

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

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

**ITA No. 5344/MUM/2025
Assessment Year: 2018-19**

ACIT, Central Circle-4(2)
4th floor, Kautilya Bhavan,,
C-41 to C43, G Block
Bandra Kurla Complex,
Bandra (East)
Mumbai-400051.

Appellant

Vs. Raheja Universal Pvt. Ltd.,
5th floor, Raheja Centre Point, CST
Road, Vidyanagri P.O. Santacruz
(East),
Mumbai-400098.

**PAN NO. AABCG 7955 Q
Respondent**

**CO No. 278/MUM/2025
(Arising out of ITA No. 5344/MUM/2025)
Assessment Year: 2018-19**

Raheja Universal Pvt. Ltd.,
5th floor, Raheja Centre
Point, CST Road,
Vidyanagri P.O. Santacruz
(East),
Mumbai-400098.

**PAN NO. AABCG 7955 Q
Appellant**

Vs. ACIT, Central Circle-4(2)
4th floor, Kautilya Bhavan,, C-41 to
C43, G Block Bandra Kurla
Complex, Bandra (East)
Mumbai-400051.

Respondent

Assessee by : Mr. Bhadresh Doshi
Revenue by : Mr. Annavaram Kasuri, Sr. DR a/w
Mr. Uma Shankar Prasad, CIT-DR

Date of Hearing : 06/11/2025
Date of pronouncement : 03/02/2026



ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue and cross-objection by the assessee are directed against order dated 14.06.2025 passed by the Ld. Commissioner of Income-tax (Appeals) – 52, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2018-19.

2. Firstly, we take up the appeal of the Revenue. The grounds raised by the Revenue are reproduced as under:

1. *"Whether on the facts and in the circumstances of the case, the Ld. CIT(A) is right in law, in restricting the disallowance made u/s 14A read with Rule 8D of the Income-tax Rules, 1962, to the extent of exempt income earned (21,465), ignoring the statutory mandate of Section 14A(2) & (3) and the method prescribed under Rule 8D?"*

2. *"Whether on the facts and in the circumstances of the case, the Ld. CIT(A) is right in law, in justifying in holding that the disallowance u/s 14A cannot exceed the exempt income, in contravention of the CBDT Circular No. 5/2014 and without appreciating the decision of the Hon'ble Supreme Court in Maxopp Investment Ltd. v. CIT (402 ITR 640)?"*

3. *"Whether on the facts and in the circumstances of the case, the Ld. CIT(A) is right in law, in allowing the deduction of? 9,00,00,000 representing the principal amount of loan to a wholly-owned subsidiary written off as bad debt, despite the admitted fact that such principal amount had never been taken into account in computing taxable income of any earlier year, thereby violating Section 36(2)?"*

4. *"Whether on the facts and in the circumstances of the case, the Ld. CIT(A) is right in law, in holding that the condition of Section 36(2) is satisfied merely because interest income on such loan was taxed in earlier years, overlooking the legislative intent that the "debt OR part thereof" must itself be in the nature of a trading/money-lending debt?"*



5. "Whether on the facts and in the circumstances of the case, the Ld. CIT(A) is right in law, in respect to the expenditure of Rs.18,70,686/- incurred for Hotel and Club Services and Facilities Expenses, without ruling out that this expenditure also contains expenses of some personal nature and not all the expenses incurred wholly and exclusively are for the business purpose?"

6. "Whether on the facts and in the circumstances of the case, the Ld. CIT(A) is right in law, in respect to restrict the deemed rent to Rs.2,00,000/- offered by the appellant as deemed rental value, by overlooking the annual value adopted @ 8.5% of the cost of construction of the property as per the Bombay Rent Control Act and amendment made in respect of deemed rent for the builder's stock in trade.?"

3. Briefly stated, the facts of the case are that the assessee is a private limited company engaged in the business of real estate development, project marketing management, and finance and investment activities. For the assessment year under consideration, the assessee e-filed its return of income on 31.12.2018, declaring a total income of ₹15,47,88,230/-. The return was selected for scrutiny, and a notice under section 143(2) of the Income-tax Act, 1961 (in short the Act) was issued on 22.09.2019 and duly served upon the assessee.

3.1 The assessment was thereafter completed under section 143(3) of the Act, wherein the Assessing Officer made various additions and disallowances to the returned income.

4. On further appeal, the Ld. CIT(A) deleted all the additions/disallowance.



5. Aggrieved, the Revenue is in appeal before the Tribunal by way of grounds raised as reproduced above.

6. In Ground Nos. 1 and 2, the Revenue has assailed the action of the learned Commissioner of Income-tax (Appeals) in restricting the disallowance under section 14A of the Income-tax Act, 1961 to the extent of the exempt dividend income earned by the assessee during the year.

6.1 The facts, in brief, are that during the relevant previous year the assessee earned dividend income of ₹1,465/- from investments in shares and shown share of loss of ₹1,008/- from its partnership firm, M/s Raheja International. The assessee contended that it had not incurred any expenditure for earning the exempt income and, therefore, no disallowance under section 14A was called for. In support, reliance was placed on the judgment of the Hon'ble Punjab & Haryana High Court in *CIT v. Hero Cycles Ltd.* (323 ITR 518), wherein it was held that where no expenditure is incurred for earning exempt income, no disallowance under section 14A can be made. Without prejudice to this contention, the assessee furnished a computation of disallowance under Rule 8D of the Income-tax Rules, 1962.

