

IN THE INCOME TAX APPELLATE TRIBUNAL

"E" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 6715/MUM/2025
(Assessment Year: 2022-23)

ITA No. 7292/MUM/2025
(Assessment Year: 2021-22)

ITA No. 6721/MUM/2025
(Assessment Year: 2018-19)

ITA No. 7293/MUM/2025
(Assessment Year: 2023-24)

ITA No. 6723/MUM/2025
(Assessment Year: 2020-21)

**Assistant Commissioner of Income Tax -
15(3)(1),**

Room No.460, 4th Floor, Aaykar Bhavan,
M.K. Road,
Mumbai - 400020
PAN : AABCT2577P

..... Appellant

v/s

Thyrocare Technologies Limited,

D/37, 1 TTC Industrial Area, MIDC,
Turbhe, Navi Mumbai - 400703

..... Respondent

Assessee by : Shri M. Subramaniam

Revenue by : Shri Hemanshu Joshi, Sr.DR

Date of Hearing - 11/03/2026

Date of Order - 30/03/2026

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The Revenue has filed the present appeals against the separate impugned orders, passed under section 250 of the Income Tax Act, 1961 ("the Act") by the learned Commissioner of Income Tax (Appeals), National Faceless

Appeal Centre, Delhi [*“learned CIT(A)”*] for the assessment years 2018-19, 2020-21, 2021-22, 2022-23 and 2023-24.

2. Since all the appeals pertain to the same assessee and involve similar issues arising out of a similar factual matrix, these appeals were heard together as a matter of convenience and are being decided by way of this consolidated order. With the consent of the parties, the Revenue’s appeal for the assessment year 2020–21 is considered as the lead case, and the decision rendered therein shall apply *mutatis mutandis* to the Revenue’s appeals for the other years before us.

ITA No.6723/Mum/2025
Revenue’s Appeal – A.Y. 2020-21

3. In this appeal, the Revenue has raised the following grounds: -

“1. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in deleting the disallowance under section 14A read with Rule 8D of the Income-tax Rules, 1962, without appreciating that the assessee held investments capable of yielding exempt income and failed to discharge the onus that no expenditure was incurred, thereby disregarding the legislative intent and the prescribed statutory formula for computation?”

2. Whether, on the facts and in the circumstances of the case and in law, the Ld. C(A) erred in holding that no disallowance under section 14A is warranted solely on the ground that no exempt income was earned during the year, ignoring the judicial position supporting the applicability of section 14A even when no exempt income is reported, and that the disallowance was computed as per Rule 8D?”

3. Whether, on the facts and in the circumstances of the case and in law, the Id. CIT(A) was justified in deleting the disallowance of Employee Stock Option (ESOP) expenditure, ignoring that such expenditure is capital/notional in nature and does not constitute an allowable revenue expenditure under section 37(1) of the Act?”

4. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of sales incentive expenditure without appreciating that the said expenditure is inadmissible under Explanation 1 to section 37(1) as it constitutes payment for a purpose prohibited by law CBDT Circular No. 5/2012 and IMC Regulations, 2002), and ignoring the binding judgment of the Hon'ble Supreme Court in Apex Laboratories Put. Ltd. v. DCIT (2022)?”

5. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the additions made by the Assessing Officer without adequately examining the records and without providing specific findings to counter the satisfaction recorded by the Assessing Officer and the consistency of disallowance in earlier assessment years?"

4. Grounds No. 1 and 2, raised in Revenue's appeal, pertain to the deletion of the disallowance made under section 14A read with Rule 8D of the Income Tax Rules, 1962 ("the Rules").

5. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that the assessee is engaged in the business of providing diagnostic services. For the year under consideration, the assessee filed its return of income on 03.12.2020, declaring a total income of Rs. 165,37,56,420/-. The return filed by the assessee was selected for scrutiny, and statutory notices under section 143(2) and section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, upon perusal of the computation of income, it was observed that the assessee has shown an amount of Rs. 1,946.74 million as non-current investments, Rs. 200 million as equity accounted investments, and Rs. 69.03 crore as current investments as on 31.03.2020. It was further observed that the assessee has shown expenditure of Rs. 7,58,921/- incurred for earning the dividend income claimed as exempt. Accordingly, the assessee was asked to furnish the details of the same and to explain why the expenditure should not be attributed to earning exempt income in view of the provisions of section 14A read with Rule 8D of the Rules. In response, the assessee submitted that it has not incurred or paid any expenditure in relation to the investments made during the year. The assessee further submitted that

during the year, it had made investments in various mutual fund schemes out of surplus funds of the previous/current year, after payment of taxes. The assessee further submitted that investments in mutual funds were made under the dividend option, while some other investments were made under the growth option. In respect of investments made in mutual funds under the dividend option, the assessee submitted that it has earned a dividend of Rs. 33,73,984/- during the year. In relation to the mutual funds under the growth option, the assessee submitted that it is not entitled to dividends on such schemes, and that the income will be by way of appreciation in the value of units, resulting in capital gains. The assessee further submitted that it *suo motu* made a disallowance of Rs. 7,58,921/- under section 14A read with Rule 8D of the Rules after taking into consideration the annual average of the monthly averages of the value of investment in mutual funds.

6. The Assessing Officer ("AO"), vide order dated 27.09.2022 passed under section 143(3) read with section 144B of the Act, disagreed with the submissions of the assessee and held that making of investments, maintaining or continuing investments, and timing of exit from investments are well informed and coordinated management decisions involving inputs from various sources as well as the acumen of senior managerial functionaries. Thus, it was held that the cost is inbuilt into even so called "*passive*" investments. Accordingly, the AO computed the disallowance at Rs. 2,14,67,000/- as against the disallowance of Rs. 7,58,921/- made by the assessee under section 14A read with Rule 8D of the Rules. After taking into consideration the *suo motu* disallowance already made by the assessee, the

AO enhanced the income of the assessee by an amount of Rs. 2,07,08,079/- on account of disallowance under section 14A read with Rule 8D of the Rules.

7. The learned CIT(A), vide impugned order, allowed the ground raised by the assessee on this issue and deleted the addition made by the AO under section 14A read with Rule 8D of the Rules. The learned CIT(A) held that the provisions of section 14A can only be applied in cases where the assessee has earned any exempt income during the year. It was further held that since the assessee has not earned any exempt income from the investments, the provisions of section 14A will not be attracted. Being aggrieved, the Revenue is in appeal before us.

8. Having considered the submissions of both sides and perused the material available on record, we find that during the year under consideration, the assessee received a dividend of Rs. 33,73,984/- from investments made in mutual funds, which was claimed as exempt under section 10 of the Act. While computing the total income, the assessee made a disallowance of Rs. 7,58,921/- under section 14A in respect of expenditure incurred in relation to income which does not form part of the total income. In this regard, during the hearing, our attention was drawn to page no. 79 of the paper book, which comprises the computation of disallowance made by the assessee under section 14A after taking into consideration the monthly average of the investments. As per the assessee, only those investments which have yielded exempt income have been considered for computation of disallowance under section 14A read with Rule 8D of the Rules. In the present case, it is undisputed that no direct expenditure was incurred by the assessee in relation

to income which does not form part of the total income. However, the AO disagreed with the submissions of the assessee regarding the *suo motu* calculation of disallowance under section 14A read with Rule 8D of the Rules and proceeded to compute the disallowance at Rs. 2,14,67,000/-. During the hearing, the learned Authorised Representative ("*learned AR*") reiterated the submissions of the assessee made before the lower authorities that for the computation of disallowance under section 14A read with Rule 8D of the Rules, only those investments which have yielded exempt income should be considered.

9. We find that this claim of the assessee is supported by the decision of the Special Bench of the Tribunal in ACIT v. Vireet Investment Pvt. Ltd., reported in (2017) 165 ITD 27 (Delhi - Tribunal), wherein it was held that only those investments are to be considered for computing the average value of investments which yielded exempt income during the year. Respectfully following the aforesaid judicial precedent, we direct the AO to consider only those investments for the purpose of computation of disallowance under Rule 8D of the Rules which have yielded exempt income during the year. As a result, Grounds Nos. 1 and 2 raised in the Revenue's appeal are allowed for statistical purposes.

10. Ground No. 3, raised in the Revenue's appeal, pertains to the deletion of the disallowance made on account of Employee Stock Option Plan ("*ESOP*") expenses.

11. We have considered the submissions of both sides and perused the material available on record. During the assessment proceedings, upon perusal of the profit and loss account, it was observed that the assessee has claimed ESOP expenses of Rs. 2 crore. Accordingly, the assessee was asked to provide an explanation regarding the allowability of such expenses. In response, the assessee submitted that ESOP is granted for attracting, maintaining, retaining and rewarding employees within the company, and the same cannot be regarded as capital expenditure merely because shares have been allotted to employees. In support of its submission, the assessee placed reliance upon the decision of the Special Bench of the Tribunal in the case of Biocon Ltd. v. DCIT, reported in (2013) 144 ITD 21 (Bangalore - Tribunal) (SB).

12. The AO, vide order passed under section 143(3) read with section 144B of the Act, disagreed with the submissions of the assessee and held that ESOP expenses are incurred in relation to the grant or issue of shares to employees and are not relatable to profits and gains arising from the business of the assessee company. It was further held that the ESOP discount does not diminish the business/trading receipts of the issuing company and, therefore, the company does not suffer any pecuniary detriment. The AO further held that ESOP is a voluntary scheme launched by the employer to issue shares to employees, and the intention is only to give a stake to employees in the organisation. Thus, it was held that the discount is not incurred towards satisfaction of any trade liability, as employees have not given up anything to procure such ESOP. The AO also held that there is no specific provision for

such deduction under sections 30 to 36 of the Act. Thus, it was held that there is neither any real expenditure at any stage of grant or otherwise, nor the expenditure if at all can be qualified as revenue in nature. Accordingly, the AO disallowed the ESOP expenditure amounting to Rs. 2 crore and added the same to the total income of the assessee.

13. The learned CIT(A), vide impugned order, following the decision of the Hon'ble Karnataka High Court in CIT v. Biocon Ltd., reported in (2020) 121 taxmann.com 351 (Kar.), allowed the ground raised by the assessee on this issue and deleted the disallowance of ESOP expenses under section 37 of the Act. Being aggrieved, the Revenue is in appeal before us.

14. We find that the Hon'ble Karnataka High Court, while deciding a similar issue in Biocon Ltd. (*supra*), observed as follows: -

"6. We have considered the submissions made by learned counsel for the parties and have perused the record. The singular issue, which arises for consideration in this appeal is whether the tribunal is correct in holding that discount on the issue of ESOPs i.e., difference between the grant price and the market price on the shares as on the date of grant of options is allowable as a deduction under section 37 of the Act. Before proceeding further, it is apposite to take note of section 37(1) of the Act, which reads as under:

Section 37(1) says that any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head, "Profits and Gains of Business or Profession".

7. Thus, from perusal of section 37(1) of the Act, it is evident that the aforesaid provision permits deduction for the expenditure laid out or expended and does not contain a requirement that there has to be a pay out. If an expenditure has been incurred, provision of section 37(1) of the Act would be attracted. It is also pertinent to note that section 37 does not envisage incurrance of expenditure in cash.

8. Section 2(15A) of the Companies Act, 1956 defines 'employees stock option' to mean option given to the whole time directors, officers or the employees of the company, which gives such directors, officers or employees, the benefit or right to purchase or subscribe at a future rate the securities offered by a

company at a free determined price. In an ESOP a company undertakes to issue shares to its employees at a future date at a price lower than the current market price. The employees are given stock options at discount and the same amount of discount represents the difference between market price of shares at the time of grant of option and the offer price. In order to be eligible for acquiring shares under the scheme, the employees are under an obligation to render their services to the company during the vesting period as provided in the scheme. On completion of the vesting period in the service of the company, the option vest with the employees.

9. In the instant case, the ESOPs vest in an employee over a period of four years i.e., at the rate of 25%, which means at the end of first year, the employee has a definite right to 25% of the shares and the assessee is bound to allow the vesting of 25% of the options. It is well settled in law that if a business liability has arisen in the accounting year, the same is permissible as deduction, even though, liability may have to quantify and discharged at a future date. On exercise of option by an employee, the actual amount of benefit has to be determined is only a quantification of liability, which takes place at a future date. The tribunal has therefore, rightly placed reliance on decisions of the Supreme Court in Bharat Movers supra and Rotork Controls India P. Ltd., supra and has recorded a finding that discount on issue of ESOPs is not a contingent liability but is an ascertained liability.

10. From perusal of section 37(1), which has been referred to supra, it is evident that an assessee is entitled to claim deduction under the aforesaid provision if the expenditure has been incurred. The expression 'expenditure' will also include a loss and therefore, issuance of shares at a discount where the assessee absorbs the difference between the price at which it is issued and the market value of the shares would also be expenditure incurred for the purposes of section 37(1) of the Act. The primary object of the aforesaid exercise is not to waste capital but to earn profits by securing consistent services of the employees and therefore, the same cannot be construed as short receipt of capital. The tribunal therefore, in paragraphs 9.2.7 and 9.2.8 has rightly held that incurring of the expenditure by the assessee entitles him for deduction under section 37(1) of the Act subject to fulfilment of the condition.

11. The deduction of discount on ESOP over the vesting period is in accordance with the accounting in the books of account, which has been prepared in accordance with Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999.

12. So far as reliance place by the revenue in the case of Infosys Technologies Ltd.(supra) is concerned, it is noteworthy that in the aforesaid decision, the Supreme Court was dealing with a proceeding under section 201 of the Act for non-deduction of tax at source and it was held that there was no cash inflow to the employees. The aforesaid decision is of no assistance to decide the issue of allowability of expenses in the hands of the employer. It is also pertinent to mention here that in the decision rendered by the Supreme Court in the aforesaid case, the Assessment Years in question was 1997-98 to 1999-2000 and at that time, the Act did not contain any specific provisions to tax the benefits on ESOPs. Section 17(2)(iiia) was inserted by Finance Act, 1999 with effect from 1-4-2000. Therefore, it is evident that law recognizes a real benefit

in the hands of the employees. For the aforementioned reasons, the decision rendered in the case of Infosys Technologies is of no assistance to the revenue. The decisions relied upon by the revenue in A. Gajapathy Naidu, Morvi Industries Ltd. and Keshav Mills Ltd.(supra) support the case of assessee as the assessee has incurred a definite legal liability and on following the mercantile system of accounting, the discount on ESOPs has rightly been debited as expenditure in the books of account. We are in respectful agreement with the view taken in PVP Ventures Ltd. And Lemon Tree Hotels Ltd. case (supra).

13. It is also pertinent to mention here that for Assessment Year 2009-10 onwards the Assessing Officer has permitted the deduction of ESOP expenses and in view of law laid down by Supreme Court in Radhasoami Satsang v. CIT, [1992] 60 Taxman 248/193 ITR 321, the revenue cannot be permitted to take a different stand with regard to the Assessment Year in question.

In view of preceding analysis, the substantial questions of law framed by a bench of this court are answered against the revenue and in favour of the assessee. In the result, we do not find any merit in this appeal, the same fails and is hereby dismissed."

15. Therefore, in view of the aforesaid findings of the Hon'ble Karnataka High Court, we do not find any infirmity in the order passed by the learned CIT(A) in allowing the claim of deduction of ESOP expenses under section 37(1) of the Act. Accordingly, Ground No. 3 raised in the Revenue's appeal is dismissed.

16. Grounds Nos. 4 and 5, raised in Revenue's appeal, pertain to the deletion of the disallowance of sales incentive expenditure under Explanation 1 to section 37(1) of the Act.

17. We have considered the submissions of both sides and perused the material available on record. During the assessment proceedings, from the perusal of the profit and loss account of the assessee, it was observed that the assessee has claimed an expenditure of Rs. 17.49 crore as sales incentive. Accordingly, the assessee was asked to furnish the details of the parties to whom sales incentives were paid during the year, along with TDS deducted

thereon. Further, the assessee was also asked to explain the nature of these payments. In response, the assessee submitted that it generated business leads from its collection centres, third-party service providers, aggregators, and online platforms in relation to its diagnostic testing services. The assessee submitted that these parties are paid a certain percentage of the revenue generated from such leads as commission and accounted as sales incentives in the books of account. On perusal of the details filed by the assessee, it was observed that the payments have been made to diagnostic centres and individuals, and not aggregators, online platforms or third-party service providers as submitted by the assessee. Further, no documentary evidence with respect to the individuals mentioned in the details was provided by the assessee. Accordingly, the assessee was asked to show cause as to why an amount of 10% of Rs. 17.49 crore should not be disallowed under the provisions of Explanation 1 to section 37(1) of the Act. In response, the assessee reiterated its earlier claim that the payments were made as sales incentives to its collection centres, third-party service providers, aggregators, and online platforms in relation to leads generated by the assessee's diagnostic testing services. It was submitted that, in the instant case, it does not provide any freebies and has engaged service providers, not medical practitioners, to meet business needs. Without prejudice to the above submissions, the assessee submitted that the MCI regulations apply to medical practitioners, and a corporate entity, as such, is not covered by these regulations.

18. The AO, vide order passed under section 143(3) read with section 144B of the Act, disagreed with the submissions of the assessee and held that *prima facie* certain medical practitioners were provided monetary benefits in the garb of commission payments to promote the assessee's client services. Thus, the AO held that in the letter and spirit, the same constitutes professional misconduct on the part of medical practitioners. On the basis that the assessee failed to clearly demonstrate that such payments do not fall within the ambit of "unlawful", the AO made an addition of 10% of Rs. 17.49 crore under the provisions of Explanation 1 to section 37(1) of the Act.

19. The learned CIT(A), vide the impugned order, allowed the ground raised by the assessee on this issue and deleted the disallowance of 10% of sales incentive made by the AO. The relevant findings of the learned CIT(A) on this issue are reproduced as follows: -

"7. Appellant's submissions were carefully considered. Appellant submitted that major payments were made to its direct selling agents(DSA) and the rest were paid to smaller entities. Appellant submitted that TDS was also deducted against those payments. Appellant submitted copies of the agreements entered into some of its major direct selling agents(DSA).

8. From the above, it could be observed that appellant made payments to its direct selling agents. Appellant had also deducted TDS on the above payments. The AO, while disallowing 10% of the total sales incentives, had not brought in, any proof to show that the payments were made to medical practitioners. AO observed that it was not ethical in making payments towards sales incentives in the industry of medical aid, since it affects the poor patients. Without making any investigation to prove that the payments to the direct selling agents (DSA) by the appellant had in fact reached the medical practitioner indirectly, AO made an assumption that the payments to direct selling agents would have been in turn paid to the medical practitioner. For making any disallowance, AO should bring in material facts and evidences. In this present case, it appears that AO had presumed that the payments made to the direct selling agents would have been indirectly paid to the doctors. Even in such case, assuming that the direct selling agents made payments to the doctors, any disallowance u/s 37(1) of the Act could be made only in the hands of the direct selling agents, to the extent of such payments to doctors, if any. In the present case, there is no such finding made by the AO with respect to any payment made to medical practitioners or doctors. In the

absence of any such material evidence/finding by the AO, the ad-hoc disallowance of 10% total sales incentives amounting to Rs. 1,75,11,156/- is not consonance with the provisions of IT Act. In view of the above, the disallowance of Rs. 1,75,11,156/- is deleted. Appeal on this ground is allowed."

Being aggrieved, the Revenue is in appeal before us.

20. During the hearing, the learned AR reiterated the submissions made by the assessee before the lower authorities and submitted that the sales incentives were paid by the assessee to third-party service providers, aggregators, and online platforms in relation to its diagnostic testing services. The learned AR submitted that a certain percentage of the revenue generated from leads provided by the abovementioned concerns was paid by the assessee as commission, and the same is accounted as sales incentives in the books of account. In this regard, the learned AR made a specific reference to pages 97-179 of the paper book comprising the details of sales incentives paid to various service providers.

21. On the other hand, the learned DR submitted that some of the parties to whom sales incentives were paid during the year are medical practitioners and, on a sample basis, made a reference to Serial Nos. 17, 31, 36, 37, etc., of the details forming part of the paper book from pages 97-179.

22. Having considered the submissions of both sides and perused the material available on record, it is evident that the sales incentives paid by the assessee to various parties was treated as being in contravention of law by the AO and, accordingly, 10% of such sales incentives paid by the assessee was disallowed under Explanation 1 to section 37(1) of the Act. As per the

assessee, these sales incentives were paid to generate business leads for its diagnostic testing services. Accordingly, it is the plea of the assessee that no payment was made to medical practitioners, which is prohibited under the relevant MCI regulations.

23. We find that the Hon'ble Supreme Court in Apex Laboratories Pvt. Ltd. v. DCIT, reported in (2022) 442 ITR 1 (SC), held that gifting of freebies by pharmaceutical companies to medical practitioners is prohibited by law and, thus, the expenditure incurred in distribution of such freebies is not allowable as deduction in terms of Explanation 1 to section 37(1) of the Act.

24. From the perusal of the details of sales incentives paid by the assessee, forming part of the paper book from pages 97 to 179, we notice that the names of certain parties are prefixed by "Dr." During the hearing, the learned AR submitted that even though these parties are referred to as "Doctors", however, they are not medical practitioners and are pathological/collection centres to whom the assessee paid sales incentives to generate business leads for its diagnostic testing services. From the perusal of the aforesaid details, we find that the assessee has also provided the address and PAN details of these parties. However, neither the AO nor the learned CIT(A) has gone into the details of the activities conducted by these parties on behalf of the assessee. There is no dispute amongst the parties regarding the law settled by the Hon'ble Supreme Court in Apex Laboratories Pvt. Ltd. (*supra*). Therefore, in the light of the facts and circumstances of the present case, we deem it appropriate to restore this issue to the file of the jurisdictional AO for *de novo* adjudication after examination *qua* each and every party to whom

sales incentive was paid by the assessee. We also note that the assessee has not, even on a sample basis, filed any agreement with these parties for the payment of commission as a sales incentive. Since this issue has been restored to the file of the AO for consideration afresh, the AO may look into the agreements entered into by the assessee with these parties pursuant to which the sales incentive was paid. Accordingly, we direct the AO to decide this issue, as per law, after thorough examination of the details pertaining to payment of sales commission by the assessee *qua* each party. We further direct the assessee to cooperate in the complete adjudication of this issue and furnish all the details as may be sought by the AO. With these directions, the impugned order on this issue is set aside, and Grounds Nos. 4 and 5 raised in the Revenue's appeal are allowed for statistical purposes.

25. In the result, the appeal by the Revenue for the assessment year 2020-21 is partly allowed for statistical purposes.

ITA No. 6721/Mum/2025
Revenue's appeal – A.Y. 2018-19

26. In this appeal, the Revenue has raised the following grounds: -

"1. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the entire disallowance made under Section 14A read with Rule 8D solely on the ground that the assessee did not earn any exempt dividend income during the previous year, thereby ignoring the legislative intent, the express clarification of the CBDT vide Circular No. 5/2014 dated 11.02.2014, and various judicial precedents holding that the provision applies to investments capable of yielding exempt income.

2. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating that the Assessing Officer had duly recorded satisfaction under Section 14A(2) of the Act, after rejecting the assessee's claim of no expenditure/quantum of expenditure, and consequently, the computation of disallowance as per the mandatory formula prescribed under Rule 8D was legally warranted and could not be deleted without pointing out any specific defect in the AO's satisfaction.

3. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the disallowance under Rule 8D, without considering the fact that the assessee failed to establish a one-to-one nexus between its own funds and the investments, and that in a scenario of 'hotchpotch' of mixed funds (borrowed and own), the presumption that interest-bearing funds were utilized for non-interest-bearing investments prevails, thereby justifying the disallowance of the interest component calculated under Rule 8D(2)(ii)."

4. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance under Rule 8D(2)(iii) (administrative expenses), without appreciating that the assessee held substantial investments which require general expenditure for their maintenance, management, and oversight, and the assessee failed to discharge its onus to prove that no part of the general overheads was incurred in relation to these investments.

5. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A)'s order is perverse and contrary to the law and facts, and should be set aside and the order of the Assessing Officer restored."

27. The solitary grievance of the Revenue, in the present appeal, pertains to the deletion of the disallowance made under section 14A, read with Rule 8D of the Rules.

28. We have considered the submissions of both sides and perused the material available on record. During the assessment year 2018-19, the assessee received a dividend of Rs. 3,63,44,833/- from investments made in mutual funds, which was claimed as exempt under section 10(34) of the Act. While computing its total income, the assessee made a *suo motu* disallowance of Rs. 81,64,334/- under section 14A of the Act in respect of expenditure incurred in relation to income which does not form part of the total income. In this regard, during the hearing, our attention was drawn to page 81 of the paper book, which comprises the computation of disallowance made by the assessee under section 14A of the Act after taking into consideration the monthly average of the investments which resulted in exempt income. As per

the assessee, only those investments which have yielded exempt income have been considered for computation of disallowance under section 14A read with Rule 8D of the Rules. In the present case, it is undisputed that no direct expenditure was incurred by the assessee in relation to income which does not form part of the total income. However, the AO disagreed with the submissions of the assessee regarding the *suo motu* calculation of disallowance under section 14A read with Rule 8D of the Rules and proceeded to compute the disallowance at Rs. 3,04,32,791/-. During the hearing, the learned AR reiterated the submissions of the assessee made before the lower authorities that for the computation of disallowance under section 14A read with Rule 8D of the Rules, only those investments which have yielded exempt income should be considered.

29. We find that while considering a similar issue in Revenue's appeal for the assessment year 2020-21, we direct the AO to consider only those investments for the purpose of computation of disallowance under Rule 8D of the Rules which have yielded exempt income during the year, following the decision of the Special Bench of the Tribunal in Vireet Investment Pvt. Ltd. (*supra*). Accordingly, we are of the considered view that our findings/conclusions as rendered in the Revenue's appeal for the assessment year 2020-21 shall apply *mutatis mutandis* to the present case. With similar directions, the impugned order on this issue is set aside, and the grounds raised by the Revenue are allowed for statistical purposes.

30. In the result, the appeal by the Revenue for the assessment year 2018-19 is allowed for statistical purposes.

31. In its appeals for the assessment years 2021-22, 2022-23 and 2023-24, the solitary issue raised by the Revenue pertains to the deletion of the disallowance of sales incentive expenditure under Explanation 1 to section 37(1) of the Act.

32. During the hearing, the learned representatives for both parties fairly agreed that the factual matrix resulting in this issue is similar to the assessment year 2020-21. Accordingly, we are of the considered view that our findings/conclusions as rendered in Revenue's appeal for the assessment year 2020-21 shall apply *mutatis mutandis* to these appeals. Accordingly, with similar directions, the grounds raised by the Revenue in its appeals for the assessment years 2021-22, 2022-23 and 2023-24 are allowed for statistical purposes.

33. In the result, the appeals by the Revenue for the assessment years 2021-22, 2022-23 and 2023-24 are allowed for statistical purposes.

34. To sum up, the appeal by the Revenue for the assessment year 2020-21 is partly allowed for statistical purposes, while its appeals for the assessment years 2018-19, 2021-22, 2022-23 and 2023-24 are allowed for statistical purposes.

Order pronounced in the open Court on 30/03/2026

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 30/03/2026
Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai