IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1751/Mum./2024
(Assessment Year : 2018–19)

The Shipping Corporation of India,
245, Shipping House, Madam Cama Road,
Nariman Point,
Mumbai - 400021
PAN – AAACT1524F ..... Appellant

Vs.

DCIT, Circe- 3(4),
Mumbai ..... Respondent

ITA No.1971/Mum./2024
(Assessment Year : 2018–19)

ACIT, Circe-3(4),
Mumbai ..... Appellant

Vs.

The Shipping Corporation of India,
245, Shipping House, Madam Cama Road,
Nariman Point,
Mumbai - 400021
PAN – AAACT1524F ..... Respondent

Assessee by : Shri Nitesh Joshi a/w Ms. Samiksha Save
Revenue by : Shri Himanshu Joshi - Sr. DR,
Dr. Kishore Dhule-CIT DR

Date of Hearing – 24/01/2025	Date of Order – 11/03/2025

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The assessee and the Revenue have filed the present appeal against the impugned order dated 09/02/2024, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faces Appeal Centre, Delhi, ["*learned CIT(A)*"], for the assessment year 2018-19.

ITA No.1751/Mum./2024
Assessee's Appeal – A.Y. 2018–19

2. In its appeal, the assessee has raised the following grounds: –

"GROUND NO. 1

The CIT(A) has erred in rejecting the claim of treatment of interest income of Rs. 84,01,13,062/- as forming part of profits from core activities relying on the Hon'ble Supreme Court's decision in the case of Goetz (India) Ltd. vs. CIT [2006] 157 Taxman 1 (SC).

GROUND NO. 2

Without prejudice to Ground no. 1, the CIT(A) has erred in disallowing deduction of administrative expenses amounting to Rs. 13,49,14,042/- against interest income of Rs. 84,01,13,062/-."

3. The brief facts of the case as emanating from the record are: The assessee is a private sector undertaking engaged in the business of merchant shipping. From the assessment year 2005-06, the assessee has opted for the Tonnage Tax Scheme, i.e., the presumptive taxation scheme provided in Chapter XII-G of the Act. Under the scheme, the income from the business of operation of qualifying ships is taxed on a presumptive basis instead of according to the provisions of section 28 to section 43C of the Act. For the year under consideration, the assessee filed its return of income on

28/11/2018 declaring a total income of Rs.161,55,42,230. The return of income was selected for complete scrutiny under CASS and statutory notices under section 143(2) and section 142(1) were issued and served on the assessee. The Assessing Officer ("*AO*"), vide order dated 19/04/2021 passed under section 143(3) read with section 144B of the Act, computed the total income of the assessee at Rs.852,42,29,860. In further appeal, the learned CIT(A) vide impugned order granted partial relief to the assessee. Being aggrieved, both the assessee and Revenue are in appeal before us.

4. The issue arising in Ground No. 1, raised in assessee's appeal, pertains to considering interest income as income from shipping activity.

5. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the year under consideration, the assessee earned interest income of Rs.84,01,13,062 from investments made in accordance with the guidelines issued by the Department of Public Enterprises. In its return of income, the assessee offered the interest income as income from other sources. As is evident from the record, the assessee claimed administrative expenses against the income declared under the head "*Income from Other Sources*", which mainly includes interest income. However, the AO rejected the claim of the assessee and disallowed the administrative expenditure claimed by the assessee. In its appeal before the learned CIT(A), the assessee for the first time raised the plea that the interest income of Rs.84,01,13,062 constitutes profit from core activities, and therefore, could not be assessed to tax. The learned CIT(A), vide impugned order, by relying upon the decision of the Hon'ble Supreme Court in Goetze India Ltd. v/s CIT,

reported in [2006] 284 ITR 323 (SC), rejected the plea of the assessee on the basis that the assessee has not filed a revised return claiming deduction of interest income. Being aggrieved, the assessee is in appeal before us.

6. We have considered the submissions of both sides and perused the material available on record. At the outset, we find that the Hon'ble Supreme Court in Goetze India Ltd. (supra) and Hon'ble Jurisdictional High Court in CIT v/s Pruthvi Brokers and Shareholders Pvt. Ltd., reported in [2012] 349 ITR 336 (Bom.), has held that the appellate authority can entertain a fresh claim made by the assessee, even if such a claim was not made in return of income or by way of revised return of income. Therefore, respectfully following the aforesaid decisions, we find no merits in the findings of the learned CIT(A) in rejecting the alternative plea of the assessee at the very threshold.

7. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that the issue whether the interest income earned by the assessee from the deposits maintained with banks and financial institutions out of the funds required for the purpose of business, but temporally lying idle, constitutes income from core shipping activity came up for consideration before the coordinate bench of the Tribunal in assessee's own case for the assessment year 2008-09. It was submitted that the Co-ordinate Bench of the Tribunal following the decision of the Hon'ble Jurisdictional High Court in CIT v/s Varun Shipping Co Ltd, reported in [2011] 324 ITR 263 (Bom.), allowed the plea of the assessee and held that income by way of interest arising from the deposits is in the nature of business income and relates to the core shipping activity of the assessee.

8. On the other hand, the learned Department Representative ("*learned DR*") placed reliance upon the decision of the Co-ordinate Bench of the Tribunal in assessee's own case for the assessment years 2005-06 and 2006-07 and submitted that the interest income earned by the assessee shall be taxable under the head "*income from other sources*".

9. From the perusal of the decision of the Co-ordinate Bench of the Tribunal in assessee's own case in The Shipping Corporation of India Ltd. v/s Additional CIT, in ITAs No.2944 and 2945/Mum/2010, for the assessment years 2005-06 and 2006-07, we find that the issue under consideration before the Co-ordinate Bench was, *inter alia*, pertaining to grant of deduction in respect of common cost based on reasonable allocation of expenditure. From the perusal of the aforesaid decision dated 21/03/2014, we find that the assessee though offered the income from interest under head "*income from other sources*", however, claimed that the income from interest should be treated as core shipping income and administrative expenses are to allocated amongst the different business activities of the assessee on a reasonable basis in terms of the provisions of section 115VJ of the Act. However, we find that the lower authorities disagreed with the submissions of the assessee on the basis that apportionment of common cost as envisaged in section 115VJ(1) of the Act was amongst other "*business*" or "*activity*" carried out by the tonnage tax company and such activity ought to be a business related activity. Further, the claim of the assessee was also rejected on the basis that the income from interest was mainly derived by the assessee from surplus funds kept in the banks and other financial institutions and this investment was not made by

the assessee on account of any business exigency. Therefore, the income earned on account of interest was held to be chargeable to tax under the head "*income from other sources*". We find that even before the Tribunal, the assessee submitted that the investment in fixed deposit was made out of its income from shipping business and interest earned thereon very much formed the part of core shipping business of the assessee. The Co-ordinate Bench of the Tribunal vide its order dated 21/03/2014 held that the income from interest cannot be said to have been earned by the assessee by carrying on any separate business activity other than tonnage tax business as envisaged in section 115VJ of the Act. The Co-ordinate Bench further held that the said income is chargeable to tax in the hands of the assessee under the head "*income from other sources*".

10. Thus, from the perusal of the aforesaid decision of the Co-ordinate Bench rendered in assessee's own case for the assessment years 2005-06 and 2006-07, it is clearly evident that the issue as raised by the assessee, in the year under consideration, being that the interest income should not be separately charged to tax being in the nature of income from core activities was not raised as an independent ground before the Tribunal and the issue under consideration before the Tribunal, as noted in the foregoing paragraphs, was limited to claim of allocation of common costs as per the provisions of section 115VJ of the Act. Thus, though in the assessment years 2005-06 and 2006-07 the interest income was offered under the head "*income from other sources*" in the return of income, however, unlike in the year under consideration there was no claim that the same should not be separately

charged to tax, even though, the assessee has treated the interest income as income from core shipping activity and the Co-ordinate Bench also agreed that the same was earned by carrying on tonnage tax business. However, we find that this very issue came up for consideration before the Co-ordinate Bench in assessee's own case in The Shipping Corporation of India v/s Additional CIT, in ITA No. 2550/Mum/2012, for the assessment year 2008-09, wherein the Coordinate Bench admitted the additional ground raised by the assessee and held that the interest earned by the assessee from deposits maintained with banks and financial institutions out of funds required for the purpose of business is in the nature of business income and relates to the core shipping activity.

