

IN THE INCOME-TAX APPELLATE TRIBUNAL "A" BENCH,  
MUMBAI

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
&  
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No. 3568/MUM/2023  
(A.Y. 2017-18)

ITA No. 1666/MUM/2024  
(A.Y. 2020-21)

Deputy Commissioner of Income Tax, Circle - 14(1)(1), Mumbai, Room No. 432, 4 <sup>th</sup> Floor, Aayakar Bhawan, M.K. Road, Mumbai - 400 020, Maharashtra	v/s. बनाम	L&T Infrastructure Company Finance Limited, Plot No. 177, Brindavan, C.S.T. Road, Kalina, Santacruz (West), Mumbai - 400 098, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABCL2283L		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

प्रत्याक्षेपसं./C.O. No.149/M/2024  
(Arising out of ITA No. 3568/MUM/2023)  
Assessment Year: 2017-18

L&T Infrastructure Company Finance Limited, Plot No. 177, Brindavan, C.S.T. Road, Kalina, Santacruz (West), Mumbai - 400 098, Maharashtra	v/s. बनाम	Deputy Commissioner of Income Tax, Circle - 14(1)(1), Mumbai, Room No. 432, 4 <sup>th</sup> Floor, Aayakar Bhawan, M.K. Road, Mumbai - 400 020, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AABCL2283L		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Alpesh Dharod,AR
Respondent by :	Dr. K.R. Subhash (CIT-DR) Shri Ram Krishn Kedia (Sr. DR)

Date of Hearing	17.03.2025
Date of Pronouncement	24.03.2025



## आदेश / ORDER

### PER PRABHASH SHANKAR [A.M.] :-

The above two captioned appeals preferred by the Revenue and one Cross Objection filed by the assessee emanate from the orders passed by the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] passed u/s 143(3) of the Income Tax Act,1961 [hereinafter referred to as "Act"] for the Assessment Years [A.Y.] 2017-18 and 2020-21. As some of the grounds are issues are common and also the fact that the appeals were heard together, these appeals are being taken up together for adjudication vide this composite order for the sake of brevity.

2. The grounds of appeal are as under:

### ITA No. 3568/MUM/2023 (A.Y. 2017-18)

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that the disallowance u/s 14A has to be made considering only those investments which yielded exempt income ignoring the explanation amended to section 14A with retrospective effect which provides for disallowance u/s 14A even if no income is earned during the year.*

3. In the relevant year, the assessee earned Dividend of Rs.56,85,150/- and Long TermCapital Gain of Rs.81,38,388/- totalling Rs. 1,38,23,538/-which were claimed as exempt income u/s. 10(34) and 10(38) of the Act respectively. However, it had made *suo motu* disallowance of Rs.



52,39,217/- u/s. 14A of the Act in the computation of income. The AO observed that the computation was not as contemplated in the provisions of section 14Ar.w.s. rule 8D of the Income-tax Rules. Accordingly, the assessee was asked to explain as to why disallowance u/s 14A read with rule 8D should not be correctly made. In reply, the assessee vide letter dated 21.12.2019 submitted “without prejudice” working of the disallowance as per Rule 8D whereby the disallowance was worked out at Rs.3,10,90,000/-. Since the assessee had *suo motu* disallowed an amount of Rs. 52,39,217/-, the balance of Rs. 2,58,50,783/- was added to the total income of the assessee u/s 14A of the Act.

4. The Ld. CIT(A) deleted the disallowance made by the AO and allowed this ground of appeal relying on the decision of the Hon'ble jurisdictional High Court in the case of **CIT Vs. Reliance Utilities & Power Ltd., 313 ITR 340 (Bom.)**. He held that earning of Dividend as well as exempt LTCG did not require any specific administrative efforts and hence, no expenses were incurred for earning such income. Further, he relied on decision of Hon'ble ITAT Kolkata in case of ACIT V/s Coal India Ltd. ITA No. 1032/Kol/2012 for holding that no investment value is to be considered for computing 14A disallowance on which exempt income is not received.



