IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI SANDEEP GOSAIN, JM

ITA Nos. 2967 to 2971/Mum/2016
(Assessment Years : 2006-07 to 2010-11)

Universal Medicare Pvt. Ltd. Capsulation Premises, Sion Trombay Road, Deonar, Mumbai-400 088	Vs.	Dy. CIT, Central Circle-3(2), Room No. 1923, 19th Floor, Air India Building, Nariman Point, Mumbai-400 021
PAN/GIR No. AAACU 0717 B		
(**Appellant**)	:	(**Respondent**)

Appellant by	:	Shri J. D. Mistry & Shri Madhur Aggarwal
Respondent by	:	Smt. S. Padmaja

Date of Hearing	:	11.09.2018
Date of Pronouncement	:	05.12.2018

O R D E R

Per Bench:

These are appeals by the assessee against the respective orders of the learned Commissioner of Income Tax (Appeals), Mumbai ('ld.CIT(A) for short), pertaining to the concerned assessment years.

2. Since the issues are common and connected and the appeals were heard together these are being consolidated and disposed of for the sake of convenience.

3. One common issue raised in all these appeals is for the proposition that whether the assessee can claim or raise additional grounds in assessment done u/s.153A of the Income Tax Act, 1961 (the Act for short), when the said grounds were not raised in the original assessment passed u/s.143 of the Act.

4. In this regard we note that the learned counsel of the assessee has placed reliance upon following case laws in support of the proposition that assessee is entitled to make such claim in assessment proceedings pursuant to notice u/s.153A of the act:

1. Dorf Ketal Chemicals (I) P. Ltd. vs. DCIT (ITA No. 3736/M/2012)(Mum-Trib).
2. M/s. Narendra Vegetable Products Pvt. Ltd. vs. ACIT (ITA No.118/Nag/2013)(Mum-Trib).
3. DCIT vs. Ms. Eversmile Construction Co. Pvt. Ltd. (ITA No. 4238/M/2010)(Mum-Trib).
4. Mr. Faisal Abbas v. DCT (ITA Nos. 3485&3487/M/2010)(Mum-Trib).
5. Mr. A. Srinivas Rama Raju vs. DCIT (ITA No.975/Hyd/2015)(Hyd-Trib).
6. M/s. KNR Constructions Ltd. v. DCIT (ITA 946/Hyd/2015)(Hyd-Trib).
7. ACIT vs. Shri V. N. Devadoss (ITA Nos.1219/Mds/2012)(Chennai-Trib).
8. Alok Textile Industries Ltd. vs. DCIT (ITA No.118 of 2003)(Bom.HC)

5. Per Contra learned departmental representative opposed this view and placed reliance upon following case laws:

1. DCIT vs. Eversmile Construction Co. (P) Ltd. 33 taxmann.com 657 (ITAT-Mum).
2. Jai Steel India Ltd. vs. ACIT 36 taxmann.com 523 (Raj); and
3. Charchit Agarwal vs. Asst.CIT 34 SOT 348 (ITAT-Del)

6. On careful consideration, we find that this issue has been elaborately dealt with by this tribunal in the case of *Dorf Ketal Chemicals (I) P. Ltd*. (supra). In the said case, the tribunal had held as under:

> 6. We have carefully considered the submission and perused the records. We find that ITAT Nagpur Bench in the case of Narendra Vegetables Products has elaborately con iderd the issue as to whether of fresh claim can be made u/s 153 A or not. The Tribunal had relied upon several Tribunal decisions and had also considered honourable Apex Court decision in the case of Sun Engineering and has also placed reliance upon honourable Supreme Court decision in the case of Shelly Products. We may gainfully referred to the finding of the Tribunal as under:
>
> "In the light of the above factual and legal discussion, we have heard both the sides at length. On careful examination of the grounds as raised before us(we have noted that basically two substantive issues have been raised before us. The first one is that the Assessing Officer has rejected the claim of the assesses in respect of sales-tax subsidy on the pretext that the proceeding was - started under section 153A of J.T. Act, which was a "revenue beneficial" assessment, hence new claim of exemption could not be entertained and the assessee is not eligible to raise a fresh claim of exemption. The second one is that if a view is taken that even if an assessment is framed under section 153A/143(3) the assessee is to claim a statutory exemption, then under such circumstances whether the assessee is entitled for the said claim in respect of the sales-tax incentive received and duly credited in profit & loss account. Therefore, the first step is to examine whether

the impugned claim can be entertained and if it goes in favor of the assessee then the next step is to examine the eligibility of the claim.

5.1 As far as the basic facts are concerned, there is no dispute that an action under section 132(1) was taken in the group of cases and in consequence thereupon a statutory notice under section 153A(l)(a) was issued. In compliance of the said notice the assessee has intimated the Assessing Officer to consider its original return filed as if furnished in compliance of the notice under section 153A of L T. Act. It may not be out of place to mention that the assessee has filed the original, return of income under section 139 of I.T. Act declaring total income of Rs.22,30,259/-, The same was assessed as per the impugned assessment order now before us. For the year under consideration, the assessment was originally made under section 143(1) dated 7th February, 2004 (A.Y. 2003-04). At this juncture it is also worth to mention that in the case of the assessee for assessment year 2004-05 originally the assessment was made under section 143(3) dated 22.12.2006. The return for the said year was filed declaring an income of Rs. 44,48,790/- and the same was assessed by the Assessing Officer. In the past the assessee was claiming a deduction under section 801B(3)(ii) of the Act. In the paper book the assessee has also computed year wise sales-tax incentive availed by the assessee. For assessment year 2003-04 the assessee has received an incentive In respect of oil refinery of Rs.74,15,531/-. For assessment year 2004-05 the sales tax incentive in respect of oil refinery was at Rs.33 96,658/- and in respect of wind power it was Rs.23,00,000/- total Rs.56,96,658/- Likewise, in rest of the years, details in respect of the sales tax incentive was furnished. This is also not in dispute that in the respective years the assessee has credited the impugned amount of sales-tax incentive In the profit and loss account

6. In the light of the above facts, the basic question which was raised from the side of the Revenu Department was that in a situation when the assessee has suo moto declared the amount in the profit and loss account and the same was accepted by the Revenue Department as a part of the revenue receipt of the assessee for all involved, then how the assessee can now change its stand, specially when the reassessment was to be framed consequence upon the search operation.

6.1 On identical situation the IT AT, Mumbai Bench in the case of COT v/s. Ever smile Construction Co, P. Ltd. bearing ITA No. 4238/Muml2010 order dated 30-08-2011 has made an observation quota "A close look at the above provision manifests that the Assessing Officer is required to make assessment afresh and compute the 'total income[1] in respect of each of the relevant six assessment years. As there is no specific inhibition on the jurisdiction of the Assessing Officer in not including any new income to such fresh total income pursuant to search which was not added during the original assessment, in the like manner, there is no restriction on the assessee to claim any deduction which was not allowed in the original assessment. The requirement of section 153A is to compute the total income of each of such assessment years. Such determination of the total income has to be done afresh without any reference to what was done in the original assessment. Of course, the AO is entitled to make any addition in the fresh assessment, which he made in the original assessment, provided he is satisfied with the merits of the

addition. But mere fact that there was some addition in the original assessment, would not preclude the assessee from contesting the addition in the subsequent proceedings. As it is going to be a fresh exercise of framing assessment or reassessment of the total income at the end of the AO, the assessee cannot be stopped from not even arguing about the merits of his case qua the addition which was made assessment. Debarring the assessee from making a claim about the deductibility of any item, which was earlier disallowed, counters the very concept of fresh assessment of total income" unquote

6.2 It is correct that an assessment in the case of a search under section 153A is to be made on the total income of respective each six assessment years, immediately preceding the assessment year in which search is conducted. Sect/on 153A starts with a non-obstante clause and prescribes that notwithstanding anything contained in section 139, 148 etc., in the case of a person where a search is initiated then the Assessing Officer shall issue a notice requiring him to furnish the return of income in respect of six assessment years setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such returns were a return required to be furnished under section 139 of the Act. The Assessing Officer is also empowered either to assess or reassess the "total income" separately for six assessment years. This language of section 153A was duly analyzed by respected coordinate bench, Mumbai in the case of M/s Eversmife Construction Co. (Supra). We are also of the view that the intention of section 153A is clear that irrespective of the fact that original return could have filed by the assessee, but if a return is filed in compliance of a notice issued consequence upon the search, then the assessee is expected to furnish relevant details and also entitled to set forth such other particulars as may be presc ibed under the provisions of the Act. The section further states that such a return is to be treated as if a return required to be furnished under section 139 of LT. Act. Meaning thereby that the assessment proceedings under section 153A are required to be started with the filing of the return which was deemed to have filed under section 139 of the LT. Act. The statute has not provided any restriction or circumcised the proceedings under section 153A, but made it clear that the assessment is to be framed as it is framed generally under the normal provisions of the Act without imposing any fetters. If it is so then naturally an assessee has options, one is to file correct statement of income and if any information was left out earlier then the said omission or mistake could be rectified. Since as per the language of section 153A the process of assessment is started with the filing of the return, as it happens in the course of normal assessment, then the second option is also available to a tax payer to place any claim or information before the Assessing Officer during the course of such assessment proceedings. Therefore, even under section 153A the Assessing Officer is not supposed to stop the assessee from claiming a fresh rebate. There is no such indication under the provisions of section 153A through which it could be adjudged that the assessee was precluded from not claiming any fresh rebate. Rather the respected Mumbai Bench has opined that the assessee could not be stopped from claiming a fresh deduction, but even the assessee is also not stopped for arguing the matter on merits. In this cited decision a conclusion was drawn that

even any deduction is claimed by the assessee in the proceedings under section 153A, that could not be rejected simply on the ground that it was not claimed in the original assessment. The Tribunal has also opined as under:

> "If any deduction is claimed by the assessee in the proceedings u/s 153A, that cannot be rejected simply on the ground that it was not claimed in the original assessment or was disallowed. The starting point of assessment is the amount of income declared in the return of income, which is further enhanced with the additions. We are unable to appreciate the qualitative difference between the two situations viz., the first in which the assessee files return in response to notice u/s 153A disclosing lower income than the one originally assessed u/s 143(3) and the second situation in which the income is disclosed at the increased level, that is, after considering the additions so made in the original assessment and then agitates during the assessment proceedings about the deducibility of the amount(s) which was/were not allowed earlier. Probably the second course is adopted so as to preempt any move on the part of the Revenue to impose concealment penalty, if the addition is sustained in the assessment u/s 153A. In our considered opinion when the Assessing Officer has to compute the total income of the assessee on the basis of return filed after considering the submissions made during the course of hearing before him. There cannot be any scope for arguing that the assessee has been rendered powerless to even lodge a claim in respect of which deduction was not allowed earlier. Here it is ' important to note that the total income is not reduced simply on the basis of making a claim. The Assessing Officer is fully empowered to consider the question of deducibility as per the provisions of the Act. If after going through such claim, he feels that addition is called for, he will obviously make addition and vice versa."

6.3 While deciding th s controversy, the I TAT, Pune Bench in the case of Sanjay Nandlal Vyas v/s. ITO in ITA Nos. 771 to 774/PN/201Q vide order dated 23-12-2011 has followed the above cited decision of ITAT, Mumbai. The Pune Bench has also ment oned that as per the old provisions of Chapter, XIV-B a tax payer was required to file the return of "undisclosed income" as a result of search whereas section 153A requires to disclose the "total income". The relevant observation is reproduced below:

> 'We find that in the above discussion after discussing the issue in detail, the Mumbai Bench has come to the conclusion that there is difference in wordings u/s 158B(b) and section 153A of the Act Provisions u/s 153A are successor of special procedure for assessment of search cases under Chapter XIV B starting with Section 1583. Chapter XIV-B required the assessment of "undisclosed income" as a result of search, which has been defined in Section 158B(b) whereas Section 153A dealing with assessment in case of search w.e.f 1.62003 requires the A.O, to determine "total income" and not "undisclosed income" under these background, the Bombay of the Tribunal has held that when the A. 0. has to compute the total income of the assessee on the basis of return filed after considering the submissions made during the course of hearing before him, there cannot be

> any scope for arguing that the assessee has been rendered powerless to even lodge a claim in respect of which deduction not allowed earlier. The A. 0. is fully empowered to consider the question of deducibility as per the provision of the Act. If after going through such claim, he feels that addition is called for, he will obviously made addition, and vice versa, held the Tribunal."

It has also been recorded by the Pune Tribunal that as far as a reassessment under section 147 is concerned, only escaped income is to be assessed, whereas under section 153A it is permitted by the statute to pass a fresh assessment on the basis of the return filed by the assessee.

6.4 Our attention has been drawn on a very old CBDT Circular no. 014 (XL-35) dated llth April, 1955 in support of the argument that the Revenue Officer is duty bound to assess the correct income and if a tax payer is unaware of law then the Assessing Officer should take initiative in guiding a tax payer. Therefore, the argument before us is that only a correct and just income is required to be assessed in the hands of the assessee by the Assessing Officer, Indeed, the true intent of the statute is that an assessee is not to be placed in a disadvantageous position because of a technical reason. The statute do not prescribe to take away a legal right of tax payer. Even the Law as pronounced by several Hon'ble Courts is that acquiescence to illegal tax for long time is not a ground for denying the relief to a tax payer if he is legally entitled for the same. The Hon'ble Courts have, therefore, guided the tax authorities that they are under obligation to act in accordance with law and tax is to be collected strictly as provided under the Act. Because of any misconception on the part of an assessee he cannot be over assessed. Rather the AOs are advised not to raise technical pleas if a citizen have a lawful right. A private litigant may adopt such recourse to prot ct his personal rights but State authorities are not expect to deny a lawful claim merely on technical grounds. We have also come across a decision of Hon'ble Supreme Court pronounced in the case of CIT v/s. Shelly Products 261 ITR 367 wherein it was observed that quote "Similarly, if he has by mistake or inadvertence or on account of ignorance, included in his income any amount which is exempted from payment of income-tax, or is not income within the contemplation of law, he may likewise bring this to the notice of the assessing authority, which if satisfied, may grant him relief and refund the tax paid in excess, if any. Unquote. Following this legal proposition as laid down by the Hon'ble Court, we find force in this argument of the assessee, 6.5 From the side of the Revenue a vehement argument has been raised that in the case of Sun Engineering Works 198 ITR 297 (SC) it was held that in a reassessment proceedings it is not open to the assessee to press for a review all the concluded items unconnected with escapement of income. This aspect has also been considered by the ITAT, Mumbai in the case of M/s Ever smile Construction (supra) and held, rightly so, that the Hon’ble Supreme Court was considering the provisions of section 147 of LT. Act. In that context the Hon'ble Court has expressed that once an assessment is validly reopened, it is not open to an assessee to seek a review of the concluded items. The Tribunal has said that it is not pertinent to note that the conditions for taking action are altogether different than

the conditions under which the provisions of section 153A are to be applied. The distinction drawn by Mumbai Tribunal is worth reproduction: -

> "The reliance of the learned Departmental Representative on the judgment of the Hon 'ble Supreme Court in the case of CIT v/s. Sun Engineering Works Pvt. Ltd. (1992) 198 ITR 297 (SC) is misconceived. The reason for the same is that in that case the Hon 'ble Supreme Court was considering the provisions of section 147 and it was held that once an assessment is vaiidly reopened it is not open to an assessee to seek a review of concluded items unconnected with the escapement of income. Here it is pertinent to note that the conditions for taking action u/s 147 vis-a-vis under section 153A are altogether different. Even though assessment u/s 147 is made read with section 143(3), but the initiation of assessment or reassessment u/s 147 originates from the belief of the AO, on the basis of some tangible material, that income chargeable to tax has escaped assessment. After forming such belief, the AO is called upon to record reasons for the reopening of the assessment before issuing mandatory notice u/s 148. If the foundation of reassessment, being the reasons about the escapement of some income do not exist, then it is impermissible to go ahead with the assessment u/s 147. It is sine qua non that some escaped income must be brought to charge in order to make afresh assessm nt u/s 147. On the contrary, the search action itself mandates on the Assessing Officer to pass orders u/s. 153A computing total income for all the relevant six assessment years,respective of the fact whether some concealed income has surfaced as a result of search or not. It is thus apparent that the ambit of assessment u/s 147 cannot be imported into the scope of section 153 A," .

6.6 Even the deci ion of Goetze India Ltd, 284 ITR 323 (SC) should not be applied in the context of the issue in hand, as reliance placed from the side of the Revenue, because t was made dear by the Hon'bie Supreme Court that the issue as settled in that appeal was limited to the power of the Assessing Officer and does not impinge on the power of Income Tax Appellate Tribunal under section 254 of I. T. Act. Rather in the case of NTPC 229 ITR 383 (SQ has held that the Tribunal has the jurisdiction to examine a question of law which arises from the facts available on record. In view of the reasons as recorded herein above, we are of the conscientious view that these decisions as cited from the side of the Revenue are not connected with the technical issue as raised before us. Thus we hereby conclude that although the assessment was made under section 153A but the Assessing Officer went wrong in not entertaining a claim of the assessee by assigning technical reasons. The view taken by the lower authorities In this regard is, therefore, reversed and connected ground No. 1 is allowed."

7. Upon carefully consideration we find that the above decision has very elaborately considered the issue and has come to the conclusion admissible claim could be entertained white framing the u/s 153A. We find ourselves in agreement with the above proposition.

8. As regards the decision relied upon the Ld. DR from the honourable Jurisdictional High court in the case of Continental Warehousing (Supra) we find

that the same is not at all applicable on the facts of the case as the same decision was rendered in the context of addition made by the revenue de-horse any incriminating material found during search in cases where assessment had abated. The same decision can by no stretch of imagination be extended to any disclosure of income exempted or otherwise in the return pursuant to section 153 A. The simple analogy which can be considered in this respect can be a disclosure of additional income by the assessee in the return of income filed pursuant to notices under Section 153 A, The revenue cannot and will not choose to let the said offer of income go tax free by referring upon the said decision of honourable Jurisdictional High Court. As regards the decision of Delhi ITAT in the case Charhit Aggarwal (Supra) it was rendered on a difference set of fact. In the said case assessee had tried to change the method of valuation. This was found by the Tribunal to be not bonafide. It was in this context it was held that assessee was not permitted to value the closing stock for concluded years in a different manner than the in earlier years and claim lower income. This decision was rendered on a different set of facts and is not applicable on the facts of present case.

9. Accordingly, in the present case on the anvil of aforesaid case laws including that from the Apex Court, we hold that a legally admissible claim could be entertaining while framing the assessment u s 153 A of IT Act. Hence the present claim of exempt dividend income has to be entertained by the revenue. 10. Now, we come to the merits of the claim of the dividend income received by the assessee from its Brazilian subsidiary being exempt in India in view of the beneficial provisions of DTAA We find that Ld. CIT(A) has not at all adjudicated the merits of the claim. In this view of the matter we are of considered opinion that the matter needs to the remitted to the file of the Ld. CIT (A) to consider this claim of the assessee upon merits. Accordingly, the merits of the claim of the assessee regarding the divid nd income being exempt is remitted to the file of Ld. CIT (A). The Ld. CIT (A), is d rected to consider this issue after giving the assessee proper opportunity of being heard.

7. From the above, we find that the tribunal has passed the above order after considering the Hon'ble Apex Court decision in the case of *Sun Engineering Works* (supra) which has been distinguished to be not applicable in these cases. Furthermore, the decision has drawn support from the Hon'ble Apex Court decision in the case of *Shelly products* (supra). In this view of the matter, we are of the considered opinion that when the issue has been decided in favour of the assessee by placing reliance upon decisions including that of the honourable apex court, we find that the same will prevail over other case laws referred by the learned departmental representative in absence of any direct

Hon'ble jurisdictional High Court decision on this issue. Moreover, as expounded by the Hon'ble Apex Court in the case of M*/s. Narendra Vegetable Products Pvt. Ltd.* (supra) if two considerations are possible, then one in favour of the assessee should be adopted. This view was also reiterated by the constitutional bench of the Tribunal in the case of *Asst. CIT vs. Shri Dilip Chimanlal Gandhi* (in I.T.A. No.7079/Mum/2016 vide order dated 01.08.2018), wherein it was held that insofar as charging provisions are concerned, if two views on possible one in favour of the assessee should be adopted, in contradiction to the exemption provisions, where if two views are possible one in favour of the Revenue should be adopted. Accordingly, in view of the aforesaid precedent's including that from the Hon'ble Apex Court we hold that assessee was entitled to make claim in the assessment proceedings u/s. 153A, though the same were not made in the earlier assessment proceedings u/s.143 of the act. In this view of the matter we decide as under :

The grounds of appeal for 2006 07 reads as under:

> 1. On the fac s & circumstances of the case the Learned Commr. of Income Tax (A) has erred in concluding that the appellant is not entitled to contest the addition of Rs 5 00,00,000/-. The conclusion reached by Learned Commr. of Income Tax (A) is erroneous and contrary to the facts.
> 2. On the facts & circumstances of the case the appellant prays that the appellant has right to place the additional grounds on legal issues before Learned Commr. of Income Tax (A) to determine the correct and the real income for A,Y. 2006-07.
> 3. On the facts & circumstances of the case the appellant prays that the claim of appellant of deduction of Rs.5,00,00,000/- be allowed.
> 4. On the facts & circumstances of the case the Learned Commr. of Income Tax (A) has erred in concluding that the appellant is not entitled to contest the addition made u/s 14A of Rs.32,08,5957-while computing the total income. The conclusion reached by Learned Commr. of Income Tax (A) is erroneous and contrary to the facts.
> 5. On the facts & circumstances of the case the appellant prays that the appellant has right to place the additional grounds on legal issues before Learned Commr. of Income Tax (A) to determine the correct and the real income for A.Y. 2006-07.

6. On the facts & circumstances of the case the appellant prays that the addition made u/s 14A amounting to Rs.32,08,595/- be deleted.
7. On the facts & circumstances of the case the Learned Commr. of Income Tax (A) has erred in concluding that the appellant is not entitled to contest the addition made u/s 14A of Rs.32,08,595/-while computing the book profit u/s 115JB. The conclusion reached by Learned Commr. of Income Tax (A) is erroneous and contrary to the facts.
8. On the facts & circumstances of the case the appellant prays that the appellant has right to place the additional grounds on legal issues before Learned Commr. of Income Tax (A) to determine the correct and the real book profit u/s 115JB for A.Y. 2006-07.
9. On the facts & circumstances of the case the appellant prays that the addition made u/s 14A amounting to Rs"32,08,595/- be deleted while computing the book profit u/s 115JB.
10. On the facts & circumstances of the case the Learned Commr. of Income Tax (A) has erred in rejecting the claim of appellant of set off of carry forward short term capital loss of Rs. 10,80,057/- against the income of short term capital gains in A.Y. 2006-07. The appellant prays that the set off of carry forward of short term capital gains be allowed in A.Y. 2006-07.

The grounds as above relate to non consideration by the ld. CIT(A) of the additional grounds/claims made by the assessee in assessment proceedings u/s.153A of the Act, on the ground that the assessee is not entitled to raise the same. In view of our adjudication in earlier part of this order, we remit these issues to the file of the assessing officer to consider the same in ligh of our direction as above.

8. The grounds of appeal for assessment year 2007-08 reads as under:

1. On the facts & circumstances of the case the Learned Commr. of Income Tax (A) has erred in concluding that the appellant is not entitled to contest the addition made on account of gratuity at Rs.6,39,866/- while computing the total income. The conclusion reached by Learned Commr. of Income Tax (A) is erroneous and contrary to the facts.
2. On the facts & circumstances of the case the appellant prays that the appellant has right to place the additional grounds on legal issues before Learned Commr. of Income Tax (A) to determine the correct and the realincome for A.Y. 2007-08. .
3. On the facts & circumstances of the case the appellant prays that the addition made on account of gratuity amount to Rs.6,39,866/- be deleted.
4. On the facts & circumstances of the case the Learned Commr. of Income Tax (A) has erred in concluding that the appellant is not entitled to contest the

addition made on account of employees contribution of provident fund at Rs.44,922/- while computing the total income. The conclusion reached by Learned Commr. of Income Tax (A) is erroneous and contrary to the facts.

5. On the facts & circumstances of the case the appellant prays that the appellant has right to place the additional grounds on legal issues before Learned Commr. of Income Tax (A) to determine the correct and the real income for A.Y. 2007-08.

6. On the facts & circumstances of the case the appellant prays that the addition made on account of employees contribution of provident fund amount to Rs.44,922/- be deleted.

7. On the facts & circumstances of the case the Learned Commr. of Income Tax (A) has erred in concluding that the appellant is not entitled to contest the addition made u/s 14A of Rs.48,66,304/-while computing the total income. The conclusion reached by Learned Commr. of Income Tax (A) is erroneous and contrary to the facts.

8. On the facts & circumstances of the case the appellant prays that the appellant has right to place the additional grounds on legal issues before Learned Commr. of Income Tax (A) to determine the correct and the real income for A.Y. 2007-08.

9. On the facts & circumstances of the case the appellant prays that the addition made u/s 14A amounting to Rs.48 66,304/- be deleted.

10. On the facts & circumstances of the case the Learned Commr. of Income Tax (A) has erred in setting aside the order to the file of Learned AO for recalculation the book profit u/s 115JB instead of deleting the addition made u/s 14A amounting to Rs.45,48 078/-. The appellant prays that the addition made by Learned AO and confirmed by the Learned Commr. of Income Tax (A) be deleted while computing the book profit u/s 115JB.

Ground numbers 1 to 6 have not been pressed by the learned counsel of the assessee, Hence these grounds are dismissed as not pressed.

9. As regards the ground with regard to disallowance u/s. 14A is concerned the same has been done in accordance with ITAT direction. Hence, we find no reason to interfere in the same. As regards disallowance u/s. 115 JB is concern, we find that the same is not as per rule 8D of section 14A, it is on reasonable basis, which in our view is in accordance with the mandate of the Special Bench of the Tribunal in the case of *Vireet Investment Pvt. Ltd. and ANR.* (2017) 165 ITD 0027 (Delhi) ((SB)). Accordingly we do not find any infirmity in the ld CIT-A's direction in this regard.

10. The grounds of appeal for assessment year 2008-09 reads as under:

1. On the facts & circumstances of the case the Learned Commr. of Income Tax (A) has erred in concluding that the appellant is not entitled to contest the addition made u/s 14A of Rs.28,54,347/-while computing the total income. The conclusion reached by Learned Commr. of Income Tax (A) is erroneous and contrary to the facts.
2. On the facts & circumstances of the case the appellant prays that the appellant has right to place the additional grounds on legal issues before Learned Commr. of Income Tax (A) to determine the correct and the real income for A.Y. 2008-09.
3. On the facts & circumstances of the case the appellant prays that the addition made u/s 14A amounting to Rs.28,54,347/- be deleted.
4. On the facts & circumstances of the case the Learned Commr. of Income Tax (A) has erred in concluding that the appellant is not entitled to contest the addition made u/s 14A of Rs.28,54,347/-while computing the book profit u/s H5JB. The conclusion reached by Learned Commr. of Income Tax (A) is erroneous and contrary to the facts.
5. On the facts & circumstances of the case the appellant prays that the appellant has right to place the additional grounds on legal issues before Learned Commr. of Income Tax (A) to determine the correct and the real book profit u/s 115JB for A.Y. 2008-09.
6. On the facts & circumstances of the case the appellant prays that the addition made u/s 14A amounting to Rs.28,54,347/- be deleted while computing the book profit u/s 115JB.
7. On the facts & circumstances of the case the appellant prays that Learned Commr. of Income Tax (A) has erred in rejecting the claim of the appellant that the sum of Rs.42,271/ being the employees contribution paid before the due date of filing return u/s 139(1) be allowed as deduction. The Learned Commr. of Income Tax (A) has rejected the claim without giving any reasons in the appellate order. The appellant prays that the deduction of Rs.42,271/- be allowed as deduction while computing the total income.

11. The grounds of appeal for assessment year 2009-10 reads as under:

1. On the facts & circumstances of the case the Learned Commr. of Income Tax (A) has erred in concluding that the appellant is not entitled to contest the addition made u/s 14A of Rs.42,86,136/-. while computing the total income. The conclusion reached by Learned Commr. of Income Tax (A) is erroneous and contrary to the facts.
2. On the facts & circumstances of the case the appellant prays that the appellant has right to place the additional grounds on legal issues before Learned Commr. of Income Tax (A) to determine the correct and the real income for A.Y. 2009-10.
3. On the facts & circumstances of the case the appellant prays that the addition made u/s 14A amounting toRs.42,86,136/- be deleted.

4. On the facts & circumstances of the case the Learned Commr. of Income Tax (A) has erred in concluding that the appellant is not entitled to contest the addition made u/s 14A of Rs.42,86,136/-while computing the book profit u/s 115JB. The conclusion reached by Learned Commr. of Income Tax (A) is erroneous and contrary to the facts.
5. On the facts & circumstances of the case the appellant prays that the appellant has right to place the additional grounds on legal issues before Learned Commr. of Income Tax (A) to determine the correct and the real book profit u/s 115JB for A.Y. 2009-10.
6. On the facts & circumstances of the case the appellant prays that the addition made u/s 14A amounting to Rs.42,86,136/- be deleted while computing the book profit u/s 115JB.

12. The grounds of appeal for assessment year 2010-11 reads as under:

1. On the facts & circumstances of the case the Learned Commr. of Income Tax (A) has erred in ; concluding that the appellant is not entitled to contest the addition made u/s 14A of Rs.23,30,1847-. while computing the total income. The conclusion reached by Learned Commr. of Income Tax (A) is erroneous and contrary to the facts.
2. On the facts & circumstances of the case the appellant prays that the appellant has right to place the additional grounds on legal issues before Learned Commr. of Income Tax (A) to determine the correct and the real income for A.Y. 2010-11.
3. On the facts & circumstances of the case the appellant prays that the addition made u/s 14A amounting to Rs 23,30,184/- be deleted.
4. On the facts & circumstances of the case the Learned Commr. of Income Tax (A) has erred in concluding that the appellant is not entitled to contest the addition made u/s 14A of Rs.23,30,184/-while computing the book profit u/s 315JB. The conclusion reached by Learned Commr. of Income Tax (A) is erroneous and contrary to the facts.
5. On the facts & circumstances of the case the appellant prays that the appellant has right to place the additional grounds on legal issues before Learned Commr. of Income Tax (A) to determine the correct and the real book profit u/s 115JB for A.Y. 2010-11.
6. On the facts & circumstances of the case the appellant prays that the addition made u/s 14A amounting to Rs.23,30,184/- be deleted while computing the book profit u/s 115JB.
7. On the facts & circumstances of the case the appellant prays that the addition confirmed by the Learned Commr. of Income Tax (A) amounting to Rs.9,80,611/- on account of diminishing in the value of investments is not justified and the same be deleted while computing total income.
8. On the facts & circumstances of the case the Learned Commr. of Income Tax (A) has erred in confirmed the disallowance of Rs. 17,06,223/- on account of unpaid incentives to the employees. The appellant prays that the addition made by the Learned Assessing Officer and confirmed by Learned Commr. of Income Tax (A) may be deleted.

13. For all these years, the grounds relate to the issue as to whether fresh claim can be made under the assessment under section 153A of the income tax act. In accordance with our adjudication in the earlier part of this order, we remit these issues to the file of the assessing officer to consider the same in accordance with our direction as above.

14. Ground no. 7 for A.Y. 2008-09 and ground no. 8 for A.Y. 2010-11 have not been pressed. Hence, the same are dismissed as not pressed. Other grounds are remitted to the file of the assessing officer with our direction as above.

15. In the result, ITA No. 2968/Mum/2016 for A.Y. 2007-08 stand dismissed and all the other appeals are partly allowed for statisti al purposes as above.

Order pronounced in the open court on 05.12.2018

Sd/-	Sd/-
(Sandeep Gosain) Judicial Member	(Shamim Yahya) Accountant Member

Mumbai; Dated : 05.12.2018
Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai