

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT &
SHRI MAKARAND V MAHADEOKAR, ACCOUNTANT MEMBER**

**ITA No. 6692/Mum/2025
A.Y:2014-15**

Mumbai International Airport Ltd., 1 st floor, Terminal-1B, Chhatrpati Shivaji International Airport, Santacruz (E), Mumbai - 400099.	Vs.	DCIT, Circle - 2(2)(1) Aayakar Bhavan, MK Road New Marine Lines, Mumbai - 400020.
PAN/GIR No. AAECM6285C		
(Applicant)		(Respondent)

**ITA No. 7035/Mum/2025
A.Y:2014-15**

DCIT, Circle - 2(2)(1) Aayakar Bhavan, MK Road New Marine Lines, Mumbai - 400020.	Vs.	Mumbai International Airport Ltd., 1 st floor, Terminal-1B, Chhatrpati Shivaji International Airport, Santacruz (E), Mumbai - 400099.
PAN/GIR No. AAECM6285C		
(Applicant)		(Respondent)

Assessee by	Shri Saurabha Soparkar Virtually Appeared
Revenue by	Shri Annavaram Kosuri, Sr. AR

Date of Hearing	25.02.2026
Date of Pronouncement	09.03.2026

आदेश / ORDER

PER MAKARAND V MAHADEOKAR, AM:

These cross appeals are directed against the order passed by the Commissioner of Income Tax (Appeals) under section 250 of the

Income-tax Act, 1961 dated 05.08.2025 in the case of the assessee for Assessment Year 2014–15. The assessment in the present case was originally completed by the Assessing Officer under section 143(3) of the Act vide order dated 30.12.2017. Since the issues involved in the appeals of the Revenue as well as the assessee arise out of the same appellate order of the Ld. CIT(A), these appeals were heard together and are being disposed of by way of this common order for the sake of convenience and brevity.

2. The Revenue has raised the following grounds of appeal in **ITA No. 7035/MUM/2025**:

1. *Whether, on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) was justified in allowing depreciation on the upfront concession fee of Rs. 31,03,450/- paid to Airports Authority of India by merely relying on the ITAT'S order for earlier years, without appreciating that the right to operate the airport under a 30-year concession is, not an 'intangible asset' owned by the assessee but a deferred capital outlay to be amortised over the concession tenure?*

2. *Whether, on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) erred in allowing deduction of the lump-sum payment made to AAI of Rs. 16,62,33,600/- towards retirement/compensation of employees solely following earlier ITAT orders, without appreciating the factual matrix and the applicability of section 35DDA, which mandates amortisation over five years for such expenditure?*

3. *Whether, on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) is justified in treating the Development Fee of Rs. 348,95,74,100/- collected from passengers as a capital receipt merely on the basis of ITAT decisions for prior years, without appreciating the facts of the present year, the terms of MoCA approval, and the assessee's control and accounting of DF, which make it a revenue/business receipt taxable under section 28 of the Income Tax Act, 1961?*

4. Whether, on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) is correct in deleting the disallowance of Rs. 41,51,500/- made u/s 14A r.w. Rule 8D by relying only on past ITAT orders, without appreciating that substantial investments existed which were capable of generating exempt income, and without considering the retrospective clarificatory amendment to section 14A by the Finance Act, 2022?

5. Whether, on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) is right in holding that the short-term capital gains on temporary investment of surplus funds of Rs. 8,75,88,808/- during the construction phase should be reduced from project cost by merely following ITAT decisions for AY 2013-14, without appreciating that commercial operations had commenced in the relevant year and the income was not inextricably linked to project execution?

6. Whether, on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) is justified in holding that PSF-SC of Rs. 24,25,65,152/- collected by the assessee is not taxable income and allowing related depreciation solely by relying on ITAT decisions for earlier years, without examining the specific escrow arrangement, control over utilisation, and subsequent CBDT Circular No. 02/2017 and MoCA clarifications (2019) which treat PSF-SC as income for services rendered?

7. Whether, on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) is justified in treating runway, taxiway, apron and allied structures as 'plant and machinery' merely on the strength of earlier ITAT orders, without appreciating that these are immovable civil structures forming part of the building and not functional tools of trade, and thereby allowing higher depreciation contrary to Explanation 1 to section 32(1)(ii) of the Income Tax Act, 1961?

8. Whether, on the facts and in the circumstances of the case, and in law, the Ld. CIT(A) is justified in granting relief on multiple issues solely by following coordinate bench decisions of the ITAT in the assessee's own case for earlier years, without examining the merits, facts, evidences, or legal developments specific to the assessment year under appeal,

and thereby failing to discharge the appellate duty of independent adjudication as mandated under section 250(6) of the Income-tax Act, 1961?

9. The appellant craves the leave to add, amend, alter and/or delete any of the grounds of appeal as above.

3. The assessee has raised the following grounds of appeal in **ITA No. 6922/MUM/2025**:

1. In law and in the facts and circumstances of the case of the appellant, the Ld. CIT(A) has erred in not adjudicating the additional grounds raised by the appellant during the course of Appellate Proceedings thereby violating the principles of natural justice.

2. In law and in the facts and circumstances of the case of the appellant, the Ld. CIT(A) has erred in not allowing the additional ground of the appellant in relation to the disallowance of alleged bogus accommodation entry for Rs. 1,25,90,278/- under normal provisions of the Act even when such disallowance was not called for.

3. In law and in the facts and circumstances of the case of the appellant, the Ld. CIT(A) has erred in not allowing the additional ground of the appellant in relation to the disallowance of Rs. 3,00,000/- being investment written off while computing income under normal provisions of the Act.

4. The appellant craves leave to add, alter or amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.

4. We shall first take up the appeal filed by the assessee. Ground Nos. 1 to 3 raised by the assessee relate to the grievance that the Ld. CIT(A) has failed to adjudicate the additional grounds raised by the assessee during the course of appellate proceedings.

During the course of hearing before us, the Ld. Authorised Representative (AR) invited our attention to the additional grounds raised before the Ld. CIT(A) and submitted that the same are placed at page no. 11 of the paper book. The Ld. AR submitted that the

assessee had specifically raised additional grounds before the first appellate authority challenging (i) the addition of Rs. 1,25,90,278/- on account of alleged bogus accommodation entries, and (ii) the disallowance of Rs. 3,00,000/- being investment written off while computing income under the normal provisions of the Act as well as while computing book profits under section 115JB of the Act.

5. The Ld. AR drew our attention to the relevant portion of the additional grounds placed in the paper book page No.11. The Ld. AR submitted that despite the fact that the above additional grounds were duly raised before the Ld. CIT(A), the same were not adjudicated in the appellate order passed under section 250 of the Act. It was therefore contended that the failure of the Ld. CIT(A) to adjudicate the additional grounds raised before him amounts to violation of the principles of natural justice as well as the statutory mandate contained in section 250(6) of the Act, which requires the appellate authority to dispose of the appeal by passing a speaking order dealing with each ground raised by the assessee. The Ld. AR accordingly submitted that the matter may be restored to the file of the Ld. CIT(A) with a direction to adjudicate the aforesaid additional grounds on merits after granting adequate opportunity of being heard to the assessee.

6. The Ld. Departmental Representative (DR), on the other hand, relied upon the orders of the lower authorities.

7. We have heard the rival submissions and perused the material available on record. From a careful perusal of the appellate order passed by the Ld. CIT(A), we find merit in the contention of the assessee. The record shows that the assessee had indeed raised specific additional grounds before the first appellate authority, which were also placed in the paper book before us. However,

ongoing through the impugned order, it is evident that the Ld. CIT(A) has not rendered any finding on these additional grounds. The appellate order is completely silent on the issues relating to the disallowance of alleged bogus accommodation entries amounting to Rs. 1,25,90,278/- and the disallowance of Rs. 3,00,000/- being investment written off.

8. It is well settled that the CIT(A), being the first appellate authority, is under a statutory obligation under section 250(6) of the Act to dispose of the appeal by passing a speaking order stating the points for determination, the decision thereon and the reasons for the decision. Once the assessee has raised specific grounds before the appellate authority, the same are required to be adjudicated on merits. Failure to adjudicate such grounds amounts to violation of the statutory mandate contained in section 250(6) of the Act as well as the principles of natural justice.

9. Considering the above facts and circumstances of the case, we are of the view that the issues raised by the assessee in the additional grounds require proper examination and adjudication at the level of the first appellate authority. Accordingly, in the interest of justice, we set aside the impugned order of the Ld. CIT(A) on these issues and restore the matter to the file of the Ld. CIT(A) with a direction to adjudicate the aforesaid additional grounds on merits in accordance with law after affording reasonable opportunity of being heard to the assessee.

10. Thus, the grounds raised by the assessee are allowed for statistical purposes.

11. We shall now take up the appeal filed by the Revenue. Ground Nos. 1 to 8 raised by the Revenue relate to various additions and disallowances on which relief has been granted by the Ld. CIT(A) by following the decisions of the Co-ordinate Bench in the assessee's own case for earlier assessment years. The issues raised by the Revenue, inter alia, pertain to allowability of depreciation on upfront concession fee paid to Airports Authority of India, deduction of payment made towards retrenchment/compensation to employees of AAI, taxability of development fee collected from passengers, deletion of disallowance under section 14A read with Rule 8D, treatment of short-term capital gains on temporary investment of surplus funds, taxability of Passenger Service Fee – Security Component (PSF-SC), and the rate of depreciation on runway, taxiway, apron and allied structures. Since each of the above issues involves separate factual and legal considerations, the same are being adjudicated issue-wise in the succeeding paragraphs.

Ground No. 1 – Depreciation on Upfront Concession Fee

12. Ground No. 1 of the Revenue's appeal relates to the action of the Ld. CIT(A) in allowing depreciation on the upfront concession fee paid to Airports Authority of India (AAI). The Ld. DR relied upon the observations made by the Assessing Officer and submitted that the assessee had paid an upfront concession fee of Rs. 31,03,450/- to Airports Authority of India under the Operation, Management and Development Agreement (OMDA) for obtaining the right to operate and manage the Mumbai airport. According to the DR, such payment merely grants a concession right for operating the airport for a fixed tenure of 30 years and does not result in acquisition of an intangible asset owned by the assessee. It was therefore

contended that the payment represents a capital outlay which ought to be amortised over the concession period and cannot be treated as an intangible asset eligible for depreciation under section 32(1)(ii) of the Act. The DR further submitted that the Ld. CIT(A) has allowed the claim of the assessee merely by following the decisions of the Tribunal in earlier years without independently examining the facts of the present assessment year.

13. Per contra, the Ld. AR for the assessee submitted that the issue is squarely covered in favour of the assessee by the decision of the co-ordinate bench in the assessee's own case for A.Y. 2007-08 in **ITA No.7507 and 7111/MUM/2011**. The Ld. AR submitted that the Co-ordinate Bench, after examining the OMDA agreement and the nature of rights acquired by the assessee, has consistently held that the upfront concession fee paid to AAI confers commercial rights of similar nature, which qualify as an intangible asset within the meaning of section 32(1)(ii) of the Act and therefore depreciation is allowable. It was further submitted that the Ld. CIT(A) has rightly followed the binding precedent in the assessee's own case and therefore no interference is called for.

14. We find that the identical issue had come up for consideration before the co-ordinate Bench in the assessee's own case for A.Y. 2007-08, wherein after examining the terms of the OMDA agreement, the nature of rights granted to the assessee and the provisions of section 32(1)(ii) of the Act, the Co-ordinate Bench held that the upfront fee paid to AAI confers a business or commercial right in the nature of a license, which qualifies as an intangible asset eligible for depreciation. In the said decision, the Tribunal noted that under the OMDA agreement, AAI had granted to the assessee exclusive rights for operating, maintaining, developing,

designing and upgrading the Mumbai Airport for a period of 30 years (extendable by another 30 years) and the assessee was granted substantial commercial rights including the right to collect charges from airport users.

15. The Co-ordinate Bench also observed that the payment of upfront fee did not result in acquisition of any tangible asset such as land, building or machinery, but rather resulted in acquisition of a commercial right to operate and exploit the airport infrastructure, which constitutes a business or commercial right of similar nature within the meaning of section 32(1)(ii) of the Act.

16. After considering various judicial precedents including the decisions of the Hon'ble Supreme Court and High Courts dealing with the scope of the expression "business or commercial rights of similar nature", the Tribunal concluded that the payment of upfront fee resulted in creation of an intangible asset in the nature of a license to develop and operate the airport.

The operative part of the decision of the co-ordinate Bench reads as under:

"There is no dispute to the fact that the said payment of Rs.150 crores paid to 'AAI' has not resulted to the assessee in the acquisition of any 'tangible assets' like building, machinery, plants or furniture. Therefore the said payment of Rs.150 crores has not resulted into acquisition of 'tangible assets'. Thus, the assessee has only acquired right to collect charges from the users of the Airport premises, which is a business or commercial right in the form of license and therefore it is an 'intangible assets' as per section 32(1)(ii) of the Act... In view of above decisions and the facts of the case, we hold that the ld. CIT(A) has rightly held that the payment of upfront fee of Rs.150 crores paid by assessee to 'AAI' has created capital assets in the form of license to develop and modernize the Airport and collect charges as per terms and conditions as

prescribed under the agreement entered into which is an 'intangible assets' to the assessee. Thus, assessee is entitled for depreciation." (para 10.2)

17. In the present case, the Ld. CIT(A) has granted relief to the assessee by following the aforesaid binding decision of the Co-ordinate Bench in the assessee's own case. The Revenue has not brought on record any change either in the facts or in the legal position warranting a different view.

18. Respectfully following the decision of the co-ordinate Bench in the assessee's own case, we find no infirmity in the order of the Ld. CIT(A) in allowing depreciation on the upfront concession fee paid to AAI. Accordingly, **Ground No. 1 raised by the Revenue is dismissed.**

Ground No. 2 - Payment made towards Compensation / Retrenchment of Employees of AAI

19. Ground No. 2 of the Revenue's appeal relates to the action of the Ld. CIT(A) in deleting the disallowance made by the Assessing Officer in respect of payment made by the assessee towards retrenchment / compensation to the employees of Airports Authority of India (AAI) pursuant to the Operation, Management and Development Agreement (OMDA).

20. The Assessing Officer, while framing the assessment order, observed that the assessee had claimed deduction of Rs. 16,62,33,600/- being payment made to Airports Authority of India (AAI) towards retirement / retrenchment compensation of employees as per the terms of the Operation, Management and Development Agreement (OMDA). According to the Assessing Officer, the said

payment represented compensation paid in connection with retirement of employees and therefore the provisions of section 35DDA of the Act were applicable, which require such expenditure to be amortised over a period of five years. The Assessing Officer therefore restricted the deduction by applying the provisions of section 35DDA and disallowed the balance amount.

21. Aggrieved by the said action, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A), after considering the submissions of the assessee and the judicial precedents relied upon, noted that the issue had already been examined by the Co-ordinate Bench in the assessee's own case for earlier assessment years. Following the decisions of the Co-ordinate Bench in A.Ys. 2010-11 and 2011-12, the Ld. CIT(A) held that the payment made to AAI towards retirement compensation of employees was allowable as revenue expenditure and that the provisions of section 35DDA were not applicable, since the payment was made to AAI under contractual obligations and not under any voluntary retirement scheme floated by the assessee for its own employees. Accordingly, the Ld. CIT(A) deleted the disallowance made by the Assessing Officer.

22. Before us, the Ld. DR relied upon the order of the Assessing Officer, whereas the Ld. AR submitted that the issue is squarely covered in favour of the assessee by the decision of the co-ordinate Bench in the assessee's own case in **ITA Nos. 4911/Mum/2013 and 4784/Mum/2014**, wherein identical issue was decided in favour of the assessee.

23. We have heard the rival submissions and perused the material available on record. We find that the identical issue has been

considered by the co-ordinate Bench in the assessee's own case. The Tribunal, after examining the nature of payment and the provisions of section 35DDA, held that the payment made by the assessee to AAI towards retirement / retrenchment compensation of employees was made pursuant to contractual obligations under the OMDA agreement and was not a payment made under any voluntary retirement scheme framed by the assessee for its own employees. Therefore, the provisions of section 35DDA were held to be not applicable.

24. The relevant findings of the co-ordinate Bench are reproduced below:

33. We have heard the rival submissions and have carefully considered the same along with the orders of the authorities below. We noted from the facts on record for A Y 2010-11 that the assessee, under an agreement of OMDA with Airports Authority of India, is developing and maintaining Chhatrapati Shivaji International Airport. The assessee has to carry out operations, maintenance and development of the airport with certain terms and conditions. As per clause 6.14 in Chapter 6 of the OMDA, the assessee is obliged to make an offer of employment to a minimum of 60% General Employees at any time during the Operation support period but not later than three months prior to the expiry of the operation support period, that it wants to employ, an option to accept or reject the offer by employees. This clause further provides that if less than 60% of the general employees accept the offer of employment made by the assessee, then assessee shall pay to the Airports Authority of India retrenchment compensation for such number of general employees as represented by the difference between 60% of the general employees accepting the offer of employment made by the assessee. Thus, this clause specifically deals with the treatment of the retrenchment compensation to be paid to the Airports Authority of India at the occurrence of the events maintained in the said clause. The operational support period of three years has expired during the impugned assessment years

under consideration and, accordingly, Airports Authority of India issued invoice dated 08.03.2010 for its claim towards retrenchment compensation amounting to Rs. 260,86,03,400/- The assessee has accordingly capitalized an amount of Rs. 260,86,03,400/- under the head intangible assets in its books of account but for the purpose of income tax he has claim said expenditure in the computation of income but disallowed itself a sum of Rs. 106,62,84,312/- as no tax has been deducted at source during the impugned assessment year but claimed remaining sum of Rs. 154,23,19,088/- as revenue expenditure. The Assessing Officer was of the view that the assessee is eligible only for one fifth of Rs. 154,23,19,088/- as per the provisions of section 35DDA amounting to Rs. 30,84,63,818/- in the year under consideration and the remaining amount is to be allowed in equal installments over the period of our immediately succeeding assessment years.

34. We have gone through the provisions of section 35DDA. We noted that the said provision is applicable only if the assessee has incurred any expenditure in any previous year by way of payment of any sum to an employee in connection with voluntary retirement. In this case, we noted that the assessee has not incurred any expenditure by way of payment made to employees but the payment has been made by the assessee to Airports Authority of India in accordance with clause 6.14 of the OMDA on account of retrenchment compensation to be paid by Airports Authority of India to its employees. It is not an amount which the assessee is paying to its employees on their retrenchment. Therefore, the provisions of section 35DDA will not apply. It is not denied that the expenditure incurred by the assessee is revenue expenditure. We noted that the CIT(A) while dealing with the issue deleted the said disallowance by observing as under:

8.8 In the backdrop of the above facts, the moot question for decision is whether the expenditure of Rs. 154,23,19,088/- which has been paid by the appellant in terms of 6.1.4 of the OMDA to AAI is a revenue expenditure and requires to be allowed in one go instead of allowing the same in five equal instalments u/s. 35DDA of the Act.

8.9 It is noticed that an obligation to pay retrenchment compensation was fastened on appellant in terms of clause 6.1.4 of OMDA as soon as the period mentioned therein is expired and the year happened to be the previous year relevant to AY 2010-11. I further find that the obligation to pay the sum of money to AAI on account of retrenchment compensation in terms of OMDA is a definite obligation and the appellant is bound by the terms of OMDA and has thus to discharge the said obligation within the time stipulated in the OMDA. Further, I find that the retrenchment compensation paid by the appellant is definitely a contractual obligation with the AAI and has been incurred solely and exclusively for the purpose of the business. The appellant has placed reliance on the decision in the case of *CIT v Sinnar Bidi Udyog Ltd.* [118Taxman 106], wherein it has been held that deduction claimed towards Retrenchment Compensation would be in the nature of revenue expenditure incurred wholly and exclusively for the purpose of business. The decision further states that where the Appellant-company took over another company along with its employees, and later paid Retrenchment Compensation to those employees by taking into account the services rendered by the munder the former company such Retrenchment Compensation is allowable as revenue expenditure.

8.10 The appellant has further placed a reliance on the decision of Karnataka High court in the case of *CIT v. Margarine & Refined Oils Co. Ltd* [154 Taxman 95] wherein the expenditure incurred by the management in paying retrenchment compensation for termination of service was held to be expenditure expended wholly and exclusively for the purpose of business and the said expenditure was allowed to be deducted in computing the business income chargeable under the head 'Profits and gains of business or profession' under section 37(1).

8.11 I also find force in the argument of the appellant that retrenchment compensation is nothing but lump sum amount paid to get rid of recurring payment. A retrenchment payment made to get rid of recurring

revenue expenditure in itself is revenue in nature. The payment made under clause 6.1.4 of the OMDA and the invoice raised "by AAI in this regard, is nothing but a lump sum payment to get rid of recurring payment which appellant would have been obligated to make to 60% of the General Employees of AAI for a period up to the effective date of their retirement. In case these employees would have joined the company all recurring payments which would otherwise undoubtedly be allowable as revenue expenditure were got rid of by making the lump sum payment under clause 6.1.4 of the OMDA. The said lump sum payment was therefore clearly a substitute for annual revenues payments.

8.12 The appellant has also relied on the decision in the case of CITvs. Madras Auto Service Pvt. Lid (1998) 233 1TR 468 – The Supreme Court has held that to decide whether expenditure is revenue or capital one has to look at the expenditure from a commercial point of view. The court has observed "Whatever substitutes for revenue expenditure should normally be considered as revenue expenditure." Had the Appellant chosen to pay rent annually for each and every year of lease such expenditure certainly would have to be regarded as revenue expenditure. The fact that the payment was made in lump sum for the entire duration of the lease does not alter the character of it being revenue expenditure.

8.13 The appellant has also brought to my notice the decision in the case of CIT vs. Gemini Arts Private Ltd (2002) 254 ITR 201. The Madras High Court relying on the above judgment of the Supreme Court has allowed the claim of a lump sum payment of lease as revenue expenditure. I find from these two decisions that the principle which emerges is that "whatever substitutes for revenue expenditure should normally be considered as revenue expenditure".

8.14 Looking to these facts as well as various court decisions relied upon by the appellant, I find that that the payment of retrenchment compensation is an obligation fastened upon the appellant under OMDA and the liability is a contractual obligation with AAI. The appellant has

made the payment in lump sum of Rs.260,86,03,400 as retirement compensation to AAI. The appellant has not made this payment directly to its own employees as retrenchment compensation, but has made this payment to AAI for paying those employees of AAI who have sought voluntary retrenchment and this payment is part of the OMDA. Had this lump sum payment not been made then the appellant would have made the payment on account of salary as well as other benefits to the employees on annual basis which would have been claimed by the appellant as revenue expenditure. The appellant instead of retaining the number of general employees represented by the difference between 60% of general employees and the number of general employees accepting the offer of employment, is required to pay retirement compensation in respect of those general employees who have not accepted the offer of employment with the appellant. Thus, the expenditure incurred by the appellant on account of retrenchment compensation paid to AAI is in lieu of salary and other benefits which the employees not accepting the employment are eligible under OMDA. The nature of this expenditure is revenue expenditure as it represents salary and wages etc. The principle which had emerged from the said two decisions cited supra, that whatever substitutes for revenue expenditure should normally be considered as revenue expenditure is applicable to the facts of the said expenditure. Accordingly, I find that the lump sum payment of Rs.260,86,03,400/-- is nothing, but a lump sum payment on account of salary and wages of certain employees who have not accepted the employment with the appellant as enumerated in clause 6.1.4 of OMDA. The expenditure certainly is therefore revenue expenditure.

8.15 With regard to the applicability of provisions of section 35DDA of the Act, I find that the said provisions are not applicable to the facts of the appellant's case as the payment has been made by the appellant to AAI and not to its own employees. The payment has been made out of commercial expediency and under contractual obligation. The appellant has not floated any voluntary retirement scheme of its own, but the payment has been

made under an agreement to AAI. Thus, the provisions of section 35DDA of the Act are not applicable. It is not a voluntary retirement scheme, but the payment is contractual and cannot be amortized. The AO is accepting the contents of the Agreement and no fault has been found in the same. The AO has also not doubted the genuineness of the agreement and the payment made on this issue.

8.16 Considering the facts in its entirety and the various court decisions cited and relied upon by the appellant, I find that the expenditure of Rs.260,86,03,400/- is an allowable expenditure as revenue. Accordingly, the disallowance of Rs.123,38,55,270/- is deleted and the ground of appeal of the appellant is allowed.

35. The learned DR even though vehemently relied on the order of the Assessing Officer, could not bring to our knowledge any decision which has taken a contrary view as has been taken by the learned CIT(A). We, do not find any infirmity in the order of the CIT(A) deleting the disallowance. It is accordingly upheld. Ground nos. 6 to 9 in A.Y. 2010-11 and ground no.4 in A.Y. 2011-12 stands dismissed.

25. Since the Ld. CIT(A) in the year under consideration has merely followed the decision of the Co-ordinate Bench in the assessee's own case on identical facts, and the Revenue has not brought any distinguishing feature on record, we see no reason to interfere with the order of the Ld. CIT(A). Accordingly, **Ground No. 2 raised by the Revenue is dismissed.**

Ground No. 3 – Treatment of Development Fee Collected from Passengers

26. During the course of assessment proceedings, the Assessing Officer observed that the assessee had collected Development Fee (DF) from passengers amounting to Rs. 348,95,74,100/-. According to the Assessing Officer, the assessee had treated the said amount as capital receipt not liable to tax, on the ground that the same was

collected for the purpose of funding capital expenditure for modernization and development of airport infrastructure.

27. The Assessing Officer, however, held that the development fee collected from passengers constituted revenue receipt in the hands of the assessee, since the same was collected during the course of business operations. The Assessing Officer further observed that the assessee had control over the collection and utilisation of such fee and therefore the amount represented income chargeable to tax. Accordingly, the Assessing Officer treated the development fee as taxable revenue receipt.

28. Aggrieved by the said action, the assessee carried the matter in appeal before the Ld. CIT(A). The Ld. CIT(A), after considering the submissions of the assessee, observed that the issue had already been examined by the Co-ordinate Bench in the assessee's own case for earlier assessment years. Following the decisions of the Co-ordinate Bench for A.Ys. 2010-11 and 2011-12 in ITA Nos. 4911/Mum/2013 and 4784/Mum/2014, the Ld. CIT(A) held that the development fee collected from passengers was in the nature of capital receipt meant for funding capital expenditure for airport development, and therefore the same was not taxable as revenue income. Accordingly, the Ld. CIT(A) deleted the addition made by the Assessing Officer.

29. Before us, the Ld. DR relied upon the order of the Assessing Officer, whereas the Ld. AR submitted that the issue is squarely covered by the decision of the Co-ordinate Bench in the assessee's own case for A.Y. 2010-11 and 2011-12.

30. We have heard the rival submissions and perused the material available on record. We find that the identical issue has been considered by the Co-ordinate Bench in the assessee's own case. The Co-ordinate Bench, after examining the statutory framework governing levy and utilisation of development fee and the purpose for which the fee was collected, held that the amount collected from passengers was earmarked for capital expenditure towards modernisation and development of airport infrastructure and therefore the same could not be treated as revenue income of the assessee.

31. The relevant findings of the co-ordinate Bench are reproduced below:

38. We find that the CIT(A) has elaborately discussed the provisions of section 22A of Airports Authority of India Act 1994, under which the assessee has collected the development fees and also the terms and conditions attached to the said collection as well as its utilization. Not only this, the CIT(A) has also referred to the decision of Hon'ble Supreme Court in the case of Consumer Online Foundation vs. Union of India & Others [2011] 5 SCC350 (SC), where the apex court has categorically made the distinction between section 22 and section 22A of Airports Authority of India Act. In the said judgment, the Hon'ble Supreme Court has also held that development fees is in the nature of cess or tax for generating revenue for specific purposes as mentioned in section 22A(a) to section 22A(c) of the Airports Authority of India Act. In the said judgment it was held that the nature of levy u/s. 22A of 2004 Act is not charges or any other consideration for services for the facilities provided by the Airports Authority. The learned DR, even though relied on the order of the Assessing Officer, he did not deny the interpretation given by the Hon'ble Supreme Court in respect of section 22A of the Airports Authority of India Act. It is not denied that the development fees so collected are utilized only for the purpose of aeronautical assets as per the provisions of section 22A of the Airports Authority of India Act.

In view of this fact, we do not find any illegality or infirmity in the order of the CIT(A), which warrant our interference, while holding that the development fees so received by the assessee is a capital receipt. We accordingly, confirm the order of the CIT(A) and dismiss ground nos.10 & 11 in A.Y. 2010-11 and ground no.5 in A.Y. 2011-12. This disposes of all the grounds in the revenue's appeal for A.Y. 2010-11.

32. In the year under consideration also, the Ld. CIT(A) has merely followed the binding decision of the Co-ordinate Bench in the assessee's own case, and the Revenue has not brought on record any change in facts or law warranting a different view.

33. Accordingly, respectfully following the decision of the Co-ordinate Bench in the assessee's own case, we uphold the order of the Ld. CIT(A) on this issue. **Ground No. 3 raised by the Revenue is therefore dismissed.**

Ground No. 4 – Disallowance under Section 14A read with Rule 8D

34. The Assessing Officer, during the course of assessment proceedings, noticed from the Profit and Loss Account and the Balance Sheet that the assessee had made investments in instruments capable of yielding exempt income. It was observed that as per the Balance Sheet, the assessee had investments of Rs. 0.13 crore as on 31.03.2013 and Rs. 0.11 crore as on 31.03.2015, and further an amount of Rs. 165.82 crores was reflected as current investments as on 31.03.2014. Accordingly, the total investment as on 31.03.2014 stood at Rs. 165.93 crores as against Rs. 0.13 crore as on 31.03.2013. The Assessing Officer observed that although the assessee had undertaken substantial investment activity, no expenditure had been attributed towards such activity. The

assessee was therefore called upon to furnish details of expenditure incurred for making investments which could result in exempt income and was show caused as to why the expenditure attributable to investments yielding exempt income should not be disallowed under section 14A read with Rule 8D.

35. In response, the assessee submitted that section 14A was not applicable to its case since no expenditure had been incurred in relation to income which does not form part of the total income. It was further submitted that during the relevant year the assessee had earned short-term capital gains of Rs. 19,63,13,871/- on sale of investments in debt mutual funds, out of which Rs. 8,75,88,808/- had been reduced from project cost and the balance Rs. 10,87,25,062/- had been offered to tax under the head "Capital Gains". The assessee thus contended that no tax-free income had been earned during the year and therefore the provisions of section 14A were not attracted. The assessee also submitted that investments in shares of wholly owned subsidiaries were made as part of business strategy and therefore no disallowance was warranted.

36. The Assessing Officer, however, did not accept the explanation of the assessee. Placing reliance on **CBDT Circular No. 5/2014 dated 11.02.2014** and the decision of the Special Bench of the Tribunal in the case of **Cheminvest Ltd. (121 ITD 318)**, the Assessing Officer invoked the provisions of section 14A read with Rule 8D and computed disallowance under Rule 8D(2)(iii) at 0.5% of the average value of investments, resulting in disallowance of Rs. 41,51,500/-.

37. Aggrieved by the said action, the assessee carried the matter in appeal before the Ld. CIT(A). The assessee reiterated that no exempt income had been earned during the year and therefore no disallowance could be made under section 14A. In support of this contention, reliance was placed on the judgment of the Hon'ble Supreme Court affirming the decision of the Hon'ble Madras High Court in the case of **CIT vs. Chettinad Logistics (P) Ltd. [2017] 80 taxmann.com 221**, as well as the decision of the Hon'ble Delhi High Court in **Cheminvest Ltd. vs. CIT (2015) 378 ITR 33**, wherein it has been held that where no exempt income is earned during the relevant previous year, no disallowance under section 14A can be made. The assessee further submitted that the identical issue had already been decided in its favour by the co-ordinate Bench of the Tribunal in the assessee's own case for Assessment Years 2009-10 to 2011-12.

38. After considering the submissions of the assessee and the judicial precedents relied upon, the Ld. CIT(A) held that in the absence of any exempt income during the year, the provisions of section 14A were not attracted and accordingly deleted the disallowance of Rs. 41,51,500/- made by the Assessing Officer.

39. Before us, the Ld. DR relied upon the order of the Assessing Officer, whereas the Ld. AR reiterated that the assessee had not earned any exempt income during the year and therefore the issue was squarely covered by the decisions of the Tribunal in the assessee's own case.

40. We have heard the rival submissions and perused the material available on record including the orders of the authorities below and the judicial precedents placed before us.

41. It is an undisputed position emerging from the record that no exempt income was earned by the assessee during the year under consideration. The short-term capital gains earned by the assessee from investments in debt mutual funds have been duly offered to tax and therefore do not constitute exempt income. In such circumstances, the very foundation for invoking the provisions of section 14A fails.

42. We further note that the co-ordinate Bench in the assessee's own case for Assessment Years 2009-10 to 2011-12 has already considered an identical issue and has held that in absence of exempt income, no disallowance under section 14A can be made. The Co-ordinate Bench while deciding the issue, in ITA No. 4911/Mum/2013, has categorically observed as under:

39. So far as ground no.6 in A.Y. 2011-12 is concerned, it is similar to ground no.1 in the assessee's appeal for A.Y. 2009-10 and 2010-11, which relates to disallowance made u/s. 14A. After hearing the rival submissions we noted that the assessee has not earned any exempt income during the impugned assessment year and therefore, the CIT(A) has rightly deleted the disallowance made by the Assessing Officer u/s.14A. Our view is duly supported by the decision of the Hon'ble Delhi High Court in the case of Cheminvest Ltd. 378 ITR 33 (Del) and that of Hon'ble Bombay High Court (Nagpur Bench) in the case of Principal CIT vs. Ballarpur Industries Ltd. in ITA No. 51/2016 dated 13.10.2016. Respectfully following these decisions, we dismiss ground no.6 taken by the revenue for A.Y. 2011-12

43. The facts in the present year being identical, and in absence of any material brought on record by the Revenue to demonstrate any distinguishing feature, judicial discipline requires that the view taken in the assessee's own case in earlier years be followed.

Accordingly, respectfully following the decision of the co-ordinate Bench in the assessee's own case, we find no infirmity in the order of the Ld. CIT(A) deleting the disallowance made under section 14A read with Rule 8D. **Ground No. 4 raised by the Revenue is therefore dismissed.**

Ground No. 5 – Treatment of temporary investment of surplus funds during construction period

44. During the course of assessment proceedings, the Assessing Officer observed from the notes to the computation of total income that the assessee had earned Short Term Capital Gain of Rs. 8,75,88,808/-, which was reduced from the Capital Work-in-Progress (CWIP) and credited to the project cost. The assessee explained that the said gain arose from temporary investment of surplus funds which were borrowed for the purpose of the airport development project and remained unutilized for a short period.

45. The assessee submitted that it had entered into an Operation, Management and Development Agreement (OMDA) with the Airports Authority of India for operating and developing the Chhatrapati Shivaji International Airport, Mumbai. For the purpose of development of the infrastructure, the assessee had raised substantial borrowings from banks led by an IDBI consortium. Since payments to contractors and vendors engaged in development activities were to be released based on the progress of work, a portion of the borrowed funds remained temporarily idle pending utilization. Such funds were invested in short term growth mutual funds, resulting in Short Term Capital Gain of Rs. 8,75,88,808/-, which the assessee treated as income inextricably linked with the project funds and accordingly adjusted against the project cost.

46. The assessee further relied upon various judicial precedents including ***CIT vs. Bokaro Steel Ltd. (236 ITR 315)***, ***CIT vs. Karnal Co-operative Sugar Mills Ltd. (243 ITR 2)***, ***CIT vs. Karnataka Power Corporation (247 ITR 268)*** and ***Bongaigaon Refinery & Petrochemicals Ltd. vs. CIT (251 ITR 329)*** to contend that income earned during the construction stage having direct nexus with the project should go to reduce the project cost.

47. The Assessing Officer, however, did not accept the explanation furnished by the assessee. According to the Assessing Officer, the gain arising on redemption of mutual fund units represented an independent income taxable under the head "Capital Gains" and could not be reduced from CWIP. The Assessing Officer also held that the judicial precedents relied upon by the assessee mainly dealt with interest income earned on surplus funds and not with gains arising from investments in mutual funds. The Assessing Officer therefore concluded that the said income had separate taxability irrespective of its connection with the project funds and accordingly brought the Short Term Capital Gain of Rs. 8,75,88,808/- to tax.

48. During the appellate proceedings, the assessee contended that the said gain was earned during the construction phase of the airport project and arose from temporary investment of surplus project funds. The assessee submitted that such funds were part of the borrowed funds raised specifically for the development of the airport infrastructure and, pending utilization for the project, were invested for short durations in growth mutual funds. According to the assessee, the income so earned was inextricably linked with the project funds and therefore was rightly adjusted against the project

cost by reducing the same from the Capital Work-in-Progress. The assessee further submitted that an identical issue had arisen in its own case for Assessment Year 2013-14, wherein the Co-ordinate Bench in ITA Nos. 2018 & 2385/Mum/2018, had decided the issue in favour of the assessee. The assessee pointed out that in the earlier year the Tribunal had examined the nature of temporary investment of idle project funds in mutual funds and fixed deposits and had held that the income earned there from had direct nexus with the project funds and therefore was required to be adjusted against the capital work-in-progress.

49. The Ld. CIT(A), after considering the submissions of the assessee and examining the order of the Tribunal for the earlier year, observed that the Tribunal had taken note of the fact that the funds were borrowed specifically for the airport development project under the terms of the financing arrangement with the lenders and the assessee had no liberty to deploy such funds except in accordance with the project agreements. The Tribunal had also considered various judicial precedents on the issue and had concluded that income arising from temporary investment of idle project funds during the implementation period had a direct nexus with the project and therefore was required to be credited to the capital work-in-progress. Following the aforesaid decision of the Tribunal in the assessee's own case for the earlier assessment year and applying the same reasoning to the facts of the present year, the Ld. CIT(A) held that the Short Term Capital Gain earned from temporary investment of project funds was inextricably linked with the project and therefore was liable to be reduced from the project cost. Accordingly, the Ld. CIT(A) deleted the addition made by the Assessing Officer and allowed the grounds raised by the assessee on this issue.

50. Before us, the Ld. DR relied upon the order of the Assessing Officer, whereas the Ld. AR reiterated that the assessee had not earned any exempt income during the year and therefore the issue was squarely covered by the decisions of the Tribunal in the assessee's own case for A.Y. 2013-14 in **ITA No. 2018 and 2385/Mum/2018.**

51. We have carefully considered the rival submissions and perused the material placed on record including the orders of the authorities below and the judicial precedents relied upon by the parties. We find that the Co-ordinate Bench of the Tribunal in the assessee's own case for A.Y. 2013-14, while dealing with an identical issue relating to income earned from temporary deployment of project funds, had examined the financing arrangement and the nature of the funds and held as under:

28. From the above, it is amply clear that in order to consider whether the income earned is of revenue or capital in nature, it is important to take into account whether the funds were inextricably linked to setting up of the project. If the assessee is under obligation to use interest income in prescribed manner, then such income should be reduced from the cost of the project. If the income earned from the investment can be utilized for any purpose as per the total discretion of the assessee, as it was in the case of Tuticorin Alkali Chemicals and Fertilizers Ltd. (supra), then such income would be considered as revenue in nature liable to be taxed u/s. 56 of the Act. As pointed out hereinabove, funds of the assessee were inextricably connected with the project and the assessee had to credit any investment income to the TRA main income. Therefore, any income arising from investment made from borrowed funds should be reduced from work-in-progress as has-been held in the various judicial pronouncements referred above. We further submitted that the decisions relied upon by the CIT(A), such as Tuticorin Alkali

(supra), have been duly considered and covered by the aforesaid various judgments relied upon by the assessee. Therefore, the income earned by the assessee from investments made out of funds that are inextricably connected with the project should be reduced from work-in-progress.

52. After considering the entire factual matrix and the judicial precedents, the Co-ordinate Bench finally concluded as under:

33. In this view of the matter and considering the ratio of case laws discussed hereinabove, we are of the considered view that short term capital gain derived from sale of units of mutual funds and interest earned from fixed deposits kept in banks out of idle funds of project is rightly credited to capital work-in-progress account during the implementation period of the project. Hence, we direct the Ld. Ld.AO to delete additions made towards short term capital gain derived from sale of units of mutual funds. We further direct the Ld. Ld.AO to delete enhancement made by the Ld. CIT(A) towards interest income earned from fixed deposits with banks invested out of idle funds of project.

53. Thus, the Co-ordinate Bench had categorically held that income arising from temporary deployment of idle project funds during the implementation stage of the project is inextricably linked with the project and is therefore required to be adjusted against the capital work-in-progress.

54. Since the facts of the present year are identical and the Revenue has not brought any distinguishing feature on record, we respectfully follow the decision of the Co-ordinate Bench in the assessee's own case for the earlier year. Accordingly, we find no infirmity in the order of the Ld. CIT(A) in holding that the Short Term Capital Gain of Rs. 8,75,88,808/- earned from temporary investment of project funds is required to be reduced from the project cost and cannot be brought to tax separately. In view of the above, the **Ground No. 5 raised by the Revenue is dismissed.**

Ground No. 6 – Taxability of Passenger Service Fee (Security Component) [PSF-SC]

55. During the course of the assessment proceedings, the Assessing Officer examined the revised computation of income furnished by the assessee vide letter dated 15.09.2017 and observed that the assessee had debited an amount of Rs. 12,13,24,531/- in the computation of income on account of negative surplus from the Passenger Service Fee (Security Component) [PSF-SC] fund offered under the head “Income from Business”. On examination of the working of PSF-SC furnished by the assessee, the Assessing Officer noted that while computing the surplus available under the PSF-SC fund, the assessee had reduced an amount of Rs. 24,25,65,152/- representing amounts included in Capital Work-in-Progress (CWIP) and had claimed the same as revenue expenditure under the provisions of the Act. Accordingly, the assessee was called upon to justify the claim of loss from the PSF-SC fund. In response, the assessee submitted that PSF-SC was collected from passengers embarking at the airport and that the funds so collected were utilised for payment to the Central Industrial Security Force (CISF) towards airport security services. The assessee further explained that the surplus funds were required to be maintained in an escrow account and could be utilised only for security-related purposes. The Assessing Officer, however, observed that the PSF-SC amount collected from passengers was meant exclusively for payment of security charges to the CISF and that the assessee was not entitled to utilise such funds for any other expenditure. The Assessing Officer further noted that the assessee had reduced Rs. 24,25,65,152/- on account of expenditure included in CWIP and claimed the same as revenue expenditure while computing the surplus under PSF-SC. According to the

Assessing Officer, such capital expenditure could not be claimed as allowable deduction from the PSF-SC fund, particularly when the said fund was earmarked only for meeting CISF security expenses in terms of the Operation, Management and Development Agreement (OMDA). The Assessing Officer therefore held that the claim of the assessee for deduction of Rs. 24,25,65,152/- from the PSF-SC fund was not permissible and accordingly disallowed the same and added it back to the total income of the assessee.

56. During the appellate proceedings, the assessee contended that Passenger Service Fee collected from passengers comprises two components namely **PSF-FC (Facilitation Component)** and **PSF-SC (Security Component)**. It was submitted that while the facilitation component forms part of the regular income of the airport operator, the security component is collected in a fiduciary capacity on behalf of the Government of India in terms of Rule 88 of the Aircraft Rules, 1937 and the directions issued by the Ministry of Civil Aviation (MoCA). The assessee submitted that the PSF-SC collected from passengers is deposited in a designated escrow account and can be utilised strictly in accordance with the directions issued by MoCA for payment of security expenses. The assessee further submitted that it has no beneficial ownership over the said amount and acts merely as a collecting agency for the Government. The assessee further submitted that identical issue had arisen in its own case in earlier assessment years, wherein the Hon'ble ITAT, Mumbai had held that PSF-SC collected by the assessee is not taxable in its hands as the amount is collected in a fiduciary capacity and is diverted at source by an overriding title in favour of the Government of India. Reliance was placed on the decision of the Co-ordinate Bench in the assessee's own case for **A.Y. 2008-09 in ITA No. 3232/Mum/2012** and subsequent decision for **A.Y. 2013-14 in ITA**

Nos. 2018 & 2385/Mum/2018, wherein the Tribunal had examined the nature of PSF-SC and held that the said collection does not constitute income of the assessee.

57. The Ld. CIT(A), after considering the submissions of the assessee and examining the judicial precedents relied upon, observed that the Co-ordinate Bench in the assessee's own case had already analysed the nature and mechanism of PSF-SC collection and utilisation. The Co-ordinate Bench had noted that the PSF-SC amount collected by the assessee is deposited in an escrow account maintained under the directions of MoCA and the funds are earmarked exclusively for meeting security expenses at the airport. It was further observed that the assessee does not have any discretion in utilisation of these funds and any surplus remaining unspent is required to be transferred to the account of the Airports Authority of India, while any deficit is to be funded by the Government. The Ld. CIT(A) also noted that the Co-ordinate Bench, after examining the factual position and the applicable legal principles including the doctrine of diversion of income by overriding title, had held that the PSF-SC collected by the assessee cannot be characterised as income within the meaning of section 2(24) read with section 5 of the Act. Following the decision of the Co-ordinate Bench in the assessee's own case for earlier assessment years, the Ld. CIT(A) held that the PSF-SC component collected by the assessee is not taxable in its hands and accordingly deleted the addition made by the Assessing Officer.

58. Before us, the Ld. DR relied upon the order of the Assessing Officer, whereas the Ld. AR reiterated that the assessee had not earned any exempt income during the year and therefore the issue was squarely covered by the decisions of the Tribunal in the

assessee's own case for A.Y. 2008-09 in ITA No. 3232 and 2760/Mum/2012 and for A.Y. 2013-14 in ITA No. 2018/Mum/2018. We note that an identical issue had arisen in the assessee's own case for earlier assessment years. The Co-ordinate Bench in the assessee's own case for **A.Y. 2008-09 in ITA No. 3232/Mum/2012** as well as for **A.Y. 2013-14 in ITA Nos. 2018 & 2385/Mum/2018** has examined the entire mechanism governing the collection and utilisation of PSF-SC and has held that the said amount is collected by the assessee in a fiduciary capacity on behalf of the Government and does not constitute income in its hands. The Co-ordinate Bench, after considering the terms of the regulatory framework and the escrow mechanism, held that the funds are earmarked exclusively for meeting security expenses and the assessee has no beneficial ownership or control over the same.

59. The Co-ordinate Bench has categorically observed that the escrow account maintained for PSF-SC is merely a pool created through the assessee for meeting security expenses and the entire amount collected is deposited in the said account which is earmarked wholly and exclusively for such purpose. Under these circumstances, there is no possibility of any real income arising to the assessee from such collections. The Co-ordinate Bench accordingly held that PSF-SC collected by the assessee cannot be characterised as income within the meaning of section 2(24) read with section 5 of the Act.

60. Since the facts of the present year are identical and the Revenue has not brought any distinguishing feature on record, we respectfully follow the decisions of the Co-ordinate Bench in the assessee's own case for the earlier years. Accordingly, we find no infirmity in the order of the Ld. CIT(A) in holding that the Passenger

Service Fee (Security Component) collected by the assessee is not taxable in its hands. Therefore, the **Ground No. 6 raised by the Revenue stands dismissed.**

Ground No. 7 – Depreciation on Runway, Taxiway, Apron and Allied Structures

61. During the appellate proceedings, the assessee submitted before the Ld. CIT(A) that the claim of enhanced depreciation had in fact been raised before the Assessing Officer during the assessment proceedings vide letters dated 13.10.2017 and 28.12.2017, though the same was not adjudicated in the assessment order. The assessee explained that the runway, taxiway and apron, though initially grouped under the “building” block and depreciation at 10% was claimed, are in fact integral operational infrastructure of the airport and function as essential tools for aircraft landing, movement and parking. Accordingly, the assessee contended that these assets satisfy the functional test and ought to be classified under the “plant and machinery” block, thereby eligible for depreciation at 15%. The additional depreciation claimed represented only the differential 5%, arising due to reclassification of the assets from building to plant and machinery.

62. The assessee further explained that the terminal building is specially designed infrastructure catering to passengers, airlines, regulatory agencies and air traffic control and is constructed with specifications significantly different from ordinary commercial buildings, including higher load-bearing capacity, large column-free spans and structural design capable of withstanding vibration and operational conditions arising from aircraft movement. Similarly, the sewage treatment plant (STP) installed within the terminal

complex is an operational equipment facilitating smooth functioning of the airport. It was therefore submitted that these assets also constitute part of the operational apparatus of the airport and are eligible to be treated as plant and machinery. The assessee also relied upon several judicial precedents including **IRC v. Barclay, Curle & Co. Ltd. (76 ITR 62, HL)**, **CIT v. Mazagaon Dock Ltd. (191 ITR 460, Bom)**, **CIT v. Dr. B. Venkata Rao (243 ITR 81, SC)** and **CIT v. Karnataka Power Corporation (247 ITR 268, SC)** to contend that structures which perform an operational function in the business activity and satisfy the functional test can be regarded as plant. The assessee further pointed out that the issue was also covered by the decision of the Co-ordinate Bench in its own case for earlier assessment years.

63. After considering the submissions of the assessee, the Ld. CIT(A) observed that the assets in question are specially designed infrastructure forming an integral part of airport operations and cannot be equated with ordinary civil structures. Taking note of the nature and functionality of the assets and also following the decisions relied upon by the assessee including earlier orders of the Co-ordinate Bench in the assessee's own case, the Ld. CIT(A) accepted the contention of the assessee that the said assets are eligible to be treated as plant and machinery and therefore depreciation at the rate of 15% is allowable.

64. Before us, the Ld. AR submitted that the issue stands covered in favour of the assessee by the decisions of the Co-ordinate Bench in the assessee's own case for earlier assessment years wherein, under identical facts, depreciation on taxiways, aprons, bridges and parking bays was directed to be allowed at the rate applicable to plant and machinery. The Ld. DR fairly accepted.

65. We find that an identical issue had come up for consideration before the co-ordinate Bench of the Co-ordinate Bench in the assessee's own case. The Co-ordinate Bench, after examining the nature of the assets and the functional role performed by such infrastructure in the operation of the airport, held that taxiways, aprons, parking bays and similar airport structures cannot be regarded as mere civil constructions forming part of a building but constitute essential operational tools of the airport business. In this regard, the Co-ordinate Bench in **ITA No. 7507 & 7111/Mum/2011** observed as under:

35. We have carefully considered the orders of authorities below and submissions of ld. Representatives of the parties. There is no dispute to the facts that runway, taxiway are necessary part of Airport operation and are specific part of infrastructure for use of aircrafts. These are not merely concrete structures. The Hon'ble Bombay High Court in the case of CIT v. Mazagaon Dock Ltd. (1991) 191 ITR 460 (Bom) has held that dry dock and wet dock created for ships are to be treated as plant and not building. The Hon'ble Apex Court has held in the case of Karnataka Power Corpn. (2000) 247 ITR 268 that power generating station building is not a simply concrete structure but a specially designed building and is to be treated as part of plant. Similarly, the Hon'ble Apex Court has held in the case of Dr. B. Venkata Rao (2000) 243 ITR 81 that the operation theatre in an hospital building is not simply a concrete structure but necessarily a part for running of the hospital and the assessee is entitled to claim depreciation as applicable to plant and machinery. If we apply the above decisions to the facts of the case before us, we are of the considered view that taxiways and aprons, parking bays cannot be said to be merely concrete structures but are necessary tools for operating/using the Airport. Hence, the same are to be considered as part of plant and machinery. Therefore, we hold that assessee is entitled for depreciation at the rate as applicable on plant and machinery in respect of taxiways, aprons, parking bays etc.

66. The Co-ordinate Bench thus concluded that such airport infrastructure forms an integral and functional component of the assessee's business of operating and managing the airport and therefore qualifies as "plant and machinery" for the purpose of depreciation under section 32.

67. Since the issue involved in the present appeal is identical and the Revenue has not brought any distinguishing facts on record, respectfully following the decision of the co-ordinate Bench in the assessee's own case, we uphold the action of the Ld. CIT(A) in allowing depreciation treating taxiways, aprons, parking bays and allied airport infrastructure as plant and machinery. Accordingly, the ground raised by the Revenue on this issue is **dismissed**.

68. In the combined result, the **appeal of the assessee is allowed for statistical purposes**, whereas the **appeal of the Revenue is dismissed**.

Order pronounced in the open court on 09.03.2026

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Sd/-
(MAKARAND V MAHADEOKAR)
ACCOUNTANT MEMBER

Mumbai, Dated 09/03/2026

KRK, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई/ DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई/ ITAT, Mumbai