6.2 The Assessing Officer did not accept the assessee's claim that no expenditure had been incurred for earning exempt income. Rejecting the said claim, he invoked the provisions of Rule 8D and



made a disallowance of ₹87,61,342/-, adopting the computation furnished by the assessee without prejudice. It is pertinent to note that the Assessing Officer computed the disallowance only under Rule 8D(2)(ii) at the rate of 1% of the average of monthly average investments, and no disallowance was made towards interest on borrowed funds.

6.3 In appeal, the learned CIT(A), following the order passed by his predecessor for assessment year 2017-18, restricted the disallowance to the extent of the exempt income earned during the year. While doing so, the learned CIT(A) relied upon binding judicial precedents, including the decision of the Hon'ble Jurisdictional High Court in *PCIT v. Ballarpur Industries Ltd.*, holding that in the absence of exempt income, no disallowance under section 14A is warranted, and the decision of the Hon'ble Delhi High Court in *Era Infrastructure (India) Ltd.*, wherein it was held that the Explanation to section 14A inserted by the Finance Act, 2022 is prospective and cannot be applied retrospectively. The learned CIT(A) further held that no disallowance is called for in respect of the share of profit or loss from the partnership firm, which operates under a distinct statutory mechanism. The relevant finding of the Ld. CIT(A) is reproduced as under:

“5.4.1 This ground deals with the disallowance of Rs.87,61,342/- made u/s. 14A read with Rule 8D. In this regard, the appellant has vehemently argued that the disallowance should not be made at all and, alternatively, the amount of disallowance should be restricted to



the amount of exempt income earned. In this regard, my attention is drawn to the order of my predecessor while deciding the appeal of the appellant for the immediately preceding year i.e. AY 2017-18 wherein the same issue had arisen. The relevant portion from the order of the CIT (A) is reproduced below -

11. I have considered the facts of the case. According to the appellant, it has average net worth of Rs. 444.12 crores and average investment in partnership firm and shares of Rs. 85.83 crores. The appellant has stated that it has received share of loss amounting to Rs. 2,911/- from the partnership firm and dividend income of Rs. 13,038/- from shares. The appellant has relied on a slew of judgments to state that no disallowance u/s 14A was called for.

11.2. The Hon'ble Jurisdictional High Court in the case of PC/T vs. Ballarpur Industries Ltd. in. ITA No. 51 of 2016 held that in the absence of any exempt income, disallowance u/s. 14A of the Act could not be made.

11.2.1 Although the explanation of sec. 14A inserted by the Finance Act, 2022 can be treated to be clarificatory in nature, the Hon'ble Delhi High Court in the case of M/s. Era Infrastructure (India) Ltd. in ITA No. 204/2022&CM.APPL. 31445/2022 dated 20.07.2022 has held that the provisions cannot be treated to be retrospective. Hence, the claim of the appellant that disallowance w/s. 14A cannot exceed the exempt income is backed by judicial precedence and binding in nature.

11.3. In the case of CIT v. UTI Bank Ltd., [2022] 447 ITR 662 (SC), the Hon'ble Supreme Court upheld the proposition that where interest free own funds available with assessee exceeded their investments in tax-free securities, investments would be presumed to be made out of assessee's own funds and proportionate disallowance was not warranted under section 14A. Similar view was taken by the Hon'ble Apex Court in the case of South Indian Bank Ltd. v. CIT, [2021] 438 /TR 1 (SC). In the instant case, the appellant does have substantial interest free funds in excess of the investments made.

11.4. While there may not be any expenses directly related to exempt income, the appellant would have certainly incurred certain expenses in maintaining such a large investment portfolio. Considering that the dividend income earned during the year was Rs. 13,038/-, the disallowance made by the AO is restricted to Rs. 13,038/- by respectfully following the decisions of the Hon'ble Courts referred above. No disallowance is made in respect of profits/loss from



partnership firm as it is a separate legal entity and has its own mechanism for the interest/profit/salary for the partners.

11.5. This ground stands PARTLY ALLOWED."

5.4.2 Following the order of my predecessor CIT (A) for the immediately preceding year and respectfully following the judgment of Hon'ble Courts referred above, I hereby direct the AO to restrict the disallowance only to the extent of exempt income of Rs. 1,465/-. No disallowance is made in respect of profits/loss from partnership firm as it is a separate legal entity and has its own mechanism for the interest / profit / salary for the partners."

6.4 We have heard the rival submissions and carefully perused the material on record. We find that the learned CIT(A) has followed binding judicial precedents in restricting the disallowance under section 14A to the extent of the exempt income actually earned by the assessee. It is now well settled that disallowance under section 14A cannot exceed the exempt income, and that the Explanation inserted by the Finance Act, 2022 does not operate retrospectively. The approach adopted by the learned CIT(A) is consistent with the law laid down by the Hon'ble Courts and does not call for any interference. Accordingly, we uphold the order of the learned CIT(A) on this issue. The ground Nos. 1 and 2 of the appeal of the Revenue are accordingly dismissed.

7. Ground Nos. 3 and 4 raised by the Revenue relate to the allowability of deduction in respect of the principal amount of a loan advanced by the assessee to its wholly owned subsidiary, written off as irrecoverable, under section 36(1)(vii) read with section 36(2) of the Act.



7.1 Briefly stated, the relevant facts are that the assessee was incorporated on 05.11.1980 and, thereafter, incorporated a wholly owned subsidiary, namely Casagrande Developers Private Limited (“CASA”), on 11.05.2006. It was submitted that both the assessee and CASA had identical principal objects, namely acquisition, development, and sale of real estate, as reflected in their respective Memoranda of Association. The assessee explained that, since it was not eligible to receive foreign direct investment (FDI) owing to the existence of non-FDI compliant projects, CASA was incorporated as a special purpose vehicle (SPV) to facilitate mobilisation of FDI/private equity funds.

7.2 In the course of its business, the assessee advanced an interest-bearing loan aggregating to ₹14.53 crores to CASA during financial year 2006–07 for acquisition of land in Goa for development purposes. The loan was intended as interim funding until CASA could secure statutory approvals and raise funds through FDI/PE. The assessee charged interest on the loan from year to year, from financial year 2006–07 up to financial year 2017–18, and such interest income, including interest on loans advanced to other subsidiaries, was consistently offered to tax and assessed as “business income” in earlier years.

7.3 Due to prolonged local objections and litigation, CASA was unable to obtain the requisite approvals for project development.



Considering that the interest burden was continuously increasing and that it was commercially unviable to retain the project, a business decision was taken to sell the project on an “as is where is” basis during financial year 2017–18 to mitigate further losses. The sale proceeds were utilised towards partial repayment of the outstanding loan to the assessee. The details of the loan account, as disclosed in Note 39 to the balance sheet as at 31.03.2018, were as under:

Particulars	Amount (Rs.)
<i>Opening Balance</i>	78,90,87,827
<i>Add: Opening interest receivable transferred to loan account</i>	5,64,24,564
<i>Add/ (Less): Loan given/ (recovered) during the year (net)</i>	(29,63,53,022)
<i>Less: Closing balance</i>	35,39,033
Total written off	54,56,20,336

7.4 The aforesaid amount of ₹54.56 crores was written off as bad debts during the year under consideration. This comprised interest accrued and charged by the assessee amounting to ₹44.94 crores, which had been offered to tax in earlier years, and the balance principal amount of ₹9 crores. The Assessing Officer allowed deduction of the interest component written off but disallowed the principal amount of ₹9 crores on the ground that it had not been taken into account in computing the income of the assessee in any earlier year, as required under section 36(2) of the Act. Reliance was



placed on the decision of the Chandigarh Bench of the Tribunal in Punjab Information & Communication Technology Corporation Ltd. v. ACIT in ITA No. 747/Chd/2009 for assessment year 2005-06 wherein it is held that the loan written off cannot be claimed as bad debts, however income offered in earlier years as interest income should be allowed.

7.5 Before the Ld. CIT(A), the assessee relied on the decision as under to contend that once a part of the debt has been taken into account in computing income, the entire debt written off is eligible for deduction :

- **CIT v. T. Veerabhadra Rao (1985-155-ITR-152-SC)**
- **CIT v. Bonanza Portfolio Ltd. [2010-320-ITR-178-(Del)]**
- **Madhup Jain in ITA No. 3950/Del/2004 for assessment year 2001-02**
- **CIT v. Shreyas Morakhia [2012-342-ITR285-Bom]**

7.6 The learned CIT(A), after an elaborate examination of facts and law, relied upon the judgment of the Hon'ble Bombay High Court in *CIT v. Pudumjee Pulp & Paper Mills Ltd.(supra)* and held that where a part of the debt has been considered while computing income in the current or earlier years, the entire debt written off qualifies for deduction under section 36(1)(vii) read with section 36(2) of the Act. The learned CIT(A) observed that interest accrued on the loan, which had been offered to tax, constituted an integral part of the same debt and that the principal and interest could not be



artificially segregated. It was held that the statutory condition under section 36(2) stood satisfied in respect of the entire amount written off. The relevant finding of the Ld. CIT(A) is reproduced as under:

“8.4.1 This ground deals with the disallowance of the principal amount of the loan given by the appellant to its wholly owned subsidiary which has been written off as bad debts as it was irrecoverable. As stated in the facts, the appellant had advanced loan to its wholly owned subsidiary, Casagrande Developers Pvt. Ltd., which was a Special Purpose Vehicle promoted by the appellant so that the required funds through FDI or other sources can be raised through it. This subsidiary company was engaged in the business which was identical to the business which was carried on by the appellant i.e. real estate development.

8.4.2 Initially, the loan of Rs.14.53 crores was advanced in the FY 2006-07 by the appellant to this subsidiary company for the purpose of acquiring land parcel for its project at Goa. Thereafter, from time to time, the further funds were also advanced as loan as and when they were required and also the appellant charged interest on the total loans so given by it which was duly offered as business income in the respective years. During the year under consideration, the total amount of Rs.54.56 crores was written off as bad debts by the appellant out of which the amount of Rs.9 crore was attributable to the principal amount of the loan and the balance amount was relating to the interest which was accrued on the loan which also could not be recovered. The deduction of bad debts written off to the extent of interest component has been allowed by the AO but the deduction pertaining to the principal amount written off has been disallowed. This was for the reason that the interest was duly taken into consideration while computing the income of the appellant in the earlier years. However, in so far as the write off of the principal amount was concerned, the AO was of the view that the condition laid down in Section 36(2) has not been satisfied because it cannot be said that it was taken into account in computing the income of the appellant for any previous year.

8.4.3 In respect of this disallowance, the appellant has submitted a detailed explanation claiming that it has satisfied the conditions laid down in Section 36(2) and, alternatively, it has also been claimed that it was entitled to the deduction of the amount written off under Section 28 r.w.s. 37(1). The appellant has also relied upon



several judicial precedent in support of its contentions. I have given my careful consideration to the submissions, perused the material on record and duly considered the factual matrix of the case as also the applicable legal position.

8.4.4 In respect of the primary contention of the AO that the appellant has not satisfied the condition of Section 36(2), the appellant has submitted that what needs to be seen is whether the 'debt or part thereof has been taken into account in computing the income of the previous year or not. The relevant provision of Section 36(2) reads as under -

(2) In making any deduction for a bad debt or part thereof, the following provisions shall apply-

(i) no such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year, or represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee;

The total amount which was written off as bad debts by the appellant was Rs.54.56 crores which consisted of partly the principal amount of the loan given and partly the interest receivable on the loan given. In respect of the component of interest receivable, it is not in dispute that it has already been offered to tax as the business income by the appellant in the respective years and, therefore, the AO has rightly allowed the deduction of it write off in the current year. On this basis, the appellant has contended that the part of the debt which has been written off has been taken into account in computing the business income of the appellant of the earlier years. As provided in clause (i), even in a case where the part of the debt has been offered as income, the appellant is entitled to the deduction when that debt is written off fully. It is not necessary that the entire amount of the debt which is being written off should have been included in the taxable income of the appellant. Had it been so intended that the entire amount of the debt should have been included in the income of the appellant, the law would not have used the words 'such debt or part thereof in the relevant clause of Section 36(2).

8.4.5 What has been written off is the total amount which was irrecoverable by the appellant company from its wholly owned subsidiary. The amount so written off was inclusive of the interest charged in the earlier years which has been offered to tax as



business income by the appellant which is an undisputed fact. The principal amount of the loan and the interest recoverable thereon cannot be considered as two different debts more particularly when the interest amount charged in one year is added to the principal amount at the beginning of the next year and interest is charged on a compounded basis in the next year on the amount inclusive of the interest already charged. The interest is nothing but the accretion to the principal amount of the loan. When the interest is being charged on the loan given, it results into increase in the amount of the debt which is recoverable from the borrower. When the interest is being charged on the loan given, it cannot be said that it brings into existence a different debt altogether. It is in light of these principles it needs to be tested that whether the appellant has satisfied the conditions of Section 36(2) or not.

8.4.6 The law on the subject is no more res-integra that when the debt in the nature of loan advanced is written off which includes the interest which has already been offered to tax, it is eligible for claiming deduction u/s. 36(1) (vii) fully. The appellant has relied upon the decision of Bombay High Court in the case of CIT vs. Pudumjee Pulp & Paper Mills Ltd. [2015] 235 Taxman 451 (Bombay). In this case, the assessee was engaged in the business of manufacture and sale of paper. During the assessment year 1995-96, the assessee made an inter-corporate deposit of Rs. 1 crore with GSB capital. Thereafter, during the subsequent assessment years, the interest of Rs. 42.65 lakh was received and offered for tax. The amount of Rs. 49.82 lakh being the aggregate of the principal amount as well as the interest was treated as doubtful debts from the assessment year 1998-99 onwards. The settlement was arrived between GSB Capital and the assessee whereby an amount of Rs. 15 lakh was paid to the respondent-assessee and the balance amount of Rs. 34.82 lakh were written off by the respondent-assessee as bad debts. The Assessing Officer disallowed the claim for bad debts on the ground that the amount of Rs. 34.82 lakh being claimed as bad debts was not the income offered to tax either in the relevant assessment year or in the earlier assessment years. In this regard, the court held as under -

The Assessing Officer's contention that amount of Rs. 34.82 lakhs was not offered to tax earlier and, therefore, deduction under Section 36(2)(i) of the Act is not available, is no longer res-integra. This very issue came up for consideration before this Court in Shreyas S. Morakhia (supra) wherein the assessee was a stock broker and engaged in the business of sale and purchase of shares. The brokerage payable by the client was offered for tax. Subsequently, it was found that the principal amount which was to



be received from its clients would not be received. The assessee sought to claim as bad debts not only the brokerage amounts not received but the aggregate of principal and brokerage amounts not received in respect of the shares transacted. This Court held that the debt comprises not only the brokerage which was offered to tax but also principal value of shares which was not received. Therefore, even if a part of debt is offered to tax, Section 36(2)(i) of the Act, stands satisfied. The test under the first part of Section 36(2)(i) of the Act is that where the debt or a part thereof has been taken into account for computing the profits for earlier Assessment Year, it would satisfy a claim to deduction under Section 36(1)(vii) read with Section 36(2)(i) of the Act. In fact, the Revenue also does not dispute the above provisions as no submission in that regard were made during the course of hearing before us. Therefore in view of the above self evident position in Section 36(2)(i) of the Act as well as decision of this Court in Shreyas S. Morakhia (supra), no substantial question of law arises for our consideration.

8.4.7 Further, the law is well settled by the Apex Court in the case of CIT vs. T. Veerabhadra Rao [1985-155-ITR-152-SC] wherein it has held as follows:

".. It is true that Clause (i) of Sub-Section (2) of Section 36 declares that a deduction can be allowed only if the debt, or part thereof, has been taken into account in computing the income of the assessee of that previous year or an earlier previous year and that it has also been written off as irrecoverable in the accounts of the assessee for that previous year. In the present case, the debt was taken into account in the income of the assessee for the assessment year 1963-64 when the interest income accruing thereon was taxed in the hands of the assessee. The interest was taxed as income because it represented an accretion accruing during the earlier year on money owed to the assessee by the debtor. The item constituted income because it represented interest on a loan. The nature of the income indicated the transaction from which it emerged. The transaction was the debt, and that debt was taken into account in computing the income of the assessee of the relevant previous year. It is the same assessee who has subsequently, pursuant to a settlement, accepted part payment of the debt in full satisfaction and has written off the balance of the debt as irrecoverable in his accounts. It appears therefore that the conditions in both sub-clauses (a) and (b) of Clause (i) of Sub-section (2) of Section 36 are satisfied in the present case, and the High Court as well as the Appellate Tribunal and the AAC are right in the view which they took."



8.4.8 In another case of PCIT vs. Mahindra Engineering and Chemical Products Ltd. (ITA No. 1881 of 2017), the Bombay High Court once again dealt with the similar issue whereunder the assessee had placed deposits aggregating to Rs.4,35,00,000/- in the year relevant to AY 2001-02 with its sister concern, Mahindra Construction Co. Ltd. The interest accrued on such deposits for AY 2001-02 amounted to Rs.15,73,952/- and that was offered to tax in the said Assessment Year. Subsequently, the assessee did not account for any interest income on the ground that the aggregate of principal amount as well as interest accrued in the AY 2001-02 was doubtful of recovery. For the AY 2005-06 which was in appeal, the assessee had written off total outstanding of Rs.4,50,73,952/- (Principal amount of deposit of Rs.4,35,00,000/- and interest accrued upto 31st March, 2001 of Rs. 15,73,952/-). In this case, the High Court followed its earlier decision in the case of Pudumjee Pulp & Paper Mills Ltd. (supra) and held that the assessee was entitled to a deduction of the total amount written off as bad debts u/s. 36(1) (vii) as the condition provided in Section 36(2) namely part of the debt was considered while computing the income of AY 2001-02 was satisfied.

8.4.9 Thus, in light of undisputed facts of the case and the decisions referred above, It is observed that the condition laid down in Section 36(2) has been satisfied in respect of the full amount of Rs.54.56 crores which has been written off as bad debts and, therefore, the appellant is entitled to claim its deduction u/s. 36(1)(vii) of the IT Act.”

7.7 The learned CIT(A) further recorded an alternative finding that the assessee was also engaged in the business of financing its subsidiaries and SPVs as an ancillary activity. This conclusion was drawn from the audited financial statements, which demonstrated substantial loan portfolios, recurring interest income assessed as business income, and acceptance of this position by the Assessing Officer himself in earlier assessments. On this basis, it was held that the loan advanced in the ordinary course of business and written off as irrecoverable also qualified for deduction under



section 36(1)(vii) read with section 36(2) of the Act. The relevant finding of the Ld. CIT(A) is reproduced as under:

“8.4.10 Alternatively, the appellant has also contended that money lending is an ancillary to the main object of the Business and, therefore, it had satisfied the alternative condition of Section 36(2)(i). It has been claimed that the extending loan to the subsidiaries / other SPVs formed for specific real estate projects was one of the business activities of the appellant. From the audited financial statements, it is observed that the total loans advanced by the appellant company including the loans to its subsidiaries as on 31st March, 2017 was Rs.311.11 crores and as on 31st March, 2018 it was Rs.201.60 crores. The appellant has earned interest income of Rs.33.01 crores and Rs.21.99 crores in FY 2016-17 & FY 2017-18 respectively. The interest so earned in this year as well as in past many years has been offered as business income. It has been claimed that the assessments u/s. 143(3) have been made wherein this position has remained unaltered i.e. interest income is considered to be the business income of the appellant in addition to its income from real estate development which is its main business. In fact, the AO himself has allowed the deduction of the interest recoverable written off as bad debts u/s. 36(1)(vii). Therefore, it goes without saying that the transaction under consideration has been considered to be part of the business of the appellant. In view of this, it can also be said that the appellant was in the business of financing its subsidiaries and the amount advanced in the course of this business had been written off. Therefore, the appellant was eligible to claim the deduction of bad debts u/s. 36(1)(vii) also on this count.”

7.8 Without prejudice, the learned CIT(A) also accepted the assessee's alternative claim that the principal amount of ₹9 crores written off constituted a business loss allowable under section 28 read with section 37(1) of the Act, having arisen in the ordinary course of business and in furtherance of the assessee's commercial objectives. Reliance was placed on binding judicial precedents, including the decision of the Hon'ble Bombay High Court in Mahindra & Mahindra Ltd. v. CIT [2023] 456 ITR 723 and other



High Court judgments, to hold that such write-off of advances to subsidiaries, made in the course of business and found irrecoverable, is allowable as a business loss.

7.9 Before us, the learned counsel for the assessee submitted that the Revenue has challenged only the primary finding of the learned CIT(A) allowing deduction of the principal amount under section 36(1)(vii) read with section 36(2) of the Act. It was pointed out that the Revenue has not assailed the alternative and independent findings of the learned CIT(A), namely, (i) that the assessee was engaged in the business of financing and money lending, and (ii) that the write-off was allowable as a business loss under section 28 read with section 37(1) of the Act.

7.10 We find merit in the aforesaid submission. Once the alternative and independent findings recorded by the learned CIT(A) remain unchallenged, the relief granted to the assessee on those grounds attains finality. In such circumstances, the objections raised by the Revenue in Ground Nos. 3 and 4 against the primary reasoning become merely academic and do not survive for adjudication. Accordingly, Ground Nos. 3 and 4 raised by the Revenue are rendered infructuous and are dismissed as such.

8. Ground No. 5 of the appeal of the assessee relates to the disallowance of ₹18,70,686/- incurred towards hotel and club services and facility expenses.



8.1 Briefly stated, the facts relevant to the issue are that the Assessing Officer noticed that the assessee had debited an amount of ₹10,90,504/- towards entrance fees and subscriptions and ₹18,70,686/- towards use of hotel and club services and facilities in its profit and loss account. According to the Assessing Officer, the said expenditure was in the nature of personal expenditure. It was observed that, despite being afforded adequate opportunities, the assessee failed to satisfactorily explain how these expenses were incurred wholly and exclusively for the purposes of business or how they benefited the business of the assessee. The Assessing Officer accordingly disallowed the aggregate amount of ₹29,61,190/- (10,90,504/- + 18,70,686/-), treating the same as personal expenditure and not incurred wholly and exclusively for the purpose of business.

8.2 In appeal, the learned Commissioner of Income-tax (Appeals), following the findings of his predecessor for assessment years 2017-18 and 2018-19, deleted the entire disallowance. The learned CIT(A) observed that the issue was identical to that decided in earlier years and that, in the absence of any change in facts or circumstances, consistency demanded a similar view. Reliance was placed on the decision of the Hon'ble Supreme Court in *CIT v. United Glass Manufacturing Co. Ltd.*, (supra) wherein club membership and related expenses incurred for business purposes were held to be allowable. Accordingly, the learned CIT(A) directed the Assessing



Officer to allow the deduction of entrance fees and subscription of ₹10,90,504/- and hotel and club services and facilities expenses of ₹18,70,686/-. The relevant finding of Id CIT(A) is reproduced as under:

"7.4.1 The identical issue had arisen in the immediately preceding year i.e. AY 2017- 18 and the disallowances of entrance fees and subscription of Rs.7,70,947/- and hotel / club services and facilities of Rs.31,33,296/- were fully deleted by the CIT (A) vide order dated 5.10.2023 by holding as follows -

"I have considered the above submission of the appellant. I have also gone through the details furnished by the appellant before the AO, I find that the expenses are incurred for hotels and club. The appellant has pointed out that the total of this expenditure is 0.07% of its turnover. I am of the view that these expenses can be stated to be linked to the business of the appellant, and there is no evidence to the contrary. I am fortified by the decision of Hon'ble Apex Court in the case of CIT v. United Glass Manufacturing Co. Ltd. [2012] 28 taxmann.com 429 (SC). Hence, this addition stands DELETED."

7.4.2 There being no change in the facts and circumstances related to the issue, following the aforesaid findings, I hereby direct the AO to allow the deduction of entrance fees and subscription of Rs. 10,90,504/- and use of hotel and club services and facilities of Rs.18,70,686/- aggregating to Rs.29,61,190/- to the appellant."

8.3 We have heard the rival submissions and carefully perused the material on record. Before us, the Revenue has confined its challenge only to the deletion of the disallowance relating to hotel and club services and facility expenses amounting to ₹18,70,686/-. The learned counsel for the assessee placed reliance on the judgment of the Hon'ble Supreme Court in CIT v. United Glass Manufacturing Company Ltd. (2012) 28 taxmann.com 429 (SC) wherein it was held that club membership fees incurred for



employees as part of business activities constitute allowable business expenditure under section 37 of the Act. Reliance was also placed on the decision of the Co-ordinate Bench of the Tribunal in DCIT v. Phillips Carbon Black Ltd. (2025) 175 taxmann.com 352. wherein similar club-related expenses incurred for business promotion, networking, and interaction with customers were held to be allowable. The relevant finding of the Tribunal is reproduced as under:

“17. This ground raised by the Revenue is against the action of Ld. CIT(A) deleting the disallowance of club expenses. The facts relating to this issue are that, the assessee had incurred club subscription and expenses of Rs. 35,25,056/-. The AO observed that, the tax auditor had reported this amount at Sl. No 21(a) of the tax audit report, which read as Expenditure incurred at clubs being entrance fees & subscriptions as well as cost for club services and facilities used. According to the AO, this reporting amounted to qualification by the tax auditor and therefore he disallowed the same.

It is further submitted the club expenses were incurred for the purposes of business and therefore the same ought to have been allowed u/s 37(1) of the Act. The assessee is engaged in the business of manufacture of carbon black, having its presence at various locations in India. The company has customers located across India. The company had obtained corporate membership of clubs having affiliations across India for its Directors and senior employees to interact with customers and other stakeholders. Such clubs provide a perfect platform for interactions, exchange of information and to conduct business. The club facilities are used as a platform for holding business meetings of the directors and senior employees to interact with business partners and customers. The activities undertaken by the Directors and the senior employees in such clubs are in the nature of business meetings, networking, brand building, dealings and business gatherings between suppliers/customers and/or senior executives of the appellant company, which fosters the business interests of the appellant company. In the circumstances, the club membership and club service expenses borne by the company were incurred in the course and for the purposes of business.



The year-wise details of club expenses incurred by the company is as follows: Particulars 2017-18 2018-19 2019-20 2020-21 2022-23 Club Expenses 24,16,517 43,09,612 48,62,302 40,95,593 38,03,221

18. In view of the above table, it would be noted that the club expenses have been consistently incurred by the assessee over the years and there has not been any major variation and/or change in the trend of expenses. It is pertinent to submit that, in none of the past or succeeding years, whose assessments were completed u/s 143(3) of the Act, has the Department disputed the allowability of the club expenses and full deduction in respect of the same has been allowed.”

8.4 On the other hand, the learned Departmental Representative was unable to point out any specific instance to demonstrate that the impugned expenditure was either capital in nature or incurred for personal purposes of the assessee. The assessee’s explanation that such expenses were incurred in the course of business for interaction with customers and other stakeholders has not been controverted by any material on record. It is also not the case of the Revenue that the expenditure resulted in any enduring benefit of a capital nature. The expenses in question are recurring in nature and have been claimed as revenue expenditure. In view of the settled legal position and in the absence of any distinguishing facts, we find no infirmity in the order of the learned CIT(A) deleting the disallowance made by the Assessing Officer. The ground No. 5 of the appeal of the Revenue is accordingly dismissed.

9. Ground No. 6 raised by the Revenue challenges the action of the learned Commissioner of Income-tax (Appeals) in restricting the deemed rental income to ₹2,00,000/- as offered by the assessee, as



against the annual value computed by the Assessing Officer at 8.5% of the cost of construction of the property held as stock-in-trade.

9.1 We have heard the rival submissions and carefully perused the material available on record. The controversy in the present ground is confined to the determination of the quantum of deemed rental income in respect of unsold property held as stock-in-trade by the assessee company. The Assessing Officer estimated the annual value by adopting 8.5% of the cost of construction, purportedly with reference to the Bombay Rent Control Act. On the other hand, the assessee contended that the property was old and, therefore, the deemed rental value could not exceed ₹2,00,000/-.

9.2 On examination, we find that neither the Assessing Officer nor the assessee has substantiated the respective figures adopted by them with cogent documentary evidence. The Assessing Officer has not demonstrated the basis for adopting the rate of 8.5% of the cost of construction, nor has he clarified the applicability of the Bombay Rent Control Act to the facts of the present case. Likewise, the assessee has also not placed any concrete material to justify the figure of ₹2,00,000/- as the correct annual lettable value. The Ld. CIT(A) allowed the claim of the assessee observing as under:

“6.4.1 It is seen that the Hon'ble ITAT has allowed appellant's appeal for this same issue for AY 2013-14 and AY 2015-16. However, with the insertion of Section 23(5) w.e.f. 1.4.2018, deemed rental income on unsold finished stock is liable to be taxed. The AO has arrived at annual value of unsold flats held as finished stock by estimating it to



be 8.5% of their cost of construction. Whereas, appellant has relied on decisions holding that municipal value should be the Annual Value as per its submission dtd. 10.03.2025.

6.4.2 I have reviewed the facts of case, submissions of appellant dtd. 10.03.2025 and 27.05.2025, and the provisions of newly introduced Section 23(5) of Income Tax Act. The municipal ratable value of the property is much lower than the deemed rent of Rs. 2,00,000/- offered by the appellant during the course of assessment proceedings and during 1st submission dated 10.03.2025 in the appellate proceedings. Later-on the appellant has requested the addition to Rs.15,097/- on account of deemed rental income from house property in respect of unsold finished inventory instead of Rs.12,18,840/- made by the Ld. AO. The appellant has also provided working of Municipal Ratable Value of the said property, which is much lower than the addition made by the AO. Considering that the property is more than 20 years old, requiring repair and renovation and situated in a remote area, deemed rent of Rs. 2,00,000/- offered by the appellant is hereby taken as deemed rental value considering the facts and submission of the appellant. After considering all these, I direct the AO to sustain addition of Rs.2,00,000/- out of addition of Rs. 12,18,840/- made by him in the assessment order.”

9.3 The learned CIT(A), while granting partial relief to the assessee, observed that similar issues had been decided in favour of the assessee in earlier assessment years and further noted the introduction of section 23(5) with effect from 01.04.2018. He accepted the assessee's offer of ₹2,00,000/- as deemed rental value, primarily on the considerations that the property was more than 20 years old, required repairs and renovation, and was situated in a remote area. However, the said conclusion is also not supported by any independent determination based on objective or verifiable material.

9.4 In our considered view, determination of annual lettable value is essentially a question of fact and must be based on relevant and



reliable material such as municipal ratable value, comparable rent, condition and location of the property, and other attendant circumstances. In the absence of any such objective basis either in the assessment order or in the appellate order, the issue requires fresh examination.

9.5 Accordingly, we set aside the finding of the learned CIT(A) on this issue and restore the matter to the file of the Assessing Officer. The Assessing Officer shall re-determine the annual lettable value of the stock-in-trade in accordance with law, after affording reasonable opportunity of being heard to the assessee and after considering documentary evidence placed on record in support of the value so determined.

9.6 The ground No. 6 of the appeal of the Revenue is accordingly allowed for statistical purposes.

10. Now, we take up the grounds raised by the assessee in the cross-objection, which are reproduced as under:

1. On the facts and circumstances of the case and in law, the learned CIT (A) has erred in not granting relief in respect of the income of Rs.26,84,001 wrongly included in the return of income filed by the appellant as a presumptive income u/s. 44AE although the appellant was never engaged in the business of goods carriage.

2. On the facts and circumstances of the case and in law, the learned CIT (A) ought to have appreciated that he had the power and, in fact, it was his duty to adjudicate the fresh claim made before him irrespective of whether it was raised through the return of income or not.



10.1 Before us, the Ld. counsel for the assessee submitted that while filing return of income, the assessee by mistake shown deemed income of Rs.26,84,001/- u/s 44AE of the Income-tax Act, 1961 (in short 'the Act'). The Ld. counsel for the assessee submitted that as per the computation of the income for the purpose of Income-tax, Rs.26,84,001/- was claimed as deduction from income for Ind AS adjustment. But inadvertently this amount of Rs.26,84,001/- was wrongly punched as deemed income u/s 44AE of the Act under row 37(i) of Schedule BP computation of income from business or profession in return form. The said section 44AE is designed to give relief to small assessee engaged in the business of goods carriage. It was claimed that the assessee was not engaged in the business of goods carriage, therefore, section 44AE is not applicable to assessee.

10.2 Accordingly, the assessee made submission before the Ld. CIT(A) to delete the said addition of income made inadvertently in the return of income. The Ld. CIT(A) however rejected the claim of the assessee relying on the decision of M/s Shriram Investments v. CIT in Civil Appeal No. 6274 of 2013 of the Hon'ble Supreme Court. The relevant finding of the Ld. CIT(A) is reproduced as under:

“9.4.1 During the course of appellate proceedings, the appellant has claimed that the deemed income amounting to Rs.26,84,001/- was wrongly offered as a Business Income in ITR due to clerical error should be allowed or deleted from Returned Income. It is observed that the appellant has not made any such claim before



the AO during the course of assessment proceedings, also the such claim was not rectified by filing of revised ROI. The issue involve in this appeal is that whether income wrongly offered by the appellant can be reduced before the CIT(A), even if no revised return was filed.

Having perused the submission made by the appellant it is observed that no satisfactory explanation or documentary evidences have been placed before the appellate proceeding by the appellant. Even no such claim was made in revised return or during the course of assessment proceedings.

9.4.2 *In the recent case of M/s. Shriram Investments v. CIT in Civil Appeal No. 6274 of 2013dt. 04.10.2024, the Hon'ble Supreme Court has held under:-*

“8.The assessing officer had **no jurisdiction to consider the claim made by the assessee in the revised return filed after the time prescribed by Section 139(5) for filing a revised return had already expired.”**

In the instant case, the appellant ought to have filed a return u/s 139(5) of the Act or followed the procedure for condonation of delay laid down in Section 119(2)(b) of the Act. Hence, in view of above the claim of appellant is rejected at the threshold level without examining the merits thereto.”

10.3 We have heard rival submissions of the parties and perused the relevant materials on record. The Ld. CIT(A) relied on the decision of M/s Shriram Investments (supra) for rejecting the claim of the assessee however said limitation applies to the Assessing Officer and Ld. CIT(A) or appellate authority is not barred from accepting any claim made before him.



10.4 Before us, the Ld. counsel for the assessee relied on the decision of the Hon'ble Madras High Court in the case of CIT v. Abhinitha Foundation (P.) Ltd. [2017] 83 taxmann.com 100 (Mad) wherein it is held that even if, the claim made by the assessee company does not form part of the original return or even the revised return, it could still be considered, if, the relevant material was available on record.

10.5 The Ld. counsel further referred to the decision of Hon'ble Bombay High Court in the case of CIT v. Pruthvi Brokers & Shareholders [2012] 349 ITR 336 (Bombay) wherein the Hon'ble Bombay High Court held that assessee is entitled to raise before appellate authorities additional ground in terms of additional claim not made in the return filed by it. The relevant finding of the Hon'ble Bombay High Court is reproduced as under:

“23. It is clear to us that the Supreme Court did not hold anything contrary to what was held in the previous judgments to the effect that even if a claim is not made before the assessing officer, it can be made before the appellate authorities. The jurisdiction of the appellate authorities to entertain such a claim has not been negated by the Supreme Court in this judgment. In fact, the Supreme Court made it clear that the issue in the case was limited to the power of the assessing authority and that the judgment does not impinge on the power of the Tribunal under section 254.

24. A Division Bench of the Delhi High Court dealt with a similar submission in CIT v. Jai Parabolic Springs Ltd. [2008] 306 ITR 42 / 172 Taxman 258. The Division Bench, in paragraph 17 of the judgment held that the Supreme Court



dismissed the appeal making it clear that the decision was limited to the power of the assessing authority to entertain a claim for deduction otherwise than by a revised return and did not impinge on the powers of the Tribunal. In paragraph 19, the Division Bench held that there was no prohibition on the powers of the Tribunal to entertain an additional ground which, according to the Tribunal, arises in the matter and for the just decision of the case.”

10.6 Respectfully following the Hon'ble High Court of Bombay, we set aside the finding of the Ld. CIT(A) on the issue in dispute and restore the matter back to the file of the Assessing Officer for considering the claim of the assessee and if such income has been inadvertently taken into consideration while computing the income, same may be removed or deleted after due verification. The ground of appeal of the cross-objection of the assessee is accordingly allowed for statistical purposes.

11. In the result, the appeal of the Revenue is partly allowed for statistical purposes whereas the cross-objection of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 03/02/2026.

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

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

Mumbai;
Dated: 03/02/2026
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