2. Therefore, we are of the considered view that the decision of the Co-ordinate Bench in assessee's own case for assessment years 2005-06 and 2006-07, as relied upon by the learned DR, is not applicable for deciding this issue at hand, as the same was rendered in a different context and the assessee subsequently also did not raise any plea that the interest income earned by it is taxable as business income. Even though it was consistently claimed to have been earned from the tonnage tax business. Accordingly, we are of the considered view that the reliance placed by the learned DR on the aforesaid decision of the Co-ordinate Bench for the assessment years 2005-06 and 2006-07 is completely misplaced. In this regard, the following observations of the Hon'ble Supreme Court in CIT v/s Sun Engineering Private Limited, reported in [1992] 198 ITR 297 (SC), become relevant: -

"It is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by the Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Court. A decision of the Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a latter case, the Courts must carefully try to ascertain the true principle laid down by the decision of the Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by the Court, to support their proceedings."

11. Therefore, we are considering the issue raised before us in the light of the following observations of the Co-ordinate Bench of the Tribunal in assessee's own case for the assessment year 2008-09: -

"38. At the outset, the learned AR wishes not to press its claim in respect of dividend income. Accordingly, to this extent, ground No. 4.1 is dismissed as not pressed. As regards the interest income of Rs. 227.68 crores, the assessee submitted that the said receipt forms part of the core shipping activity of the assessee and therefore should be taxed on a presumptive basis under Chapter XII-G of the Act. As per section 115VT of the Act, tonnage tax company is required to credit to Tonnage Tax Reserve Account an amount not less than 25% of the book value derived from the activities referred to in section 115VI in each previous year. As per section 115VT(3) of the Act, the amount credited to the Tonnage Tax Reserve Account is required to be utilised by the company before the expiry of 8 years for acquiring a new ship for the purpose of the business of the company and until the acquisition of the new ship for the purpose of the business of operating qualifying ships. As per the assessee, in its Tonnage Tax Reserve, following the procedure prescribed under the aforesaid section, is Rs. 695 crores as on 31/03/2008. Further, the assessee earned interest on deposits placed with the banks and financial institutions out of the funds required for purpose of the business but temporarily lying idle. The funds are required for meeting the working capital requirement and repayment of loans earlier taken for the acquisition of ships. In support of its submission, the assessee has placed on record statements showing theplacement of surplus funds in short-term deposits on weekly basis, by way of additional evidence filed vide application dated 18/02/2021. It was submitted that factual assertion was made before the learned CIT(A), however, the underlying document in support of the same are filed for the first-time before the Tribunal. The assessee has also placed on record the details of repayment of loans taken for the acquisition of ships. Further, the month-wise weekly fund position was also filed by the assessee. In the present case, it is undisputed that the only business activity pursued by the assessee relates to shipping, and thus the entire receipts are from the shipping activity, which qualifies for computation on a presumptive basis under the tonnage tax provisions. We find that the Hon'ble jurisdictional High Court in CIT vs Varun Shipping Co Ltd, [2011] 324 ITR 263 (Bom.) held that where the assessee borrowed certain amount for its business purpose and earn interest on

unutilised portion of the loan, interest income is taxable as business income. Thus, since the funds are nothing but the funds required for running the shipping business, which has been invested by the assessee, and interest income is earned, therefore, we are of the considered opinion that income by way of interest arising from the said deposits is in the nature of business income and relates to the core shipping activity. As a result, ground No. 4 is partly allowed. In view of our aforesaid findings, the other aspects raised in ground No. 4 are rendered academic and therefore require no separate adjudication."

12. From the statement showing position of investment of funds in fixed deposits as on 31/03/2018, forming part of the paper book-3 at page 233, we find that the assessee made the investments in fixed deposits placed with State Bank of India or other Nationalised Banks including private banks. From the remarks in respect of each deposit, we find that same was for the various purposes, which include fixed deposits marked as lien, conditional deposit "*FPO*" money, fixed deposits maintained to comply with facility agreement, and lastly, fixed deposits placed for meeting working capital requirement.

(a) <u>Lien Marked Fixed Deposits</u>

13. As per the assessee for carrying on its business of operation of qualifying ships, it has to obtain various facilities from the banks, which could be for the purpose of its meeting its contractual or statutory obligations. As per the assessee, before sanctioning the facilities, the banks insist on placing of fixed deposits over which they have a lien over the period for which the facility is operative. It is the plea of the assessee that an amount of Rs.144 crore was placed with the banks for availing various facilities as on 01/04/2017, which was reduced to Rs.123 crore as on 31/03/2018. Thus, as per the assessee, the fixed deposits were placed with the banks out of commercial expediency with a view to advance its business interest in the sole

business carried out on by it of operating qualifying ships. Thus, the assessee claims that interest earned on such deposits should be regarded as profits and gains on business. Having considered the aforesaid submissions, it is pertinent to note that in the present case, it is undisputed that the only business activity pursued by the assessee relates to shipping. Thus, there cannot be any dispute regarding the fact that the various facilities availed by the assessee from the banks, with respect to which it has placed fixed deposits as a lien, are also for the purpose of effectively and efficiently running its business of operating qualifying ships. Therefore, we are of the considered view that the interest earned by the assessee from such fixed deposits maintained with the banks, which are marked as lien, is inextricably linked with the business of operating qualifying ships and therefore, should be treated as an item of receipt from core activity of a tonnage ship company.

(b) Conditional Fixed Deposits out of funds raised by way of Public Offering

14. As per the assessee during the financial year 2010-11, it had floated a public offer comprising of, inter alia, fresh issue of 4,23,45,365 equity shares. The proceeds from the issue of said shares of Rs.582.54 crore were fully utilized in the financial year 2011-12 as per the object of the issue for part-financing of capital expenditure on nine ship-building projects. However, for various defaults committed by the shipyards, during the period from January, 2014 to May, 2014, the assessee rescinded contracts for four shipping building projects and re-negotiated the payments in respect of two of them. The investment in the rescinded contracts out of the said proceeds was Rs.330.65 crore, which was entirely received from the respective shipyards. As per the

assessee, the shareholders, vide their resolution passed through postal ballot on 11/02/2017, approved the proposal to redeploy the said sum received as refund from shipyards towards various other ship-building projects including off-shore assets and LPG Vessels and also for acquisition of any other vessels. Further, based on the approval granted by the shareholders, the assessee could also utilize the sum towards the balance payments remaining due for the tonnage acquisition made by it. As per the assessee, these funds were redeployed for acquisition of other ships and vessels, and in this regard, reference was made to the disclosure in the audited financial statement as follows: -

"Out of the said amount of Rs.330.65 crs., an amount of Rs. 196.80 crs has been utilized till date as under –

Month and Year	*Rs. Crs.*	*Utilized for*
November 2016	*34.37*	*Equity portion of PSV – SCI Sabarmati*
April 2017	*63.82*	*Equity portion of Suezmax Tanker – Desh Abhiman*
July 2017	*27.63*	*Equity portion of PSV – SCI Saraswati*
September 2017	*70.98*	*Equity portion of VLGC – Nanda Devi*
Total Utilized till date	*196.80*	

"

15. As per the assessee, the said amount at the beginning of the year stood at Rs.298 crore and as at the end of the year stood at Rs.138 crore. It is further the plea of the assessee that pending its utilization for the said purpose the funds have been placed as fixed deposits with the banks, and the interest was earned thereon. In the present case, it is undisputed that only business activity pursued by the assessee related to shipping and thus, the entire receipts are from shipping activity, which qualifies for computation of presumptive basis under the tonnage tax provisions. From the facts as noted above, it is evident that the funds generated by the assessee from the public

offering were also for the purpose of part-financing of capital expenditure on ship building projects, and since some of the contracts were rescinded, the refund received was agreed to be redeployed, vide shareholders' resolution towards various other ship building projects, including acquisition of vessels. From the details, as noted above on page 45 of the audited financial statements, it is evident that out of the amount of Rs.330.65 crore, an amount of Rs.196.80 crore was utilized for acquiring the equity portion of various ships and vessels. The amount pending utilization for the said purpose has been placed by the assessee as fixed deposits with the banks on which the assessee has earned interest income. Therefore, we are of the considered view that the interest arising on the said fixed deposits is in the nature of business income, since the only business carried out by the assessee is that of operation of qualifying ships.

(c) <u>Fixed Deposits placed to comply Facility Agreement</u>

16. As per the assessee, it has availed a loan from the Bank of Nova Scotia Asia Ltd. for an amount of USD 35,712,000 for the purpose of acquiring ships and vessels. In this regard, a facility agreement was entered into on 24/12/2008, which came to be amended by a Side Letter dated 29/01/2009, and further amended and supplemented by a First Supplemental Agreement dated 17/05/2013. Vide Side Letter dated 06/01/2015, the assessee agreed that it shall maintain Minimum Unencumbered Cash of USD 100,000,000 at all times when it is in the Breach of the Debt Service Coverage Ratio. The assessee was in breach of said covenant and to comply with the said requirement, the assessee had to place a fixed deposit with the bank to an

extent of Rs.650 crore to be maintained as Minimum Unencumbered Cash available with it at all times. On such fixed deposits, the assessee earned interest income which has been claimed as income from operating qualifying ships. Having considered the submissions, we find that the assessee made a due disclosure in this regard in its audited financial statements in Note 38(b) at page 153 of the paper book-3. In the present case, there is no dispute regarding the fact that the fixed deposits were placed with the bank in view of the agreement entered into by it with the lender, from whom the loan was received by the assessee for the purpose of acquiring ships and vessels. Thus, we are of the considered view that the fixed deposits maintained with the bank are inextricably linked with the business of the assessee of operating qualifying ships, and the interest earned by the assessee on fixed deposits placed with the banks, complying with the covenants in the loan agreement entered for the purpose of acquiring ships and vessels, is in the nature of business income of the assessee and relates to core shipping activity.

(d) <u>Fixed Deposits placed for meeting Working Capital Requirement</u>

17. By referring to pages 98 and 99 of the Audited Financial Statement, forming part of the paper book-3, the assessee submitted that the current liabilities were in excess of the current assets, during the year under consideration, and therefore, the assessee had to maintain sufficient funds for the purpose of meeting its working capital requirement as and when they arise. The assessee further submitted that the fixed deposits which stood at Rs.1295.35 as at the beginning of the year have been reduced to Rs.1081.45 crore as at the end of the year, which shows that the fixed deposits have not

been placed out of surplus funds, however these are the funds which are required for the purpose of its business and have been placed in the fixed deposits temporarily. Thus, as per the assessee, the funds are required for meeting the working capital requirement and repayment of loans taken in earlier years for the acquisition of ships and vessels. In respect of the aforesaid submission, the assessee has placed on record, the statement showing repayment schedule of principal and interest in respect of the loan taken for the acquisition of ships at pages 3 to 6 of paper book – 2. Further, the assessee has also placed on record, the reports by its Finance and Treasury Department, forming part of the paper book-2 from pages 12-18, to show that at regular intervals the assessee analyze the availability of funds as compared to the requirement thereof, and based thereon, the excess funds are identified which are placed as fixed deposits with the banks temporarily, since these funds are required for the purpose of business and pending their utilization they are placed on deposits. We find that the interest income earned from fixed deposits of funds which are required for meeting the working capital requirement and repayment of loans was held to be in the nature of business income since the funds are nothing but the funds required for running the shipping business, by the Co-ordinate Bench of the Tribunal in assessee's own case for the assessment year 2008-09 cited supra. Therefore, respectfully following the decision rendered in assessee's own case, the interest income earned from fixed deposits placed with the banks for meeting working capital requirement in the year under consideration is held to be in the nature of business income and relates to the core shipping activity.

18. Therefore, in view of our aforesaid findings, the AO is directed to treat the interest income of Rs.84,01,13,062 as part of the profits from core shipping activities carried on by the assessee. Accordingly, Ground No. 1 raised in assessee's appeal is allowed.

19. In view of the aforesaid findings, Ground No. 2 raised in assessee's appeal is rendered academic, therefore is left open.

20. In the result, the appeal by the assessee is allowed.

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Revenue's Appeal – A.Y. 2018–19

21. In this appeal, the Revenue has raised the following grounds: -

"(i) "Whether on the facts of the case and in law, Ld. CIT(A) was justified in holding that investments from surplus funds should enter into the computation under Rule 8D while arriving at the average value of investment, income from which does not form part of the total income?"

(ii) "Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) is right in ignoring the Explanation inserted by Finance Act, 2022 to section 14A that provisions shall be applicable retrospectively?"

(iii) "Whether on the facts of the case and in law, Ld. CIT(A) was justified in allowing administrative expenses being apportionment of common cost against income from incidental activities"?"

22. In the interest of justice, the slight delay of 7 days in filing the appeal by the Revenue is condoned.

23. The issue arising in Grounds No. 1 and 2, raised in Revenue's appeal, pertains to the deletion of disallowance made under section 14A r.w. Rule 8D of the Income-tax Rules, 1962 ("*the Rules*").

24. The brief facts of the case pertaining to this issue, as emanating from the record, are: During the assessment proceedings, the assessee was asked

to furnish the opening and closing balance of monthly investments and working of disallowance under section 14A of the Act. It was observed that the assessee has not recorded any expenditure for earning exempt income. Accordingly, the assessee was asked to show cause why the disallowance under section 14A of the Act should not be worked out as per the provisions of Rule 8D of the Rules. In response, the assessee submitted that it is a shipping company and has opted for tonnage tax scheme as per Chapter XII-G of the Act and the provisions of section 14A of the Act are only application in respect of income calculated under Chapter IV of the Act, therefore, the same cannot be applied to make any disallowance. The AO, vide assessment order passed under section 143(3) r.w.s. 144B of the Act, disagreed with the submission of the assessee and after noting the fact that the assessee has earned dividend income at Rs.2,04,62,257, during the year, computed the disallowance of Rs.53,04,895 under section 14A r.w. Rule 8D of the Rules.

25. The learned CIT(A), vide impugned order, allowed the ground raised by the assessee on this issue and deleted the disallowance made under section 14A r.w. Rule 8D of the Rules on the basis that the aforesaid disallowance cannot be made in the case of the assessee, since it is subjected to tax under Chapter XII-G of the Act. The relevant findings of the learned CIT(A), vide impugned order, reproduced as follows: -

> *"8.3 Decision:*
>
> *The appellant's submission made on this ground is perused and considered on the merit. There is merit in the submission of the appellant that disallowance u/s. 14A of the Act cannot be made in the case of an assessee subject to tax under Chapter 12G of the Act. There is merit in the submission of the appellant that the facts and laws on this ground is covered by the Judgement of Hon'ble*

Mumbai ITAT in the case of M/s. Varun Shipping Company Ltd. vs Addl. CIT [ITA No. 5576/Mum/2011, order dt. 30 November 2011]. The relevant extract of the decision of the Hon'ble ITAT clearly stipulates as under:

> *"7. ... It is observed that the assessee is mainly engaged in the business of operation of ships and its income from the said business was declared and assessed as per the special provisions contained in Chapter XIIG which lay down tonnage tax scheme. As per the provisions of section 115VA contained in Chapter XIIG, the income from the business of operating qualifying ships can be computed at the option of the assessee in accordance with the provisions of Chapter XIIG and once this option is exercised by the assessee, the income so computed shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and Gains of business or profession" notwithstanding anything to the contrary contained in section 28 to 43C. It, therefore, follows that when the income of the assessee from the business of operating ships is computed as per the special provisions contained in Chapter XIIG, only the expenses incurred by the assessee for earning income of the said business are deemed to be allowed and nothing else. It, therefore, cannot be said that when the income of the assessee from the business of operating ships is computed as per the special provisions of Chapter XIIG, any expenditure other than the expenditure incurred for the purpose of the said business has been allowed and consequently no addition to income so computed can be made by way of disallowance u/s 14A on account of expenditure incurred by the assessee in relation to earning of exempt dividend income. We, therefore, find merit in the contention of the learned counsel for the assessee that the income of the assessee from the business of operating ships having been computed in accordance with the provisions of Chapter XIIG, only the expenses incurred for the said business are deemed to have been allowed and no addition to such income can be made by way of disallowance u/s 14A on account of any expenditure incurred in relation to earning of exempt dividend income..."*

Not only that the appellant has cited many other cases of Hon'ble Mumbai ITAT and ITAT, Chennai, which favours the case of the appellant on this ground. It is also a fact emanating from the Assessment Order that the appellant has cited these cases in its submission to the AO in the assessment proceeding. But the AO has not examined the applicability of those cases to the facts of the case of the appellant in the assessment proceedings. Hence, in view of the above- mentioned judgements of the Hon'ble ITAT, Mumbai, it is held that the AO had wrongly made the addition of Rs. 53,04,895/- u/s. 14A r.w.r 8D of the IT Rule, 1962. Once the appellant has computed its income in accordance with the provisions of Chapter XIIG of the Act and opted for tonnage tax scheme (TTS). Hence, the addition of Rs. 53.04.895/- is deleted."

Being aggrieved, the Revenue is in appeal before us.

26. Having considered the submission of both sides and perused the material available on record, we find that the learned CIT(A) deleted the disallowance made under section 14A r.w. Rule 8D of the Rules by placing reliance upon the decision of the Co-ordinate Bench of the Tribunal in M/s

Varun Shipping Company Ltd v/s Addl. CIT, in ITA No. 5576/Mum/2011, vide order dated 30.12.2011. In the absence of any contrary decision being brought on record, we find no infirmity in the findings of the learned CIT(A) on this issue, which are based on the judicial pronouncement by the Co-ordinate Bench of the Tribunal. Accordingly, the same is upheld and Grounds No. 1 and 2 raised in Revenue's appeal are dismissed.

27. The issue arising in Ground No. 3, raised in Revenue's appeal, pertains to the deletion of disallowance of administrative expenditure incurred towards earning income from incidental activities.

28. The brief facts pertaining to this issue, as emanating from the record, are: During the assessment proceedings, from the computation of income, it was observed that the assessee has allocated administrative expenditure amounting to Rs.13,16,28,352 to the computation of income from incidental activity. Since the proviso to section 115VI(1) of the Act does not provide for any allocation, the assessee was asked to show cause why the allocation of administrative expenditure to the computation of income of incidental activity should not be disallowed. In response, the assessee submitted that the administrative expenses are incurred for the entire business comprising of core shipping activities, incidental activities which generate other income. It was further submitted that administrative expenses are required to be incurred for all activities of the company and as such in terms of provisions of section 115VJ of the Act these expenses should be allocated to activities other than tonnage tax business on a reasonable basis. The AO, vide assessment

order, following the approach adopted in the preceding year, disallowed the administrative expenditure claimed by the assessee.

29. The learned CIT(A), vide impugned order, allowed the ground raised by the assessee on this issue by following the decision of the Co-ordinate Bench of the Tribunal in assessee's own case in preceding years. Being aggrieved, the Revenue is in appeal before us.

30. Having considered the submissions of both sides and perused the material, we find that while considering a similar issue of disallowance of administrative expenses against income from incidental shipping activities, the Co-ordinate Bench of the Tribunal in assessee's own case in The Shipping Corporation of India Ltd. v/s Additional CIT, in ITA No. 169/Mum/2021, for the assessment year 2010-11, vide order dated 28/02/2024 observed as follows: -

> *"37. Heard both the sides and perused the material on record. We have perused the provision of Sec. 115VI of the Act the extract of the same is reproduced as under:*
>
> > *"115V-1 (I) For the purposes of this Chapter, the relevant shipping income of a tonnage tax company means-*
> >
> > *(i) Its profits from core activities referred to in sub-section (2) –*
> > *(ii) Its profits from incidental activities referred to in sub-section (5);*
> >
> > *Provided that where the aggregate of all such incomes specified in clause (ii) exceeds one-fourth per cent of the turnover from core activities referred to in sub-section (2), such expenses shall not form part of the relevant shipping income for the purposes of this chapter and shall be taxable under the other provisions of this Act.*
>
> *After referring the aforesaid provision of Sec. 115VI the Id. DRP agreed that in respect of profit from incidental activities only the net receipt cannot be treated as income and reasonable allocation of administrative expenditure is required to be made. It is also stated in the finding of the DRP that assessee has shown the same on the basis of turnover, therefore, the same is reasonable. Considering the aforesaid fact and submission of the assessee that administrative expenses are required to be incurred for all activities of the*

assessee company, therefore, we consider that the same is required to be attributed on a reasonable basis to arrive at profit from the incidental activities in the case of the assessee in accordance with the Sec. 115VI of the Act. Therefore, we direct the AO to allow the claim of the assessee for allocating the administrative expenditure on the basis of turnover therefore this ground of appeal is allowed."

31. The learned DR could not show us any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in facts and law was alleged in the relevant assessment order. Therefore, respectfully following the judicial precedent in assessee's own case cited supra, we find no infirmity in the impugned order passed by the learned CIT(A) on this issue. Accordingly, the same is upheld and Ground No. 3 raised in Revenue's appeal is dismissed.

32. In the result, the appeal by the Revenue is dismissed.

33. To sum up, the appeal by the assessee is allowed, while the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 11/03/2025

Sd/-	**Sd/-**
AMARJIT SINGH **ACCOUNTANT MEMBER**	**SANDEEP SINGH KARHAIL** **JUDICIAL MEMBER**

MUMBAI, DATED: 11/03/2025

prabhat

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai