-tax refund.

31. This issue arises in the following appeals:

Assessment year	Ground No. in Assessee's appeal	Ground No. in Revenue's appeal
2004-05	5	-
2005-06	5	-
2007-08	5	-
2008-09	4	-

31.1. On this issue, assessee had received interest of Rs.3,91,43,395/- u/s. 244A on the refund of income-tax, upon processing of its return u/s.143(1) for Assessment Year 2003-04 which remained to be offered to tax in its return for Assessment Year 2004-05. Ld. Assessing Officer made the addition for this receipt of interest for bringing it to tax while making assessment u/s.143(3) for Assessment Year 2004-05. Subsequently, assessment for Assessment Year 2003-04 was subjected to regular assessment proceedings u/s.143(3) whereby demand was raised. While arriving at the demand for Assessment Year 2003-04 on assessment made u/s. 143(3), ld. Assessing Officer recovered the refund which had already been granted at the time of issuing intimation u/s. 143(1). Thus, the interest on income-tax paid to the assessee was recovered while arriving at demand for Assessment Year 2003-04. Assessee moved a rectification application before the ld. Assessing Officer claiming that interest on income-tax refund which was brought to tax on receipt basis has been recovered from the assessee and therefore the addition so made ought to be deleted. Ld. Assessing Officer considered the application and passed an order u/s. 154, dated 15.02.2011 taking note of the above stated facts and allowed the deduction for the interest income which was earlier added by him.

31.2. In the light of above stated facts and rectification order already passed giving effect to the issue raised by the assessee in the aforesaid ground, the said grievance is addressed and hence the ground so raised has become infructuous. Accordingly, ground so raised for Assessment Year 2004-05 is dismissed as infructuous.

31.3. Similar fact pattern exists for Assessment Year 2007-08 and 2008-09 for which also rectification orders have been passed u/s.154 by the ld. Assessing Officer giving relief to the assessee on account of interest income on income-tax refund. The said rectification orders have been perused. Considering the same, for these two years also, grounds raised by the assessee are rendered infructuous and dismissed accordingly.

31.4. For Assessment Year 2005-06, similar rectification was made by ld. Assessing Officer in respect of interest on income-tax refund pertaining to Assessment Year 2004-05, amounting to Rs.4,26,57,786/- for which order u/s. 154 was passed on 15.02.2011. To the extent of Rs.4,26,57,786/-, ground raised by the assessee is rendered infructuous. However, for the interest on income-tax refund aggregating to Rs.10,32,13,824/- pertaining to Assessment Year 1999-2000, 2000-01 and 2001-02, ld. Counsel for the assessee did not press the ground by submitting that these years were subjected to appeal before the Co-ordinate Bench and order had been pronounced on 05.07.2024. In terms of the said order, the “order giving effect” exercise at the end of ld. Assessing Officer is pending and has a direct bearing on the issue relating to addition made on account of interest income on the income-tax refund. Accordingly, ground raised by the assessee to this extent is dismissed as not pressed.

XXIV. Dropping penalty proceeding initiated u/s. 270A of the Act.

32. This issue arises in the following appeals:

Assessment year	Ground No. in Assessee's appeal	Ground No. in Revenue's appeal
2018-19	-	9
2019-20	-	6
2020-21	-	7

32.1. Ground raised by Revenue on dropping of penalty proceedings by ld. CIT(A) is pre mature and consequential to the quantum appeal which have already been dealt in this consolidated order. Accordingly, ground raised by Revenue in this respect is dismissed as pre mature and consequential.

XXV. Penalty imposed u/s.271(1)(c) on disallowance on deduction u/s.36(1)(viii).

33. This issue arises in the following appeals:

Assessment year	Ground No. in Assessee's appeal	Ground No. in Revenue's appeal
2005-06	1(1.1 to 1.15)	-
2006-07	1(1.1 to 1.15)	-
2002-03	1 to 7	-
2003-04	1 to 7	-

33.1. On this issue, ld. Assessing Officer made disallowance of claim u/s.36(1)(viii) for which penalty proceedings were initiated u/s.271(1)(c) for furnishing inaccurate particulars of income on account of difference in deduction claimed by the assessee and that disallowed by him. Aggrieved, assessee went in appeal before the ld. CIT(A), who confirmed the penalty so imposed except in Assessment Year 2005-06 and 2006-07 where the penalty imposed at the rate of 200% by ld. Assessing Officer was reduced to 100% and the same is now, before the Tribunal.

33.2. Issue relating to claim of deduction u/s.36(1)(viii) along with its various facets have been elaborately dealt by us in the above paragraphs which has a consequential effect on this issue of penalty. For the components for which we have held in favour of assessee while allowing the claim of deduction u/s.36(1)(viii), consequentially penalty to the extent imposed in respect of these components stands deleted. There are components in respect of claim of deduction u/s.36(1)(viii) for which the disallowance has been sustained. For such sustenance of disallowance, the moot point is whether this tantamount to "furnishing of inaccurate particulars of income" for the purpose of imposing penalty u/s.271(1)(c).

33.3. Before us, it was submitted that mere making of a claim, even if the same is not sustainable in law, by itself cannot amount to furnishing to inaccurate particulars of income. On this contention, Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts (P) Ltd. [2010] 322 ITR 158 (SC) held in para 10 that "M*erely because the assessee had claimed the expenditure, which claim was not accepted or not acceptable to the Revenue, that, by itself, would not attract the*

penalty u/s.271(1)(c). If the contention of the Revenue was accepted, then in case of every return where the claim made was not accepted by the

Assessing Officer for any reason, the assessee would invite penalty u/s.271(1)(c). That is clearly not the intendment of the Legislature."

33.4. In the given set of facts and elaborate discussions already made in respect of deduction made u/s.36(1)(viii) whereby certain components relating to the said deduction have been allowed and certain others disallowed, respectfully, following the decision of Hon'ble Supreme Court in the case of Reliance Petroproducts (P) Ltd. (supra), penalty imposed by ld. Assessing Officer u/s. 271(1)(c) on account of furnishing inaccurate particulars of income, is deleted. Grounds raised by the assessee are thus, allowed.

34. In the result, appeals of both, assessee and revenue are decided as per the table below:

Sr. No.	ITA No.	Assessment Year	Appeal by	Result of the appeal
1.	4315/Mum/2007	2002-03	Assessee	Partly allowed
2.	4161/Mum/2007	2002-03	Revenue	Partly allowed
3.	4316/Mum/2007	2003-04	Assessee	Partly allowed
4.	4162/Mum/2007	2003-04	Revenue	Partly allowed
5.	3861/Mum/2009	2004-05	Assessee	Partly allowed
6.	3785/Mum/2009	2004-05	Revenue	Dismissed
7.	3862/Mum/2009	2005-06	Assessee	Partly allowed

8.	3788/Mum/2009	2005-06	Revenue	Dismissed
9.	5033/Mum/2010	2006-07	Assessee	Partly allowed
10.	5707/Mum/2010	2006-07	Revenue	Dismissed
11.	5442/Mum/2011	2007-08	Assessee	Partly allowed
12.	5005/Mum/2011	2007-08	Revenue	Dismissed
13.	2868/Mum/2012	2008-09	Assessee	Partly allowed
14.	2093/Mum/2017	2009-10	Assessee	Partly allowed
15.	2326/Mum/2017	2009-10	Revenue	Partly allowed
16.	5885/Mum/2017	2010-11	Assessee	Partly allowed
17.	5673/Mum/2017	2010-11	Revenue	Partly allowed
18.	2609/Mum/2017	2011-12	Assessee	Partly allowed
19.	2861/Mum/2017	2011-12	Revenue	Partly allowed
20.	2610/Mum/2017	2012-13	Assessee	Partly allowed
21.	2862/Mum/2017	2012-13	Revenue	Partly allowed
22.	4983/Mum/2017	2013-14	Assessee	Partly allowed
23.	5110/Mum/2017	2013-14	Revenue	Partly allowed
24.	4217/Mum/2017	2013-14	Revenue	Allowed
25.	2666/Mum/2024	2014-15	Assessee	Partly allowed
26.	2980/Mum/2024	2014-15	Revenue	Partly allowed
27.	2665/Mum/2024	2015-16	Assessee	Partly allowed
28.	2979/Mum/2024	2015-16	Revenue	Partly allowed
29.	1890/Mum/2023	2016-17	Assessee	Partly allowed
30.	2049/Mum/2023	2016-17	Revenue	Dismissed
31.	1891/Mum/2023	2017-18	Assessee	Partly allowed
32.	2046/Mum/2023	2017-18	Revenue	Dismissed
33.	1892/Mum/2023	2018-19	Assessee	Partly allowed
34.	2047/Mum/2023	2018-19	Revenue	Dismissed
35.	1893/Mum/2023	2019-20	Assessee	Partly allowed
36.	2048/Mum/2023	2019-20	Revenue	Dismissed
37.	3717/Mum/2023	2020-21	Assessee	Partly allowed
38.	2597/Mum/2024	2020-21	Revenue	Dismissed

39.	4313/Mum/2010	2002-03	Assessee	Allowed
40.	4314/Mum/2010	2003-04	Assessee	Allowed
41.	2866/Mum/2012	2005-06	Assessee	Allowed
42.	2867/Mum/2012	2006-07	Assessee	Allowed

Order is pronounced in the open court on 28 January, 2025

Sd/-	Sd/-
(Anikesh Banerjee) Judicial Member	(Girish Agrawal) Accountant Member

Dated: 28 January, 2025

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai

	Sr. No.	Details	Date	Initial	Designation
	1.	Draft dictated and typed directly on computer on	01.01.2025 to 22.01.2025		Sr.PS/PS
	2.	Draft Placed before author	23.01.2025		Sr.PS/PS
	3.	Draft proposed & placed before the Second Member	24.01.2025		JM/AM
	4.	Draft discussed/approved by Second Member	27.01.2025		JM/AM
	5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
	6.	Order pronouncement on	27.01.2025		Sr.PS/PS
	7.	File sent to the Bench Clerk	27.01.2025		Sr.PS/PS
	8.	Date on which the file goes to the Head clerk			
	9.	Date on which file goes to the AR			
	10.	Date of Dispatch of order			