

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA No. 2831/MUM/2025  
Assessment Year: 2014-15**

DCIT(CC)-8(3),  
Room No. 656, 6<sup>th</sup> floor,  
Aayakar Bhavan, M.K. Road,  
Mumbai-400020.

**Appellant**

**Vs.** Shapoorji Pallaonji And  
Company Pvt. Ltd.,  
First floor, Shapoorji Pallonji  
Centre, 41/44, Minoo Desai  
Marg, Colaba,  
Mumbai-400005.  
**PAN NO. AAACS 6994 C**  
**Respondent**

**CO No. 130/MUM/2025  
(Arising out of ITA No. 2831/MUM/2025)  
Assessment Year: 2014-15**

Shapoorji Pallaonji And  
Company Pvt. Ltd.,  
First floor, Shapoorji Pallonji  
Centre, 41/44, Minoo Desai  
Marg, Colaba,  
Mumbai-400005.

**PAN NO. AAACS 6994 C**  
**Appellant**

**Vs.** DCIT(CC)-8(3),  
Room No. 656, 6<sup>th</sup> floor,  
Aayakar Bhavan, M.K. Road,  
Mumbai-400020.

**Respondent**

Assessee by : Rajan Vora a/w  
Mr. Nikhil Tiwari  
Revenue by : Mr. R A Dhyani, CIT-DR

Date of Hearing : 14/10/2025  
Date of pronouncement : 12/01/2026



## **ORDER**

### **PER OM PRAKASH KANT, AM**

This appeal by the Revenue and cross-objection by the assessee are directed against order dated 20.02.2025 passed by the Ld. Commissioner of Income-tax (Appeals) – 50, Mumbai [in short ‘the Ld. CIT(A)’] for assessment year 2014-15. As the appeal of the Revenue and cross-objection of the assessee are arising from the same impugned order, both were heard together and disposed off by way of this common order for the sake of convenience.

2. Briefly stated, facts of the case are that the assessee company is engaged in executing construction and other infrastructure works contracts. For the year under consideration, the assessee filed its return of income on 28.11.2014 declaring total loss at Rs.(-) 10,83,63,227/- under regular provisions of the Income-tax Act, 1961 (in short ‘the Act’) and book profit u/s 115JB of the Act at Rs.85,05,38,143/-. The scrutiny assessment was completed u/s 143(3) r.w.s. 144C(3) of the Act on 15.06.2017 wherein the total income was assessed under normal provisions of the Act at Rs.21,73,79,550/- and book profit u/s 115JB of the Act at Rs.92,66,70,763/-.

2.1 Subsequently, the Assessing Officer recorded reasons to believe that income escaped assessment and issued notice u/s 148 of the Act on 31.03.2019. In response to the notice, the assessee



filed return of income on 23.04.2019 and thereafter following due process under law, the reassessment was completed on 09.12.2019. In the reassessment order, the Assessing Officer disallowed, firstly, interest expenditure u/s 14A of the Act amounting to Rs. Rs. 76,99,24,606/which was the basis of the reasons recorded.

2.2 Secondly, during the year under consideration, the Assessing Officer had also received information in respect of certain sub-contract expenses which according to Investigation Wing of Income-tax Department, Ahmadabad were not genuine. Accordingly, after carrying out inquiry during the course of reassessment proceedings, the Assessing Officer held corresponding expenses amounting to Rs.3,74,61,918/- as unexplained and non-genuine.

2.3 Aggrieved, the assessee filed appeal before the Ld. CIT(A) and challenged the validity of the reassessment proceedings as well as assailed the additions on merit. The reopening was challenged on many propositions but the Ld. CIT(A) rejected all those contentions of the assessee. But as far as merit of the addition is concerned the Ld. CIT(A) deleted both the additions.

3. Aggrieved, the Revenue is in appeal on the merit of the additions whereas the assessee is in cross-objection by way of challenging the action of the Ld. CIT(A) on the issue of the validity of the reopening of the assessment.



3.1 As in the grounds raised in the cross-objection, the assessee has assailed the reassessment proceedings itself, therefore, first we take up the cross-objection of the assessee for adjudication, which are reproduced as under:

*On the facts and in the circumstances of the case, the learned AO has:*

*General Objection to Department's Appeal*

*1. erred in objecting the order of Ld. CIT(A) deleting additions in respect of interest expenses of INR 76,99,24,606 under section 14A of the Act read with rule 8D of the Rules and unexplained and non-genuine labour charges of INR 3,74,61,918/-made in the order under section 147 of the Act without appreciating the facts of the case;*

*Validity of Reopening proceedings under section 147 of the Act:*

*General Ground:*

*2. erred in passing order under section 147 of the Act by reopening of original assessment order without appreciating that condition for reopening of assessment are not satisfied in the present case;*

**No approval obtained** from Joint Commissioner of Income Tax for reopening assessment:

*3. erred in re-opening the assessment proceedings after seeking **sanction of Additional Commissioner of Income Tax, Range-3(3) instead of the Joint Commissioner of Income Tax** thereby violating the provisions of Section 151 of the Act and thus leading to entire reassessment proceedings bad in law;*

*Reopening assessment on the basis of **borrowed satisfaction**:*

*4. ought to have appreciated that the **officer recording the reasons for re-opening and the officer issuing the notice under section 148 of the Act are different** and therefore, the impugned proceedings conducted on borrowed satisfaction are bad-in-law and liable to be quashed;*

*5. erred in reopening the assessment proceedings and passing order under section 147 of the Act solely on the basis of the*



*investigation report of the Deputy Director of Income Tax (Inv.), Ahmedabad and not on the basis of any independent opinion formed by AO and therefore the assessment is reopened on **borrowed satisfaction** leading to entire reassessment proceedings being bad in law;*

*Reopening assessment on the basis of **change of opinion**:*

*6. erred in reopening assessment only on the basis of change of opinion without any new tangible material and without appreciating the fact that disallowance of interest expense under section 14A of the Act read with rule 8D of the Rules has been adjudicated by the Assessing Officer during the course of regular assessment proceedings thereby rendering the reassessment proceedings initiated without any new material bad in law;*

*Reasons for reopening mentions **only one of the issue in dispute under reassessment***

*7. ought to have appreciated that the reasons recorded were only on the issue of disallowance of interest under section 14A of the Act and thereby the other issue could only be examined in the reassessment if addition proposed basis reasons for reassessment is survived;*

4. The first ground of the cross-objection of the assessee is general in nature wherein the assessee objected to the appeal filed by the Revenue on the merit of the addition. Therefore, objections if any of the assessee on merit shall be accordingly considered while adjudicating the ground on the merit of the Revenue. The ground No. 1 of the cross-objection of the assessee is accordingly dismissed as infructuous.

5. In Ground No. 2 of the cross-objection, the assessee has challenged the validity of the reassessment proceedings on the premise that the notice issued under section 148 of the Act was not issued by the very Assessing Officer who had recorded the reasons



to believe, and that such mismatch vitiates the assumption of jurisdiction.

5.1 The Id Counsel submitted that on ITBA Portal in the notice u/s 148 issued, name of Shri Madhav Deshmukh is appearing, whereas reasons were recorded by Shri P. Satish Reddy, therefore, the reasons were recorded by one officer, whereas, the notice u/s 148 of the Act was issued by another officer, therefore, reopening has not been done by the Assessing Officer who recorded the reasons to believe, which has rendered the entire reassessment proceedings as invalid.

5.2 On the contrary, the Ld. Departmental Representative (DR) submitted that notice u/s 148 has been validly issued by the same officer, who recorded reasons to believe and the assessee has not appreciated the facts properly.

5.3 We have carefully considered the rival submissions and perused the material placed on record, including the contemporaneous documents produced by the learned Departmental Representative, copies of which were duly supplied to the learned counsel for the assessee. The allegation of the assessee is that reasons were recorded by the officer namely Shri P. Satish Reddy, whereas the notice u/s 148 as appearing on ITBA portal was issued by Shri Madhav Deshmukh.



5.4 The undisputed factual position emerging from the record is that jurisdiction over the assessee vested with Circle 3(3)(1), Mumbai. Up to 29.03.2019, the said charge was held by Shri Madhav Deshmukh, Deputy Commissioner of Income-tax, who was relieved on the afternoon of 29.03.2019, pursuant to a transfer order of the competent authority. On the same date, Shri P. Satish Reddy assumed charge as the Assessing Officer of the said circle.

5.5 It is evident from the record, and not disputed by the assessee, that the reasons to believe for reopening of the assessment were recorded by Shri P. Satish Reddy after he had taken charge as the Assessing Officer. The approval of the competent authority was also sought and obtained on the basis of the reasons so recorded.

5.6 The grievance of the assessee arises solely from the fact that the notice generated electronically through the ITBA portal carried the pre-printed name of the predecessor officer, Shri Madhav Deshmukh. The Revenue has satisfactorily explained that due to non-substitution of the RSA token on the ITBA system at the relevant point of time, the system continued to reflect the name of the predecessor officer. However, the notice was physically printed, and after striking off the pre-printed name, duly signed by Shri P. Satish Reddy, and then same was validly served upon the assessee. The service of such signed notice has not been disputed. A copy of



such a notice was filed by the ld DR during the course of hearing and also supplied to the ld Counsel for the assessee.

5.7 In these circumstances, we find that the substance of the jurisdictional requirement stands fully complied with. The reasons to believe were recorded by the incumbent Assessing Officer sgP Satish Reddy , and the notice under section 148 was also issued under his authority and signature. Mere appearance of the predecessor's name on a system-generated notice available on ITBA portal, due to an administrative or technical limitation, cannot invalidate the proceedings, when there is no dispute regarding the identity of the officer exercising jurisdiction, recording reasons, and issuing the notice.

5.8 Jurisdiction under section 147 is founded on the formation of belief by the Assessing Officer having lawful charge, and not on clerical or mechanical features of a system-generated notice. In the absence of any prejudice to the assessee or violation of statutory mandate, such technical irregularity, if any, cannot render the reassessment proceedings void.