5. Before us, the Id.AR has relied on the order of the Id.CIT(A) while the Id.DR has agitated the addition by claiming that the Ld.CIT(A) has not taken into consideration the fact that the assessee failed to establish a nexus between interest free funds with the investments capable of earning exempt incomes before the AO. He also failed to appreciate that disallowance u/s. 14A of the Act could be invoked even if no exempt income is earned during the relevant previous year for which reliance is placed on CBDT Circular No.5 of 2014. It was pleaded that the provisions of the Act provide for disallowance of expenditure in relation to income not includable in the total income even if the assessee claims that no exempt income has been received or accrued during the relevant previous year. Further, the above referred amendment is *clarificatory* in nature whereby an **Explanation is added to section 14A w.e.f. 01.04.2022 stating that 'the section 14A shall apply and shall be deemed to have always been applied even if income has not arisen during the year'** more so because it clearly mentions in the opening words itself that 'for the removal of doubts it is hereby clarified' and hence, it has its application with retrospective effect.

6. We have carefully considered all the relevant facts of the case, rival submissions, provisions of the Act in the matter and also legal position existing. In the above ground of appeal, the Revenue has basically



challenged the action of the Id.CIT(A) in not applying the amended provisions. We find the Hon'ble Delhi High Court in the case of **Cheminvest Ltd. (61 Taxmann.com 118), CIT Vs. Holcim India Pvt. Ltd. (57 Taaxmann.com 28)** and others Courts have consistently taken a consistent view that once assessee has not earned exempt income, disallowance u/s.14A cannot be made. The courts have held that if the assessee has earned exempt income, disallowance u/s.14A can be restricted to such exempt income. However, due to amendment brought to [section 14A](#), the CBDT has given its clarification regarding intention of [section 14A](#), even when no exempt income is earned and non-obstante clause was introduced to counter observation/decisions of various courts referred supra.

6.1 However, it may be stated here that the Hon'ble Delhi High Court in the case of **PCIT vs. Era Infrastructure (India) Ltd. (2022) 448 ITR 674 (Delhi)** after considering the amendment brought in [section 14A](#) of the Act, vide [Finance Act 2022](#) has held the amendment as brought in by [Finance Act 2022](#) is not retrospective in nature. The Hon'ble Madhya Pradesh High Court as well in the case of **PCIT (Central) vs. Keti Construction Ltd. (2024) 162 taxmann.com 278 (MP)** has also reiterated that the amendment brought in [section 14A](#)



will apply in relation to the A.Y. 2022-23 and subsequent assessment year. Accordingly, we do not find any infirmity in the appellate order in deleting the addition. **In the result, appeal of the Revenue is dismissed.**

**7. ITA No. 1666/MUM/2024 (A.Y. 2020-21)**

In ground nos. 1 and 2, the Revenue has contested disallowance of ESOP expenses stating as below:

- 1. Whether on the facts and circumstances of the case and in law, the CIT(A) erred by directing to delete the disallowance made by the Assessing Officer, in respect of the ESOP expenses and holding it is allowable as revenue expenses*
- 2. Whether on the facts and circumstances of the case and in law, the CIT(A) erred by directing to allow the ESOP expenses ignoring the CBDT Circular No 2007, dated 20.12.2007 which has clearly provided that where ESOP are purchased by the company and then issued to the employees. then the same allowed, else it is not an expenditure which is not the instant case as the discounted value of shares have been reimbursed by the subsidiary company to the holding company.*

8. According to the assessment order, it was noticed on perusal of the P&L A/c that the assessee had claimed Employee Stock Option (ESOPs) expense of Rs. 9,31,00,000/-. In response to a query, it submitted that as per the ESOP established by the Holding Company (i.e. L&T Finance Holdings Limited) of the Company, stock options have been granted to the employees of the assessee company. The Scheme provides that employees



are granted an option to subscribe to equity shares of the holding company that vest in a graded manner. The options may be exercised within the specified period. During the year under consideration, stock options were granted to the employees of the Company. The cost incurred by the holding company, in respect of options granted to employees of the Company has been recovered by the holding company from assessee company. The cost incurred on the ESOP amounting to Rs. 9.31 Crore was debited to the Expenses on ESOP account under the head "Employee benefit expenses". The CIT(A) in assessee's own case in AY 2012-13 had allowed similar issue in favour of the assessee by placing reliance on the decision of Accenture Services Pvt. Ltd. and Novo Nordisk India Pvt. Ltd. judgements. It was also submitted that ESOP expense is called as compensation cost because employee share based payment involves grant of shares at a concessional price. Such payments are borne by the employers to compensate employees for their services and to provide incentive to the employees for remaining in the employment with the company. Thus, ESOP expense will be covered by general provisions of Sec 37 of the Act. Sec. 37(1) grants deduction for expenses which are not covered in Sec. 30 to 36, which are not of capital or personal nature, and it should be laid out or expended wholly and exclusively for the purpose of the business. Thus, ESOP expenses claimed are allowable expense as the conditions required u/s 37



of the Act were duly satisfied. In case of **CIT vs. Biocon Ltd. [2020] 121 taxmann.com 351 (Karnataka), Hon'ble Karnataka High Court** held that Discount on issue of ESOPs was allowable as a deduction under section 37(1) as primary object was not to waste capital but to earn profits by securing consistent services of employees. However, the AO disallowed the deduction claimed.

9. The Id.CIT(A) allowed the claim by relying on the case of **JM Financial Institutional Securities Ltd. vs. DCIT (ITA No. 6891/Mum/2016 Order dated 03-10-2018)(Mum-ITAT)** which held that payment in respect of ESOP expenses could not be treated as capital and the reimbursement of ESOP expenses to parent company had to be allowed as revenue expenditure. The Hon'ble ITAT Bangalore, Special Bench, in its decision in the case of **DCIT vs Biocon Ltd. [2013] 35 taxmann.com 335 (Bangalore - Trib.) (supra)**, inter alia, concluded as under with respect to deductibility of ESOP expenditure: - *Primary object of issue of shares under ESOP is not to raise capital but to earn profit by securing consistent and concentrated efforts of employees.* In view of the aforesaid discussions, the precedence in the appellant's own case wherein the issue was consistently decided by ITAT and CIT(A) in its favour and judicial pronouncements, the cost of Rs. 9.31 cr. incurred during the relevant year is akin to employee cost wholly and exclusively incurred for



the purpose of business, allowable u/s 37 of the Act. With regard to reimbursement of ESOP expenses to parent company it observed that the same is akin to a situation where the assessee acquires certain moveable properties for the benefit of its employees as a means of retaining them or rewarding them, which is clearly allowable to the assessee as business expenditure u/s 37(1). Thus, it was held that reimbursement of ESOP expenses to parent company has to be allowed as revenue expenditure. Similar views are expressed in decisions in **HDFC Bank Ltd. –vs- DCIT (2016) 45 ITR(T) 529 (Mum.)**, **ACIT –vs- People Interactive India Private Limited (ITA No. 6990 & 6986/Mum/2013, order dtd. 21-10-2015)(Mum. Trib.)**, **Pr. CIT –vs.- New Delhi Television Ltd. (2017) 398 ITR 57 (Delhi)**. Hence, he held that the contention of the AO that expenditure on ESOP is not a revenue expenditure is contrary to the settled legal position. He accordingly deleted the addition.

10. We have carefully considered all the relevant facts of the case. The dispute revolves around deductibility of the impugned sum as revenue expenditure as against the claim of the Revenue being capital expenditure. Rewarding employees through share-based benefit schemes has been an effective tool for the companies to not just recognise their contribution to the company but also retain them by imbibing a sense of belonging and



ownership. One such scheme, popular among the companies for almost last two decades, has been to grant of ESOPs. In simple terms, it is an option and not an obligation, provided by a company to its employees, to purchase its shares at a future date at a pre-determined price, which is ordinarily less than the market price, on satisfaction of certain prescribed conditions. The hon'ble Karnataka High Court affirmed the ruling of the special bench of the Bangalore Income Tax Appellate Tribunal in the case of Biocon Ltd., wherein it was held that discount on issuance of ESOPs is an allowable business expenditure under Section 37(1) of the Act for the employer in **Commissioner of Income Tax v. Biocon Ltd., ITA No. 653 of 2013 (Karnataka HC); (2013) 35 taxmann.com 335 (Bangalore – ITAT) (SB)**. In view of the foregoing, considering the fact that issue in hand was identical and recurring in nature and was also being consistently decided in favour of the assessee, respectfully following the decisions referred above, it is held that the disallowance was rightly deleted by the Id.CIT(A). In the result, above grounds no 1, 2 are **dismissed**.

12. In **ground no.3**, it is stated that the CIT(A) erred in holding that the disallowance under 14A has to be made considering only those investments which yielded exempt income ignoring the explanation amended to section 14A with retrospective effect which provides for disallowance u/s 14A even if no income is earned during the year.



12.1 The AO noticed that the assessee earned Dividend income of Rs. 63,548/- which was claimed as exempt u/s 10(34) of the Act. He observed that the assessee had significant investments which was capable of generating exempt income. Contention of the assessee that there were interest free surplus funds available, was not found not acceptable. Expenses had to be apportioned as per the provisions of Section 14A read with Rule 8D in all cases where dividend income is earned. On the related issue, i.e. whether disallowance u/s 14A was to be restricted to the quantum of exempt income. Thus, the income of the assessee was enhanced by an amount of Rs. 6,46,07,000/- on account of disallowance u/s 14A of the Act.

13. In the subsequent appeal, before the Id.CIT(A), the assessee reiterated that in case any disallowance was to be made in the instant case, the same should have been restricted only to total exempt income dividend income of Rs. 63,548/- received by the appellant during the year under consideration. The AO erred in treating the interest paid on inter corporate deposit of Rs.6,46,07,000/- as 'interest expenditure which is not directly attributable to any particular income or receipt'. The appellant further contended it did not incur any expenses towards earning of exempt income. Therefore, no addition was made by it in computation of total income. It is further submitted that the appellant had utilized its own funds in making



investments and borrowed funds has been used for earning taxable income. Hence, no further disallowance is called for u/s 14A r.w. Rule 8D. Further, investments were entirely made out of own funds of the Company and hence, no disallowance u/s 14A r.w.r. 8D is warranted. The appellant placed reliance on the decision in the case of **PCIT vs. Premier Finance & Trading Co. Ltd [2019] 104 taxmann.com 97 (Bombay)**, wherein the Hon'ble High Court held that the mere fact that assessee had sufficient interest free funds in excess of interest bearing funds to make investment which would result in exempt income, doesn't result in disallowance under Sec. 14A. Also relied on in the case of **ACIT vs. Crompton Greaves Ltd. [2020] 181 ITD 40 (Mum)** wherein the Hon'ble Mumbai Tribunal held that where no finding at all had been recorded by Assessing Officer as to incurrance of any expenditure by assessee for earning exempt income, no disallowance under section 14A was called for. After considering the facts of the case and examining the appellant's submissions, it was held by the ld.CIT(A) that it had not incurred any direct expenditure for earning the dividend income and no borrowings were utilized for investment in shares out of which dividend income was earned during the year under consideration. The AO disregarded the fact that the appellant is registered as NBFC with Reserve Bank of India (RBI) and company's operations are regularly monitored by



the RBI. The borrowed funds on which interest expenditure incurred was utilized only for providing infrastructure loans which yielded taxable business income and not for any other purposes. Therefore, the interest paid on loan funds was directly connected to the interest received on infrastructure loans. Accordingly, there should not be any disallowance u/s 14A on account of interest expenses as there is a net interest income. Further, the AO disregarded the fact that only such investments are to be considered for 14A disallowance on which exempt income is received by the appellant and not on which dividend income is not received.

14. We find from the ground of appeal above that the Revenue has agitated only the issue on the applicability of amended provisions as brought into the statute w.e.f.1.4.2022. We have already deliberated on the issue in appeal no. ITA no. 3568(supra) in para 6 of the order for AY 2017-18 wherein it has been held that the disallowance would be limited to the exempt income only and the amended provisions were not applicable retrospectively. Accordingly, the issue being the same this year as well, we hold that the disallowance is not justified. We uphold the order of the Id.CIT(A) deleting the addition. The ground of appeal is, therefore, **dismissed.**

15. In the **ground no. 4**, it is contented that on the facts and circumstances of the case and in law, the CIT(A) erred in directing the



*AO to give credit of TDS, which appeared in 26AS subsequent to filing of ITR by assessee, without giving finding that the corresponding income has been offered to tax by the assessee or without directing AO to verify the same.*

16. According to the appellate order, the assessee had claimed total TDS credit of Rs. 1,86,54,09,986/- in the original return of Income filed on 15/02/2021- on the basis of credit available in Form No. 26AS. Subsequently additional TDS credit of Rs. 3,03,56,991/- had been credited in appellant's Form No. 26AS on account of TDS deposited by few customers after filing of return of income. Therefore, it was eligible for total TDS credit of Rs. 189,57,66,977/- as reflected in appellant's Form No. 26AS. However, in the impugned order, the AO had inadvertently granted TDS credit amounting to Rs. 1,86,54,09,986/-, which resulted in short TDS credit of Rs. 3,03,56,991/-. Based on the above facts, the AO erred in completely ignoring the TDS credit available to the appellant as per Form No. 26AS for granting the TDS credit at the time of passing the impugned order dated 26/09/2022. In view of the aforesaid facts, the Id.CIT(A) observed that the appellant should be granted the entire TDS credit available as per latest Form No. 26AS. This ground of appeal adduced by the assessee was upheld. We find that this issue basically involves verification of TDS credit in 26AS. The Id.CIT(A) has stated that the appellant should be granted the entire TDS credit available as per latest



Form No. 26AS..We do not find any infirmity in the direction given by him.**The ground is therefore, dismissed.**

**C.O. No.149/M/2024(Arising out of ITA No. 3568/MUM/2023):**

*“The Ground of Cross Objection Appeal is that on the facts and circumstances of the case and in law, the Ld. Deputy Commissioner of Income Tax, Circle 14(2)(1), Mumbai, erred in disallowing the claim of debenture issue expenses of Rs. 2,70,33,059/-.”*

17. We notice that there is delay in filing of cross objection. In this regard, it is stated by the assessee that it received the copy of appeal for the captioned assessment year on 23-04-2024. As per the provisions of Sec. 253(4) of the Act, a cross-objection against the aforesaid order was required to be filed within 30 days from the receipt of the said order i.e. 23-05-2024. **This cross-objection is filed on 31-07-2024. Thus, there is a delay in filing of 74 days.** In this respect, it is submitted before us that on receipt of the appeal papers, the assessee-company forwarded the relevant documents to its consultant for preparation and attending the hearing fixed on 11-06-2024. Upon review of the appeal papers and relevant orders, the consultant observed that **relief in respect of disallowance of Debenture issue expenses made in the order u/s 143(3) dated 28-12-2019 is yet to be granted.** As the said issue was directly coming out of the order u/s 143(3) and same being



covered by orders of CIT(Appeals) in the earlier years, the assessee has been advised to file a cross-objection. In this connection, copy of the affidavit was enclosed. Considering the submissions made above, we condone the delay as the reasons attributed are reasonable and bonafide.

18. It was noted by the AO that the assessee claimed Debenture issue expenses of Rs. 2,70,33,059/-. These expenses had not been debited to the Profit & Loss Account of year but were adjusted against the Securities Premium account in the Balance Sheet. Before the AO, it was submitted that the expenses are in relation with debentures which are a form of loan and therefore, the expenses were allowable revenue expenditure. The submission of the assessee was not found acceptable by the AO who observed that as per the sections 28 to 37(1) of the Act, there is no provision for allowing the expenses which had been adjusted against Securities Premium in Reserve & Surplus of the Balance Sheet. The assessee had claimed the allowance of a Balance sheet item in computing the total income. In order to claim an expense, it had to be recorded in the Profit and Loss Account. In the tax audit report of the assessee, the auditor had also not commented with regard to its allowability. Alternatively, the expense was in the nature of capital expenditure and subject to the provisions of section 35D of the Act. Therefore, the claim was disallowed.



19. The Id.CIT(A) has inter alia discussed the issue in on pages-11 to 19 of the order by observing that *the appellant, which is registered under the Companies' Act, 1956 and registered with the RBI as NBFC, is engaged in the business of providing various financial products and services to its customers engaged in infrastructure development and construction, with a focus on power, roads, telecommunications, oil & gas and ports sectors in India. The company also provides customized financial solutions such as term loans, mezzanine debts, debentures, securitized debt. However, there is finding or decision on the matter by him as the observations are inconclusive and incomplete.* However, no decision has been rendered by him in respect of this ground. It appears that he has inadvertently failed to address the ground before him at all. In such circumstances, we are of the considered opinion that the issue requires to be sent back to the Id.CIT(A) for deciding the ground by way of speaking order. **As a result, the cross appeal of the assessee is allowed for statistical purposes.**

20. **In the result, the appeals of the Revenue in ITA No.3568/Mum/2023and ITA No.1666/Mum/2024 are dismissed**



**and CO in 149/M/2024 of the assessee is allowed for statistical purposes.**

Order pronounced in the open court on 24/03/2025.

**Sd/-**

**NARENDER KUMAR CHOUDHRY**

**(न्यायिक सदस्य / JUDICIAL MEMBER)**

**Sd/-**

**PRABHASH SHANKAR**

**(लेखाकार सदस्य/ACCOUNTANT MEMBER)**

Place: मुंबई/Mumbai

दिनांक /Date 24.03.2025

Lubhna Shaikh / Steno

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण/ ITAT, Bench,**  
**Mumbai.**

