

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 760/Del/2022
(Assessment Year: 2017-18)

Matrix Clothing Pvt. Ltd, Village Mohammadpur, Khandsa Road, Gurgaon- 122 001, Haryana	Vs.	ACIT, Central Circle-18, Delhi
(Appellant)		(Respondent)
PAN: AABCM8475B		

Assessee by :	Ms. Kavita Jha, Sr. Adv Shri Himanshu Agarwal, Adv Shri Akash Shukla, Adv
Revenue by:	Shri Chetan P. S. Rao, CIT DR
Date of Hearing	02/09/2025
Date of pronouncement	01/12/2025

ITA No. 3805/Del/2024
(Assessment Year: 2020-21)

Matrix Clothing Pvt. Ltd, Village Mohammadpur, Khandsa Road, Gurgaon- 122 001, Haryana	Vs.	ACIT, Central Circle-18, Delhi
(Appellant)		(Respondent)
PAN: AABCM8475B		

Assessee by :	Ms. Kavita Jha, Sr. Adv Shri Himanshu Agarwal, Adv Shri Akash Shukla, Adv
Revenue by:	Shri Chetan P. S. Rao, CIT DR
Date of Hearing	03/09/2025
Date of pronouncement	01/12/2025

ORDER

PER M. BALAGANESH, A. M.:

1. The Assessee Matrix Clothing Pvt. Ltd (hereinafter referred to as 'assessee) by filing the present appeal sought to set aside the impugned order dated 28.02.2022 passed by the Assessing Officer (AO) under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (for short 'the Act') inconsonance with the order passed by the Dispute Resolution Panel (DRP) dated 03.01.2022 u/s 144C(5) and TPO order dated 29.01.2021 passed u/s 92CA(3).

2. The Ground No. 1 raised by the assessee is general in nature and does not require any specific adjudication.

3. The Ground Nos. 2 to 2.5 raised by the assessee are challenging the Transfer Pricing Adjustment of ₹4,41,005/- on account of guarantee commission imputed on guarantee for issuance of Stand by Letter of Credit (SBLC) for Associated Enterprise (AE).

4. We have heard the rival submissions and perused the material available on record. The assessee is engaged in the business of design, manufacturing, export of wide range of garments for men, women and children to cater the needs of several leading industrial fashion brands and also in the business of generation of power. The return of income for AY 2017-18 was filed by the assessee company on 29.11.2017 declaring total income of ₹7,66,88,350/- which stood revised on 30.01.2019 declaring total income of ₹7,20,43,270/-. The assessee incurred a sum of ₹1,99,41,653/- on account of freight, professional fees, salary, SBLC charges, telephone charges for services, travelling expenses and other miscellaneous expenses on behalf of Indo Jordan Clothing Company (AE). Same have been

reimbursed by the AE on cost to cost basis to the assessee without any mark-up. Out of this expenditure, a sum of ₹99,10,228/- was incurred towards SBLC charges for SBLC provided on behalf of the AE. This sum was also reimbursed by the AE on cost to cost basis without any markup. The said transaction was benchmarked by assessee using 'Other Method' determining Arm's Length Price (ALP) at Rs Nil. The Id TPO observed that SBLC charges paid by the assessee on behalf of AE is basically a service of the nature of corporate guarantee. The Id TPO sought to disturb the Most Appropriate Method (MAM) i.e. 'Other Method' chosen by the assessee on the presumption that assessee has basically charged nothing from its AE on account of SBLC charges and accordingly proceeded to adopt 'Comparable Uncontrolled Price' (CUP) method as the most appropriate method to benchmark this transaction. For this purpose, the Id TPO collected data from various banks u/s 133(6) of the Act where the banks had charged the bank guarantee rates. The Id TPO adopted the average of the bank guarantee rates charged by HDFC Bank, Federal Bank and Punjab National Bank at 2.45% and considered the said rate to be at ALP after adding 200 basis points to it. Accordingly, by adopting ALP rate at 4.45%, the Id TPO proposed a transfer pricing adjustment of ₹4,41,005/- on account of guarantee fee, which the assessee ought to have got it reimbursed from its AE. This addition stood upheld by the Id DRP and accordingly the same was adopted in final assessment order.

5. At the outset, we find that Id TPO had proceeded on the wrong presumption that assessee had not recovered any amount on account of SBLC charges from its AE. In this regard, our attention was drawn by the Id AR to page 152 of the paper book containing the details of reimbursement of expenses incurred on behalf of Indo-Jordan Clothing Company (AE) for

FY 2016-17 and recovered by the assessee company, which is reproduced hereunder:-

Cartage & Freight	1,07,356
Miscellaneous Expenses	3,71,035
Professional Fee for Registration of Company	3,80,926
Salaries	59,88,020
SBLC Charge	99,10,228
Telephone Expenses	10,694
Travelling	31,73,394
Grand Total	1,99,41,653

6. From the same, it could be seen that assessee had indeed recovered ₹99,10,228/- on account of SBLC on cost to cost basis from its AE. Hence, the entire benchmarking analysis carried out by the Id TPO using external CUP method is totally flawed as it is based on incorrect assumption of facts. In any case, the bank guarantee commission charges cannot be equated with corporate guarantee at all. It is not in dispute that the Id TPO had sought to consider the grant of SBLC to Citibank on behalf of its AE by the assessee as corporate guarantee. Hence, adoption of bank guarantee commission charges for the purpose of benchmarking the international transaction of SBLC/Corporate Guarantee itself is wrong. In our considered opinion, the issuance of SBLC/corporate guarantee cannot be compared with the commission charged by the bank while issuing the bank guarantee, for the purpose of arriving at the ALP with reference to corporate guarantee. In fact, it is only on that basis, the assessee had relied on safe harbour rule on without prejudice basis vide Ground No. 2.5 as per which the corporate guarantee commission was prescribed at the rate of 1%. In the instant case, the assessee had not opted for Safe Harbour Rules. Further, we find the Hon'ble Bombay High Court in the case of CIT Vs. Glenmark Pharmaceuticals Limited reported in 398 ITR 439 (Bom) had held that for computing ALP of guarantee commission, comparison cannot be

made between the guarantees issued by Commercial Banks for the purpose of benchmarking the transaction of corporate guarantee issued by a holding company for benefit of its AE. It also held that the considerations which apply for insurance of corporate guarantee are distinct and separate from that of bank guarantee and therefore no transfer pricing adjustment could be made in respect of guarantee commission by making comparison between the guarantees issued by Commercial Banks as against Corporate Guarantee issued by holding company for benefit of its AE. It is pertinent to note that appeal filed by the revenue against this decision is dismissed by the Hon'ble Supreme Court in Civil Appeal No. 12632/2017 dated 11.12.2018.

7. Since the issue in dispute is settled by the Hon'ble Supreme Court, respectfully following the same, we hold that the benchmarking adopted by the assessee using 'Other Method' need to be adopted as ALP in the facts and circumstances of the instant case. Accordingly, Ground Nos. 2 to 2.4 are allowed and Ground No. 2.5 is dismissed as infructuous.

8. The Ground Nos. 2.6 to 2.13 raised by the assessee are challenging the transfer pricing adjustment made on account of interest on loans advanced by the assessee to its AE.

9. We have heard the rival submissions and perused the material available on record. It is not in dispute that assessee had extended loan of US\$ 22 lakhs to Matrix Clothing Private Limited, Jordan LLC (AE) on 09.08.2016. The assessee charged interest at the rate of 3.55% on the said loan, which is calculated at 1.8% per year LIBOR in US\$ as on 30th September + 1.75 % spread. The assessee sought to justify this interest rate by stating that it had availed packing credit facility/discounting facility

from banks since it is in the business of export of goods and that the packing credit facility/discounting facility was provided to the assessee on prevailing LIBOR rate plus a spread of 1.75%. The rate comes to 2.805% to 3.00215%. Further, the assessee had not opted for safe harbour rules since it has not filed Form 3CEFA. The assessee is a resident of Jordan and the rate charged by the Central Bank of Jordan on loans to companies resident in Jordan was @3.5%. The assessee adopted CUP method as the most appropriate method in benchmarking interest on loan transaction in respect of interest charged at the rate of 3.55% by the assessee from its AE. The Id TPO by adopting interest of 5.80% to be the ALP rate proposed a transfer pricing adjustment of ₹20,66,415/- in the draft assessment order which got reduced to ₹15,42,924/- in the final assessment order passed pursuant to the directions of Id DRP. It is pertinent to note that rate adopted by the assessee is on the basis of Jordan Central Bank rate. The evidences in this regard are enclosed at page 184 to 186 of the Paper Book. The main justification for adoption of 400 basis points to the LIBOR rate by the Id TPO was that the credit rating details of the lendee were not given. Either way, when the assessee had adopted CUP method by comparing Jordan Central Bank rate for loan extended in Jordan to the Jordan based companies, there need not be any other better rate of comparison that could be adopted. In the instant case, had the AE not chosen to avail loan from the assessee, the said AE could have got the loan from Jordan Central Bank at the rate of 3.5% only. Hence, the adoption of rate of @5.23% by the Id TPO pursuant to the directions of the Id DRP cannot be accepted at all in the facts and circumstances of the instant case. Hence, we have no hesitation to hold that the interest charged by the assessee from its AE on the loan advanced @ 3.55 % is to be accepted to be at ALP. Accordingly, the Ground Nos. 2.6 to 2.13 raised by the assessee are allowed.

10. Ground Nos. 3 to 3.6 raised by the assessee are challenging the addition made u/s 68 r.w.s. 115BBE of the Act on account of loan received from Avail Financial Services Pvt. Ltd (AFSPL), a non banking financial company (NBFC).

11. We have heard the rival submissions and perused the material available on record. The assessee availed a loan of Rs. 3 crores @9% per annum interest payable on a quarterly basis from AFSPL which is a non-banking financial company (NBFC) which is duly registered with Reserve Bank of India (RBI). The assessee submitted the following documents with regard to the said loan before the Id AO:-

- a. PAN of Avail Financial Services Ltd
- b. Balance Confirmation from AFSPL
- c. Bank Statement of the assessee reflecting payments received from lender through banking channels.
- d. Audited financial statements of the lender for 31.03.2017
- e. Master data (Ministry of Corporate Affairs website) of lender.

12. The assessee submitted that the lender is engaged in business of providing financial services and in the process of such business, had advanced loan of Rs. 3 crores to the assessee. The assessee also furnished affidavit of Ms Rekha Bhandari and Ms. Rajini Tanwar, the director and employee of lender respectively duly confirming the fact of advancing loan of Rs. 3 crores to the assessee. The bank statements of the lender were also furnished before the lower authorities to prove the creditworthiness of

the lender. The Id AO ignoring all these facts proposed an addition of Rs. 3 crores as unexplained cash credit u/s 68 of the Act in the draft assessment order. The assessee filed all the relevant documents again together with some additional evidences before the Id DRP. The Id DRP having examined the documents filed by the assessee and without drawing any adverse inference thereon merely remanded the matter to the file of the Id AO to consider all the documents of the assessee and pass a speaking order. The Id AO while framing the final assessment order chose not to fulfill the directions of the Id DRP by not resorting to the verification of the documents filed by the assessee. The Inspector of Income Tax was deputed to check the existence of the lender and the Inspector visited at the incorrect address at 555, 3rd Floor, New Rajinder Nagar, New Delhi. Later the Inspector visited the correct address of the assessee at 47/18, Old Rajinder Nagar, New Delhi wherein he met with the employee of the lender. It was also submitted by the Id AR that the assessee company is equipped with CCTV cameras and the presence of the Inspector in the assessee company premises was duly captured in the CCTV camera. Further, the affidavit of Ms Rajini Tanwar employee of the lender company had affirmed that the Inspector indeed visited the administrative office and met her with the intention of serving a notice on the Director, however, since, the Director was working from home due to Covid-19 pandemic, he could not do so. Accordingly, it was pleaded that the Inspector's report is factually incorrect and addition made based on such incorrect facts need to be deleted.

13. In the instant case, the assessee has availed loan from NBFC which is duly registered with RBI. The said NBFC is engaged in regular course of lending activity. The assessee has furnished all the requisite documents to prove the creditworthiness of the lender, genuineness of the transaction and

identity of the lender. Notice u/s 133(6) of the Act stood issued by the Id AO to the lender which stood directly complied with by the lender duly confirming all the transactions of advancing loan to the assessee through regular banking channel and the fact of such loan being reflected in the books of account of the lender company. The affidavit of the Director of the lender company duly confirmed the genuineness of the transaction is already placed on record. Hence, this is not a fit case for confirmation of addition made u/s 68 of the Act as the assessee had proved all the 3 necessary ingredients of Section 68 of the Act. Accordingly, Ground Nos. 3 to 3.6 raised by the assessee are allowed.

14. Ground No. 3.7 raised by the assessee is challenging the confirmation of disallowance of interest on loan availed from AFSPIL which has been dealt above. Since, the loan is treated as genuine, the interest paid on such loan shall be allowable as deduction as it is not the case of the revenue that the borrowed fund from AFSPIL had been diverted for non business purposes by the assessee. Accordingly, Ground No. 3.7 is allowed.

15. Ground Nos. 3.8 to 3.11 raised by the assessee are challenging the confirmation of disallowance of deduction claimed by the assessee of Rs. 3,88,77,284/- u/s 35(2AB) of the Act.

16. We have heard the rival submissions and perused the material available on record. During the year under consideration, the assessee company claimed deduction u/s 35(2AB) of the Act amounting to Rs. 3,88,77,284/- as expenses incurred in Research and Development (R&D). Notice u/s 142(1) of the Act was issued to the assessee company to furnish the details of item-wise expenditure along with nature of expenses for claiming deduction on account of R&D u/s 35(2AB) of the Act. The assessee

submitted its reply vide letter dated 31.03.2021. On perusal of the same, the Id AO noticed that the assessee company has claimed their regular business expenditure such as expenses towards purchase of fabric and processing cost of Rs. 266.60 lakhs; employee cost of Rs. 103.49 lakhs; travelling and convenience cost of Rs. 11.31 lakhs totaling to Rs. 381.40 lakhs on account of revenue expenditure. The Id AO observed that it is not understandable as to why the regular business expenditure could be treated as R&D expenditure. The Id AO stated that the assessee failed to discharge its onus to prove that the claim of expenditure towards R&D was actually incurred towards R&D not towards any other activity. This was sought to be buttressed by the Id AR by stating that assessee had duly furnished its reply to the notice dated 15.04.2021 by providing break up of total expenditure incurred and claimed towards R&D activities. In addition thereto, the assessee also provided the following details:-

- a. list of capital assets purchased during FY 2016-17 utilized in R&D activities ;
- b. details of capital expenditure approved by Department of Scientific and Industrial Research (DSIR) for FY 2015-16;
- c. copy of invoices depicting purchase of capital assets during FY 2016-17.

It was submitted before the Id AO that DSIR, which is a statutory authority, visited the premises of the assessee company for inspection and after duly considering the project documents and details of expenses submitted including capital expenditure, duly approved the R&D facilities of the assessee company. It was also submitted that DSIR had issued a certification in this regard approving R&D activities together with the figure

for expenditure incurred towards R&D activities. On perusal of the Form 3CL enclosed in pages 292 to 293 of the paper book, we find that the DSIR had certified the R&D expenditure eligible for deduction u/s 35 (2AB) of the Act to the extent of Rs. 384.88 lakhs. The Chartered Accountant had issued a certificate enclosed in pages 285 to 286 of the Paper Book certifying the expenditure for Rs. 387.37 lakhs. In our considered opinion, once a certificate has been issued by DSIR duly certifying the figures eligible for deduction u/s 35(2AB) of the Act, the Id AO again cannot go beyond the said certificate. This issue is no longer res integra in view of the decision of the Hon'ble Karnataka High Court in the case of Tejas Network Ltd Vs. DCIT reported in 60 taxmann.com 309 (Kar-HC) wherein it was observed as under:-

"18. A plain reading of section 35(2AB)(1) would indicate that where a company is engaged in the business of biotechnology or any business of manufacture or production of any article or thing, not being an article or thing specified in the list of the Eleventh Schedule incurs any expenditure on "Scientific Research" (not being expenditure in the nature of cost of any land or building) on in-house, research and development facility "as approved by the prescribed authority," such assessee would be entitled to a deduction of a sum equal to one and half times of the expenditure so incurred. The word "Scientific Research" has been defined under subsection (4) of Section 43 of the Act, which is extracted supra and same would indicate expenditure incurred in such scientific research includes all expenditure incurred for the prosecution or the provision of facilities for the prosecution of such scientific research. However, it does not include expenditure incurred in the acquisition of rights in or arising out of scientific research. Such expenditure incurred should be approved by the authority prescribed under Section 35(2AB) of the Act read with Rules framed thereunder. The authority prescribed to grant such approval under Rule 6(1B) of the Income Tax Rules, 1961 is the Secretary, Department of Scientific and Industrial Research.

19. A perusal of the above rule would clearly indicate that the section (1) of Section 35(2AB) is the Secretary, Department of Scientific and Industrial Research (3) of the Section 35(2AB) would indicate that no company would be entitled for deduction under clause (1) unless it enters into an agreement with the prescribed authority for co-operaid authority in required

to development facility and for audit of accounts maintained for that facility. Said authority is required to examine the application and if satisfied that conditions provided under Section 35(2AB) are satisfied would pass an order in writing in Form No. 3CM. In the event of such application of assessee is being rejected by the prescribed authority, an opportunity of being heard would be extended by the prescribed authority to the assessee. As per sub-section (4) of Section 35(2AB) the prescribed authority would in turn submit its report to the approval of the said facility to the Director General (Income tax Exemptions) in Form No. 3CL. within 60 days as per Rule 7(A)(b) of the Rules. Approval of such expenditure incurred by a coction 35(2AB) would be subject to conditions stipulated in clauses (a) to (d) of Rule 7A of the Rules. This would clearly indicate that the prescribed authority after receiving the application under Rule 3CR would examine the said application in the background of the definition found in sub-section (4) of Section 43 and on being satisfied that such application satisfies the criteria prescribed under the Act, then alone it would issue the certificate by granting its approval to the expenditure incurred by a company. To put it differently, prescribed authority is the authority under the Act which would examine the claim for grant of approval under Section 35(2AB), Pursuant to such application filed by assessee to the prescribed authority, a report would be submitted by the prescribed authority to the Director General (Income tax Exemptions) in Form No. 3CL, in order to entitle the assessee to weighted deduction and such report by the prescribed authority would be forwarded to Director General (Income tax Exemptions) within 60 days from order of approval. This order in Form No. 3CM would be passed by the prescribed authority only after being satisfied that the conditions provided in Rules (7A) and in sub-section (2AB) of Section 35 of the Act are fulfilled. Facts on hand would clearly indicate that application had been filed by assessee on 07.01.2009 and after calling for documents/information from assessee and on examination and scrutiny of such documents/information furnished by assessee, Order of approval came to be granted in favour of assessee on 18.11.2009 in Form No. 3CM vide Annexure-G.

20. It would be apt to point at this juncture itself that in the event of any question would arise before the assessing officer under Section 35 as to whether amounts certified by the prescribed authority is eligible for being allowed as expenditure and to what extent and whether such activity constitutes or constituted, or any asset is or was being used for scientific research in that regard, then assessing officer has to request the Board to refer such question to the prescribed authority as provided under clause (b) of Section 35(3). In other words, the correctness or otherwise of the order passed by the prescribed authority is not examined by the assessing officer or by the Income Tax Authority and this exercise is outsourced by the

Income Tax Department and same is being done by the prescribed authority namely, Department of Scientific and Industrial Research. This is the plain meaning which can be deciphered from the perusal of above said statutory provisions.

*21. Thus, reading of Section 35 (3) of the Act would clearly indicate that where the assessing officer does not accept the claim of the assessee made under Section 35(2AB), he has to refer the matter to the Board, which in turn, will refer the question to the prescribed authority. The decision of the prescribed authority would be final as could be seen from clause (b) of sub-section (3) of Section 35. Thus, it would emerge from above analysis that neither the assessing officer nor the Board is competent to take any decision on any such controversy relating to report and approval granted by "Prescribed Authority" as it involves expert view or opinion. **The controversy arising out of certificate issued by the prescribed authority if any, has to be referred to the prescribed authority by the Board on such doubt being raised by Assessing Officer and also on his request. It is the prescribed authority along which would be competent to take a decision with regard to correctness or otherwise of its order of approval granted in Form No. 3CL as prescribed under Section 35(2AB) of the Act read with Rule 7A of the Rules.***

(emphasis supplied by us)

17. In the event of Id AO not agreeing with the certificate of DSIR, then the Id AO should follow the procedure provided in Section 35(3) of the Act. In the instant case, no such process/procedure was followed by the Id AO. Hence, he would be left with no other option but to accept the figure certified by DSIR and grant deduction to the assessee u/s 35(2AB) of the Act. In view of the aforesaid observations and respectfully following the aforesaid judicial precedent, the Ground Nos. 3.8 to 3.11 raised by the assessee are hereby allowed.

18. Ground No. 3.12 raised by the assessee is with regard to chargeability of interest. The Id AO is directed to examine whether the return of income has been duly filed by the assessee within the due date or such other time

as extended by CBDT from time to time and accordingly decide the chargeability of interest u/s 234A of the Act.

19. The chargeability of interest u/s 234B of the Act is consequential in nature.

20. The chargeability of interest u/s 234D of the Act is also consequential in nature and the same shall be charged only in the event of any refund earlier issued actually to the assessee or adjusted with the any other arrear of the assessee.

21. Ground No. 3.13 raised by the assessee is challenging the initiation of penalty proceedings u/s 270A and 271AAC of the Act which would be premature for adjudication at this stage and hence dismissed.

22. In the result, the appeal of the assessee in ITA No. 760/Del/2022 is partly allowed.

ITA No. 3805/Del/2024
(Assessment Year: 2020-21)

23. The Assessee Matrix Clothing Pvt Ltd (hereinafter referred to as 'assessee) by filing the present appeal sought to set aside the impugned order dated 27.06.2024 passed by the Assessing Officer (AO) under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (for short 'the Act') inconsonance with the order passed by the Dispute Resolution Panel (DRP) dated 29.052024 u/s 144C(5).

24. The Ground Nos. 1 to 4 raised by the assessee are general in nature and does not require any specific adjudication.

25. Ground Nos. 5 to 5.5 raised by the assessee for AY 2020-21 are identical to Ground Nos. 2 to 2.5 raised by the assessee for AY 2017-18.

Hence, the decision rendered by us hereinabove for AY 2017-18 shall apply *mutatus mutandis* for AY 2020-21 also except with variance in figures.

26. Ground Nos. 6 to 6.3 raised by the assessee for AY 2020-21 are identical to Ground Nos. 2.6 to 2.13 raised by the assessee for AY 2017-18. Hence, the decision rendered by us hereinabove for AY 2017-18 shall apply *mutatus mutandis* for AY 2020-21 also except with variance in figures.

27. Ground Nos. 7 to 7.3 raised by the assessee for AY 2020-21 are identical to Ground Nos. 3.8 to 3.11 raised by the assessee for AY 2017-18. Hence, the decision rendered by us hereinabove for AY 2017-18 shall apply *mutatus mutandis* for AY 2020-21 also except with variance in figures.

28. Ground Nos. 8 to 11 raised by the assessee are challenging the confirmation of disallowance of brokerage claimed on the sale of property.

29. We have heard the rival submissions and perused the material available on record. The assessee acquired a leasehold industrial land from SIPCOT in earlier years. This lease hold industrial land was acquired as most of cotton textile mills are based in Tamil Nadu, the assessee thought it as good investment for future expansion in manufacturing cotton garments. However, due to other constraints, the business plan did not materialize. The assessee company got an offer through the local brokers from Hyundai Engineering Ltd, Chennai who wanted to acquire the said industrial plot. The process of transferring leasehold industrial plot by the assessee was a long drawn process. It had to be put up to SIPCOT for its approval. The documents once submitted to SIPCOT would need constant follow-up to get the approval. The assessee company instead of sending its personnel from Delhi for this work opted for taking services of local brokers to follow up with SIPCOT to get approval. The local brokers were compensated for the

extra work done by them in this regard. The assessee sold the property for Rs. 4.80 crores on 27.08.2019. Out of this sum, Rs. 1.26 crores was to be paid to SIPCOT and Rs. 3.54 crores was to be paid to assessee. The assessee paid total commission and brokerage of Rs. 40.32 lakhs. The Id AO observed that the market trend for payment of commission and brokerage is only 2% of the sale consideration and accordingly proceeded to allow Rs. 9.60 lakhs being 2% of Rs. 4.80 crores as transfer expenses and disallowed the remaining of Rs. 30.72 lakhs (Rs. 40.32 lakhs – Rs.9.60 lakhs) as excess payment of commission and brokerage. The assessee sought to explain the purpose behind paying 8.4% of the sale consideration in the sum of Rs. 40.32 lakhs as commission and brokerage as the local brokers were not only negotiating the sale price, identifying the buyer but also coordinating with SIPCOT officials for getting NOC for the transfer of leasehold industrial land which is a cumbersome process. The assessee gave the list of the persons to whom commission and brokerage was paid after due deduction of tax at source and also enclosed the confirmation from them. The list are as under:-

Sl No	Name	Amount	Pan
1.	S. Jyoti	6,25,000	BOKPJ2900M
2.	B Shkhar	15,00,000	BFFPS0265G
3.	J. Geeta	82,000	AAHPJ1265B
4.	N. Jai Raman	18,25,000	AAFPJ8545G
	Total	40,32,000	

30. The said confirmation from the parties also proved that they had duly reflected the receipt of commission in their respective returns, in support of which they also placed on record their Form 26AS and ITR acknowledgement.

31. We find that the fact of the aforesaid parties rendering brokerage services to the assessee is not disputed by the revenue in the instant case. All the payments of commission and brokerage were made through regular banking channels after due deduction of tax at source. The payees have duly disclosed the receipt of commission and brokerage in their respective returns and paid taxes thereon. We find that the lower authorities had merely gone by the market trend stating that the normal practice of payment of commission on transfer of immovable property would not exceed 2%. In the instant case, the said normal practice could not be adopted as the nature of services rendered by the brokers also involved constant and frequent coordination with SIPCOT officials for obtaining the NOC for transfer of industrial land by the assessee to the buyer. The fact that those brokers coordinating with the SIPCOT in this regard is not disputed by the revenue. Hence, in our considered opinion, the entire sum of Rs. 40.32 lakhs paid by the assessee towards commission and brokerage shall be allowed as transfer expenses while computing the long term capital gains. Accordingly, Ground Nos. 8 to 10 raised by the assessee are hereby allowed.

32. Ground Nos. 11 to 14 raised by the assessee are challenging the confirmation of disallowance made u/s 14A of the Act in the sum of Rs. 6,15,435/-.

33. We have heard the rival submissions and perused the material available on record. It is not in dispute that the assessee earned dividend income of Rs. 1.50 crores and claimed the same as exempt. The assessee had not made any disallowance of expenses u/s 14A of the Act for the purpose of earning such exempt income. When confronted as to why the disallowance should not be made in accordance with the computation

mechanism provided in Rule 8D(2) of the Income Tax Rules, the assessee explained that dividend has been earned from its wholly owned subsidiary company M/s. Tangerine Designs Pvt. Ltd and the said investment was made in earlier years. No expenses were incurred by the assessee in this regard and no fresh investments were made by the assessee during the year. We find that the Id AO in para 5.2 of his order had observed that the assessee vide its reply dated 25.09.2023 had agreed for the disallowance of expenses u/s 14A of the Act as per the computation mechanism provided in Rule 8D of the Rules. The Id AO accordingly took all the investments in shares as per an the balance sheet and computed the disallowance of Rs. 6,15,435/- by adopting 1% of average value of investments thereon. This action of the Id AO was upheld by the Id CIT(A). The law is now very well settled by the Hon'ble Supreme Court in the case of Maxopp Investments reported in 402 ITR 640 (SC) that only dividend bearing investments are to be considered for the purpose of making disallowance u/s 14A of the Act. Hence, we direct the Id AO to consider only 1% of average value of dividend bearing investments and make disallowance u/s 14A accordingly. Ground Nos. 11 to 14 are partly allowed.

34. In the result, the appeal of the assessee is partly allowed.

35. To sum up the appeals of the assessee for both the years are partly allowed.

Order pronounced in the open court on 01/12/2025.

(VIMAL KUMAR)
JUDICIAL MEMBER

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 01/12/2025

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi