IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No. 6242/DEL/2013	**A.Y. 2009-10**
ITA No. 72/DEL/2014	**A.Y. 2010-11**
ITA No. 3234/DEL/2016	**A.Y. 2011-12**
ITA No. 5601/DEL/2016	**A.Y. 2012-13**
ITA No. 6054/DEL/2016	**A.Y. 2013-14**
ITA No. 5506/DEL/2017	**A.Y. 2014-15**
ITA No. 5659/DEL/2018	**A.Y. 2015-16**
ITA No. 6455/DEL/2019	**A.Y. 2016-17**

DCIT, Central Circle-6, New Delhi. PAN-	Vs	Sahara Prime City Ltd., 1, Kapoorthala Complex, Aliganj, Lucknow. PAN: AABCS7893P
APPELLANT		**RESPONDENT**
Assessee represented by	Sh. Ajay vohra, Sr. Adv. Ms. Shaily Gupta, CA; and Sh. Archit Kawra, Adv.	
Department represented by	Sh. Zafarul Haque Tanweer, CIT(DR)	
Date of hearing	23.10.2023	
Date of pronouncement	31.10.2023	

O R D E R

PER BENCH:

The captioned appeals, by the Revenue, in respect of the very same assessee, are directed against separate orders dated 14.09.2023 for A.Y. 2009-10; 18.10.2023 for A.Y. 2010-11; 28.03.2016 for A.Y. 2011-12; dated 18.08.2016 for

A.Y. 2012-13; dated 06.09.2016 for A.Y. 2013-14; 21.06.2017 for A.Y. 2014-15; 29.06.2018 for A.Y. 2015-16; and 31.05.2019 for A.Y. 2016-17 passed by the learned Commissioner of Income-tax (Appeals)-23, New Delhi. All these appeals were heard together and are being disposed of by a common order for the sake of convenience. The Revenue has raised following grounds of appeals:

ITA No. 6242/Del/2013 (A.Y. 2009-10):

"On the facts and in the circumstances of the case the Ld. CIT(A) has erred in:

1. The CIT(A) is not correct in law and facts.

2. On the facts and in the circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs. 3,02,89,518/- on account of disallowance u/s 14A of the I.T. Act.

3. On the facts and in the circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs. 3,26,60,270/- on account of disallowance of commission payment.

4. On the facts and in the circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs. 19,19,288/- on account of disallowance of interest expenses.

5. On the facts and in the circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs. 3,04,896/- on account of disallowance of excess depreciation on UPS/Printers.

6. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.

ITA No. 72/Del/2014 (A.Y. 2010-11):

On the facts and in the circumstances of the case the Ld. CIT(A) has erred in:

1. The CIT(A) is not correct in law and facts.

2. On the facts and in the circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs. 4,95,56,017/- made by Assessing Officer on account of disallowance u/s 14A of the I.T. Act.

3. On the facts and in the circumstances of the case the Ld. CIT(A) has erred in law in deleting the disallowance of Rs. 70,86,600/- made by Assessing Officer on account of disallowance of interest expenses.

4. On the facts and in the circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs. 1,32,348/- made by Assessing Officer on account of disallowance of excess depreciation claimed on UPS/Printers.

5. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.

ITA No. 3234/Del/2016 (A.Y. 2011-12):

"1. The order of Ld. CIT(A) is not correct in law and on facts.

2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 6,36,60,742/- made by the AO on account of disallowance u/s 14A.

3. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 70,86,600/- made by the AO on account of interest free loan given to M/s Sahara India Club Royal Ltd.

4. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 36,702/- made by the AO on account of excess depreciation claimed on UPS/Printers.

5. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.

ITA No. 5601/Del/2016 (A.Y. 2012-13):

"1. The order of Ld. CIT(A) is not correct in law and on facts.

2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 7,07,00,291/- made by the AO on account of disallowance u/s 14A of the Income Tax Act, 1961.

3. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 70,86,600/- made by the AO on account of interest free loan given to M/s Sahara India Club Royal Ltd.

4. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 2,05,32,572/- made by the AO on account of disallowance on account of Non deduction of TDS.

5. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 29,40,656/- made by the AO on account of disallowance of expenses pertaining to previous years.

6. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.

ITA No. 6054/Del/2016 (A.Y. 2013-14):

"1. The order of Ld. CIT(A) is not correct in law and on facts.

2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 9,81,06,116/- on account of "disallowance u/s 14A".

3. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 70,86,600/- on account of "Disallowance of interest free loan given to Group Concerns".

4. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 11,79,037/- on account of "Disallowance of expenses pertaining to Gift, Meeting & conference and Advertisement & Publicity".

5. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.

ITA No. 5506/Del/2017 (A.Y. 2014-15):

"1. The order of Ld. CIT(A) is not correct in law and on facts.

2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 14,20,93,532/- on account of "disallowance u/s 14A".

3. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 70,86,600/- on account of "Disallowance of interest free loan given to Group Concerns".

4. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 11,61,759/- on account of "Disallowance of expenses pertaining to Gift, Meeting & conference and Advertisement & Publicity".

5. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.

ITA No. 5659/Del/2018 (A.Y. 2015-16):

"1. The order of Ld. CIT(A) is not correct in law and facts.

2. On the facts & circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 14,57,45,175/- made by Assessing Officer on account of disallowance u/s 14A of the I.T. Act, 1961.

3. On the facts & circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 70,86,600/- made by Assessing Officer on account of disallowance of interest on account of interest free advance to group concern.

4. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.

ITA No. 6455/Del/2019 (A.Y. 2016-17):

"1. The order of Ld. CIT(A) is not correct in law and facts.

2. That On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 13,38,20,650/- made by AO on account of disallowance u/s 14A, even though heading of Section 14A of the IT Act, 1961 as well as Rule 8D has used the phrase 'Income not includible', with respect to expenditure to be disallowed under the said section/rule.

3. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 8,83,89,764/- on account of interest free Loan & Advances, ignoring that the assessee had failed to provide documentary evidence in the shape of agreement with respect to advance given, purpose for advance given, business expediency etc.

4. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.

ITA No. 6242/Del/2013 (A.Y. 2009-10):

2. Relevant facts related to the grounds of appeal are that the assessee is a company primarily engaged in the business of development, construction and sale of residential and commercial properties. The assessee filed its return of income through electronic mode, thereby declaring total income at Rs. 45,55,85,125/- on 30.09.2009. The case was selected for scrutiny assessment and statutory notices were issued on different dates. In response to the statutory notices, learned AR of the assessee attended the proceedings. The AO thereafter framed assessment u/s 143(3) of the Income-tax Act, 1961, hereinafter referred to as the "Act". Thereby he made addition by invoking the provisions of Section 14A amounting to Rs. 3,02,89,518. The AO further made addition on account of commission expenses of Rs. 3,26,60,270/-. Further the AO also made disallowance of interest expenditure amounting to Rs. 19,19,288/-. The AO also disallowed claim of depreciation at a higher rate and thus made addition of Rs. 3,04,896/-. Aggrieved against this the assessee preferred appeal before learned CIT(A), who deleted the addition and allowed the appeal of the assessee. Aggrieved against the order of learned CIT(A), now the Revenue is in appeal before this Tribunal.

3. Ground nos. 1 & 6 of the Revenue's appeal are general in nature and require no adjudication.

4. Ground no. 2 is against deletion of disallowance made by the assessing authority by invoking the provisions of Section 14A of the Act.

4.1 Learned CIT(DR) representing the Revenue supported the assessment order and submitted that the AO had noticed that the assessee had investments in shares of different companies. It is observed by the AO that income from the joint venture was exempt, therefore, he invoked the provisions of Section 14A and computed disallowance as per Rule 8D. Learned CIT(DR) supported the assessment order.

4.2. On the other hand, Shri Ajay Vohra, learned Sr. Counsel for the assessee, vehemently argued that the issue is squarely covered in favour of the assessee, therefore, learned CIT(A) was justified in deleting the addition. He drew our attention to the impugned order and submitted that the learned CIT(A) has categorically stated that the exempt income has been offered to tax. Therefore, there was no requirement of making disallowance by invoking the provisions of Section 14A of the Act.

4.3. We have heard rival submissions and perused the material available on record. We find that the learned CIT(A) has given a finding of fact at paras 4 to 4.5

of his order. For the sake of clarity the operative paras 4.4 & 4.5 are reproduced below:

> *"4.4 Reading the above provisions of law (section 14A and Rule 8D), and the CBDT circular, the inescapable conclusion that can be reached is that Rule 8D provides for allocation of expenditure relatable to exempt income and that such expenditure is to be disallowed even when there is actually no exempt income during the previous year as the Rule speaks of "income from which does not or shall not form part of the total income", and the phrase 'shall not' here refers to the future income as juxtaposed to the phrase "does m present income. This interpretation is further amplified by the use of the word "or between the phrase "does not' and 'shall not'. In this view of the legal position, it is my respectful opinion that the interpretation adopted by some of the Hon'ble Courts / Tribunals to the contrary may not be the correct interpretation of the extant law in the matter.*
>
> *4.5 Having observed as above, in this particular case it is seen that despite having dividend income, which is exempt from tax, the appellant has not claimed exemption in respect of such income and has offered the said income to taxation. Having offered the said exempt income to tax, the appellant cannot be subjected to disallowance in respect of the expenses relating to such income. That would amount to double taxation and impinge on the fundamental right of the appellant. In this view of the matter, no disallowance can be made u/s 14A. I hold accordingly. The addition made is deleted. Appellant gets relief of Rs. 3,02,89,518/-."*

4.4. The above finding of fact is not controverted by the Revenue. We, therefore, do not see any infirmity in the order of learned CIT(A) which is hereby affirmed. Ground raised by the Revenue is devoid of any merit, hence rejected.

5. Ground no. 3 is against deletion of addition of Rs. 3,26,60,270/- made by the Assessing Authority on account of disallowance of commission payment.

5.1 Learned CIT(DR) supported the assessment order and submitted that the assessee had claimed commission expenses to the tune of Rs. 4,25,71,004/- as against Nil in earlier year. Out of the aforesaid commission a sum of Rs. 3,26,60,270/- i.e. the impugned addition was paid to M/s Sahara India. Accordingly, the AO had show caused the assessee for justification of this payment. He drew our attention to the operative part of the assessment order and submitted that the AO has observed that the assessee claimed to have appointed their agents directly for booking of Sahara City homes but it had made payment of commission to the agents through M/s Sahara India. However, it was stated that the same was paid through bank account of Sahara India, but no evidence was produced to establish the same. Therefore, the AO was justified in making the addition.

5.2. On the other hand, learned Sr. counsel for the assessee opposed the submissions and submitted that the assessee paid commission to various agents/ associates against booking of Sahara City project. Since booking of such project was undertaken from various centers spread all over the country, for which the assessee had rented premises of M/s Sahara India along with its infrastructure facility, the payment was made through their branches. He contended that the assessee had submitted complete detail along with PAN no. etc. The tax was duly

deducted and deposited with the Central Government account. Therefore, the learned CIT(A) was justified in deleting the disallowance.

5.3. We have heard learned representatives of the parties and perused the material on record. We find that the learned CIT(A) has decided the issue by observing as under:

> *"5.2 I have considered the assessment order, the submissions made and the details filed. The only reason the payment appears to have been caught the revenue's attention is that these were routed through M/s Sahara India, a partnership firm and a group concern. Facts are that Sahara India is the original business venture of the group and the network of 1,500 branches and almost 8 lakh field agents / workers was established by this firm. Subsequently, as the business of NBFCs and the para-banking business became regulated by the RBI, the group discontinued such business from various entities and confined it to the approved NRFCs, The infrastructure of Sahara India was taken on agency basis and subsequently on rent basis for the para-banking business by the approved NBFCs belonging to the group. It is in this context that the disputed amount of commission payments made by the appellant has passed through M/s Sahara India. It is not the case that the payment made is disallowable u/s 40A(2)(b). The tact of the payments is not in dispute. The only reason is that AO was not satisfied. Copies of detailed list of the deductees and sample Form 16-A have been filed before me. I find that the necessary details were available before the AO to establish the payments made and TDS was also duly deducted on the payments and deposited with the Government. There was no basis, therefore, to conclude that no evidence with respect to the commission payments was produced. In these circumstances, the disallowance made cannot be legally sustained and is deleted. Appellant gets relief of Rs.3.26,60,270/-."*

5.4. The aforesaid finding of the learned CIT(A) is not rebutted by the Revenue by bringing any contrary material on record. Moreover, the finding of learned

CIT(A) is based on facts. The Revenue has not controverted the facts as stated by the learned CIT(A) in the impugned order, hence we do not find any infirmity into the order of the learned CIT(A), the same is hereby affirmed.

6. Ground no. 4 is against deletion of addition of Rs. 19,19,288/- made by the Assessing Authority on account of disallowance of interest expenses.

6.1 Learned CIT(DR) supported the order of the learned AO.

6.2 On the other hand, learned Sr. Counsel supported the order of learned CIT(A) and submitted that that there is no nexus between the money advanced and the funds borrowed, therefore the AO was not justified in making the impugned disallowance.

6.3 We have heard rival submissions and perused the material available on record. The learned CIT(A) has deleted the addition in question, inter alia, by observing as under:

> *"6.2 I have considered the assessment order and submissions made. I find* that *the amount was advanced by the appellant was to its subsidiary company for the purpose of business, i.e. for purchase of met at Gurgaon. and was not in the nature of any loan. There is nothing to establish the amount was advanced out of borrowed funds. The interest paid by the appellant to customers on refunds of money for cancelled flat bookings has no connection to the money advanced by the appellant to M/s Sahara India Club Royal Ltd. In view of these facts, it cannot be held that appellant has failed to charge interest on loan given for which corresponding interest paid*

it to be disallowed. The disallowance made is not legally sustainable and is deleted. Appellant gets relief of Rs. 19,19,288/-."

6.4 The learned CIT(A) has given a finding of fact that there is no nexus between the money advanced by the assessee M/s Sahara India Club Royal Ltd. and the borrowed funds, therefore, in the absence of such link, the AO was not justified in making the disallowance. Therefore, we find no flaw or infirmity in the order of the learned CIT(A) in deleting the addition in question. Accordingly, order of learned CIT(A) on the issue in question is affirmed. Ground is rejected.

7. Ground no. 5 is against deletion of addition of Rs. 3,04,896/- on account of disallowance of excess depreciation on UPS/Printers.

7.1 Learned CIT(DR) supported the assessment order.

7.2 On the other hand, learned Sr. counsel submitted that the issue is no more res-integra and covered in favour of the assessee by the judgment of the Hon'ble Jurisdictional High Court and the same fact is duly recorded by the learned CIT(A).

7.3 We have heard rival submissions. Learned CIT(A) in para 7.2 has recorded the fact that the issue is covered by the judgment of the Hon'ble Jurisdictional High Court. The learned DR could not controvert the finding of learned CIT(A). for the sake of clarity the finding is reproduced below:

"7.2 I have considered the assessment order and the submission made. The ruling of Hon'ble Jurisdictional High Court is clear in the matter. UPS is part and parcel of the computer system. The addition made is not sustainable and is deleted. Appellant gets relief of Rs. 3,04,896/-."

7.4 We find not infirmity in the order of learned CIT(A) on the issue in question and the same is hereby affirmed.

8. Ground raised by the Revenue are rejected. Consequently, appeal of the Revenue stands dismissed.

ITA No. 72/Del/2014 (A.Y. 2010-11):

9. Ground nos. 1 and 5 are general in nature and require no adjudication.

10. Ground no. 2 is against deletion of addition of Rs. 4,95,56,017/- made by the Assessing Authority on account of disallowance u/s 14A of the Act.

10.1 We have heard rival contentions and perused the material available on record. The AO made disallowance of Rs. 4,95,56,017/-on account of expenses relating to income not forming part of total income u/s 14A of the Act read with Rule 8D. In appeal the learned CIT(A) deleted the addition by observing as under:

"Having observed as above, in this particular case it is seen that despite having dividend income, which is exempt from tax, the appellant has not claimed exemption in respect of such income and has offered the said income to taxation. Having offered the said exempt income to tax, the appellant cannot be subjected to disallowance in respect of expenses relating to such income. That would amount to double taxation and

impinge on the fundamental right of the appellant. In this view of the matter, no disallowance can be made u/s 14A. I have held so in appellant's own case in Appeal No. 506/11-12 for AY 2009-10 and I hold accordingly for this AY also. The addition made is deleted. Appellant gets relief of Rs. 4,95,56,017/-."

10.2 The learned CIT(A) has deleted the disallowance in question by following his own order in assessee's own case for A.Y. 2009-10. In assessee's case for A.Y. 2009-10, the order of learned CIT(A), on the issue in question, deleting the disallowance made by the AO u/s 14A of the Act, has been affirmed by us. No distinction in facts has been pointed out by the parties. Therefore, for the reason given in A.Y. 2009-10, we see no reason to interfere in the order of the learned CIT(A) on the issue in question. The same is hereby affirmed. Ground is rejected.

11. Ground no. 3 is against deletion of addition of Rs. 70,86,600/- made by the Assessing Authority on account of interest expenses.

11.1 We have heard rival submissions and perused the material available on record. The Assessing Authority made addition of Rs. 70,86,600/- by disallowing the claim of interest relating to funds used for loan given to M/s Sahara India Club Royal Ltd. In appeal the learned CIT(A) deleted the addition, inter alia, by observing as under:

"5.2 I have considered the assessment order and submissions made. I find that *the amount was advanced by the appellant was to its subsidiary*

company for the purpose of business, i.e. for purchase of asset at Gurgaon and was not in the nature of any loan. There is nothing to establish the amount was advanced out of borrowed funds. The interest paid by the appellant to customers on refunds of money for cancelled flat bookings has no connection to the money advanced by the appellant to M/s Sahara India Club Royal Ltd. In view of these facts, it cannot be held that appellant has failed to charge interest on loan given for which corresponding interest paid it to be disallowed. The disallowance made is not legally sustainable and is deleted. Appellant gets relief of Rs. 70,86,600-."

11.2 The learned CIT(A) has deleted the addition in question by following his own order in assessee's own case for A.Y. 2009-10. In A.Y. 2009-10, the order of learned CIT(A), deleting the disallowance on the issue in question, has been affirmed by us. No distinction in facts has been pointed out by the parties. Therefore, for the reason given in A.Y. 2009-10, we affirm the order of learned CIT(A) on the issue in question. Ground is rejected.

12. Ground no. 4 is against deletion of addition of Rs. 1,32,348/- made by the Assessing Authority on account of disallowance of excess depreciation claimed on UPS/Printers.

12.1 We have heard rival submissions and perused the material available on record. The Assessing Authority made addition of Rs.1,32,348/- on account of excess depreciation claimed on UPS/Printers. In appeal the learned CIT(A) deleted the addition, inter alia, by observing as under:

"6.2 I have considered the assessment order and the submission made. The ruling of Hon'ble Jurisdictional High Court is clear in the matter. UPS is

part and parcel of the computer system. The addition made is not sustainable and is deleted. Appellant gets relief of Rs. 1,32,348/-."

12.2 Identical issue has been adjudicated by us in A.Y. 2009-10, in favour of the assessee, by affirming the order of learned CIT(A), deleting the addition in question. No distinction in facts has been pointed out by the parties. Therefore, for the reason given in A.Y. 2009-10, we affirm the order of learned CIT(A) on the issue in question. Ground is rejected.

13. In the result appeal of the Revenue for A.Y. 2010-11 being ITA No. 72/Del/2014 stands dismissed.

ITA No. 3234/Del/2016 (A.Y. 2011-12):

14. Ground nos. 1 and 5 are general in nature and require no adjudication.

15. Ground no. 2 is against deletion of addition of Rs. 6,36,60,742/- made by the Assessing Authority on account of disallowance u/s 14A of the Act.

15.1 We have heard rival contentions and perused the material available on record. The AO made disallowance of Rs. 6,36,60,742/-on account of expenses relating to income not forming part of total income u/s 14A of the Act read with Rule 8D. In appeal the learned CIT(A) deleted the addition, inter alia, by observing as under:

"4.2.3 In consideration of the above facts it is seen that the interest paid by the appellant during the year is not relatable to investment and it is

apparent that there is no nexus between the borrowed money on which interest was paid and the investments and the interest payments are squarely related to the business activities of the appellant company. Moreover, as mentioned above there is no exempt income. Beside the judgments relied upon by the appellant the facts of the case are also covered in favour of the appellant by the decision of the Hon'ble Delhi High Court in CIT v. Holcim India Pvt. Ltd. [2015] 57 taxmann.com 28 (Delhi) *and* Cheminvest Ltd-v-ACIT 378 ITR 33 Delhi *wherein it has been held that where the interest free funds available with the assessee were more than investment made in tax free securities, no disallowance under section 14A could be made. The AO has incorrectly made further disallowance on this account in the computation as per Rule 8D of the Income Tax Rules. The addition is therefore* deleted."

15.2 In our considered view the learned CIT(A) has given a finding of fact which has not been convtroverted by the learned CIT(DR). Therefore, we see no reason to interfere with the finding and conclusion of the learned CIT(A) on the issue in question. The same is hereby affirmed. Ground is rejected.

16. Ground no. 3 relates to the deletion of addition of Rs. 70,86,600/- made by the Assessing Authority on account of interest free loan given to M/s Sahara India Club Royal Ltd. In appeal the learned CIT(A) deleted the addition, inter alia, by observing as under:

"4.2.3In this view of the matter the AO has not been able to establish nexus between the borrowed funds and the interest paid, and his observation that interest paid on both accounts are for non-business purposes is incorrect. The interest paid to PNB is for the purposes for which loan was taken are related to the business of the appellant, and the cancellation charges too are related to the business of the appellant, and there is no nexus between the borrowed funds from PNB and advance given to SICRL, and therefore there is no justification in disallowance of interest u/s 36(1)(iii) of the Act. The addition is therefore ***deleted."***

16.1 This issue has been adjudicated by us in 2009-10, wherein we have affirmed the order of learned CIT(A), deleting the disallowance on the issue in question. No distinction in facts has been pointed out by the parties. Therefore, for the reasons given in A.Y. 2009-10, we affirm the order of learned CIT(A) on the issue in question. Ground is rejected.

17. Ground no. 4 is against deleting the addition of Rs. 36,702/- made by Assessing Officer on account of disallowance of excess depreciation claimed on UPS/Printers. In appeal, the learned CIT(A) deleted the addition, inter alia, by observing as under:

> ***"4.4 Ground no. 07 and 08*** *relate to disallowance ot Ks.3b,/U2/- Oui ui uepieumu on UPS / Printer which were part of computers by reducing the depreciation allowable to 15% as against 60% claimed by the appellant. .'The AO has held that Printers are not an integral part of computers and are not eligibleTor depreciation @60% claimed by the appellant, and allowed depreciation @15% and 7% for plant and machinery. The appellant has relied on the decisions of the Hon'ble Delhi High Court in CIT v Orient Ceramic & Industries Ltd. 358 ITR 49 (Del.) and CIT v BSES Yamuna Powers Ltd. 358 ITR 47 (Del.) wherein it has been held that the printers are integral part of the computer and therefore they are entitled to higher rate of depreciation that of 60%. It is a matter of common understanding that the printers cannot function on its own but needs to be installed on the computer hard disk for it to generate prints and the computer by itself cannot generate printouts, and UPS is an integral part of computers for uninterrupted functioning of the computers and for providing power backup and saving data in case of power failure. Even otherwise the Hon'ble Delhi High Court has decided in favour of the appellant and my opinion postulated herein above. In this view of the matter, the addition made on this account is* ***deleted."***

17.1 Identical issue has been adjudicated by us in A.Y. 2009-10, in favour of the assessee, by affirming the order of learned CIT(A), deleting the addition in question. No distinction in facts has been pointed out by the parties. Therefore, for the reason given in A.Y. 2009-10, we affirm the order of learned CIT(A) on the issue in question. Ground is rejected.

18. In the result, Revenue's appeal stands dismissed.

ITA No. 5601/Del/2016 (A.Y. 2012-13):

19. Ground nos. 1 and 6 are general in nature and require no adjudication.

20. Ground no. 2 is against deletion of addition of Rs. 7,07,00,291/- made by the Assessing Authority on account of disallowance u/s 14A of the Act.

20.1 We have heard rival contentions and perused the material available on record. The AO made disallowance of Rs. 7,07,00,291/- on account of expenses relating to income not forming part of total income u/s 14A of the Act read with Rule 8D. In appeal the learned CIT(A) deleted the addition, inter alia, by observing as under:

> *"Without prejudice to the above submissions, though the appellant has not claimed dividend income received amounting to Rs. 1,400/- as exempt and the same has also been subjected to tax by the department, in any view of the matter disallowance u/s 14A cannot exceed the amount of the dividend income as has been held in various cases.*
>
> *Similar disallowance made in the immediately preceding year, i.e.*

assessment year 2010-11 and 2011-12 was dealt with by the Id. CIT(A) and he has deleted the disallowance made u/s 14A of the Income Tax Act in his appellate order for the assessment year 2010-11 and 2011-12, a copy of which is in enclosed herewith."

20.2 The learned CIT(A) has deleted the disallowance in question by following his own order in assessee's own case for earlier years. In earlier years we have affirmed the order of the learned CIT(A) , on the issue in question, deleting the disallowance made by the AO u/s 14A of the Act. No distinction in facts has been pointed out by the parties. Therefore, for the reasons given in earlier years in assessee's own case, we see no reason to interfere in the order of the learned CIT(A) on the issue in question. The same is hereby affirmed. Ground is rejected.

21. Ground no. 3 relates to the deletion of addition of Rs. 70,86,600/- made by the Assessing Authority on account of interest free loan given to M/s Sahara India Club Royal Ltd. In appeal the learned CIT(A) deleted the addition, inter alia, by observing as under:

"Ground nos. 05 & 06 relate to addition of Rs. 70,86,600/- by way of disallowance of interest by imputing interest income on hypothetical basis in respect of loan given to subsidiary companies. In this respect too the facts in this case are similar (even the related amount is same) to that of the AY 2011-12. In terms of my findings at paras 4.3 to 4.3.2 of my order dt. 28.03.2016 for AY 2011-12 in Appeal No. 120/14-15 in the case of the appellant, the addition made is deleted."

21.1 The learned CIT(A) has deleted the addition by following his own order in assessee's own case for A.Y. 2011-12. In A.Y. 2011-12, somewhere in this order,

we have affirmed affirmed the order of learned CIT(A), deleting the disallowance on the issue in question. No distinction in facts has been pointed out by the parties. Therefore, for the reasons given in A.Y. 2011-12, we affirm the order of learned CIT(A) on the issue in question. Ground is rejected.

22. Ground no. 4 is against deleting the addition of Rs. 2,05,32,572/- made by the Assessing Authority on account of disallowance of non-deduction of tax at source.

22.1 Apropos to this ground learned DR supported the order of AO.

22.2 On the other hand learned Sr. Counsel for the assessee relied upon CBDT Circular No. 715 dated 08.08.1995 read with Circular no. 5/2002 dated 30.07.2002. He submitted that as per the CBDT Circular "Rent" means any payment, by whatever name called under any lease …. Or any other agreement or arrangement for the use of any land. He contended that as per Circular the meaning of rent u/s 194I is wide in its ambit and scope. For this reason payment made to hotels for hotel accommodation, whether in the nature of lease or licence agreements are covered, so long as such accommodation has been taken on 'regular basis'. Where earmarked rooms are let out for a specified rate and specified period, they would be construed to be accommodation made available on 'regular basis'. He contended that there is nothing on this sort in the case of the assessee. Learned counsel placed reliance on the decision of the Coordinate Bench decision in the

case of Dadiba Kali Pundole Esplanade House vs. ACIT ITA No. 779/Mum/2019 (Mum.Trib). The Ld. Sr. Counsel also submitted that no deduction is called for as M/s Sahara Hotel Ltd. ahs submitted a certificate regarding declaration of the income and payment of tax thereon.

22.3 We have heard the rival contentions and perused the material available on record. In para 4.4 the learned CIT(A) has given a finding of fact by observing as under:

> *"Ground nos. 7(a) & 7(b)* relate to disallowance of Rs.2,05,32,572/- out of rent : utility charges paid by the appellant u/s 40A(ia) of the Act on the ground that TDS deductible u/s 194J of the Act on the payment of Rs.2,05,32,572/- made to Sahara Hospitality Limited was not made. The appellant has submitted that the expenditure related to room rent charges paid by the appellant company to hotel Sahara Star Mumbai in lieu of the stay of the appellant's employees at the hotel during their visits for purpose of business of the appellant company, and that there was no rate agreement or contract with the said hotel. It is also to be noted *that the hotel Sahara* • s a hotel of the Sahara group of which the appellant is one of the companies and it is natural that the employees of the Sahara group companies, on their visits to Mumbai for the purpose of business/official work of the relevant Sahara group company, would have stayed at the hotel of the Sahara group for reasons of commercial expediency. Besides the appellant has filed copy of the certificate dt. 08.06.2011 u/s 197 of the Act issued by the DCIT(TDS)-3(2), Mumbai vide ref. no. 197/AADCB7619L/2011-12/12 and AADCB7619L/2011-12/19 for no deduction of tax at source u/s 194I & 194C respectively in the case of M/s Sahara Hospitality Ltd. (Sahara Star) (though the rate mentioned is 0.01% due to systemic problem of the application software), which is valid from 01.06.2011 to 31.03.2012. Thus, it is apparent that even if the appellant had rate contact with hotel Sahara Star TDS was not required to be made the addition is therefore deleted."

22.4 This finding of fact is not rebutted by the Revenue by placing any contrary material on record. In the light of the statutory provisions and the CBDT Circulars

and the averments by the assessee that there was no hiring of rooms on regular basis and/or any agreement with the said party and the Revenue having not controverted these submissions by placing any contrary material, we see no reason to interfere in the finding of learned CIT(A) on the issue in question. The same is hereby affirmed.

23. Ground no. 5 is against deletion of addition of Rs. 29,40,656/- made by the AO on account of disallowance of expenses pertaining to previous years.

23.1 Learned CIT(DR) supported the order of AO. He submitted that the learned CIT(A) was not justified in deleting the addition.

23.2 On the other hand learned Sr. Counsel submitted that the impugned addition of Rs. 29,40,656/- relates to service tax paid on rent of earlier years. He submitted that deduction was in accordance with provisions of law. He submitted that the issue is covered in favour of the assessee by the decision of the Hon'ble Jurisdictional High Court.

23.3 We have heard rival submissions. The learned CIT(A) has decided the issue in para 4.5 by observing as under:

> ***"Ground nos. 8(a) & 8(b)*** *relate to addition of Rs,29,40,656/- on account of service tax paid on rent of earlier years. The appellant has also contended that service tax paid, even relating to earlier years, was allowable deduction u/s 43B of the Act having been paid during the previous year relevant to AY 2012-13. The appellant has submitted that the said matter of Service Tax was under dispute and pending before Hon'ble Supreme Court and that the said liability crystallized only when an order was passed against the*

appellant, and hence, the **said expenses could not** *be* **treated as** *prior period expenses and should be allowed in the current year. As regards the levy of service tax, service tax on renting of immovable properties was introduced by the Finance Act, 2007 by inserting clause (zzzz) in section 65(105) of the Finance Act, 1994 with effect from 1st June 2007. However, this levy of service tax was* challenged *in various writ petitions throughout the country; on 18.04,2009, the Hon'ble High Court of Delhi in the case of* Home Solutions v. UOI - ***2009-TIOL-196-HC-DEL-ST*** *(now know as Home Solutions - I) held that renting per se does not entail any value addition and therefore, cannot be regarded as a service. In view of this judgment, majority of assessees stopped paying service tax on renting of immovable properties. In order to over-come the judgment and remove ambiguities, Central Government amended clause (zzzz)by the Finance Act,* 2010 with retrospective *effect from 1st June 2007 i.e. the date the levy was first introduced. The amendment made by the Finance Act, 2010 came into force with effect from 1st July 2010, This amendment was challenged through writ petitions before different High Courts and the High Courts of Bombay, Gujarat, Karnataka. Orissa, Punjab and Haryana have already upheld the Constitutional validity of levy of service tax on renting of immovable properties and also upheld the retrospective amendment. However, the Retailers Association of India and another Multiplex Association of India has approached the Supreme Court challenging the Bombay High Court Order on the above issue and on 28th September 2011 the Supreme Court has granted a Stay against the said Bombay High Court Order, The judgments of the Hon'ble Delhi Court in Home Solutions -I as well as* Home Solutions- ***(2011-TIOL-610-HC-DEL-ST-LB)*** *are sub-judice before the Hon'ble Supreme Court. In this view of the matter due to the dispute and subsequent judgment of the Hon'ble Delhi High Court withholding of service tax and payment of the same later during the FY 2011-12 cannot be said to be without reasonable cause and payment of the same during the previous year relevant to this assessment year is apparently allowable expenditure of the current assessment year, more so in view of the provisions of S.43B of the Act. In any case, there is no dispute regarding the allowability of the expenditure on this account and if the AO considered it as relatable to any earlier year the same should have been allowed in that year. In this view of the matter the service tax paid during the year is held to be an allowable expenditure during this year. The addition made on this account is* ***deleted."***

23.4 There is no dispute with regard to the fact that payment of service tax is an allowable expenditure. The only objection of the AO was that the service tax related to previous year. However, looking to the provisions of Section 43B of the Act, the action of the Assessing Authority is ill founded. We, therefore, do not see any reason to interfere with the finding of learned CIT(A). Ground is dismissed.

25. In the result, Revenue's appeal stands dismissed.

ITA No. 6054/Del/2016 (A.Y. 2013-14):

26. Ground nos. 1 and 5 are general in nature and require no adjudication.

27. Ground no. 2 is against deletion of addition of Rs. 9,81,06,116/- made by the AO on account of "disallowance u/s 14A".

27.1 We have heard rival contentions and perused the material available on record. The AO made disallowance of Rs. 9,81,06,116/- on account of expenses relating to income not forming part of total income u/s 14A of the Act read with Rule 8D. In appeal the learned CIT(A) deleted the addition, inter alia, by observing as under:

> ***"4.2 Ground*** nos. 02 to 05 ***relate to disallowance of*** Rs.,***9,81,06,116/-*** u/s 14A of the Act read with Rule ***8D of the Income Tax*** Rules ***1962*** (the Rules hereinafter). The facts in this year are ***similar (except*** that the related amounts are different) to that of the AY 2011-12 and ***AY 2012-13.*** In fact during the year the appellant had only Rs.60/- as dividend i***ncome which*** was also not claimed as exempt income. In terms of my finding at paras 4.2 to 4.2.3 in Appeal No. 120/14-15 and in Appeal No. 62/15-16 respectively in the case of the appellant, the addition made is deleted."

27.2 The learned CIT(A) has deleted the disallowance in question by following his own order in assessee's own case for earlier years. In earlier years we have affirmed the order of the CIT(A), on the issue in question, deleting the disallowance made by the AO u/s 14A of the Act. No distinction in facts has been pointed out by the parties. Therefore, for the reasons given in earlier years in assessee's own case, we see no reason to interfere in the order of the learned CIT(A) on the issue in question. The same is hereby affirmed. Ground is rejected.

28. Ground no. 3 is against deleting the addition of Rs. 70,86,600/- on account of "Disallowance of interest free loan given to Group Concerns". The AO made addition of Rs. 70,86,600/- on account of interest free loan given to M/s Sahara India Club Royal Ltd. In appeal the learned CIT(A) deleted the addition, inter alia, by observing as under:

> "Ground nos. 06 to 08 *relate to addition of Rs.70,86,600/- by way of disallowance of interest by imputing interest income on hypothetical basis in respect of loan given to subsidiary companies. In this respect too the facts in this year are similar (even the related amount is same) to that of the AY 2011-12 and AY 2012-13. In terms of my findings at paras-4.2 to 4.2.3 and para-4.2of my orders dt. 28.03.2016 and for AY 2011-12 and AY 2012-13 in Appeal No.120/14-15 and in Appeal No.62/15-16 respectively in the case of the appellant, the addition made is* deleted."

28.1 The learned CIT(A) has deleted the addition by following his own order in assessee's own case for A.Y. 2011-12 & 2012-13. In A.Y. 2011-12 & 2012-13, somewhere in this order, we have affirmed the order of learned CIT(A), deleting

the disallowance on the issue in question. No distinction in facts has been pointed out by the parties. Therefore, for the reasons given in earlier years, we affirm the order of learned CIT(A) on the issue in question. Ground is rejected.

29. Ground no. 4 relates to deletion of addition of Rs. 11,79,037/- on account of "Disallowance of expenses pertaining to Gift, Meeting & conference and Advertisement & Publicity". In appeal the learned CIT(A) deleted the addition, inter alia, by observing as under:

> *"I have examined all vouchers copies of which have been filed on the PB and I find the contention of the appellant that tax has been duly deducted at source & deposited wherever required. In this view of the matter the addition made on this account is deleted."*

29.1 We have heard rival submissions and perused the material available on record. The learned CIT(A) has categorically stated that TDS has been duly deducted wherever required. This finding of learned CIT(A) has not been controverted by the Revenue. Therefore, we see no reason to interfere in the order of learned CIT(A) on the issue in question. Ground is rejected.

30. Grounds of appeal are rejected. Appeal of the revenue is dismissed.

ITA No. 5506/Del/2017 (A.Y. 2014-15):

31. Ground nos. 1 & 5 are general in nature and require no adjudication.

32. Ground no. 2 is against deleting the addition of Rs. 14,20,93,532/- on account of "disallowance u/s 14A".

32.1 We have heard rival contentions and perused the material available on record. The AO made disallowance of Rs. 14,20,93,532/- on account of expenses relating to income not forming part of total income u/s 14A of the Act read with Rule 8D. In appeal the learned CIT(A) deleted the addition, inter alia, by observing as under:

> *"4.2 Ground nos. 02 to 05* relate to disallowance of Rs. 14,20,93,532/- u/s 14A of the Act read with Rule 8D of the Income Tax Rules 1962 (the Rules hereinafter). The facts in this year are similar (except that the related amounts are different) to that of the AYs 2011-12, 2012-13 and 2013-14. In fact during this year the appellant has not claimed any exempt income as dividend income or otherwise. In terms of my findings at paras 4.2 to 4.2.3, *para-4.2* and *para-4.2* of my orders dt. 28.03.2016, 18.08.2016 and 06.09.2016 for AYs 2011-12, AY *2012-13* and *2013-14* in Appeal Nos. 120/14-15, 62/15- 16 and 406/15-16 respectively in the case of the appellant, the addition made is *deleted"*.

32.2 The learned CIT(A) has deleted the disallowance in question by following his own order in assessee's own case for earlier years. In earlier years we have affirmed the order of the CIT(A), on the issue in question, deleting the disallowance made by the AO u/s 14A of the Act. No distinction in facts has been pointed out by the parties. Therefore, for the reasons given in earlier years in assessee's own case, we see no reason to interfere in the order of the learned CIT(A) on the issue in question. The same is hereby affirmed. Ground is rejected.

33. Ground no. 3 is against deleting the addition of Rs. 70,86,600/- on account of "Disallowance of interest free loan given to Group Concerns". In appeal the learned CIT(A) deleted the addition, inter alia, by observing as under:

> *"Ground nos. 06 to 08* relate to addition of the same amount of Rs.70,86,600/- by way of disallowance of interest by imputing interest income on hypothetical basis in respect of loan given to subsidiary companies in this year as well. In this respect too the facts in this year are similar (even the related amount is same) to that of the AY 2011-12, AY 2012-13 and 2013-14. In terms of my findings at paras-4.3 of my orders dt. 28.03.2016, 18.08,2016 and 06.09.2016 for AYs 2011-12, AY 2012-13and 2013014 in Appeal Nos.120/14-15, 62/15-16 and 406/15-16 respectively in the case of the appellant, the addition made is *deleted."*

33.1 The learned CIT(A) has deleted the addition by following his own order in assessee's own case for A.Y. 2011-12, 2012-13 & 2013-14. In A.Y. 2011-12, 2012-13 and 2013-14, somewhere in this order, we have affirmed the order of learned CIT(A), deleting the disallowance on the issue in question. No distinction in facts has been pointed out by the parties. Therefore, for the reasons given in earlier years, we affirm the order of learned CIT(A) on the issue in question. Ground is rejected.

34. Ground no. 4 is against deleting the addition of Rs. 11,61,759/- on account of "Disallowance of expenses pertaining to Gift, Meeting & conference and Advertisement & Publicity". In appeal the learned CIT(A) deleted the addition, inter alia, by observing as under:

"Having examined the vouchers, invoices etc., I finds that the expenditure are part of normal business expenditure incurred during the course of carrying on the business and are allowable expenses. These expenses have been duly debited in the P&L a/c and are properly vouched and there is no reason for disallowance thereof. The addition is accordingly deleted."

34.1 We have heard rival submissions and perused the material available on record. The learned CIT(A) in deleting the addition has categorically observed that expenses have been duly debited in the P&L a/c and properly vouched. This finding of learned CIT(A) has not been controverted by the Revenue. Therefore, we see no reason to interfere in the order of learned CIT(A) on the issue in question. Ground is rejected.

35. Grounds of appeal are rejected. Appeal of the revenue is dismissed.

ITA No. 5659/Del/2018 (A.Y. 2015-16):

36 Ground nos. 1 & 4 are general in nature and require no adjudication.

37. Ground no. 2 is against deleting the addition of Rs. 14,57,45,175/- made by Assessing Officer on account of disallowance u/s 14A of the I.T. Act, 1961.The AO made disallowance on account of expenses relating to income not forming part of total income u/s 14A of the Act read with Rule 8D. In appeal the learned CIT(A) deleted the addition by following his order in assessee's own case for earlier years.

37.1 Having heard the parties we find that in earlier years we have affirmed the order of the CIT(A), deleting the disallowance made by the AO u/s 14A of the Act. No distinction in facts has been pointed out by the parties for the assessment year in question so as to take a different view. Therefore, for the reasons given in earlier years in assessee's own case, we see no reason to interfere in the order of the learned CIT(A) on the issue in question. The same is hereby affirmed. Ground is rejected.

38. Ground no. 3 is against deleting the addition of Rs. 70,86,600/- made by Assessing Officer on account of disallowance of interest on account of interest free advance to group concern. In appeal the learned CIT(A) deleted the addition by following his order in assessee's own case for earlier years.

38.1 in earlier years we have affirmed the order of the CIT(A), deleting the disallowance made by the AO on account of interest on account of interest free advance to group concern No distinction in facts has been pointed out by the parties for the assessment year in question so as to take a different view. Therefore, for the reasons given in earlier years in assessee's own case, we see no reason to interfere in the order of the learned CIT(A) on the issue in question. The same is hereby affirmed. Ground is rejected.

39. Grounds of appeal are rejected. Appeal of the revenue is dismissed.

ITA No. 6455/Del/2019 (A.Y. 2016-17):

40. Ground nos. 1 and 4 are general in nature and require no adjudication.

41. Ground no. 2 is against deleting the addition of Rs. 13,38,20,650/- made by AO on account of disallowance u/s 14A of the IT Act, 1961 read with Rule 8D.

41.1 The AO made disallowance on account of expenses relating to income not forming part of total income u/s 14A of the Act read with Rule 8D. In appeal the learned CIT(A) deleted the addition by following his orders in assessee's own case for earlier years.

41.2 Having heard the parties we find that in earlier years we have affirmed the order of the CIT(A), deleting the disallowance made by the AO u/s 14A of the Act. No distinction in facts has been pointed out by the parties for the assessment year in question so as to take a different view. Therefore, for the reasons given in earlier years in assessee's own case, we see no reason to interfere in the order of the learned CIT(A) on the issue in question. The same is hereby affirmed. Ground is rejected.

42. Ground no. 3 is against deleting the addition of Rs. 8,83,89,764/- on account of interest free advance to group concern. In appeal the learned CIT(A) deleted the addition by following his order in assessee's own case for earlier years.

42.1 In earlier years we have affirmed the order of the CIT(A), deleting the disallowance made by the AO on account of interest on account of interest free advance to group concern No distinction in facts has been pointed out by the parties for the assessment year in question so as to take a different view. Therefore, for the reasons given in earlier years in assessee's own case, we see no reason to interfere in the order of the learned CIT(A) on the issue in question. The same is hereby affirmed. Ground is rejected.

43. Grounds of appeal are rejected. Appeal of the Revenue is dismissed.

44. In the result all the appeals preferred by the Revenue stand dismissed.

Order pronounced in open court on 31st October, 2023.

Sd/-	**Sd/-**
(M. BALAGANESH)	**(KUL BHARAT)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI