आयकर अपीलीय अधिकरण, अहमदाबाद।

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, AHMEDABAD
(THROUGH VIRTUAL COURT)

BEFORE SHRI JUSTICE P.P. BHATT, HON'BLE PRESIDENT
And SHRI WASEEM AHMED, ACCOUNTANT MEMBER

Sl. No(s)	ITA No(s)	Asset. Year(s)	Appeal(s) by Appellant vs. Respondent	
			Appellant	Respondent
1.	413/Ahd/2016	2010-11	DCIT Circle-1(3), Ahmedabad-380015	Edelweiss Financial Advisors Ltd. [Formerly Known Anagram Stock Broking Ltd] 'Anagram House' Near H. L. Commerce College, Stadium Road, Navrangpura, Ahmedabad-380009 **PAN No. AABCA9956F**
2.	445/Ahd/2016	2012-13	DCIT Circle-1(3), Ahmedabad-380015	Edelweiss Financial Advisors Ltd. [Formerly Known Anagram Stock Broking Ltd] 'Anagram House' Near H. L. Commerce College, Stadium Road, Navrangpura, Ahmedabad-380009 **PAN No. AABCA9956F**
3.	268/Ahd/2016	2010-11	Edelweiss Broking Ltd. (On behalf of amalgamating company: Edelweiss Financial Advisors Ltd.) 801-804, 8th Floor, Abhishree Avenue, Opp. Hanumanji Temple, Nehrunagar, Ambawadi, Ahmedabad-380015 PAN No. AABCE9421H PAN No. AABCA2916K	Jt. CIT, Range-3 Ahmedabd-380015
4.	318/Ahd/2016	2011-12	Edelweiss Broking Ltd. (On behalf of	Jt. CIT, Range-3 Ahmedabd-380015

			amalgamating company: Edelweiss Financial Advisors Ltd.) 801-804, 8th Floor, Abhishree Avenue, Opp. Hanumanji Temple, Nehrunagar, Ambawadi, Ahmedabad-380015 PAN No. AABCE9421H PAN No. AABCA2916K	
5.	446/Ahd/2016	2012-13	DCIT Circle-1(3) Ahmedabad	Edelweiss Broking Ltd. (on behalf of amalgamating Company M/s.Edelweiss Financial Advisors Ltd.) PAN: AABCA 9956 F

Assessee(s)by :	Shri Vartik Chokshi, AR
Revenue by :	Shri Dileep Kumar, Sr. DR

सुनवाई की तारीख/Date of Hearing : 24/09/2020
घोषणा की तारीख /Date of Pronouncement : 03/12/2020

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

In this bunch of appeals two appeals have been filed by the Assessee and two appeals have been filed by the Revenue for A.Ys. 2010-11, 2011-12 2012-13 which are arising from the order of the CIT(A)-10, Ahmedabad orders dated 11.12.2015, in the assessment proceedings under Section 143(3) of the Income Tax Act, 1961 (in short "the Act").

First we take up ITA No. 413/AHD/2016 for the A.Y. 2010-11 (Revenue's Appeal):-

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

"1. That the ld. CIT(A) has erred in law and on the facts by deleting addition of depreciation on membership card without appreciation the fact that condition u/s 32 of the I. T. Act, 1961 is not fulfilled on the said depreciation.

(2) That the ld. CIT(A) has erred in law and on the facts by deleting addition of depreciation, interest and insurance on vehicle amounting to Rs. 29,64,082/- by ignoring the fact that the assessee failed to prove the ownership of these vehicles as well as use of those assets wholly and exclusively for the business purpose.

(3) That the ld. CIT(A) has erred in law and on the facts by deleting addition of Rs. 1,12,972/- made by AO as disallowance of interest without appreciating the fact that conditions laid down in Section 36 of the I. T. Act, 1961, are not fulfilled by the assessee.

(4) That the ld. CIT(A) has erred in law and on the facts by deleting addition of Rs. 24,75,967/- made by the AO u/s 14A without considering the fact that the AO has rightly disallowed the same u/s 14A after considering the provisions of Rule 8D, which is not fulfilled in the assessee's case.

(5) That the ld. CIT(A0 has erred in law and on the facts by deleting addition of Rs. 1,51,201/- made by the AO as disallowance of expenditure for payment of penalty without appreciating the fact that the conditions of provisions u/s. 37 are not fulfilled by the assessee.

(6) That the ld. CIT(A) has erred in law and on the facts by deleting addition of Rs. 1,18,89,628/- made by the AO as disallowance of deduction of Bad Debts by ignoring the fact that the condition of provisions of Section 36(2) are not satisfied in the assessee's case.

(7) That the ld. CIT(A) has erred in law and on the facts by allowing the contention of assessee for verification of part disallowance of Rs. 17,02,013/- made by the AO as disallowance of Saudafer Los by ignoring the fact that whole Saudafer Loss claimed by the assessee was Speculation Loss within the meaning of explanation to Section 73 of the I. T. Act, 1961.

(8) That the ld. CIT(A) has erred in law and on the facts in directing to re-compute the Capital Gain by ignoring the fact that the AO has rightly computed the Capital Gain as per provision of Section 48 of the I. T. Act, 1961 for indexing the cost from F.Y. 2005-06 when the BSE shares were allotted and first held by the assessee."

3. The first issue raised by the Revenue is that Learned CIT(A) erred in deleting the addition made by the AO for Rs.79/- on account of depreciation claimed under Section 32 of the Act on the membership card despite the conditions for claiming the depreciation were not satisfied.

4. The facts in brief are that the assessee in the present case is a limited company and engaged in the business of stock broking. The AO during the assessment proceedings found that the membership card of the stock exchange held by the assessee has been demutualized/corporatized into the shares in the earlier year 2005-06. As such the assessee was not in the possession of stock exchange card in the year under consideration. Accordingly, the AO was of the view that the depreciation claimed by the assessee on the intangible asset being membership card of the stock exchange is not allowable under the provisions of Section 32 of the Act. Accordingly, the AO disallowed the same and added to the total income of the assessee.

5. Aggrieved assessee preferred an appeal to the Learned CIT (A) who deleted the addition made by the AO by observing as under:

> *"7.3 I have carefully considered the Assessment Order and submission filed by Appellant. The Assessing Officer has made disallowance of depreciation on Ahmedabad Stock Exchange Membership Card relying on decision of Hon'ble Mumbai ITAT in the case of Sino Securities Pvt. Limited whereas Appellant has relied upon decision of Hon'ble Ahmedabad ITAT in the case of Edelweiss Stock Broking Limited for A.Y. 2006-07 which is merged with Appellant Company and Appellant's own case for A.Y. 2008-09 decided by Hon'ble Ahmedabad ITAT on 6th November, 2015.*
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> *On careful consideration of entire facts, the issue raised by Assessing Officer is covered in favour of Appellant by decision of Hon'ble Ahmedabad ITAT in Appellant's own case for A.Y. 2008-09 (ITA No. 1531 and 1718/Ahd/2011) wherein Hon'ble ITAT vide its order dated 6th November, 2015 has held as under:*
>
> *"13. The Assessee's next ground raised in the instant appeal challenges disallowance of depreciation on Ahmedabad Stock Exchange card of Rs. 141/- made in the course of assessment and affirmed in the lower appellate proceedings. Both the lower authorities hold that stock exchange membership card is not an eligible asset u/s 32 of the Act as held by hon 'ble Bombay high court in M/s. Tech nosh 3 res and Stocks Ltd. Vs.CIT 193 Taxrnan 248. The CIT(A) observes that the hon'ble apex court has reversed the above stated decision as reported in 327ITR 323 with a rider that the same relates to Bombay Stock Exchange card only. He reproduces relevant, portion of this judgment as well. However, the Revenue fails to point out any distinction between the Assessee's Ahmedabad Stock Exchange card and relevant features of Bombay Stock Exchange card. Nor such a distinction is forthcoming from hon'hle apex court decision. We find that a co-ordinate bench of the tribunal in case of Assessee's sister concern's case M/s. Edelweiss Stock*

Broking Ltd. Vs. CIT, ITA No. 1168/Ahd/2011decided on 11.07.2014 for AY 2006-07grants identical depreciation relief. We also draw support therefrom for allowing the impugned depreciation claimed. This ground is accepted."

Following the decision of Hon'ble Ahmedabad 1TAT 1 appellant's own case., disallowance of depreciation made by Assessing Officer for Rs.79 is deleted. This ground of appeal is ***allowed****."*

6. Being aggrieved by the order of the Learned CIT-A, the Revenue is in appeal before us.

7. The Learned DR before us vehemently supported the order of the AO whereas the Learned AR before us filed a Paper Book running from pages 1 to 231 and submitted that the Tribunal in the own case of the assessee has allowed the depreciation in ITA No. 1718/AHD/2011 vide order dated 6-11-2015 for the assessment year 2008-09. The Learned AR vehemently supported the order of the Learned CIT (A).

8. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset we note that the Tribunal in the own case of the assessee in ITA No. 1718/AHD/2011 for the Assessment Year 2008-09 vide order dated 6th November 2015, involving identical issue has decided the matter in favor of the assessee. The relevant extract of the order is reproduced as under:

"13. The assessee's next ground raised in the instant appeal challenges disallowance of depreciation on Ahmedabad Stock Exchange card of Rs.141/- made in the course of assessment and affirmed in the lower appellate proceedings. Both the lower authorities hold that stock exchange membership card is not an eligible asset u/s 32 of the Act as held by hon'ble Bombay high court in M/s. Technoshares and Stocks Ltd. Vs. CIT 193 Taxman 248. The CIT(A) observes that the hon'ble apex court has reversed the above stated decision as reported in 327 ITR 323 with a rider that the same relates to Bombay Stock Exchange card only. He reproduces relevant portion of this judgment as well. However, the Revenue fails to point out any distinction between the assessee's Ahmedabad Stock Exchange card and relevant features of Bombay Stock Exchange card. Nor such a distinction is forthcoming from hon'ble apex court decision. We find that a co-ordinate bench of the tribunal in case of assessee's sister concern's case M/s. Edelweiss Stock Broking Ltd. Vs. CIT, ITA No.

1168/Ahd/2011 decided on 11.07.2014 for AY 2006-07 grants identical depreciation relief. We also draw support therefrom for allowing the impugned depreciation claimed. This ground is accepted.

14. This leaves us with assessee's last substantive ground challenging Section 40(a)(ia) of Rs.1,02,39,903/- arising from non-deduction of TDS qua payments made of NSE lease line charges, NSE VSAT charges and MTNL expenses. There is no dispute that the assessee has not deducted TDS on these payments. We have given our thoughtful consideration to the rival contentions. The assessee inter alia invites our attention to Section 40(a)(ia) second proviso introduced by the Finance Act, 2012 w.e.f. 01.04.2013. It refers to case law of Rajeev Kumar Agarwal vs. ACIT, ITA No.337/Agra/2013 decided on 29.05.2013 (authored by one of us Pramod Kumar, Accountant Member) as considered by a recent decision of hon'ble Delhi high court in CIT vs. Ansal Landmark Townships Pvt Ltd, (377 ITR 635), upholding the same after reproducing the operative part in extempore to the effect that when a deductor-assessee is not an assessee in default u/s 201(1), it is deemed that it has deducted and paid the tax on such sums on the date of filing of return of income by the concerned payee as referred in the above stated proviso. The co-ordinate bench as well as hon'ble Delhi high court have accordingly applied the above stated proviso with retrospective effect by holding it as a curative one. The Revenue is unable to dispute correctness thereof. We accordingly remit this issue back to the Assessing Officer for carrying out necessary verification regarding related payments having been taken into account by the concerned payees in computing their income. The assessee's other arguments disputing applicability of TDS provision shall be readjudicated as per law. This ground is treated as allowed for statistical purposes. This assessee's appeal ITA No.1718/Ahd/2011 is partly allowed."

9. The Learned DR at the time of hearing has not brought anything on record contrary to the finding of the ITAT, as discussed above, suggesting that there was the change in the facts and circumstances or under the provisions of law. Hence, there being is no change in the facts and circumstances viz a viz under the provisions of law, we confirm the order of the ld. CIT-A in view of the order of this tribunal in the own case of the assessee *(supra)*. Accordingly we direct the AO to delete the addition made by him. Hence the ground of appeal of the Revenue is dismissed.

10. The next issue raised by the Revenue is that the Learned CIT-A erred in deleting the addition made by the AO amounting to Rs. 29,64,082/- being depreciation allowance, interest and insurance expenses relating to vehicles though the assessee was not the owner of such vehicles.

11. The assessee in the year under consideration has claimed depreciation and incurred expenses on interest /insurance aggregating to Rs. 29,64,082/- with respect to certain vehicles which were not registered in its name. However, it was contended by the assessee that it is the beneficial owner of such vehicles as the loan was taken by it and accordingly the instalment of such loan was also born by it which is evident from the books of accounts.

11.1 The assessee also submitted that the provisions of Section 32 of the Act requires that the assets must be owned by the assessee which does not mean that the vehicles has to be registered in the name of the assessee under the Motors Vehicles Act.

12. However, the AO disagreed with the contention of the assessee by observing that the assessee failed to substantiate based on documentary evidence that it had dominion over the vehicles and such vehicles were used for the purpose of the business.

13. Furthermore, the AO also found that the purpose of registering the vehicles in the name of individual directors was to avoid the tax payable to the RTO. In fact, the amount of tax payable to the RTO is much lesser if the vehicles are registered in the name of the individuals instead of corporate bodies. Accordingly, the AO was of the view that the revenue authority cannot become a party by allowing the benefit of tax payable by the assessee to the RTO. Accordingly, the AO disallowed the claim of the assessee for the depreciation, interest expenses and insurance expenses aggregating to ₹ 29,64,082/- and added to the total income of the assessee.

14. Aggrieved assessee preferred an appeal to the Learned CIT (A). The assessee before the Learned CIT-A submitted that the payment for the purchase of the car was paid by it. The cars were shown in the balance sheet as fixed assets. The repayment of the car loan was made by it. All the expenses such as running and maintenance expenses of the vehicles were incurred by it which are duly reflected in the books of accounts. The assessee also contended that it has paid wealth tax on such vehicles in its wealth tax returns. In view of the above the assessee submitted that the beneficial ownership of the vehicles vest with it and these cars were used for the purpose of the business. Accordingly, the depreciation allowance, insurance and interest expenses cannot be denied to it.