5.9 Accordingly, we hold that the objection raised by the assessee is without proper appreciation of the fact and devoid of the merit. Ground No. 2 of the cross-objection is, therefore, dismissed.



6. The ground No. 3 of the cross-objection relates to allegation of no approval sought from the Joint Commissioner of Income-tax for reopening of the assessment. This ground of the cross-objection was not pressed before us and accordingly same is dismissed as infructuous. The relevant part of submission dated 25<sup>th</sup> September 2025 ( PB -967) is reproduced as under:

**“Cross-objection No. 3: No approval obtained from Joint Commissioner of Income Tax for reopening assessment”**

17. The Assessee does not wish to press this cross objection.”

7. In Ground Nos. 4 and 5, the assessee has challenged the validity of the reassessment proceedings on the ground that the reopening was based on *borrowed satisfaction*, contending that the Assessing Officer merely acted upon information received from another source without independent application of mind.

7.1 The learned counsel for the assessee submitted that the formation of “reason to believe” under section 147 of the Act must be the belief of the Assessing Officer himself and cannot be a mechanical adoption of conclusions drawn by another authority. It was argued that although information may originate from an external source, the Assessing Officer is duty-bound to independently examine the material on record, apply his own mind, and arrive at a prima facie satisfaction that income chargeable to



tax has escaped assessment. According to the assessee, failure to do so renders the reopening jurisdictionally invalid.

7.2 Elaborating the submission, the learned counsel pointed out that during the relevant period, summons under section 131(1A) were issued by the Investigation Wing, Ahmedabad, to the assessee and certain contractors. The assessee submitted details of various projects at Gujarat along with copies of work orders issued to Smt. Mayaben Vijay Parmar and Vijay G Parmar (HUF) in relation to providing manpower services. Smt. Mayaben Parmar also appeared and submitted the income-tax return for assessment year 2012-13 to 2018-19 and also bank statement along with bank book. The Investigation Wing, after examining the responses and documents, forwarded its report to the Assessing Officer. According to the assessee, the Assessing Officer merely reproduced the investigation report in the recorded reasons without any independent analysis, thereby acting on borrowed satisfaction.

7.3 The Ld. counsel for the assessee further submitted that for reopening an assessment, the basic requirement of the law is application of mind by the Assessing Officer, to the material produced prior to the reopening of the assessment to form reason to believe that income has escaped assessment. Unless that basic jurisdictional requirement is satisfied, a post-mortem exercise of



analysing the material produced subsequent to reopening will not make an inherently defective reassessment order valid.

7.4 The Ld. counsel further submitted that the Assessing Officer in the present case has not arrived at the satisfaction about the escapement of income in the hands of the assessee in an independent manner as contemplated u/s 147 of the Act i.e. the Assessing Officer has simply accepted the information given by the Investigation Wing and concluded that there was escapement of income without making any independent enquiry. Thus the reassessment made by the Ld. AO, on the basis of borrowed satisfaction and without independent application of the mind, is bad in law and liable to be quashed.

7.5 In this regard, the Ld. counsel placed reliance on the decision of the Hon'ble Mumbai Tribunal in Assessee's own case for AY 2010-11 (ITA No. 5768/Mum/2013 and 5304/Mum/2013) (Refer Pg. No. 597 to 60 of Legal Paperbook) which has been further affirmed by the Hon'ble Bombay High Court in (ITA No. 1298 of 2017) dated 4 March 2020 (Refer Pg. No. 604 to 609 of Legal Paperbook) and Supreme Court (SLP No. 11299 of 2022) dated 15 July 2022 (Refer Pg. No. 610 of Legal Paperbook) wherein it is held that the additions made by the Assessing Officer on the basis of information of Sales Tax Department without conducting any



independent inquiry needs to be deleted. The relevant para has been reproduced below :

*"16. Having heard rival submissions, we are of the view that there is merit in the submissions made by the assessee. We notice that the AO has simply relied upon the Sales Tax Department report about suspicious dealers, without making independent inquiries. On the contrary, the assessee has furnished all the materials to prove the genuineness of purchases, and the AO has failed to show that those materials were bogus. Under these set of facts, we are of the view that there is no justification in doubting the genuineness of purchases made by the assessee. Further, these alleged bogus purchases form a minor fraction of total volume of the assessee company and it is stated that there is no day-to-day involvement of the management. It was further submitted that the assessee is having strict internal controls. Hence, we are of the view that the AO has not made a proper ground in support of the disallowance. Accordingly, we set aside the order passed by Ld. CIT (A) on this issue and direct the AO to delete the addition of Rs. 3,23,944/-."*

7.6 The Ld. counsel further placed reliance on the decision of Hon'ble Bombay High Court in case of Shodiman Investments (P.) Ltd. (2020) (422 ITR 337) (Bom HC) (Refer Pg. No. 465 to 468 of Legal Paperbook) wherein the court held that reassessment is not valid when the same is resorted on the basis of DDIT(Investigation) without any independent application of mind by the Assessing Officer. The relevant extracts of the said judgment are reproduced as under:

*"13. In this case, the reasons as made available to the Respondent- Assessee as produced before the Tribunal merely indicates information received from the DIT (Investigation) about a particular entity, entering into suspicious transactions.*

*However, that material is not further linked by any reason to come to the conclusion that the Respondent-Assessee has indulged in any activity which could give rise to reason to believe on the part*



*of the Assessing Officer that income chargeable to tax has escaped Assessment. It is for this reason that the recorded reasons even does not indicate the amount which according to the Assessing Officer, has escaped Assessment. This is an evidence of a fishing enquiry and not a reasonable belief that income chargeable to tax has escaped assessment.*

*14. Further, the reasons clearly shows that the Assessing Officer has not applied his mind to the information received by him from the DDIT (Inv.). The Assessing Officer has merely issued a re-opening notice on the basis of intimation regarding re-opening notice from the DDIT (Inv.) This is clearly in breach of the settled position in law that re-opening notice has to be issued by the Assessing Office on his own satisfaction and not on borrowed satisfaction.*

*15. Therefore, in the above facts, the view taken by the impugned order of the Tribunal cannot be found fault with. This view of the Tribunal is in accordance with the settled position in law.*

*16. Therefore, the question as framed does not give rise to any substantial question of law. Thus, not entertained."*

7.7 He further placed reliance on the decision of Hon'ble Supreme Court in case of Andaleeb Sehgal [(2021) 124 taxmann.com 246 (Delhi HC) - SLP Dismissed in [2021] 277 Taxman 492 (SC) (Refer Pg. No. 478 to 489 of Legal Paperbook) wherein the court held that reassessment is not valid when the same is resorted on the basis of Enforcement Directorate without any independent application of mind by the Assessing Officer. wherein it has been held as under:

*"13. The Court finds that in none of the above grounds is there any reference to any inquiry conducted by the AO or the CIT (A) on examining the above documents, which were available with the AO. The crucial element of explaining how, on the basis of such record, the AO formed the reason to believe that income had escaped assessment is missing. As pointed out by the ITAT in para 17 "the entire case is based upon borrowed investigation stated to have been conducted by Enforcement Directorate and no*



evidence has been brought on record to connect assessee with the amount of US \$ 62,000, rather it is a case of zero investigation.

14. It is one thing to state that the above documents were available but an entirely different thing to state that on examining those documents the AO found the live link for forming the reason to believe that the sum added had escaped assessment. It must be recalled that these were re-assessment proceedings and not at the stage where it was enough to form a prima facie view for reopening the assessment. In the re-assessment proceedings the AO was expected to undertake a full-fledged inquiry into the documents produced before him to come to the conclusion that the addition sought to be made was justified. As pointed out by the ITAT or that the AO seems to have done is to simply borrow the conclusions drawn by the ED without making any independent inquiry himself into the matter. Even before the ITAT, the Revenue was unable to show the precise documents or material on the basis of which the AO formed the reason to believe that 60,000 US\$ had been paid as bribe to the Iragi officials and therefore was required to be added to the income of the Assessee."

7.8 Further reliance is placed on the decision of Hon'ble Delhi Tribunal in case of Ajay Singh (ITA No. 1934/Del/2023) dated 7 February 2025 (Refer Pg. No. 482 to 490 of Legal Paperbook) wherein summons were issued and investigation was conducted in case of the Assessee and based on said investigation reassessment was made in case of the Assessee without any independent application of mind by the Ld. AO. The relevant extract reproduced as under:

"6. On perusal of the reasons for reopening of assessment suggest that the assessment was reopened by the Assessing Officer based on the information received from the office of Assistant Director of Income Tax (Inv.) in the case of the assessee. The report of the Assistant Director of Income Tax (Inv.) on which the Assessing Officer relied on suggest that summons were issued to the assessee and also to one Shri Manpreet Singh Chadha for personal deposition and Shri Manpreet Singh Chadha appeared in person and filed information. However, the assessee did not



*appear in person and therefore the assessee did not explain the credits appearing in the bank accounts. The Assessing Officer based on such report and also observing that in the return filed for the AY 2012-13 by the assessee showing income from other sources at only Rs.6,10,072/-, was of the view that he has reason to believe that income had escaped assessment for the AY 2012-13 in respect of the credit entries to the extent of Rs.25 lakhs.*

*9. The ratio of the decision of the Hon'ble Jurisdictional High Court in the case of PCIT Vs. Meenakshi Overseas Pvt. Ltd. (supra) squarely applies to the facts of the assessee's case. Respectfully following the said decision, I hold that the reopening of assessment in this case merely based on report of the ADIT (Inv.) without making any independent enquiry by the Assessing Officer is nothing but borrowed satisfaction and therefore the reassessment made by the Assessing Officer u/s 143(3) r.w.s. 147 for the AY 2012-13 is bad in law and the same is hereby quashed."*

7.9 Per contra, the learned Departmental Representative submitted that the legal position is well settled that for initiation of reassessment proceedings, what is required is the existence of relevant material giving rise to a prima facie belief that income has escaped assessment. The sufficiency or correctness of such material is not to be examined at the stage of recording reasons. He submitted that only requirement is that the material which is in possession of the Assessing Officer is relevant to the case in hand and it is linked to the assessment year under consideration. It is the Assessing Officer who has to go through the material and after that he has to form a belief that income escaped assessment. It was contended that prior to the amendment of section 148, the Assessing Officer was not empowered to conduct roving inquiries before reopening and was required to form a belief on the basis of material already available on record or otherwise coming to his



notice. Under the provisions of the Act any inquiry including notice u/s 133(6) of the Act could be issued to the assessee or any other person in respect of case of the assessee only if any proceedings under the Act were pending in the case of that assessee. The Assessing Officer is to form a reason to believe that income escaped assessment and not a conclusive proof that the income escaped assessment. Reliance was placed on the decisions of the Hon'ble Supreme Court in *Rajesh Jhaveri Stock Brokers Pvt. Ltd* 291 ITR 500 (SC) and *Raymond Woollen Mills Ltd* (1999) 236 ITR 34 SC

7.10 We have carefully considered the rival submissions and perused the reasons recorded for reopening as well as the material placed on record. At the outset, there can be no quarrel with the settled proposition of law that reassessment proceedings cannot be initiated on borrowed satisfaction. The Assessing Officer must independently apply his mind to the material before him and establish a live link between such material and the formation of belief that income chargeable to tax has escaped assessment. Where the Assessing Officer merely reproduces an report or information without such independent examination from records, the assumption of jurisdiction would indeed be invalid. As the reason recorded in the case is centre point of dispute, it is imperative to reproduce the reasons recorded by the ld AO in this case as under:



**“M/s. Shapoorji Pallonji & Co. Pvt. Ltd.- PAN: AAACS6994C-AY. 2014-15**

**REASONS FOR REOPENING OF THE ASSESSMENT U/S.147 OF THE ACT**

*The assessee company e-filed its return of income for A.Y.2014-15 on 28.11.2014 declaring loss for the year at (10,83,63,227) and book profit u/s.115JB of the Act at 85,05,38,143. The scrutiny assessment proceedings were completed u/s.143(3) r.w.s 144C(3) of the Income Tax Act, 1961 on 15.06.2017, assessing the total income under the normal provisions of the Act at Rs.21,73,79,550 and book profit u/s.115JB of the Act at Rs.92,66,70,763.*

*2. It is seen that the assessee company has incurred interest expenditure of Rs.478,11,71,706, however, for the purpose of computation of disallowance u/s.14A of the Income Tax Act, 1961 the same was not considered by the assessee company under Rule 8D(ii) of the Act., which has resulted in computation of disallowance u/s.14A at Rs.6.93 crores instead of Rs.83.93 crores, leading to short disallowance of Rs.76.99 crores. Therefore, I am satisfied that the income chargeable to tax of Rs.76.99 crores has escaped assessment and hence, it is a fit case for initiation of proceedings u/s.147 of Income Tax Act, 1961, in order to frame proper assessment to bring to tax the amount of Rs.76.99 crores, which has escaped assessment.*

*3. Necessary approval of the Addl. Commissioner of Income Tax, Range-3(3), Mumbai has been obtained for initiation of proceedings u/s.147 of the Income Tax Act, 1961 vide letter No. Addl.CIT-Rg.3(3)/148/2018-19 dated 31.03.2019.”*

7.11 In the present case, the reasons recorded by the Assessing Officer as reproduced above reveal that the reopening was not initiated on the basis of information. The Assessing Officer specifically examined the records of the case and then noted that in the original assessment under section 143(3), disallowance under section 14A of the Act had been made without considering interest expenditure attributable to investments yielding exempt income.



Thus, the Assessing Officer verified the assessment records of the assessee. The Assessing Officer examined the nature of investments, the interest expenditure incurred, and the absence of corresponding disallowance under section 14A. On this factual foundation, he formed a prima facie belief that income chargeable to tax had escaped assessment.

7.12 The reasons recorded clearly demonstrate an independent evaluative exercise by the Assessing Officer. This cannot be equated with a case of mechanical or blind reliance on conclusions drawn by another authority.

7.13 The decisions relied upon by the assessee, including *Shodiman Investments (P.) Ltd. (supra)* and *Andaleeb Sehgal (supra)*, are clearly distinguishable on facts, as in those cases the Assessing Officer had failed to demonstrate any independent application of mind or establish a live link between the information received and the alleged escapement of income. In the instant case, facts are entirely different and such live link is evident from the reasons recorded themselves. The Assessing Officer examined the disallowance u/s 14A of the Act and after due verification that expenses were incurred for investment in the exempted income yielding assets, he noted that no disallowance was made in respect of such interest and therefore, he recorded reason to believe therefore, reopening has been made after due application of mind on the material and



therefore allegations of borrowed satisfaction are not sustainable in law.

7.14 As regards the submissions relating to subcontract charges, we find that the same do not form the basis of the reopening and therefore , same are wholly extraneous to the controversy raised in these grounds.

7.15 In view of the above discussion, we hold that the reopening in the present case is founded on the independent satisfaction of the Assessing Officer and not on borrowed satisfaction. The jurisdictional requirement under section 147 of the Act stands duly fulfilled.

7.16 Accordingly, Ground Nos. 4 and 5 of cross objection raised by the assessee are dismissed.

8. The next cross-objection raised by the assessee challenges the validity of reopening of the assessment on the ground that it is founded on a mere *change of opinion*, which is impermissible in law.

8.1 The Ld. CIT(A) has rejected the contentions of the assessee observing as under:

*“6. I have considered the assessment order, submission of the appellant, and facts available on record. In this case, the assessment u/s 143 r.w.s 144C(3) of the I.T Act was completed on 15.06.2017 wherein the AO made a disallowance of Rs 6,93,36,620 u/s 14A of the I.T Act. Thereafter, the AO found that the assessee has debited*



expenditure of Rs 478,11,17,706/- in the profit and loss account. The disallowance as per the provisions of Section 14A r.w.r 8D comes to Rs 83.93 crores whereas the disallowance made u/s 14A in the assessment order passed u/s 143(3) r.w.s 144C is only of Rs 6.93 crores. Thus, there is a short disallowance of interest of Rs 76.99 crores as per Rule 8D. Therefore, the AO had reasons to believe that the income to the extent of Rs 76.99 crores has escaped assessment and hence the assessment was reopened u/s 147 of the I.T Act and accordingly notice u/s 148 was issued on 31.03.2019.

7. In the submissions filed before me, the appellant has raised various objections challenging the proceedings of reopening u/s 147 of the I.T Act. It is contended that the appellant had filed objections against reopening the assessment, which were disposed off by the AO vide letter dated 10.10.2019. However, notice u/s 143(2) of the I.T Act was issued on 17.09.2019 i.e. prior to the disposal of objections filed by the appellant which is in violation of procedure laid down by the Hon'ble Supreme Court in the case of GKN Driveshaft (India) Ltd. The appellant further contended that the reopening is invalid as the AO recording the reason for reopening and obtaining sanction u/s 151 and the AO issuing notice u/s 148 are not the same. The appellant has relied on the decision of the Hon'ble Gujarat High Court in the case of Hyoup Food and Oil Industries Ltd. The appellant further contended that the assessment u/s 143 r.w.s 144C was already completed wherein the appellant had furnished all the details related to the exempt income and interest expenditure incurred and after verification of the same the AO made a disallowance of Rs 6.93 crores u/s 14A of the I.T Act. Thus, there is no failure on the part of the appellant to disclose true and full information related to the expenditure debited. The reopening made u/s 147 of the I.T Act is based on the facts/information already available before the AO. No new information or tangible material was available with the AO to reopen the assessment u/s 147 of the I.T Act. Therefore, the reopening of the assessment u/s 147 of the I.T Act is invalid as it is merely based on change of opinion. To support its contention, the appellant has relied on various case laws including the decision of the Hon'ble Supreme Court in the case of CIT vs Kelvinator India Ltd.

8. It is a fact that the appellant was subjected to scrutiny proceedings u/s 143 r.w.s 144C of the I.T Act wherein the assessing officer examined the issue of disallowance to be made u/s 14A read with rule 8D. After examining the issue, the AO made a disallowance of Rs 6,93,36,620/- as per Rule



8D(2)(iii) of the I.T Rules. Subsequently, the A.O observed that, the total disallowance as per the rule 8D should have been of Rs 83.94 crores, however, in the assessment order passed u/s 143(3) rws 144C the disallowance made u/s 14A is of Rs 6.93 crores only under clause (iii) of Rule 8D(2). In this order the disallowance as per clause (ii) of rule 8D(2) has not been made. In reasons of reopening recorded, the AO held that the disallowance as per Rule 8D(2) (ii) comes to Rs 76,99,24,606/-, however, in the earlier assessment passed u/s 143(3) this disallowance was not made. Therefore, the AO had reasons to believe that the income to the extent of Rs 76.99 crores has escaped assessment

9. From the reasons of reopening recorded by the AO, it is evident that the provisions of section 14A of the I.T. Act are applicable in the facts of the case. The total disallowance as per rule 8D(2) comes to Rs.83.93 crores. However, the disallowance made in the assessment order passed u/s 143(3) r.w.s 144C was of Rs.6.93 crores only by applying clause (iii) of rule 8D(2). Thus, there is an underassessment to the extent of Rs.76.99 crores u/s 14A r.w.s 8D(2). As per clause (c) of Explanation 2 to section 147 of the I.T. Act, where an assessment has been made but income chargeable to tax has been under assessed, the case shall be deemed to be a case where income chargeable to tax has escaped assessment. In this case, there is an underassessment of income chargeable to tax to the extent of Rs.76.99 crores. Therefore, it comes under the purview of clause (c) of Explanation 2 to section 147 of the I.T. Act. Hence, I find no infirmity in reopening the assessment u/s 147 of the I.T. Act.  
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10. Further the contentions of the appellant that the notice u/s 143(2) has been issued prior to the disposal of objections filed by the appellant is in violation of the decision of Hon'ble Supreme Court in case of GKN Driveshaft (India) Ltd has also no merit as there is no such observation made by the Hon'ble Supreme Court. Therefore, this contention is also rejected.

Regarding the next contention that the A.O who recorded the reasons of reopening and who issued notice u/s 148 is different, vide letter dated 07.01.2025 the AO was asked to furnish the factual details on the contentions raised by the appellant. In response to this, the AO, DCIT-CC-8(3), Mumbai vide letter dated 31.01.2025 has submitted a factual report wherein it is stated that the AO who has recorded the reasons for reopening on 31.03.2019 was Shri Satish Reddy, ACIT-



*Circle-3(3)(1), Mumbai and subsequently notice u/s 148 of the I.T. Act was also issued by Shri Satish Reddy on 31.03.2019. Along with this report, the AO also forwarded the copy of notice issued u/s 148 of the I.T. Act dated 31.03.2019 and a copy of reasons recorded for reopening u/s 147 of the I.T. Act. On perusal of the same, it is observed that the ACIT-Circle-3(3) (1), Mumbai, Shri P Satish Reddy has signed the reasons for reopening as well as the notice issued u/s 148. Therefore, the contention raised by the appellant is factually incorrect and hence deserves to be rejected. Accordingly appeal on this ground is DISMISSED.”*

8.2 The learned counsel for the assessee submitted that the expression “reason to believe” appearing in section 147 of the Act is of decisive significance and necessarily excludes reopening based on a mere reappraisal of the same material. It was contended that where an issue has been examined during the original assessment proceedings and a conscious view has been taken by the Assessing Officer, the assessment cannot be reopened merely because the Assessing Officer subsequently forms a different view on the same set of facts.

8.3 Elaborating the submission, the learned counsel pointed out that during the original assessment proceedings, the Assessing Officer had specifically issued a show cause notice on the applicability of section 14A of the Act. The assessee furnished a detailed reply (Refer Pg. No. 371 to 373 of Factual Paperbook), which was duly considered, and thereafter a disallowance of ₹6.93 crores was made under section 14A read with Rule 8D(2)(iii) (Refer Pg. No. 374 to 382 of Factual Paperbook). According to the assessee, the Assessing Officer, having consciously chosen not to



make any disallowance under Rule 8D(2)(ii), must be deemed to have formed an opinion that no such disallowance was warranted. Reopening the assessment to make a disallowance under Rule 8D(2)(ii), therefore, amounts to a change of opinion.

8.4 Reliance was placed on the landmark judgment of the Hon'ble Supreme Court in *CIT v. Kelvinator of India Ltd.* [320 ITR 561], as also on the decision of the Hon'ble Bombay High Court in *Marico Ltd.*, wherein reassessment proceedings were quashed on the ground of change of opinion.

8.5 Per contra, the learned Departmental Representative supported the orders of the authorities below and submitted that there was no conscious formation of opinion by the Assessing Officer in the original assessment on the issue of interest disallowance under Rule 8D(2)(ii). It was contended that failure to make a particular disallowance does not, by itself, establish formation of an opinion, unless it is shown that the Assessing Officer had applied his mind to that specific issue and taken a view. It was further submitted that underassessment of income squarely falls within Explanation 2(c) to section 147 of the Act and constitutes escapement of income.

8.6 We have heard rival submissions of the parties and perused the relevant materials on record. The legal position on the issue of "change of opinion" is well settled. The Hon'ble Supreme Court in



*Kelvinator of India Ltd.* has held that reassessment cannot be resorted to on a mere change of opinion and that the concept of “change of opinion” acts as an in-built safeguard against arbitrary exercise of power by the Assessing Officer.

8.7 In the present case, it is evident from the record that during the original assessment proceedings, the Assessing Officer made a disallowance under section 14A read with Rule 8D(2)(iii). In the case, in the reasons recorded, the ld Assessing Officer has recorded that *It is seen that the assessee company has incurred interest expenditure of Rs.478,11,71,706, however, for the purpose of computation of disallowance u/s.14A of the Income Tax Act, 1961 the same was not considered by the assessee company under Rule 8D(ii) of the Act.* Thus, no new fresh or tangible material has been referred by the Assessing officer for reopening the assessment, therefore, the reassessment is based on same material which was available before the AO during original assessment proceedings. It is pertinent to note that reassessment proceedings are not in the nature of review and reopening is permissible only where any new or fresh tangible material comes to the notice of the Assessing Officer. Reopening just on the basis of re-appreciation of already available material on record, without any other trigger, amounts to review, which is not permitted in law.



8.8 The case of the assessee is squarely covered by the decisions relied upon by the assessee, including *Kelvinator of India Ltd.(supra)* and *Marico Ltd.(supra)*.

8.9 Accordingly, we hold that the reassessment proceedings are vitiated on account of 'change of opinion'. The cross-objection raised by the assessee on this issue is, therefore, allowed.

9. The next ground of cross-objection challenges the validity of reassessment proceedings on the ground that where the very addition forming the basis of reopening has been deleted, any other addition made during reassessment proceedings cannot survive.

9.1 The brief facts relevant to the issue are that in the reassessment order passed under section 143(3) read with section 147 of the Act dated 09.12.2019, the Assessing Officer made addition of Rs.80,73,86,524 comprising of two additions:

(i) disallowance of interest expenditure under section 14A read with Rule 8D(2)(ii) amounting to ₹76.99 crores, and  
(ii) disallowance of payments made to two contractors, namely Smt. Mayaben Parmar and Shri Vijay Parmar (HUF), amounting to ₹3.74 crores, treating the same as unexplained and non-genuine.

9.2 It is undisputed that in the reasons recorded for reopening dated 31.03.2019, the Assessing Officer recorded "reason to believe" only with respect to alleged underassessment arising from non-



disallowance of interest under section 14A read with Rule 8D(2)(ii). No reference whatsoever was made in the recorded reasons to the alleged non-genuine payments to contractors. The issue relating to contractor payments was raised for the first time during reassessment proceedings by issuance of notice under section 142(1) dated 20.11.2019 and required the assessee to show cause as to why the payments made to the two contractors i.e. Smt. Mayaben Parmar and Shri Vijay Parmar (HUF) as mentioned in the reasons recorded for assessment year 2012-13, should not be considered as unexplained and non-genuine.

9.3 In the assessment order u/s 143(3) r.w.s. 147 of the Act, the Ld. Assessing Officer made both the disallowance i.e. disallowance of payments amounting to Rs.3,74,61,980/- made to Smt. Mayaben Parmar and Shri Vijay Parmar and also disallowance u/s 14A of the Act amounting to Rs. 76,99,24,606/-.

9.4 The Ld. counsel for the assessee submitted that the Ld. CIT(A) following the binding decision in the case of assessee's own case for assessment year 2008-09, 2010-11 and 2011-12 deleted the disallowance of interest made under Rule 8D(2)(ii) of the Income-tax Rules, 1962 (in short 'the Rules') r.w.s. 14A of the Act amounting to Rs.76.99 crores. According to the assessee, once the very foundation of reopening has been knocked down, the reassessment proceedings cannot be sustained, and consequently, any other



addition made during reassessment must also fail. The Ld. counsel relied on the decision of the Hon'ble Bombay High Court in the case of Jet Airways 331 ITR 236 (Bombay).

9.5 Per contra, the learned Departmental Representative submitted that the ratio of *Jet Airways(supra)* applies only to a situation where the Assessing Officer himself does not make any addition on the issue forming the basis of reopening in the reassessment order. According to the Revenue, subsequent deletion of such addition by an appellate authority does not invalidate the reassessment proceedings, particularly when the issue is still contested by the Department.

9.6 In rejoinder, the Ld. counsel for the assessee further referred to the decision of the Third Member in the case of Mahesh Kumar (ITA No. 2650/Del/2024) dated 06.08.2025 and submitted that even if addition for the basis of reopening has been deleted by the Ld. CIT(A) still the reassessment proceedings cannot be sustained in law as basis of the reopening itself has been removed. The Ld. counsel also relied on the decision of the Asha Kansal [2014] 62 SOT 146 (Agra-Trib.) wherein it is held that when the original reason for which the notice was issued was not sustained and was deleted by the Ld. CIT(A) which was also accepted by the Ld. AO. In such case the reassessment proceedings had become infructuous.



Therefore, the connected additions made by the AO during reassessment proceedings could not be sustained.

9.7 We have heard rival submissions of the parties and perused the relevant materials on record. The legal position emanating from the judgment of the Hon'ble Bombay High Court in *Jet Airways (I) Ltd.(supra)* is that if the Assessing Officer, during reassessment proceedings, does not make any addition on the issue for which the assessment was reopened, he cannot assess any other income which comes to his notice during such proceedings. The rationale is that the assumption of jurisdiction under section 147 is issue-specific and must culminate in an addition on the very issue forming the basis of reopening. For ready reference, the relevant finding of the Hon'ble Bombay High Court in the case of *Jet Airways (supra)* is reproduced as under:

*"17. We have approached the issue of interpretation that has arisen for decision in these appeals, both as a matter of first principle, based on the language used in section 147(1) and on the basis of the precedent on the subject. We agree with the submission which has been urged on behalf of the assessee that section 147(1) as it stands postulates that upon the formation of a reason to believe that income chargeable to tax has escaped assessment for any assessment year, the Assessing Officer may assess or reassess such income "and also" any other income chargeable to tax which comes to his notice subsequently during the proceedings as having escaped assessment. The words "and also" are used in a cumulative and conjunctive sense. To read these words as being in the alternative would be to rewrite the language used by Parliament. Our view has been supported by the background which led to the insertion of Explanation 3 to section 147. Parliament must be regarded as being aware of the interpretation that was placed on the words "and also" by the Rajasthan High Court in Shri Ram Singh's case*



*(supra). Parliament has not taken away the basis of that decision. While it is open to Parliament, having regard to the plenitude of its legislative powers to do so, the provisions of section 147(1) as they stood after the amendment of 1-4-1989 continue to hold the field.”*

9.8 The basis for reopening in the case is non disallowance of interest while making disallowance of expenses related to exempted income. The 1d AO in impugned assessment order made disallowance for such interest invoking section 14A read with Rule 8D(2)(ii) of Rules.

9.9 Alongwith the disallowance u/s 14A of the Act, in the impugned reassessment order, the Assessing also made another addition for the disallowance of sub-contract charges paid to two parties holding the same as in-genuine.

9.10 The contention of the Ld. counsel for the assessee contended before us that since the addition forming basis of the reasons recorded was comprised only of disallowance u/s 14A of the Act and which has been deleted by the Ld. CIT(A), therefore, following the decision of the Hon'ble Bombay High Court in the case of Jet Airways (supra) the other addition in respect of sub-contractor charges paid to two persons also cannot survive.

9.11 However, the above judgment does not lay down that where the Assessing Officer has, in fact, made an addition on the reopening issue, the reassessment becomes invalid merely because such addition is subsequently deleted by the appellate authority.



The Assessing Officer cannot be expected to anticipate or prejudge the outcome of appellate proceedings while framing the reassessment.

9.12 But situation will change if the Department accept the finding of the appellate authority and does not dispute further. In the case of Asha Kansal (supra) also the addition forming basis of the reasons recorded was deleted by the Ld. CIT(A) and it was also accepted by the Department. In the case of the Mahesh Kumar (supra) also the finding of the Ld. CIT(A) was accepted by the Department, whereas in the instant case before us, the deletion of the disallowance under section 14A by the learned CIT(A) is under challenge before us by the Revenue and has not attained finality. The issue remains sub judice and is actively contested. Therefore, it cannot be said, at this stage, that the basis of reopening has been finally removed or accepted by the Department.

9.13 In such a situation, the reassessment proceedings cannot be held to be invalid merely because the first appellate authority has deleted the addition forming the basis of reopening. Consequently, the ratio laid down in *Jet Airways (I) Ltd.(supra)*, *Asha Kansal (supra)*, and *Mahesh Kumar(supra)* does not advance the case of the assessee on the facts before us.

9.14 Accordingly, the cross-objection No. 7 of the assessee is dismissed.



10. Now, we take up the grounds raised by the Revenue challenging the deletion of the addition on merit. For ready reference, said grounds are reproduced as under:

1. *"Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 3,74,61,918/- made by the Assessing Officer u/s 69C of the Act, on account of unexplained expenditure relating to transactions with **Smt. Mayaben Vijay Parmar and Shri Vijay Gajendrusinh Parmar (HUF)?"***

2. *"Whether, on the facts and in the circumstances of the case and in law, the Id. CIT(A) failed to properly consider the findings and evidence recorded by the Assessing Officer in the assessment order, and erred in granting relief without conducting adequate verification or bringing any corroborative material on record to justify the deletion of the addition made by the AO u/s. 69C of the Act on account of unexplained expenditure?"*

3. *"Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of Rs. 76,99,24,606/- made by the Assessing Officer under Section 14t of the Income-tax Act, 1961, read with Rule 8D(2)(ii) of the Income-tax Rules, 1962, without properly appreciating the facts as mentioned in the assessment order by the Ld.AO.*

4. *"Whether on the facts and in the circumstances of the case and in law, the Ed. CT(A) erred in deleting the disallowance of Rs. 76,99,24,606/- made by the Assessing Officer under section 144 of the Income Tax Act, 1961 r.w.r 8D(2)(ii) of the Act while computing the tax liability w/s 115JB of the Act, without appreciating the facts as mentioned in the assessment order by the AO.*

5. *"The appellant craves leave to amend, alter, or add any ground of appeal as may be necessary."*

11. Ground Nos. 1 to 2 of the Revenue's appeal arise from deletion of an addition of ₹3,74,61,918/- made on account of alleged unexplained and non-genuine subcontract expenditure in respect of



payments made to Smt. Mayaben Vijay Parmar and Shri Vijay G. Parmar (HUF).

11.1 The facts in brief qua the issue in dispute are that during the year under consideration, the Assessing Officer received information from the Investigation Wing, Ahmedabad, stating that detailed investigation had been carried out into transactions entered into by the assessee with the aforesaid two parties. The investigation noted that amounts received by these parties from the assessee were withdrawn in cash shortly thereafter. For ready reference details of payment made by the assessee to these two parties is extracted as under:

**(i) Smt. Mayaben Vijay Parmar**

Sr. No.	Name of Bank & A/c No.	F.Y.	Amount (Rs.)
1.	IDBI, 910400224765	2011-12	71,99,052/-
2.	IDBI, 9102000049629	2011-12	1,46,99,364/-
3.	IDBI, 9102000049629	2012-13	2,87,92,909/-
4.	IDBI, 9102000049629	2013-14	49,62,067/-

**(ii) Shri Vijay G. Parmar (HUF)**

Shri Vijay G. Parmar holds a joint account no. 910400224765 with his wife Mayaben V. Parmar in the IDBI Bank, Ahmedabad.

Sr. No.	Name of Bank & A/c No.	F.Y.	Amount (Rs.)
1.	IDBI, 910400224765	2013-14	3,24,99,851/-
2.	IDBI, 910400224765	2014-15	3,46,38,688/-

11.2 The Investigation Wing observed that neither the assessee nor the contractors, namely Smt. Mayaben Vijay Parmar and Shri Vijay G. Parmar (HUF), were able to substantiate the transactions with



primary evidences such as muster rolls, wage registers, or labour payment vouchers. It was further noticed that the amounts received by the contractors from the assessee were withdrawn in cash soon after being credited to their bank accounts.

11.3 Accordingly, summons under section 131 of the Act were issued to the assessee by the Deputy Director of Income-tax (Investigation) on 24.01.2019. In response, the assessee, vide letter dated 30.01.2019, furnished details of the relevant projects and copies of work orders issued to Smt. Mayaben Vijay Parmar for providing manpower services. Subsequently, vide letter dated 05.02.2019, the assessee also submitted copies of ledger accounts of Smt. Mayaben Parmar and Shri Vijay G. Parmar (HUF) for the period April 2013 to March 2014, along with copies of TDS certificates issued to them.

11.4 The assessee explained that the said parties had provided skilled and unskilled manpower, hired machinery, construction material, and other allied services at various construction sites. However, the Investigation Wing required the assessee to furnish further documentary evidence such as labour payment receipts or supporting records evidencing disbursement of wages, which, according to the Investigation Wing, were not produced.

11.5 Similar requisitions were made to the contractors, who furnished only copies of their income-tax returns and bank



statements, but did not produce independent evidence to substantiate the nature of services rendered. On this basis, the Investigation Wing concluded that the transactions were not genuine.

11.6 Relying upon these observations, the Assessing Officer called upon the assessee to explain why the expenditure should not be treated as unexplained and non-genuine. The contention of the assessee was not accepted and the Assessing Officer made addition holding those expenses as unexplained and non-genuine. But, on further appeal, the Ld. CIT(A) following his finding in assessment years 2012-13 deleted the addition holding that facts in the year under consideration are identical to the assessment year 2012-13.

11.7 Before us, the Ld. counsel for the assessee submitted that expenditure has been incurred wholly and exclusively for the purpose of the business of the assessee and therefore, same is allowable u/s 37 of the Act.

11.8 Before us the assessee for justification of genuineness of the transaction submitted that it is a large construction company executing multiple labour-intensive projects across various locations in India. Given the nature, scale, and urgency of such projects, it was neither practical nor feasible to deploy permanent employees at each site. Consequently, the assessee engaged independent contractors and labour suppliers to provide skilled and



unskilled manpower, machinery, and allied services as per project requirements.

11.9 It was explained that the labourers were on the payroll of the contractors and had no direct contractual relationship with the assessee. The assessee's obligation was limited to making payments to the contractors against invoices raised by them, and the contractors, in turn, were responsible for making payments to individual labourers. The assessee was not required, either contractually or under law, to make direct payments to such labourers. The assessee explained that during the reassessment proceedings extensive documentary evidence were furnished, including:

- project-wise details for which contractor services were utilised;
- copies of work orders specifying scope of work, rates for skilled and unskilled labour, and project details;
- ledger accounts of the contractors in the books of the assessee;
- copies of invoices raised by the contractors;
- statements of salaries paid to labour along with department-wise break-up;
- details of provident fund and service tax;
- bank statements evidencing payments made through banking channels; and



- TDS certificates issued to the contractors.

11.10 The assessee further pointed out that the contractors had also furnished their income-tax returns, bank statements, and bank books, and had explained that cash withdrawals were made to disburse wages to labourers. It was submitted that mere withdrawal of cash by contractors does not render the expenditure non-genuine, particularly in the construction industry where cash payments to labourers are common. It was emphasised that the assessee had maintained proper books of account and had fully discharged its obligation of substantiating the expenditure incurred. Any failure on the part of the contractors to maintain detailed internal records such as muster rolls or wage registers could not be attributed to the assessee.

11.11 The assessee also highlighted that the projects executed were large, well-known infrastructure projects involving construction costs ranging from approximately ₹900 crores to over ₹4,000 crores. Against such projects, the payments made to the two contractors were negligible, constituting a minuscule percentage of the total turnover and total subcontracting expenditure. The assessee contended that the Assessing Officer had doubted the genuineness of the expenditure without disproving execution of the projects or utilisation of labour, and without pointing out any specific defect in the documentation furnished.



11.12 Further, the Id counsel for the assessee submitted that the said investigation report itself stated that Smt. Mayaben Vijay Parmar and Shri Vijay Parmar have supplied labour services to the Assessee and the Assessee as well as the aforesaid Contractors had provided sufficient documents to substantiate the payments made and further, it has been clearly mentioned that the subsequent cash withdrawal was for making payments to the labourers. Thus, the Assessee as well as the aforesaid Contractor had provided all the documentary evidence and had provided its explanation with respect to the aforesaid transaction and which was also accepted in the investigation report. Thus, the investigation report seems to be in favour of the Assessee.

11.13 Further it was submitted that even during investigation and the reassessment proceedings, the Assessee had submitted details of project undertaken by the Assessee for which the contractor services were utilised. (Refer page no. 359 of Factual paperbook). From the details of the project given below including project value it is quite clear that the projects undertaken by the Assessee were well known and huge projects involving labour intensive work and thus, for the said purpose, the Assessee had obtained contractor services from contractor Smt. Mayaben Parmar and Shri Vijay G Parmar:

<b>Project Name</b>	<b>Cost of Construction</b>
Tata Motors Plant at Sanand	Rs. 3,676.64 Crore
Ford Motors Plant at Sanand	Rs. 4,000 Crore



Power Plant of Bhavnagar Energy Co. Pvt. Ltd. at Padva Bhavnagar	Rs. 3800 Crore
Cement plant of ABG Cement at Kutch	Rs. 900 Crore

11.14 It was emphasized that the aforesaid projects were huge of almost Rs. 1,000 to Rs. 4,000 Crore , against which the Assessee has made contractor payment of very meagre amount and the Ld. AO has without verifying the documentation submitted has doubted the genuineness of payments without providing any cogent reasons for doubting the genuineness of the projects. Further, it was submitted that the Assessee's turnover from Construction business is Rs. 4,351.56 Crores out of the total turnover amounting to Rs. 4,522.60 Crores. (Refer Pg. No. 41 of Factual Paperbook). The payment made to contractor Smt. Mayaben Parmar and Vijay G Parmar (HUF) is Rs. 0.50 Crores and Rs. 3.25 crores respectively. Thus, the payment made to the contractors is merely 0.09% of the turnover from construction business. Thus, this is meagre amount as compared to the huge transactions undertaken by the Assessee during the year. It was also submitted that the Assessee during the year has claimed sub-contracting charges amounting to Rs. 1,490.97 Crores (Refer Pg. No. 42 of Factual Paperbook). The payment made to contractor Smt. Mayaben Parmar and Vijay G Parmar (HUF) is Rs. 0.50 Crores and 3.25 crores respectively. Thus, the payment made to contractors comprises of only 0.25% of the total sub-contracting charges claimed which is just a meagre



amount as against the huge sub-contracting charges claimed during the year.

11.15 The ld counsel for the assessee submitted that except relying on the investigation report, the Ld. AO nowhere in the reassessment order has stated that why the expenses were non-genuine and what documentation the Assessee has failed to provide to prove the genuineness of the transaction. Thus, the Ld. AO merely on the basis of investigation report has alleged the transaction as non-genuine expenditure.

11.16 The assessee further submitted that the learned CIT(A), after examining the entire material, had recorded a categorical finding that (i) payments were made through banking channels after deduction of tax at source; (ii) the Investigation Wing itself acknowledged that labour services were provided and that cash withdrawals were for payment to labourers; and (iii) expenditure recorded in the books could not be treated as unexplained merely on the basis of suspicion. Accordingly, the CIT(A) deleted the disallowance, holding that the assessee had furnished sufficient material to establish the genuineness and business purpose of the expenditure.

11.17 It was submitted that the claim of the Assessee cannot be denied merely on the ground that sufficient documentation is not



submitted when actually the Assessee has submitted documents and has proved the genuineness and source of the expenditure.

11.18 The Ld. counsel for the assessee relied on the decision of the Co-ordinate Bench of the Tribunal in the case of the assessee's own case for assessment year 2010-11 which has been further affirmed by the Hon'ble Bombay High Court in ITA No. 1298 of 2017. In said decision, the Hon'ble Bombay High Court has held that the assessee had furnished all the material to prove genuineness of the purchases but the AO held that those materials were bogus and under those set of facts, there was no justification in doubting the genuineness of purchases made by the assessee. Further, it was held that such alleged bogus purchases formed only a minor fraction of total volume of the assessee company and it is stated that there is no day-to-day involvement of the management. Further, the Ld. counsel for the assessee relied on the decision of the Hon'ble Bombay High Court in the case of Nikunj Eximp Enterprises (P) Ltd. (2015) 372 ITR 619. The relevant extract of which is reproduced as under:

*"7. We have considered the submission on behalf of the revenue. However, from the order of the Tribunal dated 30-04-2010, we find that the Tribunal has deleted the additions on account of bogus purchases not only on the basis of stock statement i.e. reconciliation statement, but also in view of the other facts. The Tribunal records that the Books of Accounts of the respondent-assessee have not been rejected. Similarly, the sales have not been doubted and it is an admitted position that substantial amount of sales have been made to the Government Department i.e. Defence Research and Development Laboratory, Hyderabad. Further, there were*



*confirmation letters filed by the suppliers, copies of invoices for purchases as well as copies of bank statement all of which would indicate that the purchases were infact made. In our view, merely because the suppliers have not appeared before the Assessing Officer or the CIT(A), one cannot coriclude that the purchases were not made by the respondent-assessee. The Assessing Officer as well as CIT(A) have disallowed the deduction of Rs.1.33 crores on account of purchases merely on the basis of suspicion because the sellers and the canvassing agents have not been produced before them. We find that the order of the Tribunal is well a reasoned order taking into account all the facts before concluding that the purchases of Rs. 1.33 crores was not bogus. No fault can be found with the order dated 30-04-2010 of the Tribunal."*

11.19 Further, the Ld. counsel relied on the Coordinate bench of Delhi Tribunal in the case of Swastik Pipes Ltd. (2018) 66 ITR(T)  
1). The relevant para of which is reproduced as under:

*"16. On ground No.6, Revenue challenged the addition of Rs. 14,64,445/- made on account of disallowance of general repair and maintenance expenses. The assessee explained before Ld. CIT (A) that it has incurred expenses for various types of electrical, mechanical and engineering type of activities which were got done from labour on regular basis. Local/casual labour is hired on regular basis for execution of various types of electrical, mechanical and engineering works. They are being paid small amounts for carrying out these CIT(A) accepted the contention of assessee on the basis of documents produced before him which are wage rolls for the wages paid by the assessee in assessment year. The services were hired on rate contract basis and payments are relating thereto. The quantum of expenditure pointed out by the Revenue is also not in any consequence keeping in view the fact that assessee runs several steel and coil manufacturing units and such expenses on repairs and maintenance of the factory premises are naturally running into lakhs of rupees. Ld. CIT (A) accepted the explanation of assessee and deleted the addition.*

*19. After considering the rival submissions we do not find any merit in this ground of Revenue. the Ld. CIT (A) correctly appreciated the fact that for repair and maintenance, assessee has to engage labour for which details are maintained. Learned Counsel for the Assessee pointed out to various documents in the paper book to show that same are properly vouched. Since the expenditure were incurred wholly and exclusively for the purpose of business, therefore, the*



*same were correctly allowed as deduction. Ground No.6 of appeal of Revenue is dismissed.”*

11.20 We have heard the rival submissions and perused the material placed on record. The core issue for adjudication is whether the assessee has discharged its burden of proving that the subcontract expenditure incurred through Smt. Mayaben Parmar and Shri Vijay G. Parmar (HUF) was genuine and incurred wholly and exclusively for the purposes of its business.

11.21 It is a matter of record that the Investigation Wing, Ahmedabad, noticed that the said parties had withdrawn substantial amounts of cash soon after receipt of payments from the assessee. On that basis, investigation was carried out in the cases of the contractors. Although the contractors stated that the cash withdrawals were made for payment to labourers, they could not produce muster rolls, wage registers or payment vouchers, except copies of their income-tax returns.

11.22 Pursuant thereto, the assessee was summoned by the Investigation Wing and, in response, furnished comprehensive details, including project-wise particulars for which manpower services were availed, copies of work orders, invoices raised by the contractors, ledger accounts, bank statements evidencing payments through banking channels, and TDS certificates. The assessee also demonstrated that skilled and unskilled manpower supplied by the



said contractors was utilised in execution of its construction projects.

11.23 The determinative question, therefore, is whether the assessee has established actual receipt and utilisation of labour services. On consideration of the material on record, we find that the assessee has successfully demonstrated that services of skilled and unskilled labour were availed and consumed in its business projects. Once such utilisation of services is established and payments are made through banking channels against invoices, the primary onus cast upon the assessee stands duly discharged.

11.24 The assessee engaged the labour through independent contractors and made payments to them by account payee cheques. The assessee cannot be held responsible for the manner in which the contractors withdrew cash or maintained their internal records. The law does not oblige an assessee to maintain or produce internal documents of third-party contractors, such as muster rolls or wage registers, nor does it require the assessee to explain as why the payments to labourers was made in cash, once the genuineness of the transaction and business purpose are established. Significantly, there is no finding that the work was not executed or that the projects themselves were fictitious. The disallowance rests solely on suspicion arising from cash withdrawals by the contractors, which, by itself, is insufficient to hold the expenditure as non-genuine.



11.25 We also note that in assessment year 2013-14, the Assessing Officer himself accepted similar subcontract expenditure as genuine and made no disallowance. When identical transactions with the same parties, based on the same investigation material, have been accepted in other assessment years, the Revenue is not justified in taking a contrary view in the year under consideration in the absence of any material change in facts or circumstances.

11.26 In view of the foregoing discussion, we find that the order of the learned CIT(A) is based on proper appreciation of facts and settled legal principles and does not suffer from any infirmity or perversity. Accordingly, we uphold the same. Ground Nos. 1 to 3 raised by the Revenue are dismissed.

12. The ground no. 3 relate to disallowance of expenses u/s 14A of the Act r.w.r. 8D(2)(ii) of the Rules amounting to Rs.76,99,24,606/-

12.1 The facts in brief qua the issue in dispute are that the assessee shown exempted income comprised of dividend income of Rs.17,25,20,478/-; income from partnership firm of Rs.4,26,45,913/- and long term capital gain (of Rs.82,69,16,993/-). As against the said exempted income, the assessee made *suo-motu* disallowance of Rs.5,00,000/- u/s 14A of the Act towards expenses incurred for collection of dividend.



12.2 The Assessing Officer, not being satisfied with the assessee's claim, issued a show cause notice proposing disallowance under section 14A read with Rule 8D. After examining the computation of income, audited financial statements, and tax audit report, the Assessing Officer recorded dissatisfaction with the assessee's explanation.

12.3 In the original assessment proceedings, the Assessing Officer made a disallowance under Rule 8D(2)(iii) at 0.5% of the average value of investments yielding exempt income. Subsequently, in the reassessment proceedings, the Assessing Officer invoked Rule 8D(2)(ii) and made a proportionate disallowance of interest on the allegation that borrowed funds were utilised for investments yielding exempt income.

12.4 Before the Assessing Officer as well as before us, the assessee contended that no disallowance under Rule 8D(2)(ii) was warranted since its interest-free own funds were far in excess of the investments yielding exempt income. It was submitted that the facts of the year under consideration were identical to those in the assessee's own cases for assessment years 2008-09, 2010-11, and 2011-12, where similar disallowances were deleted by the Tribunal and such orders were affirmed by the Hon'ble Bombay High Court and further by the Hon'ble Supreme Court.



12.5 Before the Assessing Officer as well as before us, the assessee contended that no disallowance under Rule 8D(2)(ii) was warranted since its interest-free own funds were far in excess of the investments yielding exempt income. It was submitted that the facts of the year under consideration were identical to those in the assessee's own cases for assessment years 2008-09, 2010-11, and 2011-12, where similar disallowances were deleted by the Tribunal and such orders were affirmed by the Hon'ble Bombay High Court and further by the Hon'ble Supreme Court. Relevant part of submission made before the ld AO is reproduced as under:

*"140. In this regard, the Assessee would like to place reliance on the decision of the Hon'ble Mumbai Tribunal in Appellant's own case for AY 2008-09 in ITA No. 4418/Mum/2012 (Refer page no. 383 of Factual paperbook) wherein the Hon'ble Tribunal held that since Appellant's own capital is much more than investment in share/funds generating exempt income, the jurisdictional High Court decisions in the case of Reliance Utilities and Power Ltd. (221 CTR 435) shall be applicable and no disallowance shall be warranted under Rule 8D(2) of the Rules. The same has been further affirmed by the Hon'ble Jurisdictional Bombay High Court in ITA No. 1843 of 2016. (Refer page no. 391 of Factual paperbook). The relevant extract of the decision of the Hon'ble Tribunal has been reproduced below for your Honour's ready reference:*

*"Learned CIT(A) find that the assessee-company has suo moto worked out the interest disallowance of borrowing which were subject matter of investment in shares which were generating exempt income and hence the working given by the assessee is done on the basis of Auditor's report of statutory auditor who carried out the work of audit. He finds that no qualifying has been made by the auditor while submitting Form 3CD report u/s. 44AB of the Act. He also finds that the assessee-company's own capital is much more than the investment made by the assessee-company in the shares/mutual funds which were generating exempt income and therefore disallowance was not correct considering the jurisdictional High Court decisions in the case of Reliance Utilities*



and Power Ltd. (221 CTR 435) and also taking note of the facts available on record and also taking note of his predecessor CIT(A)'s orders which have been referred by the assessee-company. Learned CIT(A) held that a sum of Rs. 5,00,000/- would be appropriate to allocate for administrative expenses in relation to earning of exempt income. He thus restricted the disallowance u/s. 14A to Rs. 1,12,91,985/- and addition made by the Assessing Officer to that extent is confirmed.

We have considered the rival submissions and perused the record. We are of the view that the order passed by learned CIT(A) does not require any interference as he has rightly restricted the disallowance u/s. 14A read with section 8D by following judgment of Hon'ble Jurisdictional High Court in the case of Reliance Utilities and Power Ltd. (supra) also order of his predecessors passed in earlier years. Therefore we uphold the order of learned CIT(A) and reject the grounds taken by the Revenue."

141. Further reliance is also placed on Appellants own case for AY 2010-11 on similar issue. wherein the Hon'ble Jurisdictional High Court in ITA No. 1298 of 2017 (Refer page no. 395 of Factual paperbook) held that if interest free as well as loan funds are available with the assessee, then a presumption would arise that the investment would be out of interest free funds available with the assessee. Disallowance under rule 8D(2)(ii) of the Rules shall not be warranted if interest free funds are sufficient to meet the investments. A Special Leave Petition against the order of the Hon'ble High Court has been dismissed by the Hon'ble Supreme Court in SLP No. 11299 of 2022. (Refer page no. 401 of Factual paperbook) The relevant extract of the decision of the Hon'ble High Court has been reproduced below for your Honour's ready reference:

"7. We have perused the decision of this Court in Reliance Utilities and Power Limited (supra) wherein it has been held that if there are funds available with the assessee, both, interest-free and overdraft and/or loans taken then a presumption would arise that investments would be out of the interest-free funds generated or available with the assessee if the interest-free funds were sufficient to meet the investments. In the facts of that case, it was noted that the said presumption was established considering the finding of fact returned by the first appellate authority as affirmed by the Tribunal which is identical in the present case.

7.1. We also note that the said decision of this Court has been affirmed by the Supreme Court in CIT Vs. Reliance Industries Limited, 410 ITR 466.



8. *In the light of the above, we do not find any good ground to entertain this question for consideration."*

142. *Additionally, reliance is also placed on Appellant's own case for AY 2011-12, wherein the Hon'ble Tribunal in ITA No. 3053/Mum/2012 (Refer page no. 402 of Factual paperbook), having regard to the similar issues which are settled for earlier AY by the Hon'ble Jurisdictional High Court and Hon'ble Supreme Court, followed the principal of consistency and restricted the disallowance made by the Ld. AO under section 14A of the Act read with rule 8D(2) of the Rules. Further, appeal against the order of the Hon'ble Tribunal has been dismissed by the Hon'ble High Court in ITA No. 792 of 2018 (Refer page no. 461 of Factual paperbook). Further, Special Leave Petition against the High Court order has been dismissed by the Hon'ble Supreme Court in SLP No. 26248 of 2024 (Refer page no. 463 of Factual paperbook). The relevant extract of the decision of the Tribunal has been reproduced below for your Honour's ready reference:*

"3.18. *It is noted that before the Ld. Assessing Officer as well as before the Ld. Commissioner of Income Tax (Appeal), the assessee took the stand that the Department, in preceding years, accepted the suo-moto disallowance made by the assessee, therefore, in the present Assessment Year also, the same has to be followed. However, we find that instead of following the rule of consistency, the Ld. Commissioner of Income Tax (Appeal) enhanced the disallowance under Rule-8D(2)(ii) for an amount of Rs.60,04,84,033/-, which is under challenge before us. We find that the Tribunal vide order dated 27/03/2015 (ITA No. 202/Mum/2013 and 207/Mum /2013) for Assessment Year 2009-10, followed the decision of the Tribunal in the case of assessee itself for Assessment Year 2008-09 with respect to disallowance made by the Assessing Officer under rule-8D(2)(ii) and 8D(2)(iii) of the Rules along with the disallowance of the administrative expenses. In that case, the Ld. Commissioner of Income Tax (Appeal) restricted the disallowance to Rs.10 lakh against the suo-moto disallowance made to the tune of Rs.1 lakh. The disallowance to the tune of Rs. 10 lakh was upheld by the Tribunal against the claim of Rs.1 lakh by the assessee. So far as, the contention of the Id. counsel for the assessee that the disallowance may be restricted to Rs.1 lakh only, is concerned, we are not satisfied with such reasoning because the rule of consistency applies to both sides and since, the Tribunal for Assessment Year 2008-09, 2009-10, being on identical facts, directed the Assessing Officer to restrict the disallowance as contained in the order of the Tribunal dated 27/03/2015 (for Assessment Year 2009-10), for the present Assessment Year also, the disallowance is directed to be restricted to Rs.10 lakh under*



*section 14A of the Act r.w.r. 8D(2)(iii), against the claim of the assessee at Rs.1 lakh, consequently, the Ld. Assessing Officer is directed to follow the ratio laid down in order dated 27/03/2015 (Assessment Year 2009-10). Thus, ground no. 2 & 3 are disposed off in terms indicated hereinabove."*

*Facts of the present year are similar to the prior years i.e. AY 2008-09, AY 2010-11 and AY 2011-12."*

12.6 The assessee furnished details demonstrating availability of substantial interest-free funds, comprising share capital and reserves, aggregating to ₹1,671.50 crores, whereas the tax-free investments stood at ₹620.12 crores and total investments at ₹1,391.37 crores. It was thus contended that the presumption in law clearly operated in favour of the assessee that investments were made out of interest-free funds. Further, the assessee provided detail of the interest free funds available as under:

<b>Particulars</b>	<b>AY 2014-15</b>
Share Capital	205.02,04,000
Reserves and Surplus	1466,48,06,132
<b>Total Interest Free funds</b>	<b>1671,50,10,132</b>
<b>Tax Free Investments</b>	<b>620,12,39,872</b>
<b>Total Investments</b>	<b>1391,37,43,359</b>

12.7 We have heard rival submissions of the parties and perused the relevant materials on record. The legal position governing disallowance of interest under section 14A read with Rule 8D(2)(ii) is now well settled. The Hon'ble Supreme Court in South Indian Bank Ltd. (2021) 283 Taxman 178 has categorically held that where an assessee has mixed funds and the interest-free own funds available exceed the investments made in tax-free securities, a



presumption arises that such investments are made out of interest-free funds. In such circumstances, proportionate disallowance of interest under section 14A is not warranted, even if separate accounts are not maintained. The relevant extract of said judgment is reproduced as under:

*“17. In a situation where the assessee has mixed fund (made up partly of interest free funds and partly of interest-bearing funds) and payment is made out of that mixed fund, the investment must be considered to have been made out of the interest free fund. To put it another way, in respect of payment made out of mixed fund, it is the assessee who has such right of appropriation and also the right to assert from what part of the fund a particular investment is made and it may not be permissible for the Revenue to make an estimation of a proportionate figure.....*

*20. Applying the same logic, the disallowance would be legally impermissible for the investment made by the assessee in bonds/shares using interest free funds, under section 14A of the Act. In other words, if investments in securities is made out of common funds and the assessee has available, non-interest-bearing funds larger than the investments made in tax-free securities then in such cases, disallowance under section 14A cannot be made.*

*27. The aforesaid discussion and the cited judgments advise this Court to conclude that the proportionate disallowance of interest is not warranted, under section 14A of Income Tax Act for investments made in tax-free bonds/securities which yield tax-free dividend and interest to Assessee Banks in those situations where, interest free own funds available with the Assessee, exceeded their investments. With this conclusion, we unhesitatingly agree with the view taken by the learned ITAT favouring the assesseees.”*

12.8 Further, the Ld. counsel for the assessee relied on the decision of the Hon’ble Bombay High Court in the case of Reliance Utilities &



Power Ltd. 313 ITR 340 where similar principle has been upheld. The relevant portion of the order is reproduced as under:

*“If there be interest free funds available to an appellant sufficient to meet its investments and at the same time the appellant had raised a loan it can be presumed that the investments were from the interest free funds available. In our opinion the Supreme Court in East India Pharmaceutical Works Ltd. (Supra) had the occasion to consider the decision of the Calcutta High Court in Woolcombers of India Ltd. (supra) where a similar issue had arisen. Before the Supreme Court it was argued that it should have been presumed that in essence and true character the taxes were paid out of the profits of the relevant year and not out of the overdraft account for the running of the business and in these circumstances the appellant was entitled to claim the deductions. The Supreme Court noted that the argument had considerable force, but considering the fact that the contention had not been advanced earlier it did not require to be answered. It then noted that in Woolcomber's case (Supra) the Calcutta High Court had come to the conclusion that the profits were sufficient to meet the advance tax liability and the profits were deposited in the overdraft account of the appellant and in such a case it should be presumed that the taxes were paid out of the profits of the year and not out of the overdraft account for the running of the business. It noted that to raise the presumption, there was sufficient material and the appellant had urged the contention before the High Court. The principle therefore would be that if there are funds available both interest free and over draft and/or loans taken, then a presumption would arise that investments would be out of the interest free fund generated or available with the company, if the interest free funds were sufficient to meet the investments. In this case this presumption is established considering the finding of fact both by the CIT (Appeals) and ITAT Considering the above, in our opinion, there is no merit in this appeal which is accordingly dismissed.”*

12.9 This principle has consistently been followed by Coordinate Benches of the Tribunal. The presumption operates as a rule of law



once the factual foundation of availability of sufficient interest-free funds is established.

12.10 Applying the aforesaid settled principles to the facts of the present case, we find that the assessee has conclusively demonstrated that its interest-free funds were substantially higher than the investments yielding exempt income. This factual position has not been controverted by the Revenue. In the absence of any finding establishing a direct nexus between borrowed funds and investments yielding exempt income, invocation of Rule 8D(2)(ii) is legally unsustainable.

12.11 We also find merit in the assessee's contention based on the principle of consistency. On identical facts, disallowance under Rule 8D(2)(ii) has been deleted in the assessee's own cases for earlier assessment years, and such decisions have attained finality up to the Hon'ble Supreme Court. In the absence of any change in facts or law, a departure from the settled position is not justified.

12.12 In view of the above discussion and in light of binding judicial precedents, we hold that no disallowance of interest under section 14A read with Rule 8D(2)(ii) is warranted in the present case. The finding of the learned CIT(A) deleting the disallowance is well reasoned and does not call for any interference.



12.13 Accordingly, the ground No.3 raised by the Revenue on this issue is dismissed.

13. The ground No. 4 raised by the Revenue relates to deletion of addition of ₹76,99,24,606/- made while computing book profits under section 115JB of the Act, by invoking section 14A read with Rule 8D of the Income-tax Rules.

13.1 During the relevant assessment year, the assessee earned exempt income and, while computing its book profits under section 115JB, made a *suo-motu* adjustment of ₹5 lakhs towards expenses relating to earning such exempt income. In the reassessment proceedings, the Assessing Officer applied the computation mechanism of section 14A read with Rule 8D(2)(ii) and made a further adjustment of ₹76.99 crores under clause (f) of Explanation 1 to section 115JB(2), thereby enhancing the book profits.

13.2 On appeal, the learned CIT(A) deleted the said adjustment, holding that the disallowance computed under section 14A read with Rule 8D cannot be imported into the computation of book profits under section 115JB, and that the addition made by the Assessing Officer was unsustainable in law. Aggrieved by this deletion, the Revenue has raised the present ground before the Tribunal.



13.3 We have heard rival submissions of the parties and perused the relevant materials on record. The scope and ambit of section 115JB are now well settled. The said provision is a self-contained code and commences with a non obstante clause. The Assessing Officer's jurisdiction to adjust the net profit as per the profit and loss account is strictly confined to the items expressly specified in Explanation 1 to section 115JB(2).

13.4 The Special Bench of the Tribunal in Vireet Industries Pvt. Ltd. ITA No. 502/Del/2012 has categorically held that the computation mechanism prescribed under section 14A read with Rule 8D cannot be applied while determining the amount of expenditure relatable to exempt income for the purposes of clause (f) of Explanation 1 to section 115JB(2). The adjustment, if any, under clause (f) must be made independently and cannot be mechanically borrowed from section 14A. The relevant extract of the said decision is reproduced as under:

*6. ... The issue posed for our consideration is whether computation provisions prescribed for computation of total income under normal provisions with reference to section 14A can or cannot be taken into consideration while computing book profits under MAT provisions.*

*6.21....*

*However. Ld. Senior Counsel has relied on the decision in the case of Bhushan Steel Ltd. (supra) wherein it has been held as under:-*

*7. Question No. 6 concerns deletion of addition of Rs. 89,00,000 made by the AO for computation of the income for*



*the purposes of Minimum Alternate Tax ('MAT') under Section 115 JB of the Act. This pertained to the expenditure incurred for earning exempt income under Section 14A read with Rule 8D. The ITAT has rightly held that this being in the nature of disallowance, and with Explanation 115JB not specifically mentioning Section 14A of the Act, the addition of Rs. 89,00,000 was not justified. The view taken by the ITAT cannot be faulted with. It is consistent with the decision in Apollo Tyres Ltd. v. Commissioner of Income Tax 255 ITR 273 (SC) which held that "the Assessing Officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation to Section 115J." The Court declines to frame a question on the above issue."*

*In such a scenario, in our humble opinion, proper course would be to follow the decision of Hon'ble Supreme Court in the case of CIT v. Vegetable Products Ltd. [1973] 88 ITR 192....*

*... In the back drop of these facts the controversy before Hon'ble Supreme Court was whether the penalty was to be levied on the tax assessed under section 143 or as demanded under section 156 being tax assessed minus the amount paid under the provisional assessment order. Hon'ble Supreme Court before resorting to the interpretation of term in addition to the amount of the tax, if any, payable by him as appearing in section 271(1)(a) (i) observed as under:*

*"On the other hand, if two reasonable constructions of a taxing provision are possible, that construction which favours the assessee must be adopted. This is a well-accepted rule of construction recognized by this court in several of its decisions. "*

*We have; therefore, to follow the later decision of Hon'ble Delhi High Court in the case of Bhushan Steel (supra).*

*6.22 In view of above discussion, we answer the question referred to us in favour of assessee by holding that the computation under clause (f) of Explanation 1 to section 115JB(2), is to be made without resorting to the computation as contemplated u/s 14A read with Rule 8D of the Income-tax Rules, 1962."*



13.5 We further note that Tribunal in assessee's own case for the year under consideration i.e. AY 2014-15 (ITA No. 2025/Mum/2021 & CO No. 55/Mum/2022) in normal 143(3) proceedings, (Refer page no. 782A to 782S of legal paperbook) wherein it has been held that disallowance under Section 14A of the Act should not be added while computing book profits under Section 115JB of the Act. The relevant extracts reproduced as under:

*"12. We have heard the rival submissions and perused the materials available on record. It is observed that the A.O. made addition of Rs. 6,93,36,620/- u/s. 14A read with Rule 8D and had added the said amount while computing the book profits in accordance with the clause (f) of Explanation 1 to section 115JB(2) of the Act by placing reliance on the Tribunal's decision in the case of Viraj Profile Ltd. (supra) and the same was restricted to the extent to Rs.5 lacs being the suo moto disallowance made by the first appellate authority by placing reliance on the Special Bench decision of Vireet Investment (P). Ltd. (supra). The assessee had relied on the decision of the Tribunal in assessee's case for A.Y. 2010-11 where on identical facts, the impugned addition was deleted and the same was upheld by the Hon'ble Jurisdictional High Court and subsequently the SLP filed by the Revenue before the Hon'ble Apex Court was dismissed, meaning to say that the issue had attained finality. As this issue has already been decided by the Special Bench of the Tribunal in the case of Vireet Investment (P.) Ltd. (supra) which has held that for computation under clause (f) of Explanation 1 to section 115JB(2) of the Act restart to computation u/s. 14A r.w. Rule 8D should not be made where there is a separate mechanism available for adjustment to the book profit of such expenditure incurred. As these issues are identical and covered by various decisions including the decision in assessee's case, we deem it fit to allow the grounds raised by the assessee in its cross objection and dismiss the grounds raised by the Revenue. Therefore, ground no. 2 of the Revenue's appeal is dismissed and ground nos. 4, 5 and 6 of the assessee's cross objection are allowed."*



13.6 In view of the settled legal position, the action of the Assessing Officer in importing the computation under section 14A read with Rule 8D(2)(ii) into clause (f) of Explanation 1 to section 115JB(2) is unsustainable in law.

13.7 Accordingly, we find no infirmity in the order of the learned CIT(A) deleting the addition made under section 115JB on the basis of section 14A read with Rule 8D. The ground raised by the Revenue is, therefore, dismissed.

14. In the result, the cross-objection of the assessee is partly allowed, whereas the appeal of the Revenue is dismissed.

**Order pronounced in the open Court on 12/01/2026.**

**Sd/-**  
**(RAJ KUMAR CHAUHAN)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;  
Dated: 12/01/2026  
Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,  
(Assistant Registrar)  
**ITAT, Mumbai**