

**IN THE INCOME-TAX APPELLATE TRIBUNAL "C" BENCH,  
MUMBAI**

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

**ITA No. 6711/MUM/2024  
(A.Y. 2013-14)**

<b>Indian Oil Adani Ventures Limited</b> , A-104, First Floor, Godrej Two, Pirojshanagar, Eastern Express Highway, Vikhroli, Mumbai – 400 079	v/s. बनाम	<b>Assistant Commissioner of Income Tax, Circle 15(1)(2)</b> , Mumbai, AayakarBhavan, M.K. Road, Mumbai - 400 020, Maharashtra
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACI6794E</b>		
<b>Appellant/अपीलार्थी</b>	..	<b>Respondent/प्रतिवादी</b>

Appellant by :	Ms. Vasanti Patel,AR
Respondent by :	Shri Mahesh Pamnani (Sr. DR)

Date of Hearing	12.02.2025
Date of Pronouncement	10.03.2025

**आदेश / ORDER**

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

The present appeal arising from the appellate order dated 28.10.2024 is filed by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] pertaining to assessment order passed u/s. 143(3) of the Income-tax Act, 1961 [hereinafter referred to as "Act"] dated 29.12.2016 for the Assessment Year [A.Y.] 2013-14.



2. The grounds of appeal are as under:
  1. *On the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeal), NFAC ('learned CIT(A), NFAC') has erred in not passing a speaking order.*
  2. *Without prejudice to Ground 1, on the facts and circumstances of the case and in law, the learned CIT(A), NFAC has erred in not allowing the Appellant an opportunity of being heard and thereby vitiating the principles of natural justice.*
  3. *Without prejudice to Grounds 1 and 2, on the facts and circumstances of the case and in law, the learned CIT(A), NFAC has erred in confirming the disallowance made by learned Assistant Commissioner of Income-Tax 15(1)(2), Mumbai ('learned AO') amounting to Rs. 84,71,490 under Section 14A of the Income Tax Act, 1961 ('Act') read with Rule 8D of the Income Tax Rules, 1962 ('Rules').*
  4. *Without prejudice to Grounds 1, 2 and 3, on the facts and circumstances of the case and in law, the learned CIT(A), NFAC has erred in upholding the disallowance made by the learned AO amounting to Rs. 84,71,490 under Section 14A of the Act read with Rule SD of the Rules without appreciating the fact that having regards to the books of accounts of Appellant, the learned AO erred in not recording any dissatisfaction with the correctness of the claim of the expenditure in relation to the income which does not form part of the total income under the Act offered by the Appellant and thereby Rule 8D of the Rules cannot be invoked.*
  5. *Without prejudice to Grounds 1 to 4 above and on the facts and circumstances of the case and in law, the learned CIT(A), NFAC has erred in upholding the disallowance made by learned AO without appreciating the fact that investments were made out of own funds therefore disallowance under section 14A cannot be warranted.*



6. *Without prejudice to Grounds 1 to 5 above and on the facts and circumstances of the case and in law, the learned CIT(A), NFAC has erred in not following the orders of Income-tax Appellate Tribunal, Mumbai ('ITAT') in Appellant's own cases for AY 2010-11, AY 2011-12, AY 2012-13 & AY 2020-21 wherein it was held that investments which do not yield dividend income should not be considered for computing average value of Investments while computing disallowance under Section 14A of the Act read with Rule 8D of the Rules.*
7. *On fact and circumstances of the case, the learned CIT(A), NFAC has erred in upholding the disallowance made by learned AO of sum amounting to Rs. 5,51,33,067 towards provision for warranty.*
8. *Without prejudice to Ground 7 above and on the facts and circumstances of the case, the learned CIT(A), NFAC has erred in not following the decision of the Hon'ble ITAT, Mumbai in Appellant's own case for AY 2008-09 wherein claim for provision for warranty to the tune of 0.10% of the value of the work completed was allowed to the Appellant.*
9. *Without prejudice to Grounds 1 and 2 above, on the facts and circumstances of the case, the learned CIT(A), NFAC has erred in not admitting the additional grounds in respect of allowability of claim for leasehold premium and other charges and also right of way charges.*
10. *Without prejudice to Grounds 1, 2 and 9 above and on the facts and circumstances of the case, the learned CIT(A), NFAC has erred in not considering the decision of the Hon'ble ITAT in the Appellant's own case for AYs 2002-03 to 2008-09 and Hon'ble CIT(A) for AY 2010-11 and AY 2011-12 wherein it was held that the development of leasehold land, leasehold premium and other charges shall be allowed proportionately over the lease period i.e. 60 years which amount to Rs. 73,53,445.*
11. *Without prejudice to Grounds 1, 2 and 9 above and on the facts and circumstances of the case, the learned CIT(A), NFAC has erred in not*



considering the decision of the Hon'ble ITAT in Appellant's own case for AY 2002-03 to 2008-09, AY 2010-11, AY 2011-12, AY 2012-13 and AY 2020-21 and Hon'ble CIT(A) for AY 2019-20 wherein it was held that the 'Right of Way' charges claimed by Appellant shall be allowed proportionately over the lease period i.e. 60 years which amounts to Rs. 4,44,219/-.

3. **Grounds nos. 1 and 2** were not pressed during the course of hearing. Hence they are **dismissed**.

4. **Ground nos.3 to 6** relate to disallowance u/s 14A of the Act. During the captioned year, the assessee was in receipt of dividend income of Rs. 1,29,75,000/- from shares held in Indian Oil Skytanking Limited and Rs. 22,23,104/- from units of mutual funds, both of which were exempt under section 10(34) and 10(35) of the Act respectively. The Assessee on a conservative basis, *suo moto* disallowed expenses under section 14A of the Act to the extent of Rs. 15,90,853/- in the return of income while computing its total income. The learned AO made disallowance of Rs. 84,71,490/- under Section 14A of the Act read with Rule 8D. The Id.CIT(A) upheld the disallowance.

4.1 Before us, it is stated that the assessee objected to the proposed disallowance by the AO in its submission made, dated October 20, 2016 and also submitted that opening and closing values of total amount of



investments held for the year ended March 31, 2013, were Rs. 2,16,25,14,860/- and Rs. 1,86,24,22,461/- respectively. Investments generating dividend income were valued at Rs. 47,30,92,399/- at the beginning of the year, and Rs. 17,30,00,000/- at the end of the year. Further, it also objected to the said disallowance in the submission made before the Hon'ble CIT(A) in its submission dated October 16, 2024, relying on the order of the ITAT in Appellant Company's own cases for AY 2020-21, 2012-13, AY 2011-12 & AY 2010-11 and on the special bench decision of Delhi Tribunal in case of Vireet Investments Pvt Ltd [(2017) 82 taxmann.com 415 (SB)]. It stated that the said issue is a covered matter wherein, it is decided by the Hon'ble ITAT Mumbai in assessee company's own cases that only those investments need to be considered which yielded exempt income while computing the disallowance under rule 8D. The ld.CIT(A) has upheld the disallowance.

5. We find that the assessee made an ad hoc disallowance. The AO applied the provisions of section 14A r.w. Rule 8D. He considered all investment for working out the disallowance. The matter is now settled that only investments yielding dividend need to be considered in working out the disallowance as held by the hon'ble **Special Bench of Hon'ble ITAT Delhi in the case of ACIT v. Vireet Investment (P.) Ltd.**



**[2017] 82 taxmann.com 415 (Delhi - Trib.) (SB).** Accordingly, the matter is restored to the Id.CIT(A) to examine the applicability of this decision and decide the matter in accordance with law. **The ground no. 3 to 6 are therefore, allowed for statistical purposes.**

6. **Ground Nos. 7 & 8** relate to the disallowance of claim of Provision for Warranty. The AO disallowed the claim of the assessee while the Id.CIT(A) upheld it.

7. Before us, it is submitted by the Id.AR that the assessee with respect to 14 contracts executed during the subject year, made a provision for performance warranty in the range of 0.25% to 0.50% of the value of contract work completed amounting to Rs.5,51,33,067. The Appellant while filing the return of income disallowed the entire provision. However, at the time of assessment proceedings, the Appellant Company raised an additional claim without prejudice, for provision for performance warranty at 0.1% of the value of the contract.

7.1 It is further submitted that the Appellant relied upon the order passed by the Hon'ble ITAT Mumbai in its own case for AY 2008-09. During the course of assessment proceedings, the company vide submissions dated December 15, 2016 and December 27, 2016 submitted that the Hon'ble Mumbai Bench of Income Tax Appellate Tribunal



('ITAT') in its own case for the AY 2008-09 has provided relief with respect to provision for warranty at the rate of 0.1% of the value of the contract. However, the claim of the was not granted. Further, during the appeal proceeding, reference was also drawn to the aforesaid order of the ITAT Mumbai for AY 2008-09 and the directions of the Hon'ble Dispute Resolution Panel for AY 2012-13 wherein, relief at 0.1% of the value of the contract was allowed following the decision of the ITAT for AY 2008-09. However, the said ground was dismissed by the Hon'ble CIT(A). To summarize, the aforesaid issue is covered by the orders of the Hon'ble ITAT Mumbai in the Appellant Company's own case.

8. We have perused the appellate order and find that the appellate order is silent on the contentions of the assessee despite the issues being covered having been deliberated and decided in its appeal before the coordinate bench of ITAT, Mumbai in AY 2008-09 and also the hon'ble DRPs order in assessee's own case in AY 2012-13. Accordingly, the matter is restored to the Id.CIT(A) to examine the applicability of these decisions and decide the matter in accordance with law. **The ground no. 7 and 8 are, therefore, allowed for statistical purposes.**

9. **Ground Nos. 9 & 10** relate to Proportionate deduction of expenditure for Leasehold premium and other charges. It is noticed that



there is no finding by the AO in the assessment order nor by the Id.CIT(A) in the appellate order.

10. In this regard, it is submitted by the Id.AR that the assessee Company had entered into an agreement with City and Industrial Development Corporation of Maharashtra Limited ('CIDCO') whereby the it had acquired a 60 years license to use the land for a lumpsum lease premium of Rs. 44,12,06,710/- paid in the earlier assessment years and a nominal annual rent which was not allowed as a revenue expenditure in the said years. Considering this, during the assessment proceedings, it claimed deduction on a proportionate basis in respect of the aforesaid leasehold premium and other charges vide submission dated September 21, 2016 relying upon the decision of the Hon'ble ITAT Mumbai in its own case for AY 2004-05 wherein, the matter was restored to the file of the AO and he was directed to verify the relevant facts in light of the decision in case of Sun Pharmaceuticals Industries Limited [(2010) 329 ITR 479 (Guj.)]. However, the said claim was not allowed by the learned AO. Further, as per the Order Giving Effect to the order of the Hon'ble ITAT Mumbai for AY 2004-05, relief for proportionate deduction of expenditure for leasehold premium and other charges was granted by the learned AO. In regard to the said claim, submission dated October 16,



2024 was filed before the Hon'ble CIT(A) wherein, reference was drawn to the aforesaid order of Hon'ble ITAT Mumbai for AY 2004-05 and for AY 2002-03 where the claim of the assessee was granted. To summarize, the aforesaid issue is covered by the orders of the Hon'ble ITAT Mumbai in the Appellant Company's own case.

11. **Ground No. 11** pertains to Proportionate deduction of expenditure on Right of Way. It is noticed that there is no finding by the AO in the assessment order nor by the Id.CIT(A) in the appellate order.

12. Before us, it is submitted that as stated above in case of Grounds 9 & 10 of above, the company had entered into an agreement with CIDCO on a 60 year licence for laying of pipelines. Consideration of Rs 2,66,53,121 was paid by the Appellant in earlier assessment years for Right of Way which was not allowed as a revenue expenditure in the said years. Considering this, during the assessment proceedings, it claimed deduction on a proportionate basis in respect of the aforesaid expenditure on Right of Way vide submission dated September 21, 2016. Further, submission dated October 16, 2024 was filed before the Hon'ble CIT(A) wherein, reference was drawn to the order of the Hon'ble ITAT Mumbai in case of AY 2002-03 where deduction on proportionate basis was allowed for the expenditure incurred for Right of Way. Reference was also



drawn to the order of the Hon'ble ITAT Mumbai for AY 2012-13 & AY 2020-21, where the said deduction was allowed relying on the order for AY 2002-03. Additionally, reference was drawn to the orders of the Hon'ble ITAT Mumbai for AY 2004-05 to AY 2008-09 and AY 2010-11 & AY 2011-12, where the matter was restored to the file of the learned AO to be decided afresh in accordance with the order of Hon'ble ITAT Mumbai for AY 2002-03. To summarize, the aforesaid issue is covered by the orders of the Hon'ble ITAT Mumbai in its own case.

12. All the issues in **ground nos. 9,10 and 11** are being considered together as the ld.CIT(A) has not adjudicated on them at all. We have perused the appellate order and find that the ld.CIT(A) has merely stated that the issue contained in ground nos. 6,7 and 8 before him as per Form no.35, did not arise from the assessment order, therefore, they did not need any adjudication. Accordingly, we have perused the assessment order as well. It is noticed that the AO has taken into account the issue of Provision for Warranty and the issue of disallowance under Rule 8d r.w. section 14A of the Act only.

13. However, in the course of hearing of the case before us, the ld.AR has drawn attention to the written submission made before the ld.CIT(A) dated 27.01.2017 wherein w.r.t. the above two issues, it is duly



submitted that the AO failed to considered its claim at all in the assessment order. She has referred to the submission dated 21.09.2016 before the AO wherein the claim of proportionate claim towards Leasehold premium was made which was however, not considered in the assessment order. Likewise, w.r.t. the proportionate deduction in respect of expenditure on Right of way, it is submitted in the letter addressed to the Id.CIT(A) dated 27.01.2017 that the AO failed to consider its claim in the assessment order.

14. It is evident from the perusal of records that on both the above issues, request was made by the assessee to the Id.CIT(A) to consider its claim in the light of previous decisions of appellate authorities including the jurisdictional ITAT. It is seen that both the issue are recurring in as much as they are being contested in past several years. Vide Paper Book submitted before us, as per Index and annexures, the assessee submitted copies of letters dated 21.09.2016,20.10.2016,02.12.2016 and 27.12.2016 incorporating various submissions made in which the above issues were clearly stated and claimed in its favour.

15. We, therefore, notice that the Id.CIT(A) has completely ignored the request of the assessee without taking note of submissions made before him as well. He neither called for any remand report or any



clarification from the AO for non consideration of assessee's claim nor made any attempt himself to examine the merits therein. In such a situation, it is quite apparent that both the authorities have not followed the principles of natural justice by denying a valid claim of the assessee. The Id.CIT(A) has brushed aside the grounds specifically raised before him on purely technical ground. It is a settled law that the CIT(A) has co-terminus powers of an Assessing officer and as held in **CIT vs Kanpur Coal Syndicate** [1964] 53 ITR 225 (SC), the AAC(now CIT(A)), has plenary powers in disposing of an appeal. The scope of his power is co-terminus with that of the ITO. He can do what the ITO can do and also direct him to do what he has failed to do. If the ITO has the option to assess one or other of the entities in the alternative, the AAC can direct him to do what the ITO should have done in the circumstances of a case. Therefore, it is duty cast upon him to consider all points of issue and give a finding. Further, section 250 clearly provides that the Commissioner (Appeals) may make further inquiry or direct the Assessing officer to undertake further inquiry before disposing of the appeal and reports the results of the inquiry to the commissioner (Appeals) and also, the order of the Commissioner (Appeals) shall state the point of determination, decision and the reasons for such decision while disposing of the appeal in writing. From the plain reading of the section, it emerges that the CIT



(A) shall, by himself or through an assessing officer, make necessary inquiry before adjudicating any appeal. However, in the case under consideration, the Id.CIT(A) has grossly failed to adhere to these provisions of the Act. In such a situation, the above matters need to be remanded back to the Id.CIT(A) to arrive at a conclusion by examining all the relevant facts of the case including submissions made by the assessee, so as to find out the actual basis for their respective contentions.

16. Thus, in the interest of justice, we deem it appropriate to allow the appeal for statistical purposes, emphasizing the need for a thorough and compliant adjudication process. The Id. CIT(A) shall give proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice in the set aside remand proceedings for due adjudication of the appeal of the Revenue filed before him. **Accordingly, ground nos. 9,10 and 11 are allowed for statistical purposes.**

17. In the result, the appeal of the assessee is **partly allowed.**

Order pronounced in the open court on **10/03/2025.**

Sd/-

**NARENDER KUMAR CHOUDHRY**  
(न्यायिक सदस्य /JUDICIAL MEMBER)

Sd/-

**PRABHASH SHANKAR**  
(लेखाकार सदस्य/ACCOUNTANT MEMBER)



Place: मुंबई/Mumbai  
दिनांक /Date 10.03.2025  
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.**

