

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री मंजुनाथा. जी, लेखा सदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष
BEFORE SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER
AND SHRI MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER

आयकरअपीलसं./ITA Nos.: **2431, 2432, 2433, 2434, 2435, 2436 & 2437/Chny/2017**

निर्धारणवर्ष / Assessment Years: 2006-07, 2006-07, 2007-08, 2008-09, 2011-12, 2012-13 & 2013-14

M/s. Electronics Corporation of Tamilnadu Ltd.,
No. 692, MHU Complex,
Anna Salai, Nandanam,
Chennai – 600 035.
[PAN: AAACE-1670-K]

The Deputy Commissioner of Income Tax,
Corporate Circle -2(1),
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by : Shri. S. Sridhar, Advocate
प्रत्यर्थीकीओरसे/Respondent by : Shri. P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing : 04.01.2024
घोषणा की तारीख/Date of Pronouncement : 21.02.2024

आदेश /ORDER

PER BENCH:

This bunch of seven appeals filed by the assessee are directed against orders of the Commissioner of Income-tax (Appeals)-9, Chennai, all even dated 29.06.2017, 23.06.2017 & 26.07.2017 and pertains to assessment years 2006-07, 2007-08, 2008-09, 2011-12, 2012-13 and 2013-14. Since, facts are identical and issues are common, for the sake of convenience,

the appeals filed by the assessee are being heard together and disposed off, by this consolidated order.

ITA NO: 2432/Chny/2017 for assessment year 2006-07:

2. The assessee has raised the following grounds of appeal:

"1. The order of The Commissioner of Income Tax (Appeals) 9, Chennai dated 23.06.2017 in I.T.A. No.14/CIT(A)-9/2008-09 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in confirming the disallowance of depreciation on the property at Nandanam in the computation of taxable total income without assigning proper reasons and justification.

3. The CIT (Appeals) went wrong in recording the findings in this regard in para 9.1 of the impugned order without assigning proper reasons and justification.

4. The CIT (Appeals) erred in partly sustaining the addition of notional expenses quantified at 2% of the exempted income on the application of section 14A of the Act in the computation of taxable total income without assigning proper reasons and justification.

5. The CIT (Appeals) went wrong in recording the findings in this regard in para 4.1 of the impugned order without assigning proper reasons and justification.

6. The CIT (Appeals) erred in sustaining the loss suffered in promoting joint venture companies as capital loss as against the claim for deduction as revenue/business loss in the computation of taxable total income without assigning proper reasons and justification.

7. The CIT (Appeals) failed to appreciate that having not considered the components of the loss claimed as deduction read with the Memorandum of Association/the purpose of such advance, the sustenance of the treatment of such loss as capital loss in para 9.3.4 of the impugned order was wrong, erroneous, unjustified, incorrect and not sustainable in law.

8. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural

justice would be nullity in law.

9. The Appellant craves leave to file additional grounds/arguments at the time of hearing."

3. The brief facts of the case are that, the appellant M/s. Electronic Corporation of Tamil Nadu Ltd., is a state owned public sector undertaking engaged in the business of promoting, establishing and developing electronic industries. The assessee has filed its return of income for the assessment year 2006-07 on 25.11.2006, declaring total income of Rs. 5,34,07,700/-. The case was selected for scrutiny and the assessment has been completed u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") on 31.12.2008 and determined total income of Rs. 7,79,23,143/-, by making additions towards disallowance of depreciation on land for Rs. 2,80,850/-, addition towards disallowance of expenditure attributable to earning of exempt income u/s. 14A r.w.r. 8D of Income-tax Rules, 1962 (hereinafter referred to as "the I.T. Rules), addition towards investment written off amounting to Rs. 1,99,48,306/- and addition towards interest due but not paid on land from Government of India for Rs. 34,20,817/-. The assessee carried the matter in appeal before the first appellant authority and the Id. CIT(A), for the reasons stated in

their appellate order dated 23.06.2017, partly allowed appeal filed by the assessee. Aggrieved by the Id. CIT(A) order, the assessee is in appeal before us.

4. The first issue that came up for our consideration from ground no. 2 & 3 of assessee appeal is disallowance of depreciation on the property at Nandanam. The facts with regard to the impugned dispute are that, the assessee is owned a land and building at MHU Complex, CIT Nagar, Nandanam, Chennai, on which depreciation has been claimed. The Assessing Officer, observed that as per the provisions of Income-tax Act, 1961, no depreciation can be allowed on landed property. Therefore, called upon the assessee to produce the details of land cost and building cost to workout depreciation and allow as per law. The assessee had not furnished any details. Therefore, the Assessing Officer has taken land cost of the area where the building of the assessee was located as per State Registration Department of Government of Tamilnadu and worked out cost of land at Rs. 28,08,493/-. Since, the assessee has claimed depreciation @ 10% on land and building, depreciation relates to cost of land at Rs. 2,08,580/- has been disallowed and added back to the

returned income. On appeal, the Id. CIT(A) has confirmed additions made by the Assessing Officer.

4.1. The Id. Counsel for the assessee, submitted that the issue of depreciation on land has been resolved with the Revenue and the claim of said depreciation on the UDS in land relating to the flat under consideration was reversed and added back to the total income in the computation of taxable income for the assessment year 2012-13 and the same has been considered by the Assessing Officer for the assessment year 2012-13. Therefore, he submitted that the income to the said extent has already been offered to tax for assessment year 2012-13 and hence, the sustenance of the disallowance resulting in addition in the present assessment would tantamount to taxing the said sum twice. Therefore, requested to delete the additions made by the AO.

4.2. The Id. DR, Shri. P. Sajit Kumar, JCIT, supporting the order of the Id. CIT(A) submitted that, there is no provision under the Income-tax Act, 1961 to claim depreciation on land. Further, the assessee should separately account cost of land and cost of building and claim depreciation on building alone.

Since, the assessee has claimed depreciation on cost of land also, the AO has rightly made additions and thus, the order of the Id. CIT(A) should be sustained.

4.3. We have heard rival contentions, perused materials available on record and gone through the orders of the authorities below. There is no dispute with regard to the legal position as per law that, no provision to claim depreciation on landed properties. In the present case, it is also undisputed fact that the assessee has claimed depreciation on land cost. Therefore, in our considered view there is no error in the reasons given by the Assessing Officer to disallow depreciation on land cost and added back to the total income. In so far as the arguments of the assessee that, the issue has been resolved with the Revenue and the said depreciation on the UDS in land has been reversed and offered to tax for the assessment year 2012-13, we are of the considered view that if the assessee has reversed depreciation and credited to profit and loss account, then same can be excluded while computing income for assessment year 2012-13. But, when it comes to allowing depreciation on any asset, said depreciation should be allowed on each year considering value of WDV of the asset.

Just because the assessee has claimed depreciation for some years and enjoyed the benefit and later on reversed the claim and offered to tax at its convenience, the claim of the assessee cannot be entered. Therefore, we are of the considered view that the Assessing Officer is right in disallowing depreciation on land for this year. However, if the claim of the assessee is correct that, it has reversed depreciation on land for the assessment year 2012-13 and offered to tax, then the same can be excluded for computing total income. Thus, we direct the Assessing Officer to verify the claim of the assessee and if the Assessing Officer found that the claim of the assessee is correct, then we direct the Assessing Officer to exclude the income offered towards reversal of depreciation while computing total income for the assessment year 2012-13.

5. The next issue that came up for our consideration from ground no. 4 & 5 of assessee appeal is disallowance of expenses relatable to earning exempt income u/s. 14A of the Act. The Assessing Officer, has disallowed expenses relatable to exempt income u/s. 14A r.w.r. 8D of I.T. Rules, 1962 and worked out total disallowance of Rs. 8,65,470/-. The Id. CIT(A), has scaled down disallowances worked out by the

Assessing Officer on the ground that, provisions of Rule 8D of I.T. Rules, 1962 is not applicable for the impugned assessment year and thus, directed the Assessing Officer to estimate 2% on exempt income towards expenses relatable to earning exempt income.

5.1. The Id. Counsel for the assessee submitted that in order to invoke provisions of section 14A r.w.r. 8D of I.T. Rules, 1962, there must be a satisfaction from the Assessing Officer having regard to the books of accounts of the assessee that, he has not satisfied with disallowance computed by the assessee u/s. 14A of the Act. In this regard, he relied upon the decision of Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Company Ltd 349 ITR 449. Since, the Assessing Officer has not recorded satisfaction, the question of invoking provisions of Rules 8D of the I.T. Rules, 1962 does not arise.

5.2. The Id. DR, P. Sajit Kumar, CIT, supporting the order of the Id. CIT(A) submitted that, although the Assessing Officer has adopted Rule 8D for computation of disallowance u/s. 14A of the Act, but the Id. CIT(A) has restricted disallowance to the extent of 2% on exempt income by considering the fact that,

provisions of Rule 8D of I.T. Rules, 1962 is not applicable for the impugned assessment year. Therefore, there is no error in the reasons given by the Id. CIT(A) to sustain disallowance of expenditure relatable to exempt income and their order should be upheld.

5.3. We have heard rival contentions, perused materials available on record and gone through the orders of the authorities below. In so far the arguments of the assessee in light of the decision of the Hon'ble Supreme Court in the case of Godrej & Boyce Manufacturing Company Ltd (Supra), we find that the Assessing Officer has recorded satisfaction having regard to books of accounts of the assessee that, the assessee has incurred expenses towards managerial remunerations and other routine administrative expenses and a portion of which must have been attributed towards earning of exempt income. It is only after examining the books of accounts, the Assessing Officer came to the conclusion that the assessee incurred administrative and other expenses and said finding that, a portion of such expenses were attributed towards earning of substantial exempt income constitutes satisfaction as required u/s. 14A of the Act and thus, we reject arguments of the

assessee. In so far as, disallowance computed by the Assessing Officer and sustained by the Id. CIT(A), in our considered view, although the provisions of Rule 8D of I.T. Rules, 1962 is not applicable for the impugned assessment year, but proportionate expenses relatable to income should be disallowed by applying certain methods. The Id. CIT(A), by following jurisdiction High Court decision in the case of M/s. Simpson and Co. Ltd in Tax case Appeal no. 2631 of 2006 dated 15.10.2012, directed the Assessing Officer to restrict the disallowance u/s. 14A to 2% of exempt income. Therefore, we are of the considered view that there is no error in the reasons given by the Assessing Officer and Id. CIT(A) to sustain disallowance u/s. 14A of the Act and thus, we reject ground taken by the assessee.

6. The next issue that came up for our consideration from ground no. 6 & 7 of assessee appeal is disallowance of investments written off and debited to profit and loss account amounting to Rs. 1,99,48,306/-. The assessee has made certain investment in subsidiary and associate concerns as promoter and investment made in subsidiary and associate concerns is diminished for various reasons. The assessee has written off diminution in value of investment amounting to Rs.

1,99,48,306/- and debited to profit and loss account. The Assessing Officer, disallowed write off of investment in subsidiary and associate concerns by observing that, as per provisions of section 37 of the Act, any expenditure (not being expenditure of the nature described in section 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 purpose of business or profession shall be allowed in computing income chargeable under the head profits and gains of business or profession. The Assessing Officer, further observed that a similar addition had been made for earlier assessment year and the Hon'ble ITAT 'A' Bench, Chennai vide its order in ITA No. 1112/Mds/2006 dated 11.01.2008 for assessment year 2001-02 has held that, investment write off is a capital loss, which cannot be allowed as deduction. Therefore, disallowed investment written off and debited to profit and loss account. On appeal, Id. CIT(A) by following the decision of ITAT, Chennai Benches in ITA No. 1112/Mds/2006 has sustained additions made by the Assessing Officer.

6.1. The Id. Counsel for the assessee submitted that, incurring of loss from the activity of promoting, establishing,

running and supporting public sector enterprises/companies engaged in electronic items manufacturing was allowable as a revenue expenses/loss in terms of section 37(1) of the Act. The amount written off by the appellant were basically in the nature of loans and advances towards working capital of the ventures to whom these advances were made and thus, write off of said investment/advance partakes the nature of business loss and same needs to be allowed in terms of section 28 and 37(1) of the Act.

6.2. The Id. Counsel for the assessee further submitted that, this issue is squarely covered in favour of the assessee by the decision of the Hon'ble Madras High Court in appellant's own case for assessment year 2001-02 in Tax Case Appeal No. 1499/2008, where the Hon'ble High Court considering the objects of the appellant company held that, finance provided by the assessee was by way of equity participation is akin to loan transactions or advances made and in such case, if the loans are irrecoverable, then they are written off and precisely, that is what has been done by the assessee on their investment and thus, said loss is allowable.

6.3. The Id. DR, Shri. P. Sajit Kumar, JCIT, supporting the order of the Id. CIT(A) submitted that, the assessee held investment in other companies not as a stock in trade. When the value of investments is depleted, same partakes the nature of capital loss which cannot be allowed as revenue expenditure. The Id. CIT(A), after considering relevant facts has rightly sustained additions made by the Assessing Officer. However, he fairly conceded that, the issue has been decided by the Hon'ble High Court of Madras in appellant's own case and thus, the matter may be decided in accordance with law.

6.4. We have heard rival contentions, perused materials available on record and gone through the orders of the authorities below. If you go by the main objects of the appellant company, as per their Memorandum of Association, the assessee's main objects are to promote, establish and run and aid public sector enterprises with electronic items. In the process, the appellant company has made investments in equity or given loans and advances toward working capital of the ventures. Since, the main objects of the appellant company is to promote industries in electronic sector, in our considered view finances provided by the assessee by way of equity

participation is akin to loan transactions or advances made and in such case, if the loans are irrecoverable, then they are written off and precisely, that is what has been done by the assessee on their investments. The incurring of loss from activity of promoting, and supporting public sector enterprises is akin to loans and advances and any loss in value of said investments partakes the nature of revenue expenses/loss in terms of section 28 and 37(1) of the Act. This position has been explained by the Hon'ble Jurisdictional High Court of Madras in appellant's own case for assessment year 2001-02 in Tax Case Appeal No. 1499/2008, where the Hon'ble High Court held as under:

"10. We have perused the order passed by the CIT(A) and in our considered view, the reasoning given by the CIT(A) is just and proper. The CIT(A) has analysed the objects of the assessee as to why it was incorporated and the nature of activities done by them. On examining the factual matrix, the CIT(A) held that the finance provided by the assessee was provided by way of equity participation and it is akin to loan transaction or advances made and in such cases, if the loans are irrecoverable, then they are written off and precisely, that is what has been done by the assessee on their investments in those four companies. Further, on facts, the CIT(A) held that the amounts advanced by the assessee to those industries were towards working capital and the real character of the transaction are those akin to loans and not equity investments. Furthermore, the assessee had explained that the amounts which have been advanced by them are shown as equity and without the permission of the assessee, the share holding pattern of the companies cannot be changed and the promoters will have to keep minimum interest in the companies' assets and transfer of shares without the consent of the assessee cannot be made.

11. On this issue, it would be beneficial to refer to a decision of the Hon'ble Supreme Court in the case of [Investments Ltd. vs. Commissioner of Income Tax](#) (1970) 77 ITR 0533, wherein, the Court considered as to whether the shares and securities held by the assessee therein has to be treated as stock-in-trade and while considering the said question, it was held as follows:-

8. In the balance sheet, it is true, the securities and shares are valued at cost, but no firm conclusion can be drawn from the method of keeping accounts. A taxpayer is free to employ, for the purpose of his trade, his own method of keeping accounts, and for that purpose to value his stock-in-trade either at cost or market price. A method of accounting adopted by the trader consistently and regularly cannot be discarded by the Departmental authorities on the view that he should have adopted a different method of keeping account or of valuation. The method of accounting regularly employed may be discarded only if, in the opinion of the taxing authorities, income of the trade cannot be properly deduced therefrom. Valuation of stock at cost is one of the recognised methods. No inference may, therefore, arise from the employment by the company of the method of valuing stock at cost, that the stock valued was not stock-in-trade. Nor is the <http://www.judis.nic.in> description of stock in the balance sheet as "investments" decisive.

12. As held in the above referred decision, no inference can be drawn with regard to description of the stock in the balance sheet as investments and this cannot be a decisive fact. In respect of more or less an identical case, the Division Bench in the case of [Commissioner of Income Tax v. Tamilnadu Industrial Investment Corporation Ltd.](#), [(2017) 394 ITR 0255 (Mad)] held the same in favour of the assessee. The question which fell for consideration was whether the Tribunal was right in holding that the shares are stock-in-trade of the assessee company. The Division Bench took note of the Memorandum and Articles of Association which spelt out the main activities of the assessee (TIIC Limited) and held that the assessee was incorporated solely for the purpose of ensuring and facilitating growth and development of industries in the State of Tamilnadu and investments by way of subscription of shares is solely on account of the under writing operations. Further, it held that the investments are in the nature of stock-in-trade and cannot be held otherwise. In our considered opinion the decision in the case of TIIC Limited (cited supra) would squarely cover the case on hand and the question framed for consideration is required to be answered in favour of the assessee.

13. The Revenue placed reliance on the decision of the Hon'ble Supreme Court in the case of [Berger Paints India Ltd., vs.](#)

Commissioner of Income-Tax, Delhi-V [2017] 393 ITR 113. We have perused the said decision and we find that the said decision can have no application to the facts of the case as it was a case where the interpretation with regard to the premium amount collected by the assessee company on the share capital and how it has to be construed for the purpose of Section 35D(3)(b) of the Act. Therefore, the said decision in the case of Berger Paints (cited supra) can render no assistance to the case of the Revenue.

14. Furthermore, we find that the CIT(A) relied upon the decision in the case of Tamil Nadu Industrial Development Corporation (TIDCO) and in the said decision also, the investments made by the TIDCO was in the form of equity shares including share application deposit and the profit made on the sale of shares was held to be in the nature of business profit and not as long term capital gains. Further, the loss on investments was treated as bad debts and claims were written off as business expenditure which goes to show that the investments on such shares are in the course of primary business activities of the company. In the case of TIDCO, the CIT(A) relied upon a decision of the ITAT, Chennai B Bench in the case of M/s.V.D.Swami and Company Ltd., Vs. DCIT in ITA No.2592/MDS/95. As pointed out by us earlier, the objects for which the assessee company had been established by the Government of Tamil Nadu is no different from the purpose for which TIIC and TIDCO were established. Therefore, the CIT(A) was fully justified in relying upon the decision in the case of TIDCO. The Tribunal relied on a decision in the case of R.ChidambaranathaMudaliar (cited supra). We find that the reliance placed on the decision is thoroughly misconceived as in the said case, the loss was under different connotation namely with regard to Section 45 of the Act. Furthermore, in the said case, the head of income was never in dispute. Therefore, the Tribunal erred in relying upon the decision in the case of R.ChidambaranathaMudaliar. Thus, for all the above reasons, the order passed by the Tribunal reversing the order passed by the CIT(A) is not sustainable.

15. In the result, the appeal filed by the assessee is allowed. The order passed by the Tribunal dated 11.01.2008 is set aside and the order passed by the CIT(A) dated 09.01.2006 is restored. The substantial questions of law are answered in favour of the assessee. No costs."

6.5 In this view of the matter and by respectfully following the decision of Hon'ble High Court of Madras in appellant's own

case for assessment year 2001-02, we are of the considered view that write off of diminution in value of investment in other companies is allowable as revenue expenses/loss in terms of section 28 and 37(1) of the Act. Thus, we reverse the findings of the Id. CIT(A) on this issue and direct the Assessing Officer to delete additions made towards disallowance of write off of investment and debited profit and loss account.

7. In the result, appeal filed by the assessee in ITA NO. 2432/Chny/2017 for assessment year 2006-07 is partly allowed.

ITA NO: 2431/Chny/2017 for assessment year 2006-07:

8. The assessee has raised the following grounds of appeal:

"1. The order of The Commissioner of Income Tax (Appeals) 9, Chennai dated 29.06.2017 in I.T.A.No.13/CIT(A)-9/2008-09 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in sustaining the assessment of fringe benefit relating to staff welfare expenses of Rs.23,95,812/- in the computation of assessable fringe benefit for taxation without assigning proper reasons and justification.

3. The CIT (Appeals) failed to appreciate that the presumption of fringe benefit in the expenses incurred under the head 'staff welfare expenses' was wrong, erroneous, unjustified, incorrect and not sustainable in law and ought to have appreciated that the entire computation of fringe benefit for taxation was bad in law.

4. The CIT (Appeals) erred in not considering the issue of

double taxation in the event of sustenance of the addition of Rs.6,77,926/- being the fringe benefit quantified from the expenses charged under the head 'selling and administrative expenses' without assigning proper reasons and justification.

5. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.

6. The Appellant craves leave to file additional grounds/argument at the time of hearing."

9. The brief facts of the case are that, the appellant has filed its return of income for the assessment year 2006-07 on 25.11.2006, admitting value of Fringe Benefit at Rs. 9,85,578/-. The Assessing Officer, has completed the assessment u/s. 115WE(3) of the Act, by assessing the value of fringe benefit at Rs. 15,91,730/- after making additions of Rs. 6,06,150/- being 20% of workmen and staff welfare expenses at Rs. 30,30,749/- and addition of Rs. 6,77,926/- being 20% of travelling expenses of Rs. 33,89,631/-. The assessee carried the matter in appeal before the first appellant authority. The Id. CIT(A), for the reasons stated in their appellant order dated 29.06.2017, partly allowed appeal filed by the assessee, where the Id. CIT(A), directed the Assessing Officer to exclude sum of Rs. 6,34,937/- being amount spent toward providing coffee, tea, biscuit and water to the employees from the value of fringe benefit and computed taxable fringe benefit for the remaining amount of

Rs. 23,95,812/-. The Id. CIT(A), had also directed the Assessing Officer to verify the claim of the assessee with regard to travelling and conveyance expenses as per Schedule 17 of return of Fringe Benefit, vide column no. 8B(b) related to 'conveyance, tour and travel' and very next column 9(a) of the said schedule under the head 'use of hotel, boarding and lodging facilities', in order to apply value of fringe benefit @ 5% or 20%. Aggrieved by the Id. CIT(A) order, the assessee is in appeal before us.

9.1. The Id. Counsel for the assessee submitted that, the Id. CIT(A) erred in sustaining the assessment of Fringe Benefit relating to staff welfare to an extent of Rs. 23,95,812/-, without appreciating fact that the presumption of fringe benefit in the expenses incurred under the head 'staff welfare expenses' was wrong, erroneous and unjustified. The Id. Counsel for the assessee, further submitted that the Id. CIT(A), erred in sustaining addition to the extent of Rs. 6,77,926/- towards travelling and conveyance expenses because the appellant has already considered such expenditure for the purpose of computing taxable fringe benefit.

9.2. The Id. DR, Shri. P. Sajit Kumar, JCIT, on the other hand supporting the order of the Id. CIT(A) submitted that, the appellant could not provide necessary details for remaining expenses under the head workmen and staff welfare expenses. Further, the appellant could not provide necessary details to prove that it has computed value of fringe benefit for travelling and conveyance. The Id. CIT(A), after considering relevant facts has rightly sustained additions made by the Assessing Officer and their order should be upheld.

9.3. We have heard rival contentions, perused materials available on record and gone through the orders of the authorities below. In so far as addition towards workmen and staff welfare expenses, the Id. CIT(A) has recorded categorical finding that the appellant could not furnish any evidence for balance amount of Rs. 23,95,812/- to prove that, it has spent for the welfare of the employees to provide refreshment facilities at work place. Therefore, we cannot find any fault with the reasons given by the Id. CIT(A) so sustain the balance addition of Rs. 23,95,812/- for the purpose of computing the value of fringe benefit. In so far as the value of fringe benefit in respect of travelling and conveyance expenses, the Id. CIT(A)

has given a categorical finding to the Assessing Officer in light of arguments of the assessee that, said expenditure has already been considered in the return of income filed under Fringe Benefit. The Id. CIT(A), further stated that the Assessing Officer must carefully verify whether the assessee has spent said amount for providing travel and conveyance expenses and if so, the same must be excluded while working out the value of fringe benefit. The Id. CIT(A), has also given directions to the Assessing Officer to consider appropriate rate for computing the value of fringe benefit. In our considered view, there is no cause of grievance with the appellant, when there is a clear finding from the Id. CIT(A) to the effect that the matter may be reexamined in light of averments of the assessee before the first appellant authority. Thus, we are of the considered view that there is no merit in ground taken by the assessee on the issue of computing the value of fringe benefit, in so far as providing travel and conveyance expenses is concerned. To sum up, the Id. CIT(A) has given appropriate relief as per law on the basis of relevant evidences filed by the assessee in so far as computation of value of fringe benefit on workmen and staff welfare expense. Similarly, the Id. CIT(A) has given a direction to the Assessing Officer to verify the claim of the assessee in

respect of travel and conveyance expenses. Therefore, we are of the considered view that, there is no error in the reasons given by the Id. CIT(A) and thus, we are inclined to uphold the order of the Id. CIT(A) and dismiss appeal filed by the assessee.

10. In the result, appeal filed by the assessee in ITA NO. 2431/Chny/22017 for assessment year 2006-07 is dismissed.

ITA NO: 2433/Chny/2017 for assessment year 2007-08:

11. The assessee has raised the following grounds of appeal:

"1. The order of The Commissioner of Income Tax (Appeals) 9, Chennai dated 23.06.2017 in I.T.A.No.108/CIT(A)-9/2010-11 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in partly sustaining the notional disallowance of expenses based on the provisions of section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 in the computation of taxable total income without assigning proper reasons and justification.

3. The CIT (Appeals) failed to appreciate that the legal issues brought out for the consideration in the proceedings before him in writing were completely overlooked and brushed aside, thereby vitiating the findings in para 11.3 of the impugned order.

4. The CIT (Appeals) erred in confirming the disallowance of Rs. 10,98,850/- being the interest on accrual basis relating to call deposits and term loan advances in the computation of taxable total income without assigning proper reasons and justification and went wrong in recording the findings in this regard in para 11.4 of the impugned order without assigning proper reasons and justification.

5. The CIT (Appeals) erred in confirming the assessment of rental income of Rs.15,600/- in the computation of taxable total income without assigning proper reasons and justification.

6. The CIT(Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.

7. The Appellant craves leave to file additional grounds/arguments at the time of hearing."

12. The first issue that came up for our consideration from ground no. 2 of assessee appeal is addition towards sale of farmer's security cards. The facts with regard to impugned dispute are that, as per director's report forming part of the annual accounts, the assessee company had successfully carried out printing of 70 lakhs farmer's security cards using electronic process systems. It was further noted that, in the audit report there was qualification that the company has not recognized income on the sale of farmer's security cards. Therefore, the Assessing Officer called upon the assessee to explain as to why income from sale of farmer's security cards cannot be assessed. In response, the assessee submitted that although the farmer's security card was printed and successfully carried out in the assessment year 2007-08, but the rate for said cards was fixed by the Government of Tamilnadu only in the subsequent assessment year 2008-09. In absence of the rate per card, the appellant was unable to offer income and the

expenses relating to the said income was also not claimed. However, in the assessment year 2008-09, when the rate was finalized at Rs. 3.43 per card, income from sale of cards was offered for tax. Therefore, additions for the impugned assessment year tantamount to double taxation, which is not permissible under law. The Assessing Officer, however was not convinced with the explanation furnished by the assessee and according to the Assessing Officer, when the assessee is following mercantile system of accounting, income and expenditure relatable to particular assessment year should be recognized on accrual basis. Since, income relating to the sale of Farmers Security card was carried in the assessment year 2007-08, the Assessing Officer has made addition of Rs. 2,59,47,140/- towards income from sale of farmers security card. On appeal, the Id. CIT(A) sustained additions made by the Assessing Officer.

12.1 The Id. Counsel for the assessee submitted that, even in a case where the assessee is following mercantile systems of accounting, income accrues only when the assessee sells the cards to farmers. Although, the appellant has printed farmers security cards, the sale has been taken place in the subsequent

assessment year, when the Government has fixed rate per card and accordingly, the assessee has offered relevant income from sale of card after reducing expenditure for the assessment year 2008-09 and thus, additions made by the Assessing Officer for the impugned assessment year should be deleted. Therefore, he submitted that, in case addition is sustained for the impugned assessment year, income offered by the assessee for the assessment year 2008-09 should be excluded.

12.2 The Id. DR, Shri. P. Sajit Kumar, JCIT, supporting the order of the Id. CIT(A) submitted that, as per matching concept of accounting policies income accrues as and when sale or service takes place. In the present case, as per director report and auditor report, income has been accrued for assessment year 2007-08. The subsequent recognition of income by the assessee for assessment year 2008-09 cannot absolve the appellant's responsibilities to offer current income for appropriate assessment year. The Assessing Officer, after considering relevant facts has rightly made additions and their order should be upheld.

12.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. It is an admitted fact that, the appellant is following mercantile system of accounting. It is also an admitted fact that as per director report, the assessee has successfully carried out printing and distribution of farmer's security cards for the assessment year 2007-08. Even, the auditor has issued a qualified audit report and said in their report that, the appellant has not recognized income pertaining to sale of farmer's security cards. The reasons given by the assessee for not recognizing income for the impugned assessment year is that, Government of Tamilnadu has not fixed selling rate of card. In our considered view the appellant's responsibility to offer income in right assessment year cannot be based on vague reason. Since, the appellant is following mercantile system of accounting, the moment it distributes cards to farmers, income from sale of cards accrues. The appellant has carried out distribution of cards in the assessment year 2007-08 and income pertaining to sale of said cards should be offered to tax for assessment year 2007-08. Therefore, we are of the considered view that, there is no error in the reasons given by the Id. CIT(A) to sustain additions made by the Assessing

Officer for assessment year 2007-08. However, while computing the income from sale of farmer's security card, the Assessing Officer should allow expenses fully and wholly incurred for the purpose of earning such income. We further direct the Assessing Officer to consider the arguments of the assessee that, it has offered income from sale of cards for subsequent assessment year 2008-09 and in case the income is sustained for this assessment year, income offered by the assessee for assessment year 2008-09 should be allowed. The Assessing Officer must carry out necessary verification and in case the arguments of the assessee is correct, then we direct the Assessing Officer to exclude income from sale of farmers security cards for the assessment year 2008-09.

13. The next issue that came up for our consideration from ground no. 3 & 4 of assessee appeal is disallowance u/s. 40(a)(ia) of the Act, for non-deduction of tax at source on certain expenditure. During the course of assessment proceedings, the Assessing Officer noticed that the tax auditor issued a qualified report on allowability of certain expenditure for non-deduction of tax at source. The Assessing Officer, called upon the assessee to explain as to why expenses without TDS

should not be added u/s. 40(a)(ia) of the Act. Since, the appellant could not offer any explanation, the Assessing Officer disallowed sum of Rs. 41,15,016/- towards expenses u/s. 40(a)(ia) of the Act, for non-deduction of tax at source under respective provisions of the Act. On appeal, the Id. CIT(A) sustained additions made by the Assessing Officer.

13.1. The Ld. Counsel for the assessee submitted that, the appellant did not get proper opportunity before the Assessing Officer to explain applicability of second proviso to section 40(a)(ia) of the Act, in light of certain judicial precedents. Therefore, the matter may be set aside to the file of the Assessing Officer to verify the case of the appellant with reference to second proviso to section 40(a)(ia) of the Act, in light of certain judicial precedents.

13.2. The Id. DR, Shri. P. Sajit Kumar, JCIT, on the other hand fairly agreed that the matter may be set aside to the file of the Assessing Officer to look into the issue, in light of arguments of the assessee as per second proviso to section 40(a)(ia) of the Act.

13.3. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The Assessing Officer made additions towards disallowance u/s. 40(a)(ia) of the Act, on the basis of tax audit report, where the tax auditor specified disallowance u/s. 40(a)(ia) of the Act, towards certain expenditure for non-deduction of tax at source under Chapter XVII-B of the Act. The assessee claims that, the Assessing Officer has not given proper opportunity to explain its case in light of second proviso to section 40(a)(ia) of the Act. We find that as per second proviso to section 40(a)(ia) of the Act, which came into statue by the Finance Act, 2012 w.e.f. 01.04.2013, if assessee is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then for the purposes of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the payee referred to in the said proviso. In other words, if the payee's have paid tax on the amount paid by the assessee and included in their return of income for relevant assessment year, then the sum paid by the assessee without deduction of tax at source cannot be disallowed u/s. 40(a)(ia) of the Act. This proviso has been examined by various

courts. Admittedly second proviso to section 40(a)(ia) of the Act came into statue w.e.f. 01.04.2013 and the impugned assessment year is 2012-13. Therefore, we are not going to comment on applicability of said proviso to the case of the assessee for impugned assessment year. However, we left open the issue to the Assessing Officer, to verify the applicability of said proviso in light of arguments of the assessee and also other evidences including judicial precedents if any, filed by the assessee to justify its case. Thus, we set aside the issue to the file of the Assessing Officer and direct the Assessing Officer to verify the claim of the assessee in light of second proviso to section 40(a)(ia) of the Act and decide the issue in accordance with law.

14. The next issue that came up for our consideration from ground no. 5 & 6 of assessee appeal is disallowance u/s. 14A r.w.r. 8D of I.T. Rules, 1962. After hearing both the sides, we find that an identical issue has been considered by us in appellant's own case for assessment year 2006-07 in ITA No. 2432/Chny/2017, where we upheld the findings of the Id. CIT(A), in directing the Assessing Officer to compute disallowance towards expenditure relatable to exempt income

@ 2% on exempt income. The facts are identical for the year under consideration. Therefore, the reasons given by us in preceding paragraph no. 5.3 for assessment year 2006-07 in ITA No. 2432/Chny/2017, shall *mutandis mutatis* apply to this appeal as well. Therefore, for similar reasons, we are inclined to uphold the findings of the Id. CIT(A) and reject ground taken by the assessee.

15. In the result, appeal filed by the assessee for assessment year 2007-08 is partly allowed for statistical purposes.

ITA NO: 2434/CHNY/2017 for assessment year 2008-09:

16. The assessee has raised the following grounds of appeal:

1. The order of The Commissioner of Income Tax (Appeals) 9, Chennai dated 23.06.2017 in I.T.A.No.108/CIT(A)-9/2010-11 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in partly sustaining the notional disallowance of expenses based on the provisions of section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 in the computation of taxable total income without assigning proper reasons and justification.

3. The CIT (Appeals) failed to appreciate that the legal issues brought out for the consideration in the proceedings before him in writing were completely overlooked and brushed aside, thereby vitiating the findings in para 11.3 of the impugned order.

4. The CIT (Appeals) erred in confirming the disallowance of Rs. 10,98,850/- being the interest on accrual basis relating to call deposits and term loan advances in the computation of taxable total income without assigning proper reasons and

justification and went wrong in recording the findings in this regard in para 11.4 of the impugned order without assigning proper reasons and justification.

5. The CIT (Appeals) erred in confirming the assessment of rental income of Rs.15,600/- in the computation of taxable total income without assigning proper reasons and justification.

6. The CIT(Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.

7. The Appellant craves leave to file additional grounds/arguments at the time of hearing."

17. The first issue that came up for our consideration from ground no. 2 & 3 of assessee appeal is disallowance u/s. 14A r.w.r. 8D of I.T. Rules, 1962, towards earning exempt income. After hearing both the sides, we find that an identical issue has been considered by us in appellant's own case for assessment year 2006-07 in ITA No. 2432/Chny/2017. The facts are identical for the impugned assessment year. The reasons given by us in ITA No. 2432/Chny/2017 for assessment year 2006-07 in preceding paragraph no. 5.3, shall *mutandis mutatis* apply to this appeal as well. Thus, we are inclined to uphold the findings of the Id. CIT(A) and direct the Assessing Officer to restrict disallowance of expenditure relatable to earning exempt income u/s. 14A of the Act to 2% exempt income earned for the assessment year and reject ground taken by the assessee.

18. The next issue that came up for our consideration from ground no. 4 of assessee appeal is additions towards interest on accrual basis relating to call deposits and term loan advances given to joint venture companies at Rs. 10,98,850/-. The facts with regard to the impugned dispute are that, the assessee in its notes on account has stated that interest due for the earlier years and financial year 2007-08 from three joint venture companies and call deposits/term loan advance to them has not been provided for or reckoned amounting to Rs. 10,98,850/-. The Assessing Officer, made additions towards interest accrued and due on loans and call deposits on the ground that the assessee is following mercantile system of accounting and hence, interest income on loans and call deposits should be offered to tax on accrual basis whether or not it recognizes income in the books of account. It was the argument of the Ld. Counsel for the assessee that, call deposits and term loan advances to joint venture companies become NPA and accordingly, the assessee has treated loans given to them as NPA. Since, the call deposits and loans given to joint venture companies become NPA, the assessee has not recognized the income in the books of accounts and thus, the question of

making additions towards interest on accrual basis does not arise.

18.1 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Although, the appellant claims that call deposits and loans given to joint venture companies become NPA, the reasons given by the appellant to treat said loans and call deposits as NPA is not acceptable. The assessee cannot treat call deposits and loan given to joint venture companies as NPA on the basis of financial creditor's decision. The assessee should independently carry out necessary exercise and ascertain whether call deposits and loans given to joint venture companies are NPA or not. Further, as long as the loans is continued in the books of accounts, interest which is due on said loans on accrual basis must be brought to tax. The Assessing Officer, after considering relevant facts has rightly made additions towards interest income. Thus, we are inclined to uphold the findings of the Id. CIT(A) and reject ground taken by the assessee.

19. The next issue that came up for our consideration from ground no. 5 of assessee appeal is additions towards rent due to staff quarters amounting to Rs. 15,600/-. The Assessing Officer has made additions towards rent due from staff quarters amounting to Rs. 15,600/-, on the ground that although the assessee has specified in its notes of account, but did not offer rent due from staff quarters to tax. The appellant claims that rent due from staff quarters has been offered to tax on receipt basis.

19.1 We have heard both the parties and considered relevant reasons given by the Assessing Officer to make additions towards rent due from staff quarters amounting to Rs. 15,600/-. In our considered view, when the appellant is following mercantile system of accounting, income pertains to relevant assessment year has to be accounted on accrual basis, whether or not said income has been received during the relevant financial year. Since, the appellant has reported rent due from staff quarters for the ending 31.03.2008, in our considered view the Assessing Officer has rightly made additions and thus, we are inclined to uphold the findings of the

Id. CIT(A) in sustaining the additions made by the Assessing Officer and reject ground taken by the assessee.

20. In the result, appeal filed by the assessee is ITA No. 2434/Chny/2017 for assessment year 2008-09 is dismissed.

ITA NO: 2435/CHNY/2017 for assessment year 2011-12:

21. The assessee has raised the following grounds of appeal:

"1. The order of The Commissioner of Income Tax (Appeals) 9, Chennai dated 23.06.2017 in I.T.A.No.67/CIT(A)-9/2014-15 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in sustaining the notional disallowance of expenses based on the provisions of section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 in the computation of taxable total income without assigning proper reasons and justification.

3. The CIT (Appeals) failed to appreciate that the legal issues brought out for the consideration in the proceedings before him in writing were completely overlooked and brushed aside, thereby vitiating the findings from para 12.6.1 of the impugned order.

4. The CIT (Appeals) erred in confirming the revenue recognition attempted by the Assessing Officer for the purpose of making addition relating to long term land lease for which deposits were received by the appellant from para 12.2.4 to 12.2.6 without assigning proper reasons and justification.

5. The CIT (Appeals) failed to appreciate that the reasons given for equating perpetual/long lease as sale were wholly unjustified and ought to have appreciated that the legal issues canvassed in this regard were completely overlooked in the process of confirming an addition of Rs.1,14,75,000.

6. The CIT (Appeals) erred in confirming the disallowance of depreciation on the property at Nandanam in the computation of taxable total income without assigning proper reasons and justification.

7. The CIT (Appeals) went wrong in recording the findings in this regard in para 12.4 of the impugned order without assigning proper reasons and justification.

8. The CIT (Appeals) erred in confirming the adjustment of depreciation in the book profit computation for the reasons stated in para 12.5 of the impugned order without assigning proper reasons and justification.

9. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.

10. The Appellant craves leave to file additional grounds/arguments at the time of hearing."

22. The first issue that came up for our consideration from ground no. 2 & 5 of assessee appeal is addition towards revenue recognition in respect of land lease deposit received by the assessee for allotment of industrial land in SEZ on long term lease basis. The brief facts are that, the appellant company is a promoter of SEZ, has acquired property and laid out such property into various plots and allotted such plots on a long term lease for 90/99 years to various parties for the purpose of developing information technology related services, training and electronic hardware industries. The appellant company allotted lands to various parties on long term lease basis for 90/99 years and collected upfront fees and also fixed yearly lease rent which is very nominal. The appellant company separately collects development and maintenance charges of industrial

plots in SEZ. The allotted parties paid advances towards land lease deposit which has been shown under the heading 'lease land deposit'. The minimum lock-in period is three years. In case, the allottee's violates any of the conditions prescribed in lease agreement, the appellant can take back the possession of the land after deducting proportionate land lease deposit paid by the allottees. The appellant company was recognizing the income proportionately over the period of 17 years in as much as 15% of the advance money received was recognized as income in the year of receipt, i.e., the first year and the balance was reckoned as revenue at 5% per year from 4th year to till 17th year. The C&AG audit made objection stating that the advance received on allotment of plots must have been treated as sale and offered as income as there is transfer of ownership to the lessees.

22.1 During the course of assessment proceedings, the Assessing Officer called upon the assessee to explain as to why upfront lease deposit received from allottees cannot be treated as income in the year of receipt. In response, the assessee submitted that, considering the business model followed by the company, only proportionate income has been recognized out of

land lease deposit received by the assessee taking into account the period of lease etc. It was also brought to the notice of the Assessing Officer that as per SEZ Act, sale of land is prohibited. Therefore, even assuming for a moment any lease transactions over a period of 12 years is treated as transfer, but the provisions of SEZ Act, 2005 override all other provisions of the Act including the Income-tax Act, 1961. The model followed by the assessee for reckoning of revenue should be accepted. The Assessing Officer, however was not convinced with the explanation furnished by the assessee and according to the Assessing Officer, the assessee received land lease deposit upfront. As per the terms of lease agreement between the appellant company and allottees, 85% land deposit is non-refundable and only 15% is refundable after the expiry of lease period. Further, in case the lease period is terminated for any violation referred in agreement with the parties, then the appellant can deduct 5% of lease deposit for every year the land held by the lessee in possession of the land subject to maximum of 85%. Since, the appellant has received land lease deposit and handed over the possession of the land upon entering into lease agreement with the allottees, the revenue towards lease deposit accrues to the assessee as and when the

assessee receives the amount. The Assessing Officer, had also took support from the case of M/s. SIPCOT, another State Government undertaking engaged in similar business, where the entire income received from allottees has been offered to tax. Therefore, the Assessing Officer opined that, from the agreement produced by the assessee, the lease period is for 90 years and such long term lease is treated as sale as per law. Therefore, rejected arguments of the assessee and made addition towards land lease deposit received by the assessee, after reducing income recognized by the assessee as per its books of accounts and made addition of Rs. 1,14,75,000/- and added back to the income. On appeal, the Id. CIT(A) for the reasons stated in their appellate order confirmed additions made by the Assessing Officer.

22.2 The Ld. Counsel for the assessee, submitted that the Id. CIT(A) erred in sustaining additions made by the Assessing Officer towards revenue recognition on land lease deposit received by the assessee, in terms of lease agreement entered into between various parties for allotment of certain land in SEZ, without appreciating fact that such allotments cannot be considered as transfer of land in terms of provisions of SEZ Act,

2005 and SEZ Rules, 2006. The Ld. Counsel for the assessee, referring to opinion from the Institute of Chartered Accountant of India, on the issue of revenue recognition on lease transaction submitted that the ICAI has considered the issue and held that, the model adopted by the assessee for recognizing revenue as per AS 19 is in accordance with law, going by the terms and conditions of the lease agreement and also provisions of the SEZ Act, 2005. The Ld. Counsel for the assessee, further submitted that the sole basis for the Assessing Officer to make additions towards land lease deposit is on the basis of C&AG audit objection. But, fact remains that going by the terms and conditions of lease agreement, the assessee collects upfront fees from the allottees and recognize the income over a period of 17 years considering the minimum holding period by the allottees. The Ld. Counsel for the assessee, further took us to various clauses of lease agreement and argued that in case of premature termination of lease agreement, the assessee is liable to refund land lease deposit, subject to deduction of 5% per year. From the above, it is very clear that, income does not accrue to the assessee when the land lease deposit is received. Therefore, on the basis of opinion given by the ICAI and also considering the SEZ Act,

which overrides the Income-tax Act, 1961 the appellant has recognized the revenue over the period of 17 years and thus, the Assessing Officer and CIT(A) are erred in making additions towards land lease deposit for the year in which said deposit has been received by the assessee.

22.3 The Id. DR, Shri. P. Sajit Kumar, JCIT, on the other hand supporting the order of the Id. CIT(A) submitted that, going by the terms and conditions of lease agreement between the appellant company and the allottees, it is undisputedly clear that the appellant company collects land lease deposit at the time of allotment of land and also fixes yearly lease rent, which is very minimal. Further, the appellant company had also collected development and maintenance charges separately. From the above, it is very clear that upfront deposit collected by the assessee is nothing but consideration received for transfer and possession of land to the allottees. The Id. DR, further referring to the provisions of section 269UA(f) of the Act submitted that, transfer in relation to immovable property means transfer of such property by way of sale or exchange or lease for a term of not less than 12 years and includes allowing of possession of such property to be taken or retained in part

performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882. In the present case, although SEZ Act, 2005 prohibits transfer of land, but because of giving possession to the allottees and also right in enjoyment of the property makes the transaction transfer within the meaning of section 269F of the Act. Since, the appellant has collected upfront deposit from the allottees and also retained 85% of deposit leaving 15% to be refundable, after expiry of lease period, the Assessing Officer has rightly assessed land lease deposit received by the appellant for the year on receipt and their order should be upheld.

22.4 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The appellant is in the business of promoting electronic industries in the state of Tamilnadu, has got allotment of land in terms of SEZ Act vide Government order No. 327 dated 26.05.2005. The appellant company in turn leased out said lands to various companies on long term lease as per the guidelines/directions of the State Government with an intention to promote electronic industry. The appellant company has allotted plots on long term lease basis for a period of 90/99

years in terms of lease deed between the assessee and allottees and has collected lease deposit. The appellant company had also collected lease rent which is minimum. As per the clause in the lease agreement, the appellant company receives the entire lease deposits upfront and out of which 15% of the lease deposits is refundable after the expiry of lease period. The balance 85% lease deposit is not refundable subject to certain conditions. Further, as per the terms of the lease agreement, the land lease deposit would be refundable after forfeiting 5% per year for the number of years the scheduled property was held by the assessee, subject to a minimum deduction of 15% and a maximum of 85%. The lock in period of the agreement is 3 years. In case any lease agreement is prematurely terminated then the appellant is required to refund lease deposit after deducting 5% per year for number of years the scheduled property was held by the lessee. From the terms and conditions of the lease agreement, it is undoubtedly clear that the assessee has allotted land on long term lease basis for a period of 90/99 years and also handed over the possession of the land to the allottees along with right, title and interest in the said property. Since, the lease period is over and above 12 years, as per provisions of Income-tax Act, 1961 it is nothing but a

transfer. Thus, land lease deposit received by the appellant should be considered as consideration for transfer of land. Therefore, in our considered view, when the appellant has received upfront land lease deposit on allotment, said land lease deposit partakes the nature of consideration for transfer of land and thus, the assessee ought to have recognized consideration received for allotment of land as income on accrual basis/receipt basis, as and when such amount was received on allotment of land, subject to the conditions prescribed in the lease agreement. In the present case, out of total land lease deposit received by the appellant from the allottees, 15% is refundable after expiry of lease period. Therefore, land lease deposit received by the appellant to the extent of 15% cannot be considered as income of the assessee. In so far as balance 85% of lease deposit, the appellant collects said lease deposit at the time of allotment of land and thus, the transaction between the appellant and allottees in terms of lease deed is nothing but a transfer of land as defined u/s. 269UA(f) of the Act and thus, the moment assessee allots land on lease basis and allow the possession of said property to be taken or retained in part performance of a contract of the nature referred to in section 53A of Transfer of Property Act, 1882, in our

considered view the assessee ought to have recognized the revenue in the year of receipt.

22.5 Having said so, let us come back to the arguments of the Id. Counsel for the assessee in terms of terms and conditions of agreement between the parties and also the provisions of SEZ, Act 2005 and SEZ Rules, 2006. There is no dispute with regard to the fact that the SEZ Act, 2005 prohibits sale of plots to allottees. But, fact remains that the Act does not prohibits the possession of the plots by the assessee. The allottees are in control of the property and enjoy the fruits of the same. Therefore, the moment the assessee allots land on lessee and allow possession of said land, in our considered view the provisions of section 2(47)(v) of the Act and the transfer referred to in section 53A of Transfer of Property Act, 1882 comes into play and thus, said transaction partakes the nature of transfer of immovable property and consideration received for transfer of said land should be recognized as revenue. Further, since the SEZ Act, 2005 prohibits sale of property, the assessee company transferred the property by giving possession of the same, which also amounts to transfer as per section 53A of Transfer of Property, 1882. In so far as,

arguments of the assessee that SEZ Act overrides the Income-tax Act, in our considered view a specific provision under SEZ Act, 2005 overrides all other provisions of The Income Tax act, 1961 and other Acts, which are contrary to provisions specified. In our considered view, the said Act only prohibits sale of plots to the allottees but does not prohibits possession of the plot to the allottees. The possession also comes under the definition of 'transfer' as per section 53A of Transfer of Property Act, 1882. In our considered view, when the appellant allots land on long term lease basis to the lessee, the conditions of transfer satisfies and any kind of consideration including the so called lease land deposit also partakes the nature of consideration which needs to be recognized as income in the year of receipt.

22.6 Coming back to another argument of the assessee. The Id. Counsel for the assessee referring to certain clauses of lease deed submitted that the Assessing Officer even taxed 15% refundable land lease deposit. We find that as per the terms of agreement between the assessee and allottees, 15% of land lease deposit is refundable after expiry of lease period. Therefore, deposit received by the appellant to the extent of 15% cannot be treated as consideration received for transfer of

property and further, said amount is refundable to the allottees after expiry of lease period. Therefore, in our considered view the Assessing Officer and CIT(A) are erred in taxing refundable land lease deposit even though the agreement between the parties clearly specifies 15% of land lease deposit is refundable. Thus, we direct the AO to exclude 15% refundable deposit from the ambit of income. As regards another argument of the Id. Counsel for the assessee in light of certain clauses of the agreement that in case of premature termination of lease agreement for any reasons, the appellant requires to refund land lease deposit after deducting 5% per year for the number of years the allottees was in possession of said land, we find that, it is not a straight case of termination of each and every transaction before expiry of lease period. The lease period is agreed for 90/99 years. Although, the lease deed provides for premature termination for violation of any of conditions prescribed there-under, but in our considered view in such unique case, the appellant can very well reverse the income recognized as and when said events takes place, but for said reason the revenue recognition cannot be postponed or reckoned proportionate over the period of lease agreement or

even for 17 years without any valid reason. Thus, we reject the arguments of the Id. Counsel for the assessee.

22.7 Coming back to the opinion issued by the ICAI. The appellant has sought a clarification from the ICAI for revenue recognition on lease deeds entered into between various allottees. The ICAI has given its opinion in light of definition of operating lease and finance lease. In our considered view, long term lease for 90/99 years is a separate category and neither can it be treated as operating lease nor finance lease. The report itself recognize the fact that the SEZ Act, 2005 prohibits the sale of land and thus, the legal position of the land is not accepted to be transferred during or at the end of the lease term. The report accepts only legal title of the land is not accepted to be transferred if the ownership is not entitled to be transferred. The lease transaction as on date is only operating lease. If it is so, where is the question of dividing the said lease into operating lease or finance lease. The opinion inheritably accepts that though legal title is not possible to be transferred, but the ownership by part performance in view of the possession of the property is not ruled out. Therefore, the opinion given by the ICAI in terms of AS 19 is only having a

persuasive value and not binding on the AO. The AO is at liberty to examine the transactions in light of provisions of the Act and decide the taxability. Therefore, in our considered view, support taken by the Ld. Counsel for the assessee from the opinion of ICAI does not come to the rescue of the assessee.

22.8 In this view of the matter and considering facts and circumstances of the case, we are of the considered view that land lease deposit received by the appellant for transfer of land along with title, right and interest for long term lease of 90/99 years to the extent of non-refundable deposit should be considered as income as and when the income accrues to the assessee. Since, the appellant has received upfront lease deposit, when the land has been leased out, in our considered view, the appellant ought to have recognized the income in the profit and loss account in the year of receipt. Since, the appellant has not recognized the income even though said income accrues to the appellant in the relevant assessment years, in our considered view, the AO has rightly taxed lease land deposit on accrual basis and thus, we are inclined to uphold the findings of the Id. CIT(A) and reject grounds taken by the assessee.

23. The next issue that came up for our consideration from ground no. 6 & 7 of assessee appeal is depreciation on land. This is a recurring issue. The Assessing Officer has made additions towards disallowance of depreciation on land for earlier assessment years. We have considered a similar issue for the assessment year 2006-07 in ITA No. 2432/Chny/2017 and after considering relevant facts, we held that the Assessing Officer is right in disallowing depreciation on cost of undivided interest in land. There is no provision under Income-tax Act to allow depreciation on land or properties. We further direct the Assessing Officer to consider the alternative arguments of the assessee that it has voluntarily reversed depreciation on land for the assessment year 2012-13 and offered to tax and in case the arguments of the assessee is correct, then we direct the Assessing Officer to sustain additions made towards disallowance of depreciation on land for relevant assessment years and exclude income offered by the assessee towards reversal of depreciation for the assessment year 2012-13. The reasons given by us in preceding paragraph no. 4 to 4.2 in ITA No. 2432/Chny/2017 for assessment year 2006-07 shall equally apply for this assessment year as well. Therefore, for similar

reasons, we are inclined to uphold the findings of the Id. CIT(A) and reject ground taken by the assessee.

24. The next issue that came up for our consideration from ground no. 8 of assessee appeal is re-computation of book profit u/s. 115JB of the Act by making additions towards depreciation on land. The Ld. Counsel for the assessee submitted that the Id. Assessing Officer is erred in re-computing book profit by making additions towards disallowance of depreciation on land component. The Id. DR, on the other hand supporting the order of the Id. CIT(A) submitted that there is no error in the findings of the Assessing Officer in re-computing book profit, because the assessee has made a wrong claim of depreciation and thus, the Assessing Officer can very well re-compute book profit by making adjustments towards depreciation.

24.1 We have heard both the parties and considered relevant reasons given by the Assessing Officer to re-compute book profit u/s. 115JB of the Act. The assessee has made excessive claim of depreciation in the books of accounts towards undivided land cost, even though there is no provision under

Income-tax Act, 1961 to allow depreciation on land. Since, the appellant has made a wrong claim, in our considered view disallowance of depreciation on land should be added back to the book profit computed u/s. 115JB of the Act. Therefore, we are of the considered view that there is no error in the reasons given by the CIT(A) to sustain additions made by the Assessing Officer towards depreciation to book profit computed u/s. 115JB of the Act. Thus, we are inclined to uphold the findings of the Id. CIT(A) and reject ground taken by the assessee.

25. The next issue that came up for our consideration from ground no. 2 & 3 of assessee appeal is disallowance u/s. 14A r.w.r. 8D of I.T. Rules, 1962 towards expenditure relatable to earning exempt income. The facts with regard to the impugned dispute are that the appellant has earned dividend income and claimed exemption u/s. 10(34) of the Act. The appellant has not debited any expenditure for earning exempt income. Therefore, the Assessing Officer invoked provisions of Rules 8D of I.T. Rules, 1962 and computed disallowance of Rs. 13,17,280/- @ 0.5% on average value of investment. On appeal, the Id. CIT(A) sustained additions made by the Assessing Officer.

25.1 The Ld. Counsel for the assessee, has made only one argument in light of the decision of ITAT Special Bench in the case of ACIT Vs. Vireet Investments Pvt. Ltd., in ITA No.502/Del/2012 & CO No.68/Del/2014, reported in 165 ITD 27 and submitted that for the purpose of computing disallowance under Rule 8D(2)(iii) of I.T. Rules, 1962 only those investment which yielded exempt income should be considered and for this purpose the matter may be set aside to the file of the Assessing Officer for verification.

25.2 The Id. DR, on the other hand fairly agreed that the matter may be examined by the Assessing Officer in light of arguments of the assessee and decide the issue in accordance with law.

25.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with regard to the legal position as per the decision of various courts including the decision of ITAT, Special Bench in the case of ACIT vs Vireet Investments Pvt Ltd (Supra), where the Tribunal held that for the purpose of computing disallowance under Rule 8D(2)(iii) of I.T. Rules,

1962 only those investments which yielded exempt income for the year needs to be considered. It is the argument of the Ld. Counsel for the assessee that while computing disallowance under Rule 8D(2)(iii) of I.T. Rules, 1962, the Assessing Officer has taken all investments including investment which did not yield exempt income. The matter needs re-look from the Assessing Officer. Therefore, we are of the considered view that the issue needs to go back to the file of the Assessing Officer and thus, we set aside the order of the Id. CIT(A) on this issue and set aside the issue to the file of the Assessing Officer and direct the Assessing Officer to reconsider the issue in light of our discussion given herein above and consider only those investments which yielded exempt income for the relevant assessment year for computing disallowance under Rule 8D(2)(iii) of I.T. Rules, 1962.

26. In the result, appeal filed by the assessee in ITA No. 2435/Chny/2017 for assessment year 2011-12 is partly allowed for statistical purposes.

ITA NO: 2436/Chny/2017 for assessment year 2012-13:

27. The assessee has raised the following grounds of appeal:

"1. The order of The Commissioner of Income Tax (Appeals) 9, Chennai dated 23.06.2017 in I.T.A.No.102/CIT(A)-9/2015-16 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in sustaining the notional disallowance of expenses based on the provisions of section 14A of the Act read with Rule 80 of the Income Tax Rules, 1962 in the computation of taxable total income without assigning proper reasons and justification.

3. The CIT (Appeals) failed to appreciate that the legal issues brought out for the consideration in the proceedings before him in writing were completely overlooked and brushed aside, thereby vitiating the findings from para 13.3 of the impugned order.

4. The CIT (Appeals) erred in confirming the revenue recognition attempted by the Assessing Officer for the purpose of making addition relating to long term land lease for which deposits were received by the appellant from para 12.2.4 to 12.2.6 read with para 13.2 without assigning proper reasons and justification.

5. The CIT (Appeals) failed to appreciate that the reasons given for equating perpetual/long lease as sale were wholly unjustified and ought to have appreciated that the legal issues canvassed in this regard were completely overlooked in the process of confirming an addition of Rs.14,88,58,800/-.

6. The CIT (Appeals) erred in confirming the addition of notional expenses quantified as per Rule 8D of the Income Tax Rules, 1962 for disallowance u/s 14A of the Act in the book profit computation for the reasons stated in para 13.4 of the impugned order without assigning proper reasons and justification.

7. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.

8. The Appellant craves leave to file additional grounds/arguments at the time of hearing."

28. The first issue that came up for our consideration from ground no. 4 & 5 of assessee appeal is addition towards

revenue recognition on land lease deposit received for allotment of land on long term lease for 90/99 years. An identical issue has been considered by us in ITA No. 2434/Chny/2017 for assessment year 2011-12. The facts are identical for the impugned assessment year under consideration. The reasons given by us in preceding paragraph no. 22 to 22.8 in ITA No. 2434/Chny/2017 for assessment year 2011-12, shall *mutatis mutandis* apply to this appeal as well. Therefore, for similar reasons, we are inclined to uphold the findings of the Id. CIT(A) and reject ground taken by the assessee.

29. The next issue that came up for our consideration from ground no. 6 of assessee appeal is re-computation of book profit u/s. 115JB of the Act towards disallowance of depreciation on land. A similar issue has been considered by us in appellant's own case for assessment year 2011-12 in ITA No. 2434/Chny/2017. The reasons given by us in preceding paragraph no. 24 & 24.1 shall *mutatis mutandis* apply to this appeal as well. Therefore, for similar reasons, we are inclined to uphold the findings of the Id. CIT(A) and reject ground taken by the assessee.

30. The next issue that came up for our consideration from ground no. 2 & 3 of assessee appeal is disallowance u/s. 14A r.w.r. 8D of I.T. Rules, 1962 towards expenditure relatable to earning exempt income. An identical issue has been considered by us in appellant's own case for assessment year 2011-12. The facts are identical for this assessment year as well. The reasons given by us in preceding paragraph no. 25 to 25.3 in ITA No. 2434/Chny/2017 for assessment year 2011-12 shall equally apply for this appeal as well. Therefore, for similar reasons we set aside the issue to the file of the Assessing Officer and direct the Assessing Officer to reconsider the issue in light of our discussions given in ITA No. 2434/Chny/2017 for assessment year 2011-12 and decide the issue for the impugned assessment year in accordance with law.

31. In the result, appeal filed by the assessee for assessment year 2012-13 is partly allowed for statistical purposes.

ITA No: 2437/Chny/2017 for assessment year 2013-14:

32. The assessee has raised the following grounds of appeal:

"1. The order of The Commissioner of Income Tax (Appeals) 9, Chennai dated 26.07.2017 in I.T.A.No.80/CIT(A)-9/2016-17 for

the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in partly sustaining the notional disallowance of expenses based on the provisions of section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 in the computation of taxable total income without assigning proper reasons and justification.

3. The CIT (Appeals) failed to appreciate that the legal issues brought out for the consideration in the proceedings before him in writing were completely overlooked and brushed aside, thereby vitiating the findings from para 14 of the impugned order.

4. The CIT (Appeals) erred in confirming the revenue recognition attempted by the Assessing Officer for the purpose of making addition relating to long term land lease for which deposits were received by the appellant from para 10 to 12 without assigning proper reasons and justification.

5. The CIT (Appeals) failed to appreciate that the reasons given for equating perpetual/long lease as sale were wholly unjustified and ought to have appreciated that the legal issues canvassed in this regard were completely overlooked in the process of confirming an addition of Rs.6,37,70,000/-

6. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.

7. The Appellant craves leave to file additional grounds/arguments at the time of hearing."

33. The first issue that came up for our consideration from ground no. 4 & 5 of assessee appeal is addition towards revenue recognition on land lease deposit received for allotment of land on long term lease for 90/99 years. An identical issue has been considered by us in ITA No. 2434/Chny/2017 for assessment year 2011-12. The facts are identical for the impugned assessment year under consideration. The reasons

given by us in preceding paragraph no. 22 to 22.8 in ITA No. 2434/Chny/2017 for assessment year 2011-12, shall *mutatis mutandis* apply to this appeal as well. Therefore, for similar reasons, we are inclined to uphold the findings of the Id. CIT(A) and reject ground taken by the assessee.

34. The second issue that came up for our consideration from ground no. 2 & 3 of assessee appeal is disallowance u/s. 14A r.w.r. 8D of I.T. Rules, 1962 towards expenditure relatable to earning exempt income. An identical issue has been considered by us in appellant's own case for assessment year 2011-12. The facts are identical for this assessment year as well. The reasons given by us in preceding paragraph no. 25 to 25.3 in ITA No. 2434/Chny/2017 for assessment year 2011-12 shall equally apply for this appeal as well. Therefore, for similar reasons we set aside the issue to the file of the Assessing Officer and direct the Assessing Officer to reconsider the issue in light of our discussions given in ITA No. 2434/Chny/2017 for assessment year 2011-12 and decide the issue for the impugned assessment year in accordance with law.

35. In the result, appeal filed by the assessee for assessment year 2013-14 is partly allowed for statistical purposes.

36. To summarize, appeals filed by the assessee in ITA No. 2431 & 2434/Chny/2017 for assessment years 2006-07 & 2008-09 are dismissed, ITA No. 2432/Chny/2017 for assessment year 2006-07 is partly allowed and ITA Nos:2433, 2435, 2436 & 2437/Chny/2017 for assessment years 2007-08, 2011-12, 2012-13 & 2013-14 are partly allowed for statistical purposes.

Order pronounced in the court on 21st February, 2024 at Chennai.

Sd/-

(मनोमोहनदास)

(MANOMOHAN DAS)

न्यायिकसदस्य/Judicial Member

Sd/-

(मंजुनाथा. जी)

(MANJUNATHA. G)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 21st February, 2024

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त/CIT |
| 4. विभागीयप्रतिनिधि/DR | 5. गार्डफाईल/GF | |