15. The Learned CIT (A) after considering the submission of the assessee found that assessee has used its own funds for the purchase of the vehicles viz a viz the repayment of the loan obtained for the purchase of the vehicles was made by it and these vehicles were duly reflected in the balance sheet as assets. Similarly, running and maintenance expenses on such vehicles were incurred by the assessee which were also allowed by the revenue. Thus what is suggested is that the vehicles were used for the purpose of the business. The Learned CIT (A) also found that the assessee is paying the wealth tax on such cars which evidences that the assessee is the beneficial owner of these cars. Accordingly, the Learned CIT (A) was of the view that the assessee cannot be denied the benefit of depreciation, insurance and interest expenses incurred on the vehicles merely on the reasoning that these vehicles were registered in the name of the individual directors. Accordingly the Learned CIT (A) allowed the ground of appeal of the assessee.

16. Being aggrieved by the order of the Learned CIT (A), the Revenue is in appeal before us.

17. Both the Learned DR and the AR before us vehemently supported the order of the respective authorities below as favorable to them.

18. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that claim of the assessee for the depreciation allowance, interest and insurance expenses on the vehicles were rejected by the AO for the following reasons:

i. The assessee was not the owner of the vehicles as these were registered in the name of individual directors under the registration of Motor Registration Act.

ii. The assessee failed to substantiate based on the documentary evidence that these vehicles were used for the purpose of the business.

iii. The assessee by way of registering the vehicles in the name of individual directors instead of in its own name has avoided the legitimate tax due to the RTO under the Motors Registration Act.

20. The provisions of Section 32 of the Income-tax Act, 1961 grants depreciation allowance to the assessee who is 'owner' of specified assets (building, plant and machinery, furniture and fixtures, etc.) and these assets are used during the relevant previous year for the purposes of its business/profession. Therefore, the ownership of asset is one of the important requirements to be entitled for depreciation allowance. The Section, however, does not define the term 'owner' as such for the purposes of grant of

depreciation allowance. The moot question that arises for consideration from a perusal of Section 32 of the Act is as to who can be said to be the 'owner' of assets for the purpose of Section 32 of the Act. The controversy in various judicial interpretations is as to the true meaning of the word 'owner' within the meaning of Section 32 of the Act. Whether Section 32 contemplates the registered/legal owner as such or it refers to a person who can exercise the rights of owner in his own right and not on behalf of others. To our understanding, the owner must be a person who can exercise rights of the owner not on the behalf of the owner but in his own right. In other words exclusive possession, right to exclude others from enjoyment of the assets, full control over the assets, right to retain possession and defend the same are some of the basic and important characteristics of the ownership which would entitle a person to claim benefit of depreciation allowance under Section 32 of the Act. Admittedly, the assessee enjoys all such benefits with respect to such vehicles. It is because the assessee has incurred the cost for the purchase of the vehicles, it is paying the instalments of the car loans, regularly paying the wealth tax on such vehicles, bearing the running and maintenance expenses. Thus in our considered view the assessee cannot be denied the benefit of depreciation merely on the reasoning that it is not the legal owner of such vehicles. In holding so we draw support and guidance from the order of this tribunal in case ITO vs. Electro Ferro Alloys Ltd. reported in 25 taxmann.com 458 where it was held as under:-

> *"22. 2 In the present case it is not disputed that investment was made by the assessee in purchase of the motor car. It is shown as asset in the balance-sheet of the company. If expenditure for running the vehicle was incurred by the assessee, the assessee is de facto owner of the vehicle. It is not disputed that it was used for the purpose of business of the assessee company. The hon'ble Rajasthan High Court in the case of CIT v. Mohd. Bux Shokat Ali (No. 2) [2002] 256 ITR 357 (Raj) held that where vehicle was purchased by the firm used by it for the purpose of its business but it was registered in the name of one of the*

partners then the firm would be entitled to depreciation on vehicle. The hon'ble Delhi High Court in the case of CIT v. Basti Sugar Mills Co. Ltd. [2002] 257 ITR 88 (Delhi) held that where vehicle was owned and used by the assessee but no registration was done in its name then the assessee would still be entitled to depreciation on such vehicle. Therefore, the assessee has right to claim depreciation thereon. This ground of the Revenue is accordingly rejected."

21. Regarding the 2nd question as discussed above, we note that the assessee has claimed repair and maintenance expenses with respect to such vehicles which were also allowed by the Revenue. Thus it is inferred that such vehicles were used for the purpose of the business of the assessee. Accordingly we are of the view that the assessee is eligible for interest and insurance expenses incurred by it with respect to such vehicles.

22. Moving to question No. 3 wherein it was alleged that the assessee has minimized the tax payable to the RTO by registering the vehicles in the name of the individual directors. In this regard, we note that there is no denial under the Motors Registration Act to register the vehicles in the name of the individual directors. The action taken by the assessee for registry the vehicles in the name of individual directors was within the framework of the provisions of law. Accordingly, we are of the view that this cannot be a ground to reject the claim of the assessee. In view of the above and after considering the facts in totality, we do not find any infirmity in the order of the Learned CIT (A). Hence the ground of appeal of the Revenue is dismissed.

23. The third issue raised by the Revenue is that the Learned CIT-A erred in deleting the addition made by the AO for Rs. 1,12,972/- on account of interest expenses under the provisions of Section 36(1)(iii) of the Act.

24. The AO during the assessment proceedings found that the assessee on one hand has been incurring interest expenses on the borrowed fund and on the other hand it has advanced money to its sister concern without charging any interest on such advances. Accordingly, the AO proposed to make the disallowance attributable to such loans and advances.

25. The assessee in response to show cause notice vide letter dated 22nd March 2013 submitted that the loans and advances were given to the sister concerns in the course of the business. Similarly in some of the cases, there was no advance provided to the sister concern in the year under consideration. The assessee, without prejudice to the above, also submitted that its own fund as on 31st March 2010 exceeds the amount of loans and advances. Therefore, it can be presumed that the assessee has provided interest free loans and advances to the sister concern out of its own fund without using any interest-bearing fund.

26. In view of the above the assessee contended that there cannot be any disallowance on the amount of loans and advances provided to the sister concerns without charging any interest thereon.

27. However, the AO disregarded the contention of the assessee by observing that the assessee failed to substantiate the fact that it has provided loans and advances for the purpose of its business activities. Accordingly, the AO worked out the proportionate amount of interest expenses attributable to such interest-free loans and advances amounting to Rs.1,12,972/- and disallowed the same under Section 36(1)(iii) of the Act by adding to the total income of the assessee.

28. Aggrieved assessee preferred an appeal to the Learned CIT (A) who has deleted the addition made by the AO by observing as under:

> *" On careful consideration of entire facts it is observed that issue regarding disallowance of proportionate interest is covered in favour of Appellant by decision of Hon'ble Ahmedabad ITAT in Appellant's own case for A.Y. 2008-09 (ITA No. 1531/Ahd/2011) wherein Hon'ble ITAT vide its order dated 6th November, 2015 has held as under:*
>
> > *3. We come to the lower appellate proceedings now. The CIT(A) prepares a party-wise tabulation qua loans in question of Rs.32,03,147/- as incurred in reimbursement of expenses. He finds the same to have been incurred in business purposes as per case la w of S A Builders vs. CIT, 288 ITR 01 (SC) as having business expediency element embedded therein. The Revenue's arguments strongly support Assessing Officer's action. It transpires from the case file that Assessee's interest free funds as on 31.03.2008 read a figure of Rs, 1,25,83,17,835/- in the nature of share capital, reserves and surplus etc. It files tribunal's order in its own case for AY 2004-05 in ITA No.1890/Ahd/2007 decided on 19.12.2008 deciding the very issue in its favour in identical circumstances. We follow suit in these facts and reject this Revenue's ground as well."*
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> *It is pertinent to note that Hon'ble Supreme Court in case of Hero Cycles (P.) Ltd vs. Commissioner of Income-Tax (Central), Ludhiana [vide Civil Appeal No.: 514 of 2008] dated 05/11/2015, held as under:*
>
> > *Insofar as the loans to Directors are concerned, it could not be disputed by the Revenue that the assessee had a credit balance in the Bank account when the said advance of Rs. 34 lakhs was given. Remarkably, as observed by the Commissioner of Income-Tax (Appeal) in his order, the company had reserve/surplus to the tune of almost 15 crores and, therefore, the assessee company could in any case, utilise those funds for giving advance to its Directors.*
> > *On the basis of aforesaid discussion, the present appeal is allowed, thereby setting aside the order of the High Court and restoring that of the Income Tax Appellate Tribunal."*
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> *It is observed that during the year under consideration the Appellant has own funds of Rs. 81,80,68,508 as against interest free advances of Rs 36,63,056 hence following the decision of Hon'ble Ahmedabad ITAT and decision of Hon'ble Supreme Court referred supra, disallowance made by Assessing Officer under Section 36(1)(iii) for Rs.1,12,972 is deleted. This ground of appeal is allowed."*

29. Being aggrieved by the order of the Ld. CIT-A, the Revenue is in appeal before us.

30. Before us, both the Learned DR and the AR vehemently supported the order of the authorities below as favourable to them.

31. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset we note that the Tribunal in the own case of the assessee in ITA No. 1718/AHD/2011 for the Assessment Year 2008-09 vide order dated 6th November 2015, involving identical issue has decided the matter in favor of the assessee. The relevant extract of the order is reproduced as under:

> *"3. We come to the lower appellate proceedings now. The CIT (A) prepares a party-wise tabulation qua loans in question of Rs.32,03,147/-as incurred in reimbursement of expenses. He finds the same to have been incurred in business purposes as per case law of S A Builders vs. CIT, 288 ITR 01 (SC) as having business expediency element embedded therein. The Revenue's arguments strongly support Assessing Officer's action. It transpires from the case file that assessee's interest free funds as on 31.03.2008 read a figure of Rs. 1,25,83,17,8357- in the nature of share capital, reserves and surplus etc. It files tribunal's order in its own case for AY 2004-05 in ITA No.l890/Ahd/2007 decided on 19.12.2008 deciding the very issue in its favour in identical circumstances. We follow suit in these facts and reject this Revenue's ground as well."*

32. The Learned DR at the time of hearing has not brought anything on record contrary to the finding of the ITAT as discussed above suggesting that there was any change in the facts and circumstances or under the provisions of law. Hence, there being no change in the facts and circumstances viz a viz under the provisions of law, we confirm the order of the Ld. CIT-A in view of the order of this tribunal in the own case of the assessee (supra). Accordingly, we direct the AO to delete the addition made by him. Hence, the ground of appeal of the Revenue is dismissed.

33. The next issue raised by the Revenue is that the Learned CIT-A erred in deleting the addition made by the AO under the provisions of Section 14-A read with rule 8D of Income Tax Rule amounting to Rs. 24,75,967/- only.

34. The assessee during the assessment proceedings contended that it has not incurred any expense against the dividend income of Rs. 10,52,162/- in the year under consideration. As per the assessee, its own funds exceeds the amount of investment which evidences that no borrowed fund was utilized for the purpose of the investment. Accordingly, the question of disallowing any interest expense does not arise under Rule 8D of Income Tax Rule.

35. Assessee similarly further contended that the dividend has been directly credited in the bank account and therefore it has not incurred any administrative expenses for the earning of such dividend income.

36. However, the AO disregarded the contention of the assessee by observing that the assessee has not furnished any day to day fund flow statement suggesting that the borrowed fund has not been utilized in the impugned investments. Accordingly, the AO invoked the provisions of Section 14A read with rule 8D of income tax rule and made the disallowance as under:

"Direct expenses	Nil
Interest expenses	Rs.18,16,250/-
Administrative expenses	Rs. 10,80,131/-
Total	Rs. 28, 96381/-

36.1 Thus, the AO disallowed a sum of Rs. 28,96,381/- and added to the total income of the assessee.

37. Aggrieved assessee preferred an appeal to the Learned CIT-A who allowed the appeal of the assessee in part by observing as under:

"11.4 On careful consideration of entire facts it is observed that issue regarding disallowance of proportionate interest is covered in favour of Appellant by decision of Hon'ble Ahmedabad ITAT in Appellant's own case for A.Y. 2008-09 (ITA No. 1531/Ahd/2011) wherein Hon'ble ITAT vide its order dated 6th November, 2015 has held as under:

> *10. The Assesses states in the course of hearing that its interest free funds as on 31.03.2008 are of Rs. 1,25,83,17,836/- in the nature of share capital, reserves and surplus etc. Corresponding investments giving raise to the impugned exempt income are of Rs. 3,37,75,313/-. Much less than the interest free funds. It is evident that Assessee's exempt income in relevant previous year is of Rs. 12.56 crores (Page 27 of the paper-book). Interest expenses are found to be of Rs.5.80 crores. This results in net interest income of Rs.6.75 crores. There is no dispute about this factual position. We follow a co-ordinate bench decision in ITA No.l277/Kol/2011, DCIT vs. M/s Trade Apartment Ltd. decided on 30.03.2012 holding therein that when there is no net interest expenditure upon setting off interest credited to P&L account, no part of interest debited is to be disallowed as attributable to earning of exempt income. The Revenue does not point out any exception thereto. We accordingly delete the interest disallowance under Rule 8D(2)(ii) of Rs.13,81,198/- (supra). Coming to administrative expenses disallowance of Rs.1,68,877/- under Rule 8D(2)(iii), the assessee fails to dispute correctness thereof since the impugned Assessment Year is 2008-09. This latter disallowance figure is confirmed. This ground is partly allowed.*

It is pertinent to note that during the year under consideration Appellant is having interest free funds in the form of share capital and reserves & surplus for Rs.81.81 crores which is higher than investment resulting into tax-free income. It is also observed that Appellant has earned taxable income of Rs.10.96 crores in comparison of interest expenditure of Rs.2.54 crores which means that net interest income of Rs.8.42 crores is earned. Following the decision of Hon'ble Ahmedabad ITAT in Appellant's own case referred herein above, disallowance of interest expenditure under Rule 8D(2)(iii) for Rs. 18,16,250 is deleted. So far as disallowance of administrative expenditure under Rule 8D(2)(iii), the Hon'ble ITAT has confirmed similar disallowance. However, it is observed that while computing such disallowance. Assessing Officer has considered investment made in subsidiary company being Anagram Stock Broking Pvt. Ltd., for Rs. 13.19 crores and such investment cannot be considered as part of average investment as said company has been amalgamated with Appellant Company from 1-1-2008 by order of Hon'ble Gujarat High Court. It is also observed that due to this amalgamation Appellant has filed revised Return of Income on 10th September, 2012 and same is considered while assessing total income by the Assessing Officer. As subsidiary company is merged with Appellant Company and revised annual accounts nullifies the effect of investment made in such company, amount of Rs. 13.19 crores cannot be considered as part of average investment while computing proportionate disallowance under Rule 8D(2)(iii). Considering these facts, investment as on 1st April, 2010 is considered at Rs.10.75 crores and investment as on 31st March, 2010 at Rs.6.06 crores hence average investment is worked out at Rs. 8.41 crores. The disallowance of administrative expenditure under Rule 8D(2)(iii) is reworked at Rs.4,20,414 being 0.5% of average investment as against disallowance made by Assessing Officer for Rs. 10,80,131. In nutshell, aggregate disallowance under Section 14A is restricted at Rs.4,20,414. It is also observed that similar disallowance has been made by

Assessing Officer while computing book profit under Section 115JB of the Act and as assessed income as well as returned income in Appellant's case is computed as per normal provisions of the Act, disallowance made while computing book profit has become infructuous and same is not adjudicated herein. Thus, the related grounds of appeal are partly allowed."

38. Being aggrieved by the order of the Learned CIT-A, both Revenue and the assessee are in appeal before us. The Revenue is in appeal against the deletion of the addition made by the AO for Rs. 24,75,967/- whereas the assessee is in appeal against the confirmation of the addition of Rs. 4,20,414/- The ground bearing no. 3 in an appeal of the assessee in ITA No. 268/AHD/2016 reads as under:

"3. In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in sustaining disallowance of Rs. 4,20,414/- made u/s. 14A read with Rule 8D(2)(iii) on account of administrative expenses [even as he had directed the quantum of the disallowance on this account to be reduced from Rs. 10,80,131 to Rs. 4,20,414 after appreciating that the applicant's investments in shares of its subsidiary which had been amalgamated with the appellant, cannot be taken into account for the purposes of arriving at the quantum of disallowance under the said Rule]. He ought to have appreciated, inter-alia, that in the peculiar and eminent facts of the appellant's case, the Ld. A.O. had got to be satisfied with the appellant's claim that it had not incurred any administrative expenditure in relation to income not forming part of its total income and that therefore, the Ld. A.O. could not have assumed jurisdiction u/s. 14A(2) to make any disallowance on this account."

39. Both the Learned DR and the AR before us vehemently supported the order of the respective authorities below to the extent favourable to them.

40. We have heard the rival contentions of both the parties and perused the materials available on record. The first issue that arises from the present ground of appeal is that whether the assessee has utilized the borrowed fund in the investments generating exempted income to it (the assessee). In this connection we note that the owned fund of the assessee exceeds the investments which has been reproduced in the finding of the Learned CIT (A).

As per the Learned CIT (A) the own fund of the assessee stands at Rs. 81.81 crores, which is much more than the amount of investments as on 31st March 2010 at Rs. 10.75 crores. Thus, in such a situation, a presumption can be drawn that the assessee had utilized its own fund in such investments. Accordingly, we hold that the disallowance of interest expenses is not warranted under the given facts and circumstances.

40.1 Coming to the administrative expenses, we find that the disallowance has been correctly made under the provisions of Rule 8D(2)(iii) of the Income Tax Rule after considering the average investments. Furthermore, both the Learned AR and the DR have not brought anything on record contrary to the finding of the Learned CIT (A). Hence, we do not find any infirmity in the order of the Learned CIT (A).

41. We also note that the Tribunal in the own case of the assessee in ITA No. 1531/AHD/2011 for the Assessment Year 2008-09 vide order dated 6th November 2015, involving identical issue has decided the matter partly in favor of the assessee. The relevant extract of the order is reproduced as under:

> *"10. The Assessee states in the course of hearing that its interest free funds as on 31.03,2008 are of Rs.1,25,83,17,836/- in the nature of share capital reserves and surplus etc. Corresponding investments giving raise to the impugned exempt income are of Rs. 3,37,75,3137-. Much less than the interest free funds. It is evident that assessee's exempt income in relevant previous year is of Rs.12.56 crores (Page 27 of the paper-book). Interest expenses are found to be of Rs.5.80 crores. This results in net interest income of Rs.6.75 crores. There is no dispute about this factual position. We follow a co-ordinate bench decision in ITA No.l277/Kol/2011, DCIT vs. M/s Trade Apartment Ltd. decided on 30.03.2012 holding therein that when there is no net interest expenditure upon setting off interest credited to P&L account, no part of interest debited is to be disallowed as attributable to earning of exempt income. The Revenue does not point out any exception thereto. We accordingly delete the interest disallowance under Rule 8D(2)(ii) of Rs.13,81,198/- (supra). Coming to administrative expenses disallowance of Rs.1,68,877/- under Rule 8D(2)(iii), the assessee fails to dispute correctness thereof since the impugned Assessment Year is 2008-09. This latter disallowance figure is confirmed. This ground is partly allowed."*

42. The Learned DR and the AR at the time of hearing has not brought anything on record contrary to the finding of the ITAT as discussed above suggesting that there was any change in the facts and circumstances or under the provisions of law. Hence, there being no change in the facts and circumstances viz-a-viz under the provisions of law, we confirm the order of the Ld. CIT-A in view of the order of this tribunal in the own case of the assessee *(supra)*. Hence, the grounds of appeal of the Revenue and the assessee are dismissed.

43. The next issue raised by the Revenue is that Learned CIT-A erred in deleting the addition made by the AO for Rs. 1,51,201/- by disallowing the expenditure representing the penalty.

44. The assessee during the year under consideration claimed that it has not complied certain bylaws of the National Stock Exchange and Bombay Stock Exchange within the allotted time. Accordingly, the penalties were levied by both the stock exchanges amounting to Rs.1,43,232/- and Rs.7,969/- respectively. However these penalties were not in the nature of any offence or infringement of any law. As such these penalties were levied on account of delay in complying the procedures of the Bombay stock exchange and National stock exchange. Accordingly, the assessee claimed that such expenses were incurred in the course of the business and therefore the same are allowable as deduction under Section 37 of the Act.

45. However, the AO found that similar penalties were disallowed by his predecessor for the Assessment Year 2006-07. Accordingly the AO disallowed the same and added to the total income of the assessee.

46. Aggrieved assessee preferred an appeal to the Learned CIT (A) who deleted the addition made by the AO by observing as under:

> *12.3 I have carefully considered the Assessment Order and submission filed by Appellant. The Assessing Officer has observed that Appellant has paid penalty of Rs. 1,43,232 to NSE and Rs. 7,969 to NSDL which has been levied by the Exchange for violation of its by-laws. The Assessing Officer has relied upon Assessment Order for A.Y. 2006-07 and held that such expenditure cannot be allowed as deduction as per Explanation - 1 to Section 37 of the Act. On the other hand, Appellant has argued that penalty levied by NSE or NSDL does not tantamount to infraction of law hence such expenditure cannot be disallowed in light of Explanation - 1 to Section 37 of the Act. The Appellant has also argued that similar disallowance is deleted by CIT (Appeals) in A.Y. 2006-07 to 2008-09 and Hon'ble Ahmedabad ITAT has also deleted similar disallowance in A.Y. 2008-09 vide its order dated 6th November, 2015.*
>
> *On careful consideration of entire facts it is observed that issue regarding disallowance of proportionate interest is covered in favour of Appellant by decision of Hon'ble Ahmedabad ITAT in Appellant's own case for A.Y, 2008-09 (ITA No. 1531/Ahd/2011) wherein Hon'ble ITAT vide its order dated 6th November, 2015 has held as under:*
>
> > *"2. We come to Revenue's appeal ITA No.l531/Ahd/2014. Its first ground challenges the lower appellate order deleting disallowance/addition of NSE penalty of Rs.74,515/-. The assessee is a limited company in stock broking business. It paid the impugned sum to the National Stock Exchange for non-compliance of its bye-laws. The Assessee's case was that this penalty sum pertained to procedural delay in filing compliance report to the exchange. And the delay caused was in payment of dues and other obligations. The Assessing Officer disallowed this claim as a business deduction by following an identical finding in preceding Assessment Year 2007-08. The CIT(A) follows case law 88 TTJ 352 (Kol), ITO vs. GDB Share and Stock Broking Services Ltd., in deciding the very issue in Assessee's favour. The Revenue fails to point out any distinction on facts or law before us. It does not quote any case law to the contrary. This first ground accordingly fails."*
>
> *Following the above decision of Ahmedabad ITAT in Appellant's own case, disallowance of Rs. 1,51,201 is deleted- This ground of appeal is allowed."*

47. Being aggrieved by the order of the Learned CIT-A the Revenue is in appeal before us.

48. Both the Learned DR and the AR before us vehemently supported the order of the respective authorities below to the extent favourable to them.

49. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset we note that the Tribunal in the own case of the assessee in ITA No. 1531/AHD/2011 for the Assessment Year 2008-09 vide order dated 6th November 2015, involving identical issue has decided the matter in favor of the assessee. The relevant extract of the order is reproduced as under:

> *"2. We come to Revenue's appeal ITA No.l531/Ahd/2014. Its first ground challenges the lower appellate order deleting disallowance/addition of NSE penalty of Rs.74,515/-. The assessee is a limited company in stock broking business. It paid the impugned sum to the National Stock Exchange for non-compliance of its bye-laws. The assessee's case was that this penalty sum pertained to procedural delay in filing compliance report to the exchange. And the delay caused was in payment of dues and other obligations. The Assessing Officer disallowed this claim as a business deduction by following an identical finding in preceding Assessment Year 2007-08. The CIT(A) follows case-law 88 TTJ 352 (Kol), ITO vs. GDB Share and Stock Broking Services Ltd., in deciding the very issue in assessee's favour. The Revenue fails to point out any distinction on facts or law before us. It does not quote any case law to the contrary. This first ground accordingly fails."*

50. The Learned DR at the time of hearing has not brought anything on record contrary to the finding of the ITAT as discussed above suggesting that there was any change in the facts and circumstances or under the provisions of law. Hence, there being no change in the facts and circumstances viz a viz under the provisions of law, we confirm the order of the Ld. CIT-A in view of the order of this tribunal in the own case of the assessee *(supra)*. Accordingly we direct the AO to delete the addition made by him. Hence, the ground of appeal of the Revenue is dismissed.

51. The next issue raised by the Revenue is that the Learned CIT-A erred in deleting the addition made by the AO for Rs. 1,18,89,628/- on account of bad debts as the conditions specified under Section 36 (2) were not satisfied.

52. The assessee during the year under consideration has claimed bad debts amounting to Rs. 1,18,89,628/- only. As per the assessee, its client has purchased the shares through the stock exchange but failed to make the payment to it (the assessee). Accordingly, the assessee after making the sale of such shares, has written off the loss in the books of accounts as bad debts as the recovery for the same was not certain. The assessee also claimed that the brokerage on account of purchase and sale of shares on behalf of the client was offered to tax by crediting the profit and loss account. However, the principal amount of purchase and sale was not shown in the profit and loss account but the difference either as loss or gain was reflected in the profit and loss account as bad debt or gain as the case may be. It was done so, with respect to the transactions carried out by it on behalf of the clients but who failed to make the payment. In most of the transactions loss was incurred which was claimed as bad debts.

53. The assessee alternatively contended that such loss has been incurred in the course of the business and therefore the same should be allowed as deduction either under Section 28 or 37 of the Act if the same is disallowed under the provisions of Section 36(2) of the Act.

54. However, the AO disregarded the contention of the assessee by observing that the deduction on account of bad debts can be admitted only upon the fulfilment of the condition specified under Section 36(1) (vii) r.w.s 36(2) of the Act. In the case on hand, the specified conditions have not been complied with therefore the same cannot be allowed as deduction under Section 36 (1)(vii)/36 (2), 37 or 28 of the Act.

55. Aggrieved assessee preferred an appeal to the Learned CIT-A, who deleted the addition made by the AO by observing as under:-

> *" On careful consideration of entire facts it is observed that issue regarding disallowance of proportionate interest is covered in favour of Appellant by decision of Hon'ble Ahmedabad ITAT in Appellant's own case for A.Y. 2008-09 (ITA No. 1531/Ahd/2011) wherein Hon'ble ITAT vide its order dated 6th November, 2015 has held as under:*
>
> > *"5. The CIT(A) deletes this bad debts disallowance after quoting case law of TRF Ltd. Vs. CIT, 323 ITR 397 (SC) to the fact that it is not necessary to prove the same to have actually become bad as per the relevant law amended from 01.04.1989. The CIT(A) comes to latter aspect (supra). The assessee submitted in the lower appellate proceedings that it had already credited its brokerage income in profit and loss account thereby offering it for taxation. It clarified that sale/purchase price of shares had been credited in the respective accounts. The CIT(A) follows special bench decision of the tribunal (2010) 5 ITR (Trib) 1 (Bom.) DCIT vs. Shreyas S. Morakhia as upheld in (2012) 342 ITR 285 (Bom.) CIT vs. Shreyas S. Morakhia that value of the share transacted by a broker-assessee on behalf of the concerned client is very much allowable as bad debts. The Revenue fails to rebut this legal position. We reject this third substantive ground accordingly."*
>
> *Following the above decision of Ahmedabad ITAT in Appellant's own case, disallowance of Rs. 1,18,89,628 is deleted. This ground of appeal is* ***allowed****."*

56. Being aggrieved by the order of the Learned CIT-A the Revenue is in appeal before us.

57. Both the Learned DR and the AR before us vehemently supported the order of the respective authorities below to the extent favourable to them.

58. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset we note that the Tribunal in the own case of the assessee in ITA No. 1531/AHD/2011 for the Assessment Year 2008-09 vide order dated 6th November 2015, involving identical issue has decided the matter in favor of the assessee. The relevant extract of the order is reproduced as under:

> *"The Revenue's third substantive ground assails correctness of the CIT(A) action in deleting bad debt disallowance of Rs.27,35,991/-comprising of debit balance written off of Rs.25,60,148/- and bad debt of Rs.1,75,843/-. These entries are mainly in the nature of vatav kasar. Some of them are less than of Rs.10,000/- even. The Assessing Officer observed that there was no material on record to prove the same to have been actually become bad. And also that the assessee had offered only brokerage sums as its income u/s 36(2) of the Act in profit and loss account. He accordingly made the impugned disallowance of this bad debts claim."*

59. The Learned DR at the time of hearing has not brought anything on record contrary to the finding of the ITAT as discussed above suggesting that there was any change in the facts and circumstances or under the provisions of law. Hence, there being no change in the facts and circumstances viz a viz under the provisions of law, we confirm the order of the Ld. CIT-A in view of the order of this tribunal in the own case of the assessee (supra). Accordingly, we direct the AO to delete the addition made by him. Hence, the ground of appeal of the Revenue is dismissed.

60. The next issue raised by the Revenue is that the Learned CIT (A) erred in deleting the addition made by the AO for Rs.17,02,013/- on account of Saudafer loss.

61. The assessee during the assessment proceedings submitted that it has made certain mistakes while carrying out transactions of purchases and sales of securities on behalf of the clients which has resulted loss of Rs. 38,40,074/- only. As per the assessee such loss should be allowed as deduction under Section 28 (1) of the Act as it did not occur in its own account and the same should not be treated as speculative loss under explanation to Section 73 of the Act.

62. The assessee further contended that had such loss been debited in the account of the clients, but such clients would not have paid for such losses as the loss was incurred due to the mistake of the assessee. In such a situation, the loss was allowable as deduction either under Section 36(1) as bad debts or as a business loss under Section 28(1) of the Act.

63. However, the AO disagreed with the contention of the assessee by observing that the assessee has not furnished the details of the mistake committed by it, such as clients in whose accounts the transaction was entered, non-delivery of the shares to the exchange and incorrect execution of orders. The AO also observed that there was disallowance made by his predecessor in the own case of the assessee for the Assessment Year 2006-07 treating such loss as speculative in nature. Accordingly, the AO added the same to the total income of the assessee and allowed the same to be carried forward.

64. Aggrieved assessee preferred an appeal to the Learned CIT (A).

65. The assessee before the Learned CIT (A) submitted that the impugned loss of Rs. 38,40,074/- is inclusive of the loss of Rs.17,02,013/- which was incurred out of future and option segment carried out through the recognized stock exchange. Therefore such loss of Rs. 17,02,013/- cannot be treated as speculative transaction as per clause (d) of sub-Section 5 to Section 43 of the Act. Therefore, to the extent of Rs.17,02,013/- such loss cannot be treated as speculative in nature.

66. The assessee also contended that it has declared of gross brokerage income of Rs. 60,34,33,815/- only and the amount of impugned loss debited stands at Rs. 38,40,074/- which is less than 0.6% of the total turnover. Therefore, there is no justification on the part of the AO to disbelieve its (assessee) version.

67. However, the Learned CIT (A) found that the assessee has not furnished necessary details about the parties on whose case the mistake was committed by it. Thus, in the absence of such information, it has to be presumed that the impugned loss was incurred on assessee's account.

68. Nevertheless, the Learned CIT (A) deleted the addition made by the AO for the Assessment Year 2006-07 for the reason that the assessee has furnished the necessary evidence to justify that the loss was not on its account. Rather such loss was incurred by the assessee on behalf of its client. But in the case on hand the assessee has not furnished the necessary details. Thus, the Learned

CIT (A) in the absence of sufficient documentary evidence concluded that such loss relates to the assessee's account.

69. However, the Learned CIT (A) held that the loss to the extent of Rs. 17,02,013/- relates to the future and option segment which was carried out through the recognized stock exchange. Therefore, such loss of Rs. 17,02,013/- cannot be treated as speculative transaction as per clause (d) of sub Section 5 to Section 43 the Act and under the explanation to Section 73 of the Act. Accordingly, the Learned CIT (A) deleted the addition made by the AO for such loss of Rs. 17,02,013.00. Thus, the Learned CIT (A) allowed the ground of appeal of the assessee in part.

70. Being aggrieved by the order of the Learned CIT (A) both the Revenue and the assessee are in appeal before us. The Revenue is in appeal against the deletion of the addition made by the AO for Rs.17,02,013/- treating such loss relating to future option segment which was carried out through the recognized stock exchange whereas the assessee is in appeal against the confirmation of the addition of Rs. 21,38,061/- which was treated by the Learned CIT (A) as speculative in nature in pursuance to the explanation to Section 73 of the Act. The ground No. 4 of appeal filed by the assessee in ITA No. 268/AHD/2016 reads as under:

> *"4. In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in sustaining the Ld. AO's action of treating what was normal business los [Saudafer loss] as speculation loss to the extent of Rs. 21,38,061 [out of Rs. 38,40,074 so treated by the Ld. A.O.]."*

71. The Learned DR before us submitted that the loss claimed by the assessee for Rs. 17,02,013/- is deemed to be speculative loss under explanation to Section 73 of the Act.

72. On the other hand, the Learned AR before us reiterated the contention of the assessee as raised before the authorities below.

73. Both the Learned DR and the AR before us vehemently supported the order of the authorities below to the extent favourable to them.

74. We heard the rival contentions of both the parties and perused the materials available on record. The first issue that arises for our consideration is whether the impugned loss incurred by the assessee relates to the sale and purchase activities carried out by the assessee for itself or it relates to the other clients of the assessee. It is a question of fact which can verified based on the documentary evidence. Indeed, the assessee has not furnished the sufficient documentary evidence in support of his contention. But looking at the amount of impugned loss in comparison to the volume of the brokerage business carried out by the assessee, we find that such loss is of negligible value. Furthermore, the tax audit report in form 3CD suggests that the assessee is engaged in the activity of stockbroking only and not in the activity of sale purchase of securities. The copy of form 3 CD is placed on pages 133 to 165 of the Paper Book. Similarly, the AO has also recorded in his order the nature of business of the assessee i.e. stockbroking. Even in the earlier Assessment Year 2006-07, the impugned loss was also treated as speculative in nature but the Learned CIT (A) deleted the same as the assessee was able to justify his contention based on the documentary evidence that such loss relates to its clients. This finding of the Ld. CIT-A, if analyzed in aggregation of other facts

i.e. form 3CD report, profit & loss account, nature of the business as recorded by the AO, the fact emerges that that the assessee is not carrying out share trading activities in its accounts.

75. On perusal of the financial statements placed on pages 59 to 132 of the Paper Book, it was observed that there was no transaction shown by the assessee as purchase and sale of the shares. In view of the above and after considering the details as discussed above we hold that the impugned loss incurred by the assessee does not pertain to its accounts rather it relates to the accounts of its clients. Accordingly, we conclude that the provisions of explanation to Section 73 of the Act cannot be applied to the case on hand. In holding so we find support and guidance from the order of this Tribunal in the case of Parker securities Ltd versus DCIT reported in 102 TTJ 235 wherein it was held as under:

> *"Explanation to Section 73 provides that where any part of the business of a company (other than certain specified companies as mentioned in the Explanation) consists in the purchase and sale of shares of other companies, such company shall, for the purposes of this Section, be deemed to be carrying on a speculation business to the extent to which the business consists of the purchase and sale of such shares. It is clear from the said provision that sale and purchase of shares of other companies, within the ambit of the Explanation, must be carried out as an activity of business. The term 'business' has been defined in Section 2(13). Noting the definition of 'business' from the view point of Explanation to Section 73, it has been observed by the Karnataka High Court in the case of Mysore Rolling Mills (P.) Ltd. v. CIT [1992] 195 ITR 404/ 63 Taxman 416 that any kind of venture would not fall within this inclusive definition. The venture or the adventure will have to be in the nature of trade, commerce or manufacture. Basically, the concept of business involves a frequent activity of a particular nature. Therefore, to find out that the assessee carried on purchase and sale of shares of other companies as its business in a given case, the facts of that case will have to be examined and the tests which could determine such situation are - (i) nature of assessee's business in general, (ii) the purpose behind the particular transaction, and (iii) the effect of the transaction etc. In the instant case, the nature of the assessee's business in general was to earn income as a broker of stock exchange and the purpose behind the transactions in regard to which the assessee had incurred loss was the purchase for and on behalf of certain clients to earn brokerage income therefrom. It was only an eventuality that some of the clients disowned only part of the transactions which under compulsion were to be taken by the assessee as its own. [Para 28]"*

75.1 In view of the above, once it has been held that loss does not relate to the activity of sale/purchase of shares by the assessee for itself, then the provisions of explanation to Section 73 of the Act cannot be applied. Hence, the ground of appeal of the Revenue is dismissed whereas the ground of appeal of the assessee is allowed.

76. The next issue raised by the Revenue is that the Learned CIT (A) erred in directing to re-compute the capital gain with indexation from the FY 2005-06.

77. The assessee acquired old BSE membership card in the year 1995-96 at cost of Rs.2,75,01,000/- and not claimed any depreciation on such membership card as it was acquired prior to 1st April 1998. The old BSE membership card was demutualised in the Financial Year 2005-06. In other words, the membership card was converted into the shares of Bombay stock exchange in the years 2005-06. The assessee sold such shares in the year under consideration and claimed long-term capital loss at Rs. 1,96,02,783/-. It was worked out as under:

No of shares	Purchase date	Sale date	Sales value (Rs.)	Cost of acquisition (Rs.)	Indexed cost (Rs.)	LTCG (Rs.)
1,30,000	31-03-1996	27-01-2010	4,22,50,000	2,75,01,000	6,18,52,784	(1,96,02,783)

78. The assessee has worked out the index cost of acquisition from the year 1995-96 while working out the long-term capital gain.

79. Similarly, the assessee also acquired another BSE membership card in the year 2000-01 at Rs. 2,52,11,102/- and claimed depreciation till the Assessment Year 2009-10. As such the assessee has shown opening written down value of such card at Rs. 93,06,442/-in its balance sheet as on 1st April 2009. Such BSE membership card was also demutualised in the Financial Year 2005-06. In other words, the membership card was converted into the shares of Bombay stock exchange in the year 2005-06. The assessee sold such shares in the year under consideration and claimed long-term capital gain at Rs. 2,77,63,125/-. It was worked out as under:

No of shares	Purchase date	Sale date	Sales value (Rs.)	Cost of acquisition (Rs.)	Indexed cost (Rs.)	LTCG (Rs.)
1,30,000	31-03-2001	27-01-2010	4,22,50,000	93,06,442	1,44,86,875	2,77,63,125

80. The assessee has worked out the index cost of acquisition from the year 2000-01 while working out the long-term capital gain.

81. However, the AO found that the shares of the Bombay Stock Exchange were acquired by the assessee in the financial 2005-06 therefore he was of the view that the benefit of cost indexation to the assessee should be given from the Financial Year 2005-06 and not from the year in which Bombay Stock Exchange membership card were acquired by the assessee. Accordingly, the AO worked out the long-term capital gain in the manner as given below:

Particulars	***Old BSE Card***	***New BSE Card***	***Total***
Sale consideration	***42250000***	***42250000***	***84500000***
Cost: 27501000/- *Indexed cost* *Cost x CII of FY 2009-10* *CII of FY 2005-06* *27501000 x 632/497*	***34971090***		
Cost : 9306442 *Indexed cost* *Cost X CII of FY 2009-10* *CII of FY 2005-06* *9306442 X 632/497*		***11734348***	***46805438***
Long term Capital gain/loss	***7278910***	***30415652***	***37694562***

17.9 From the above it can be seen that the assessee has earned total Long term capital gain from sale of BSE of Rs.37694562/-. The assessee has computed the total Long term capital loss in the return of income as under.

Arvind Ltd. *(-) 33970829/-*
BSE Shares *(-) 19602783/-*
Arvind Ltd. *(-) 14083776/-*
BSE Shares *27763125/-*
Total Long term capital Loss ***(-) Rs.39894263/-***

In view of the Long term capital gain/loss is recomputed as under.
a. Long term capital gain on sale of BSE Shares *Rs.37694562/-*
b. *Less Long term capital loss on sale of Arvind Shares* ***(-)Rs.48054605/-***
Allowable long term capital loss ***Rs.10360043/-"***

82. In view of the above the AO worked out the excessive long-term capital loss at Rs. 2,95,34,220/- and disallowed the same by adding to the total income of the assessee.

83. Aggrieved assessee preferred an appeal to the Learned CIT (A), and submitted that the provisions of Explanation-1 (ha) of Section 2(42A) requires that the period prior to demutualisation of shares shall be included in the period of holding. Thus, the indexation benefit should be granted from the year of acquisition.

84. The assessee by way of filing the additional ground of appeal also contended that the cost of acquisition of the membership card of BSE acquired in the FY 2000-01 should be taken the original cost instead of WDV as on 1st April 2005 as mandated under Section 55(2)(ab) of the Act. The assessee in this connection further submitted that it has inadvertently taken the WDV as on 1st April 2009 while computing the long term capital gain.

85. However, the assessee agreed that the indexation cost of the shares with respect to both the membership card can be taken from the FY 2005-06 corresponding to AY 2006-07. The assessee in support of his contention filed the revised computation of income as detailed under:

No of shares	*Purchase Date*	*Sale date*	*Sale value*	*Cost*	*Indexed cost*	*Long term capital gain*
1,20,000	*31-03-1996*	*27-01-2010*	*4,22,50,000*	*2,75,01,000*	*3,49,71,090*	*72,78,910*
1,30,000	*31-03-2001*	*22-01-2010*	*4,22,50,000*	*2,52,11,102*	*3,20,59,188*	*1,01,90,812*
Total						*1,74,69,722*

86. The Ld. CIT-A after considering the submission held that the assessee is entitled for the indexation benefit at the original cost of the membership card after taking the cost inflation index of the AY 2006-07. Thus, the ground of appeal of the assessee was partly allowed.

87. Being aggrieved by the order of the Learned CIT(A), both the Revenue and the assessee came in appeal before us. The Revenue is in appeal against the direction of the Learned CIT(A) for computing the capital gain considering the original cost of membership cards whereas the assessee is in appeal before us against the direction of the Learned CIT(A) for providing the indexation benefit from the year 2005-06 when the assets were 1st held by the assessee.

87.1 The learned DR before us contended that the assessee on one hand has claimed the benefit of depreciation and on the other hand is also claiming the deduction while computing the capital gain by taking the original cost of acquisition of the membership card.

88. On the other hand, the AR before us submitted that the provisions of Section 55(2)(ab) and Explanation 1(ha) to Section 2(42A) of the Act are unambiguous and clear. Therefore, the assessee should be allowed the original cost of acquisition of the membership card while computing the capital gain as per the provisions of Section 55(2)(ab) of the Act. Similarly, the assessee should also be allowed the benefit of indexation from the year of acquisition of respective membership cards as per the provisions of Explanation 1(ha) to Section 2(42A) of the Act.

89. Both the Learned DR and the AR relied on the order of the respective authorities to the extent favourable to them.

90. We have heard the rival contentions of both the parties and perused the materials available on record. The facts of the case are not in dispute which have been elaborated in the preceding paragraph. Therefore, we are not

inclined to repeat the same for the sake of brevity and convenience. From the preceding discussion the following question arises for our consideration.

(a) Whether the cost of acquisition of the BSE shares should be calculated in accordance with the original cost of acquisition of the BSE membership card under Section 55(2)(ab) or the written down value be adopted under Section 50 of the Act ?

(b) Whether the relevant year for calculating indexed cost of acquisition should be the year of original acquisition of the BSE membership, i.e., year 1995-96/2000-01 or the year of allotment of shares in the BSE in lieu of membership, i.e., year 2005-06?

91. The Act comprises of several provisions pertaining to the computation of capital gains when equity shares of a recognized stock exchange are allotted to a shareholder under a scheme of demutualization and corporatization approved by the SEBI.

91.1 Under section 47(xiiia) of the Act, any transfer of a membership right in a recognized stock exchange in India for acquisition of shares and trading or clearing rights in accordance with scheme of demutualization or corporatization which is approved by the SEBI, is not regarded as transfer.

91.2 Section 55(2)(ab) stipulates that the cost of acquisition for such shares shall be cost of acquisition of original membership of the exchange.
Explanation 1(ha) to Section 2(42A) provides that period of holding of such shares shall include the period of membership of the recognized stock

exchange in India immediately prior to such demutualization or corporatization.

92. Moving forward, we also note that Section 50 of the Act is a special provision for computing capital gains in case of depreciable assets. It begins with a non-obstante clause to Section 2(42A) of the Act. The provision of Section 50 of the Act provides that notwithstanding anything contained in clause (42A) of Section 2 of the Act, where the capital asset in respect of which depreciation is provided under the Act, the cost of acquisition of asset, inter alia, shall be deemed to be written down value of the asset as at the beginning of the previous year. Further, the capital gain shall be deemed to arise from the transfer of short-term capital assets.

93. In the backdrop of the stated discussion, first we deal with question No. 1 with respect to both the membership card in seriatim. Regarding the first membership card of the BSE acquired in the year 1995-96, we note that the assessee has not claimed any depreciation thereon. Therefore, the same is outside the purview of the provision of Section 50 of the Act i.e. special provision for computation of capital gain in case of depreciable assets. It is because such membership card was not depreciable assets. Thus, the original cost incurred by the assessee on the acquisition of such membership card shall be taken as the cost of acquisition as defined under Section 55(2)(ab) of the Act.

94. Regarding the second membership card of the BSE acquired in the year 2000-01, we note that the assessee has claimed depreciation thereon. Therefore, it appears that the same is subject to the provision of Section 50 of the Act i.e. special provision for computation of capital gain in case of

depreciable assets which provides that written down value of the block of assets at the beginning of the previous year shall be reduced from the sale consideration. However, we note that what has been sold in the year under consideration are the shares of BSE which were not depreciable assets upon the conversion membership card as shares in the year 2005-06. Thus, the present membership card in the year under consideration was no longer depreciable assets. Therefore, we are of the view that the provisions of Section 50 of the Act cannot be applied for the year under consideration. Indeed, the assessee is availing double benefit, firstly, by way of depreciation and secondly by way of claiming the deduction of the original cost of acquisition of the membership card under Section 55(2)(ab) of the Act. But the issue before us is limited to the cost of acquisition of the membership card as provided under section 55(2)(ab) of the Act. As per this section, the original cost should be takes as the cost of acquisition while determining the income under the head capital gain.

95. Now coming to the 2nd question arising for our consideration, what should be the period of holding for computing the capital gain with respect to shares acquired by the assessee upon the conversion of both membership cards of the BSE. In this regard we note that the assessee itself has agreed before the ld. CIT-A for allowing the benefit of indexation from the AY 2006-07 and accordingly, the ld. CIT-A decided the issue after considering the plea of the assessee. The relevant submission of the assessee before the ld. CIT-A has already been recorded in the preceding paragraph.

95.1 Now, the assessee before us contends for allowing the benefit of indexation for both the membership cards from the year of acquisition. In our considered view this plea of the assessee is not desirable for the reason it has accepted before the ld. CIT-A to provide the indexation benefit from the AY 2006-07. Moreover, the ld. AR has not brought anything on record suggesting that the assessee has accept the indexation benefit from AY 2006-07 on account of misunderstanding of the provisions of law or wrong advice of the consultant or it was against the spirit of the provisions of law. Accordingly, we decline to interfere in the order of the ld. CIT-A. Hence, the grounds of appeal of the revenue and the assessee are dismissed.

96. In the result, the appeal filed by the Revenue is dismissed.

Coming to ITA No.268/AHD/2016(A.Y.2010-11) Assessee's Appeal:-

97. The assessee has raised the following concise grounds of appeal:

"1. In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in dismissing ground No. 1 of the appellant's appeal as being general in nature, not requiring any consideration by him. He ought to have appreciated, inter alia, that only a bare reading of that ground showed the reason for the appellant's challenge to the validity of the assessment order impugned before him and, accordingly, he ought to have adjudicated upon the same on merits.

2. In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in upholding addition of Rs. 8,678 [out of Rs. 6,94,288 added by the Ld. AO. on this account] made on the ground that income to that extent shown by ITS/26AS as having been paid by some parties to the appellant had not been included in the appellant's return.

3. In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in sustaining disallowance of Rs. 4,20,414 made u/s. 14A read with Rule 8D(2)(iii) on account of administrative expenses [even as he had directed the quantum of the disallowance on this account to be reduced from Rs. 10,80,131 to Rs. 4,20,414 after appreciating that the applicant's investments in shares of its subsidiary

which had been amalgamated with the appellant, cannot be taken into account for the purposes of arriving at the quantum of disallowance under the said Rule]. He ought to have appreciated, inter-alia, that in the peculiar and eminent facts of the appellant's case, the Ld. A.O. had got to be satisfied with the appellant's claim that it had not incurred any administrative expenditure in relation to income not forming part of its total income and that therefore, the Ld. A.O. could not have assumed jurisdiction u/s. 14A(2) to make any disallowance on this account.

4. In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in sustaining the action of treating what was normal business loss [Saudafer loss] as speculation loss to the extent of Rs. 21,38,061 [out of Rs. 38,40,074 so treated by the Ld. A.O.].

5. In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in upholding the disallowance of deduction for Rs. 2,76,213 (actual figure of disallowance made by learned A.O is Rs. 2,72,613/-) on the ground that, the expenditure having been incurred on the purchase of mobile phones, was capital in nature.

6. In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in upholding the learned A. O.'s action of holding that the appellant was required to deduct tax at source u/s. 194J from Membership Fee and other charges of Rs.2,29,9327-/ paid to recognized Stock Exchanges and of making a disallowance of the same u/s. 40(a)(ia) on the ground that the appellant had not deducted TDS therefrom.

7. In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in upholding the learned A. O.'s action of holding that the appellant was required to deduct tax at source u/s.194-1 from VSAT and lease line charges paid to recognized Stock Exchanges and in sustaining a disallowance of Rs. 9,14,6197- u/s. 40(a)(ia) on the ground that the appellant had not deducted TDS therefrom (out of Rs. 37,46,013 disallowed by the A. O. on this account).

8. In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in upholding the disallowance of deduction for Rs. 26,910 on account of brokerage on the ground that it had been paid to a sub broker whose registration number could not be produced before the Ld. A.O. He ought to have appreciated that even if it were assumed that the sub broker was not a registered sub broker, and further, that payment of brokerage to him was in violation of the SEBI Rules/ guidelines, that could not entitle the Ld. A.O. to disallow deduction for what was a genuine business expenditure, actually incurred by the appellant, especially when the Explanation below section 37(1) could not be applied thereto.

9. In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in upholding the learned A.O.'s action of holding that the appellant's long term gain/loss on the sale of shares of the Bombay Stock Exchange Ltd. allotted to it in financial year 2005-06 have to be computed on the basis of the cost inflation index pertaining to the financial year 2005-06 instead of on the basis of the cost inflation index pertaining to the financial years 1995-96 and 2000-01 during which the appellant had acquired the respective Membership Cards of the Bombay Stock Exchange in lieu

whereof the shares of the Bombay Stock Exchange Ltd. in question had been allotted to it upon demutualization/corporatization of the Bombay Stock Exchange.

10.1 In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in summarily dismissing the ground No. 20 of the appellant's appeal reading as under:-

> *"20.1 In law and in the facts and circumstances of the appellant's case, the learned Assessing Officer has grossly erred in levying interest amounting to Rs.98,15,678 u/s. 234B. He ought to have appreciated, inter alia, that quite apart from the fact that all the additions/disallowances in the impugned order were unwarranted/unjustified, they were such in nature as to attract the ratio of the decision of the Gujarat High Court in Bharat Machinery and Hardware Mart's case (136 ITR 875) and of the decision of the ITAT, Delhi Bench in Haryana Warehousing Corporation v. DCIT [252 ITR (A.T.) 34] was attracted and it was not open to him to levy the impugned interest. The appellant challenges the very levy of this interest arising from those additions/disallowances.*
>
> *20.2 Without prejudice to the foregoing, in law and in the facts and circumstances of the appellant's case, the learned Assessing Officer has grossly erred in failing to appreciate that even on his own untenable stand, the quantum of interest u/s. 234B was required to be only Rs.32,66,431 (as against Rs. 98,15,678 erroneously computed by him, inter alia, without considering credit for huge amount of TDS and advance tax)."*

10.2 He ought to have appreciated, inter-alia,:
a) that the appellant having challenged the very levy of interest on substantive grounds, its ground deserved to be considered on merits;

b) that, without prejudice and in any case, he ought to have issued appropriate direction to the Ld. A.O. as prayed for by the appellant vide ground No. 20.2.

11. In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in dismissing Ground No. 21 of the appellant's appeal before him challenging the initiation of penalty proceedings u/s. 271(1)(c). He ought to have appreciated, inter alia, that in the peculiar facts and circumstances of the appellant's case, initiation of penalty proceedings for concealment of income was not at all warranted and that, therefore, he ought to have ordered for the cancellation of those proceedings, thereby saving the appellant as well as the Department from having to undergo avoidable litigation.

12. The appellant craves leave to add, alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal."

98. The first issue raised by the assessee in ground No. 2 is that Learned CIT (A) erred in holding the addition of Rs. 8,678/- in part out of the total addition made by the AO on account of mismatch in ITS/26AS.

99. The AO during the assessment proceedings observed certain difference in the amount of income shown between ITS/26AS viz-a-viz income accounted in the books of accounts of the assessee. Such difference was of Rs. 6,94,288/- which was not shown as income by the assessee in its books of accounts. On question by the AO, the assessee could not furnish any suitable reply for reconciling such difference. Thus the AO in the absence of any information, treated such difference aggregating to Rs. 6,94,288/- as income and added to the total income of the assessee.

100. Aggrieved assessee preferred an appeal to the Learned CIT (A) who deleted the addition made by the AO in part by observing as under:

"The Assessing Officer has made addition on the ground that Appellant has not offered income received from following four parties:

Name of Tax Deductor	*Income from which TDS deducted*
Manish Kumar Goyel	*1,36,356*
Rajyog Share and Stock Brokers ltd.	*8,678*
IL & FS Securities Services Ltd.	*45,484*
Indian Bank	*5,03,770*
Total	*6,94,288*

(ii) The Assessing Officer in the Remand Report, as reproduced herein above, has accepted Appellant's explanation that income from Manishkumar Goyel and IL&FS Securities is already offered to tax hence addition made by Assessing Officer to the extent of Rs. 1,82,240 (1,36,356 + 45,484) is deleted.

(iii) So far as addition for Rs.5,03,770 is concerned, Assessing Officer has accepted that income disclosed by Appellant in Return of Income is matching with physical TDS certificate issued by the Bank, it is pertinent to note that Bank vide its dated 10th April, 2013 and 11th April, 2013 has accepted the mistake made by them for uploading data of TDS to NSDL and even certified that interest as mentioned in physical TDS certificate is correct. Considering these facts addition made by Assessing Officer for Rs. 5,03,770 is deleted.

(iv) So far as addition of Rs. 8,678 is concerned. Appellant has claimed that it has not received any income from such party though it is reflected in 26AS. The Appellant has not submitted any evidences to prove this contention hence addition to the extent of Rs. 8,678 is confirmed.

In view of- facts discussed herein, addition made by Assessing Officer is restricted to Rs. 8,678 and relief of 6,85,610 is granted. Thus, this ground of appeal is partly allowed."

101. Being aggrieved by the order of the Learned CIT (A), the assessee is in appeal before us.

102. The Learned AR before us submitted that it has not received any income from the party namely M/s Rajyog Share and stockbrokers Ltd for Rs. 8,678/-. Therefore, no addition is warranted.

103. On the other hand, the Learned DR vehemently supported the order of the authorities below.

104. We have heard the rival contentions of both the parties and perused the materials available on record. The onus lies upon the assessee to justify based on the documentary evidence that it has not received any income from M/s Rajyog Share and stockbrokers Ltd for Rs. 8,678/- but the assessee failed to discharge its onus. Thus in the absence of any documentary evidence, we do not find any infirmity in the order of the authorities below. Hence, the ground of appeal of the assessee is dismissed.

105. The second issue raised by the assessee is that the Learned CIT-A erred in upholding the addition in part amounting to Rs. 4,20,414/- under the provisions of Section 14A read with Rule 8D(2)(iii) of Income Tax Rule.

106. The issue raised by the assessee has already been disposed of by us along with the appeal filed by the Revenue bearing ITA No. 413/AHD/2016 vide paragraph number 40-42 of this order. As such, the ground of appeal of the assessee has already been dismissed. For the detailed discussion, please

refer the relevant paragraph. Hence, the ground of appeal of the assessee is dismissed.

107. The next issue raised by the assessee in ground No. 4 is that the Learned CIT-A erred in confirming the addition in part of Rs. 21,38,061/- out of the total addition made by the AO at Rs. 38,40,074/- by treating the normal business loss as speculation loss.

108. The issue raised by the assessee has already been disposed of by us along with the appeal filed by the Revenue bearing ITA No. 413/AHD/2016 vide paragraph number 74 & 75 of this order. As such, the ground of appeal of the assessee has already been allowed. For the detailed discussion, please refer the relevant paragraph. Hence, the ground of appeal of the assessee is allowed.

109. The next issue raised by the assessee in ground No. 5 is that the Learned CIT (A) erred in holding that the expenses incurred on the purchase of the mobiles are in the nature of capital expenditure.

110. The assessee in the year under consideration has claimed the expenses incurred by it on the purchase of the mobile set as revenue in nature on the reasoning that there was no enduring benefit accruing to it out of such expenses. However the AO disregarded the contention of the assessee by observing that the mobile phone falls under the category of equipment as provided under Section 32 of the Act. Accordingly the AO treated the same as capital in nature and disallowed the same by adding to the total income of the assessee.

111. Aggrieved assessee preferred an appeal to the Learned CIT (A).

112. The assessee before the Learned CIT (A) submitted that there is fast change in the technology in the field of mobiles. Therefore, the same should be treated as revenue expenditure. However, the Learned CIT (A) disregarded the contention of the assessee by observing as under:

> *"15.3 I have carefully considered the assessment order and submission filed by appellant. The Assessing Officer has observed that appellant has claimed purchase of cell phones as revenue expenditure but such claim cannot be allowed as it falls under the category of equipment and it definitely has enduring benefit. Thus Assessing Officer has made disallowance of Rs 2,76,213. On the other hand, appellant has argued that due to radical changes in technology, cell phones have no enduring benefits and same is required to be allowed as revenue expenditure. It was alternatively argued that depreciation on such capital expenditure need to be allowed.*
>
> *On careful consideration of entire facts it is observed that cell phones purchased by appellant are having enduing benefits and same falls under the block of "Plant & machinery" which covers all the office equipment. The Appellant has not established how such expenditure are allowable as revenue expenditure u/s 37 of the Act hence it is held that Assessing Officer is justified in treating the expenditure as capital expenditure. However, while passing the assessment order, Assessing Officer has not allowed depreciation on above expenditure treated as capital expenditure hence he is directed to allow depreciation on cell phones treated as capital expenditure. This ground of appeal is partly allowed."*

113. Being aggrieved by the order of the Learned CIT (A) the assessee is in appeal before us.

114. The Learned AR before us reiterated the submission as made before the Learned CIT (A) whereas the Learned DR vehemently supported the order of the authorities below.

115. We have heard the rival contentions and perused the materials available on record. From the preceding discussion, we note that the assessee has treated the expenses incurred by it on the purchase of mobile expenses as revenue in nature whereas the revenue has treated the same as capital in nature. Accordingly, the claim of the assessee was disallowed but after allowing the depreciation at the rate of 15% treating the same as plant and machinery.

A capital expenditure represents the expenses incurred by the person to purchase, upgrade, or extend the life of an asset. Capital expenditures are designed to be used to invest in the long-term financial health of the company. Capital expenditures are a long-term investment, meaning thereby the assets purchased have a useful life of more than a year. Types of capital expenditures can include purchases of property, equipment, land, computers, furniture, and software.

115.1 Capital expenditures are often employed to improve operational efficiency, increase revenue in the long term, or make improvements to the existing assets of a company. Capital spending is different from other types of spending that focus on short-term operating expenses, such as overhead expenses or payments to suppliers and creditors.

115.2 Depreciation is used to expense the fixed asset over its useful life. Depreciation helps to spread out the cost of an asset over many years instead of expensing the total cost in the year it was purchased. Depreciation allows companies to earn revenue from the asset while expensing a portion of its cost each year until the asset's useful life has ended.

115.3 For example, if an asset costs $10,000 and is expected to be in use for five years, $2,000 may be charged to depreciation in each year over the next five years. There are several methods used to calculate depreciation. The full value of costs that are not capital expenditures must be deducted in the year they are incurred.

115.4 In the light of the above stated discussion, we have to see whether the expenditure incurred on the purchase of the mobile phones represents the capital expenditure as discussed above. In this regard we note that Mobile obsolescence is a well-known fact. The Mobile phones become obsolete every year. The old models become outdated, very, very quickly. Considering that the mobile phones become outdated soon, and their value erodes fast, it cannot be treated as capital expenditure.

115.5 Besides the above, we also find that Section 32 of the Act provides for depreciation in respect of buildings, machinery, plant or furniture owned by an assessee and used for the purposes of the business or profession. Under this section, for getting depreciation, the following two conditions should be satisfied:

(i) The asset in question should be owned by the assessee; and

(ii) The asset should be used for the purposes of the business or profession carried on by the assessee.

115.6. Upon satisfaction of the above conditions, the next step comes for calculating the rate of depreciation for which we need to refer the rule 5 of Income Tax Rules which reads as under:

> [87]*[**Depreciation**[88]**.***
>
> ***5.** (1) Subject to the provisions of sub-rule (2), the allowance under clause (ii) of sub- section (1) of section 32 in respect of depreciation of any block of assets shall be calculated at the percentages specified in the second column of the Table in Appendix I to these rules on the written down value of such block of assets as are used for the purposes of the business or profession of the assessee at any time during the previous year:*

115.7. Now to determine the rate of depreciation we need to refer the appendix-1 of the Act as applicable to the mobile phones. However, on perusal of the appendix-1, we find no entry for the rate applicable to the mobile phones. However, the revenue has treated the mobile phones as part of the plant and machinery and accordingly it allowed the depreciation thereon at the rate of 15%. Now the question arises whether the mobile phones are machinery. The word "plant'" according to section 43(3) includes ships, vehicles, boats, scientific apparatus and surgical equipment. Nowhere, does it specify mobile phones. Of course, it may be argued that "plant" is an inclusive definition, not an exhaustive one. But, then plant would include anything which can be comprehended within it's ordinary meaning. No one would ordinarily consider mobile phone to be a "plant."

115.8. When we come to the second part, which calls mobile phone as "machinery," what is the definition of "machinery" in Income-tax Act? Well, the word "machinery" itself has not been defined in the Act. So, it has nowhere been defined that mobile phone is "machinery." Accordingly, in the absence of any specific entry in the appendix-1 of the Act, we are of the view the assessee is eligible for claiming the impugned expenses as revenue in nature. Hence, we set aside the finding of the learned CIT (A) and direct the AO to delete the addition made by him. Thus the ground of appeal of the assessee is allowed.

116. The next issue raised by the assessee in ground No. 6 is that the Learned CIT (A) erred in upholding the disallowance of Rs. 2,29,932/- representing the

payment made to the stock exchange on account of Non-deduction of TDS under Section 194J of the Act.

117. The assessee during the assessment proceedings submitted that it has incurred an expense of Rs. 2,29,932/- towards the membership fees paid to the stock exchanges. As per the assessee such membership subscription is not a payment in the nature of technical/professional services and therefore the same is not subject to the TDS under the provisions of Section 194J of the Act.

117.1 However, the AO observed that the stock exchanges are providing a platform to its members for carrying out sale purchase of the securities/derivatives through the screen based system. Under this system, the buyers of the securities/derivatives are able to find out the prospective seller and vice versa. The stock exchanges to provide such services charges various fees such as listing fees, admission fees, arbitration fees and transaction charges. Accordingly, the AO was of the view that such membership subscription and transaction charges incurred by the assessee are subject to the provisions of TDS under Section 194J of the Act. But the assessee failed to do so, therefore the AO disallowed the same and added to the total income of the assessee.

118. On appeal, the Learned CIT(A) confirmed the order of the AO by observing as under:

> *(i) So far as payment for depository transactions are concerned, it is observed that Central Government has issued notification on 31st December, 2012 wherein it is stated that such charges are not subject to provisions of TDS but notification is applicable from 1st January, 2013 hence it cannot have retrospective effect. Considering these facts, it is held that Appellant has failed to deduct TDS on payment made to HDFC Bank hence disallowance under Section 40(a)(ia) is required to be upheld subject to legal issue regarding applicability of Finance Act, 2012, as discussed herein under.*

(ii) So far as subscription and membership fees paid to exchange are concerned, it is observed that same are paid for obtaining various facilities as provided by exchange for carrying out screen based trading transactions on behalf of clients. The exchanges have provided managerial services which are in nature of technical services as mentioned in Section 194J the decision of Bombay High Court relied upon by Appellant is on the issue whether payment5 of lease-line charges and VSAT charges are subject to TDS under Section 194J of the Act or not and they are dealing with payment referred hereinabove hence same cannot be made applicable while adjudicating present issue. Thus, non-deduction TDS would lead to disallowance under Section 40(a)(ia) subject to legal issue regarding app0licability of Finance Act, 2012, as discussed herein under:

(iii) So far as disallowance under Section 40(a)(ia) for VSAT and lease-line charges are concerned, my predecessor CIT(Appeals)-XVI vide his order dated 28th April, 2011 for A.Y. 2008-09 has upheld the disallowance and held as under:

"10.3.1. I have considered the submission made by the appellant and observation of the Assessing Officer. With respect to NSE lease line charges of Rs.5,40,372/- NSC, VSAT charges of Rs.14,56,083/- lease line expenses of Rs.12,54,523/- apart from what the Assessing Officer has stated above, the most important thing is that the assessee has been making payment to the stock exchange in respect of each and every transaction made by the assessee called transaction charges in addition to VSAT charges and lease the charges which are quarterly or annual payments made for the use of equipment which consists of lease line, dish, satellite link, IDE box etc. These charges are dependent upon the bandwidth taken by the Appellant and not on the transactions made by the Appellant for the purchase and sale of shares. Over and above, these quarterly/annual payments the Appellant is making payment for each and every transaction of share purchase and also of share sale. These are transaction charges. Therefore, the VSAT charges and lease line charges are definitely nothing but rent for the various equipment which does not belong to the assessee but belongs to either the stock exchange or the service provider, who manages this facility. These payments are exactly same as those made by the subscriber of landline telephone with zero free call charges. He makes monthly payment of fixed amount and usage payment for every call made. Similarly, the Appellant makes payment for every transaction of sale and every transaction of purchase and another charges fixed quarterly or annual payment whether any purchase/sale transaction is made or not. Therefore, these payments are nothing but rental payments on which TDS should have been deducted under se4ction 194I".

119. Being aggrieved by the order of the Learned CIT (A), the assessee is in appeal before us.

120. The Learned AR before us submitted that the stock exchange is not providing any service in the nature of technical services. Therefore, the provisions for the TDS under Section 194J of the Act cannot be applied on the payment made by the assessee for the membership subscription and transaction charges.

121. On the other hand, the Learned DR vehemently supported the order of the authorities below.

122. We have heard the rival contentions of both the parties and perused the materials available on record. For attracting the provisions of TDS under Section 194J of the Act, the payment as 'fees for technical services' should have been paid in consideration of rendering by the recipient of payment of any (a) managerial service, (b) technical or consultancy services. The stock exchanges merely provide facility to its members to purchase and sell shares, securities, etc., within the framework of its bye laws. In the event of dispute it provides for mechanism for settlement of dispute. It regulates conditions subject to which a person can be a member and as to when and in what circumstances membership can be transferred, cancelled, suspended, etc. The exchange provides a place where the members can meet and transact business. The membership subscription /transaction fee paid is on the basis of volume of transaction effected by a member. The stock exchanges neither render any managerial service nor any technical consultancy service. The transaction fee

is not paid in consideration of any service provided by the stock exchange. It is a payment for use of facilities provided by the stock exchange and such facilities are available for use by any member. The provisions of Section 194J which cast a burden on a person to deduct tax at source and treat him as a defaulter on his failure to deduct tax at source, need to be interpreted strictly and in the absence of a clear obligation on the part of a person, spelt out in unambiguous terms by the provisions of Section 194J, read with Explanation 2 to Section 9(1)(vii), such obligation cannot be implied or left to the ipsi dixit of the revenue authorities. Therefore, transaction fee paid could not be said to be a fee paid in consideration of the stock exchange rendering any technical services to the assessee. The provisions of Section 194J were, thus, not attracted. In holding so we draw support and guidance from the judgment Hon'ble Supreme Court in the case of CIT versus Kotak Securities Ltd reported in 67 Taxmann.com 356 wherein it was held as under:

> *"9. There is yet another aspect of the matter which, in our considered view, would require a specific notice. The service made available by the Bombay Stock Exchange [BSE Online Trading (BOLT) System] for which the charges in question had been paid by the appellant – assessee are common services that every member of the Stock Exchange is necessarily required to avail of to carry out trading in securities in the Stock Exchange. The view taken by the High Court that a member of the Stock Exchange has an option of trading through an alternative mode is not correct. A member who wants to conduct his daily business in the Stock Exchange has no option but to avail of such services. Each and every transaction by a member involves the use of the services provided by the Stock Exchange for which a member is compulsorily required to pay an additional charge (based on the transaction value) over and above the charges for the membership in the Stock Exchange. The above features of the services provided by the Stock Exchange would make the same a kind of a facility provided by the Stock Exchange for transacting business rather than a technical service provided to one or a Section of the members of the Stock Exchange to deal with special situations faced by such a member(s) or the special needs of such member(s) in the conduct of business in the Stock Exchange. In other words, there is no exclusivity to the services rendered by the Stock Exchange and each and every member has to necessarily avail of such services in the normal course of trading in securities in the Stock Exchange. Such services, therefore, would undoubtedly be appropriate to be termed as facilities provided by the Stock Exchange on payment and does not amount to "technical services" provided by the Stock Exchange, not being services specifically sought for by the user or the consumer. It is the aforesaid latter feature of a service rendered which is the essential*

hallmark of the expression "technical services" as appearing in Explanation 2 to Section 9(1)(vii) of the Act.

10. For the aforesaid reasons, we hold that the view taken by the Bombay High court that the transaction charges paid to the Bombay Stock Exchange by its members are for 'technical services' rendered is not an appropriate view. Such charges, really, are in the nature of payments made for facilities provided by the Stock Exchange. No TDS on such payments would, therefore, be deductible under Section 194J of the Act."

In view of the above we hold that there was no obligation on the part of the assessee to deduct tax at source. Consequently, the provisions of Section 40(a)(ia) were also not attracted and, therefore, the disallowance made was to be deleted. Hence the ground of appeal of the assessee is allowed.

123. The next issue raised by the assessee is that the Learned CIT-A erred in partly confirming the disallowance made by the AO on the payment made to the stock exchange for Rs. 9,14,619/-on account of VSAT and lease line charges.

124. The AO during the year under consideration found that the assessee has paid VSAT and lease line charges amounting to Rs. 37,46,013/- without deducting the TDS under the provisions of Section 194-I of the Act. Accordingly, the AO disallowed the same and added to the total income of the assessee.

On appeal, the Learned CIT (A) partly confirmed the order of the AO.

125. Being aggrieved by the order of the Learned CIT-A the assessee is in appeal before us.

126. The Learned AR before us submitted that the payment to the stock exchange towards the VSAT charges and lease line charges are not subject to

the provisions of TDS under Section 194-I of the Act as there is no element of income rather it represents the reimbursement of expenses.

127. On the other hand, the Learned DR vehemently supported the order of the authorities below.

128. We have heard the rival contentions of both the parties and perused the materials available on record. The issue for deducting the TDS on the payment made to the stock exchange on account of VSAT charges and lease line charges is no longer res integra by virtue of the order of the ITAT Mumbai in the case of Destimoney Securities Private Ltd vs. ITO in ITA No. 4106 /MUM/2014, after relying the judgment of the Hon'ble Bombay High Court, wherein it was held as under:

> *"12. We now take up the issue as regards the liability of the assessee to deduct tax at source on payments towards lease line charges. We find that the issue involved herein is no more res integra, as the same is squarely covered in favour of the assessee by the judgment of the Hon'ble High Court of Bombay in the case of:- (i) Income Tax Commissioner, Mumbai City-4 Vs. Angel Capital & Debit Market Ltd. (ITA (L) No. 475 of 2011, dated 28.07.2011)(Bom) (ii) CIT-4, Vs. M/s. The Stock and Bond Trading Company Ltd. (ITA No. 4177 of 2010, dated 14.10.2011)(Bom). We find that the Hon'ble Jurisdictional high Court in the aforesaid judgments had clearly held that VSAT and lease line charges paid by the assessee to stock exchange are merely in the nature of reimbursement of the charges paid/payable by the stock exchange to the department of the telecommunication, and thus in the absence of any element of income involved in the said payments, the issue as regards deduction of tax at source on the same does not arise at all. We are of the considered view that in the backdrop of the aforesaid judgment of the Hon'ble Jurisdictional High Court, the order of the CIT(A) treating the assessee as being in default u/s. 201(1)/201(1A) in respect of failure to deduct tax at source as regards the payments made towards lease line charges, cannot be sustained, and is thus set aside. The Ground of appeal No. 2 raised by the assessee before us is allowed."*

128.1 In view of the above, we hold that the assessee was not subject to the provisions of TDS under Section 194-I of the Act as alleged by the authorities below. Accordingly no disallowance on account of non-deduction of TDS is warranted.

129. Before parting, it is also important to note that the ITAT in the own case of the assessee for the Assessment Year 2008-09 in ITA No. 1718/AHD/2011 has set aside the identical issue to the file of the AO for fresh adjudication after verifying whether payees have included the amount received from the assessee in their income tax return. However in that order, there was no whisper about the Tribunal order as discussed above in the case of Destimoney Securities Private Ltd versus ITO in ITA No. 4106 /MUM/2014, which was decided in favour of the assessee after placing reliance on the order of Bombay High Court as discussed here in above. Thus the issue on hand on merit has been decided by a higher forum in favour of assessee which is binding on us. Accordingly, we are not impressed with the finding of the ITAT in the own case of the assessee and accordingly, the principles laid down by the ITAT in its own case in earlier years are not applicable. Thus, the grounds of appeal of the assessee is allowed.

130. The next issue raised by the assessee is that Learned CIT-A erred in confirming the order of the AO by sustaining the disallowance of brokerage expenses of Rs. 26,910/- on the reasoning that the registration certificate of broker was not produced.

130.1 The assessee during the year has claimed brokerage expenses of Rs. 26,910/- paid to the broker namely Kirit Mansukhlal who was not registered with the stock exchange. Accordingly, the AO was of the view that such payment cannot be allowed as deduction, more particularly, when the assessee failed to justify the services rendered by such unregistered broker. Thus, the AO disallowed the same and added to the total income of the assessee.

131. Aggrieved assessee preferred an appeal to the Learned CIT (A).

132. The assessee before the Learned CIT (A) submitted that it has provided the registration numbers of all the brokers except in one case only who was paid brokerage based on the volume of the business carried out through him.

132.1 However, the Learned CIT-A disregarded the contention of the assessee by observing that the payment to the sub-broker has been made in violation of SEBI rule which is not allowable deduction as provided under Explanation 1 to Section 37 of the Act. As such there is no relation between the quantum of business given by the broker AO viz a viz the violation of the provisions of law. Accordingly the Learned CIT (A) confirmed the order of the AO.

133. Being aggrieved by the order of the Learned CIT (A), the assessee is in appeal before us.

134. The Learned AR before us reiterated the submission as made before the Learned CIT (A) whereas the Learned DR vehemently supported the order of the authorities below.

135. We have heard the rival contentions of both the parties and perused the materials available on record. The amount of brokerage expenses can be claimed as deduction provided it was incurred in the course of the business. The Learned AR at the time of hearing has not brought anything on record suggesting the nature of services rendered by such brokerage.

135.1 Besides the above, the payment was made against the violation of the rules of the SEBI, therefore we are of the view that payment is not eligible for deduction under the provisions of Section 37 of the Act. Accordingly we uphold the finding of the Ld. CIT (A). Hence, the ground of appeal of the assessee is dismissed.

136. The next issue raised by the assessee in ground No. 9 is that the Learned CIT-A erred in directing the AO to compute the capital gain on the basis of cost inflation index pertaining to the financial 2005-06 instead of the cost inflation index pertaining to the years in which the assets in question were acquired i.e. 1995-96 and 2000-01.

137. The issue raised by the assessee has already been disposed of by us along with the appeal filed by the Revenue bearing ITA No. 413/AHD/2016 vide paragraph number 90 to 95 of this order. As such, the ground of appeal of the assessee has already been dismissed. For the detailed discussion, please refer the relevant paragraph. Hence, the ground of appeal of the assessee is dismissed.

138. The next issues raised by the assessee in ground No. 10, 11 and 12 are consequential, premature to decide or general in nature. Therefore, we do not find any merit in the grounds of appeal. Therefore we dismiss the same as infructuous.

139. In the result, the appeal filed by the assessee is partly allowed.

Coming to ITA No.445/AHD/2016(A.Y.2012-13) Revenue's Appeal:-

141. The first issue raised by the Revenue is that the Learned CIT-A erred in deleting the addition made by the AO amounting to Rs. 21,07,549/- being depreciation allowance, interest and insurance expenses relating to vehicles though the assessee was not the owner of such vehicles.

141.1 At the outset, we note that the identical issue has been decided by us in the own case of the assessee in ITA No.413/AHD/2016 vide Para No. 18 to 22 of this order against the Revenue. For the detailed discussion please refer the relevant paragraphs. Respectfully, following the same, we dismiss the grounds of appeal of the Revenue.

142. The second issue raised by the Revenue is that Learned CIT-A erred in deleting the addition made by the AO in part amounting to Rs. 15,10,965/- on account of interest and administrative expenses under the provisions of Section 14A r.w.r 8D of Income Tax Rules.

143. The AO during the assessment proceedings found that the assessee has not provided the basis for the disallowance of the expenses of Rs.14,284/- against the dividend income of Rs.24,324/-. As per the assessee, its own funds exceeds the amount of investment and therefore no borrowed fund was utilized for the purpose of the investment. Accordingly, the question of disallowing any interest expense does not arise under Rule 8D of Income Tax Rule.

143.1 Similarly, the Assessee further contended that the dividend has been directly credited in the bank account and therefore it has not incurred any administrative expenses for the earning of such dividend income.

143.2 However, the AO disregarded the contention of the assessee by observing that the assessee has not furnished any day to day fund flow statement suggesting that the borrowed fund has not been utilized in the impugned investments. Accordingly, the AO invoked the provisions of Section 14A r.w.r 8D and made the disallowance as under:

Direct expenses	*nil*
Interest expenses	*8,51,466.00*
Administrative expenses	*9,50,183.00*
Total	*18,01,649.00*

143.3 Thus, the AO disallowed a sum of Rs. 18,01,649/- and added to the total income of the assessee.

144. Aggrieved assessee preferred an appeal to the Learned CIT-A, who partly allowed the appeal of the assessee.

145. Being aggrieved by the order of the Learned CIT-A, both the Revenue and the assessee are in appeal before us. The Revenue is in appeal against the deletion made by the AO for Rs. 15,10,965/- whereas the assessee is in appeal against the confirmation of the addition of Rs. 2,76,400/-. The ground bearing No. 2 in an appeal of the assessee in ITA No. 318/AHD/2016 reads as under:

> *"2.1 In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in sustaining disallowance of Rs. 2,76,400/- u/s. 14A read with*

Rule 8D(2)9iii) on account of administrative expenses [even as he had directed the quantum of the disallowance on this account to be reduced from Rs. 2,90,466 to Rs. 2,76,400 after appreciating that the appellant's investments in shares of its subsidiary which had been amalgamated with the appellant, cannot be taken into account for the purposes of arriving at the quantum of disallowance under the said Rule]. He ought to have appreciated, inter-alia, that in the peculiar and eminent facts of the appellant's case, the learned A.O. had got to be satisfied with the appellant's claim that it had not incurred any administrative expenditure in relation to income not forming part of its total income other than expenditure of Rs. 14,284 for which it had made a suo motu disallowance and that therefore, the learned A.O. could not have assumed jurisdiction u/s. 14A(2) to make any further disallowance on this account.

2.2 Without prejudice to the foregoing, in law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in failing to appreciate that in any case, the quantum of disallowance u/s. 14A could not exceed the quantum of income not forming part of the appellant's total income this year viz. Rs. 24,324."

146. Both the Learned DR and the AR before us vehemently supported the order of the respective authorities below to the extent favourable to them.

147. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the assessee in the year under consideration has earn exempted income amounting to Rs.24324/- only. Now the issue arises before us for the adjudication whether the disallowances made under Section 14A r.w Rule 8D can exceed the amount of exempted income earned during the year under consideration. At this juncture, we find important to refer the provisions of Section 14A of the Act which reads as under:

"Expenditure incurred in relation to income not includible in total income.

14A. For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred88 by the assessee in relation to88 income which does not form part of the total income88 under this Act.]

The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed89, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act."

147.1 The above provision requires to make the disallowance of the expenses in relation to the income which does not form part of the total income under this Act. The term used under Section 14A of the Act amount of expenditure incurred in relation to such income" implies that the expenditure cannot exceed the amount of exempted income.

148. In holding so we find support and guidance from the judgment of Hon'ble Delhi High Court in the case of Joint Investments Private Ltd. vs. CIT reported in 372 ITR 694 wherein it was held as under:

> *"By no stretch of imagination can s. 14A or r. 8D be interpreted so as to mean that the entire tax exempt income is to be disallowed. The window for disallowance is indicated in s. 14A, and is only to the extent of disallowing expenditure "incurred by the assessee in relation to the tax exempt income". This proportion or portion of the tax exempt income surely cannot swallow the entire amount as has happened in this case."*

148.1 We also note that in the identical facts and circumstances the Hon'ble jurisdictional High Court has decided that the amount of disallowance of the expenditure cannot exceed the amount of exempted income in the case of CIT versus Vision Finstock Stock Ltd. in Tax Appeal No. 486 of 2017 vide order dated 31st July 2017. The relevant extract of the order is extracted below:

> *"1. The Revenue has challenged the judgement of the Income Tax Appellate Tribunal dated 07.07.2016 raising following questions for our consideration:*
>
> *"A. Whether on the facts and circumstances of the case and in low, the ITAT was justified in restricting the disallowance made of Rs. l,02,82,049/- u/s. 14A to the extent of exempt income of Rs. 55,6047- only?*
>
> *B. Whether on the facts and circumstances of the case and in law, the ITAT was justified in restricting the disallowance of Rs. 1,02,82,049/- made u/s. 14A of the Act to the extent of income earned of Rs. 55,6047- without appreciating that the assessee had paid interest of Rs.1,45,52,6327- on borrowed funds?"*

2. From the record it emerges that, during the period relevant to the Assessment Year 2008-09, the assessee had earned exempt income of Rs.55,604/-. As against that, the Assessing Officer had worked out the disallowance of expenditure under Section 14A of the Act read with Rule 8D to Rs. 1,02,82,049/-. The Tribunal, while restricting the disallowance to Rs. 55,604/-, relied on the decision of Delhi High Court in case of Joint Investments (P) Ltd vs. CIT reported in 372 ITR 694 holding that disallowance of expenditure in terms of Section 14A read with Rule 8D cannot exceed the exempt income itself. Our High Court has also adopted the similar view in case of Commissioner of Income Tax vs. Corrtech Energy Pvt Ltd. reported in 372 ITR 97.

3. Tax appeal is, therefore, dismissed.

148.2 We also note that the Hon'ble Apex court has also confirmed the principles laid down by the Hon'ble High Court as discussed above in the case of CIT vs. State Bank of Patiala reported in 99 taxmann.com 286 by dismissing the Special Leave petition.

149. In view of the above, we hold that the disallowance of the expenses under Section 14A read with rule 8D cannot exceed the amount of exempted income. Hence, the ground of appeal filed by the revenue is dismissed whereas the ground of appeal filed by the assessee is partly allowed.

150. The third issue raised by the Revenue is that Learned CIT-A erred in deleting the addition made by the AO for Rs. 42,700/- by disallowing the expenditure representing the penalty.

150.1 At the outset, we note that the identical issue has been decided by us in the own case of the assessee in ITA No. 413/AHD/2016 vide Para No. 49 to 50 of this order against the Revenue. For the detailed discussion please refer the relevant paragraphs. Respectfully, following the same, we dismiss the grounds of appeal of the Revenue.

151. The fourth issue raised by the Revenue is that the Learned CIT-A erred in deleting the addition made by the AO for Rs. 1,47,79,776/- on account of bad debts as the conditions specified under Section 36 (2) were not satisfied.

151.1 At the outset, we note that the identical issue has been decided by us in the own case of the assessee in ITA No. 413/AHD/2016 vide Para No. 58 to 59 of this order against the Revenue. For the detailed discussion please refer the relevant paragraphs. Respectfully, following the same, we dismiss the grounds of appeal of the Revenue.

In the result, the appeal of the Revenue is dismissed.

Coming to ITA No.318/AHD/2016(A.Y.2011-12) Assessee's Appeal:-

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

> *"1. In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in dismissing ground No. 1 of the appellant's appeal as being general in nature, not requiring any consideration by him. He ought to have appreciated, inter alia, that only a bare reading of that ground showed the reason for the appellant's challenge to the validity of the assessment order impugned before him and, accordingly, he ought to have adjudicated upon the same on merits.*
>
> *2.1 In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in sustaining disallowance of Rs. 2,76,400 u/s. 14A read with Rule 8D(2)(iii) on account of administrative expenses [even as he had directed the quantum of the disallowance on this account to be reduced from Rs.2,90,466 to Rs. 2,76,400 after appreciating that the appellant's investments in shares of its subsidiary which had been amalgamated with the appellant, cannot be taken into account for the purposes of arriving at the quantum of disallowance under the said Rule], He ought to have appreciated, inter-alia, that in the peculiar and eminent facts of the appellant's case, the learned A.O. had got to be satisfied with the appellant's claim that it had not incurred any administrative expenditure in relation to income not forming part of its total income other than expenditure of Rs. 14,284 for which it had made a suo motu disallowance and that*

therefore, the learned A. O. could not have assumed jurisdiction u/s. 14A(2) to make any further disallowance on this account.

2.2 Without prejudice to the foregoing, in law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in failing to appreciate that in any case, the quantum of disallowance u/s. 14A could not exceed the quantum of income not forming part of the appellant's total income this year viz. Rs. 24,324.

3. In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in sustaining disallowance of deduction of Rs. 19,38,207 in respect of deposits made by the appellant with landlords of rented properties which the appellant was unable to recover and which it had written off to its Profit & Loss Account this year and which was deductible as a business loss in any case.

4.1 In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in sustaining the learned A.O's action of treating what was normal business loss [Saudafer loss] of Rs. 19,68,177 as speculation loss.

4.2 Without prejudice to the foregoing, in law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in omitting to consider that the impugned loss of Rs. 3,25,857/- was inclusive of loss on Futures and Options [F&O] Transactions and Currency segment on recognized Stock exchanges [Trading in Derivatives] which was incapable of being treated as speculative loss by virtue of an express provision in that behalf in clause (5) of section 43 of the I. T. Act, 1961.

5. In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in upholding the disallowance of deduction for Rs. 48,796 on the ground that, the expenditure having been incurred on the purchase of mobile phones, was capital in nature.

6. In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in upholding disallowance of the following expenses u/s. 40(a)(ia) on the ground that the appellant had failed to deduct TDS u/s. 194I/194J of the I. T. Act:

a) Rs. 10,000 on account of lease line charges paid to BSNL (even though it was below the prescribed monetary limit for the applicability of the provision in question)

b) Lease Line and V-Sat charges paid to recognized Stock Exchanges - Rs. 10,32,430
c) Other charges paid to recognized Stock exchanges - Rs. 3,80,401

7. In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in not ordering for the deletion of the levy of interest u/s. 234B challenged by the appellant vide ground No. 10 of its appeal, inter alia, on the ground that the levy under that provision was not at all attracted if consideration was given to all the prepaid expenses.
8. In law and in the facts and circumstances of the appellant's case, the learned CIT(A) has grossly erred in dismissing Ground No. 12 of the appellant's appeal before him challenging the initiation of penalty proceedings u/s. 271(1)(c). He ought to have appreciated, inter alia, that in the peculiar facts and circumstances of the appellant's case, initiation of penalty proceedings for concealment of income was not at all warranted and

that, therefore, he ought to have ordered for the cancellation of those proceedings, thereby saving the appellant as well as the Department from having to undergo avoidable litigation.

9. The appellant craves leave to add, alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal."

153. The first issue raised by the assessee in ground No. 1 is general in nature and, therefore, no separate adjudication is required. Accordingly, we dismiss the same.

154. The second issue raised by the assessee is that the Learned CIT (A) erred in upholding the order of the AO in part by sustaining the disallowance of Rs.2,76,400/- under the provisions of Section 14A read with Rule 8D(2)(iii) of income tax rule.

155. The issue raised by the assessee has already been disposed of by us along with the appeal filed by the Revenue bearing ITA No. 445/AHD/2016 vide paragraph number 147 to 149 of this order. As such, the ground of appeal of the assessee has already been allowed in part. For the detailed discussion, please refer the relevant paragraph. Hence, the ground of appeal of the assessee is partly allowed.

156. The next issue raised by the assessee in ground No. 3 is that the Learned CIT (A) erred in confirming the order of the AO by sustaining the disallowance of Rs. 19,38,202/- with respect to the deposits made with the landlords for the rented properties.

157. The AO during the assessment proceedings found that the assessee has claimed the deduction with respect to the deposits made with the rented properties amounting to Rs. 19,38,007/- but failed to file the supporting

evidence to substantiate its contentions. Accordingly, the AO disallowed the same and added to the total income of the assessee.

158. Aggrieved assessee preferred an appeal to the Learned CIT (A) who also confirmed the order of the AO.

159. Being aggrieved by the order of the Learned CIT (A), the assessee is in appeal before us.

160. At the outset, the Learned AR appearing for the assessee submitted that the assessee has not furnished the necessary evidence in support of his claim before the authorities below. Accordingly, the Learned AR prayed before us to restore the matter to the file of the AO for fresh adjudication and further assured that all the necessary documents shall be filed before the AO.

161. On the other hand the Learned DR did not raise any objection if the matter is set aside to the file of the AO for fresh adjudication as per the provisions of law.

161.1 Heard the rival contentions of both the parties and perused the materials available on record. Considering the submission of the Learned AR and the concession extended by the Learned DR by admitting prayer of the AR for restoring the issue to the file of the AO for fresh adjudication as per the provisions of law, accordingly, we set aside, the issue to the file of the AO for fresh adjudication as per the provisions of law. It is directed to the assessee to file the necessary supporting documents in support of his contention and cooperate in the assessment proceedings. Hence, the ground of appeal of the assessee is allowed for the statistical purposes.

162. The next issue raised by the assessee in ground No. 4 is that the Learned CIT (A) erred in confirming the addition made by the AO for Rs. 19,68,177.00 on account of Saudafer loss.

162.1 At the outset, we note that the identical issue has been decided by us in the own case of the assessee in ITA No. ITA No. 268/Ahd/2016 for A.Y. 2010-11 vide Para No. 74 to 75 of this order against the Revenue and in favor of the assessee. For the detailed discussion please refer the relevant paragraphs. Respectfully, following the same, the ground of appeal of the assessee is allowed.

163. The next issue raised by the assessee in ground No. 5 is that the Learned CIT (A) erred in holding that the expenses incurred on the purchase of the mobiles are in the nature of capital expenditure.

164. At the outset, we note that the identical issue has been decided by us in the own case of the assessee in ITA No. ITA No. 268/Ahd/2016 for A.Y. 2010-11 vide Para No. 115 of this order against the Revenue and in favor of the assessee. For the detailed discussion please refer the relevant paragraph. Respectfully, following the same, the ground of appeal of the assessee is allowed.

165. The next issue raised by the assessee is that the Learned CIT-A erred in confirming the disallowance made by the AO on the payment made to the

BSNL and stock exchange for Rs. 14,22,831/- on account of VSAT and lease line charges.

166. At the outset, we note that the identical issue has been decided by us in the own case of the assessee in ITA No. ITA No. 268/Ahd/2016 for A.Y. 2010-11 vide Para No. 128 to 129 of this order against the Revenue and in favor of the assessee. For the detailed discussion please refer the relevant paragraphs. Respectfully, following the same, the ground of appeal of the assessee is allowed.

167. The issues raised by the assessee in ground Nos. 7, 8 and 9 are consequential, premature to decide or general in nature. Therefore, we do not find any merit in these grounds of appeal. Therefore we dismiss the same as infructuous.

168. In the result, the appeal of the assessee is partly allowed for the statistical purposes.

Coming to the ITA No. 446/Ahd/2016 for AY 2012-13 an appeal filed by the Revenue.

169. The captioned appeal has been filed at the instance of the Revenue against the order of Learned Commissioner of Income Tax (Appeals)-10, Ahmedabad [in short Ld. CIT(A)], dated 21/12/2015 arising in the matter of assessment order passed u/s 143(3) of the Income-tax Act 1961, (hereinafter

referred to as ''the Act'') dated 30/01/2015 relevant to Assessment Year 2012-2013.

170. The Revenue has raised the following grounds of appeal:

Appellate order of Commissioner of Income-tax(A)-10, Ahmedabad in the case of Edelweiss Broking Ltd. (On behalf of amalgamating Company Edelweiss Financial Advisors Ltd.), for AY 2012-13.

I hereby direct the DCIT, Circle-1(3), Ahmedabad to file and appeal to the Appellate Tribunal against the order No.CIT(A)-10/ACIT-Cir.1(3)/654/14-15 dated 21.12.2015 in the above case on the following grounds:

(1) That the ld.CIT(A) has erred in law and on the facts by deleting addition of depreciation, interest and insurance on vehicle amounting to Rs.16,62,595/- by ignoring the fact that the assessee failed to prove the ownership of these vehicles as well as use of those assets wholly and exclusively for the business purpose.

(2) That the ld.CIT(A) erred in law and on the facts by deleting addition of Rs.12,09,926/- made by the AO u/s.14A without considering the fact that the AO has rightly disallowed the same u/s.14A after considering the provisions for Rule 8D, which is not fulfilled in the assessee's case.

(3) That the ld.CIT(A) erred in law and on the facts by deleting addition of Rs.6,44,163/- made by the AO as disallowance of expenditure for payment of penalty without appreciating the fact that the conditions of provisions u/s.37 are not fulfilled by the assessee.

(4) That the ld.CIT(A) erred in law and on the facts by deleting addition of Rs.78,98,203/- made by the AO as disallowance of deduction of Bad Debts by ignoring the fact that the condition of provisions of Section 36(2) are not satisfied in the assessee's case.

(5) That the ld.CIT(A) erred in law and on the facts by deleting addition of Rs.20,29,917/- made by the AO u/s.40(a)(ia) without appreciating the fact that the conditions of provisions u/s.40(a)(ia) are not fulfilled by the assessee and had upheld disallowance in assessee's own case for payment made for VSAT charges and lease line charges in AY 2007-08.

171. At the time of dictation, it was noticed that the tax effect in the impugned appeal filed by the Revenue is less than ₹50 lakhs. Therefore, the

same is not maintainable in view of the recent circular issued by the CBDT bearing No. 17/2019 dated 8th August 2019. The relevant extract of the circular issued dated 8 August 2019 reads as under:

> *"2. As a step towards further management of litigation. it has been decided by the Board that monetary limits for filing of appeals in income-tax cases be enhanced further through amendment in Para 3 of the Circular mentioned above and accordingly. the table for monetary limits specified in Para 3 of the Circular shall read as follows:*
>
> | ***S.No.*** | ***Appeals/SLPs in Income-tax matters*** | ***Monetary Limit (Rs.)*** |
> |---|---|---|
> | ***1*** | ***Before Appellate Tribunal*** | ***50,00,000*** |
> | ***2*** | ***Before High Court*** | ***1,00,00,000*** |
> | ***3*** | ***Before Supreme Court*** | ***2,00,00,000"*** |

172 From the above, it is clear that the impugned appeal filed by the Revenue is not maintainable as the tax effect is less than ₹50 lakhs. This fact can also be verified from the grounds of appeal filed by the assessee as mentioned above.

173. Before parting, we also note that there are certain exceptions specified in the CBDT circular bearing No. 17 of 2019 dated 8 August 2019 read with circular No. 3 of 2018 dated 11th July 2018 where the tax limit of Rs. 50 lacs will not be applied. As such, in those cases the appeal of the revenue will stand and the same will not be hit by the impugned circular despite the tax effect is less than ₹50 lakhs. Therefore, we want to make it clear that if the revenue on the verification finds that the impugned case of the assessee falls in the exception as provided in the circular or tax effect exceeds, then it will be at its liberty to move an application for the recalling of this order of the tribunal within the prescribed time under the provisions of section 254(2) of the Act. In view of the above, we dismiss the appeal filed by the Revenue as not maintainable.

174. In the result, the appeal filed by the Revenue is dismissed.

175. In the combined result, all the three appeals filed by the Revenue are dismissed, whereas assessee's appeal in ITA No.268/Ahd/2016 is partly allowed and ITA No.318/Ahd/2016 is partly allowed for statistical purposes.

Order pronounced in the Court on the 3rd December, 2020 at Ahmedabad.

Sd/-	**Sd/-**
(JUSTICE P. P. BHATT)	**(WASEEM AHMED)**
HON'BLE PRESIDENT	**ACCOUNTANT MEMBER**

Ahmedabad; Dated 03 /12/2020

TANMAY, Sr. PS/TC NAIR, Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-10, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad.
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY ORDER,

सत्यापित प्रति //True Copy// **उप/सहायक पंजीकार** (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad