IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'B': NEW DELHI.

BEFORE SHRIS.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.319/Del/2025
(Assessment Year: 2018-19)

ITA No.320/Del/2025
(Assessment Year: 2019-20)

REC Limited, C/o D-22, Second Floor, South Extension 1, New Delhi – 110 049	vs.	ACIT – 10 (OSD), Delhi.

(PAN :AAACR4512R)

ITA No.577/Del/2025
(Assessment Year: 2018-19)

ITA No.578/Del/2025
(Assessment Year: 2019-20

JCIT – 10 (OSD), Delhi.	vs,	Rural Electrification Corporation Ltd., Core-4, Scope Complex, Kasturba Nagar, 7 Lodhi Road, East Delhi 110003 **(PAN : AAACR4512R)**

(APPELLANT) (RESPONDENT)

ASSESSEE BY : Shri Ashwani Taneja, Advocate
Shri Shivam Kukreja Advocate
Shri Shantanu Jain, Advocate
Shri D. Dubey, Advocate
Ms. Ria Jain, Advocate

REVENUE BY : Ms. Pooja Swroop, CITDR

ITA No.609/Del/2025
(Assessment Year: 2020-21)

ITA No.579/Del/2025
(Assessment Year: 2021-22)

JCIT – 10 (OSD), Delhi.	vs,	Rural Electrification Corporation Ltd., Core-4, Scope Complex, Kasturba Nagar, 7 Lodhi Road, East Delhi 110003.
		(PAN : AAACR4512R)
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Ms. Menal Goel, CA
Ms. Tanya Upreti, Advocate
REVENUE BY : Ms. Pooja Swroop, CIT DR
Shri Rajesh Kumar Dhanesta, Sr. DR

Date of Hearing : 20.11.2025
Date of Order : 12.02.2026

ORDER

PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. The assessee and Revenue has filed cross appeals against the order of the Learned Commissioner of Income Tax (Appeals)-20, New Delhi ["Ld. CIT (A)", for short] dated 22.11.2024 for the Assessment Years 2018-19 and 2019-20. The Revenue has also filed appeals against the order of the ld. CIT (A) dated 28.11.2024 for the Assessment Years 2020-21 and 2021-22.

2. Since the issues are common and the appeals are connected, hence the same are heard together and being disposed off by this common order.

3. Frist we take up **ITA No.319/Del/2025** and **ITA No. 577/Del/2025** for AY 2018-19wherein both the assessee and revenue has taken following grounds of appeal, the assessee has taken the following grounds :-

> "1. That the action taken w/s 143(3) of the Income Tax Act and consequent assessment framed, as upheld by Ld. CIT(A) is vitiated, without jurisdiction and contrary to law.
>
> 2. That the Ld. CIT(A) has erred in law and on facts in upholding the action of the Ld. AO in making the additions/ disallowances on the issues which were beyond the scope of limited scrutiny, as such the assessment order passed is illegal, without jurisdiction and liable to be set aside.
>
> 3. That having regard to the facts and circumstances of the case, the Ld. CIT(A) has erred in law and on facts in upholding the action of Ld. AO in not taking into account, for deduction u/s 36(1)(vii) of the Act and subsequently u/s 36(1)(viia) of the Act. the amount of Rs.15,11,41,174/- towards certain fees related to processing of loans (which includes processing charges, upfront fees etc.) by not considering the same to have been derived from the Long Term Finance Business of the Appellant and that too by recording incorrect facts and findings and without observing the principle of natural justice.
>
> 3.1 That in any case and in any view of the matter, action of Ld. CIT(A) in upholding the action of Ld. Assessing Officer in not taking into account, for deduction u/s 36(1)(viii) of the Act and subsequently u/s 36(1)(viia) of the Act, the amount of Rs.15,11,41,174/- towards certain fees related to processing of loans (which includes processing charges, upfront fees etc.) by not considering the same to have been derived from the Long Term Finance Business of the Appellant, is bad in law and against the facts and circumstances of the case.
>
> 3.2 That, without prejudice to the above grounds, if the amount of Rs.15,11,41,174/- is not considered to be part of Long Term Finance Business of the Appellant, then the total income of the

Appellant ought to have been proportionately increased by this amount so as to re-compute the deduction u/s 36(1)(viia) of the Act on the enhanced amount and the deduction amount also ought to have been directed to be proportionately enhanced.

4. That having regard to the facts and circumstances of the case, the Ld. CIT(A) has erred in law and on facts in not deleting the addition itself and remanding back the issue related to the addition of interest income of Rs.5,32,26,430/- to the file of the Ld. AO so as to examine whether the cooperative societies has disclosed the said interest income in their respective hands, thereby ignoring the evidences furnished by the Appellant to the said effect.

5. That the assessment so framed by the Ld. AO and upheld by the Ld. CIT(A) is in violation of principle of natural justice, as such the same deserves to be quashed and set aside.

6. That the assessment so framed and upheld and additions/ disallowances made suffers from perverse findings and is contrary to the facts on record and the same needs to be set aside.

7. That the levy of interest under the Act is disputed and as such unsustainable in law besides being excessive."

14. The Revenue has filed appeal for AYs 2018-19 wherein the Revenue has taken the following grounds of appeal :-

"**AY 2018-19**

1. Whether on the facts and in the circumstances of the case, the Ld. CTT(A) has erred in granting relief to the assessee on disallowance of deduction of Rs.179,74,78,529/- u/s 36(1)(vi) of the Act in relation to deduction claimed on interest income earned on long term loans which were prepaid before 5 years ?

1.2 Whether, the Ld. CIT(A) has ignored the facts of the case however it is clear form statement of profit and loss account that the assessee has received prepayment premium of Rs. 106.41 Cr. during

the year under consideration ?

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in granting relief to the assessee on the issue of the disallowance of Rs.5584,57,541/- under section 36(1)(vii) and section 36(1) (viia) (c) of the Act i.e., deductions under both section is independent on each other ?"

4. Since the issue raised by the revenue and assessee relating to the issue of deduction claimed u/s 36(1)(viii) are common, the same are adjudicated together below.

5. Ground Nos.1 & 2 raised by the assessee are general in nature, hence not adjudicated. With regard to ground Nos. 5, 6 and 7 are not pressed, the same are dismissed as not pressed.

6. With regard to Ground Nos.3 to 3.2 raised by the assessee and grounds 1 and 2 raised by the revenue are common issues of deduction u/s 36(1)(viii) of the Act, the relevant facts are, during the assessment proceedings, the AO observed that the assessee is in the business of providing financing for rural electrification. Every loan is sanctioned with prior terms and conditions of loan repayment, interest and schedule of repayment. It is pre-decided based on individual loan policy and must maintain the details of various loan sanctions, maturity period, status of repayment and closure of loan account. He observed that as per the information available in the public domain, assessee had well defined policy guidelines in respect of

premature repayment/prepayment of terms of loan and short-term loans. On perusal of the records, he noticed that the assessee has earned pre-payment premium of Rs. 1,06,41,31,740/- during the year under consideration. The pre-payment premiums are charged to be paid by the borrowers opting for pre-payments of loan to the assessee and sometimes such pre-payments happens before the end of 5 years from the date of granting of loan. Since the assessee is engaged in the business of providing long terms finance, accordingly, it claims deductions u/s 36(1)(viii) of the Act. He observed that as per the clause (h) of the above section, the long term finance means any loan where the terms under which the moneys are loaned or advanced provide for repayment along with interest thereof during a period of not less than 5 years. Further observed that as per above definition, the money should be payable during a period of not less than 5 years, therefore, wherever the money is repaid in a period less than 5 years no deduction u/s 36(1)(viii) of the Act should be granted on the income derived from such loans. He observed that this leads to misuse of the provisions.

6.2 He observed that as per the above provisions of the Act, the assessee is eligible to claim 20% of the profits derived from the eligible business. The prepayment premium is received from the applicant on the loans which are

repaid before its maturity, accordingly the assessee had earned Rs. 106.41 crores, thus, withdrawal of deduction claimed u/s 36(1)(viii) of the Act is required in the year under consideration. He noticed that the assessee had earned Rs. 47.80 crores out of loans prepaid after 5 years and Rs. 58.61 crores out of loans prepaid in 5 years or less. Further he noticed that as per the policy documents, it charges 0.75% of the loans outstanding on the date of prepayment. Based on the above information, he worked the repayment of loan amount by factoring the premium earned with the fixed rate of premium of 0.75%, the total loan repaid was determined at Rs. 7815.12 crores, by adopting 11.5% as the estimated average interest rate, determined the estimated income earned by the assessee out of the above-mentioned loans at Rs. 898.74 crores. From the above, he disallowed the deduction u/s 36(1)(viii) of the Act, at 20% of the above estimated income at Rs. 179.75 crores. He added the above estimated deduction claimed by the assessee during the year.

6.3 Further he observed that the deduction u/s 36(1)(viii) is available in respect of special reserve created by the financial corporation for providing long term finance, an amount not exceeding 20% of the profits derived from such business of providing long term finance before making any deduction (under this clause) carried to such reserve account. It is available only

when the special reserve is created, the income should have been earned from the long term finance which should be out of loans advanced thereof during a period not less than five years. The assessee was asked to explain why the disallowance on account of deduction u/s 36(1)(viii) should not be made on the same reasoning as done in the preceding to the assessment year under consideration. In response, the assessee submitted that it is providing long term finance and is eligible to claim deduction u/s 36(1)(viii) along with the deduction u/s 36(1)(via)(c) of the Act. He observed that the assessee also considered into account various fees charged like processing fees, upfront fees, lead finance fees underwriting fees etc., from its borrowers on such eligible financing. AO observed that in the previous years, why this should not be disallowed. In response, it was submitted that the above said incomes are direct nexus to the long-term finance business of the assessee and undisputedly it is eligible for deduction. It was also submitted that the word used in the provisions of the Act that profit derived from the eligible business which is carried to the reserve account should be considered in calculating deduction under the section. The assessee relied on the decision of Hon'ble decision of Supreme Court in the case of National Organic Industries Limited (106 STC 467)(1997), Pandian Chemicals (129 Taxmann 539)(2003) and other

related decisions on the issue of income derived from the business. Further it was submitted that the deduction u/s 36(1)(viii) should be determined and allowed before the computation of deduction u/s 36(1)(via)(c) of the Act. The assessee relied on the decision in the case of Infrastructure Development Finance Co. Ltd (2016) (67 taxmann.con 61) and also decision of coordinate bench decision in the case of Tourism Finance Corporation of India (31 SOT 495) (2009). With regard to mode of computation of deduction u/s 36(1)(viii) and 36(1)(viia) (c), it was submitted that as held in the assessee's own case, the coordinate bench had decided in favour of the assessee that the deduction u/s 36(1)(viii) and 36(1)(via) are interdependent on each other.

6.4 After considering the above submissions of the assessee, the AO rejected the submission of the assessee and proceeded to determine the deductions by following the decision of the coordinate bench and came up with the new calculation and the same are reproduced at pages 53 to 57 of the assessment order, as per which the assessee had claimed excess to the extent of Rs. 64,83,31,467/-.

7. Aggrieved with the above order, the assessee preferred an appeal before NFAC, Delhi and filed detailed submissions and grounds. After considering the same, Ld CIT(A) allowed the claim of the assessee on the

aspect of eligibility criteria for terms of loans of 5 years or more at the time of providing loans instead of determining the period of loan on the basis of preclosure 5 year or less.

8. With regard to other issues raised on deduction u/s 36(1)(viii) of the Act, he has sustained the additions on the basis that the jurisdictional ITAT at Delhi in the order dated 25.06.2009 and 31.08.2009 in ITA Nos.5347, 5348 & 5349/Del/2004 for A.Ys.2001-02 to 2003-04 in the case of M/s. Power Finance Corporation Ltd and held that the income from upfront fees, management fees and agency fees are not income derived from business of long-term finance and the same cannot be treated as profits eligible for deduction u/s 36(1)(viii). Therefore, the action on part of the Assessing Officer to exclude this sum of Rs.15,11,41,174/-from the purview of the deduction u/s 36(1)(viii) is upheld.

9. With regard to ground raised by the assessee, ld. AR of the assessee submitted as under:-

2.3 The Appellant is a Public Sector Undertaking (PSU) which is engaged in the business of providing finance for electrification purposes/ projects. It has been funding power generations, transmissions and distribution projects besides electrification of villages.

2.3.1 The details of the various incomes earned by the Assessee having clear nexus with the interest income earned by it from providing Long Term Finance and which has been excluded by the Ld. AO for the quantification of deduction u/s 36(1)(viii) of the Act are as under:

- Processing of loan application fee: 50% of this fee is receivable from borrower at the time of application and remaining 50% is receivable at the time of sanction of the project. Therefore dis-associating this fee from the project financing is not at all possible. The project financing comes in the picture only on receipt of this fee.

- Upfront fee: This is receivable before disbursement of loan showing its commitment for drawl of the loan instalment and after this payment only, the Company starts making arrangement of funds for disbursement at the request of the borrower. No project financing is possible unless this fee is paid.

- Lead Financer Fee: This is charged in those cases wherein the company has to play lead role in consortium lending and coordinates with other Lenders also. In view of this, the Lead Fee basically channelize the whole financing stream and cannot be segregated from the project financing.

- Security Trustee Fee: This is received for ensuring proper loan documentation and securitization of loan. So, it is receivable for activities which is part and parcel of total loan process.

- Underwriting Fee: This is applicable for arranging Financial Closure of the Project financing.

- Letter of Comfort fee: This fee is receivable towards issuing commitment to the LC Bankers for assuring immediate disbursements to the Contractor/LC Bankers on receipt of such requests/ demands.

2.3.2 It is relevant to mention that the Ld. AO has not drawn any adverse inference on the present issue in the remand report dated 07.03.2023 **(PB Pg. 802 to 807)**

2.3.3 To support our contention, we have reproduced herein below the relevant extract of Section 36(1)(viii) for your easy reference:-

"In respect of any special reserve created and maintained by a specified entity, an amount not exceeding twenty percent of the profits derived from eligible business computed under the head "Profits and gains of business or profession" (before making any deduction under this clause) carried to such reserve account"

2.4 That the Income Tax Department has drawn any adverse inference on the said issue in the preceding years but has drawn favourable inference in the subsequent years. The details are as under:

AY	Amount of upfront fees, processing etc (Rs.)	Amount of processing fee disallowed (Rs.)	Remarks
2015-16	519306068	519306068	Department has disallowed by stating that processing fee is not derived from LT financing. The matter is settled under VsV 1.0 scheme.
2016-17	247129474	247129474	Department has disallowed by stating that processing fee is not derived from LT financing. The matter is settled under VsV 1.0 scheme.
2017-18	484880660	484880660	Department has disallowed by stating that processing fee is not derived from LT financing. The matter is settled under VsV 1.0 scheme.
2018-19	151141174	151141174	Department has disallowed by stating that processing fee is not derived from LT financing. Issue pending in the present appeal.
2019-20	295224202.2	295224202.2	Department has disallowed by stating that processing fee is not derived from LT financing. Issue pending in the present appeal.
2020-21	554198049	0	No addition on said issue by Ld. AO in the Assessment Order passed dated 28.09.2022
2021-22	641301896.5	0	No addition on said issue by Ld. AO in the Assessment Order passed dated 26.12.2022

2.5 That in identical facts and circumstances the Hon'ble High Court of Karnataka in the case of **CIT vs. Weizmann Homes Ltd. in 33 taxmann.com 171*(See CLC Page 7, Para 9)***has held that the processing fee and penal interest received by the Assessee who is in the business of providing Long Term Finance shall be included in income eligible for deduction u/s 36(1)(viii) of the Act, as the same has direct nexus with the business of Long Term Finance. The relevant portion reads as under: -

"9. *In the instant case, the assessee is in the business of long term finance. In order to carry on the said business, a debtor, who needs the assistance, has to make an application in writing. To consider the said application before granting loan, the assessee collects processing charges. After the debtor is found to be eligible to grant loan, agreements are entered into and thereafter loan is advanced. The amount has to be repaid with interest within 7 years period for repayment of the loan. The agreement also contains the stipulation that the amounts are not paid periodically as agreed to, the debtor has to pay penal interest. If the debtor chooses to repay the amount and fore close before the agreed period, then not only he has to pay the loan amount plus interest, he has also to pay additional interest, as he is not entitled to the benefit in respect of lower rate of interest, which was spread over the period of 7 years. All these amounts, which are paid by the debtor to the assessee, have a direct nexus with the business, which he is carrying on. All these incomes are derived from the business, which he is carrying on. It is also on record except this long term finance business, the assessee is not carrying on any other business much less any short-term finance business. Therefore, all these categories of incomes which the assessee is receiving as a direct nexus with the long term finance and therefore Section 36(1)(viii) of the Act is attracted. Therefore, we do not see any merit in these appeals. Accordingly, the first substantial question of law is answered in favour of assessee."*

2.5.1 It is relevant to mention that the Authority for Advance Rulings of New Delhi in the **Appellant's own case reported in 308 ITR 321**

(AAR- New Delhi)*(See CLC Page 158-160) has* held that the 'swapping premium' received by the appellant from the State Electricity Boards on account of re-scheduling of the interest rates, has direct and immediate nexus with the business of providing Long Term Finance.

2.5.2 It is submitted that the AO/CIT(A) have failed to look into this contention and segregation done by the assessee and have denied the deduction by stating that the entire incidental income such as processing fees, upfront charges etc should be considered as other income as the immediate and effective source of such income is "receipts" from lending business and not "business of long-term finance" and accordingly the said income is not "derived from" the business of providing long-term finance for various purposes. In this regard it is relevant to look at the ratio laid down by the Hon'ble Supreme Court in the case of **Meghalaya Steels Ltd *(See CLC Page 127-128, Para 15-18)*** while considering the distinction between the expression "derived from" and "attributable to" where it is held that "derived from" as being something directly from, as opposed to "attributable to", which can be said to include something which is indirect as well. Therefore the test for eligibility for deduction is to be the first degree/direct nexus between the income earned and the business of the Appellant. The nature of business of the Appellant is lending money for financing large infrastructural projects which is funded by raising loans from institutions and there is bound to be a time gap in terms funds mobilised and utilised. Further, the incidental income such as processing fees, upfront charges etc. are derived from the business of long-term finance. Therefore, the same shall be eligible for deduction u/s 36(1)(viii) of the Act.

2.6 The Hon'ble Supreme Court in the case of **National Organic Industries Ltd. vs. CCE in 106 STC 467(SC)*(See CLC Page 134, Para 10-13)*** has explained the expression "derived from" and stated that it means the original source of the product has to be found, arise from, originate in, trace from a source.

2.6.1 That the similar language i.e. "Derived from" have been used in some other provisions of the Act such as Section 80-IA, 80-IB, 80-IC etc and the Hon'ble Courts as well as the Hon'ble Tribunals time and again have allowed similar incomes to be forming part of the eligible business. Reliance is based upon the following judgments:

- **CIT vs. Seshasayee Paper & Board Ltd. reported in 73 Taxman 80 (High Court of Madras)**
- **M/s. Havells India Ltd. vs. DCIT in ITA No. 1259/D/2017 dated 23.11.2022 (ITAT, Delhi)**
- **Odisha Power Generation Corp. Ltd. vs. ACIT reported in 456 ITR 495 (High Court of Orissa)**
- **PCIT vs. BSNL reported in 388 ITR 371 (High Court of Delhi)**
- **PCIT vs. Atul Ltd. reported in 103 taxmann.com 249 (High Court of Gujarat) upheld by Hon'ble Supreme Court in the case of PCIT vs. Atul Ltd. reported in 262 Taxman 10 (SC)**
- **CIT vs. Translam Ltd. reported in 231 Taxman 901 (High Court of Allahabad)**
- **CIT vs. Pratham Developers reported in 355 ITR 507 (High Court of Gujarat)**
- **CIT vs. Jackson Engineers Ltd. reported in 341 ITR 518 (High Court of Delhi)**
- **Nirma Industries Ltd. vs. DCIT reported in 283 ITR 402 (High Court of Gujarat)**
- **CIT vs. Bramhaputra Carbon Ltd. reported in 152 taxmann.com 290 (High Court of Calcutta)**
- **M/s Canadian Speciality Vinyls vs. ITO in ITA No. 7612/Del/2019 dated 02.06.2023 (ITAT, Delhi)**

2.7 It is relevant to mention that the provisions related to deductions have to be liberally construed. Reliance is based is based upon following judgment:

- **National Organic Industries Limited Vs CCE (AIR 1997 SC 690)** ***(See CLC Page 134, Para 10-13)***

  "The dictionaries state that the word "derive" is usually followed by the word 'from' and it means : ***get or trace from a source; arise from, originate in; show the origin or formation of.....***

  ..The use of the words "derive" from in item 11-AA(2) suggests that the original source of the product has to be found. Thus, as a matter of plain English, when it is said that one word is derived from another, often in another language, what is meant is that the source of that word is another word, often in another language. As an illustration, the work 'democracy' is derived from the Greek word 'demos' the people, and most dictionaries will also state. That is the ordinary meaning of the words 'derived from' and there is no reason to depart from that ordinary meaning here"

- **Housing Development Finance Corporation Ltd., vs The Adit Cir. 1(1) I.T.A. No. 552 /Mum/2004 decided on 12.01.2024** ***(See CLC Page 40-41, Para 42,43)***

  "In this regard it is relevant to look at the ratio laid down by the Hon'ble Supreme Court in the case of Meghalaya Steels Ltd (supra) while considering the distinction between the expression "derived from" and "attributable to" where it is held that "derived from" as being something directly from, as opposed to "attributable to", which can be said to include something which is indirect as well. ***Therefore, the test for eligibility for deduction is to be the first degree/direct nexus between the income earned and the business of the assessee.*** *The nature of business of the assessee is lending money for construction / purchase of residential houses which is funded by raising loans from institutions and there is bound to be a time gap in terms funds mobilised and utilised. The assessee is using the idle funds of housing finance business in temporary investments, and it is established that the source of investment from which the impugned*

*income is derived is from the housing finance business of the assessee.**Therefore, the deployment of surplus funds by the assessee in short term investments with an intention to reduce the burden of cost of interest paid on loans in our view has a direct nexus with the business of housing finance. Therefore, the income which has a direct nexus with the housing finance business of the assessee is to be considered as "derived from" the business of providing long-term finance for construction or purchase of houses in India for residential purposes and accordingly will be eligible for deduction u/s.36(1)(viii).**The nomenclature of income is not so relevant as the nature of income since the same income which is a business income for somebody can be an income from other sources for someone else. A typical example would be the leasing of property which can either be a business income or income from property depending on whether the leasing is the doing of the business or the exploitation of the property by its owner. In the given case, the deployment of funds in short term investment is part and parcel of housing finance business of the assessee since the idle funds are available in the regular course of business of housing finance and as part of the business activity the assessee keeps these funds in short term investments which earn income."*

- **Pandian Chemicals Vs CIT (129 Taxman 539) [2003] *(See CLC Page 136, 138 Para 6 & 8)***

"5. The High Court rejected the submission of the appellant by relying upon the decision of this court in Cambay Electric Supply Industrial Co. Ltd. v. CIT , where this court had clearly stated that the expression "derived from" had a narrower connotation than the expression "attributable to" (page 93) :

"In this connection, it may be pointed out that whenever the Legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor-General, it has used the expression 'derived from', as, for instance, in Section 80J. In our view, since the

expression of wider import, namely, 'attributable to', has been used, the Legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity."

6. The word "derived" has been construed as far back in 1948 by the Privy Council in CIT v. Raja Bahadur Kamakhaya Narayan Singh [1948] 16 ITR 325 when it said (page 328) :

"The word 'derived' is not a term of art. ***Its use in the definition indeed demands an enquiry into the genealogy of the product. But the enquiry should stop as soon as the effective source is discovered.*** *In the genealogical tree of the interest land indeed appears in the second degree, but the immediate and effective source is rent, which has suffered the accident of non-payment. And rent is not land within the meaning of the definition."*

- **Bajaj Tempo Ltd. vs CIT in 196 ITR 188**
- **PCIT vs WIPRO Ltd. in 446 ITR 1**
- **Krushi Vibhag Karmchari Vrund Sahakari Pat Sanstha vs. ITO in ITA no. 182/Nag/2019 dated 7.10.2022 (ITAT, Nagpur)**

2.8 The Ld. AO as well as Ld. CIT (A) have placed reliance upon the order passed by the Hon'ble ITAT, Delhi in the case of **M/s Power Finance Corporation Ltd.** while drawing adverse inference against the assessee. It is relevant to submit that the settled judicial interpretation of the expression "derived from" requires a direct and proximate nexus between the income and the Appellant's core business activity, not merely a remote or incidental connection. The effective source of the income must be traced to the business itself, and once that source is established, the form or nomenclature of such income becomes irrelevant. In the case of above-cited judgment of Housing Development Finance Corporation Ltd., the Hon'ble ITAT Mumbai has correctly allowed all incidental income and even interest from deployment of surplus funds was held to be "derived from" the

business of housing finance because it was integrally connected to the long-term lending operations.

2.8.1 Applying these principles, the processing fees, upfront charges, etc. earned by the Appellant arise directly and incidental from its business of providing long-term finance to power and rural electrification projects. These charges are not independent windfalls but are integral components of the financing process as they are necessarily required to be paid for the loan to be disbursed. The effective source of such income is the long-term lending activity itself. Hence, it squarely falls within the expression "profits derived from the business of providing long-term finance" under Section 36(1)(viii). A restrictive reading that limits the deduction only to interest income would be in ignorance of this proximate nexus and result in defeat of the legislative intent of incentivizing long-term financing for infrastructural development.

2.8.2 It is also a settled law that if two views are possible then view in favour of the appellant has to be adopted, as has been held by the Hon'ble Supreme Court in the case of **CIT vs. Vegetable Products Ltd. in 88 ITR 192 (SC)**.

<u>There is no estoppel against law.</u>

2.8.3 Even if, Appellant agrees or consents for something contrary to law, A.O. has to discharge his duty of making fair assessment of income and to compute amount of tax payable as per law:

*Article 265 of the Constitution of India: "**No tax can be collected except by authority of law"**

*Ramlal vs Rewa Coalfield Ltd AIR 1962 SC 361 ***(See CLC Page 145, Para 15)***: " The State authorities should not raise technical pleas if the citizens have a lawful right is being denied to them merely on technical grounds. The state authorities cannot adopt the attitude which private litigants might adopt."

*CIT v. V. MR. P. Firm Muar 1956 ITR 67 (SC)
*SDS Mongia vs CBDT 211 CTR 357 (Del)

2.8.4 Further reliance is placed on the cases of Hon'ble Gujarat High Court in the case of **CIT vsKeiser-E-Hind Mills Co. Ltd128 ITR 486 (Guj.)** in which lordship has relied upon circular of the Board in which duty has been cast upon the revenue to guide the assessee to make claims as permissible under the law. Relevant portion is reproduced below:

*"In view of the circular No. 14(XI-35) of 1955 dated 11-4-1955, it was clear that for the purpose of the circular, what should be the guiding factor was whether the proceedings or other particulars before the Income-tax officer at the stage of original assessment disclosed any grounds for relief under section 2(5) (*a*) (*iii *) of the Finance Act of 1964 or of the Finance Act of 1965, even though no claim was made for that relief by the assessee at the stage of those proceedings before him.*

Even if there is a deviation on a point of law, so far as the circular of the Board is concerned, that circular will be binding on all officers concerned with the execution of the Act and they must carry out their duties in the light of the circular.

*In view of this clear position regarding the effect of the circular, it was obvious that in the instant case it was incumbent on the Income-tax officer to advise the assessee to claim relief under section 2(5)(*a *)(*iii*) if the proceeding or any other particulars before him at the stage of the original assessment indicated that the assessee was entitled to such relief under the provisions of the relevant Finance Act, 1965, so far as the order under reference was concerned. This question in the light of this circular of 1955 had not been examined by the Tribunal. What applies to the obligation of the Income-tax Officer would also apply to all officers of the department concerned with the execution of*

the I.T. Act, 1961. Therefore so far as the controversy regarding the powers of the AAC was concerned, in the light of the facts and in the light of this circular, the question could not be answered.

*In such a situation, the matter was to be sent back to the Tribunal so that it could examine the question whether, in the light of what was disclosed in the proceedings or other particulars before the Income-tax officer, at the time of original assessment proceedings, the Income-tax officer concerned should have taken the initiative in guiding the assessee in claiming relief under section 2(5)(*a)*(*iii *) of the relevant Finance Act."*

2.8.5 Further reliance is placed another landmark judgment in the case of **S.R. Koshti 276 ITR 165 (Guj)** in which relief was granted to assessee with following observations:

"The authorities under the Act are under an obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, misconception or on not being properly instructed, is over assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected." **[Para 20]**

- **CIT vs Lucknow Public Educational Society** 318 ITR 223 (ALL)

"The Assessing Officer had treated the revised return as 'non est' *wrongly, for the reason that he himself had passed the order under section 143(3) on the basis of the original return where the assessee was legally entitled to the exemption under section 11, if not under section 10(*23C*). The department should not take advantage of the ignorance of the assessee as per the CBDT Circular No. 14(XL-35)/1955, dated 11-4-1955. Hence, it was the duty of the Assessing Officer to have asked information from the assessee at the time of scrutiny, but he had not done so before completing the assessment under section 143(3). Further, the tax audit report along with return*

is not a mandatory condition as per the ratio laid down in the case of CIT *v.* Rai Bahadur Bissesswarlal Motilal Malwasie Trust *[1992] 195 ITR 825/65 Taxman 273 (Cal.) as well as in the case of* CIT *v.* Sankalp Welfare Society *[2008] 303 ITR 64 (Punj. & Har.). The audit report can be furnished before completing the assessment.* [Para 9]

In the instant case, the Assessing Officer had not asked for any information before denying the exemption for which the assessee was legally entitled. On the other hand, he had rejected the second return which was enclosed with the necessary documents for claiming the exemption. [Para 11]

No opportunity was given to the assessee for any discrepancy. The assessee was entitled to exemption under section 11 and that exemption was the statutory exemption available to the assessee. [Para 12]

In the light of above discussion, no substantial question of law emerged from the impugned order of the Tribunal. Therefore, the appeal was to be dismissed. [Para 13]"

2.8.6 Further, reliance is placed on **J&K High Court in Snehlata (2004) 192 CTR 50**: In this case, it has been held that:

"When the substantive law confers a benefit on the assessee under a statute, it cannot be taken away by the adjudicatory authority on mere technicalities. It is settled proposition of law that no tax can be levied or recovered without authority of law. Article 265 of the Constitution of India and section 114 of the State (J&K) Constitution imposes an embargo on imposition and collection of tax if the same is without authority of law…"

2.8.7 Reliance is placed on the landmark judgment of Hon'ble Delhi High Court in the case of **CIT vsBharat General Reinsurance Co Ltd 81 ITR 303 (Del.)** Relevant portion is reproduced below:

"It was true that the assessee itself had included that dividend income in its return for the year in question, but there was no* estoppel *in the Income-tax Act and the assessee having itself challenged the validity of taxing the dividend during the year of assessment in question, it must be taken that it had resiled from the position which it had wrongly taken while filing the return. Quit apart from it, it was incumbent on the income-tax department to find out whether a particular income was assessable in the particular year or not. Merely because the assessee wrongly included the income in its return for a particular year, it could not confer jurisdiction on the department to tax that income in that year even though legally such income did not pertain to that year. Therefore the income from dividend was not assessable during the assessment year 1958-59, but it was assessable in the assessment year 1953-54. It could not, therefore, be taxed in the assessment year 1958-59."

2.9 That, in the alternative and without prejudice, if the amount of Rs.15,11,41,174/- is not considered to be part of the Long Term finance Business of the Appellant, then the total income of the Appellant ought to have been proportionately increased by this amount so as to re-compute the deductions u/s 36(1)(viia)(c) of the Act on the enhanced amount and as such the deduction also ought to have been directed to be proportionately enhanced.

The reliance is placed upon the following judgments:

- **Smt. Gurpreet Kaur vs. Income Tax Officer, Jalandhar in ITA No.87(ASR)/2016 (ITAT, Amritsar)**

- **Improvement Co. (P) Ltd. vs ITO Urban in ITA No. 7496/Del/2019 Dated 07.02.2020 (ITAT, Delhi)**
- **Rajesh Jain vs. ITO reported in 162 Taxman 212 (ITAT, Chandigarh)(Mag.)**
- **Gift Land Handicrafts vs. CIT reported in 108 TTJ 312 (ITAT, Delhi)**
- **Nayek Paper Converters vs. ACIT reported in 93 TTJ 574 (ITAT, Kolkata)**
- **Shri Sita Ram Swami vs. ITO in ITA No. 73/JP/2020 dated 27.02.2020 (ITAT, Jaipur)**
- **PCIT vs. Weilburger Coatings (India) (P) Ltd. in 463 ITR 89 (Cal)**
- **Madras Craft Foundation Society vs. CIT in WMP No. 11291/2021 (Madras) dated 23.02.2024**
- **Atul Gupta vs. ACIT in 2020 SCC Online ITAT 7918 (Del)**
- **Kamal Kumat Sethi vs. ACIT in 2022 SCC Online ITAT 481 (Del)**
- **Sanjay Gupta vs. ACIT in 2023 SCC Online ITAT 290 (Del)**
- **Spooner Industries (P) Ltd. vs. ITO in 2020 SCC Online ITAT 12561 (Del)**
- **M/s Vikas Jewels (P) Ltd. vs. ITO in ITA 1332/Del/2019**
- **M/s Shivalik Education and Placement Services (P) Ltd. ACIT in ITA 3207/Del/2019**

10. On the other hand, ld. DR of the Revenue brought to our notice page 40 of the assessment order and submitted that the income earned by the assessee are not part of the main business and there is no direct nexus with the business carried on by the assessee. She further submitted that the deduction is available to the assessee only the profit derived from the eligible business. The income earned is not from the specified business. She supported the findings given in pages 12 and 13 of the first appellate

order. With regard to computation of the claim, she relied on the findings of AO at the pages 50 and 51 of the order.

11. Considered the rival submissions and material placed on record. We observed that the AO, while processing the deduction claimed by the assessee, observed that the assessee had earned other income from the processing fees on loan application (50% at the time of application and balance at the time of sanction of the project), Upfront fees, Lead financer fees, Security Trustee Fees, Underwriting Fees and letter of comfort fees during the year. He was of the view that these are additional income from other businesses and not connected to the long term finance business of the assessee. Similar view was taken by the department in the previous assessment years from 2015-16 to 2017-18. We noticed that the above disallowances were settled by the assessee under Vs V 1.0Scheme. However, the assessee raised this issue before us and also brought to our notice that the revenue has accepted the stand of the assessee in the subsequent assessment years i.e., from AY 2020-21 and 2021-22 onwards. We further noticed that the Ld CIT(A) had rejected the above plea on the basis of the decision in the case of Power Finance Corporation Ltd (supra) by the coordinate bench. In our view, the above decision was rendered on 25.06.2009. However, we noticed that Hon'ble Karnataka High Court held

in the case of Weizmann Homes Ltd (supra) that the processing fee and penal interest received, who are in the business of providing long term finance shall be included in the eligible income for deduction u/s 36(1(viii) of the Act, as the same has direct nexus with the business of Long Term Finance. Respectfully following the same ratio, we are inclined to hold that the processing fees collected by the assessee has direct nexus with the long term finance provided by it. It cannot be dissociated and to the extent it is relates to the eligible loans granted under the long term schemes. Similarly, the other incomes like upfront fee, Lead Financer Fees, Security Trustee Fee and other fees are directly connected with the long-term finance business of the assessee. These fees are derived directly from the long term finance, towards processing the loan and administer of the long term loans, since, there is direct decision of the Hon'ble High Court, we are inclined to follow the same. With regard to decision of AAR quoted by the assessee, we are of the view that it is relating to the interest paid by REC on foreign currency loans, utilized for its business, was subject to withholding tax (TDS) under Section 195 of the Income-tax Act, 1961, as it deemed to accrue or arise in India. It is not relevant to the present issue.

12. Further as held in the case of Meghalaya Steels Ltd (supra), the Hon'ble Supreme Court explained the distinction between the terms 'derived from'

and 'attributable to'. Further they held that the test for eligibility for deduction is to be the direct nexus between the income earned and the business of the assessee. They have also held that the incidental incomes such as processing fees, upfront charges etc are derived from the business of long term finance and they held that the same shall be eligible for deduction u/s 36(1)(viii) of the Act. Since the facts in the present appeal is exactly similar, we are inclined to allow the grounds raised by the assessee in this regard.

13. Further, the issue of applicability of sections 36(1)(viii) and 36(1)(via) together or independent of each other are not relevant at this stage as we have already decided the issue of other income like upfront fees etc are directly linked and derived from the long term finance, hence not adjudicated at his stage, it will render only academic purpose.

14. With regard to grounds raised by the revenue, Ld DR brought to our notice the detailed findings of the AO, particularly the page 32 of the order along with provisions of section 36(1)(viii)(h). Further she brought to our notice pages 33 and 34 of the assessment order and submitted that the loans are granted for more than 5 years but the same are closed for the period less than 5 years, the assessee also collected the premature premium. Therefore, she reiterated that the provisions of the section intended to give deduction

to the assessee who provide the long term loans for the period beyond 5 years, the assessee controls the terms of providing loans and they are aware of the terms of period at the time of disbursal itself. Once it is established that the loans are actually provided to the beneficiaries for the period less than 5 years, the relevant deduction is not available to the assessee. She brought to our notice pages 10 and 11 of the appellate order and submitted that the decision given in para 6.11.3 is not proper. She objected to the relief granted by the Ld CIT(A).She submitted that the provision of the section must be interpreted literally and Ld CIT(A) had failed to interpret the same. Hence, she supported the findings of AO.

15. On the other hand, Ld AR submitted that the assessee, a notified public financial institution engaged in providing long-term infrastructure finance, is eligible to claim a 20% deduction of profits from eligible business u/s 36(1)(viii) of the Act for the sum transferred towards specified reserve created therein. The term long-term finance for the aforesaid purposes is defined by Clause (h) of Explanation to Section 36(1)(viii) of the Act, as any loan/ advance where the terms under which money is loaned/ advanced provide for repayment along with interest thereof, during a period of not less than 5 years. The AO held in respect of loans repaid before expiry of 5 years to not qualify as long term

finance and accordingly deduction of profits claimed against interest income derived from such prepaid loans was disallowed u/s 36(1)(viii) of the Act. Vide the assessment order, the AO computed the profits derived from financing the prepaid loans and denied deduction of the same claimed by the assessee u/s 36(1)(viii) of the Act.

16. For AY 2018-19, the ld. CIT(A) observed from the applicable provisions that qualification as whether the loan is Long Term or otherwise is determined by the term of loan agreement at the time of grant and not based upon the act of premature closure of such loan. Further, the ld. CIT(A) placed reliance in this regard on decision of the Gujarat High Court in PCIT v. Gruh Finance Ltd. (2017] 81 taxmann.com 388, whereby the nature of Long Term finance for the purposes of Section 36(1)(viii) of the Act was to be seen at the time of sanction of loans and in case of no change in the character of account i.e. tenure being more than 5 years even after assignment, the same was held eligible for deduction w/s 36(1)(viii) of the Act.

17. Considered the rival submissions and material placed on record. We observed that as per the provisions of section 36(1)(viii) and relevant explanation clause (h) provides that any loan/ advance where the terms under which money is loaned/ advanced provide for repayment along

with interest thereof, during a period of not less than 5 years. We noticed that the AO interpreted the same to include only those loans which are provided for the period 5 year or more only, accordingly he excluded all those loans which are preclosed in 5 years or less are not eligible to claim deduction u/s 36(1)(viii) of the Act. He excluded the eligible profit on the loans which are repaid in 5 years or less than 5 years. Accordingly he recalculated the 20% of the eligible interest instead of eligible profit earned from the long term finance business. After considering the submissions of both the parties and detailed findings of Ld CIT(A), we observed that Ld CIT(A) had placed reliance on the decision of Hon'ble Gujarat High Court in the case of Gruh Finance Ltd (supra) wherein it was held that the nature of Long Term finance for the purposes of Section 36(1)(viii) of the Act was to be seen at the time of sanction of loans and in case of no change in the character of account i.e. tenure being more than 5 years even after assignment, the same was held eligible for deduction w/s 36(1)(viii) of the Act. Since, Ld CIT(A) had followed the decision of Hon'ble High Court, we are inclined to respectfully follow the same, hence the ground raised by the revenue is accordingly dismissed.

18. With regard to ground no.4 raised by the assessee relating to addition of interest income of Rs.5,32,26,430/-, the relevant facts are, as per the

business model of the assessee, it advances loans to various cooperative societies for rural electrification in their respective states. In order to protect the financial health of these societies, the assessee had provided an option of waiving of the interest for the period of five years on such loans, provided the society agrees to set apart an amount equivalent to the said interest in a special fund which is constituted and administered by the society in accordance with the rules framed by the assessee. It was submitted that though the assessee monitors the utilization of the fund, the beneficiary is always society. The issue under consideration is the devolution interest earned on such funds set apart by society in fixed deposits.

19. According to the assessee and based on the certificates provided by the cooperative societies identified in the assessment order, the income has been disclosed in the hands of the cooperative societies and hence the assessee need not offer the same as its income, The AO did not accept this principle and he followed the principle laid down by the AO in the preceding assessment years, thus proceeded to make the addition in the hands of the assessee resulting in an addition of Rs.5,32,26,430/-.

20. Aggrieved, the assessee filed an appeal before CIT(A) and after considering the submissions, Ld. CIT (A) observed that as in the case of

issues of addition dealt in the preceding paragraph, this aspect was elaborately dealt by the Hon'ble 'F' Bench of ITAT, Delhi in its order dated 23.10.2019 in ITA No. 5443/Del/2016AY. 2012-13 and in para 18 had held and accepted the principle that once the interest income earned by the cooperative society was offered in the hands of such societies, the same could not be taxed in the hands of the appellant company. Therefore, the JAO is directed to examine as to whether the respective 12 cooperative societies identified in the assessment order had disclosed the interest income in the respective hands and if proven this so, the corresponding addition shall be deleted. As a result, the corresponding ground of the assessee is allowed for statistical purposes.

21. At the time of hearing, ld. AR of the assessee submitted as under :-

> "4.3 That the Appellant has a policy to provide the borrower with an option to forego the interest on loans for the first five years subject to societies agreeing to set apart an amount equivalent to interest in a Special Fund to be constituted and administered by the society in accordance with the rules made by the Appellant in this behalf. The Ld. AO made the addition in the hands of the Appellant on the ground that said funds belong to the Appellant and as such it should have been the income of the Appellant. The Ld. CIT(A) remanded the issue back to the Ld. AO in order to verify whether the cooperative societies had disclosed the interest income in their respective hands and if it has been disclosed then the additions is to be deleted. The Ld. CIT(A) has placed reliance on the order passed by this Hon'ble ITAT, Delhi in the Appellant's own case.

4.4 It is submitted that when all the evidence are on record to show that said interest income has been offered to taxation by the respective societies, then the Ld. CIT(A) ought to have deleted the addition instead of remanding the matter back to the Ld. AO. The following evidences have been placed on record:

- Copy of letter and confirmation from CESS Ltd. Sircilla: **PB Pg. 481 & Pg. 541**
- Copy of Conformation from HRECS Ltd. Hukeri: **PB Pg. 540**
- Copy of Conformation from KRECS Ltd. Kuppam: **PB Pg. 542"**

22. On the other hand, ld. DR of the Revenue relied on the reasons given by Ld CIT(A) and there is no prejudice caused to the assessee.

23. Considered the rival submissions and material placed on record. We observed that Ld CIT(A) had followed the decision of Coordinate bench in the case of the assessee's own case to remit the issue under consideration to the file of AO. We observed that Ld AR submitted that all the relevant material is placed on record, Ld CIT(A) should have adjudicate the issue on the basis of coordinate bench decision. We observed that even before us, the assessee did not submit any OGE order before us relating to AY 2012-13. Since, it involves verification whether the other societies have also declared the income in their hands, the same cannot be decided at the stage of first appellate proceedings. Therefore, we do not see any reason to disturb the same at this stage. In the result, above ground raised by the assessee is dismissed.

24. In the result, the appeal being ITA No.319/Del/2025 for AY 2018-19 filed by the assessee is partly allowed and appeal filed by the revenue is dismissed.

15. The assessee has filed appeal being ITA No.320/Del/2025 for AY 2019-20wherein the assessee has challenged the issue relating to deduction claimed u/s 36(1)(viii) of the Act, which relates to Ground Nos.3 to 3.2 of AY 2018-19 which we discussed above, and other grounds are either general, not pressed or premature. Since the facts relating to above ground challenged in AYs 2019-20 are exactly similar to Assessment Year 2018-19, our above findings in AY 2018-19are applicable *mutatis mutandis* in Assessment Year 2019-20. Accordingly, the appeal filed by the assessee for AY 2019-20 is partly allowed.

16. With regard to appeal preferred by the revenue, the relevant grounds raised for AY 2019-20 are as under:

> 1. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in enhancing an amount of Rs.2135,77,85,466/- as interest from long term financing from Rs.22243,97,29,597/- to Rs.24379,75,15, 505/- in relation to deduction claimed on interest income earned on long term loans which were prepaid before 5 years.
>
> 2. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in inclusion an amount of Rs.139,28,99,081/- as prepayment premium in relation to deduction claimed on interest income earned on long term loans which were prepaid before 5 years."

17. The grounds raised by the revenue in AY 2019-20 are exactly similar to the grounds raised by them in AY 2018-19, the findings given in the AY 2018-19 are applicable mutandis mutatis in the AY 2019-20, Hence, the appeal preferred by the revenue are dismissed.

18. Now we take up Revenue's appeal being ITA Nos.609 & 579/Del/2025 for AYs 2020-21 and 2021-22 wherein the Revenue has taken the following grounds of appeal :-

"**AY 2020-21**

l. Whether on the facts and in the circumstances of the case, the Ld. CIT[A) has erred in granting relief to the assessee on disallowance on account of variations of Rs,94,11,968/- u/s 14A of the Act read with rule 8D of the of the Rule ?

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in granting relief to the assessee on disallowance of deduction of Rs.69,58,768/- u/s 36(1) (viii) of the Act in relation to deduction claimed on interest income earned on long term loans which were prepaid before 5 years?

3. Whether on the facts an in the circumstances of the case, the Ld. CIT(A) has erred in granting relief to the assessee of Rs.78,34,00,000/- on account of variation in respect of disallowance u/s 80G of the Act?"

"AY 2021-22

1. Whether on the facts and in the circumstances of the case, the disallowance of Rs.7,22,58,469/- made on account of withdrawal of deduction u/s 36(1)(viii) of the Act is liable to be deleted?

2. Whether on the facts and circumstances of the case, Ld. CITA) has erred in granting relief an amount of Rs.7,22,58,469/- as prepayment premium in relation to deduction claimed on interest income earned on long term loans which were prepaid before 5 years?

19. With regard to Ground No.2 and Ground Nos.1 & 2 of AYs 2020-21 and 2021-22 respectively, the issue involved is deduction of profits derived from interest on prepaid loans claimed u/s 36(1)(viii) of the Act and the relevant issues are already discussed and adjudicated in AY2018-19, the facts are exactly similar, the decision taken in AY 2018-19 are applicable mutandis mutatis, hence the grounds raised by the revenue are dismissed.

20. With regard to Ground No.1 of AY 2020-21, the relevant facts are, the assessee suo-motu made a disallowance of Rs.6,01,10,032/-, being 1% of the annual average or monthly average of opening and closing balance of investments yielding exempt income at their actual cost. Accordingly, while computing disallowance tax exempt investments averaging Rs.600.31 crores out of the total investments of Rs.2293.67 crores (FV at Rs.2313.21 crores), were considered. The AO, while computing the average value of investments also considered the balance investments of Rs.94.91 crores (at FV) being preference shares, venture capital fund units, and other equity instruments from which the Respondent did not derive any exempt income, thereby making additional disallowance of Rs.94,11,968/- over and above the suo motu disallowance offered in the

return. The Ld. CIT(A) observed the similarity of issue being repetitive to AY 2018-19 and also being adjudicated by the ITAT in favour of the Respondent in AY 2012-13, directed the Ld. AO to delete the impugned additions made u/s 14A of the Act. The ITAT Delhi in AY 2012-13 relying on the Hon'ble Jurisdictional High Court, Delhi in case of ACB India Ltd. 374 ITR 108, directed to consider only those investments from which dividend income has been earned by the Appellant and claimed as exempt.

21. At the time of hearing, Ld DR relied on the detailed findings of AO.

22. On the other hand, ld. AR of the assessee submitted as under :-

> "For the subject AY, the Assessee suo motu made a disallowance of Rs.6,01,10,032/- (being 1 % of annual average of monthly average of opening and closing balances of investment, income from which does not form part of total income), in accordance with Section 14A of the Act r.w. Rule 8D of the Rules vide the return of income.
>
> That the Ld. AO disregarding the above, calculated average value of investments by including preference shares, units of venture capital funds and other equity instruments from which exempt income was derived by the Assessee to arrive at the impugned addition of Rs.94,11,968/- being the additional sum above the suo motu disallowance already made by the Assessee in the return.
>
> That the ld. CIT(A) rightly deleted the aforesaid disallowance following the settled position of law established by the Hon'ble jurisdictional High Court, whereby only tax exempt investments are to be considered for computing average value of investments for the purposes of determining disallowance under Section 14A of the Act r.w. Rule 8D of the Rules.

ACB India Ltd. vs. ACIT 374 ITR 08 (Delhi)
Caraf Builders &Constructions (P) Limited 414 ITR 122 (Delhi)
Cargo Motors (P.) Ltd. v. DCIT 453 ITR 554 (Delhi).

Further, post Finance Act 2020 dividend income is taxable in the hands of the shareholder. Accordingly, such investments shall not subsequently result in any exempt income."

23. Further, ld. AR submitted that it is settled law that only tax-exempt investments are to be considered for the purpose of computing average value of investments for determining disallowances w/s 14A of the Act r.w. Rule 8D of the Rules. The Hon'ble High Court of Delhi in PCIT vs. Caraf Builders & Constructions (P.) Ltd. (2019] 101 taxmann.com l67 (Delhi) dismissed the revenue appeal by holding that only average value of the entire investment that does not form part of the total income is the factor which could be covered by the numerical B for computing disallowance under clause (ii) of rule 8D (2).

24. Considered the rival submissions and material placed on record. We observed that the assessee had earned exempt income and suo motto disallowed 1% of the average investment on which the assessee earned the exempt income whereas the AO considered the average of total investment held by the assessee. This issue is already settled in favor of the assessee by the Hon'ble Jurisdictional High Court in the case of Caraf Builders and Constructions P Ltd (supra), ACB India Ltd (supra) and Cargo Motors P.

Ltd (supra). Respectfully following the same, we are inclined not to disturb the findings of Ld CIT(A). In the result, ground raised by the revenue is dismissed.

25. With regard to Ground No.3 of AY 2020-21, the relevant facts are, the assessee contributed Rs.156.68 crores to REC Foundation, a registered entity u/s. 12A and 80G of the Act, in furtherance of its charitable objectives. The said amount being a part of CSR obligations, was suo motu disallowed under Explanation 2 to Section 3(1) of the Act and a 50% deduction of Rs.78.34 crores u/s 80G of the Act was claimed by the assessee. The AO disallowed the above deduction holding that CSR expenses u/s. 135 of the Companies Act, 2013 were not voluntary. He held that CSR expenditure is mandatory and do not qualify as voluntary donation u/s. 80G of the Act. Accordingly, the AO denied the excess claim of deduction of Rs.78.34 crores u/s 80G. The ld. CIT(A) observed that CSR expenditure, though statutorily mandated remains philanthropic in nature and devoid of any element of quid pro quo. Accordingly, it qualifies for deduction u/s 80G of the Act, as upheld by the Coordinate bench in case of Interglobe Technology Quotient (P.) Ltd. v. ACIT [2024| 163 taxmann.com 542 (Del-Trib) and directed the Ld. AO to allow deduction u/s 80G of the Act to the assessee.

26. At the time of hearing, Ld. DR submitted relied on the findings of AO.

27. On the other hand, Ld AR submitted as under:

"For the subject AY, the Assessee extended CSR donations amounting to Rs.156.68 crore to REC Foundation in furtherance of its charitable objects, which is duly registered under Section 12A and Section Gof the Act. The aforesaid sum being part of Assessee's CSR obligation was suo motu disallowed in the return as per Explanation 2 Section 37(1) of the Act. However, eligible deduction (at 50%) amounting to Rs.78,34,00,000/-was claimed under Section 8G of the Act.

That the aforesaid deduction was denied by the Ld. AO merely on the ground that the same formed part of CSR obligations under Section 135 of the Companies Act, 2013 and were not "voluntary" in nature. That the Ld. AO failed to appreciate that CSR expenditure though mandatory, is philanthropic in nature, without any quid pro quo, and hence qualities for deduction under Section G of the Act, upon satisfaction of prescribed conditions vide Interglobe Technology Quotient (P) Ltd v. ACIT [2024] 163 taxmann.com 542 (Delhi - Trib) and Cheil India (P) Ltd. v. DCIT, [2024] 169 taxmann.com 507.

Further that the legislature nowhere specifies any exception qua ineligibility of deduction under Section 80G(2)(iv) of the Act regarding contributions made in pursuance of CSR obligations, except made towards the Swachh Bharat Kosh and Clean Ganga Fund as confined by Section 80G(2)(a)(iiihk) and Section 80G(2)(a)(iiihl) of the Act vide Gujarat Mineral Development Corporation Ltd. v. PCIT [2025] 176 taxmann.com 227 (Ahmedabad – Trib).

That it is amply clear that the legislature has no intention to deny deduction of CSR contributions made under Section S0G of the Act, provided the conditions specified therein are satisfied vide IN Ericsson India Global Services (P) Ltd, e DCIT, [2024] 160 taxmann.COm 599 (Delhi - Trib), as under

> "7. Only condition for claiming deduction under section 80G of the Act as per the existing provisions is the institute to which donation is made must have been registered under section 80G of the Act. Once therefore said condition is fulfilled, the donor is

entitled to avail the deduction. This is also the view expressed by the Co-ordinate Bench in case of Honda Motorcycle and Scooter India Pot. Ltd. (supra),"

8. Before us, it is the specific contention of learned Counsel of the assessee that the institutes to whom the assessee has donated the CRS fund are registered under section 80G of the Act. Keeping in view the submissions of the assessee as well as the ratio laid down in the judicial precedents cited before us, we direct the Assessing Officer to allow assessee's clam or deduction under section 80G of the Act, subject to, factual verification of assessee's claim that the donee institutions are registered under section 80G of the Act and other conditions of section 80G of the Act are fulfilled. Ground is allowed for statistical purposes."

The aforesaid view has unanimously been upheld by coordinate benches of Hon'ble Tribunal as under:

American Express (India) P. Ltd. v. PCIT- [2024] 166 taxmann.com 91 (Delhi - Trib.)

M/s. Naik Seafoods Pvt. Ltd v. PR. CIT ITA No. 490/Mum/2021."

28. Ld. AR further submitted that in furtherance to the above, the legislature nowhere specifies any exception qua ineligibility deduction u/s. 80G(2)(iv) of the Act regarding contributions made pursuance to CSR obligations, except towards Swachh Bharat Kosh and Clean Ganga Fund as confined by Section 80G(2)\(a)(iiihk) of the Act vide Gujarat Mineral Development Corporation Ltd. v. PCIT [2025] 176 taxmann.com 227 (Ahmedabad-Trib.).

29. Considered the rival submissions and material placed on record. We

observed that the issue under consideration is covered in favor of the assessee and the coordinate benches has taken consistent view in the case of American Express (India) P Ltd (supra) and Ericsson India Global Services P Ltd (supra) and also other ITAT benches. Hence, we are inclined to dismiss the ground raised by the revenue.

30. In the result, appeals filed by the revenue in the AY 2020-21 and AY 2021-22 are dismissed.

31. In conclusion, the appeals filed by the assessee in AY 2018-19 and AY 2019-20 are partly allowed and revenue appeals in AY 2018-19 to 2021-22 are dismissed.

Order pronounced in the open court on this day of 12th February, 2026.

Sd/-	**sd/-**
(ANUBHAV SHARMA)	**(S.RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 12.02.2026
***Mittali, Sr. PS**

Copy forwarded to:
1. Appellant
2. Assessee
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI