

**IN INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

**BEFORE SHRI. LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND SHRI. SOUNDARARAJAN K, JUDICIAL MEMBER**

ITA Nos.1184, 1185/Bang/2025
Assessment Years : 2017-18, 2018-19

M/s Raajratna Energy Holdings Pvt. Ltd Plot No 304, Level 3, Surya Chakra House, Road No 78, Jubilee Hills, Hyderabad – 500033. PAN : AAECM 6049 G	Vs.	ITO, Ward –3(2)(3), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Ramesh Babu, CA
Revenue by	:	Shri. Swaroop Manava, Addl. CIT(DR)(ITAT), Bangalore.

Date of hearing	:	07.08.2025
Date of Pronouncement	:	11=.09.2025

ORDER

Per Laxmi Prasad Sahu, Accountant Member :

Both these appeals are filed by the assessee against the ex-parte Order passed by the CIT(A), for the Assessment Years 2017-18 and 2018-19. The assessee has raised the following issues:

Assessment Year	2017-18	2018-19
Particulars	Amount	Amount
Addition under section 14A	2254686	3067036
Addition under section 56(2) (viib)	31858800	-

Interest income	78471	386801
Disallowance of long term capital loss	5,10,000	-

2. From the above table it is clear that the issue raised by the assessee at Sl. Nos.1 and 3 are common for both the years, therefore, we decide these issue together.

3. Briefly stated the facts of the case are that assessee filed return of income within the due date. The return filed was selected for scrutiny under CASS and statutory notices were issued to the assessee. Assessee furnished reply and it was noticed that during the impugned Assessment Years, assessee had not received any exempt income and has made huge investments. Assessee has suo-moto disallowed Rs.48,000/- and Rs.3,81,256/- respectively for both the Assessment Years. Assessee's submissions were not accepted by the AO and the AO has applied section 14A r.w.r. 8D(ii) of the Rules and computed disallowance after relying on various judgments as mentioned in his order.

4. Further, the AO noted that there is a difference in the interest income reported in the income tax return and figures appearing in Form 26 AS. Therefore, the AO made addition towards interest income as mentioned in above table for both the years respectively. Further it was noted that assessee has issued 27,80,000 shares to Tavasya Venture Partners Pvt. Ltd., at a premium of Rs.15 per share and securities premium was received of Rs.4,17,00,000/- and 40,000 shares at par. The face value of each share is Rs.10/-. Assessee stated that these shares have been issued based on the share valuation report from the CA and has valued it by adopting discounted cash flow method (DCF). On perusal of the valuation report, he noticed that value of shares adopted did not match with the balance sheet. Therefore, assessee company was asked to submit details of same and to justify why the share premium received should not be

taxed as income from other sources in view of the provisions of section 56(2)(viib) of the Act. Assessee has failed to substantiate this claim. AO noted that as per the provisions of section 56(2)(viib) of the Act the share has to be valued at fair market value as per the method prescribed in income tax rules 11U and 11UA of the Rules or as may be substantiated by the company to the satisfaction of the AO based on the value as on date of issue of shares. Assessee has valued shares at Rs.15 premium per share and assessee filed valuation report applying DCF method wherein valued at Rs.24.93 per share as determined. A Copy of certificate was produced by the assessee which is incorporated in the Assessment Order. The valuer (Accountant) had given disclaimer in the certificate. The entire shares were issued to Tavasya Ventures Partners and details of address, PAN and mode of Transactions were given by assessee during assessment proceedings. The AO observed that the Accountant in his report has stated that “the calculation of present value of DCF is based on the projected financials of the company as certified by the management, we have only carried out valuation based on the projected financials, no liabilities are considered as per the information provided by the management”. The AO relied on judgment noted in his Order and he rejected the valuation by the AO and he applied net asset value method (NAV) and fair value calculated for each equity shares at Rs.13.54 per share. Accordingly, he noted that there is huge difference between the value adopted by the CA under DCF method and value adopted by the AO under NAV. The difference amount of Rs.3,18,58,800/- was added as income from other sources as per the provisions of section 56(2)(viib) of the Act for the Assessment Year 2017-18. Further for the Assessment Year 2018-19, AO has disallowed short term capital loss of Rs.5,10,000/- as per his Order at para No.5 on sale of investment in Venu Hydro Powers Ltd., and observed that the assessee has claimed excess long term capital loss of Rs.5,10,000/-.

5. Aggrieved from the above Order, assessee filed appeal before the learned CIT(A). The CIT(A) issued 5 notices to the assessee for both the Assessment

Years which is evident from para 5 of his Order but there was no response from the assessee's side. Therefore the learned CIT(A) dismissed the appeal of the assessee.

6. Aggrieved from the above Order, assessee filed appeal before the Tribunal. The learned Counsel has filed written submissions for both the Assessment Years which are as under:

ITA No. 1184/BANG/2025

I. Brief facts of the case:

The assessee is engaged in generation of Power. The Assessee e-filed its return of income for the A.Y. 2017-18 on 31.10.2017 declaring a total income of Rs. NIL under regular provisions of the I.T. Act, 1961 and loss of Rs.30,42,673/- U/s.115JB of the I.T. Act, 1961. Subsequently, the case was selected for 'limited scrutiny' under CASS. Subsequently, the case was centralised to Central Circle-2(2), Bangalore. The Assessee submitted all the information called for by the above Assessing Officer promptly from time to time. The above Assessing Officer completed the IT Assessment of the assessee U/s.143(3) on 07.12.2019 by making the following additions under regular provisions of the Income-Tax Act, 1961.

	Addition amount (Rs.)
1) Addition U/s.14A	22,54,686/-
2) Addition U/s.56(2)(vüü)	3,18,58,800/-
3) Interest income	<u>78,471/-</u>
Total additions	<u>3,41,91,957/-</u>

Aggrieved by the above unjust and incorrect additions referred (1) and (2) above, the assessee filed appeal to the Commissioner of Income-Tax (Appeals) on 04.01.2020.

Subsequently, the Hon'ble Commissioner (A) gave notices to the assessee through e-mail of the company and the assessee promptly forwarded all such notices to its authorised representative Sri. V Shekar

Babu of Akasam& Associates, Chartered Accountants along with all the required information and submissions with a request to submit the same to the Hon'ble Commissioner of Income-Tax (Appeals) after scrutiny and editing the same. The assessee also forwarded the last and final show cause notice issued by the Hon'ble CIT (A) on 19.03.2025 with a request to make the necessary submissions.

*However, the Hon'ble CIT (A) passed an ex-parte order on 27.03.2025 dismissing our **appeal for non-submission of response without going into merits of the appeal**. It was shocking to the Assessee that its authorised representative did not make any submissions inspite of the regular requests and assistance by the Assessee. The Assessee categorically and humbly submit that this lapse happened entirely due to the inaction and lapse of the assessee's authorised representative and not due to the negligence of the assessee. A sworn affidavit from the Principal Officer of the company to this effect is being submitted by the assessee to bring out true facts in this regard.*

Further, the Hon'ble CIT (A) did not pass the order on merit but simply dismissed our appeal due to non-response which is against the principles of natural Justice as held by various ITAT benches/High courts in umpteen number of cases. Aggrieved by this unjust and invalid ex-parte dismissal of our Appeal by the Hon'ble CIT (A), due to a non-response without going into merits, the assessee preferred this appeal.

II. Our ground-wise submissions are as follows:

- 1. Ground No. 1: The Hon'ble Commissioner of Income-tax (Appeals) erred in law in summarily dismissing the appeal of the assessee for the sole reason of non-response to his notices and without basing his decision on merits of the appeal and without going through the available material with him which is gross violation of the principles of natural justice as held by various courts/tribunals in umpteen number of cases.**

We humbly submit that the learned Commissioner of Income-Tax (Appeals) did not decide our appeal on merits and on the basis of the material available with him, but simply dismissed the same with the following remarks:

"The law assists those who are vigilant, not those who sleep over their rights. This principle is embodied in the dictum: vigilantibus non dormientibus jura subveniunt. Thus, the non-response from the appellant is nothing but negligence

and inaction on part of the appellant. Therefore, the appeal proceedings are hereby closed, and it is assumed that the appellant has nothing to say. Accordingly, the grounds of appeals filed by the appellant are treated as dismissed.”

The above decision of the Hon’ble CIT (A) dismissing our appeal summarily solely for non-response and non-submission of the information is clearly against the principles of natural justice as held by various ITAT benches including the Jurisdictional ITAT benches in the following cases:

1. Alps Construction Vs. Income-tax Officer (2025) 170 taxmann.com 371 (Mumbai-Trib.).
2. Meena Jewellers Extension (P.) Ltd. Vs. ACIT (2025) 171 taxmann.com 55 (Hyderabad-Trib.).
3. Dnyaneshwar Baburao Kathe Vs. Income-tax Officer (2024) 168 taxmann.com 408 (Pune-Trib.).
4. Amitkumar Dhirajlal Joshi Vs. Income-tax Officer (2024) 166 taxmann.com 310 (Rajkot-Trib.).
5. Dhanya TMT (P.) Ltd. Vs. Deputy Commissioner of Income-tax (2024) 159 taxmann.com 1563 (Bangalore-Trib.).
6. Vattikuti Veera Venkata Prasad Vs. Income-tax Officer (2024) 160 taxmann.com 1252 (Visakhapatnam-Trib.).
7. Wrinkle Marketing (P.) Ltd. Vs. Income-tax Officer (2024) 159 taxmann.com 1395 (Kolkata-Trib.).
8. Ramson Remedies Vs. Assistant Commissioner of Income-tax (2024) 159 taxmann.com 1376 (Amritsar-Trib.).
9. RMPInfotec (P.) Ltd. Vs. Assistant Commissioner of Income-tax (2024) 158 taxmann.com 266 (Chennai-Trib.).
10. Effluent & Water Treatment Engineers (P.) Ltd. Vs. Deputy Commissioner of Income-tax (2022) 140 taxmann.com 420 (Kolkata-Trib.).
11. Marvel Industries Ltd. Vs. Deputy Commissioner of Income-tax (2022) 140 taxmann.com 430 (Mumbai-Trib.).
12. Bharat Chaturbhuji Vedant Vs. Deputy Commissioner of Income-tax (2025) 175 taxmann.com 178 (Jodhpur-Trib.).

Hence, in view of the above decisions which squarely apply to the facts of our case, we humbly submit that the above order of the Hon’ble CIT (A) is unjust and invalid. Hence, we earnestly request your Honour to allow this ground of appeal and delete both the unjust and incorrect additions made by the Assessing Officer and wrongly upheld by the Hon’ble CIT (A).

2. Ground No. 2:

a) The Hon'ble Commissioner of Income-tax erred in law and in facts in not appreciating the legal position that provision of Sec. 14A of the does not apply when the appellant has not earned and exempt income either in the form of dividend or in the form of any other exempt income as consistently held by various courts/tribunals and consequently should have deleted the addition of Rs.22,54,686/- wrongly made by the learned Assessing officer on this account.

b) The Hon'ble Commissioner of Income-tax erred in law and in facts in not appreciating the fact that the assessee has not incurred any direct or indirect expenditure (except Rs.48,000/- which was disallowed by the assessee himself) with respect to or for the purpose of investments made in its subsidiaries as it made the investments out of its own cost-free funds and not out of any borrowed funds.

c) The Hon'ble Commissioner of Income-tax erred in law and in facts in not appreciating the fact that the investments were made by assessee in its subsidiaries are exclusively for strategic business purposes made to gain management and control of subsidiary companies and were not made with the intention of earning exempt income from these investments.

d) The Hon'ble Commissioner of Income-tax erred in law and in facts in not appreciating the fact that the decisions referred to by, the learned Assessing officer including the Hon'ble Supreme court's decision in the case of Maxopp Investment Ltd. Vs. Commissioner of Income-tax (2018) 91 taxmann.com 154 (SC)/402 ITR 640 does not apply to the facts of the assessee.

e) The Hon'ble Commissioner of Income-tax should have appreciated that the learned Assessing officer's general comments that "when an investment is made it involves certain indirect expenses like administrative expenses as well" does not hold good in the case of assessee as all these investments were made in its subsidiaries as one time basis for strategic business purposes and hence does not involve any cost or administrative expenses.

During the financial year 2016-17, the Assessee made long-term investments to the tune of Rs.5,86,52,700/- in its subsidiary

company Viz., Anakampoil Power Private Limited **exclusively for strategic business purposes** and not with an intention to earn dividends from the same. The outstanding investments in all of its subsidiaries as on 31.03.2017 are to the tune of Rs.27,62,13,473/-. All these subsidiaries are Private limited companies which are all engaged in power generation which clearly shows that the Assessee made these investments **exclusively for strategic business purposes and not with an intention to earn dividends or gain any profit by trading in them.** Further, all these investments were made **by the assessee out of its own resources and not out of any borrowings.** As on 31.03.2017, the Assessee is having its own funds to the tune of Rs.54.87 crores in the form of share capital and reserves and the same can be established from the attached Audited Balance sheet of the Assessee company as on 31.03.2017. Hence, it is very clear fact that the entire long-term investments of the assessee made to the tune of Rs.27.62 crores of the Assessee exclusively in its subsidiaries (Private limited companies and power generation companies) is out of its own resources of Rs.54.87 crore and not out of any borrowings. Hence, it has not incurred any expenses on these investments in the form of interest or administrative expenses (except Rs.48,000/-) as the same is out of its own funds and it is only **one-time** investments in its closely held subsidiaries. It has also not earned any exempt income during the year from these investments in the form of dividends. The small amount of administrative expenses of Rs.48,000/- incurred by the Assessee was voluntarily disallowed by the Assessee himself. In umpteen number of cases various courts/ITAT benches have consistently **held that when the investment is made out of its own funds, provisions of sec. 14A does not apply at all.** The following are some of such decided cases:

- a) Principal Commissioner of Income-tax-IV, Ahmadabad Vs. Sintex Industries Ltd. (2018) 93 taxmann.com 24/255 TAXMAN 171 (S. C)
- b) CIT-2, Mumbai Vs. HDFC Bank Ltd (2014) 49 taxmann.com 335 (Bombay H C).
- c) Commissioner of Income Tax Vs. Reliance utilities and Power Ltd. (2009) 178 Taxman 135 (Bombay HC).
- d) Principal Commissioner of Income-tax -7 Vs. Premier Finance and Trading Co. Ltd (2019) 262 TAXMAN 341/104 taxmann.com 97 (Bombay).

- e) *Commissioner of Income-tax, Faridabad Vs. NHPC Ltd. (2019) 110 taxmann.com 461 (Punjab and Haryana)*
- f) *Roca Bathroom products (P.) Ltd. Vs. Principal Commissioner of Income-tax, Chennai (2019) 261 TAXMAN 197/101 taxmann.com 395 (Madras).*
- g) *Asst. Commissioner of Income-tax, Circle-16(2), Hyderabad Vs. Progressive Constructions Ltd (2018) 92 taxmann.com 104 (Hyderabad-ITAT) (SB).*
- h) *ACIT, Circle- 13(1), New Delhi Vs. NIIT Technologies Ltd. (2021) 123 taxmann.com 135 (Delhi-Trib).*
- i) *Principal Commissioner of Income-tax, Vadodara Vs. Gujarat Flurochemicals Ltd (2020) 275 TAXMAN 366/120 taxmann.com 433 (Gujarat).*
- j) *K. B. Mehta Construction (P) Ltd. Vs. DCIT (2020) 119 taxmann.com 456 (Ahmedabad- Trib).*
- k) *Commissioner of Income-tax Vs. Weizmenn Ltd. (2020) 115 taxmann.com 247 (SC)/273 TAXMAN 15 (S.C)*
- l) *Zaveri & CO (P) Ltd Vs. Deputy commissioner of Income-tax, Circle 4(1)(2), Ahmedabad (2020) 118 taxmann.com 429 (Ahmedabad-ITAT).*
- m) *Triveni Engineering & Industries Ltd. Vs. Additional Commissioner of Income-tax (2020) 118 taxmann.com 301 (Delhi-Trib).*
- n) *Addl. Commissioner of Income-tax Vs. PNB Gilts Ltd. (2020)116 taxmann.com 418 (Delhi-Trib).*

*The fact of not earning any exempt income by the assessee on these investments was admitted by the learned Assessing officer himself in Para 4.1 of his Assessment order itself. As the Assessee made all its investments in its own closely held subsidiaries, the following general averments of the learned assessing officer in para 4.2 of his assessment order Viz., **“the cost of such funds and its management such as identification of the company in which the funds are to be invested, the statutory compliances under the Companies Act, the part utilization of expenses which are charged as overheads was inevitable”** and learned AO’s observation in para 4.4 that **“it is also seen that the company deploys manpower and resources which attract costs in the form of salaries, rent, audit fees, filing fees with ROC communication cost, professional charges amongst other***

expenditure” are not at all applicable to the facts of the assessee’s case.

Hence, the learned Assessing officer clearly erred in not appreciating **the specific facts of the Assessee and had clearly proceeded with a pre-determined mind and based on general assumptions inspite** of the fact that they are not applicable to the facts of the assessee. Hence, the Assessing officer clearly erred in invoking the provisions of sec.14A read with Rule 8D and making an unjustified and invalid addition of Rs.22,54,686/-. In umpteen number of cases the Hon’ble Supreme Court, various high courts/ITAT benches have clearly held that **when the assessee has not earned any exempt income, the provisions of sec 14A are not applicable at all.** The following are some of such cases:

- i. *Principal commissioner of Income-tax-2 Vs. Caraf Builders and Constructions (P.) Ltd (2019) 112 taxmann.com 322 (S.C)*
- ii. *Principal Commissioner of Income-tax Vs. GVK Project and Technical Services Ltd. (2019) 106 taxmann.com 181/264 TAXMAN 76. (S.C)*
- iii. *Principal Commissioner of Income-tax Vs. Oil Industry Development Board (2019) 103 taxmann.com 326 (S.C) /262 TAXMAN 102 (S.C).*
- iv. *Principal Commissioner of Income-tax, Patiala Vs. State Bank of Patiala (2018) 259 TAXMAN 314/ 99 taxmann.com 286 (SC).*
- v. *Maxopp. Investment Ltd. vs. CIT (2018) 91 taxmann.com 154 /254 TAXMAN 325 (SC).*
- vi. *CIT Vs. Chettinad logistics (P) Ltd. (2018) 95 taxmann.com 250 (SC).*
- vii. *Principal Commissioner of Income-tax, New Delhi Vs. Mcdonald’s India (p). Ltd (2019) 101 taxmann.com 86 (Delhi).*
- viii. *Principal Commissioner of Income-tax-2 Vs. Caraf Builders and Constructions (P) Ltd. (2019) 101 taxmann.com 167/261 TAXMAN 47 (Delhi)*
- ix. *Principal Commissioner of Income-tax Vs Ballarpur Industries Ltd (2019) 104 taxmann.com 394 (SC);*
- x. *Joint Investment (P) Ltd Vs. CIT (2015) 59 taxmann.com 295 /233 TAXMAN 117 (Delhi).*

- xi. *Commissioner of Income Tax Vs. Sociedade De Fomento Industrial (P) Ltd. (2021) 123 taxmann.com 38 (Bombay).*
- xii. *Marg Ltd. Vs. Commissioner of Income-tax (2020) 120 taxmann.com 84 (Madras) / 275 TAXMAN 502 (Madras).*
- xiii. *Deputy commissioner of Income-tax, Circle 11(1), New Delhi Vs. Hind Industries Ltd. (2020) 122 taxmann.com 165 (Delhi-Trib).*
- xiv. *Commissioner of Income-tax, Bangalore Vs. Chemsworth (P) Ltd. (2020) 275 TAXMAN 408/ 119 taxmann.com 358 (Karnataka).*
- xv. *Principal Commissioner of Income-tax Vs. Jay Chemical Industries Ltd. (2020) 120 taxmann.com 315 (Gujarat)/ 275 TAXMAN 78 (Gujarat).*
- xvi. *IBM India (P) Ltd. Vs. Asst. Commissioner of Income-tax, Circle-4(1)(2), Bangalore (2020) 120 taxmann.com 424 (Bangalore-Trib).*
- xvii. *Kundan Rice Mills Ltd. Vs. Asst. Commissioner of Income-tax, Panipat (2020) 120 taxmann.com 422 (Delhi-Trib).*
- xviii. *Deputy Commissioner of Income-tax, Circle-2(2), Bangalore Vs. Cornerstone Property Investment (P) Ltd. (2020) 118 taxmann.com 541 (Bangalore-Trib).*
- xix. *Commissioner of Income-tax Vs. Syndicate Bank (2020) 270 TAXMAN 237/ 115 taxmann.com 287 (Karnataka).*
- xx. *Principal Commissioner of Income-tax-3 Vs. Reliance Ports and Terminals Ltd. (2020) 114 taxmann.com 529 (Bombay).*
- xxi. *DCIT Vs. Maheswari Mega Ventures Limited (Hyderabad-ITAT).*
- xxii. *Bellwether Microfinance Fund (P) Ltd. Vs. ITO, Hyderabad (2014) 47 taxmann.com 260 (Hyderabad-Trib.).*

Further, the Hon'ble Commissioner of Income-tax (Appeals)-2, Hyderabad in Assessee's own case for the A Y 2014-15 on account of the same investments deleted the addition made by the Assessing officer U/s. 14A by following the decision of the Hon'ble Hyderabad bench of the ITAT in the case of DCIT Vs. Maheswari Mega Ventures Limited ITA No. 367/Hyd/2013 (copy attached) deleted the addition of Rs.46,64,689/- made U/s. 14A by holding that when no exempt income was earned by the assessee, no addition U/s. 14A can be made and the department has also accepted the same and did not go for any appeal to the ITAT.

The cases referred to and relied by the learned Assessing Officer and our submission on the same are as follows:

1. Maxopp Investments Limited in 402 ITR 640(SC):

The learned Assessing Officer referred to this Judgement in last Para of the page no.4 of the Assessment order and stated as follows:

“In the light of the above finding, the Apex Court upheld the restriction of the disallowance to the dividend income earned in the case of State Bank of Patiala as the same were held as stock in trade. The rationale behind this was that when the same are held as stock in trade, assessee may or may not get dividend. However, on earning the dividend, the provisions of section 14A are triggered and an apportionment needs to be made which would not have been warranted, if no dividend was earned. However, that is not the case in the event, the same is held as investment. In such cases, the Apex Court has made it clear that the purpose of holding was to earn dividend and hence the provisions of section 14A are applicable. This fine distinction has not been appreciated by the assessee while making its claim.”

The learned Assessing Officer stated that as per the Hon’ble Supreme Court’s decision in the above case, if the shares are held as investment, the purpose of the holdings was to earn dividend and hence the provision of Sec.14A are applicable.

The facts of our case are totally different and distinguishable from the facts of the above case. **We have made investments out of our own funds exclusively in our subsidiaries for strategic business purpose and not with the intension to earn dividend income. Further, as we have made the investments out of our funds that too in closely held subsidiaries on long term basis.** Our submission is that, we have not incurred any expenditure either on interest or on administrative expense.

In fact, in the above case, the Hon’ble Supreme Court clearly held that **“only the expenditure which is in relation to earning dividends can be disallowed U/s.14A and Rule 8D”**. As stated above, as we have not incurred any expenditure, our submission is that provisions of Sec.14A read with Rule 8D are not applicable to us. Hence, even as per the above decision of the Hon’ble Supreme court relied on by the learned Assessing officer,

the provisions of sec 14A read with Rule 8D are not applicable to us. Hence, we humbly submit that the learned Assessing officer misinterpreted the above decision and wrongly applied to our case.

On the other hand, the Hon'ble Supreme Court in the case of 1) Caraf Builders (2) GVK projects and Technical Services Ltd. (3) Oil Industry Development Board (4) State Bank of India and (5) Chettinad logistics (P.) Ltd. (referred above) clearly held that when the Assessee has not earned any exempt income, the provisions of Sec. 14A are not applicable and all these decisions of Hon'ble Supreme court squarely applies to the facts of our case.

2. Indian Sugar Exim Corp. Ltd. Vs. DCIT in ITA No.1042 (Del.)/2005 dt 05.12.2008:-

The decision of the Hon'ble Delhi Bench of the ITAT in the above case was quoted by the learned Assessing officer as follows (page No. 3 of the Assessment order).

*"The reason is that the management has to take investment decisions in accordance with the rules and regulations of the company and make investments in bonds and units, as the case may be. The management has also to pay attention towards rise or fall in the value of investments with a view to suitably change the investment pattern. **All these activities lead to expenditure, which will be in the nature of administrative expenditure.**"*

In the above case, the Hon'ble Delhi bench of the ITAT opined that "the management has also to pay attention towards rise or fall in the value of the investments with a view to suitably change the investment pattern and all these activities had to incur expenditure, which will be in the nature of administrative expenses.

The above may be true in the facts of the above case whose investment is made in bonds and units in the open market/stock exchange. The facts of our case are entirely different as we have not made the investments in the open market through stock exchanges with an intention to gain by trading in the market or earning dividends therefrom. We have exclusively made our investments in our closely held subsidiaries exclusively involved in power generation business for strategic purpose and not with an intention to gain profit by trading in them or with an intention to earn dividend/interest from there. All these investments were made in our subsidiaries which are closely held private limited

companies exclusively doing power generation business. In fact, we are not allowed to trade in these investments as they are all closely held private limited companies and hence cannot be traded or transferred freely.

Hence, the decision in the above case clearly does not apply to the facts of our case and the learned assessing officer failed to take this difference into consideration.

3. CIT Vs. Walfort Share & Stock Brokers (P.) Ltd 326 ITR 0001

*In this case, the Hon'ble supreme court finally held that "for attracting Sec. 14A, **there has to be proximate cause for disallowance, which is its relationship with tax exempt income** and since pay-back or return of investment is not proximate cause, Sec. 14A is not applicable in such case.*

*Infact, this decision **support our case and it is not against our case** as held by the learning Assessing Officer since it was held that for applying Sec. 14A and disallowing certain expenditure there has to be proximate case and it has to have relationship with tax exempt income.*

In fact, it is supporting our argument that no proximate expenditure has been incurred by us for making it disallowable. During the year, we have not earned any exempt income nor incurred any expenditure for earning the same.

Hence, the decision of the Hon'ble Supreme Court in the above case strengthens our case. The same is the case with other decision quoted by the learned Assessing Officer {Godrej & Boyce Mfg. Co. Ltd. (Bombay HC)}

4. Judgement of the Hon'ble ITAT, Mumbai Bench in the case of ACIT Vs. Citycorp Finance (India) Ltd. 1081 ITD 457:

We fail to understand why the learned Assessing Officer referred to this decision. It not at all supports his stand and infact it supports our stand. In this case, the Hon'ble ITAT clearly held that "the Assessing Officer could not make disallowance on adhoc basis and he is statutorily required to compute disallowance in manner provided by sub-section (2) and (3) of Sec.14A". Hence, we earnestly submit that this Judgement is not at all relevant to us.

5. Judgement of the Hon'ble Kolkata Bench of the ITAT in the case of CIT Vs SG Investments and Industries Ltd (2011) 89 ITD 44.

In this case the Hon'ble ITAT held as follows:

“There should be apportionment of expenditures between taxable income and non-taxable income; where capital is borrowed for various indivisible business activities and investment in shares is also made out of borrowed capital, proportionate interest paid on such borrowings is to be deducted from gross dividend income before computing amount of dividend on which exemption under section 10(33) is to be allowed, and pro rata expenses on account of interest relating to borrowings for investment in shares is to be disallowed against taxable business income”

Hence, as per the above decision, if the investment was made out of borrowed funds, proportionate interest expenditure is to be disallowed. We humbly submit that this decision is not applicable to us as we have exclusively made the investment out of our own funds and not out of borrowed funds.

6. ITAT Mumbai Bench decision in the case of M/s. Kalpataru Construction Overseas (P.) Ltd. Vs. CIT (2007) 13 SOT 94 (Mumb.):

*In this case the Hon'ble ITAT held that “expenditure incurred in relation to exempt income have to be disallowed U/s.14A regardless of whether they are direct or indirect, fixed or variable and managerial or financial in accordance with law”. The above decision does not apply for us as our facts are totally different. **We have neither incurred any expenditure nor earned any exempt income and hence this decision does not apply to us.***

7. CBDT circular 5/2014:*The gist and essence of memorandum introducing the provisions of Sec.14A and the above circular is “expenses incurred can be allowed only to the extent they are relating to the **earning of taxable income**”.*

*The above circular also does not apply to the facts of our case as we have **neither incurred any expenditure nor***

earned any exempt income. Further, the CBDT circular is not binding on the Assessee as consistently held by various courts/ITAT benches.

Hence, in view of the above genuine facts and umpteen number of decided cases in our favour and inapplicability of the cases relied on by the learned Assessing officer, we earnestly request your Honour to allow these grounds of appeal and delete the unjustified and invalid addition of Rs.22,54,686/- made by the learned Assessing officer U/s. 14A of the I. T Act, 1961.

3. Ground No. 3:

a) The Hon'ble Commissioner of Income-tax(appeals) erred in law and facts in not accepting the DCF method of valuation of its shares adopted by the assessee for arriving at the fair market value of its shares even though Sec. 56(2)(viib) specifically provides that the assessee can choose this method and the same was upheld by various courts/Tribunals in umpteen number of cases and consequently ought to have deleted the unjustified addition of Rs.3,18,58,800/- made by the learned Assessing Officer on this account.

b) The Hon'ble commissioner of Income-tax(appeals) should have appreciated the fact that the valuation as per DCF method was done by the chartered accountant in accordance with the provisions of sec. 56(2)(viib) of the I. T Act, 1961 read with Rule IIV and IIVA and the rejection of the same was made by the learned Assessing officer for the flimsy, immaterial and irrelevant reasons that the CA's report is qualified and not supported by ant material though the comments in the report are common and general in nature.

During the year the Assessee issued 27,80,000/- shares of Rs.10/- at a premium of Rs.15/- per share and collected a premium of Rs.4,17,00,00/-. The Assessee issued these shares at a price determined price @ Rs.25/- per share after obtaining the valuation report from a Chartered Accountant who valued the same at Rs.24.93/- by following Discounted Cash Flow method which is one of the prescribed method under Rule 11UA, of the Income-Tax Rules, 1962. As per the provisions of Rule 11U/11UA, the assessee can adopt either the **Net Assets method or the**

discounted cash flow method at his option and he is not obliged to follow the Net Assets method alone.

Though the learned Assessing officer has not disputed this legal position, he rejected the discounted cash flow method adopted by the assessee by observing that **“the certificate furnished is qualified and has not been substantiated with any basis”**. The disclaimers contained in the certificate **are standard disclosures found in any certificate and not specific to the certificate obtained by the Assessee.** If the learned Assessing officer is not satisfied about the basis of calculations made, he could have directed the assessee to furnish the same.

Hence, rejection of the valuation done by the assessee on the above flimsy and untenable grounds is not valid and unjustified. The **substitution of the Net Assets method by the learned Assessing Officer is completely beyond his Jurisdiction and invalid.**

In the case of Vodafone M-Pesa Ltd. vs DCIT, 164 ITR 257, the Hon'ble Bombay High court categorically held that the A.O cannot change the method of Discounted Cash Flow method (DCF) as adopted by the assessee for share valuation which is clearly in violation of Rule 11UA.

Further, in the case of CIT, Corporate Circle-3, Chennai vs VVA hotels Pvt. Ltd., 276 Taxman 330 (Madras), The Hon'ble Madras High court held that variation between **projection and actual results cannot be ground** for rejection of DCF method to value shares. It also held that unless the Assessing Officer is able to bring out any evidence of abuse of benevolent provision with an intention to defraud the revenue, the option given to the assessee shall be held to be absolute as regards DCF method of share valuation. Further, in the case of Creditalpha Alternative Investment Advisors (P.) Ltd, 134 taxmann.com 223, Hon'ble Mumbai ITAT held that **the Assessing Officer has no authority to pick and choose the valuation method and make addition as it** was the assessee who has option to choose the method of valuation. Further, in the case of Urmin Marketing Pvt. Ltd., 122 taxmann.com 40, the Hon'ble ITAT, Ahmedabad bench held that the **valuation report prepared by technical expert cannot be disturbed by the AO** without taking the opinion of the technical person. Further, in the case of CIT vs I.A. Hydro Energy (P) Ltd., the Hon'ble Chandigarh bench of the ITAT in ITA No 548/CHD/2022 Dt 11.10.2023, held that the **AO's decision to substitute DCF method of share valuation by NAV method was not in accordance with rule 11UA of the IT rules.** This

decision was also upheld and confirmed by the Hon'ble Himachal Pradesh High court in the case of Principal Commissioner of Income-tax Vs. I.A. Hydro Energy(P) ltd (2024) 163 Taxmann.com 408(Himachal Pradesh)

The following decisions also support our above contentions:

1. *I-Exceed Technology Solutions (P.) Ltd. Vs. Income-tax officer, ward-3(1), Bangalore (2020) 119 taxmann.com 378.*
2. *Asst. Commissioner of Income-tax, Circle-2, Alwar Vs. Safe Decore (P.) Ltd. (2018) 90 taxmann.com 161 (Jaipur-Trib.).*
3. *Keep learning Resources (P.) Ltd. Vs. Income-tax officer (2024) 165 taxmann.com 224 (Mumbai-Trib.).*
4. *Shanta Blankets (P.) Ltd. Vs. Income-tax Officer (2024) 162 taxmann.com 97 (Delhi-trib.).*
5. *Rugby Regency (P.) Ltd. Vs. Additional Commissioner of Income-tax (2024) 160 taxmann.com 1056 (Delhi-Trib.).*
6. *Joint Commissioner of Income-tax (OSD) Vs. OM Sons Marketing (P.) Ltd. (2024) 158 taxmann.com 175 (Amritsar-Trib.).*
7. *ThinkstationsLearing (P.) Ltd. Vs. ACIT (2023) 155 taxmann.com 451 (Delhi-Trib.).*
8. *Deputy Commissioner of Income-tax, Circle-11(1) Vs. HometrailBuildtech (P.) Ltd. (2023) 155 taxmann.com 578 (Delhi-Trib.).*
9. *Asst. Commissioner of Income-tax Vs. lifestyle Probuild (P.) Ltd. (2023) 155 taxmann.com 338 (Delhi-Trib.).*
10. *Caddie Hotels (P.) Ltd. Vs. Principal Commissioner of Income-tax/Deputy Commissioner of Income-tax (2023) 153 taxmann.com 524 (Delhi-Trib.).*
11. *Movefast Automobiles (P.) Ltd. Vs. Income-tax officer (2023) 152 taxmann.com 532 (Delhi-Trib.).*
12. *Brio Bliss Life Sciences (P.) Ltd. Vs. Income-tax Officer (2023) 149 taxmann.com 89 (Chennai-Trib.).*
13. *Deputy Commissioner of Income-tax-6(2)(1), Mumbai Vs. Creditalpha Alternative Investment Advisors (P.) Ltd. (2022) 134 taxmann.com 223 (Mumbai-Trib.).*
14. *Innacel Technologies (P.) Ltd. Vs. ACIT, Circle-3(1)(1), Bangalore (2021) 125 taxmann.com 73 (Bangalore-Trib.).*
15. *Futura Business Solutions (P.) Ltd. Vs. Income-tax Officer (2020) 117 taxmann.com 567 (Bangalore-Trib.).*
16. *Rameshwaram Strong Glass (P.) Ltd. Vs. Income-tax officer, Ward-2(1), Ajmer (2018) 96 taxmann.com 542 (Jaipur-Trib.).*

The learned Assessing Officer while rejecting the fair market value arrived by the assessee by following Discounted Cash Flow Method relied and referred to the following decision and our submissions on the same are as follows:

- i. **M/s. Medplus Health Services (P.) Ltd. vs Income Tax Officer, Ward- 16(1), Hyderabad (2016) Taxpub (DT) 1326 (Hyd-Trib.)/(2016) 158 ITD 0105/(2016) 048 ITR (Trib.) 0396:** The learned Assessing Officer referred to the decision as in the above case as follows:

“The Assessing officer however, was not convinced with the assessee's contentions and held that the 'market value' mentioned in the rule means "price which it would have fetched if sold in the open market. He observed that the valuation of any property is based on the fact as to what value the property would fetch if sold in the open market. Further if AO is not satisfied with working of the assessee, he ought to have computed the FMV himself in the method prescribed under the rule”.

However, the above is not the correct decision in the above case. In fact, the above **decision is in favour of us**. The Hon'ble ITAT in the above case clearly held that the Assessing Officer ought to have computed FMV in accordance with prescribed method under rules and cannot adopt a different method. As held by the Tribunal and umpteen number of decisions referred above, the learned Assessing Officer cannot choose his own method and it is the prerogative of the assessee and once he choose a method, the Assessing Officer has to compute the Fair Market Value according to that method. Hence, **he cannot replace the DCF method chosen by the assessee with Net Assets Value method as was wrongly done by the learned Assessing Officer in our case**. Hence, this action is unjustified, incorrect and invalid.

- ii. **Agro portfolio (P.) Ltd. Vs. Income Tax Officer, Ward- 1(4), New Delhi 94 taxmann.com 112 (Delhi-Trib):**

The learned Assessing officer referred to the above decision and relied on the same and quoted the decision as follows:

" we are unable to accept the contentions of the assessee that in view of the provisions under section 56(2)(viib) of the Act read with Rule 11UA(2) of the Rules

the Ld. AO had no jurisdiction to adopt a different method than the one adopted by the assessee, and if for any reason the AO has any doubt recording such valuation report and does not agree with the same is bound to make a reference to the Income tax Department Valuation Officer to determine the fair market value of such capital asset. This is so because unless and until the assessee produces the evidences to substantiate the basis of projections in cash flow and provides reasonable connectivity between those projections in cash flow with the reality evidences by the material, it is not possible even for the Departmental Valuation Officer to conduct any exercise of verification of the acceptability of the value determine by the merchant banker. This is more particularly in view of the long disclaimer appended by the merchant banker at page no. 16 & 17 of the paper book which clearly establishes that no independent enquiry is caused by merchant banker to verify the truth or otherwise the figures furnished by the assessee at least on test basis. The merchant bankers solely relied upon an assumed without independent verification, the truthfulness accuracy and completeness of the information and the financial data provided by the company. A perusal of this long disclaimer clearly shows that the merchant banker did not do anything reflecting their expertise, except mere applying the formula to the data provided by the assessee. We, therefore, are unable to brush aside the contention of the Revenue that the possibility of tailoring the data by applying the reverse engineering to the pre-determined conclusions."

However, we wish to submit that the above decision of the Delhi bench of the ITAT was already reversed by the Hon'ble Delhi court in the case of Agro portfolio (P.) Ltd. Vs. Principal commissioner of Income-Tax (2024) 161 taxmann.com 303 (Delhi) and hence the above decision of the ITAT is no more valid (copy attached). The Hon'ble Delhi High Court categorically held that **"the assessee has the choice to choose one of the prescribed method and the Assessing Officer does not have power to independently evaluate face value of unquoted shares by adopting a valuation method other than one chosen by assessee"**.

Hence, the above ITAT decision relied on by the learned Assessing Officer is no more valid and the decision of the

Hon'ble Delhi High Court is in support of our view that the learned Assessing Officer cannot replace the DCF method chosen by the Assessee with the "Net Assets Valuation method" as was done by the Assessing officer and hence is incorrect and Invalid.

Hence, in view of the genuine facts and umpteen number of decided cases in our favour and in applicability of the cases relied on by the learned Assessing officer, we earnestly request your honour to allow these grounds of appeal and delete the unjustified and invalid addition of Rs.3,18,58,800/- made by the learned Assessing officer U/s. 56(2)(viib) of the I. T Act, 1961.

ITA No. 1185/BANG/2025

I. Brief facts of the case:

The assessee is engaged in generation of Power. The Assessee e-filed its return of income for the A.Y. 2018-19 on 31.10.2018 declaring a total income of Rs. 3,95,00,640/- under regular provisions of the I.T. Act, 1961 and loss of Rs.5,98,44,341/- U/s.115JB of the I.T. Act, 1961. Subsequently, the case was selected for 'limited scrutiny' under CASS. Subsequently, the case was centralised to Central Circle-2(2), Bangalore. The Assessee submitted all the information called for by the above Assessing Officer promptly from time to time. The above Assessing Officer completed the IT Assessment of the assessee U/s.143(3) on 22.04.2021 by making the following additions under regular provisions of the Income-Tax Act, 1961.

	Addition amount (Rs.)
4) Addition U/s.14A	30,67,036/-
5) Disallowance of Short Term Capital Loss	5,10,000/-
6) Interest income	<u>3,86,801/-</u>
Total additions	<u>39,63,837/-</u>

Aggrieved by the above unjust and incorrect additions referred (1), (2) and (3) above, the assessee filed appeal to the Commissioner of Income-Tax (Appeals) on 27.09.2021.

Subsequently, the Hon'ble Commissioner (A) gave notices to the assessee through e-mail of the company and the assessee promptly forwarded all such notices to its authorised representative Sri. V Shekar Babu of Akasam & Associates, Chartered Accountants along with all the required information and submissions with a request to submit the same to the Hon'ble Commissioner of Income-Tax (Appeals) after scrutiny and editing the same. The assessee also forwarded the last and final show cause notice issued by the Hon'ble CIT (A) on 19.03.2025 with a request to make the necessary submissions.

However, the Hon'ble CIT (A) passed an *ex-parte* order on 27.03.2025 dismissing our **appeal for non-submission of response without going into merits of the appeal.** It was shocking to the Assessee that its authorised representative did not make any submissions inspite of the regular requests and assistance by the Assessee. The Assessee categorically and humbly submit that this lapse happened entirely due to the inaction and lapse of the assessee's authorised representative and not due to the negligence of the assessee. A sworn affidavit from the Principal Officer of the company to this effect is being submitted by the assessee to bring out true facts in this regard.

Further, the Hon'ble CIT (A) did not pass the order on merit but simply dismissed our appeal due to non-response which is against the principles of natural Justice as held by various ITAT benches/High courts in umpteen number of cases. Aggrieved by this unjust and invalid *ex-parte* dismissal of our Appeal by the Hon'ble CIT (A), due to a non-response without going into merits, the assessee preferred this appeal.

III. Our ground-wise submissions are as follows:

4. Ground No. 1: The Hon'ble Commissioner of Income-tax (Appeals) erred in law in summarily dismissing the appeal of the assessee for the sole reason of non-response to his notices and without basing his decision on merits of the appeal and without going through the available material with him which is gross violation of the principles of natural justice as held by various courts/tribunals in umpteen number of cases.

We humbly submit that the learned Commissioner of Income-Tax (Appeals) did not decide our appeal on merits and on the basis of the material available with him, but simply dismissed the same with the following remarks:

“The law assists those who are vigilant, not those who sleep over their rights. This principle is embodied in the dictum: vigilantibus non dormientibus jura subveniunt. Thus, the non-response from the appellant is nothing but negligence and inaction on part of the appellant. Therefore, the appeal proceedings are hereby closed, and it is assumed that the appellant has nothing to say. Accordingly, the grounds of appeals filed by the appellant are treated as dismissed.”

The above decision of the Hon’ble CIT (A) dismissing our appeal summarily solely for non-response and non-submission of the information is clearly against the principles of natural justice as held by various ITAT benches including the Jurisdictional ITAT benches in the following cases:

13. Alps Construction Vs. Income-tax Officer (2025) 170 taxmann.com 371 (Mumbai-Trib.).
14. Meena Jewellers Extension (P.) Ltd. Vs. ACIT (2025) 171 taxmann.com 55 (Hyderabad-Trib.).
15. Dnyaneshwar Baburao Kathe Vs. Income-tax Officer (2024) 168 taxmann.com 408 (Pune-Trib.).
16. Amitkumar Dhirajlal Joshi Vs. Income-tax Officer (2024) 166 taxmann.com 310 (Rajkot-Trib.).
17. Dhanya TMT (P.) Ltd. Vs. Deputy Commissioner of Income-tax (2024) 159 taxmann.com 1563 (Bangalore-Trib.).
18. Vattikuti Veera Venkata Prasad Vs. Income-tax Officer (2024) 160 taxmann.com 1252 (Visakhapatnam-Trib.).
19. Wrinkle Marketing (P.) Ltd. Vs. Income-tax Officer (2024) 159 taxmann.com 1395 (Kolkata-Trib.).
20. Ramson Remedies Vs. Assistant Commissioner of Income-tax (2024) 159 taxmann.com 1376 (Amritsar-Trib.).
21. RMPInfotec (P.) Ltd. Vs. Assistant Commissioner of Income-tax (2024) 158 taxmann.com 266 (Chennai-Trib.).
22. Effluent & Water Treatment Engineers (P.) Ltd. Vs. Deputy Commissioner of Income-tax (2022) 140 taxmann.com 420 (Kolkata-Trib.).
23. Marvel Industries Ltd. Vs. Deputy Commissioner of Income-tax (2022) 140 taxmann.com 430 (Mumbai-Trib.).
24. Bharat Chaturbhuj Vedant Vs. Deputy Commissioner of Income-tax (2025) 175 taxmann.com 178 (Jodhpur-Trib.).

Hence, in view of the above decisions which squarely apply to the facts of our case, we humbly submit that the above order of the

Hon'ble CIT (A) is unjust and invalid. Hence, we earnestly request your Honour to allow this ground of appeal and delete both the unjust and incorrect additions made by the Assessing Officer and wrongly upheld by the Hon'ble CIT (A).

5. Ground No. 2:

a) The Hon'ble Commissioner of Income-tax erred in law and in facts in not appreciating the legal position that provision of Sec. 14A of the does not apply when the appellant has not earned and exempt income either in the form of dividend or in the form of any other exempt income as consistently held by various courts/tribunals and consequently should have deleted the addition of Rs.30,67,036/- wrongly made by the learned Assessing officer on this account.

b) The Hon'ble Commissioner of Income-tax erred in law and in facts in not appreciating the fact that the assessee has not incurred any direct or indirect expenditure (except Rs.3,81,256/- which was disallowed by the assessee himself) with respect to or for the purpose of investments made in its subsidiaries as it made the investments out of its own cost-free funds and not out of any borrowed funds.

c) The Hon'ble Commissioner of Income-tax erred in law and in facts in not appreciating the fact that the investments were made by assessee in its subsidiaries are exclusively for strategic business purposes made to gain management and control of subsidiary companies and were not made with the intention of earning exempt income from these investments.

d) The Hon'ble Commissioner of Income-tax erred in law and in facts in not appreciating the fact that the decisions referred to by, the learned Assessing officer including the Hon'ble Supreme court's decision in the case of Maxopp Investment Ltd. Vs. Commissioner of Income-tax (2018) 91 taxmann.com 154 (SC)/402 ITR 640 does not apply to the facts of the assessee.

e) The Hon'ble Commissioner of Income-tax should have appreciated that the learned Assessing officer's general comments that "when an investment is made it involves certain indirect expenses like administrative expenses as well" does not hold good in the case of assessee as all these investments were made in its subsidiaries as one time basis

for strategic business purposes and hence does not involve any cost or administrative expenses.

During the financial year 2017-18, the Assessee made long-term investments to the tune of Rs.7,76,04,140/- in its subsidiary company Viz., Anakampoil Power Private Limited **exclusively for strategic business purposes** and not with an intention to earn dividends from the same. The outstanding investments in all of its subsidiaries as on 31.03.2018 are to the tune of Rs.35,37,17,613/-. All these subsidiaries are Private limited companies which are all engaged in power generation which clearly shows that the Assessee made these investments **exclusively for strategic business purposes and not with an intention to earn dividends or gain any profit by trading in them.** Further, all these investments were made **by the assessee out of its own resources and not out of any borrowings.** As on 31.03.2018, the Assessee is having its own funds to the tune of Rs.61.60 crores in the form of share capital and reserves and the same can be established from the attached Audited Balance sheet of the Assessee company as on 31.03.2018. Hence, it is very clear fact that the entire long-term investments of the assessee made to the tune of Rs.35.37 crores of the Assessee exclusively in its subsidiaries (Private limited companies and power generation companies) is out of its own resources of Rs.61.60 crore and not out of any borrowings. Hence, it has not incurred any expenses on these investments in the form of interest or administrative expenses (except Rs.3,81,256/-) as the same is out of its own funds and it is only **one-time** investments in its closely held subsidiaries. It has also not earned any exempt income during the year from these investments in the form of dividends. The small amount of administrative expenses of Rs.3,81,256/- incurred by the Assessee was voluntarily disallowed by the Assessee himself. In umpteen number of cases various courts/ITAT benches have consistently **held that when the investment is made out of its own funds, provisions of sec. 14A does not apply at all.** The following are some of such decided cases:

- o) Principal Commissioner of Income-tax-IV, Ahmadabad Vs. Sintex Industries Ltd. (2018) 93 taxmann.com 24/255 TAXMAN 171 (S. C)
- p) CIT-2, Mumbai Vs. HDFC Bank Ltd -ITA No. 330 of 2012 dt. 23.07.14 (Bombay H C).
- q) Reliance utilities and Power Ltd. - 313 ITR 340 (Bombay H C).

- r) *Principal Commissioner of Income-tax -7 Vs. Premier Finance and Trading Co. Ltd (2019) 262 TAXMAN 341/104 taxmann.com 97 (Bombay).*
- s) *Commissioner of Income-tax, Faridabad Vs. NHPC Ltd. (2019) 110 taxmann.com 461 (Punjab and Haryana)*
- t) *Roca Bathroom products (P.) Ltd. Vs. Principal Commissioner of Income-tax, Chennai (2019) 261 TAXMAN 197/101 taxmann.com 395 (Madras).*
- u) *Asst. Commissioner of Income-tax, Circle-16(2), Hyderabad Vs. Progressive Constructions Ltd (2018) 92 taxmann.com 104 (Hyderabad-ITAT) (SB).*
- v) *ACIT, Circle- 13(1), New Delhi Vs. NIIT Technologies Ltd. (2021) 123 taxmann.com 135 (Delhi-Trib).*
- w) *Principal Commissioner of Income-tax, Vadodara Vs. Gujarat Flurochemicals Ltd (2020) 275 TAXMAN 366/120 taxmann.com 433 (Gujarat).*
- x) *K. B. Mehta Construction (P) Ltd. Vs. DCIT (2020) 119 taxmann.com 456 (Ahmedabad- Trib).*
- y) *Commissioner of Income-tax Vs. Weizmenn Ltd. (2020) 115 taxmann.com 247 (SC)/273 TAXMAN 15 (S.C)*
- z) *Zaveri & CO (P) Ltd Vs. Deputy commissioner of Income-tax, Circle 4(1)(2), Ahmedabad (2020) 118 taxmann.com 429 (Ahmedabad-ITAT).*
- aa) *Triveni Engineering & Industries Ltd. Vs. Additional Commissioner of Income-tax (2020) 118 taxmann.com 301 (Delhi-Trib).*
- bb) *Addl. Commissioner of Income-tax Vs. PNB Gilts Ltd. (2020)116 taxmann.com 418 (Delhi-Trib).*

*The fact of not earning any exempt income by the assessee on these investments was admitted by the learned Assessing officer himself in Para 4.1 of his Assessment order itself. As the Assessee made all its investments in its own closely held subsidiaries, the following general averments of the learned assessing officer in para 4.2 of his assessment order Viz., **“the cost of such funds and its management such as identification of the company in which the funds are to be invested, the statutory compliances under the Companies Act, the part utilization of expenses which are charged as overheads was inevitable”** and learned AO’s observation in para 4.4 that **“it is also seen that the company deploys manpower and resources which attract costs in the form of***

salaries, rent, audit fees, filing fees with ROC communication cost, professional charges amongst other expenditure” are not at all applicable to the facts of the assessee’s case.

Hence, the learned Assessing officer clearly erred in not appreciating **the specific facts of the Assessee and had clearly proceeded with a pre-determined mind and based on general assumptions inspite** of the fact that they are not applicable to the facts of the assessee. Hence, the Assessing officer clearly erred in invoking the provisions of sec.14A read with Rule 8D and making an unjustified and invalid addition of Rs.30,67,036/-. In umpteen number of cases the Hon’ble Supreme Court, various high courts/ITAT benches have clearly held that **when the assessee has not earned any exempt income, the provisions of sec 14A are not applicable at all.** The following are some of such cases:

- xxiii. *Principal commissioner of Income-tax-2 Vs. Caraf Builders and Constructions (P.) Ltd (2019) 112 taxmann.com 322 (S.C)*
- xxiv. *Principal Commissioner of Income-tax Vs. GVK Project and Technical Services Ltd. (2019) 106 taxmann.com 181/264 TAXMAN 76. (S.C)*
- xxv. *Principal Commissioner of Income-tax Vs. Oil Industry Development Board (2019) 103 taxmann.com 326 (S.C) /262 TAXMAN 102 (S.C).*
- xxvi. *Principal Commissioner of Income-tax, Patiala Vs. State Bank of Patiala (2018) 259 TAXMAN 314/ 99 taxmann.com 286 (SC).*
- xxvii. *Maxopp Investment Ltd. vs. CIT (2018) 91 taxmann.com 154 /254 TAXMAN 325 (SC).*
- xxviii. *CIT Vs. Chettinad logistics (P) Ltd. (2018) 95 taxmann.com 250 (SC).*
- xxix. *Principal Commissioner of Income-tax, New Delhi Vs. Mcdonald s India (p). Ltd (2019) 101 taxmann.com 86 (Delhi).*
- xxx. *Principal Commissioner of Income-tax-2 Vs. Caraf Builders and Constructions (P) Ltd. (2019) 101 taxmann.com 167/ 261 TAXMAN 47 (Delhi)*
- xxxi. *Principal Commissioner of Income-tax Vs Ballarpur Industries Ltd;*

- xxxii. *Joint Investment (P) Ltd Vs. CIT (2015) 59 taxmann.com 295 / 233 TAXMAN 117 (Delhi).*
- xxxiii. *Commissioner of Income Tax Vs. Sociedade De Fomento Industrial (P) Ltd.(2021) 123 taxmann.com 38 (Bombay).*
- xxxiv. *Marg Ltd. Vs. Commissioner of Income-tax (2020) 120 taxmann.com 84 (Madras) / 275 TAXMAN 502 (Madras).*
- xxxv. *Deputy commissioner of Income-tax, Circle 11(1), New Delhi Vs. Hind Industries Ltd. (2020) 122 taxmann.com 165 (Delhi-Trib).*
- xxxvi. *Commissioner of Income-tax, Bangalore Vs. Chemsworth (P) Ltd. (2020) 275 TAXMAN 408/ 119 taxmann.com 358 (Karnataka).*
- xxxvii. *Principal Commissioner of Income-tax Vs. Jay Chemical Industries Ltd. (2020) 120 taxmann.com 315 (Gujarat)/ 275 TAXMAN 78 (Gujarat).*
- xxxviii. *IBM India (P) Ltd. Vs. Asst. Commissioner of Income-tax, Circle-4(1)(2), Bangalore (2020) 120 taxmann.com 424 (Bangalore-Trib).*
- xxxix. *Kundan Rice Mills Ltd. Vs. Asst. Commissioner of Income-tax, Panipat (2020) 120 taxmann.com 422 (Delhi-Trib).*
- xl. *Principal Commissioner of Income-tax Vs. Jay Chemical Industries Ltd. (2020) 120 taxmann.com 315 (Gujarat).*
- xli. *Deputy Commissioner of Income-tax, Circle-2(2), Bangalore Vs. Cornerstone Property Investment (P) Ltd. (2020) 118 taxmann.com 541 (Bangalore-Trib).*
- xlii. *Commissioner of Income-tax Vs. Syndicate Bank (2020) 270 TAXMAN 237/ 115 taxmann.com 287 (Karnataka).*
- xliii. *Principal Commissioner of Income-tax-3 Vs. Reliance Ports and Terminals Ltd. (2020) 114 taxmann.com 529 (Bombay).*
- xliv. *DCIT Vs. Maheswari Mega Ventures Limited (Hyderabad-ITAT).*
- xlv. *Microfinance Fund (P) Ltd. Vs. ITO, Hyderabad (2014) 47 taxmann.com 260 (Hyderabad-Trib.).*

Further, the Hon'ble Commissioner of Income-tax (Appeals)-2, Hyderabad in Assessee's own case for the A Y 2014-15 on account of the same investments deleted the addition made by the Assessing officer U/s. 14A by following the decision of the Hon'ble Hyderabad bench of the ITAT in the case of DCIT Vs. Maheswari Mega Ventures Limited (2017) ITA No. 367/Hyd/2013 (copy attached) deleted the addition of Rs.46,64,689/- made U/s. 14A by holding that when no exempt income was earned by the assessee, no addition U/s. 14A

can be made and the department has also accepted the same and did not go for any appeal to the ITAT.

The cases referred to and relied by the learned Assessing Officer and our submission on the same are as follows:

8. Maxopp Investments Limited in 402 ITR 640(SC):

The learned Assessing Officer referred to this Judgement in last Para of the page no.4 of the Assessment order and stated as follows:

“In the light of the above finding, the Apex Court upheld the restriction of the disallowance to the dividend income earned in the case of State Bank of Patiala as the same were held as stock in trade. The rationale behind this was that when the same are held as stock in trade, assessee may or may not get dividend. However, on earning the dividend, the provisions of section 14A are triggered and an apportionment needs to be made which would not have been warranted, if no dividend was earned. However, that is not the case in the event, the same is held as investment. In such cases, the Apex Court has made it clear that the purpose of holding was to earn dividend and hence the provisions of section 14A are applicable. This fine distinction has not been appreciated by the assessee while making its claim.”

The learned Assessing Officer stated that as per the Hon'ble Supreme Court's decision in the above case, if the shares are held as investment, the purpose of the holdings was to earn dividend and hence the provision of Sec.14A are applicable.

The facts of our case are totally different and distinguishable from the facts of the above case. **We have made investments out of our own funds exclusively in our subsidiaries for strategic business purpose and not with the intension to earn dividend income. Further, as we have made the investments out of our funds that too in closely held subsidiaries on long term basis.** Our submission is that, we have not incurred any expenditure either on interest or on administrative expense.

In fact, in the above case, the Hon'ble Supreme Court clearly held that **“only the expenditure which is in relation to earning dividends can be disallowed U/s.14A and Rule 8D”**. As stated above, as we have not incurred any expenditure, our submission is that provisions of Sec.14A read with Rule 8D are

not applicable to us. Hence, even as per the above decision of the Hon'ble Supreme court relied on by the learned Assessing officer, the provisions of sec 14A read with Rule 8D are not applicable to us. Hence, we humbly submit that the learned Assessing officer misinterpreted the above decision and wrongly applied to our case.

On the other hand, the Hon'ble Supreme Court in the case of 1) Caraf Builders (2) GVK projects and Technical Services Ltd. (3) Oil Industry Development Board (4) State Bank of India and (5) Chettinad logistics (P.) Ltd. (referred above) clearly held that when the Assessee has not earned any exempt income, the provisions of Sec. 14A are not applicable and all these decisions of Hon'ble Supreme court squarely applies to the facts of our case.

9. Indian Sugar Exim Corp. Ltd. Vs. DCIT in ITA No.1042 (Del.)/2025 dt 05.12.2008:-

The decision of the Hon'ble Delhi Bench of the ITAT in the above case was quoted by the learned Assessing officer as follows (page No. 3 of the Assessment order).

*"The reason is that the management has to take investment decisions in accordance with the rules and regulations of the company and make investments in bonds and units, as the case may be. The management has also to pay attention towards rise or fall in the value of investments with a view to suitably change the investment pattern. **All these activities lead to expenditure, which will be in the nature of administrative expenditure.**"*

In the above case, the Hon'ble Delhi bench of the ITAT opined that "the management has also to pay attention towards rise or fall in the value of the investments with a view to suitably change the investment pattern and all these activities had to incur expenditure, which will be in the nature of administrative expenses.

The above may be true in the facts of the above case whose investment is made in bonds and units in the open market/stock exchange. The facts of our case are entirely different as we have not made the investments in the open market through stock exchanges with an intention to gain by trading in the market or earning dividends therefrom. We have exclusively made our investments in our closely held subsidiaries exclusively involved in power generation business for strategic purpose and not with an intention to gain profit by trading in them or with an intention

to earn dividend/interest from there. All these investments were made in our subsidiaries which are closely held private limited companies exclusively doing power generation business. In fact, we are not allowed to trade in these investments as they are all closely held private limited companies and hence cannot be traded or transferred freely.

Hence, the decision in the above case clearly does not apply to the facts of our case and the learned assessing officer failed to take this difference into consideration.

10. CIT Vs. Walfort Share & Stock Brokers (P.) Ltd 326 ITR 0001

*In this case, the Hon'ble supreme court finally held that "for attracting Sec. 14A, **there has to be proximate cause for disallowance, which is its relationship with tax exempt income** and since pay-back or return of investment is not proximate cause, Sec. 14A is not applicable in such case.*

*Infact, this decision **support our case and it is not against our case** as held by the learning Assessing Officer since it was held that for applying Sec. 14A and disallowing certain expenditure there has to be proximate case and it has to have relationship with tax exempt income.*

In fact, it is supporting our argument that no proximate expenditure has been incurred by us for making it disallowable. During the year, we have not earned any exempt income nor incurred any expenditure for earning the same.

Hence, the decision of the Hon'ble Supreme Court in the above case strengthens our case. The same is the case with other decision quoted by the learned Assessing Officer {Godrej & Boyce Mfg. Co. Ltd. (Bombay HC)}

11. Judgement of the Hon'ble ITAT, Mumbai Bench in the case of ACIT Vs. Citycorp Finance (India) Ltd. 1081 ITD 457:

We fail to understand why the learned Assessing Officer referred to this decision. It not at all supports his stand and infact it supports our stand. In this case, the Hon'ble ITAT clearly held that "the Assessing Officer could not make disallowance on adhoc basis and he is statutorily required to compute disallowance in

manner provided by sub-section (2) and (3) of Sec.14A”. Hence, we earnestly submit that this Judgement is not at all relevant to us.

12. Judgement of the Hon’ble Kolkata Bench of the ITAT in the case of CIT Vs SG Investments and Industries Ltd (2011) 89 ITD 44.

In this case the Hon’ble ITAT held as follows:

“There should be apportionment of expenditures between taxable income and non-taxable income; where capital is borrowed for various indivisible business activities and investment in shares is also made out of borrowed capital, proportionate interest paid on such borrowings is to be deducted from gross dividend income before computing amount of dividend on which exemption under section 10(33) is to be allowed, and pro rata expenses on account of interest relating to borrowings for investment in shares is to be disallowed against taxable business income”

Hence, as per the above decision, if the investment was made out of borrowed funds, proportionate interest expenditure is to be disallowed. We humbly submit that this decision is not applicable to us as we have exclusively made the investment out of our own funds and not out of borrowed funds.

13. ITAT Mumbai Bench decision in the case of M/s. Kalpataru Construction Overseas (P.) Ltd. Vs. CIT (2007) 13 SOT 94 (Mumb.):

In this case the Hon’ble ITAT held that “expenditure incurred in relation to exempt income have to be disallowed U/s.14A regardless of whether they are direct or indirect, fixed or variable and managerial or financial in accordance with law”. The above decision does not apply for us as our facts are totally different. **We have neither incurred any expenditure nor earned any exempt income and hence this decision does not apply to us.**

14. **CBDT circular 5/2014**:*The gist and essence of memorandum introducing the provisions of Sec.14A and the above circular is “expenses incurred can be allowed only to the extent they are relatable to the **earning of taxable income**”.*

*The above circular also does not apply to the facts of our case as we have **neither incurred any expenditure nor earned any exempt income**. Further, the CBDT circular is not binding on the Assessee as consistently held by various courts/ITAT benches.*

Hence, in view of the above genuine facts and umpteen number of decided cases in our favour and inapplicability of the cases relied on by the learned Assessing officer, we earnestly request your Honour to allow these grounds of appeal and delete the unjustified and invalid addition of Rs.30,67,036/- made by the learned Assessing officer U/s. 14A of the I. T Act, 1961.

- 6. Ground No. 3: The Hon’ble Commissioner of Income-tax(appeals) erred in law and in facts in not deleting the disallowance of Rs.5,10,000/- wrongly made by the learned Assessing officer in respect of Short-term capital loss on sale of shares though the same is clearly evident from page 47 of the Income-tax return filed for the A Y 2018-19.**

The Assessee sold an open plot in ward no.7 of Nellipoyil Village of Kodanchery-7 panchayat, Thamarassery Taluk of Kozhikoe Dt. of Kerala state on 08.12.2017 for a consideration of Rs.6,25,000/- (copy of sale deed is enclosed). The same was purchased by the Assessee Company on 08.05.2015 at a cost of Rs.11,35,000/-. Hence, the Assessee has incurred a short-term capital loss of Rs.5,10,000/- and the same was reported and claimed by the Assessee in page No.47 of the I.T. return filed by the assessee for the A.Y. 2017-18. Hence, the Assessee is very much eligible to claim to this loss.

However, the learned Assessing Officer completely ignored this fact and referred to only sale of investment by the assessee in Panyor Hydro Power Pvt Ltd. and stated as follows:

“Capital Gain on sale of investment in Panyor Hydro Power Pvt. Ltd.

The assessee has sold the investment in Panyor Hydro Power Private Limited on short term capital loss of Rs.3,39,24,000/- and the assessee offered net capital gain of Rs.317,23,378/-. However, it is seen from the assessee

submission and in his computation of income, the available Capital loss of Rs.3,34,14,000/- as under.

Particulars	Rs.
Cost of investment (34,91,400 shares of Rs.10 each)	3,49,14,000
Sale Consideration	15,00,000
Capital Loss	3,34,14,000

The assessee has claimed the loss of Rs.3,39,24,000/- where available loss is of Rs.3,34,14,000/- Hence, the assessee's claim of the loss in excess Rs.5,10,000/- is disallowed and added to the income under the **head of Long-term Capital Gain**.

(Addition: Rs.5,10,000/-)

Hence, it is clear that the learned Assessing Officer ignored the loss on sale of land transaction completely and came to the conclusion that the assessee claimed this loss of Rs.5,10,000/- in excess and consequently wrongly added the same in spite of the fact that the Assessee clearly reported the same in page no.47 of the Income-Tax return for the A.Y. 2018-19.

As the above addition was wrongly made by the learned Assessing Officer, the Assessee humbly request the Hon'ble ITAT to allow this ground of appeal and delete this incorrect addition made.

7. Ground No. 4:The Hon'ble Commissioner of Income-tax(appeals) erred in law and in facts in not deleting the wrong addition of Rs.3,86,801/- on account of interest income made by the learned Assessing officer though the same was already included by the assessee in its taxable income which is also clearly evident from Note 18 to the audited financial statements.

During the financial year 2017-18, The Assessee has earned interest income to the tune of Rs.1,53,07,137/- the details of which are as follows:

1. Interest on Fixed deposits	3,82,935
2. Interest Income from ICD	<u>1,49,24,742</u>
Total	<u>1,53,07,137</u>

The same was clearly reported in Profit & Loss account and note No.18 of the Audited annual accounts and hence the Assessee has already offered this interest income as income in its Income-Tax return for the A Y 2018-19 and paid due tax thereon.

However, the learned Assessing Officer ignored this fact and stated as follows in page.10 of the Assessment order.

“It is seen from the reconciliation between 26AS and the ITR and the Assessee has not offered income from other sources of Rs.3,86,801/- in respect of interest income. Hence, this sum of Rs.3,86,801/- is brought to tax under the head income from other sources” and consequently added the same to the income of the assessee.

*However, as stated above, the Assessee has already included the interest income of Rs.3,82,935/- in its I. T return for the A Y 2018-19 and already paid due tax thereon and hence it amounts to **taxing the same income twice.***

Hence, in view of the above fact, the assessee humbly request the Hon’ble ITAT to allow this ground of appeal and delete the addition to the extent of Rs.3,82,935/- incorrectly added by the learned Assessing Officer.

7. On the other hand, learned DR relied on the Order of the lower authorities and submitted that with regard to disallowance under section 14A of the Act, AO has calculated rightly as per provisions of section 14Ar.w.r. 8D(ii) of the Rules. In fact there is no dispute that the assessee has not received any exempt income during the impugned Assessment Year but incurring of some administrative expenditures looking to the size of investments cannot be denied to maintain and taking administrative decision which bears some cost to the assessee and the judgment relied on by the AO is very much applicable to the assessee. Further, in respect of addition made under section 56(2)(viib) of the Act, he submitted that the accountant has given disclaimer in his certificate and there is no authenticity on the data provided by the management. Therefore, the AO has rightly rejected the value adopted as per DCF and the calculation made as per NAV is correct approach to value the shares as on the date of issue of

shares and the case law relied on by the AO is applicable. Therefore, the addition made under section 56(2)(viib) of the Act by the AO may be upheld. For other issue he reiterated the observation of the AO.

8. At the outset of hearing we noted that Order passed by learned CIT(A) is ex-parte Order. However, the addition made by the AO as per the above table do not require further investigation on the facts of the case. Since the learned CIT(A) has decided the issue ex-parte without going into merits of the case therefore we are taking up for adjudication by relying on the judgment of Hon'ble Orissa High Court in the case of Siksha 'O' Anushandhan Vs. CIT reported in (2012) 20 taxmann.com 798 (Orissa) in which it has been held that "law is well settled once the materials are available on record the appellate court should have disposed off the case on the merits taking those materials into consideration and there is no need to direct remand".

9. Considering the rival submissions we noted that for both the Assessment Years, the AO has made disallowance under section 14A r.w.r. 8D(ii) of the Rules and disallowance amount as noted in the above table. The AO has disallowed Rs.22,54,686/- for Assessment Year 2017-18 and Rs.30,67,036/- for Assessment Year 2018-19 respectively. There is no dispute that the assessee has not received any exempt income. This issue has been settled by the Hon'ble High Court that if there is no exempt income received no disallowance can be made under section 14A of the Act in the case of PCIT vs. Novell Software Development India (P) Ltd reported in (2021) 128 taxmann.com 29 (Karnataka). The relevant part of the judgment is as under:

4. Learned counsel for the revenue fairly submitted that the first substantial question of law does not arise for consideration in this appeal. However, with regard to the third substantial question of law, it is submitted that the Tribunal has not considered whether the depreciation policies of the assessee are similar to that of comparables and has not given independent finding regarding reasons assigned by the Transfer Pricing Officer. It is further submitted that the Tribunal failed to note that depreciation cannot be excluded from the cost of tax payer as well as comparables and rule 10B(l)(e)(iii) of the Income-tax Rules

nowhere provides to exclude the depreciation as it will materially affect the adjustments and therefore, the same cannot be excluded. With regard to second substantial question of law it is argued that assessee has not determined the expenditure incurred in relation to exempt income and Assessing Authority has rightly held that even though there is no dividend income from the investment, the assessee was required to determine expenditure as per section 14A read with rule 8D of the Rules. In support of aforesaid submission, reliance has been placed on the decision of this Court in *CIT v. Kingfisher Finvest India Ltd.* [\[2020\] 121 taxmann.com 233/\[2021\] 276 Taxman 128](#)

5. On the other hand, learned counsel for the assessee submitted that rule 10B of the Rules provides for the method in which comparability analysis is to be conducted under the transactional net margin method. It is pointed out that under sub-clause (i) of rule 10B(l)(e) of the Rules, the net profit margin realized by the tax payer from an international transaction is computed having regard to a relevant base that is cost incurred and sales effected, etc. It is further submitted that since the assessee has a policy of charging a higher rate of depreciation as compared to the companies selected by the Transfer Pricing Officer, there is a definite impact on the net margins of the assessee as compared to comparable companies. Therefore, there is a need of making an adjustment to eliminate differences into accounting policies of the assessee and the comparable companies in terms of the Rules. It is also argued that Tribunal has rightly accepted the aforesaid submission by relying on decision of Hyderabad Bench of the Tribunal in MARKET RESEARCH TOOLS PVT. LTD. and no errors have been pointed out in the aforesaid provision. It is also urged that the Tribunal has rightly deleted the disallowance made under section 14A of the Act as the assessee had not incurred any exempt income. In support of aforesaid submissions, reliance has been placed on the decision of the Supreme Court in *CIT v. Chettinad Logistics (P.) Ltd.* [\[2018\] 95 taxmann.com 250/257 Taxman 2 \(SC\)](#), decisions of Madras High Court in *CIT v. Chittanad Logistics (P.) Ltd.* [\[2017\] 80 taxmann.com 221/248 Taxman 55 \(Mad.\)](#), *Redington (India) Ltd. v. Addl. CIT* [\[2017\] 77 taxmann.com 257/392 ITR 633 \(Mad.\)](#), decisions of Delhi High Court in *Cheminvest Ltd. v. CIT* [\[2015\] 61 taxmann.com 118/234 Taxman 761/378 ITR 33 \(Delhi\)](#) AND *CIT v. Holcim India (P.) Ltd.* [\[2015\] 57 taxmann.com 28 \(Delhi\)](#).

6. We have considered the submissions made on both sides and have perused the record. Admittedly, the first substantial question of law does not arise for consideration. Therefore, we need not deal with the same. So far as second substantial question of law is concerned, this Court in *Biocon Ltd. v. Dy. CIT* [IT Appeal No. 416 of 2014, dated 12-1-2021] has held that if no exempt income has accrued to the assessee the provisions of section 14A do not apply. However, reliance placed by the learned counsel for the revenue on the decision in the case of *Kingfisher Finvest Ltd. (supra)* is concerned, suffice it to say that reliance was placed in the aforesaid decision on the decision in *Maxopp Investment Ltd. v. CIT* [\[2018\] 91 taxmann.com 154/254 Taxman 325/402 ITR 640 \(SC\)](#). It is pertinent to note that the decision *Maxopp Investment Ltd. (supra)* does not deal with the issue of applicability of Section 14A of the Act. The subsequent decisions of Madras High Court as well as Delhi High Court, namely in *Chettinad Logistics (P.) Ltd. (supra)* and *Cheminvest Ltd. (supra)* have been affirmed by the Supreme Court subsequently. Therefore, taking into account the fact that *Maxopp Investment Ltd. (supra)* does not deal with the issue with regard to applicability of Section 14A of the Act, we are in respectful agreement with the view taken by the High Court of Madras and High Court of Delhi. Since no exempt income has accrued to the assessee,

therefore we hold that the provisions of Section 14A of the Act do not apply to the fact situation of the case. In the result, the second substantial question of law is answered against the revenue and in favour of the assessee.

10. Respectfully following the above judgment, we allow this ground raised by the assessee for both the years.

11. Further, in respect of income tax return and Form 26AS regarding interest income, we are remitting this issue back to the file of AO for examining the differences and assessee is directed to furnish the reason for differences and substantiate its case as argued by the learned Counsel during the course of hearing. Accordingly, this issue is allowed for statistical purposes.

12. Further in respect of addition under section 56(2)(viib) of the Act of Rs.3,18,58,800/- we noted that the assessee has got valuation report from accountant and the valuation of premium per share has been determined at Rs.15 per share. Accordingly, assessee has issued shares to Tavasya Ventures Partners of 276,80,000/- at a premium of Rs.15 per share and calculated share premium of Rs.4,17,00,000/- on the basis of valuation adopted following the DCF method is prescribed under Rule 11U or 11UA of the Income Tax Rules. The AO has only rejected the valuation report on the basis of disclaimer given in the certificate by the CA and he has adopted NAV and determined the value at Rs.13.54 per share. On going by the Rule 11UA of the Rules, we noted as under:

Determination of fair market value.

11UA. (1) For the purposes of section 56 of the Act, the fair market value of a property, other than immovable property, shall be determined in the following manner, namely,—

(a)

(i)

(ii)

(iii)
(b)

- (i)
- (ii)
- (iii)

(c)

(a)

⁷⁶[(b)

PE
=

(c)

⁷⁷[(2) Notwithstanding anything contained in sub-clause (b) or sub-clause (c), as the case may be, of clause (c) of sub-rule (1): —

(A) *the fair market value of unquoted equity shares for the purposes of sub-clause (i) of clause (a) of the Explanation to clause (viib) of sub-section (2) of section 56 shall be the value, on the valuation date, of such unquoted equity shares, as shall be determined under sub-clause (a), sub-clause (b), sub-clause (c) or sub-clause (e), at the option of the assessee, where the consideration received by the assessee is from a resident ; and under sub-clauses (a) to (e) at the option of the assessee, where the consideration received by the assessee is from a non-resident, in the following manner:—*

(a) *the fair market value of unquoted equity shares = (A-L) × [PV/PE], where,*

A = book value of the assets in the balance-sheet as reduced by any amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act and any amount shown in the balance-sheet as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

L = book value of liabilities shown in the balance-sheet, but not including the following amounts, namely:—

- (i) *the paid-up capital in respect of equity shares;*
- (ii) *the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;*
- (iii) *reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;*
- (iv) *any amount representing provision for taxation, other than amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;*
- (v) *any amount representing provisions made for meeting liabilities, other than ascertained liabilities;*
- (vi) *any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;*

PE = total amount of paid up equity share capital as shown in the balance-sheet;

PV = the paid up value of such equity shares; or

(b) ;

11. As per the above Rule 11UA(2) A it is clear that the method of selection is at the option of the assessee. The AO cannot change the valuation adopted by the assessee. A similar issue has been decided by Co-ordinate Bench in the case of M/s. Writemen Media Pvt. Ltd., Vs. ITO in ITA No.1516/Bang/2024 vide Order dated 31.07.2025. The AO has calculated the value of shares after applying NAV which was not opted by the assessee. Accordingly, following

the above judgment of the Co-ordinate Bench, we allow this ground of the assessee.

13. Further in respect of difference in the loss claimed by the assessee of Rs.5,10,000/-. During the course of arguments, it was submitted that the AO has gone on different facts and the assessee sold open plot at Ward No.7 of Nellipoyil Village of Kodanchery-7 panchayat, Tamarassery Taluk of Kozhikoe Dt. of Kerala. The facts are completely different as submitted by the learned Counsel. Therefore, for the verification of the loss claimed by the assessee we remit this issue back to the file of AO for fresh consideration and decide issue as per law. Assessee is directed to substantiate it claim. Accordingly, this ground is allowed for statistical purposes.

14. To sum up, grounds raised by assessee in both the appeals are partly allowed for statistical purposes as per above terms.

15. A common Order passed shall be kept in respective case files.

Pronounced in the court on the date mentioned on the caption page.

Sd/-

(SOUNDARARAJAN K)
Judicial Member

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Bangalore,
Dated : 11.09.2025.
/NS/*

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT4.CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.