Deputy Commissioner Of Income Tax, ... vs Atria Convergence Technologies ... on 26 May, 2026

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, BANGALORE

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI SOUNDARARAJAN K, JUDICIAL MEMBER

ITA No. 1094/Bang/2024
Assessment Year: 2016-17

M/s Atria Convergence Technologies Limited, No.1, 2nd and 3rd Floor, Indian Express Building, Queens Road, Bangalore - 560 001.	Vs.	The Dy. Commissioner of Income Tax, Central Circle - 2(4), Bangalore.
PAN - AACCA 8907 B APPELLANT		RESPONDENT

ITA No. 1206/Bang/2024
Assessment Year: 2016-17

The Dy. Commissioner of Income Tax, Central Circle - 2(4), Bangalore.	Vs.	M/s Atria Convergence Technologies Limited, No.1, 2nd and 3rd Floor, Indian Express Building, Queens Road, Bangalore - 560 001. PAN - AACCA 8907 B
APPELLANT		RESPONDENT

Assessee by : Shri T Suryanarayan, Sr. Advocate
Revenue by : Shri Shivanad Kalakeri , CIT (DR)

Date of hearing : 05.03.2026
Date of Pronouncement : 26.05.2026

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The cross appeals by the assessee and Revenue are filed against order passed by the Learned Commissioner of Income Tax (Appeals)-15, Bengaluru for the assessment year 2016-17.

First, we take up assessee's appeal in ITA No. 1094/Bang/2024.

2. In the memo of appeal, the assessee has raised several grounds which are numbered as Ground Nos. 1 to 7. The grounds raised are lengthy and run into multiple pages. Hence, for the sake of brevity and convenience, we are not inclined to reproduce the same here.

3. Further, the assessee vide application dated NA raised additional ground which is numbered as Ground No. 8 in the application.

3.1 The assessee, in the application for admission of additional grounds, argued that the issues raised may not arise from the appellate order but the same is fundamental and necessary to correctly assessee the tax liability to the resolution of the case. Consequently, the assessee's learned AR requested that the additional ground be admitted for adjudication.

3.2 On the other hand, the learned (DR) opposed the admission of the additional grounds of appeal, arguing that these grounds had not been raised before the lower authorities.

ITA No.1094-1206/Bang/2024

4. We have heard the rival submissions of both the parties and perused the materials available on record. The Hon'ble Supreme Court in the case of National Thermal Power Co. Limited vs. CIT reported in 229 ITR 383 has held as under:

> " Under section 254 of the Income-tax Act, 1961, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, there is no reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of the item. There is no reason to restrict the power of the Tribunal under section 254 only to decide the grounds which arise from the order of the Commissioner of Income-tax (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. The Tribunal should not be prevented from considering questions of law arising in assessment proceedings, although not raised earlier.
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> 4.1 From the above, it is evident that the view limiting the Tribunal's jurisdiction to the issues arising solely from the appeal before the Commissioner (Appeals) is too

restrictive to define the Tribunal's powers. The Tribunal undoubtedly has the discretion to permit or decline the raising of a new ground. Since the issue raised in additional grounds of appeal is necessary to consider for assessing the income of the assessee correctly, and in light of the judgment cited above, we admit the additional ground raised by the assessee. Having admitted the additional grounds of appeal, now we proceed to adjudicate specific issues raised by the assessee through grounds of appeal and additional grounds of appeal.

5. The Ground No. 1 of the assessee's appeal is general ground and the same does not require any separate adjudication, hence, we dismiss the same as infructuous.

ITA No.1094-1206/Bang/2024

6. The issue raised by the assessee through Ground No. 2 is that the notice issued u/s 143(2) was unsigned rendering the assessment order invalid.

6.1 At the outset, we note that the learned AR before us submitted that issue raised in the captioned ground of appeal is not pressed. Hence, we hereby dismiss the same as not pressed.

7. The issue raised by the assessee through Ground No. 3 is that the assessment order passed u/s 143(3) of the Act by the Additional CIT, Special Range-1 is without valid jurisdiction, as the said authority lacked lawful jurisdiction to perform the functions of an Assessing Officer in the absence of a valid and specific authorization under section 120(4)(b) of the Act.

7.1 At the outset, we note that the learned AR before us submitted that issue raised in the captioned ground of appeal is not pressed. Hence, we hereby dismiss the same as not pressed.

8. The issue raised by the assessee through Ground No. 4 is that the learned CIT(A) erred in restricting the allowances of expenditure towards connectivity charges to the extent of Rs. 37,80,100/- instead of allowing the same in full amounting to Rs. 1,12,31,385/- only.

9. The relevant facts are that the AO during the assessment proceedings noted that the assessee had claimed amortisation of 1,12,31,385 towards connectivity charges paid to M/s Bele Tele Services ITA No.1094-1206/Bang/2024 India Pvt. Ltd. for acquiring a right to use optical fibre cables for broadband services for a period of 15 years. These expenses were treated by the assessee as prepaid and amortised over time. After examining the submissions, the AO held that the expenditure was capital in nature since it resulted in an enduring benefit by securing long-term rights to use optical fibre infrastructure. The AO further observed that section 37 of the Act does not permit deduction of capital expenditure and bars allowance of expenses not

incurred during the relevant previous year. It was also noted that only expenditure pertaining to the year under consideration could be allowed, whereas the assessee had spread a lump-sum payment over several years. On these grounds, the AO disallowed the amortisation claim and added the entire amount of 1,12,31,385/- to the total income of the assessee.

10. The aggrieved assessee preferred an appeal before the learned CIT(A).

10.1 Before the learned CIT(A), the assessee submitted that it had merely amortised 1,12,31,385/- paid to Bell Teleservices India Pvt. Ltd. for obtaining limited rights to use optical fibre infrastructure for providing broadband services and that no asset, tangible or intangible, had been acquired by it. It was explained that Bell Teleservices continued to own and operate the fibre network and the assessee only enjoyed restricted usage rights for a fixed period of 15 years under the agreement. The payment was therefore made wholly and exclusively for carrying on day- to-day business operations and did not result in creation of any enduring capital asset in the hands of the assessee.

ITA No.1094-1206/Bang/2024 10.2 The assessee further contended that the expenditure was revenue in nature within the meaning of section 37 of the Act, as it merely facilitated the earning of income without enlarging the profit-making apparatus or increasing the capacity of the business. Applying settled judicial principles, including the test of enduring benefit and the decision of the Hon'ble Supreme Court in Alembic Chemical Works Co. Ltd. reported in 177 ITR 377, it was argued that a lump-sum payment or a benefit spread over several years does not automatically render the expenditure capital, particularly when ownership of the infrastructure never vested in the payer. It was emphasised that the true object of the payment was to enable smooth conduct of business and not to acquire any independent source of income.

10.3 It was also submitted that the company followed sound accounting principles by treating the lump-sum payment as prepaid expenditure and charging it to the Profit and Loss Account proportionately over the tenure of the agreement in accordance with the matching concept, since the related revenues would also accrue over multiple years. Reliance was placed on the concept of deferred revenue expenditure as recognised in accounting practice to justify amortisation of a revenue outlay whose benefits extend over more than one year.

10.4 Without prejudice, the assessee argued that even if the payment were to be regarded as capital in nature, the same represented a business or commercial right similar to licenses or franchises and would therefore qualify for depreciation under section 32(1)(ii) of the Act at the applicable rate. It was accordingly pleaded that the disallowance made by the AO under section 37 of the Act be deleted and the amortised amount be ITA No.1094-1206/Bang/2024 allowed as revenue

> expenditure, or alternatively that depreciation be granted on the connectivity charges.
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> 10.5 However, the learned CIT(A) after considering facts in totality partly allowed the appeal of the assessee by observing as under:

5.3 Considering the facts of the case and submissions made by the appellant, it is observed that the appellant has charged a onetime lump-sum payment of Rs. 1,12,31,385/- towards obtaining connectivity charges for the relevant A.Y. It is seen that the appellant has entered into an "Agreement for Right to Use Optical Fibres" with Bell Teleservices India Pvt. Ltd. This agreement was entered into in December, 2009. An amount of Rs. 567,01,620/- was paid for this right apart from annual maintenance charges. There is no dispute regarding the payment of this annual maintenance charges. The dispute is with respect to the lump-sum payment. The appellant has written off 1/5th of the lump-sum payment of Rs. 5,67,01,620/- during this year. The AO rightfully holds that this is not paid during the year. On the other hand, the appellant submits that it has charged the relevant expenditure accrued during the year. Perusal of the agreement as stated supra reveals that the one time payment of Rs. 567,01,620/- bestows right of usage for optical cable for a period of 15 years. Therefore, this act of the appellant writing off 1/5th during the relevant AY is found to be without any basis. On the other hand, the AO's action on denying any expenditure is also without basis. Therefore, the AO is directed to allow 1/15th of Rs. 567,01,620/- amounting to Rs. 37,80,100/-.

5.4 Therefore, this ground of appeal is partly allowed.

11 Being aggrieved by the order of the learned CIT(A), both the assessee as well as the Revenue are in appeal before us.

11.1 The assessee is aggrieved by the restriction of allowance to 37,80,100/- as against the claim of 1,12,31,385/-, whereas the Revenue is in appeal against the relief granted by the learned CIT(A) by allowing one-fifteenth of the connectivity charges. The relevant ground of Revenue's appeal in ITA No. 1206/Bang/2024 reads as under:

> "2. Whether on the facts and circumstances of the case, the IA. CIT(A) was right in allowing writing off 1 / 15th of Rs.5,67,41,62O/- amounting to Rs.37,80,100/- on account of connectivity charges ignoring the facts that the expenditure is capital in. nature and not incurred in the relevant year hence it cannot be permissible under ITA No.1094-1206/Bang/2024 section 37 of the Income Tax Act.
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> 3. The CIT(A) failed to appreciate the provisions of Section 37, which disallows deduction of capital expenditure and expenditure not incurred in the relevant previous year that the agreement for right to use optical fibers provides a long-term benefit (15 years) to the assessec, clearly establishing the capital in nature.

12. The learned AR before us filed paper books running from pages 1 to 2873, compilation of case laws running from pages 1 to 413, written notes etc. and submitted that the assessee is engaged in the business of providing broadband and internet services and, for this purpose, requires access to optical fibre infrastructure. Since such infrastructure was not owned by the assessee, it entered into an agreement with Bele Teleservices India Private Limited in AY 2010-11 for a limited right to use optical fibres for a period of 15 years. Under the agreement, only the right to use the optical fibres was granted and ownership was with Bele Teleservices only.

12.1 The Ld. AR further submitted that the assessee made a lump-sum payment towards connectivity charges, which was recorded as prepaid expenses and amortised over the tenure of the agreement following the matching concept. Accordingly, for AY 2016-17, the assessee amortised and claimed 1,12,31,385 as revenue expenditure under section 37 of the Act. The Assessing Officer, however, disallowed the claim by treating the expenditure as capital in nature and on the grounds that it did not pertain to the year under consideration.

12.2 The learned AR submitted that the learned CIT(A) rightly held that the expenditure is revenue in nature, as it was incurred only for a limited right to use optical fibres, without acquisition of any asset or enduring benefit. However, the learned CIT(A) erred in restricting the allowance to ITA No.1094-1206/Bang/2024 37,80,100 on an incorrect assumption that the assessee had amortised one-fifteenth of 5,67,01,620, whereas the total connectivity charges paid amounted to 19,58,67,621 and one-fifteenth thereof worked out to approximately 1.13 crore only.

12.3 The Ld. AR further submitted that the expenditure is in the nature of deferred revenue expenditure, which is essentially revenue in nature but amortised over the period of expected benefit. Reliance was placed on the decisions of the Hon'ble Supreme Court in Devidas Vithaldas & Co. v. CIT 84 ITR 277, Taparia Tools Ltd. v. JCIT 372 ITR 277 and Madras Industrial Investment Corporation Ltd. v. CIT 91 Taxman 340, as well as the decision of the Hon'ble Delhi High Court in CIT v. Hero Honda Motors Ltd. 55 taxmann.com 230, to contend that payments for limited right to use an asset are allowable as revenue expenditure.

12.4 In view of the above, the learned AR submitted that while the ld. CIT(A) has correctly held the expenditure to be allowable in principle, the restriction made is erroneous, and the Assessing Officer ought to be directed to allow the full amount of 1,12,31,385 claimed by the assessee for AY 2016-17.

13. On the other hand, the Ld. DR before us submitted that the learned CIT(A) has erred in holding the impugned expenditure to be revenue in nature. It was contended that the assessee obtained a long-term benefit by securing access to optical fibre infrastructure for a substantial period of 15 years, which clearly results in an enduring advantage to the business. Such expenditure, according to the Ld. DR, cannot be treated ITA No.1094-1206/Bang/2024 as routine operational cost but assumes the character of capital expenditure.

14. Both the ld. AR and the Ld. DR before us vehemently supported the order of the authorities below to the extent favourable to them.

15. We have heard the rival contentions of both the parties and perused the materials available on record. We note that the assessee for the transmission of internet & broadband services required optical fibres. Hence, the assessee entered into an agreement dated 30 th December 2009 with M/s Bell Teleservices India Pvt Ltd (hereafter BELL) for the right to use of optical fibres.

15.1 As per the agreement, BELL granted the assessee the "Right to Use" the two core (i.e. one pair) of specified dark fibres network (OFC- optical fibres infrastructure), covering a continuous rout distance of 405 KM out of route map shown in annexure-A of the agreement for a period of 15 years. As per clause 2 of the agreement, the assessee for grant of such "Right to Use" in its favour required to pay BELL a fee of Rs. 1,40,004/- per pair per KM for a period of 15 years aggregating to Rs. 5,67,01,620/- only. The impugned fee was payable in two instalments. In addition to the fixed fee of Rs. 5,67,01,620/-. The assessee, as per relevant clause 3 of the agreement also required to pay annual maintenance fee of Rs. 4000/- per Km which was due to be increased by 7% every year plus applicable taxes.

15.2 Thereafter, the assessee further entered into multiple addendum agreement to the original agreement for grant of "Right to Use" additional ITA No.1094-1206/Bang/2024 KMs of OFC. The first addendum agreement was entered into as on 18 th November 2011 for grant of Right to Use of additional 100 KM of OFC for a period of 15 years from the date of this agreement. For which fee at the rate of Rs. 1,40,004/- per pair per KM for a period of 15 years aggregating to Rs. 1,40,00,400/- required to be paid. Similarly, the assessee was also required to pay annual maintenance fee Rs. 4000/- per Km which was due to be increased by 7% every year plus applicable taxes.

15.3 The second addendum agreement was entered as 23 rd September 2013 for additional 400 KM of OFC for a fixed fee of 1.6 lakh per KM aggregating to Rs. 6.4 crore and annual maintenance fee of Rs. 4900 per KM was liable to increase by 7% per annum.

15.4 Hence, the assessee entered into multiple agreements with M/s BELL for right to use OFC for which, it paid upfront fee for 15 years and annual maintenance charges. As such for the assessment year under consideration, the assessee made total payment of Rs. 19,58,67,621/- to M/s BELL.

15.5 From the above, it is transpired that the ownership of the optical fibre network always remained with M/s Bell and only limited user rights were granted to the assessee. For which assessee made payment of two distinct nature.

15.6 In our view, the nature of the two components of payment has to be examined separately. The annual maintenance charges are recurring in nature and are paid every year for upkeep and operation of the network. Such expenditure is incurred wholly and exclusively for carrying on the ITA No.1094-1206/Bang/2024 business during the year and does not bring into existence any capital asset or enduring advantage in the capital field. These charges are therefore clearly allowable as revenue expenditure in the year of payment or accrual.

15.7 As regards the upfront connectivity fee paid for obtaining the right to use optical fibres for a fixed period of 15 years, we are unable to accept the extreme positions taken by either side. On the

one hand, the Assessing Officer was not justified in denying the claim in toto merely on the ground that the payment was made in an earlier year, because the benefit of the payment admittedly flows over the entire contractual period and the expenditure relatable to the year has necessarily to be matched with the revenue of that year. On the other hand, the assessee was also not correct in claiming an arbitrary fraction without properly linking it to the tenure and commencement of each individual agreement. The right obtained under each contract is for a defined period and the commercial reality is that the upfront fee represents consideration for such right spread over the life of the agreement. On principle, therefore, such upfront fee has to be amortised evenly over the contractual period of 15 years, starting from the date on which the respective agreement or addendum came into force.

15.8 However, the record before us shows that there were several agreements and addenda entered into on different dates--namely in December 2009, November 2011 and September 2013 and further agreement thereafter each granting right to use additional fibre routes for 15 years from those dates. The total payment up to the year under consideration is stated to be 19.58 crore, but the exact portion of such amount relatable to the relevant previous year cannot be determined ITA No.1094-1206/Bang/2024 without agreement-wise working of the amortisation, taking into account the commencement date and remaining tenure of each contract. This factual exercise has not been properly carried out either by the Assessing Officer or by the learned CIT(A), who proceeded on assumptions regarding only one agreement and an incorrect fraction.

15.9 In these circumstances, we consider it appropriate to set aside this issue to the file of the Assessing Officer for a limited purpose. The Assessing Officer shall verify all the agreements and addenda entered into with M/s Bell Teleservices India Pvt Ltd., note the date of commencement and tenure of each, segregate the upfront connectivity fees paid under each contract from the recurring annual maintenance charges, and thereafter allow amortisation of the upfront fees strictly on a straight-line basis over the respective 15-year periods. The annual maintenance charges shall be allowed in full as revenue expenditure in the relevant year in accordance with law. The assessee shall be afforded a reasonable opportunity of being heard and to furnish agreement-wise details and workings. With these directions, the issue is restored to the file of the Assessing Officer for limited verification and recomputation in accordance with the above principles and as per law. Hence, the ground of appeal of the assessee and the revenue are allowed for statistical purposes.

16. The next issue raised by the assessee through Ground No. 5 of the appeal relates to the disallowance under section 14A read with Rule 8D of the Rules.

17. The relevant facts are that during the year under consideration, the assessee earned dividend income for the sum of Rs. 63,982/- from the ITA No.1094-1206/Bang/2024 investment in HDFC cash management Mutual fund which was claimed as exempted income under the provision of section 10(35) of the Act. The AO found that no corresponding expenses as per the provision of section 14A of the Act have been disallowed. The AO also noted that the assessee has also made investment in the shares of subsidiary and associated concerns. Hence, the AO invoked the provision of section 14A read with rule 8D of the Income Tax Rule and made the disallowance of Rs. 2,04,14,700/- in the following manner:

- Interest expense under rule 8D(2)(ii) Rs. 1,84,72,595/-

- Administrative expenses under rule 8D(2)(iii) Rs. 19,42,105/-

18. The aggrieved assessee preferred an appeal before the learned CIT(A).

18.1 Before the learned CIT(A), the assessee submitted that no interest- bearing borrowed fund was utilised for making investment either in the HDFC cash management mutual fund or strategic investment in the subsidiary companies. Fund utilised for making those investments was sourced out of the proceeds from M/s IVF Trustee Company Pvt Ltd (holding company) which is not an interest-bearing fund. The assessee also submitted that it has sufficient funds in the form of share application money and securities premium. Therefore, interest expenses cannot be disallowed under the provisions of section 14A r.w.r. 8D of the Rules.

18.2 The assessee further claimed that there was no expenditure incurred in relation to the exempt income. Therefore, in the absence of expenditure incurred for earning exempted income, no disallowance can be made under section 14A of the Act.

ITA No.1094-1206/Bang/2024 18.3 Furthermore, the assessee submitted that investment in subsidiary companies is in nature of strategic business investment and not for earning the dividend income. Also, no dividend income earned during the year form those investments. Therefore, the same cannot be considered for making disallowances as per rule 8D of income tax rule.

18.4 Without prejudice the assessee submitted that the disallowances under section 14A r.w.r. 8D of the Rule cannot exceed the exempted income.

18.5 However, Ld. CIT(A) found that the assessee has earned exempt of Rs. 64,000 only from investments in mutual funds and it settled position of law by the various judicial pronouncement including the ruling of Hon'ble Supreme Court in the case of M/s Maxopp Investment Ltd that the disallowances under section 14A of the Act shall be restricted to the extent of exempted income earned during the year. Thus, the learned CIT(A) directed the AO to restrict the disallowances up to Rs. 64000/- only.

19. Being aggrieved by the order of Ld. CIT(A), both the assessee and the revenue are in appeal before us. The assessee is in appeal against the confirmation of disallowance to the extent of exempted income whereas the revenue is in appeal against the addition deleted in excess of exempted income. The relevant ground of revenue's appeal in ITA No. 1206/Bang/2024 reads as follows:

> ITA No.1094-1206/Bang/2024 "5. Whether on the facts and circumstances of the case, the Ld. CLT(A) was correct in restricting the disallowance made by AO u/s. 14A read with Rule 8D to the amount of exempt income earned in a year."

20. The Ld. AR before us submitted that the AO invoked section 14A read with Rule 8D of the Act without recording the mandatory satisfaction as required under section 14A(2) of the Act, rendering the disallowance unsustainable in law.

20.1 The learned AR further submitted that the assessee had sufficient interest-free own funds far in excess of the investments yielding exempt income and that the borrowed funds were utilised only for business purposes, as evidenced by loan agreements and end-use certificates. Therefore, no disallowance of interest under Rule 8D(2)(ii) could be made. Reliance in this regard was placed on the decision of the Hon'ble Supreme Court in South Indian Bank Ltd. v. CIT reported in 130 taxmann.com 178.

20.2 It was also submitted that even otherwise, for the purpose of Rule 8D(2)(iii), only those investments which yielded exempt income during the year can be considered for computing the average value of investments. Since the assessee earned exempt income only from mutual funds, only such investments are required to be considered.

20.3 The learned AR further submitted that in the assessee's own case for AY 2011-12, this Tribunal had directed the AO to recompute disallowance under section 14A of the Act by considering only those investments which yielded exempt income, and therefore the same principle should be followed for the year under consideration.

ITA No.1094-1206/Bang/2024 20.4 Accordingly, the learned AR submitted that no disallowance under section 14A is warranted and, without prejudice, the disallowance, if any, should be restricted strictly in accordance with Rule 8D and only with reference to investments yielding exempt income.

21. On the other hand, the Ld. DR before us submitted that the Assessing Officer was justified in invoking the provisions of section 14A read with Rule 8D of the Act, as the assessee had admittedly earned exempt income during the year under consideration. It was contended that once exempt income is earned, disallowance under section 14A becomes mandatory and the Assessing Officer is duty-bound to apply Rule 8D where the assessee's claim regarding expenditure is not acceptable.

22. Both the ld. AR and the Ld. DR before us vehemently supported the order of the authorities below to the extent favourable to them.

23. We have heard the rival contentions of both the parties and perused the materials available on records. The issue before us relates to the disallowance under section 14A read with Rule 8D of the Income-tax Rules, in respect of interest expenditure under Rule 8D(2)(ii) and administrative expenditure under Rule 8D(2)(iii), arising from exempt dividend income earned by the assessee from investment in HDFC Cash Management Mutual Fund during the year under consideration .

23.1 So far as the disallowance of interest expenditure under Rule 8D(2)(ii) is concerned, it is an undisputed fact on record that the assessee had sufficient interest-free own funds in the form of share application money and securities premium, which is far in excess of the investments ITA No.1094-1206/Bang/2024 yielding exempt income. The assessee has also explained that the

investments were not made out of borrowed funds and that the borrowed funds were utilised for business purposes. In view of the settled legal position, where the assessee is able to demonstrate availability of sufficient own funds, a presumption arises that investments in tax-free instruments are made out of such own funds and no disallowance of interest is warranted. Accordingly, we hold that the interest expenditure cannot be disallowed under Rule 8D(2)(ii) in the present case.

23.2 Coming to the disallowance of administrative expenditure under Rule 8D(2)(iii), the assessee has argued that no expenditure was incurred for earning the exempt income. However, this argument cannot be accepted in its entirety. The scheme of section 14A read with Rule 8D clearly provides for a presumptive disallowance of administrative expenditure once exempt income is earned, irrespective of whether the assessee claims that no specific expenditure was incurred. Therefore, some disallowance towards administrative expenses is justified under Rule 8D(2)(iii) of the Act.

23.3 At the same time, we find merit in the contention of the assessee that for the purpose of computing disallowance under Rule 8D(2)(iii), only those investments which have actually yielded exempt income during the year can be considered. In the present case, the exempt income has arisen only from investment in HDFC Cash Management Mutual Fund, and no exempt income has been earned from investments in subsidiaries or associate concerns. Hence, such strategic investments, which did not yield any exempt income during the year, cannot be taken into account for ITA No.1094-1206/Bang/2024 computing the average value of investments under Rule 8D(2)(iii) of Income Tax Rules.

23.4 Further, it is now a well-settled principle that the total disallowance made under section 14A read with Rule 8D cannot exceed the amount of exempt income earned during the year. In the present case, the exempt income earned by the assessee is only 63,982/-. Therefore, even the disallowance of administrative expenditure computed under Rule 8D(2)(iii) shall be restricted to the extent of exempt income earned during the year and cannot exceed such exempt income.

23.5 In view of the above discussion, we hold that (i) no disallowance of interest expenditure under Rule 8D(2)(ii) is called for in the given facts,

(ii) disallowance of administrative expenditure under Rule 8D(2)(iii) is liable to be made, but only with reference to investments which yielded exempt income during the year, namely investment in HDFC Cash Management Mutual Fund, and (iii) the total disallowance under section 14A shall, in any case, be restricted to the amount of exempt income earned during the year. The AO is directed to recompute the disallowance accordingly. Hence the ground of appeal raised by the assessee is allowed for statistical purposes whereas the ground of appeal of the revenue is hereby dismissed.

24. The Ground No. 6 of the assessee relates disallowance of depreciation on network acquisition.

25. The necessary facts are that in the schedule of depreciation, the assessee had shown "network acquisition" as an intangible asset and ITA No.1094-1206/Bang/2024 claimed depreciation of 2,35,83,242/- at the rate of 25 per cent. During the assessment proceedings, the assessee was

asked to justify the claim, particularly since similar additions had been proposed in earlier years. In reply, the assessee submitted that the payments were made for obtaining access to customers' homes or networks, which according to it constituted a "right" and therefore an intangible asset distinct from goodwill.

25.1 The AO examined the submissions and documentary evidence produced by the assessee, including the network purchase agreements, and observed that depreciation under the Act is allowable only in respect of intangible assets falling within the scope of section 32(1)(ii) of the Act. The AO referred the relevant statutory provision and emphasised that depreciation is permitted on know-how, patents, copyrights, trademarks, licences, franchises, or any other business or commercial rights of a similar nature. According to the AO, the Act does not specifically recognise a "right to provide services to a customer's home or network" as an eligible intangible asset. He held that the expression "any other business or commercial rights of similar nature" must be interpreted ejusdem generis with the specific categories mentioned in the section, namely know-how, patents, trademarks, licences and franchises, which form a distinct class of rights. On this reasoning, the AO concluded that the assessee's claim did not fall within the statutory framework of section 32(1)(ii) of the Act.

25.2 The AO further relied on judicial precedents, including the decision of the Mumbai Bench of the Tribunal in R.G. Keswani v. Asstt. CIT (2009) 26 ITCL 217, to support a restricted interpretation of the residual clause. He also placed strong reliance on the Bangalore Tribunal decision in M/s Sanyo BPL Pvt. Ltd. v. DCIT (ITA No.1395/Bang/2014 dated 04-11-2016), ITA No.1094-1206/Bang/2024 wherein it was held that acquisition of a customer distribution network does not result in the creation of any intangible asset and that depreciation on such alleged intangible assets was not allowable. The AO reproduced the relevant portion of that order, noting the Tribunal's observations that no separate payment was made to distributors for such rights and that the arrangement was viewed as an attempt to inflate asset values to claim higher depreciation, attracting the principles laid down by the Hon'ble Supreme Court in McDowell & Co. Ltd. v. CTO (154 ITR 148).

25.3 In view of the above statutory analysis and judicial authorities, the AO held that the assessee was not entitled to depreciation on the so-called network acquisition. Accordingly, the claim of 2,35,83,242 was disallowed and added back to the total income of the assessee.

26. The Aggrieved assessee preferred an appeal before Ld. CIT(A).

26.1 Before the Ld. CIT(A), the assessee submitted that during the subjected AY it made payments towards acquisition of new customer rights, commonly referred to as network acquisition, from various LCOs. The payments were made for acquiring the right to distribute cable signals to end subscribers/consumers. The details of additions to network acquisition during the year were furnished along with agreements as enclosed in the paper book.

26.2 Further, the assessee submitted that such network acquisition was capitalized as an intangible asset in the books of account and depreciation of 2,35,83,242/- was claimed at the rate of 25% u/s

32 of the Act.

ITA No.1094-1206/Bang/2024 26.3 The assessee contended that the consideration paid to LCOs was not for acquisition of any tangible assets but solely for acquiring the right to access and to provide service to customers' homes or networks. Such right constitutes a business or commercial right and is therefore, the same is an intangible asset eligible for depreciation. It was further submitted that this right is distinct from goodwill, which generally represents the excess of purchase consideration over the value of tangible assets in a business acquisition. In the case of network acquisition, no tangible assets are acquired, and the payment is exclusively for customer access rights.

26.4 The assessee submitted that these payments result in acquisition of revenue-generating units and have therefore been rightly capitalised as intangible assets in the financial statements.

26.5 However, the learned CIT(A) confirmed the disallowances made by the AO by observing as under:

> 9.3 Considering the facts of the case, assessment order and submissions made by the appellant, it is seen that AO has noted that the appellant has not proved with documentary evidence about the network purchase agreement and how the purchase consideration is made only for intangible assets and not for the tangible assets.
>
> 9.5 Further, it was not demonstrated that the LCO's acquired, were profit making and the sum total valuation/consideration is more than the value of the physical assets in the Balance sheet. In the absence of any of these factors, the appellant is not justified in making a claim purely based on the purchase agreement and that too saying that the value paid was based on 'per individual connection multiplied by the rate' and saying that there is no value for the physical infrastructure in the eyes of the appellant. Therefore, it is held that depreciation claim on network acquisition as an intellectual property, has been rightly disallowed by the Assessing officer.
>
> 9.7 Therefore, the disallowance of depreciation claim on network acquisition made under section 32 of the Act is confirmed.

27. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

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28. The Ld. AR before us submitted that during the year under consideration, the assessee incurred expenditure of 5,19,97,358/- towards acquisition of new customer rights, commonly referred to as network acquisition, from Local Cable Operators. The payments were made for acquiring the right to distribute cable signals to customers' homes and such rights were capitalised as intangible assets in the books of account. Depreciation of 2,35,83,242 was claimed at the rate of 25% U/s 32(1)(ii) of the Act.

28.1 Further, it was submitted that the AO and the Ld. CIT(A) erred in disallowing the depreciation on the ground that the assessee failed to establish that the consideration was paid only for intangible assets and not for tangible assets. The learned AR contended that when an LCO network is acquired, the consideration is paid exclusively for the right to access and service customers' homes or networks and not for acquisition of any tangible assets, as evident from the business transfer agreements placed on record.

28.2 The learned AR further submitted that section 32(1)(ii) of the Act allows depreciation on business or commercial rights of similar nature and that the right to provide services to customers' homes or networks constitutes such a commercial right. Reliance was placed on the decision of the Hon'ble Delhi High Court in CIT v. Hindustan Coca Cola Beverages (P.) Ltd. reported in 198 Taxman 104, wherein it was held that any right obtained for carrying on business more effectively would fall within the scope of intangible assets eligible for depreciation.

ITA No.1094-1206/Bang/2024 28.3 It was also submitted that the right acquired is distinct from goodwill, as no tangible assets were acquired and the consideration was not paid for acquisition of a business as a whole. The payment was solely for customer access rights, which are revenue-generating in nature and qualify as identifiable intangible assets.

28.4 Without prejudice to the above, the learned AR submitted that even if depreciation is held to be not allowable, the expenditure incurred towards network acquisition ought to be allowed as a revenue deduction under section 37 of the Act, being expenditure incurred wholly and exclusively for the purposes of the assessee's business.

29. On the other hand, the Ld. DR before us submitted that the Assessing Officer as well as the learned CIT(A) were justified in disallowing the depreciation claimed by the assessee. It was contended that the assessee failed to conclusively establish that the entire consideration paid to the Local Cable Operators was solely towards acquisition of intangible rights and did not include any element of tangible assets such as cables, equipment, or other infrastructure.

29.1 The Ld. DR further submitted that the so-called "customer access rights" are not independently identifiable assets capable of ownership and transfer in isolation and therefore cannot be equated with business or commercial rights contemplated under section 32(1)(ii) of the Act. According to the Ld. DR, the expenditure resulted in creation of an enduring benefit and was in the nature of capital expenditure, but not falling within the specified category of depreciable intangible assets.

ITA No.1094-1206/Bang/2024 29.2 It was also argued that the alternative plea for allowing the expenditure as revenue under section 37 of the Act is not tenable, since the assessee itself treated the expenditure as capital in nature by capitalising it in the books of account. Once the expenditure is capital in nature, it cannot be allowed as revenue merely because depreciation is not admissible. Accordingly, the Ld. DR supported the orders of the Assessing Officer and the learned CIT(A) and prayed that the disallowance of depreciation be sustained.

30. We have heard the rival contentions of both the parties and perused the materials available on record. From the perusal of the material available on record, we note that the assessee over the period has acquired the internet broadband business of the various LCOs and during the year made aggregate payment of Rs. 5,19,97358/- toward such acquisitions of internet broadband business of local operator.

30.1 For better understanding, we perused a sample copies of the agreement dated 1st day of September 2015 for such acquisition of network entered between the assessee and M/s Guru Video a proprietary concern of Shri Rajendra Eshwarappa. We note that Shri Rajendra Eshwarappa or M/s Guru Video was carrying on the trade and business of providing internet broadband services through his cable network to around 45 customers. The assessee purchased and acquired all rights, titles and interest in the business of M/s Guru Video as a going concern which consisted of following:

> i. The list of areas to which the promoter has been providing internet broadband services detailed in Annexure 1 of the Agreement.
>
> ITA No.1094-1206/Bang/2024 ii. Total subscriber base of the Promoter consisting of 45 (Forty- Five only) subscribers as on the date of execution of this agreement, whose details have been detailed in Annexure 2 of the agreement.
>
> iii. The network diagram of his entire network as detailed in Annexure 3 of the agreement 30.2 The assessee acquired the entire business (providing internet broadband services) of M/s Guru Video without transfer of liability of M/s Guru Video. The assessee made payment of composite consideration for entire business at the rate of Rs. 7518.35 per customer which arrived at Rs. 3,38,325.75/- (45 x 7518.35). The proprietor of M/s Guru Video was also prohibited from carrying the business of providing internet broadband services in the said locality in any form.
>
> 30.3 These features clearly show that what was transferred was not merely an isolated right to collect revenue from a few customers but the complete operating set-up of the broadband activity in that area, together with commercial rights attached to the subscriber base and an element of non-competition. Such rights are capable of generating enduring income for the assessee and form part of its profit-earning apparatus. Prima facie, therefore, the transaction bears the character of acquisition of business or commercial rights rather than a simple reimbursement for individual connections.
>
> 30.4 We have also examined the core legal question as to whether the acquisition of broadband networks from LCOs can be regarded as an intangible asset falling within the expression "any other business or ITA No.1094-1206/Bang/2024 commercial rights of similar nature" used in section 32(1)(ii) of the Act.

The provision specifically lists know-how, patents, copyrights, trademarks, licences and franchises, followed by the residuary category of other business or commercial rights of similar nature. The settled legal position is that this residuary expression must be interpreted by applying the rule of ejusdem generis, meaning that the general words take colour from the specific items preceding them and would cover only such rights which are akin in commercial character to licences, franchises or similar legally enforceable rights used in carrying on business.

30.5 On examination of the agreements placed before us, we find that the assessee did not merely acquire a bundle of individual customers. The assessee acquired the entire running broadband activity of the LCOs in a defined area, including the subscriber base, territorial operating rights, network layout and, importantly, restrictive covenants preventing the seller from competing in the same locality. These elements together confer on the assessee an enforceable commercial right to operate broadband services in that territory and to exploit the acquired customer base for earning income on a continuing basis. Such rights are clearly capable of being owned, transferred and used in business and are not in the nature of routine revenue contracts.

30.6 In our view, rights of this nature are commercially comparable to licences or franchises, because they permit the holder to operate in a particular area, access customers and derive recurring income therefrom. The acquisition therefore satisfies the essential attributes of an intangible asset contemplated in section 32(1)(ii) of the Act, namely that it represents a business or commercial right, acquired for consideration, ITA No.1094-1206/Bang/2024 owned by the assessee and deployed in the business for generating revenue.

30.7 At the same time, we observe that identical acquisition of assets was made in earlier year and capitalized as network acquisition. The depreciation of Rs. 2,35,83,242/- claimed during the year is on opening WDV as well as on the new acquisition made during the year. The Revenue has also raised doubts regarding whether any part of the consideration related to tangible infrastructure, it is necessary that the AO verifies the composition of the block, the treatment adopted in the initial year of capitalisation, and the consistency of allowance in prior assessments. The AO shall also examine whether any portion of the consideration is attributable to tangible assets and segregate the same, if required, in accordance with law.

30.8 Subject to such verification, we hold that acquisition of broadband networks of LCOs, involving transfer of subscriber base, territorial operating rights and non-compete covenants, is in principle capable of qualifying as an intangible asset being a "business or commercial right of similar nature" within the meaning of section 32(1)(ii) of the Act. The matter is accordingly restored to the file of the AO for fresh examination on the above lines after affording due opportunity to the assessee. Hence, the ground of appeal of the assessee is allowed for statistical purposes.

31. The Ground No. 7 is regarding the disallowing of depreciation claimed on goodwill arising on amalgamation.

32. The relevant facts are that the assessee acquired the business of M/s Beam Telecom Private Limited through a scheme of amalgamation in ITA No.1094-1206/Bang/2024 the nature of merger

with effect from 1st April 2013. In consequence of amalgamation, the assessee company created goodwill in its books amounting to 86,86,66,741/- on account of difference between the purchase consideration paid and net assets acquired. On the impugned goodwill the assessee during the year under consideration (A.Y. 2016-17), claimed depreciation of 12,21,56,682/-. In support of the claim, the assessee relied in the riling of Hon'ble Supreme Court in the case of CIT v. Smifs Securities Ltd reported in 348 ITR 302.

32.1 The AO observed that the Hon'ble Supreme Court in Smifs Securities Ltd (supra) has held that excess consideration over the assets taken constitute goodwill and the same eligible is for depreciation. However, to claim depreciation, the valuation of goodwill must be taken correctly as per the provision of the Act.

32.2 The AO referred to the fifth proviso to section 32(1) of the Act, and held that in cases of succession, amalgamation or merger, the aggregate depreciation allowable to the amalgamating and amalgamated companies shall not exceed the depreciation that would have been allowable had the amalgamation not taken place, and such depreciation is to be apportioned based on the period of use of the assets.

32.3 It was observed that M/s Beam Telecom Private Limited, the amalgamating company, had not claimed depreciation on goodwill prior to amalgamation. Therefore, if the amalgamation had not taken place, no depreciation on goodwill would have been allowable. In such circumstances, the assessee, being the amalgamated company, could not claim depreciation on goodwill arising on amalgamation.

ITA No.1094-1206/Bang/2024 32.4 The AO further held that the consideration paid under the scheme of amalgamation was for acquisition of the business as a whole and not for acquisition of individual assets, and therefore the assessee could not claim depreciation on goodwill in excess of what would have been allowable to the amalgamating company.

32.5 Reliance was also placed on the decision of the Bangalore Bench of the Tribunal in United Breweries Ltd. v. Addl. CIT in ITA No. 722, 801 &. 1065/Bang/2014. Accordingly, the AO concluded that the claim of depreciation on goodwill was hit by the fifth proviso to section 32(1) of the Act and disallowed the depreciation of 12,21,56,682 claimed by the assessee as disallowed in earlier years also.

33. The aggrieved assessee preferred to file an appeal before the Ld. CIT(A).

33.1 Before the Ld. CIT(A), the assessee reiterated that in the F.Y. 2013- 14 it had taken over the business of M/s Beam Telecom Private Limited pursuant to a scheme of amalgamation and purchase consideration over net assets taken recognised as goodwill. The goodwill was recognised in pursuant to amalgamation is eligible for depreciation under section 32 of the Act as an intangible asset as held by the Hon'ble Supreme Court in the case of Smifs Securities Ltd. The assessee in this regard further placed reliance on various other decisions of Hon'ble High Courts and the Tribunals.

ITA No.1094-1206/Bang/2024 33.2 With respect to the AO's reliance on the fifth proviso to section 32(1) of the Act, the assessee submitted that the said proviso merely restricts depreciation on assets transferred from the amalgamating company to the extent depreciation that would have been allowable had the amalgamation not taken place. It was contended that the proviso is intended to prevent enhanced depreciation due to revaluation of existing assets and does not apply to goodwill which arises for the first time on amalgamation in the hands of the amalgamated company.

33.3 It was further submitted that the goodwill in the present case is not transferred from the amalgamating company but arises as a result of the amalgamation itself and therefore falls outside the scope of the fifth proviso to section 32(1) of the Act. The assessee also distinguished the decision in United Breweries Ltd (supra) relied upon by the AO, on the ground that the facts of the present case were materially different.

33.4 Accordingly, the assessee submitted that goodwill arising on amalgamation is an intangible asset eligible for depreciation and that the disallowance of depreciation of 12,21,56,682 was unsustainable in law.

33.5 The Ld. CIT(A) observed that the AO had placed reliance on the decision of the jurisdictional Bangalore Bench of the Tribunal in United Breweries Ltd. v. Addl. CIT reported in (ITA Nos. 722, 801 & 1065/Bang/2014). In the said decision, the Tribunal held that by virtue of the fifth proviso to section 32(1) of the Act, depreciation in the hands of the amalgamated company is allowable only to the extent it would have been allowable had the amalgamation not taken place.

ITA No.1094-1206/Bang/2024 33.6 The learned CIT(A) noted that while the Hon'ble Supreme Court in CIT v. Smifs Securities Ltd. has held that goodwill is an intangible asset eligible for depreciation, the said judgment does not override the operation of the fifth proviso to section 32(1) of the Act. According to the learned CIT(A), the proviso restricts the depreciation claimed in cases of amalgamation and mandates that the amalgamated company cannot claim depreciation on assets acquired under the scheme in excess of what would have been allowable to the amalgamating company.

33.7 The learned CIT(A) further observed that the Tribunal in United Breweries Ltd. had categorically held that the consideration paid for acquiring shareholding or business in earlier years is not relevant for the purpose of allowing depreciation on assets taken over under amalgamation, insofar as the restriction under the fifth proviso to section 32(1) is concerned.

33.8 Holding that the facts of the present case are similar to those in United Breweries Ltd., the Ld. CIT(A) respectfully followed the said decision and upheld the action of the AO. Accordingly, the ground raised by the assessee challenging the disallowance of depreciation on goodwill was dismissed.

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

35. The Ld. AR before us submitted that during FY 2013-14, the assessee acquired the business of Beam Telecom Private Limited pursuant to amalgamation and goodwill amounting to 86,86,66,741, being the ITA No.1094-1206/Bang/2024 excess of purchase consideration over net assets taken over, arose for the first time and was duly recorded in the books of account. Depreciation of 12,21,56,682 was claimed on such goodwill for the year under consideration.

35.1 The Ld. AR further submitted that the AO and the Ld. CIT(A) erred in disallowing the claim by applying the erstwhile fifth proviso to section 32(1) of the Act. The Ld. AR contended that the said proviso applies only to assets already existing in the books of the predecessor company on which depreciation was being claimed prior to amalgamation, and not to goodwill which arises for the first time in the hands of the amalgamated company.

35.2 The learned AR further submitted that the legislative intent behind the proviso was only to prevent double depreciation on the same asset in the hands of the predecessor and successor, as evident from the Memorandum explaining the provisions of the Finance Bill, 1996. Since goodwill did not exist in the books of the amalgamating company and arose only pursuant to the amalgamation, the proviso has no application in the present case.

35.3 Reliance was placed on various decisions of this Tribunal, including I & B Seeds (P.) Ltd. reported in 142 taxmann.com 274, Altimetrik India (P.) Ltd., Atos IT Services (P.) Ltd. reported in 137 taxmann.com 9, and the Ahmedabad Bench decision in Urmin Marketing (P.) Ltd. reported in 122 taxmann.com 40, wherein it has been held that depreciation on goodwill arising on amalgamation is allowable and not hit by the proviso to section 32(1) of the Act.

ITA No.1094-1206/Bang/2024 35.4 The learned AR also relied on the decision of the Hon'ble Supreme Court in CIT v. Smifs Securities Ltd. to submit that it is a settled legal position that goodwill, being the excess consideration paid over net assets acquired, is an intangible asset eligible for depreciation. Accordingly, it was submitted that the claim of depreciation on goodwill deserves to be allowed.

36. On the other hand, the learned DR before us strongly supported the orders of the AO and the Ld. CIT(A). It was submitted that the depreciation claimed on goodwill arising on amalgamation was rightly disallowed by invoking the fifth proviso to section 32(1) of the Act, as the assessee had stepped into the shoes of the amalgamating company.

36.1 The learned DR contended that the scheme of amalgamation is a tax-neutral reorganisation and, therefore, no additional benefit by way of depreciation can be claimed merely by revaluing or recognising goodwill in the books of the amalgamated company. It was submitted that the purchase consideration paid over and above the net assets represents nothing but an accounting adjustment and does not give rise to a new depreciable asset for the purposes of the Act.

36.2 The learned DR further argued that allowing depreciation on such goodwill would defeat the very purpose of the fifth proviso to section 32(1) of the Act, which seeks to restrict depreciation in the hands of the amalgamated company to the amount that would have been allowable had the

amalgamation not taken place. According to the learned DR, permitting depreciation on goodwill created pursuant to amalgamation ITA No.1094-1206/Bang/2024 would result in an unintended tax advantage and effectively allow depreciation on an asset that did not independently exist prior to the restructuring.

36.3 It was also submitted that the reliance placed by the assessee on the decision of the Hon'ble Supreme Court in Smifs Securities Ltd. is misplaced, as the said decision does not deal with the applicability of the fifth proviso to section 32(1) in the context of amalgamation. The learned DR submitted that the ratio of Smifs Securities cannot be mechanically applied to cases where statutory restrictions specifically govern depreciation arising from amalgamation. The learned DR therefore submitted that the authorities below were justified in disallowing the depreciation claimed on goodwill and that the order of the Ld. CIT(A) deserves to be upheld.

37. We have heard the rival contentions of both the parties and perused the materials available on record. The undisputed facts are that the assessee acquired the business of M/s Beam Telecom Private Limited in pursuant to a scheme of amalgamation with effect from 1 April 2013. Consequent to such amalgamation, goodwill amounting to 86,86,66,741.00 arose in the books, being the excess of purchase consideration over the net assets taken over. Depreciation was claimed on such goodwill and, for the year under consideration, A.Y. 2016-17, the claim amounted to 12,21,56,682.00 only. It is thus evident that the present year is not the first year of claim of depreciation on goodwill rather, it is the third year following the amalgamation.

ITA No.1094-1206/Bang/2024 37.1 The legal position that goodwill is an intangible asset eligible for depreciation under section 32(1)(ii) of the Act and stands settled by the judgment of the Hon'ble Supreme Court in CIT v. Smifs Securities Ltd(supra). The lower authorities have not disputed the principle that goodwill is depreciable assets. The controversy has arisen only on account of the application of the fifth proviso to section 32(1) of the Act, which was invoked by the AO and the ld. CIT(A) to restrict the claim on the ground that the amalgamating company had not claimed depreciation on goodwill prior to amalgamation.

37.2 In our considered view, the approach of the lower authorities is not sustainable on the facts of the present case. The goodwill in question did not exist in the books of the amalgamating company and has arisen for the first time in the hands of the assessee pursuant to the scheme of amalgamation itself. The fifth proviso to section 32(1) of the Act is intended to ensure that, in cases of succession or amalgamation, depreciation on the same asset is not claimed twice and that the aggregate depreciation does not exceed what would have been allowable had the amalgamation not taken place. The said proviso primarily operates in respect of existing depreciable assets transferred from the predecessor to the successor. It cannot be mechanically extended to a situation where a new intangible asset, namely goodwill, comes into existence for the first time on amalgamation in the hands of the amalgamated company.

37.3 We also find merit in the contention of the learned AR that the legislative intent behind the proviso, as explained in the Memorandum to the Finance Bill, 1996, was to curb enhanced depreciation by revaluation of transferred assets and to prevent duplication of depreciation. Since

no ITA No.1094-1206/Bang/2024 goodwill was appearing in the books of the amalgamating company and no depreciation had ever been claimed thereon, there was no question of double deduction or inflation of depreciation in the present case.

37.4 In this regard we also find support and guidance from the judgment of Hon'ble Jurisdictional High Court of Karnataka in the case of Padmini Products (P) Ltd reported in 121 taxmann.com 237, where it was held as under:

> 8. It is noteworthy to mention here that 5th proviso to section 32(1) of the Act restricts the total depreciation which can be claimed in case of succession etc. to the depreciation which would have been allowable had there been no succession. The 5th proviso (earlier 4th proviso) to section 32(1) was inserted by Finance Act, 1996 to restrict the claim of aggregate deduction, which is evident from the memorandum to Finance Bill, 1996, which reads as under:
>
> In cases of succession in business and amalgamation of companies, the predecessor of the business and successor the amalgamating company and amalgamated company as the case may be, are entitled to depreciation allowance on same assets which in aggregate exceeds depreciation allowance for Previous year at the prescribed dates. It is proposed to restrict the aggregate deduction in a year to the deduction computed at the prescribed rates and apportion the allowance in the ratio of number of days for which the assets were used by them.
>
> 9. Thus, it is evident that 5th proviso to section 32 of the Act restricts aggregate deduction both by the predecessor and the successor and if in a particular year there is no aggregate deduction, the 5th proviso does not apply. Thus, it is axiomatic that until and unless it is the case of aggregate deduction, the proviso has no role to play. The 5th proviso in any case will apply only in the year of succession and not in subsequent years and also in respect of overall quantum of depreciation in the year of succession. Accordingly, the third substantial question of law is answered in favour of the assessee and against the revenue.

37.5 Another important aspect is that the year under consideration is not the initial year in which depreciation of goodwill was claimed. The amalgamation took effect from A.Y. 2014-15, and depreciation has been claimed since then. Once depreciation on a particular asset is forming part of a block has been allowed in the first year of claim, the written-down value of that block becomes final and, in the absence of any reopening or disturbance in that first year, the Revenue cannot, in a subsequent year, ITA No.1094-1206/Bang/2024 disallow depreciation by questioning the very existence or eligibility of the asset itself. The allowability of depreciation on goodwill, if at all, had to be examined in the first year when the block was created. In later years, when depreciation is claimed merely on the carried-forward WDV of the block, the same cannot ordinarily be disturbed unless the allowance in the initial year is set aside in accordance with law.

> 37.6 We note that the AO in his findings has noted that the claim of depreciation on goodwill in earlier years has been disallowed. We further note that the ld. AR of the assessee before the Tribunal on previous hearing date (13th May 2025) have sought adjournment citing reason that on the very same issue i.e. disallowance of deprecation on goodwill pertaining to A.Y. 2014-15 i.e. first year of claim, the assessee is in appeal before the learned CIT(A) which is pending. However, afterward, the learned AR before us furnished the copy of the common order of the learned CIT(A) for A.Y. 2012-13 to 2015-16 dated 30th July 2025. On perusal of the learned CIT(A) finding for A.Y. 2014-15 in respect of claim of depreciation on goodwill arising on the amalgamation, we note the learned CIT(A) confirmed the disallowances by placing reliance on the decision given by the learned CIT(A) for the year under consideration.

Hence the learned CIT(A) treated the year under consideration as lead case on the issue of deprecation on goodwill arising first time in the books of assessee on account of amalgamation.

37.7 Be that as maybe, we also take note of the decisions relied upon by the assessee, including I & B Seeds (P.) Ltd.(supra), Altimetrik India (P.) Ltd., Atos IT Services (P.) Ltd. and Urmin Marketing (P.) Ltd. (supra), wherein coordinate Benches have consistently held that goodwill arising ITA No.1094-1206/Bang/2024 on amalgamation is a depreciable intangible asset and that the restriction under the proviso to section 32(1) does not apply to such newly generated goodwill. These authorities support the stand of the assessee and reinforce the principle flowing from the judgment of the Hon'ble Supreme Court in Smifs Securities Ltd.

37.8 In view of the above discussion, we hold that goodwill arising pursuant to the amalgamation, in principle, is an intangible asset eligible for depreciation under section 32(1)(ii) of the Act. The character of goodwill as a depreciable intangible asset having been settled by the Hon'ble Supreme Court, and the restriction under the proviso not being applicable to goodwill arising for the first time on amalgamation, the present assessee is entitled in principle to depreciation.

37.9 We are also conscious to the fact that the year under consideration is not the first year of claim, and as noted in the preceding paragraph that the assessee's claim in the very first year has been disallowed by the AO and confirmed by the learned CIT(A) following the finding given for the year under consideration. Since the lower authorities with respect to dispute in the very first year of the claim have followed the year under consideration by treating the year under consideration as lead case. Accordingly, we deem it fit to resolve the dispute in the present appeal despite not being the first year and claim made during the year on WDV. Hence considering the above detailed discussion, the ground of appeal of the assessee for the year under consideration is hereby allowed.

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38. The issue raised by the assessee through the additional ground of appeal numbered as Ground No. 8 pertains to depreciation claimed on non-compete fee.

39. The relevant facts are that the assessee in the past acquired the business of cable television distribution of certain partnership firm. Subsequently, the assessee in March 2009 entered into non-competition agreement with promoters of the said partnership firm and it was agreed that the promotor of the said partnership firm will not enter into similar business. For the said non-compete agreement, the assessee made payment of Rs. 2.55 crores. The amount paid was capitalised by the assessee by treating the same as intangible asset and claimed deprecation @ 25%. Accordingly, in the year under consideration, the assessee claimed deprecation on the same for Rs, 15,12,817/- only.

39.1 The AO observed that section 32(1)(ii) of the Act permits depreciation only in respect of specified intangible assets such as know- how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature. Though payment of non- compete fees is capital in nature, depreciation thereon is allowable only if such payment results in creation of an intangible asset falling within the scope of section 32(1)(ii) of the Act 39.2 According to the AO, payment of non-compete fees does not result in creation of any intangible asset akin to intellectual property rights or other business or commercial rights contemplated under the Act. While reliance was placed on the decision of the Hon'ble Delhi High Court in CIT v. Hindustan Coca Cola Beverages (P.) Ltd reported in 331 ITR 192 to note ITA No.1094-1206/Bang/2024 that rights obtained for carrying on business effectively may constitute intangible assets, the AO held that a non-compete agreement does not create any such qualifying asset.

39.3 The AO further reasoned a non-compete agreement confers only a personal and time-bound restriction against specific individuals and does not grant an exclusive or transferable right to carry on business. Such rights, being personal in nature, cannot be equated with intellectual property rights or goodwill.

39.4 Reliance was placed on the judgment of the Hon'ble Delhi High Court in Sharp Business Systems v. CIT reported in 211 taxman 576, wherein it was held that although non-compete fees are capital in nature, depreciation is not allowable as such rights do not qualify as intangible assets under section 32(1) of the Act.

39.5 Accordingly, the AO held that depreciation claimed on non-compete fees does not fall within the purview of section 32(1)(ii) of the Act and disallowed the depreciation of 15,12,817.00 only.

40. Aggrieved by the action of Ld. AO, the assessee filed an appeal before Ld. CIT(A).

40.1 Before the ld. CIT(A), the assessee submitted that the AO erred in disallowing depreciation of 15,12,817 claimed on non-compete fees. It was claimed that 2.55 crore was paid in March 2009 to the promoters of the erstwhile partnership firm from whom the business of cable television distribution was acquired under a composite agreement, whereby the promoters were restrained from carrying on a competing business. The ITA No.1094-1206/Bang/2024 non-compete fees paid were capitalised and depreciation was claimed thereon.

40.2 It was submitted that section 32(1)(ii) of the Act allows depreciation on know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar

nature, being intangible assets. The expression "any other business or commercial rights of similar nature" has not been defined under the Act and therefore has to be construed by applying the rule of ejusdem generis. The word "similar" does not mean identical but denotes resemblance or likeness in nature.

40.3 The assessee contended that the right acquired under a non- compete agreement is a valuable business and commercial right, as it enables the assessee to carry on its business more efficiently by eliminating competition, at least for a stipulated period. Such rights are akin to other intangible assets specifically mentioned in section 32(1)(ii) of the Act, as all such assets confer an advantage to carrying on business with greater effectiveness.

40.4 Reliance was placed on the decision of the jurisdictional Karnataka High Court in Ingersoll Rand International Ltd. v. CIT reported in 48 taxmann.com 349, wherein it was held that non-compete rights constitute business or commercial rights eligible for depreciation under section 32(1)(ii) of the Act. Reliance was also placed on the decision of the Chennai Bench of the Tribunal in ACIT v. Real Image Tech (P.) Ltd. reported in 177 taxman 80, wherein it was held that payment of non- compete fees results in acquisition of a commercial right similar to know-

ITA No.1094-1206/Bang/2024 how, licence or franchise and qualifies as an intangible asset eligible for depreciation.

40.5 The assessee further relied on the decision of the Hon'ble Delhi High Court in CIT v. Hindustan Coca Cola Beverages (P.) Ltd. (supra), wherein it was held that the scope of section 32(1)(ii) of the Act is wide enough to include various business and commercial rights which enable an assessee to conduct business more effectively.

40.6 It was submitted that the Assessing Officer erred in holding that non-compete rights are purely personal or not transferable. What is relevant is the nature of the right acquired and the commercial advantage flowing therefrom, and not whether such right is perpetual or time bound. The non-compete covenant ensures exclusivity in business operations during its subsistence and therefore constitutes an intangible asset.

40.7 Accordingly, it was submitted that the non-compete fees paid by the assessee results in acquisition of a business or commercial right of similar nature within the meaning of section 32(1)(ii) of the Act and depreciation claimed thereon is allowable. The disallowance made by the Assessing Officer was therefore prayed to be deleted.

40.8 The learned CIT(A) after considering the facts in totality, allowed the ground of appeal of the assessee by observing as under:

> 8.3 Considering the facts of the case, assessment order and submissions made by the appellant, it is seen that the appellant has submitted that having capitalised the said payment which is akin to acquisition of goodwill or equivalent to intangible asset, it is entitled for depreciation on the same. The appellant relied on various Judicial

precedents (Ingersoll Rand International Ltd Vs Commissioner of Income-tax [2014] 48 taxmann.com 349(Karnataka)) wherein, the Karnataka High Court as held that the expenditure incurred for acquiring the non-compete right is held to be capital in nature, consequently depreciation ITA No.1094-1206/Bang/2024 provided under section 32(1)(ii) is attracted and the appellant would be entitled to the deduction as provided in the said provision.

"what is to be seen is, what are the nature of intangible assets which would constitute business or commercial rights to be eligible for depreciation. In this regard, it is necessary to notice that the intangible assets enumerated in Sec.32 of the Act effectively confer a right upon an assessee for carrying on a business more efficiently by utilizing an available knowledge or by carrying on a business to the exclusion of another assessee. A non-compete right encompasses a right under which one person is prohibited from competing in business with another for a stipulated period. It would be the right of the person to carry on a business in competition but for such agreement of non-compete. Therefore the right acquired under a non-compete agreement is a right for which a valuable consideration is paid. This right is acquired so as to ensure that the recipient of the non-compete fee does not compete in any manner with the business in which he was earlier associated. The object of acquiring a know-how, patents, copyrights, trade marks, licences, franchises is to carry on business against rivals in the same business in a more efficient manner or to put it differently in a best possible manner. The object of entering into a non-compete agreement is also the same i.e., to carry on business in a more efficient manner by avoiding competition atleast for a limited period of time. On payment of non-compete, the payer acquires a bundle of rights such as restricting receiver directly or indirectly participating in a business which is similar to the business being acquired, from directly or indirectly soliciting or influencing clients or customers of the existing business or any other person either not to do business with the person who has acquired the business and paid the non-compete fee or to do business with the person receiving the non-compete fee to do business with a person who is directly or indirectly in competition with the business which is being acquired. The right is acquired for carrying on the business and therefore it is a business right.

....

Generally, non-compete fee is paid for a definite period. The idea is that by that time, the business would stand firmly on its own footing and can sustain later on. This clearly shows that the commercial right comes into existence whenever the assessee makes payment for non-compete fee. Therefore that right which the assessee acquires on payment of non- compete fee confers in him a commercial or a business right which is held to be similar in nature to know-how, patents, copyrights, trade marks, licences, franchises. Therefore the commercial right thus acquired by the assessee unambiguously falls in the category of an 'intangible asset'. Their right to carry on business without competition has an economic interest and money value.

> The term 'or any other business or commercial rights of similar nature' has to be interpreted in such a way that it would have some similarities as other assets mentioned in Cl.(b) of Expln.3. Here the doctrine of ejusdem generis would come into operation and therefore the non-compete fee vests a right in the assessee to carry on business without competition which in turn confers a commercial right to carry on business smoothly.
>
> ITA No.1094-1206/Bang/2024 When once the expenditure incurred for acquiring the said right is held to be capital in nature, consequently the depreciation provided under Sec.32(1)(ii) is attracted and the assessee would be entitled to the deduction as provided in the said provision i.e., precisely what the Tribunal has held."

8.4 Further, in the case of Deputy Commissioner of Income-tax vs. Mcdowell &Co. Ltd. [2007] 291 ITR 107 (KAR.), the Hon'ble Karnataka High Court has held the said expenditure to be revenue in nature.

8.5 However, it is seen from the record that the AO has disallowed the depreciation summarily stating that non-compete right does not qualify for depreciation under Section 32 of the Act.

8.6 On careful consideration of the above, it is seen that the appellant has made payment of non-compete fee to acquire the business rights to restrain the erstwhile promoter; and respectfully following the judgement of Hon'ble Karnataka High Court in the case of Ingersoll Rand International Ltd vs Commissioner of Income-tax [2014] 48 taxmann.com 349 (Karnataka). Therefore, the depreciation on the said non-compete fee paid by the appellant is hereby allowed.

41. Being aggrieved by the order of the learned CIT(A), both the assessee and the Revenue are in appeal before us. The assessee is in appeal through additional ground number as Ground No. 8 contending alternatively that payment for non-compete be allowed as business expenses. On the contrary, the revenue is in appeal against the allowances of deprecation on the same. The relevant ground of appeal of the Revenue in ITA No. 1206/Bang/2025 reads as under:

> "6. Whether on the facts and circumstances of the case, the Ld. CIT(A) was correct in deleting the addition made on account of depreciation on non-compete fee by following the judgment of Hon'ble Karnataka High Court in the case of Ingersol Rand International Limited Vs CIT [2014] 48 taxmann.com 349."

42. The learned AR before us reiterated the assessee's contention as made before the lowe authorities and further submitted that the issue on hand is squarely covered by the decision of Hon'ble Jurisdictional High Court of the Karnataka in the case of Ingersoll Rand International Limited (supra). Furthermore, the learned AR submitted that the impugned issue ITA No.1094-1206/Bang/2024 has been decided in favour of the assessee by the learned CIT(A) in the A.Y. 2011-12 against which the department did not consider filing appeal. Hence, the impugned issue got settled in favour of the assessee by the own acceptance of department. Therefore, following the principle of consistency, the claim of the assessee be allowed and the appeal of the revenue

should be dismissed.

43. On the contrary, the learned DR vehemently opposed the submissions of the learned AR and reiterated the findings recorded by the AO and the Ld. CIT(A). It was submitted that merely because the department did not file an appeal for A.Y. 2011-12, the same cannot be construed as acceptance of the issue on merits, and the principle of res judicata does not apply to income-tax proceedings.

43.1 The learned DR further contended that the doctrine of consistency is not absolute and cannot be invoked where the claim is contrary to the express provisions of law. According to the learned DR, the allowance of depreciation on goodwill arising on amalgamation is specifically restricted by the fifth proviso to section 32(1) of the Act, and therefore an erroneous allowance in an earlier year cannot be perpetuated. Accordingly, the learned DR therefore submitted that the orders of the lower authorities deserve to be upheld, and the appeal of the revenue should be allowed.

44. We have considered the rival submissions of both the parties and perused the materials available on record. The undisputed facts are that the assessee had paid non-compete fees to the promoters of the erstwhile partnership firm for restraining them from carrying on a competing business and had capitalised the said payment. Depreciation was claimed ITA No.1094-1206/Bang/2024 thereon under section 32(1)(ii) of the Act by treating the same as an intangible asset.

44.1 The Assessing Officer disallowed the claim on the grounds that a non-compete agreement does not result in creation of an intangible asset of nature contemplated under section 32(1)(ii) of the Act. However, the learned CIT(A) allowed the claim by relying upon the decision of the Hon'ble Karnataka High Court in Ingersoll Rand International Limited v. Commissioner of Income-tax.

44.2 We find that the issue is no longer valid. The Hon'ble Karnataka High Court in Ingersoll Rand International Limited (supra) has categorically held that the right acquired under a non-compete agreement is a valuable business or commercial right, which enables the assessee to carry on its business more efficiently by avoiding competition and, therefore, falls within the expression "any other business or commercial rights of similar nature" used in section 32(1)(ii) of the Act. The Hon'ble High Court has further held that depreciation is allowable on such non- compete fees.

44.3 It is also not in dispute that in the assessee's own case for an earlier assessment year, the claim of depreciation on non-compete fees has been allowed by the ld. CIT(A) and the Revenue has not shown any change either in facts or in law warranting a different view in the year under consideration. Further, the depreciation claimed during the year is on the written down value of the same intangible asset and represents a continuation of the claim allowed in earlier years.

ITA No.1094-1206/Bang/2024 44.4 Respectfully following the binding decision of the Hon'ble Karnataka High Court in Ingersoll Rand International Limited (supra), we find no infirmity in the order of the learned CIT(A) in allowing depreciation on non-compete fees under section 32(1)(ii) of the Act. Accordingly, the order of the CIT(A) is upheld and the ground raised by the Revenue is dismissed.

44.5 As we have decided the main issue/contention favouring the assessee and against the revenue, the alternative ground raised by the assessee for allowances of expenses under section 37 of the Act become infructuous. Hence, we hereby dismiss the assessee's additional ground of appeal as infructuous.

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

Coming to Revenue's appeal in ITA No. 1206/Bang/2024

47. The Ground No.1 and 9 of the Revenue's appeal are general ground which do not require any separate and independent adjudication.

48. The Ground No. 2 & 3 of the Revenue's appeal relates to amortization of connectivity charges.

48.1 At the outset, we note that the issue raised by the revenue has been adjudicated along with the assessee's grounds of appeal in ITA No. 1094/Bang/2024. The assessee's relevant ground of appeal has been decided by us vide paragraph No. 15 to 15.9 of this order wherein we ITA No.1094-1206/Bang/2024 have decided the issue favouring the assessee and against the revenue. Hence, the ground of appeal raised by the revenue is hereby dismissed.

49. The Ground No. 4 of Revenue's Appeal is regarding notional interest on interest free loans & advances to related concerns.

50. During the year under consideration, the assessee had claimed finance cost of 4,948.57 lakhs, which included interest expenditure of 4,449.02 lakhs. It had borrowed substantial funds from banks and financial institutions, including term loans of about 23,809.66 lakhs at 14.20% interest and 11% redeemable debentures which were redeemed during the year. At the same time, the assessee had advanced large amounts as interest-free loans to its subsidiaries and sister concerns aggregating to 19,947.29 lakhs. The AO noted that such simultaneous borrowing and interest-free lending indicated diversion of interest-bearing funds for non-business purposes.

50.1 The assessee contended that the interest-free advances were given purely on grounds of commercial expediency to support its subsidiaries, which were engaged in similar lines of business and were in their initial or loss-making stages. It was submitted that the assessee was a majority shareholder in those companies and had funded them to meet capital and operational requirements so that their businesses could be stabilized. The assessee also claimed that borrowed funds were not utilized for granting such advances and furnished CA certificates to demonstrate the end-use of borrowings. Reliance was placed on the judgment of the Hon'ble Supreme Court in SA Builders Ltd 288 ITR 1. and other decisions to argue that where advances are made for business considerations, interest on ITA No.1094-1206/Bang/2024 borrowings cannot be disallowed. It was further stated that only real income can be taxed and that the total interest debited to the profit and loss account was 4,387.19 lakhs.

50.2 The AO, however, was not convinced with the explanation of the assessee. He held that the assessee failed to establish, with documentary evidence, that there was no nexus between the borrowed funds and the interest-free advances made to subsidiaries. According to him, the plea of commercial expediency was only general in nature and not supported by specific facts. The AO observed that the subsidiaries were operating independently in their own areas and the assessee had not shown how such advances directly benefited its own business. Mere existence of a holding-subsidiary relationship was considered insufficient to justify interest-free lending. Placing reliance on the decision of the Karnataka High Court in Embassy Development Corporation Ltd. reported in 62 taxmann.com 234 and other judicial precedents, the AO concluded that the advances were not made for business purposes. Applying the matching principles and computing notional interest at 14.20% on the interest-free advances, he worked out a disallowance of 2,832.51 lakhs under section 36(1)(iii) of the Act, made the corresponding addition to total income.

51. The aggrieved assessee preferred an appeal before the learned CIT(A).

51.1 Before the Ld. CIT(A), the assessee submitted that the disallowance of interest under section 36(1)(iii) of the Act made by the AO is based on incorrect assumptions. The AO proceeded on the basis that ITA No.1094-1206/Bang/2024 interest-free advances amounting to 19,947.29 lakhs were made during the year out of borrowed funds. However, this figure merely represents the closing balance as on 31.03.2016. The net increase in advances during the year was only 5,973.29 lakhs.

51.2 It was submitted that the said net advances were made out of the appellant's own interest-free funds, including substantial securities premium received from its majority shareholder and internal accruals. The appellant had sufficient interest-free funds far exceeding the advances made to subsidiaries, as evident from the audited financial statements. Accordingly, no nexus exists between borrowed funds and interest-free advances.

51.3 The assessee further submitted that the loans obtained from banks and financial institutions during the year were subject to strict end-use restrictions under the respective loan agreements. The borrowed funds were utilized only for specified purposes such as capital expenditure already incurred, redemption of debentures, redemption of preference shares issued pursuant to amalgamation, and placement in fixed deposits for specified purposes. Independent Chartered Accountant-certified end- use certificates were furnished, which categorically confirmed that the borrowed funds were not utilized for granting loans to subsidiaries.

51.4 It was contended that the AO ignored the documentary evidence placed on record, including bank ledgers and end-use certificates, and proceeded to presume diversion of borrowed funds without establishing any direct nexus.

ITA No.1094-1206/Bang/2024 51.4 Without prejudice, it was submitted that the advances to subsidiaries were made out of commercial expediency. The subsidiaries are engaged in the same line of business and are largely wholly owned entities of the appellant. Many of them were in their gestation period and required financial support to meet capital and operational requirements.

Charging interest at such stage would have adversely impacted their business. Some of the loans were subsequently converted into equity, demonstrating the commercial intent behind the advances.

51.5 It was reiterated that the Hon'ble Supreme Court in S.A. Builders Ltd. v. CIT (surpa), has held that interest-free advances to sister concerns are allowable if made on grounds of commercial expediency and that the Revenue cannot substitute its judgment for that of a prudent businessman. Reliance was also placed on other judicial precedents.

51.6 It was further submitted that the AO erred in including advances made to ACT Digital Home Entertainment Pvt. Ltd., on which interest was admittedly charged, while computing the disallowance. Accordingly, it was prayed that the disallowance of interest under section 36(1)(iii) be deleted.

51.7 The learned CIT(A) after carefully considering the facts in totality found that interest free fund advance during the year stand at 5,973 lakhs only not 19,947.29 lakhs found by the AO. The learned CIT(A) found that out of total loan to the subsidiary (19,947.29 lakhs) only 10,176.77 lakhs are interest free and out of those interest free advances during the year stand at 5,973 lakhs only whereas remaining amount representing opening balance.

ITA No.1094-1206/Bang/2024 51.8 Furthermore, the learned CIT(A) on perusal of the financial statements, found that the appellant had substantial interest-free funds in the form of share capital, share application money and securities premium, which were far in excess of the interest-free advances made to subsidiaries. The opening interest free fund of the assessee stands at 43048.45 lakh and closing balance at 35437.22 lakh.

51.9 In view of the above factual position, the learned CIT(A) held that assessee has adequate interest free funds which are sufficient to explain the sources of interest free loan & advance to the subsidiary. Accordingly, the learned CIT(A), deleted the disallowance of interest under section 36(1)(iii) of the Act.

60. Being aggrieved by the order of the Ld. CIT(A), the revenue is in appeal before us.

61. The Ld. DR before us submitted that the learned CIT(A) erred in deleting the disallowance of interest under section 36(1)(iii) of the Act. It was contended that the assessee had advanced substantial interest-free loans to its subsidiaries, which were not justified from the business requirements of the assessee. According to the learned DR, once it is established that the assessee had borrowed funds on which interest was paid and had also advanced interest-free loans, a presumption arises that such advances are out of borrowed funds unless the assessee conclusively establishes otherwise.

61.1 The learned DR further submitted that mere availability of interest- free funds is not sufficient, and the assessee is required to demonstrate a ITA No.1094-1206/Bang/2024 direct nexus between such interest-free funds and the advances made. It was argued that the learned CIT(A) erred in

accepting the assessee's explanation without appreciating that funds are mixed and fungible in nature. The learned DR contended that the AO was justified in making the disallowance on a proportionate basis.

61.2 The learned DR also submitted that the plea of commercial expediency has not been substantiated with cogent evidence. According to the learned DR, advancing interest-free loans to subsidiaries, particularly when they are in their gestation period, cannot automatically be regarded as commercially expedient unless the assessee establishes tangible business benefits accruing to it. The learned DR therefore prayed that the order of the learned CIT(A) be set aside and that of the AO be restored.

63. On the other hand, the learned AR before us reiterated the submissions made before the lower authorities and strongly supported the order of the learned CIT(A). It was submitted that the CIT(A) has recorded clear factual findings regarding availability of sufficient interest-free funds, absence of nexus between borrowed funds and advances, and incorrect computation adopted by the AO. It was further submitted that these findings have not been controverted by the Revenue with any material evidence. The learned AR submitted that the disallowance was made purely on presumption and the learned CIT(A) has rightly deleted the same by relying on settled judicial principles.

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

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65. We have considered the rival contentions of both the parties, and perused the materials placed on record. After carefully considering the rival submissions and perusing the material available on record, we find that the sole issue raised by the Revenue relates to deletion of disallowance of interest made by the AO under section 36(1)(iii) of the Act on account of alleged diversion of borrowed funds to subsidiaries by way of interest-free advances. The AO proceeded on the premise that the assessee had simultaneously borrowed large sums from banks and financial institutions and had also advanced interest-free loans aggregating to 19,947.29 lakhs to its subsidiaries and therefore concluded that interest-bearing funds had been diverted for non-business purposes. On this basis, notional interest at the rate of 14.2% was computed and a disallowance of 2,832.51 lakhs was made.

65.1 However, on a careful examination of the records, we find that the foundation of AO's action itself is factually flawed. The figure of 19,947.29 lakhs relied upon by the AO represents the closing balance of loans and advances to subsidiaries as on the year end and not the amount advanced during the year. The learned CIT(A), after detailed verification of the balance-sheet and schedules, has recorded a categorical finding that the net increase in advances during the year was only 5,973 lakhs and that a substantial portion of the total advances represented opening balances. Further, the learned CIT(A) has also found that out of the total loans outstanding to subsidiaries, only 10,176.77 lakhs were interest-free and that the increment during the year in such interest-free advances was limited to 5,973 lakhs. These factual findings have not been controverted by the Revenue before us

by bringing any contrary material on record.

ITA No.1094-1206/Bang/2024 65.2 More importantly, the learned CIT(A) has examined the availability of the assessee's own interest-free funds and recorded that the assessee possessed substantial non-interest-bearing resources in the form of share capital, share application money and securities premium. The opening balance of such interest-free funds stood at 43,048.45 lakhs and the closing balance at 35,437.22 lakhs, which were far in excess of the interest-free advances made to subsidiaries. In view of these undisputed figures emerging from the audited financial statements, a clear presumption arises that the advances to subsidiaries were made out of the assessee's own funds and not from borrowed monies. It is well settled by a long line of judicial precedents that where both interest-free funds and borrowed funds are available, and the interest-free funds are sufficient to cover the advances, a presumption must follow that such advances are out of own funds and no disallowance of interest can be made under section 36(1)(iii) of the Act.

65.3 We also note that the assessee had placed on record bank statements and Chartered Accountant-certified end-use certificates to demonstrate that the loans raised from banks and financial institutions were subject to strict contractual conditions and were utilized only for specified purposes such as capital expenditure, redemption of debentures and preference shares issued pursuant to amalgamation, and for placement in fixed deposits for earmarked uses. These contemporaneous documents clearly negate the AO's presumption of diversion of borrowed funds to subsidiaries. The AO has not brought any concrete material to establish a direct nexus between any specific borrowing and any interest- free advance, and the disallowance has been made merely on surmises and general observations, which cannot be sustained in law.

ITA No.1094-1206/Bang/2024 65.4 Even otherwise, we find considerable merit in the alternative plea of the assessee that the advances to subsidiaries were made on grounds of commercial expediency. The subsidiaries are engaged in the same line of business as the assessee, many of them were in their gestation period, and financial support was required to enable them to stabilize operations and expand business. Some of the advances were subsequently converted into equity, which further demonstrates the commercial intent behind such funding. The Hon'ble Supreme Court in S.A. Builders Ltd. v. CIT has clearly laid down that where interest-free advances are made to sister concerns on grounds of commercial expediency, the Revenue cannot sit in judgment over the business wisdom of the assessee and disallow interest merely because no interest has been charged. The test is not whether the assessee earned immediate profits, but whether the advance was made as a prudent businessman for business considerations, which in the present case clearly stands satisfied.

65.5 We also find force in the contention of the assessee that the AO had erred in including advances to ACT Digital Home Entertainment Pvt. Ltd., on which interest was admittedly charged, while computing the quantum of interest-free advances for the purpose of disallowance. This further vitiates the computation made by the AO.

65.6 In light of the above factual position and the settled legal principles, we are of the considered view that the learned CIT(A) was fully justified in holding that the assessee had sufficient

interest-free funds to cover the advances made during the year and that no nexus between borrowed funds and interest-free advances had been established by the AO. Consequently, the very basis for invoking section 36(1)(iii) fails. We ITA No.1094-1206/Bang/2024 therefore uphold the order of the learned CIT(A) deleting the disallowance of interest and dismiss ground of appeal raised by the Revenue.

66. The Ground No. 5 of the Revenue's appeal pertains to disallowances under section 14A r.w.r. 8D of the income tax rules.

66.1 At the outset, we note that the issue raised by the revenue has been adjudicated along with the assessee's grounds of appeal in ITA No. 1094/Bang/2024. The assessee's relevant ground of appeal has been decided by us vide paragraph nos. 23 to 23.5 of this order wherein we have decided the issue favouring the assessee and against the revenue. Hence the ground of appeal raised by the revenue is hereby dismissed.

67. The Ground No. 6 of revenue's appeal pertains to depreciation on non-compete fees treating as intangible assets.

67.1 At the outset, we note that the issue raised by the revenue has been adjudicated along with the assessee's additional ground of appeal in been decided by us vide paragraph nos. 44 to 44.5 of this order wherein we have decided the ground of appeal of assessee as infructuous and against the revenue. Hence the ground of appeal raised by the revenue is hereby dismissed.

68. The Ground No. 7 of revenue's appeal pertains to allowances of expenses of services and bandwidth charges of Rs. 9,21,99,045/- only.

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69. The relevant facts are that the AO during the assessment noted that the assessee had claimed substantial expenditure under the heads "bandwidth charges", "support services" and related Hyderabad-based meeting, security and business-promotion expenses aggregating to 36.87 crore. The AO required the assessee to furnish the nature of services received, documentary evidence, justification of business necessity, tax-deduction particulars, party-wise ledger accounts and copies of bills. On verification of the ledgers, the AO observed several large year-end journal entries such as bandwidth charges of about 28.26 crore, Hyderabad meeting expenses of 4.97 crore, Hyderabad security expenses of 1.82 crore and business-promotion expenses of 1.82 crore, many of which were recorded as journal entries at the close of the year with generic narrations.

69.1 The AO further recorded that although the assessee submitted party-wise break-ups and sample invoices, but it failed to produce original bills and vouchers for verification despite repeated opportunities. The assessee also did not furnish complete addresses and PAN details of all parties to whom payments were allegedly made. In the AO's view, mere furnishing of ledger extracts, sample invoices and reliance on statutory audit could not establish the genuineness of such large claims, particularly when supporting primary evidence was not produced. 69.2 Placing reliance on the

decision of the Hon'ble Supreme Court in Lachminarayan Madan Lal v. CIT (86 ITR 439), the AO held that the existence of agreements or book entries does not automatically bind the tax authorities and that it is open to the AO to examine whether the expenditure was laid out wholly and exclusively for business purposes. Since the assessee failed to substantiate the genuineness and business ITA No.1094-1206/Bang/2024 necessity of the expenses with proper bills and vouchers, the AO concluded that the claim was not proved under section 37(1) of the Act. Accordingly, he made an ad-hoc disallowance of 25% of the total expenditure of 36.87 crore, amounting to 9.22 crore, and added the same to the total income of the assessee.

70. The aggrieved assessee preferred an appeal before the learned CIT(A).

70.1 Before the learned CIT(A), the assessee submitted that it had incurred genuine business expenditure towards support services, bandwidth charges and business-promotion expenses amounting to 36.87 crores and that complete ledger break-ups and party-wise details had already been furnished during the assessment proceedings. It was pointed out that such details were filed on 18 December 2018 and enclosed as annexures, clearly showing the nature of services, the parties to whom payments were made and the amounts involved. The assessee contended that the AO ignored these materials and mechanically proceeded to make an ad-hoc disallowance of 25% merely on the allegation that PAN and address details were not furnished, without properly appreciating the evidence already placed on record.

70.2 The assessee further submitted that, in appellate proceedings, it had filed additional documentary evidence comprising party-wise particulars, PAN and address details and copies of invoices to substantiate the genuineness of the expenses, and that these were furnished in response to notices issued by the jurisdictional AO during remand proceedings. It was emphasized that invoices covering nearly 83% of the ITA No.1094-1206/Bang/2024 total expenditure had been collated and produced subsequently, thereby removing the very basis on which AO had proceeded to make the ad-hoc disallowance. According to the assessee, the expenses were wholly and exclusively incurred for business purposes and were duly recorded in the account books, which were subject to statutory audit.

70.3 It was also argued that a substantial portion of the very same expenditure had already suffered disallowance under section 40(a)(ia) of the Act on account of tax-deduction issues, and therefore any further disallowance under section 37(1) of the Act on an estimated basis would result in double disallowance of the same amount, which is impermissible in law. The assessee placed detailed working to demonstrate the overlap between the amounts considered for ad-hoc disallowance and those already disallowed under section 40(a)(ia) of the Act. On these facts, the assessee prayed that the addition of 9.21 crore made on a purely ad-hoc and presumptive basis be deleted in full.

70.4 The learned CIT(A) deleted the impugned addition by observing that the AO has made disallowance of 25% expenses on ad-hoc basis without recording any incontrovertible finding to the effect that the expenses claimed are not verifiable except the facts that original bill copies were not furnished.

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

72. The learned DR supported the order of the AO and submitted that the assessee had failed to discharge the onus cast upon it to substantiate ITA No.1094-1206/Bang/2024 the genuineness and allowability of the impugned expenditure. It was contended that merely furnishing ledger extracts and self-prepared break- ups does not absolve the assessee from producing primary evidences such as original bills, vouchers, PAN details and addresses of the payees, especially when the expenditure involved substantial amounts.

72.1 The learned DR further submitted that the AO had repeatedly called upon the assessee to furnish complete supporting documents during the course of assessment proceedings, which were not fully complied with. In the absence of verifiable details, the AO was justified in making a reasonable estimate and disallowing a portion of the expenditure to safeguard the interest of revenue. According to the learned DR, ad-hoc disallowance in such circumstances cannot be said to be arbitrary.

72.2 With respect to the additional evidence filed before the learned CIT(A), the learned DR contended that the same did not conclusively establish the genuineness of the entire expenditure and that the learned CIT(A) erred in deleting the disallowance merely on the ground that the AO did not bring any adverse material in the remand report. It was argued that the primary responsibility to prove the allowability of expenditure rests on the assessee and cannot be shifted to the Revenue.

72.3 The learned DR further submitted that the plea of double disallowance is misconceived, as the disallowance under section 40(a)(ia) operates in a different field and does not automatically render the balance expenditure allowable under section 37 of the Act. The learned DR therefore prayed that the order of the learned CIT(A) be set aside and that of the AO be restored.

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73. On the contrary, the learned AR before us submitted that during the assessment year, the assessee had claimed expenditure towards support services of 6.79 crore, bandwidth charges of 28.26 crore and business-promotion expenses of 1.82 crore, for which complete ledger copies and break-ups had already been furnished before the AO, with specific references to pages of the paper book. It was argued that despite these details, the AO proceeded to make an ad-hoc disallowance of 25% amounting to 9.21 crore merely on the ground that PAN details, addresses and original bills were not furnished, without pointing out any specific defect in the books of account or identifying any particular expenditure as bogus.

73.1 The learned AR further contended that the assessee before the ld. CIT(A) had filed extensive additional evidence, including party-wise details and large sets of invoices, and that upon calling for a remand report, the ld. CIT(A) deleted the addition after finding that the AO had not brought any clinching material to hold that the expenses were unverifiable. It was emphasized that the disallowance was purely ad-hoc, arbitrary and violative of principles of natural justice, especially since even business- promotion expenses were disallowed though the notices issued during

assessment were confined only to bandwidth and support-service charges.

73.2 It was also argued that the AO, in the remand proceedings, failed to rebut the documents and invoices placed on record by the assessee, which covered a substantial portion of the expenditure. The learned AR further submitted that the impugned expenses were incurred wholly and exclusively for business purposes and were allowable under section 37 of ITA No.1094-1206/Bang/2024 the Act. Without prejudice, it was pointed out that part of the very same expenditure had already been disallowed under section 40(a)(ia) of the Act and therefore sustaining any further disallowance under section 37 would result in impermissible double disallowance. On these grounds, the learned AR supported the order of the ld. CIT(A) and prayed for dismissal of the Revenue's appeal.

74. Both the learned DR and AR before us vehemently supported the order of authorities below as favourable to them.

75. We have heard the rival contentions of both the parties and perused the materials available on record. we find that issue raised by the Revenue relates to deletion of ad-hoc disallowance of 9.21 crore made by the AO out of expenditure claimed towards bandwidth charges, support services and business-promotion expenses. The AO had made the disallowance mainly on the ground that the assessee had passed large year-end journal entries, had not produced all original bills and vouchers, and had not furnished PAN and address details of every party. On this basis, without rejecting the books of account or identifying any specific item of expenditure as non-genuine, the AO estimated that 25% of the total expenses of 36.87 crore were not allowable and added the same under section 37(1) of the Act.

75.1 We note that the learned CIT(A), after examining the entire record and calling for a remand report, deleted the disallowance by observing that the AO had not brought any concrete or clinching material on record to show that the expenses were bogus or unverifiable, except for the fact that all original bills were not produced at the assessment stage. Before ITA No.1094-1206/Bang/2024 us also, the assessee has demonstrated that during the assessment proceedings itself it had furnished ledger accounts and detailed break-ups of bandwidth charges and support services, and in appellate proceedings it placed further party-wise details, PAN and address particulars and voluminous invoices covering nearly 83% of the total expenditure. These documents were also examined during remand proceedings, and the AO has not pointed out any specific defect or falsity therein.

75.2 We further observe that the disallowance made by the AO is purely ad-hoc in nature. It is well settled that additions under section 37(1) of the Act cannot be sustained merely on suspicion or estimates unless the AO brings positive evidence on record to show that the expenditure is not genuine or not incurred wholly and exclusively for business purposes. In the present case, the AO has not rejected the books of account, nor has he identified even a single party or payment which was proved to be fictitious. The mere fact that certain expenses were booked through journal entries at the year end, by itself, cannot be a ground to disallow a percentage of expenditure when the underlying transactions are supported by ledger records and subsequent invoices. 75.3 We also find force in the assessee's contention that the AO travelled beyond the scope of notices issued during assessment by even disallowing business-promotion expenses, though the queries were primarily in

respect of bandwidth and support-service charges, thereby violating the principles of natural justice. Further, the assessee has pointed out, with supporting workings, that part of the same expenditure had already been disallowed under section 40(a)(ia) of the Act on account of TDS issues, and therefore sustaining a further estimated disallowance under section ITA No.1094-1206/Bang/2024 37(1) would clearly result in double disallowance of the same amounts, which is not permissible in law.

75.4 In view of the above factual position, and in the absence of any specific adverse finding by the AO even after examination of additional evidence in remand proceedings, we are of the considered opinion that the learned CIT(A) was justified in deleting the impugned ad-hoc disallowance. The Revenue has not been able to controvert the findings recorded by the ld. CIT(A) with any tangible materials. Accordingly, we uphold the order of the learned CIT(A) and dismiss Ground No. 7 raised by the Revenue.

76. The last issue raised by the Revenue through Ground No. 8 of the appeal is that the learned CIT(A) erred in allowing the claim of additional claim of expenses without filing return.

77. The AO during the assessment proceedings noted that the assessee made an additional claim in respect of premium on redemption of debentures which had not been claimed in the original return of income. The assessee explained that during the year an amount of 17,01,11,111 was transferred to redemption reserve out of the total premium paid on redemption of debentures amounting to 34,45,96,011, and that such premium had been adjusted from the securities premium account. In the revised computation, the assessee claimed deduction of 17,44,84,900 in respect of such premium and relied upon certain judicial precedents in support of the claim.

ITA No.1094-1206/Bang/2024 77.1 The AO, however, held that the said amount had not been claimed in the return of income and, relying upon the decision of the Hon'ble Supreme Court in Goetze (India) Ltd. (284 ITR 323), concluded that such a claim could not be entertained otherwise than by filing a revised return. He therefore rejected the additional claim made during assessment proceedings.

78. The aggrieved assessee preferred an appeal before the learned CIT(A).

78.1 Before the learned CIT(A), the assessee submitted that during AY 2016-17 it had redeemed non-convertible debentures at a total premium of 34.46 crore, out of which 17.01 crore was adjusted against the Debenture Redemption Reserve and the balance 17.44 crore against the Securities Premium Account. It was explained that the entire premium represented the cost of borrowing incurred wholly for business purposes and that only part of the amount had remained unclaimed in the return due to an omission, for which an additional claim was made during assessment proceedings.

78.2 The assessee further argued that the Assessing Officer was not justified in rejecting the additional claim by relying on Goetze (India) Ltd., because that decision restricts only the powers of the AO and does not curtail the powers of appellate authorities. Reliance was placed on the Hon'ble

Supreme Court ruling in Jute Corporation of India Ltd. 53 taxman 85 and on decisions of the Hon'ble Karnataka High Court and various ITAT benches holding that the CIT(A) has wide and plenary powers to admit ITA No.1094-1206/Bang/2024 new claims and consider additional evidence when the relevant material is already on record.

78.3 On merits, the assessee contended that premium on redemption of debentures is in the nature of interest or borrowing cost and is allowable as revenue expenditure under sections 36(1)(iii) or 37 of the Act. Reference was made to ICDS-IX and to several judicial precedents, including Madras Industrial Investment Corporation Ltd. 225 ITR 802 (SC), Raymond Ltd. 23 taxmann.com 427 (Bom), Grindwell Norton Ltd [TS-84- HC-2014 (Bom)], and other High Court decisions, which have consistently held that such premium is a deductible revenue outgo. On these grounds, the assessee prayed before the CIT(A) that the disallowance made by the AO be deleted and the additional claim for premium on redemption of debentures be allowed in full.

78.4 The learned CIT(A) allowed the assessee's claim by observing as under:

> 12.2 The appellant relied on the following judicial pronouncements, Karnataka High Court Lakhan Singh. The relevant portion is reproduced as under:
>
> "The Hon'ble Supreme Court in the case of Goetze (India) Limited v. Commissioner of Income-tax (supra) relied on by the CIT is distinguishable on the facts. The question before the Court was whether the appellant-assessee could make a claim for deduction, other than by filing a revised return. After the return was filed, the appellant sought to claim a deduction by way of a letter before the Assessing Officer. The claim, therefore, was not before the appellate authorities. The deduction was disallowed by the Assessing Officer on the ground that there was no provision under the Act to make an amendment in the return of income by modifying an application at the assessment stage without revising the return."

The Hon'ble Supreme Court did not hold anything contrary to what was held in the previous judgments to the effect that even if a claim is not made before the assessing officer, it can be made before the appellate authorities. The jurisdiction of the appellate authorities to entertain such a claim has not been negated by the Supreme Court in this judgment. In fact, the Supreme Court made it clear that the issue in the case was ITA No.1094-1206/Bang/2024 limited to the power of the assessing authority and that the judgment does not impinge on the power of the appellate authorities. 12.3 Respectfully following the Hon'ble ITAT's judgment, the AO is directed to allow this claim of expenditure of Rs. 17,01,11,111/-. Therefore, this grounds of appeal is allowed.

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

80. The learned DR before us supported the order of the AO and submitted that the learned CIT(A) erred in entertaining and allowing a fresh claim of expenditure which was admittedly not made in the original or revised return of income. It was contended that the assessee, having consciously restricted its claim during assessment proceedings, cannot be permitted to enlarge the claim at the

appellate stage without following the procedure prescribed under the Act.

80.1 The learned DR further submitted that the decision of the Hon'ble Supreme Court in Goetze (India) Ltd. v. CIT clearly lays down that a claim not made in the return of income cannot be entertained otherwise than by filing a revised return. According to the learned DR, the learned CIT(A) exceeded his jurisdiction by directing allowance of an amount which was never claimed before the AO in the manner prescribed by law.

80.2 The learned DR further argued that mere allowance of a part of the claim by the AO does not automatically justify allowance of the entire amount, particularly when the balance amount was never claimed in the return of income. According to the learned DR, the allowability of expenditure must be examined strictly in accordance with law and procedural compliance is an integral part thereof. The learned DR ITA No.1094-1206/Bang/2024 therefore prayed that the order of the learned CIT(A) be set aside and that of the AO be restored.

81. On the contrary, the learned AR before us submitted that during assessment proceedings the assessee had requested allowance of the entire premium on redemption of debentures amounting to 34.46 crore, but the AO allowed only 17.44 crore and disallowed the balance 17.01 crore solely on the ground that the same was not claimed in the revised return, by relying on the decision in Goetze (India) Ltd. It was argued that the ld. CIT(A) rightly entertained the additional claim and directed allowance of the disallowed amount, since appellate authorities are empowered to consider such claims.

81.1 The learned AR further contended that settled law casts a duty on the tax authorities to grant lawful relief even if the assessee has omitted to claim it in the return, relying on CBDT Circular No. 14 of 1955 and the Karnataka High Court decision in Wipro Ltd reported in 62 taxmann.com

26. He submitted that the ruling in Goetze (India) Ltd. (supra) only restricts the powers of the AO and does not curtail the powers of appellate forums, for which reliance was placed on Jute Corporation of India Ltd.(supra), the Bangalore Tribunal decision in Sri Lakhan Singh in ITA No. 1025/Bang/2011 and the Mumbai Tribunal ruling in Unifrax India Ltd in ITA No. 505/Mum/2014.

81.2 It was also pointed out that the AO had already accepted the allowability in principle by allowing 17.44 crore out of securities premium, which showed that the expenditure was genuine and allowable in nature, and therefore denial of the balance 17.01 crore was unjustified. On these ITA No.1094-1206/Bang/2024 grounds, the learned AR supported the order of the ld. CIT(A) and prayed that the Department's appeal be dismissed.

82. Both the learned DR and AR before us vehemently supported the order of authorities below as favourable to them.

83. We have heard the rival contention of both the parties and perused the materials available on record. From the preceding discussion, we note that the Assessing Officer had rejected the assessee's additional claim of 17,01,11,111/- relating to premium on redemption of debentures only on the

grounds that the same was not claimed in the return of income and that no revised return had been filed. The AO relied solely on the decision of the Hon'ble Supreme Court in Goetze (India) Ltd. and did not dispute either the fact of redemption of debentures or the payment of premium thereon, nor did he doubt that such premium related to the business of the assessee.

83.1 We further observe that the assessee before the learned CIT(A) explained the full facts of redemption of debentures and demonstrated that the total premium of 34.45 crore was a borrowing cost, out of which 17.44 crore had already been allowed by the AO himself and only the balance 17.01 crore was denied for technical reasons. The assessee also relied on binding judicial precedents to show that appellate authorities have wide powers to admit and decide additional claims and that the restriction in Goetze (India) Ltd. is confined only to the powers of the Assessing Officer. These submissions and the reasoning adopted by the ld. CIT(A) in allowing the claim stand recorded.

ITA No.1094-1206/Bang/2024 83.2 We find merit in the approach of the learned CIT(A). The Hon'ble Supreme Court in Goetze (India) Ltd. has itself clarified that the limitation applies only at the assessment stage and does not curtail the jurisdiction of appellate authorities. Further, in Jute Corporation of India Ltd. (supra) and several other decisions of Hon'ble High Courts and coordinate benches, it has been consistently held that an assessee is entitled to raise a legal claim before appellate forums so long as the relevant facts are on record. In the present case, the facts relating to redemption of debentures and payment of premium were already available before the AO, and part of the very same expenditure had been accepted by him, which clearly shows that the claim was genuine and related to business purposes.

83.4 We also note that on merits, premium on redemption of debentures has been held in a long line of authorities to be revenue in nature and allowable either as interest or as borrowing cost under sections 36(1)(iii) or 37 of the Act, as discussed before the ld. CIT(A). Therefore, once the nature of expenditure itself is not in dispute, denial of the balance amount merely because of a procedural lapse in not claiming it in the return cannot be sustained at the appellate stage.

83.5 In view of the above discussion, we uphold the order of the learned CIT(A) directing the Assessing Officer to allow the additional claim of 17,01,11,111/- towards premium on redemption of debentures. The ground raised by the Revenue is accordingly dismissed.

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

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85. In the combined result the appeal of the assessee is partly allowed for statistical purposes whereas the appeal of the Revenue is hereby dismissed.

Order pronounced in court on 26th day of April, 2026

Sd/-	Sd/-
(SOUNDARARAJAN K)	(WASEEM AHMED)
Judicial Member	Accountant Member

Bangalore
Dated, 26th April, 2026

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore