

आयकर अपीलीय अधिकरण “E” न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री जी. मंजुनाथ लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI G MANJUNATHA, AM

आयकर अपील सं./ ITA No. 2416/Mum/2011

(निर्धारण वर्ष / Assessment Year 2003-04)

आयकर अपील सं./ ITA No. 637/Mum/2013

(निर्धारण वर्ष / Assessment Year 2004-05)

आयकर अपील सं./ ITA No. 2417/Mum/2011

(निर्धारण वर्ष / Assessment Year 2004-05)

आयकर अपील सं./ ITA No. 2418/Mum/2011

(निर्धारण वर्ष / Assessment Year 2005-06)

Tata Motors Limited (Successor to Tata Finance Limited) Bombay House, 24, Homi Mody Street, Hutatma Chowk, Mumbai-400 001	Vs.	The Asst. commissioner of Income Tax (OSD), 2(1), Mumbai
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAAC2727Q		

आयकर अपील सं./ ITA No. 2737/Mum/2011

(निर्धारण वर्ष / Assessment Year 2003-04)

आयकर अपील सं./ ITA No. 2738/Mum/2011

(निर्धारण वर्ष / Assessment Year 2004-05)

आयकर अपील सं./ ITA No. 2739/Mum/2011

(निर्धारण वर्ष / Assessment Year 2005-06)

Dy. Commissioner of Income Tax-2(3), R.No. 555, Aayakar Bhavan, Mumbai	Vs.	Tata Motors Limited (Successor to Tata Finance Limited) Bombay House, 24, Homi Mody Street, Hutatma
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		Chowk, Mumbai-400 001
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Ms. Arati Vissanji & Shri Hari Iyer, AR
प्रत्यर्थी की ओर से / Respondent by	:	S/Shri R Manjunatha Swamy & Manoj Kumar Singh, DRs

सुनवाई की तारीख / Date of hearing:	17-12-2018
घोषणा की तारीख / Date of pronouncement :	19-12-2018

आदेश / ORDER

PER BENCH:

These cross appeals are arising out of the orders of Commissioner of Income Tax (Appeals)-6, Mumbai [in short CIT(A)], in appeals No. CIT(A)-6/IT-59/2009-10, CIT(A)-6/IT-60/2009-10, CIT(A)-6/IT-138/2009-10, CIT(A)-6/IT-24/2011-12 dated 18.01.2011, 20.11.2012. The Assessments were framed by the Asst. Commissioner of Income Tax (OSD) Circle-2(1), Mumbai (in short 'ACIT'/ AO) for the A.Y. 2003-04, 2004-05, 2005-06 vide order dated 29.03.2006, 29.12.2007 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The first common issue in these appeals of assessee for AY 2003-04, 2004-05 and 2005-06 in ITAs No. 2416,2417&2418/Mum/2011 is as regards to the orders of CIT(A) confirming the action of the AO in disallowing securitization expenses. For this assessee in all the three years filed identical worded grounds and facts are exactly identical. The relevant issue raised by assessee in AY 2003-04 in ITA No. 2416/Mum/2011 reads as under: -



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"1. The Learned CIT(A) has erred in law and on facts in confirming the disallowance of estimated future servicing expenses of Rs 97,25,864 and estimated delinquencies of Rs. 1,94,51,729 pertaining to income realised on assignment of future receivables under hire purchase contracts.

The Learned CIT(A) ought to have appreciated that as per accrual principles of mercantile accounting, all expenses related to income accrued have to be provided for and constitute an admissible expenditure."

3. At the outset, the learned counsel for the assessee stated that she has instructions from the assessee not to press this issue and hence, this issue is withdrawn. As the learned Counsel for the assessee, under the instructions of the assessee has not pressed this issue the same is dismissed as withdrawn.

4. The next common issue in these three appeals of assessee for AYs 2003-04 to 2005-06 in ITAs No. 2416,2417&2418/Mum/2011 is as regards to the order of CIT(A) dismissing the ground relating to allowance of interest under section 244A of the Act as not applicable. The assessee, in all these three years, have raised identical worded grounds and facts are also exactly identical. The relevant ground raised in AY 2003-04 in ITA No. 2416/Mum/2011 reads as under: -

"2. The Learned CIT(A) has erred in law and on facts in dismissing the ground relating to interest u/s 244A as not appealable. The Learned CIT(A) ought to have given directions to the assessing officer to compute interest u/s 244A as per the provisions of law."



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5. At the outset, the learned Counsel for the assessee drew our attention to the co-ordinate bench of ITAT Pune decision in the case of Sandvik Asia Limited vs. CIT in ITA No 1420/PN/2005 for AY 1997-98 vide order dated 21.10.2015, wherein Tribunal after considering the decisions of Hon'ble Bombay High court in the case of Caltex Oil Refining (India) Limited vs. CIT [1993] 202 ITR 375 (Bombay) and Phaltan Sugar Works Ltd. vs. CIT 1995] 216 ITR 479 (Bombay), held that the allowance of interest under section 244A of the Act claimed by the assessee is appealable order and directed the CIT(A) to decide the resultant payment of interest under section 244A of the Act by observing in para 7 and 8 as under: -

"7. In the recent decision, the Hon'ble Calcutta High Court in the case of CIT Vs. Biswanath Pasari reported as 364 ITR 404 (Cal) has held that the appeal is maintainable against an order refusing to grant interest u/s. 244 (IA) of the Act. The relevant extract of the findings of the Hon'ble High Court are as under:

9. Aggrieved by the order omitting to grant interest the assessee preferred an appeal which was dismissed by an order dated 29th March, 1996 by the CIT [Appeal] holding that:

an appeal for claiming interest u/s. 244[1A] of the Act is not entertainable in a case where the order giving the appeal effect itself is not being challenged on any ground. However, it is noted that the refund has not arisen as a result of giving of appeal effect. The refund results because of



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adjustment of certain earlier refunds in earlier years. In such circumstances, in my opinion, the ground of appeal is not acceptable.

11. We are unable to see how can it be said that the appeal preferred by the assessee which was dismissed by the order dated 29th March, 1996 was not an appeal against an order passed under section 143(3) of the Act. The Assessing Officer could not have exercised jurisdiction except under section 143(3) of the Act. Reference in this regard may be made to the judgment in the case of Kooka Sidhwa & Co. vs CIT reported in [1964] 54 ITR 54 (Cal), wherein the following view was taken (page 62):

In my judgment, the forms of the orders passed under section 23(3) of the Income-tax Act, 1922, are not exhaustive. The effect or substance of the order should be looked into to decide whether an appeal lies. The order passed by the Income-tax Officer revising the assessment, made originally under the direction of the Appellate Tribunal, would partake the character of a fresh assessment order and would be no less an order as made under section 23(3) of the Act within the ordinary acceptance of the term from which an appeal would lie to



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the Appellate Assistant Commissioner.

A right of appeal is a creature of the statute conferred on the assessee by section 30(l) of the Act. The said right, which is substantive, cannot be taken away unless it is expressly provided.

12. The order passed by the CIT [Appeal] had virtually set aside the earlier order of assessment. Therefore, a fresh assessment was required to be made which the Assessing Officer did and directed refund but omitted to pass an order directing payment of interest. Therefore, it was an order passed under section 143[3] of the Act. It cannot be disputed that an appeal against an order passed under section 143[3] is permissible. It is altogether a different matter that the entitlement to interest arises out of section 244[1A] of the Act. A Civil Court may pass or refuse to pass an order for payment of pendente lite interest under section 34 of the Code of Civil Procedure. But it cannot be contended that the decree is one passed under section 34 of the Code of Civil Procedure. We are as such of the opinion that the learned CIT fell into a grievous error in proceeding on the basis that it was an appeal against an order refusing to grant interest under section 244 [1A] of the Act. The appeal was an appeal against the order of assessment under section 143[3] of the Act in



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which the Assessing Officer omitted to grant interest which he should have done under section 244[1A] of the Act. Therefore, the question which has been posed on behalf of the Revenue does not, in our opinion, arise in the facts and circumstances of the case.

13. In any event, the views taken by the Madras High Court and the Bombay High Court are, according to us, logical and reasonable. In the case of CIT vs. T. V. Sundaram Iyengar & Sons Ltd., the Madras High Court answered the question as follows page 534 of 236 ITR):

Therefore, we are of the view that the interest on the refund is really a part of the refund and interest and refund are not two different things. When the Income-tax Officer has passed the order under section 154 of the Act without granting interest due to the assessee under section 244[1A] of the Act, he has reduced the refund due to the assessee. We are not able to accept the view of the Karnataka High Court that clause [f] of sub-section [1] of section 246 should be limited only to the case where the refund was granted earlier but was reduced by an order passed under section 154 of the Act. Since we are of the view that the interest forms part of the refund and



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where the interest is not granted in an order passed under section 154 of the Act, the order in substance and effect meant that the Income-tax Officer has passed an order under section 154 of the Act reducing the refund. The decision of the Madhya Pradesh High Court also proceeds on the basis that an order not granting refund is referable to section 237 of the Act and since the interest forms part of the refund the order refusing to grant interest is relatable to section 237 of the Act and it is appealable. Thirdly, where there is a total denial by the Revenue to grant interest on the refund due, on the basis of the decision of the Andhra Pradesh High Court, an appeal provisions should be construed in a reasonable manner and viewed in any manner, we are of the view that the order of the Income-tax Officer refusing to grant interest due to the assessee is an appealable order under section 246 of the Act.

14. We are in agreement with the views of the Madras High Court which also took into consideration the judgment of the Bombay High Court.

8. Thus, in the light of the judgments discussed above, it is held that the order resulting in payment



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of interest u/s 244A of the Act is appealable. We are of the considered view that the Commissioner of Income Tax (Appeals) has erred in not adjudicating the appeal of the assessee on merits. We deem it appropriate to remit the file back to the Commissioner of Income Tax (Appeals) with a direction to decide the issues raised by the assessee in first appeal on merits, in accordance with law."

6. When this was pointed to the learned CIT DR, he could not controvert the above co-ordinate Bench decision. As the issue has already been adjudicated by the co-ordinate Bench in the case of Sandvik Asia Limited (supra) and held that non granting of interest under section 244A of the Act is appealable. Hence, we direct the AO to compute the interest applicable to assessee under section 244A of the Act as per the Provisions of the Act. We direct the AO accordingly. Similarly, we decide this issue in all the three years and the direct the AO accordingly for three years.

7. The next common issue in these three appeals of Revenue for AYs 2003-04, 2004-05 and 2005-06 in ITAs No. 2737,2738 & 2739/Mum/2011 is as regards to the order of CIT(A) deleting the disallowance of interest expenditure on advances. According to AO, the advances were made in contravention of RBI directions. For this Revenue has raised identical worded grounds in all these three years and the relevant grounds raised in AY 2003-04 in ITA NO. 2737/Mum/2011 reads as under: -

"2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of expenditure of 12% of advances as it was incurred on advances made in contravention of RBI directions."



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8. The AO during the assessment proceedings noted that in Schedule-18 of the significant accounting policies and note to accounts, filed with accounts of AY 2002-03, it is mentioned that assessee company has not complied with the NBFC Prudential Norms (Reserve Bank) Directions 1998 & NBFC Acceptance of Public Deposits (Reserve Bank) Directions, 1998. The loan on account of which this observation was made pertains to advances made by the assessee to Nishkalp Investments & Trading Co. Ltd. The said loan continues in the previous year under consideration also as mentioned in Clause (8) of significant accounting policies and notices to accounts for the previous year under consideration. The assessee replied but the AO was not convinced and he noted that there is contravention of RBI norms in as much as the assessee has invested / lend more than 25% of common funds to single party namely Niskalp Investment & Trading Co. Ltd. i.e. subsidiary of the assessee company. Accordingly, he disallowed a sum of Rs. 31,09,37,226/-. Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) after considering the submissions of the assessee allowed the claim of assessee by observing in Para 4.3 as under: -

“4.3 I have considered the facts of the issue and the written submissions made by the AR and find merit in them. The AO has merely disallowed the interest by holding that the payment of interest was in contravention of law. It is clear that the payment made on the loans borrowed by the appellant company is not in contravention of any legal provision. Only the appellant had lent more than 25% of own funds to a single party (Niskalp Investment & Trading Co. Ltd-a subsidiary company) in contravention of the RBI norms. There is merit in the AR's contention that firstly the



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payment of interest is deductible under section 36(1) and not under section 37(1) and that even under section 37, the said payment is not of the nature contemplated by the legislature while enacting the explanation to sec. 37(1) as the said payment does not represent any protection money, extortion, hafta, bribery, etc. Hence, it will not be appropriate to call the said payment having been made in contravention of law. There is merit in the AR's contention that the RBI directions are not law and that by not imposing any fine on the appellant, the RBI has effectively condoned the breach of its norms. In view of the above discussion, the disallowance made by the AO is deleted and this ground is allowed."

Aggrieved, now Revenue is in appeal before us.

9. At the outset, the learned Counsel for the assessee filed copy of Tribunals in assessee's own case for AY 2001-02 in ITA No. 1721/Mum/2012 & 4095/Mum/2013 vide order dated 21.08.2018, wherein Tribunal exactly identical facts has allowed the claim of the assessee rejecting the grounds taken by the Revenue vide Para 33 as under: -

"33. We have heard both the parties and perused the material on record. The facts with regard to the impugned dispute are that the assessee being an NBFC, given loans and advances of more than 25% of its own funds to a single entity, M/s Nischal Investment & Trading Company, a subsidiary company, in contravention of Regulation 12 of NBFCs Prudential Norms (Reserve Bank) Acceptance of Public Deposit Rules. The AO made



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disallowance of interest @12% on total loans and advances given to a subsidiary company on the ground that the assessee has contravened provisions of RBI guidelines and any expenditure incurred on such loans and advances is in the nature of expenditure incurred for any purpose which is an offence or which is prohibited by law and hence, not allowable as deduction. The AO made disallowance of Rs.57,79,00,000 being interest @12% p.a. on the amount of Rs.48,159.54 crores of loans and advances given to subsidiary company. The AO has calculated notional interest on said loans and advances and disallowed u/s 37(1) of the Act. It is not a case of AO that the assessee has paid any fine or penalty for contravention of RBI guidelines issued to NBFCs for not following prudential norms. The AO also not brought out any facts with regard to the violation of any law and the RBI has passed any order imposing penalty or fine on the assessee. The AO has taken a clue from the Notes to Accounts given by the assessee in its financial statements, which states that the assessee has given loans and advances to a single entity in contravention of RBI guidelines issued to NBFCs. Except this, nothing has been brought on record to indicate that the assessee has incurred an expenditure of Rs.57.79 crores in contravention of RBI guidelines which comes within the ambit of Proviso to section 37(1) of the Act. The AO has not brought any materials against the assessee to prove that the RBI has passed any orders imposing fine or penalty. On the other hand, the assessee has filed enough evidence before the AO to prove that the



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guidelines issued by the RBI is only advisory in nature and any contravention of such guidelines can be cured by making an application before RBI for condonation of such violations using its powers. Therefore, we are of the considered view that disallowing notional interest on borrowings for the simple reason that the assessee has violated directives issued by RBI without any contrary materials to prove that the assessee has incurred such expenditure for contravention of the provisions of the Act is incorrect. Therefore, we are of the considered view that the AO was erred in disallowing interest expenditure of Rs.57.79 crores u/s 37(1) of the Act. The Ld.CIT(A), after considering relevant submissions, has rightly deleted addition made by the AO. We do not find any error in the order of Ld.CIT(A). Hence, we are inclined to uphold the finding of Ld.CIT(A) and reject ground taken by the revenue.

33. In the result, appeals filed by the assessee are partly allowed, for statistical purpose and the appeals filed by the revenue are partly allowed. "

10. When this was pointed out to the learned CIT DR, he could not controvert the findings of Tribunal in assessee's own case for earlier assessment year as reproduced above. As the issue is squarely covered, respectfully following the Tribunal findings in earlier year, as there is no change in the facts, we confirm the order of CIT(A) deleting the addition. Similarly, we decide this issue in all the three assessment years and the direct the AO accordingly for three assessment years.



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11. The next common issue in these three appeals of Revenue for AYs 2003-04 to 2005-06 in ITAs No. 2737,2738 & 2739/Mum/2011 is as regards to the order of CIT(A) allowing securitization expenses. For this Revenue has raised identical worded grounds in all three years and the grounds has raised in AY 2003-04 in ITA NO. 2737/Mum/2011 reads as under: -

"3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the securitization expenses, ignoring the fact that these were mere provisions and not actual expenditure."

12. At the outset, it is to be stated that the CIT(A) has not allowed securitization expenses hence this ground is misconceived and need no adjudication in the Revenue's appeal. The appeal filed by Revenue is without applying mind on this ground and hence, we dismiss this ground. The appeal of Revenue is dismissed. Similarly, we decide this issue in all the three assessment years.

13. The next issue in ITA No. 2417/Mum/2011 for AY 2004-05 is as regards to the order of CIT(A) confirming the action of the AO in disallowing expenses relatable to exempt income by invoking the provisions of section 14A of the Act.

14. At the outset, the learned Counsel for the assessee stated that these ground raised by assessee has become infructuous because the CIT(A) has set aside this issue to the file of the AO and AO reframed the set aside assessment and CIT(A) has restricted the disallowance at Rs. 5,59,180/-, which is raised in ITA No. 637/Mum/2013. As this ground has become infructuous, this issue of assessee's appeal is dismissed.

15. The next issue in ITA No. 2738/Mum/2011 for AY 2004-05 in Revenue's appeal is as regards to the order of CIT(A) deleting the



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addition made by AO on account of club fee. For this Revenue has raised the grounds in AY 2004-05 and 2005-06, which is common in both the years. The grounds raised are identically worded and facts are exactly identical. The relevant grounds raised by Revenue in AY 2004-05 i.e. ground No.3 reads as under: -

“3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition on account of club fees, ignoring the fact that the assessee had failed to prove the nexus of these expenses to the business.”

16. The AO during the course of assessment proceedings notice that the assessee has debited a sum of Rs. 8,08,664/- towards club entrance fee and subscription fee. According to assessee these expenses are incurred by the company in respect of corporate membership held by the company in its own name, depending on business under certain executives have been nominated by the Member of the of the company. The AO disallowed the same and CIT(A) deleted the same by observing in Para 9.5 as under: -

“9.5 I have considered the facts of the issue and the written submission made by the AR and find merit in them. The AR has exhaustively brought out the legal position including the decision of the ITAT Mumbai in the case of DCIT vs. M/S Bank of America Securities (India) Pvt. Ltd. [2020-TIOL-630-ITAT-Mum] in which the various High Court decisions in the matter including the jurisdictional High Court judgement in the case of Otis Elevators Co. (India) Ltd. have been considered before giving a finding that admission/ entrance fee paid towards corporate membership of the club is an expenditure



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incurred wholly and exclusively for the purpose of business and not towards capital account. Hence, in view of the legal position brought out by the AR, the said expenditure is held as allowable revenue expenditure and this ground is allowed."

Aggrieved, now Revenue came in appeal before Tribunal

17. At the outset, the learned Counsel for the assessee stated that this issue is covered in assessee's own case for AY 1996-97 in the case of Tata Engineering & Locomotive Co. Ltd. vs. JCIT in ITA No. 1015/Mum/2001 vide order dated 31.07.2007, wherein by para 10, the Tribunal has deleted the addition and the same reads as under: -

"10. The next dispute in the assessee's appeal relates to the disallowance under section 40A(9) in respect of payment of Tata Sports Club, Telco Recreation Club, Telco Club. Etc. IN support of his contention, the learned Counsel for the assessee relied on the following decisions:

(i) ITA No 7061/M/98 dated 19.4.2006 for AY 1994-95.

(ii) ITA No 5449/M/98 dated 2.3.2006 for AY 1993-94.

(iii) ITA No 1668/Bom/92 dated 26.6.2006 for AY 1985-86

(iv) ITA No 1787/Bom/95 dated 26.06.2006 for AY 1989-90.

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*Following the orders of the tribunal, the claim
of the assessee is accepted and the
disallowance is deleted."*

18. When this was confronted to the learned CIT DR, he could not controvert the above decision of Tribunal. As the issue is squarely covered in favour of assessee in assessee's own case for the AY 1996-97 respectfully following the same, we confirmed the order of CIT(A) deleting the addition.

19. The next common issue in assessee's appeal in ITAs No. 2418/Mum/2011 for AY 2005-06 and 637/Mum/2011 for AY 2004-05 is as regards to the disallowance of expenses in regard to exempt income under section 14A of the Act. The facts and circumstances are exactly identical in both the years and hence, we will take the ground from AY 2005-06. The relevant ground no.1 reads as under: -

"The learned commissioner of Income-tax (Appeals) [CIT(A)] has erred in law and on facts in concluding that section 14A is applicable without verification of facts of the Appellant and directing the assessing officer to recompute the disallowance disregarding the fact that no expenditure had been incurred in relation to exempt income.

The CIT(A) ought to have deleted the disallowance based on the facts of the case of the appellant."



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20. Briefly stated facts are that the AO disallowed the expenses relatable to exempt income under section 14A of the Act at Rs. 2,08,17,440/-, out of which 2,05,27,000/- was pertaining to interest expenses and Rs. 2,90,440/- being for administrative expenses. The AO vide Para 5.10 and 511 disallowed as under: -

“5.10 Consistent with the department stand on this issue as also applied to assessee’s own case in earlier assessment years, the proportionate interest as worked out in the “without prejudice statement” filed by the assessee amounting to ₹ 2,05,27,000/- is held to be the expense disallowable under section 14A, being the expense incurred by the assessee for earning the exempted dividend income.

5.11 Further to the above, as held in the earlier assessment years in the assessee’s own case, a certain amount of disallowance towards expenses (other than interest) such as salary, travelling, conveyance, telephone office maintenance etc. is certainly allocate for earning to the tax free income. With the same set of circumstances prevailing in this year also, I consider that an amount of 2,90,440/- being 2% of dividend income of Rs. 1,45,21,992/- earned as attributable to earning the dividend income (apart from interest) and accordingly disallow the same under section 14A.”



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Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) confirmed the same. Aggrieved, now assessee is in second appeal before Tribunal.

21. Before us, the learned Counsel for the assessee first of all took us through the AO's order at page 9 wherein the details of own funds plus reserves are to the tune of Rs. 35,987.69 lakhs were available as against the investment in equity shares are to the tune of Rs. 3,501.05 lakhs. Accordingly, the learned Counsel for the assessee stated that there is no nexus established by AO that interest bearing borrowed funds have been invested in the investment of equity shares. In the absence of the same the learned Counsel stated that the presumption will be in favour of assessee that the assessee is having own funds more than the investment from own funds and that investment will be from own funds. In view of the above decision for Hon'ble Bombay High Court in the case of CIT v. Reliance Utilities & Power Ltd. [2009] 313 ITR 340 (Bom) and CIT vs. HDFC Bank Ltd. (2014) 366 ITR 505 (Bom), the presumption is in favour of assessee. The learned Counsel for the assessee also stated that the tribunal has consistently restricted the disallowance at 1% of the exempt income. She stated that in assessee's case exempt income to the tune of Rs. 1,45,21,992/- and the AO has disallowed 2% of the dividend income which comes to Rs. 2,90,440/- apart from the above interest. When these things are put to the learned CIT DR, he fairly agreed that 2% dividend income can be considered for disallowance.

22. After going through the facts and circumstances of the case, we are of the view that assessee has its own funds available in the shape of share capital plus reserves at Rs. 35897.69 lakhs as against the investment in equity shares at Rs. 3501.05 lakhs, which is much below the own funds. Once this is the position, respectfully following the Hon'ble Bombay High court decision in the case of HDFC Bank Ltd. (Supra), we



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delete the addition made by AO of interest expenses but sustained the disallowance at the rate of 2% of dividend income estimated by AO at Rs. 2,90,440/-. We allow this issue of assessee's appeal partly.

23. Similar are the facts in AY 2004-05 in that year also we direct the AO to restrict the disallowance at 2% of the exempt income.

24. In the result, the appeals of the assessee in ITAs No 2416, 2417, 2418/Mum/2011 & 637/Mum/2013 are partly allowed & in Revenue's appeal in ITAs No 2737, 2738 & 2739/Mum/2011 are dismissed.

Order pronounced in the open court on 19-12-2018.

Sd/-

(जी. मंजुनाथ / G MANJUNATHA)
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)
(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 19-12-2018

सुदीप सरकार, व. निजी सचिव / Sudip Sarkar, Sr.PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai