आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद।

IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND
SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.611 AND 612/Ahd/2025
Assessment Year : 2020-21 AND 2021-22

Axis Bank Limited "Trishul", 3rd Floor Opp: Samtheshwar Mahadev, Nr.Law Garden Ellisbridge Ahmedabad 380 006. PAN : AAACU 2414 K	Vs	Asstt.Commissioner of Income Tax Cir.1(1)(1), Vejalpur Ahmedabad.

ITA No.563 AND 564/Ahd/2025
Assessment Year : 2020-21 AND 2021-22

Asstt.Commissioner of Income Tax Cir.1(1)(1), Vejalpur Ahmedabad.	Vs	Axis Bank Limited "Trishul", 3rd Floor Opp: Samtheshwar Mahadev, Nr.Law Garden Ellisbridge Ahmedabad 380 006.

(APPELLANT)		(RESPONDENT)

Assessee by	:	Shri Tushar Hemani, Sr.Advocate and Shri Kushal Fofaria, AR
Revenue by	:	Shri Sher Singh, CIT-DR

सुनवाई की तारीख/**Date of Hearing : 25/02/2026**
घोषणा की तारीख /**Date of Pronouncement: 20/05/2026**

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

These cross-appeals filed by the Revenue and the assessee relate to the same assessee and are against the order of the ld.

Commissioner of Income-Tax(Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "ld.CIT(A)] of even dated i.e. 13.1.2025 under section 250 of the Income Tax Act, 1961 ("the Act" for short) pertaining to Assessment Year 2020-21 and 2021-22.

2. At the outset itself it was common ground that the issues involved in the appeals for both the years were identical. Therefore, both the appeals were taken up together for hearing. We shall be dealing with the appeal of the assessee for the assessment year 2020-21, and our decision rendered therein on identical issues raised in the Asst.Year 2021-22 will apply *pari-passu*.

3. <u>ITA No.611/Ahd/2025 : Asstt.Year 2020-21</u>

Ground no.1 raised by the assessee reads as under:

1. Disallowance in relation to administrative expenses u/s 14A read with Rule 8D of the Income-tax Act, 1961 (Tax effect - Rs.5,06,30,986)

1.1 The learned AO and the Hon'ble CIT(A) erred in disallowing the expenses u/s 14A r.w. Rule 8D over and above the suo-moto disallowance of administrative expenses of Rs.1.8 crores.

1.2 The learned AO and the Hon'ble CIT(A) erred in rejecting the arithmetic quantification of suo moto disallowance made by the Appellant and by upholding the automatic enforceability of Rule 8D from AY 2008-09 onwards without appreciating that the formula under Rule 8D can only be resorted to if the AO is not satisfied about the claim of expenditure in relation to exempt income as made by the Appellant and only if there is a direct and proximate nexus of the expenditure proposed to be disallowed and the exempt income.

1.3 The learned AO and the Hon'ble CIT(A) erred in not appreciating that the suo moto disallowance made by the Appellant was on a conservative basis and without prejudice to the position of the Appellant that the expenses debited to the profit and loss account do not have any direct or proximate nexus with the exempt income.

1.4 The learned AO and the Hon'ble CIT(A) erred in not appreciating the fact that the majority of investments made by the Appellant are in the nature of stock in trade and accordingly, the provisions of section 14A shall not be applicable to such investments in line with judicial precedents and in not appreciating that the Appellant's submission with respect to proportionate disallowance in the ratio of exempt and taxable amount was on without prejudice basis.

1.5 The learned AO and the Hon'ble CIT(A) erred in misinterpreting the decision in the case of Maxopp Investments Ltd. (402 ITR 640 (SC)) for apportioning the disallowance u/s 14A in the ratio of taxable and exempt income while the said decision provides for non-applicability of section 14A in the case of shares and securities held as stock in trade.

1.6 The learned AO and the Hon'ble CIT(A) erred in not relying upon favourable judgements of Hon'ble Tribunal and Gujarat HC up to AY 2009-10 and Supreme Court judgement for AY 2003-04 in the Appellant's own case. Further, the learned AO and the Hon'ble CIT(A) erred in not relying upon favourable latest judgement of the Hon'ble Tribunal in Appellant's own case for AY 2018-19, wherein the Tribunal had deleted entire addition u/s 14A in the same facts as involved in the year under consideration.

1.7 The learned AO and the Hon'ble CIT(A) erred in not appreciating that the Appellant has sufficient own funds which are far more than the amount of investment in shares and securities which yield exempt income and thereby erred in holding that a portion of expenses should be attributable to investments which fetch exempt income.

1.8 Without prejudice to the above, the learned AO and the Hon'ble CIT(A) erred in considering merely the amount of gains offered to tax under the head "Capital gains" as taxable income from investments and not considering the amount of gains offered to tax under the head "Profits and Gains from Business or Profession" while computing the proportion of exempt income to taxable income for the purpose of disallowance u/s 14A.

1.9 The Hon'ble CIT(A) erred in not considering the issue on merits and merely relying on the order of the Hon'ble CIT(A) in respect of the issue for earlier years in confirming the disallowance made by the learned AO u/s 14A."

4. Sole issue raised in the above grounds relates to disallowance of expenses incurred for the purpose of earning exempt income in terms of provisions of section 14A of the Act.

4.1 As per the facts of the facts of the case, the AO computed the disallowance under section 14A of the Act at Rs.21,30,22,033/- and after giving set off of *suo moto* disallowance made by the assessee of Rs.1,18,49,966/- he disallowed the balance amounting to Rs.20,11,72,067/-.

4.2 The primary contention of the ld.counsel for the assessee before us was that this was a legacy issue arising year to year in the case of the assessee right from assessment year 2003-04 onwards, and the issue has consistently been decided in favour of the assessee by higher authorities ,in some assessment years by the Apex Court. It was pointed out that right from the assessment year 2010-11 to 2018-19, the ITAT had consistently ruled in favour of the assessee. Copies of the order for all the above stated assessment years were placed before us.

4.3 The ld.DR though was unable to controvert the contention of the Ld.Counsel for the assessee as above , he however relied on the order of the ld.CIT(A).

4.4 We have heard both the parties. The facts relating to the case are that the assessee was noted to have earned exempt income of Rs.3,14,12,00,134/- against which *suo moto* disallowance of Rs.1,18,49,966/- had been made by the assessee under section 14A of the Act, in the computation of income. During assessment proceedings, the assessee submitted the working of the disallowance made under section 14A of the Act to the AO. The AO was of the view that the disallowance made by the assessee was not appropriate and he directed the assessee to compute the disallowance as per the Rule

8D(2)(ii) of the IT Rules. The assessee submitted the said working computing the disallowance to be Rs.37,28,07,199/-. The AO apportioned the said amount between the taxable income earned by the assessee from its investment and tax free earning from the said investment resulting in 57.14% of the amount computed by the assessee of Rs.37,28,07,199/- amounting to Rs.21,30,22,033/-, being apportioned to the earning of exempt income. Reducing therefrom the *suo moto* disallowance made by the assessee of Rs.1,18,49,966/-the balance of Rs.20,11,72,067/- was disallowed by the AO.

4.5 The matter was carried in appeal before the ld.CIT(A) who confirmed the disallowance made by the assessee.

5. We have gone through the order of the ld.CIT(A), and we find that, the assessee besides making submissions on merit, also pointed out that this issue had been consistently decided in its favour by the ITAT, Hon'ble High Court, and even Apex Court in the proceeding years. The submissions of the assessee in this regard are reproduced in the order of the ld.CIT(A) at para 6 to 6.6 as under:

> *6. Favourable decisions in the Bank's own case*
>
> *6.1. The Hon. ITAT for A.Y. 2003-04 by its order dated 31-7-2012 in case of the Bank itself has deleted entire additions u/s 14A for this year The Departmental Tax Appeal against this order has been dismissed by the Hon. Gujarat HC on 22-3-2013.*
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> *The Revenue SLP against Hon. Gujarat HC order dated 22-3-2013 has been dismissed by the Hon. SC for interest expenses u/s 14A for A.Y. 2003- 04. Further, the Hon'ble Supreme Court has also decided the matter relating to disallowance of administrative expenses u/s 14A for A.Y. 2003-04, against the Revenue vide order dated 1 Sept ember 2022.*

6.2. Hon. Gujarat HC has also rejected revenue's Tax Appeal for disallowance u/s 14 A for A.Y. 2002-03 and from A.Y. 2004-05 to A.Y. 200 7-08 and deleted the entire disallowance (including suo- moto disallowance) u/s 14A for the said years.

6.3. The Hon. ITAT, Ahmedabad "A" Bench in the case of the Bank itself for A.Y. 2008-09 has deleted entire additions of interest expenses and of operating expenses. The Hon. ITAT has sustained only suo moto disallowance out of operating expenses. The Hon'ble Gujarat High Court vide its order dated 12.12.2017 has dismissed the Revenue's appeal against order of Hon. ITAT for A.Y.2008-09 on disallowance of expenses for taxable income under section 14A r.w Rule 8D of the Act. Further, the Hon. ITAT, Ahmedabad "A" Bench in case of the Bank for A.Y. 2009-10 has followed the order of co-ordinate bench for A.Y. 2008-09 and has allowed the miscellaneous application filed by the Bank and deleted the disallowance made out of administrative expense as per Rule 8D and upheld that only suo moto disallowance made by the Bank should sustain. Further, the Hon'ble Gujarat High Court vide its order dated 19.06.2018 has dismissed the Revenue's appeal against order of the Hon. ITAT for AY 2009-10 on t he disallowance u/s 14A r.w. Rule 8D of the Act.

6.4. Additionally, the Hon. ITAT has deleted disallowance of interest expenses u/s 14A for the years AY 2010-11 to AY 2015-16 and had remanded the matter relating to disallowance of administrative expenses u/s 14A to the AO. Further, for the said years, in the second round of appeal, the CIT(A) has granted partial relief in respect of disallowance of administrative expenses relying on the decision in the case of Maxopp (supra).

6.5. It may also be noted that for AY 2018-19, the Hon. ITAT has deleted the disallowance in respect of both interest and administrative expenses u/s 14A. The Appellant had followed a similar methodology for computation of suo-moto disallowance in the said year. A copy of the said order of ITAT is enclosed as Exhibit E and the relevant observations of the Hon. ITAT are reproduced below: "Thus, the assessee had demonstrated a reasonable basis for calculating the disallowance of expenses pertaining to earning of exempt income, considering the expenses relatable to the investment activity and allocating that portion of the said expenses to the earning of tax free income therefrom on a scientific basis. Vis-à-vis the interest expenditure incurred, and allocable to the earning of exempt income, the ld. Counsel for the assessee had pointed out to the AO that it had enough owned interest free funds for the purpose of making investment in securities, warranting no disallowance of interest under section 14A of the Act, which proposition has been settled by the Hon'ble Apex Court in the case of CIT Vs. Reliance Industries, 410 ITR 466. 15. The

AO, we find, has not touched upon and made no adverse comment on the specific explanation offered by the assessee regarding the methodology adopted for allocating the expenses for the purpose of earning exempt income, as pointed out to us above. The AO, we find has made only certain general comments for rejecting the assessee's explanation, that too factually incorrect… 7716. Moreover para 21 of the AO's order reveals the AO to be statin g that when a clear formula for calculating disallowance of expenses u / s 14A of the Act is provided in the Rules, there is no scope for the assessee to adopt any method of proportional allocation of expenses. That if the assessee has any issues with regard to the formula so pre scribed in law he can take up the matter at the appropriate judicial forum. These findings of the AO, no doubt are contrary to the provision of law as interpreted by the jurisdictional High court itself in CIMS(supra) that the formula provided in Rule 8D of the Rules is to be applied only in the circumstance that the assesses calculation of disallowance appears to the AO to be incorrect having regard to its books of accounts."

6.6. In view of the above favourable decisions in the Appellant's own case, the disallowance made by the ld.AO ought to be deleted.

5.1 The ld.CIT(A), however, we have noted has taken no cognizance of the same while adjudicating the issue. His finding at 7.3 to 7.33 of the order reveal that he has considered appellate order passed in the case of the assessee for Asst.Year 2012-13, 2013-14, 2014-15 and 2015-16, noting that in the said years, the assessee had agreed to the disallowance being made on the lines adopted by the AO for Asst.Year 2020-21 i.e. impugned year before us and noting so, the ld.CIT(A) held that since the assessee had agreed to the methodology adopted by the AO for computing the disallowance of interest under section 14A of the Act for the impugned year, there was no case with the assessee now to dispute the same. Clearly, the CIT(A) has failed to note that the appellate orders for the Asst.Year 2012-13 to 2015-16 which he has relied upon for confirming the disallowance made by the AO in the impugned year, were carried in appeal before ITAT, which had ruled in favour of the assessee, and which fact was submitted by the

assessee to the ld.CIT(A) also, who for reasons best known to him, chose to ignore the same.

5.2 However, having noted so, we have considered the submissions of the ld.counsel for the assessee before the ld.CIT(A), and before us that the impugned issue of disallowance of expenses under section 14A of the Act has been adjudicated by the ITAT in Asst.Year 2012-13 to 2015-16 and also in Asst.Year 2018-19. Copies of the orders of the said years, which were placed before us in paper-book compilation, were gone through by us, and we have noted that in Asst.Year 2012-13 and upto 2015-16, the ITAT has consistently deleted the disallowance of interest expenses, noting the sufficiency of own funds of the assessee for the purpose of making investment earning exempt income. However, the issue of disallowance of administrative expenses in the said years has been restored back to the AO for giving opportunity to the assessee to satisfy the AO about the correctness of the method adopted by the assessee for computing the disallowance of the same. In Asst.Year 2018-19, the ITAT in its order passed in ITA No.365/Ahd/2022 dated 10.4.2024 has deleted the disallowance noting that the AO has failed to point out any correctness in the explanation of the assessee regarding the *suo moto* disallowance made by it, and having failed to do so, the ITAT found that the AO was not entitled to compute the disallowance by invoking Rule 8D. Holding so, the ITAT deleted the entire disallowance made in the case of the assessee. The relevant finding in this regard are contained in para 13 to 17 of the order as under:

> *"13. We have heard both the parties. There is no dispute regarding the proposition of law that for invocation of Rule 8D of the Rules for computing the disallowance of expenditure under section 14A of the Act, the AO has to first record his satisfaction as to why the claim of the assessee to the disallowance is incorrect having regard to its books*

of accounts. The ld. Counsel for the assessee has relied on the decision of the Hon'ble jurisdictional High Court in the case of CIMS Hospital P. Ltd. (supra) wherein the Hon'ble Court has held in very clear terms that before invoking Rule 8D, the AO is obliged to indicate that having regard to the accounts of the assessee, he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to the income which does not form part of the total income under the Act. The Hon'ble Court interpreted the provisions of section 14A(2) of the Act while holding so.

14. Having said so, we find that in the facts of the present case, the AO has failed to fulfil this necessary prerequisite for invoking Rule 8D of the Rules. We have noted from the documents filed before us that the assessee had demonstrated to the AO that the suo moto disallowance made by it had been calculated on a scientific basis. The entire basis of calculating the same had been explained to the AO, pointing out that out of the operating expenses only that portion was considered for the purpose of disallowance which was in proportion to the salary of employee, involved in the investment activity to the salary of the total employees of the assessee being 0.20%; that thereafter, these operating expenses incurred for earning exempt income was determined by bifurcating these expenses in the ratio of tax free income earned from securities and taxable earned income therefrom, which came to 3.72% of the expenses. And accordingly an amount of Rs.1,03,08,336/- was determined suo moto by the assessee as disallowable under section 14A of the Act, and disallowed while computing its taxable income. Thus, the assessee had demonstrated a reasonable basis for calculating the disallowance of expenses pertaining to earning of exempt income, considering the expenses relatable to the investment activity and allocating that portion of the said expenses to the earning of tax free income therefrom on a scientific basis. Visà-vis the interest expenditure incurred, and allocable to the earning of exempt income, the ld. Counsel for the assessee had pointed out to the AO that it had enough owned interest free funds for the purpose of making investment in securities, warranting no disallowance of interest under section 14A of the Act, which proposition has been settled by the Hon'ble Apex Court in the case of CIT Vs. Reliance Industries, 410 ITR 466.

15. The AO, we find, has not touched upon and made no adverse comment on the specific explanation offered by the assessee regarding the methodology adopted for allocating the expenses for the purpose of earning exempt income, as pointed out to us above. The AO, we find has made only certain general comments for rejecting the assessee's explanation, that too factually incorrect. We have noted, that the AO stated that the assessee has given no basis for holding 3.72% of the expenses attributable to earning of tax free income. This is clearly

incorrect, since, as noted above by us, the assessee had given a basis for the same. Further, the AO has mentioned that only few expenses had been considered for allocation without any basis, which too is an incorrect finding, since the assessee had given a scientific basis for considering 0.20% of the total operating expenditure for allocation to the earning of tax free income. The assessee had also explained, why the interest expenditure were not being considered for the purpose of disallowance. Therefore, it is abundantly clear that the AO had proceeded to apply Rule 8D for computing the expenses disallowable under section 14A of the Act without fulfilling the mandatory pre-requisite of first recording dissatisfaction with the assessee's computation of the same, having regard to its books of accounts.

16. Moreover para 21 of the AO's order reveals the AO to be stating that when a clear formula for calculating disallowance of expenses u/s 14A of the Act is provided in the Rules, there is no scope for the assessee to adopt any method of proportional allocation of expenses. That if the assessee has any issues with regard to the formula so prescribed in law he can take up the matter at the appropriate judicial forum. These findings of the AO, no doubt are contrary to the provision of law as interpreted by the jurisdictional High court itself in CIMS(supra) that the formula provided in Rule 8D of the Rules is to be applied only in the circumstance that the assesses calculation of disallowance appears to the AO to be incorrect having regard to its books of accounts.

17. In view of the same, we are in agreement with the ld. Counsel for the assessee that invocation of Rule 8D by the AO was against the provisions of law, and the disallowance therefore made of expenses by the AO amounting to Rs.43.59 crores u/s 14A of the Act in accordance with Rule 8D of the Rules is not sustainable in law, and is directed to be deleted."

5.3 As is evident from the said order, the assessee submitted to have adopted a scientific basis for calculating *suo moto* disallowance, and finding the AO to have made no adverse comments on the methodology adopted by the assessee for allocating the expenses for the purpose of earning exempt income, the disallowance made by the AO was deleted.

5.4 The facts in the present case, we find are identical to that in Asst.Year 2018-19. The assessee had submitted its basis of

computing the *suo moto* disallowance made at Rs.1,18,49,966/-. The working of the same was placed before us in paper book, and the methodology adopted was explained in the letter filed to the AO placed at page no.193 to 196. The methodology adopted, it was stated before us was identical to that adopted in A.Y 18-19, being identification of expenses incurred for investment activity and apportioning the same in the ration of tax free and taxable income earned from investments. Identically, as in A.Y 18-19, the AO, we have noted, has not pointed out any infirmity in the methodology adopted by the assessee except for stating that the computation does not include the components of interest that is required to be apportioned and attributed to the tax free investments. To this, the assessee has consistently pleaded, not only in the impugned year, but also in the preceding year, that it had sufficient own funds for making investments, and therefore, no disallowance of interest expenses are warranted. The assessee had pointed out the availability of interest free funds of Rs.84,947.84 crores as against investments made of Rs.3,949.63 crores and this contention of the assessee, has all along been accepted in the preceding years by the ITAT, wherein it has been consistently held that in the light of the said facts, no disallowance of interest expenditure was warranted.

5.5 In the absence of any infirmity pointed out by the AO in the calculation of disallowance made by the assessee under section 14A of the Act, the issue, we hold, stands clearly covered by the decision of the ITAT in the case of the assessee itself for Asst.Year 2018-19, following which, we uphold the order of the ld.CIT(A) directing the AO to delete the disallowance of expenses amounting to Rs.2,01,172,067/- u/s. 14A of the Act.

5.6 Ground no.1 raised by the assessee is allowed.

6. Ground No.2 raised by the assessee reads as under:

Disallowance of interest in respect of capital work in progress under proviso to section 36(1)(iii) of the Income-tax Act, 1961 (Tax effect – Rs. 2,59,04,919)

2.1 The learned AO and the Hon'ble CIT(A) erred in invoking proviso to section 36(1)(iii) in respect of amounts capitalized to capital work in progress (CWIP), representing advance payments for purchase of fixed assets but not put to use by previous year end and other payments to contractors etc., particularly for opening of new branches, and making addition of proportionate interest expense of Rs. 10.29 crores under proviso to section 36(1) (iii).

2.2 The learned AO and the Hon'ble CIT(A) erred in not appreciating that the Appellant has not availed any specific borrowing in respect of CWIP and where own funds of the Appellant were in excess of amount capitalized as CWIP, the presumption would be that the Appellant has used its own funds and no disallowance of interest expenses was warranted in such case.

2.3 The learned AO and the Hon'ble CIT(A) erred in incorrectly taking resort to the amendment in proviso to section 36(1)(iii) by the Finance Act, 2015, which deleted the phrase for extension of existing business or profession, when the said amendment has no bearing in the case of the Appellant since the Appellant has sufficient interest free funds out of which CWIP may be said be funded and consequently, there would not be any interest attributable to CWIP.

2.4 The learned AO and Hon'ble CIT(A) erred in not considering explanatory notes to the provisions of The Finance Act, 2015 wherein it is clarified that the amendment in the proviso to section 36(1)(iii) merely to remove the inconsistency between the section 36(1)(iii) and ICDS-IX so that that the borrowing cost incurred for acquisition of an asset shall be capitalised up to the date the asset is put to use without making any distinction as to whether an asset is acquired for extension of existing business or not.

2.5 The learned AO and the Hon'ble CIT(A) erred in not relying on the earlier own favourable case laws in the case of the Appellant quashing the disallowance u/s 36(1)(iii) in case of sufficient own funds and in not appreciating that the amendment in the proviso to section 36(1)(iii) would have no bearing on the position of law laid down in the said decisions.

7. The issue raised in the above ground relates to interest expenses allegedly incurred on funds borrowed for financing capital work-in-

progress ("CWIP" for short) of the assessee which as per the AO needed to be capitalized but were claimed as Revenue expenses by the assessee. The disallowance was made in terms of the provisions of section 36(1)(iii) of the Act, and the quantum of the same being Rs.10,29,28,000/-.

8. At the outset itself, the ld.counsel for the assessee pointed out that this issue also stood covered by the decision of the ITAT in the case of the assessee itself in preceding years; that this fact was pointed to both the lower authorities i.e. the Assessing Officer and the Commissioner of Income Tax (Appeals), but, however, they distinguished the decision of the ITAT in the preceding year, and held the same to be not applicable on account of an amendment made to the provision of section 36(1)(iii) of the Act by Finance Act, 2015, though, the ld.counsel for the assessee contended that it was categorically brought to the notice of the ld.CIT(A) that the said amendment in no way had any effect on the ratio/proposition relied on by the ITAT in the preceding years.

8.1 Taking us to the facts of the case, it was pointed out that the assessee, during assessment proceedings was asked to provide the details of nature of the "CWIP", as also preoperative expenses and/or cost of borrowing added to the "CWIP". The assessee was show caused as to why the interest in relation to "CWIP" be not disallowed in view of provisions of section 36(1)(iii) as done in earlier years. The assessee responded by stating that the issue had been decided in its favour in earlier years by the ITAT, and that even the DRP had deleted the disallowance proposed by the AO for Asst.Year 2018-19. The AO, however did not accept the contentions of the assessee, contending that in the earlier years, the amended proviso of section 36(1)(iii) of

the Act were not applicable, and being applicable in the impugned year, the assessee was not entitled to claim interest expenditure till the asset was put to use. With regard to the DRP decision for Asst.Year 2018-19, the AO noted that the DRP had deleted the disallowance referring to the order of the ITAT for Asst.Year 2012-13 and 2015-16. accordingly rejecting all the contentions of the assessee, the AO disallowed interest of "CWIP" amounting to Rs. 10,29,28,000/-.

8.2 Before the ld.CIT(A), the assessee reiterated contentions made before the AO, contending that the identical issue had been decided by the ITAT in the preceding year also; that the amendment to section 36(1)(iii) did not in any way effect the proposition relied upon by the ITAT while deleting the disallowance in the preceding year. The ld.CIT(A), however, noted that the assessee had not furnished the copy of the order of the ITAT dated 20.10.2021 nor given citation of the same. Further, he noted that the decision of the ITAT dated 10.9.2024 did not deal with this specific issue. Accordingly, he found no reason to agree to the assessee's submissions, and upheld the order of the AO.

8.3 Before us, the ld.counsel for the assessee reiterated the submissions made before the lower authorities, and also produced before us copies of the order of the ITAT passed in its case in the preceding years, wherein identical disallowance made of interest on "CWIP" under section 36(1)(iii) of the Act was deleted by the ITAT. The order of the ITAT for Asst.Year 2010-11 to 2014-15 in ITANo.311/Ahd/2016 and others dated 28.10.2021 was placed before us, and our attention drawn to para 72 to 77 of the order pertaining to Asst.Year 2012-13 in the Revenue's appeal for the said year in ITA

No.287/Ahd/2017, wherein, it was pointed out that the ITAT had confirmed the order of the CIT(A) deleting the disallowance of interest in respect of "CWIP" noting that own funds of the assessee in the said year was more than sufficient, and far exceeded the "CWIP" and presumption which could be drawn therefore was that the own funds were utilized in such "CWIP", calling for no disallowance of interest. Our attention thereafter was drawn to the decision of the ITAT in the case of the assessee for Asst.Year 2015-16 in the Revenue's appeal in ITA No.956/Ahd/2019 dated 30.3.2022 wherein it was pointed out that identical issue was dealt with at para 44 to 50 and the ITAT following the decision in Asst.Year 2012-13 upheld the order of the ld.CIT(A) deleting the disallowance of interest in respect of "CWIP" made under section 36(1)(iii) of the Act.

8.4 It is abundantly clear from the above that finding of the ld.CIT(A) that the assessee was unable to substantiate its claim of this issue having been decided in its favour in earlier years, is completely incorrect.

8.5 Be that so, it is clearly established on record that the identical issue of disallowance of interest expenses incurred in respect of "CWIP" has consistently been decided in favour of the assessee by the first and second appellate authorities i.e. CIT(A) and the ITAT, in the case of the assessee itself right from Asst.Year 2010-11 to Asst.Year 2018-19.

8.6 Having noted so, we shall now consider the contentions of the AO that the said decisions are not applicable to the facts of the present case, since, there was an amendment to the provisions of section 36(1)(iii) of the Act, which was not applicable in the preceding years,

but applied for the impugned year. The amendment to section 36(1)(iii) has been reproduced in page no.66 of the order as under:

> *"The amount of the interest paid in respect of capital borrowed for the purposes of the business or profession. Provided that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset (whether capitalized in the books of account or not); for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction."*

8.7 As per the interpretation of the AO interest expenses incurred on assets is not to be allowed till they are put to use. Finding the assessee to have incurred interest expenses on "CWIP", which means asset not yet put to use, the AO held the interest expenses disallowable in the case of the assessee by virtue of provisions of section 36(1)(iii) of the Act amended w.e.f Asst.Year 2015-16.

8.8 There is no dispute with respect to the amendment to this section. Even the ld.counsel for the assessee does not dispute the same. However, what the ld.counsel for the assessee has pointed out and what we have found to be correct is that, in the preceding years, the disallowance made was deleted on account of the fact that the assessee was found to have more than sufficient own interest free funds, for making investment in "CWIP" and it the presumption, therefore, was that the assessee had utilized its own funds for investing in "CWIP", calling therefore for no disallowance of interest. Surely, the ITAT, for that matter even the ld.CIT(A) in the preceding year, has not referred to or relied upon or based its decision of deleting the disallowance of interest on the fact, whether the assets were put to use or not. Therefore, we completely agree with the ld.counsel for the assessee that the amendment to section 36(1)(iii) of the Act does not in any way disturb the proposition relied upon by the ITAT/ld.CIT(A) in the preceding years for deleting the disallowance of

interest incurred for "CWIP". The ITAT in the preceding years has clearly held and found, as a matter of fact that, no interest expenses have been incurred for acquiring assets or investing "CWIP" and accordingly no disallowance of interest was warranted. The fact of assets having been put to use or not makes no difference once it is found, as a matter fact that no interest expenses have been incurred by the assessee. Therefore, we are not agreement with the ld.CIT(A) that the amendment to provisions of section 36(1)(iii) of the Act would apply to the facts of the present case, and the decision of the ITAT in the preceding years would not apply. On facts, it has been consistently pointed out to the authorities below that the assessee had interest free funds amounting to Rs.1,01,603.01 crores while its investment in "CWIP" was only Rs.109.07 crores. On facts, therefore, the assessee has sufficiently demonstrated existence of own interest free funds for making investment in "CWIP" and the proposition, therefore relied upon by the ITAT in the preceding years that the presumption in such cases would be that interest free funds have been used for investment in "CWIP", would apply. We, therefore, agree with the ld.counsel for the assessee that in the facts of the issue before us, the decision of the ITAT in the case of the assessee in preceding years would squarely apply, and following the same, we direct the deletion of disallowance of interest amounting to Rs.10,29,28,000/-.

8.9 Ground no.2 is, therefore, allowed.

9. Ground No.3 raised by the assessee reads as under:

3. Reclassification of long-term capital gains as business income (Tax effect – Rs.6,04,66,030)

3.1 The learned AO and the Hon'ble CIT(A) erred in treating gains arising on the sale of investments in Max New York Life

insurance Co. Ltd. and venture capital funds as business income instead of long-term capital gains.

3.2 The learned AO and the Hon'ble CIT(A) erred by failing to appreciate that not all investments of a banking concern are business investment, and it is possible for an assessee to have two portfolios viz. investment portfolio as well as trading portfolio stock in trade simultaneously.

3.3 The learned AO and the Hon'ble CIT(A) erred in applying the rationale of the decision in the case of CIT vs. Nawanshahar Central Cooperative Bank Ltd. [2007] 160 Taxman 48 SC which was in the context of classification of income arising from the investments which are made for fulfilling statutory requirements of RBI and are made in the approved securities without appreciating that the investment made by the Appellant in Max New York Life insurance Co. Ltd. and venture capital funds was not pursuant to any statutory requirements.

3.4 The learned AO and the Hon'ble CIT(A) erred in not following CBDT Instruction F No. 225/12/2016/ITA.II dated 2.5.2016 which provides that gains on transfer of unlisted shares would be considered as capital gains, irrespective of the period of holding. The said Instruction, which is binding on the tax department, is squarely applicable in the instant case of gain on sale of unlisted shares of Max New York Life Insurance Co. Ltd. and gain on sale of shares of unlisted venture capital undertakings arising to venture capital funds, which is ultimately passed through to the Appellant. .

3.5 The learned AO and the Hon'ble CIT(A) erred in not appreciating that the classification of gains from investment in venture capital funds as capital gains was in line with section 115U of the Income-tax Act, 1961 and Form No. 64 issued by the venture capital funds.

9.1 The issue involved in the above grounds relates to reclassification of income returned by the assessee on sale of investments as capital gain reclassified by the Revenue and treated as "Profits and Gains of Business and Profession". The facts relating the issue are that during the impugned year, the assessee had sold shares of Max New York Life Insurance Co. Ltd. ("MAX" for short) and investment in venture capital funds and returned capital gains

earned thereon under the head income from "Capital Gains", after indexing amounting to Rs.234,82,66,462/-.The assessee paid taxes thereon at special rate of 20%. The AO, however, held the income arising from the sale of such investments, as being attributable to the business of banking, and therefore, taxable under the head "Profits and Gains of Business and Profession". He referred to the decision of Hon'ble Apex Court in the case of CIT Vs. Nawanshahar Central Cooperative Bank Ltd., (2007) 160 TAXMAN 48 (SC) for the proposition that the investments made by the banking concerns were part of the business of the banking, and therefore, and drawing the ratio therefrom, he held that income earned from the sale of such investments would be of in the nature of "Profits and Gains of Business and Profession".

9.2 The assessee carried the matter before the ld.CIT(A) contending that the impugned investments made by the assessee were not made in the ordinary course of business or for the purpose of trading. The assessee contended that the investment made in "MAX" was a strategic investment and the assessee, by virtue of this investment had significant influence, voting power and representation on the Board of Directors of "MAX". Similarly, with respect to the investment in venture capital fund, the assessee pointed out that such investments were typical ill-liquid investments with the purpose of capital appreciation ;that such venture capital investments were managed by the investment manager and the investor had no active role in the management of such investment ;that the intention of such investment was to earn capital appreciation in the long run. The assessee accordingly contended that the both investments were distinct from the investments made by the assessee in the regular course of business and constituted capital asset of the assessee.

9.3 The assessee further referred to the various CBDT circulars, beginning from CBDT Circular No.7 of 2007 dated 15.6.2007, pointing out that it laid out the guiding principle for distinction between the shares held as stock-in-trade and shares held as investment based on various judicial precedents and contended that the assessee had provided sufficient evidences to justify the impugned investments to be not in the regular business of the assessee, but for long term purpose. He referred to CBDT Instruction No.F.No.225/12/2016/ITA No.II dated 2.5.2016 pointing out that it mentioned income arising from the transfer of unlisted shares to be considered under the head Capital Gains, irrespective of period of holding so as to avoid dispute/litigations and to maintain uniform approach. The assessee pointed out that the shares of MAX and investment in venture capital funds were unlisted. The assessee further distinguished the decision of Hon'ble Apex Court in the case of CIT Vs. Nawanshahar Central Cooperative Bank Ltd. (supra), pointing out that the decision in the said case was rendered on the facts that investments were made by the assessee for fulfilling statutory requirements which was not the fact in the present case; that therefore, the said decision was not applicable in the present case. The ld.CIT(A) however rejected the contentions of the assessee and held the stand taken by the AO of treating the impugned earning on sale of shares by the assessee as business income to be correct, noting that the AO had correctly followed the decision of the Hon'ble Supreme Court, while doing so.

9.4 Before us, the ld.counsel for the assessee reiterated the contentions made before the ld.CIT(A) to the effect that the decision relied upon by the authorities below was not applicable to the facts of the present case, because it was rendered in the background of facts that the investments were made for fulfilling statutory requirement,

and in the back ground of such facts, the Hon'ble Apex Court had held the income from such investments to be in the nature of business income.

9.5 He contended that Courts have recognized the fact that investment made to bank are not necessarily during the course of conducting its business of banking but can also be long term investments and that therefore, there can be two portfolios with banks, as capital asset or as stock-in-trade. Our attention was drawn to the decision of the Hon'ble Apex Court in the case of Bank of Rajasthan vs. CIT (2024) 469 ITR 280 (SC), wherein it was pointed out that the Hon'ble Apex Court recognized that investments made in securities by banks could either in the nature of stock-in-trade or long term investments depending upon the facts of each case. He drew our attention to Para 19-21 of the order of the Hon'ble Apex Court pointing out therein that the Hon'ble Apex Court held the securities to be purchased by the banks in the category of AFS & HFT to be in the nature of stock-in-trade while those in the category of HRM to be either be in the nature of stock-in-trade or investments depending upon the facts of each case. Para 19 to 21 of the order of the Hon'ble Apex Court is reproduced hereunder:

> *"19. As stated earlier, Banks are required to purchase Government securities to maintain the SLR. As per RBI's guideline dated 16th October 2000, there are three categories of securities: HTM, AFS and HFT. As far as AFS and HFT are concerned, there is no difficulty. When these two categories of securities are purchased, obviously, the same are not investments but are always held by Banks as stock-in-trade. Therefore, the interest accrued on the said two categories of securities will have to be treated as income from the business of the Bank. Thus, after the deduction of broken period interest is allowed, the entire interest earned or accrued during the particular year is put to tax. Thus, what is taxed is the real income earned on the securities. By selling the securities, Banks will earn profits. Even that will be the income*

considered under Section 28 after deducting the purchase price. Therefore, in these two categories of securities, the benefit of deduction of interest for the broken period will be available to Banks.

20. If deduction on account of broken period interest is not allowed, the broken period interest as capital expense will have to be added to the acquisition cost of the securities, which will then be deducted from the sale proceeds when such securities are sold in the subsequent years. Therefore, the profit earned from the sale would be reduced by the amount of broken period interest. Therefore, the exercise sought to be done by the Department is academic.

21. The securities of the HTM category are usually held for a long term till their maturity. Therefore, such securities usually are valued at cost price or face value. In many cases, Banks hold the same as investments. Whether the Bank has held HMT security as investment or stock-in-trade will depend on the facts of each case. HTM Securities can be said to be held as an investment (i) if the securities are actually held till maturity and are not transferred before and (ii) if they are purchased at their cost price or face value."

9.6 He contended that it is settled law that the intention of the purchaser at the time of purchase is important for deciding the nature of income . He referred to the decision of the Hon'ble Apex Court in the case of PCIT vs. Bhanuprasad D. Trivedi (HUF) (2018) 94 taxmann.com 114 (SC) in this regard. He further contended that in the preceding years in the case of the assessee in regular assessment LTCG and loss returned by the assessee on sale of investments made in Venture Capital Funds and others was accepted as Income from capital gains. The details of such assessment was filed in tabular form before us as under:

A.Y.	*Particulars*	*Amount (Rs.)*	*Department's stand*	*Pg. Nos. of Addl. Compilation*
13-14	*Long term capital gain on sale of shares of Axis AMC Ltd. and Axis MF Trustee Ltd.*	*1,48,72,64,049*	*Accepted as capital gain*	*1-14*
	Long term capital gain on sale of units of UTI Venture	*2,56,12,312*	*Accepted as capital gain*	

	Fund and Axis Infrastructure Fund 1			
14-15	*Long term capital gain on sale of shares of Prizrn Payment Services Pvt. Ltd.*	*1,24,44,79,717*	*Accepted as capital gain*	*15-26*
	Long term capital gain on sale of units of venture capital funds	*38,20,844*	*Accepted as capital gain*	
	Short term capital gain on sale of units of venture capital funds	*16,87,655*	*Accepted as capital gain*	
16-17	*Long term capital gain on sale of shares of Max Life Insurance Co. Ltd.*	*1,11,35,59,083*	*Accepted as capital gain*	*27-37*
	Long term capital loss on sale of shares of Axis Private Equity Ltd., Axis Infrastructure Fund & Biotechnology Venture Fund	*(1,20,43,49,340)*	*Accepted as capital loss*	

9.7 He further pointed out that in A.Y. 2018-19 the Ld. PCIT had invoked Section 263 and directed the AO to treat the income arising only from statutory or SLR requirements to be treated as business income. Copy of the order of the Ld. PCIT was placed before us. He contended therefore that since the Department had consistently accepted the source of income arising from the sale of shares and units of venture capital funds assessable under the head capital gains in the preceding years and there being no change in facts or law on the issue in the current year. the Department could not have taken a different stand applying the principle of res judicata. Reliance in this regard was placed on the decision of Hon'ble Apex Court in the case of CIT vs. Excel Industries Ltd. (2013) 358 ITR 295 (SC). As for the reliance placed by the Ld. CIT(A) on the decision of the Hon'ble Apex Court in the case of CIT vs. Nawanshahar Central Cooperative Bank Ltd. (2017) 289 ITR 6 (SC), it was contended that the same was rendered in the backdrop of different set of facts. He pointed out that the facts of the said case were noted in the order

passed by the Hon'ble Punjab and Haryana High Court reported in CIT vs. Nawanshahar Central Cooperative Bank Ltd. (2003) 263 ITR 320 (P&H) wherein it was found that the assessee cooperative bank had made investment in bonds in accordance with the mandatory requirement of the Statute under which it was created. The assessee had claimed deduction under Section 80P(2)(a)(i) of the Act on the income earned from such statutory investments and the Hon'ble Court had held that since the investments made were on account of the requirement of law for carrying out the business of banking, income earned from such investment were held to be attributable to the business activity of the assessee. He contended that noting this fact the income earned by the cooperative bank from investments was treated to be in the nature of business income eligible for deduction under Section 80P(2)(a)(i) of the Act which, in turn, was confirmed by the Hon'ble Apex Court. In the facts of the present case it was pointed out that the investments were not in the nature of statutory investments but were strategic investment or investments made for the purposes of capital appreciation and therefore, the facts of the present case being different from that in the case of Nawanshahar Central Cooperative Bank Ltd. the decision of the Hon'ble apex court had been wrongly applied in the case of the assessee for treating the income earned from sale of shares amounting to Rs. 234.82 crs to be in the nature of business income.

9.8 Ld.DR however supported the order of the Ld.CIT(A) stating that he had rightly applied the decision of the Hon'ble apex court in the case of Nawanshahr (supra) for treating the income earned from sale of investments to be in the nature of business income.

9.9 We have heard the rival contentions. The issue which falls for our consideration is the nature of the income earned from sale of shares of Max Life Insurance Co. Ltd. and units of venture capital funds amounting to Rs234.82 Crs, whether it is to be treated as capital gains as claimed by the assessee or in the nature of business income as treated by the AO/CIT(A). The Revenue's case rests entirely on the decision of the Hon'ble Apex Court in the case of Nawanshahar Central Cooperative Bank Ltd. (supra) and on the basis of the said decision the Ld. CIT(A) has held that all investments made by banks are for the purpose of business and incomes therefrom are to be treated as in the nature of business income.

9.10 Before us, the Ld. Counsel for the assessee has fairly demonstrated that the decision of the Hon'ble Apex Court so relied upon by the Ld. CIT(A) nowhere a lays down a blanket proposition that income from investments made by banks are to be treated as in the nature of business income. He has pointed out the factual background in which the said decision was rendered pointing out that in the facts of the said case the investments were made on account of a statutory requirement of the law as per which the assessee was created and in the background of this fact it was noted that such statutory investments were necessary for carrying out business of the asessee and therefore, income earned therefrom was to be treated as in the nature of business income. The Ld. Counsel for the assessee further has demonstrated distinction in the facts in the case of the assessee and that in the case of Nawanshahar Central Cooperative Bank Ltd. (supra),the assessee having invested in the shares of Max Life Insurance Co. Ltd. and the venture capital funds for strategic purposes/ Long Term appreciation in the value of investments and not on account of any statutory requirement as in the case

Nawanshahar Central Cooperative Bank Ltd. Ld. Counsel for the assessee has also pointed out that the Hon'ble Apex Court in the decision of Bank of Rajasthan Ltd.(supra) has recognized that investments made by banks can be both in the nature of stock-in-trade and long term investments also depending upon the facts of each case. Thus, the Ld. Counsel for the assessee has fairly distinguished the decision of the Hon'ble Apex Court in the case of Nawanshahar Central Cooperative Bank Ltd. and has demonstrated the non-applicability of the same to the facts of the present case.

9.11 Ld. DR was unable to controvert the contention of the Ld. Counsel for the assessee before us as above. He was unable to point out as to how the decision of the Hon'ble Apex Court in the case Nawanshahar Central Cooperative Bank Ltd. could be said to lay down a blanket proposition that all investments made by banks were to be treated as in the course of doing banking business. He was also unable to controvert the observations of the Hon'ble Apex Court in the case Bank of Rajasthan Ltd. (supra) that banks can be said to be having two types of investments (i) stock-in-trade and other is (ii) long term investment.

9.12 In light of the above alone, we are in agreement with the Ld. Counsel for the assessee that the Ld. CIT(A) has erred in holding the income earned by the assessee from sale of investments to be in the nature of capital gains relying solely on the decision of the Hon'ble Apex Court in the case of Nawanshahar Central Cooperative Bank Ltd. (supra).

9.13 We also agree with the Ld. Counsel for the assessee that since the assessee has fairly demonstrated the investments to have been

made not for the purpose of carrying its business but for long term purposes/ strategic purposes., therefore, the income arising from the sale of such shares has been rightly returned as income under the head capital gains. Besides the claim of the assessee is also strengthened by the fact that in the preceding years identical claim made by the assessee on account of sale of identical investments was accepted by the Department as being in the nature of capital gain / capital loss and even Ld. PCIT in revisionary proceedings had categorically held that only the income from statutory / SLR requirements was to be treated as business income. Applying the principle of res judicata, therefore, the Revenue in the present case we hold could not have treated the identical income arising in the impugned year as income from business and profession. The order of the Ld. CIT(A) holding the income in the nature of business income is therefore set aside. The Assessing Officer is directed to accept the claim for the assessee of the income being in the nature of income from capital gains.

9.14 Ground of appeal no. 3 of the assessee is accordingly, allowed.

10. In effect, the appeal of the assessee is allowed.

11. We shall now take Revenue's appeal in ITA No.563/Ahd/2025 for Asst.Year 2020-21.

11.1 The ground no.1 raised by the assessee reads as under:

> *1. Whether the CIT(A) has justified in law and on facts in allowing the deduction of ESOP cost of Rs.197.69 crores made by the assessee merely only on the basis of the SEBI guidelines when the deduction is not permissible under the Income-tax Act unless a liability has either been paid or arisen during the year?*

11.2 The Revenue in the above ground, had challenged deletion of disallowance made by the AO of ESOP expenses claimed by the assessee. The assessee had claimed deduction in respect of the shares allotted to its employees under ESOP amounting to Rs.197,69,43,432/-. The assessee submitted that these expenses claimed pertained to excess of market price of shares on the date of exercise of the option over the exercise price, since it tantamounted to the discount available to the employees and in turn signified the cost incurred by the bank towards incentivizing the services rendered by the employees. The assessee contends that the claim was in accordance with the decision of the Hon'ble Special Bench of the ITAT in the case of Biocon Ltd. Vs. DCIT, (2013) 25 ITR(T) 602 (Bang-Trib.). Further, the assessee pointed out that identical disallowance of ESOP expenses made in the case of the assessee in earlier years was deleted by the ITAT. The AO, however, rejected the contentions of the assessee, noting that identical disallowance was made in the case of the assessee for Asst.Year 2018-19 and also in earlier assessment years, though, the addition was deleted by the ITAT, yet for the purpose of maintaining consistency, the addition/disallowance was being made. His finding in this regard are reproduced at page no.74 of the order of the ld.CIT(A) as under:

> *"9.5.3. The contention of the assessee is not accepted for the reasons mentioned in the earlier years' assessment orders particularly para 7.3.10 of the assessment order passed for the A.Y.2018-19. Without prejudice to the above, even if the ESOP cost is to be treated as expenditure, the same is directly relatable to Capital account and is required to be treated as capital nature expenditure and cannot be allowed as revenue expenditure u/s 37(1) of the Act. Though the issue has been decided in its favour by deleting the addition made on this ground for the earlier years by the Hon'ble ITAT, Ahmedabad Bench, maintaining consistency with the decision taken for the earlier assessment years and the reasons stated therein are the similar to that*

of this year, the addition on this ground is made to the tune of Rs.197,69,43,432/- as the issue has not reached the finality.

11.3 The ld.CIT(A) however deleted the disallowance noting that the ITAT in its detailed order passed in the case of the assessee for Asst.Year 2010-11 and 2011-12 has deleted the disallowance made in assessee's own case. Before us, the ld.DR was unable to controvert the finding of the ld.CIT(A) that identical disallowance made in the case of the assessee in preceding years was deleted by the ITAT. Moreover, we have noted that even the AO had acknowledged this fact to continue with the disallowance only for the purpose of maintaining consistency.

11.4 In view of the same, since it is an uncontroverted fact that identical expenses of ESOP made in the case of the assessee has not withstood the test of judicial scrutiny by the ITAT's order in the case of the assessee itself, we see no merit in the grounds raised by the Revenue before us. Accordingly, ground no.1 raised by the Revenue is dismissed.

12. Ground no.2 raised by the Revenue reads as under:

2. Whether, given the facts and circumstances of the case and in accordance with the law, the Hon. ITAT is justified in deleting the addition of Rs.105.18 crores made under rule 6EA r.w.s. 43D of the Act, without appreciating the fact that RBI Guidelines on non-performing assets do not override the provisions of Income tax Act.

12.1 The above ground relates to the issue of addition made in the case of the assessee of Rs.105.18 crores as interest income on non-performing assets (NPA) held by the AO to be deemed to have agreed to the assessee as per the section 43D read with Rule 6EA of the Income Tax Rules, 1962. The AO in his order, as noted, has recognized the interest income from non-performing assets as per the

RBI guidelines, where overdue period is only three months. However, he noted that as per Rule 6EA of the IT Rules, 1962, the interest should not be recognized only when the overdue period 180 days had been completed. The AO, therefore, held that difference between two periods ought to have been recognised as income. The assessee responded stating that section 43D of the Act provides for taxation of interest on bad and doubtful debts, as per the RBI Guidelines issued and the assessee had accounted for interest as per the said guidelines. He further pointed out that identical issue had arisen in the case of the assessee in the preceding years and the ITAT had deleted the addition made on this amount vide its order passed dated 28.10.2021. The AO persisted with the addition, noting that, since the issue has not attained acceptable level of finality, and therefore, to maintain consistency and keep the issue alive, he made an addition of the interest on NPA for the period, since the debts became overdue from three months to six months, resulting the addition to the income of the assessee of Rs.105,18,67,642/-. The finding of the AO in this regard are reproduced at page no.36 of the CIT(A)'s order as under:

> *9.3.2 The assessee has responded to this query and has stated that Section 43D of the Act provides for taxation of interest on bad and doubtful debts as per the guidelines issued by RBI. The RBI Guidelines provide for 90 days' overdue norm for classification of a debt as bad and doubtful debt. Accordingly, as per the RBI Guidelines, debts overdue for more than 90 days are classified as bad and doubtful debts and interest thereon is not recognized in the P/L account until received. Further it has also stated that, the issue has been decided in its favour for the earlier years by deleting the addition made on this ground by the Hon'ble ITAT, Ahmedabad Bench vide its order dated 28.10.2021. Since the issue has not attained an acceptable level of finality and when this aspect of addition has been done after elaborate deliberation on this issue in the Assessments of past years and for the sake of unwanted rumination, while the fact situation in the present case has not undergone any change in comparison to those years of disputed additions, further discussion on this aspect is avoided in this*

order. Accordingly, the deemed interest income from NPAs of Rs.105,18,67,642/- is added to the taxable income for the year.

12.2 The CIT(A), however, deleted the addition made, noting that the ITAT in the assessee's own case in ITA No.852/Ahd/2019 dated 30.3.2022 for Asst.Year 2015-16 had deleted the identical addition made. The ld.DR was unable to controvert the findings of the ld.CIT(A), and accordingly, we dismiss the ground raised by the Revenue.

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

13. We shall now take up the cross appeals of the assessee and the Revenue for Asst.Year. 2021-22.

14. ITA No.612/Ahd/2025, Assessee's appeal for Asst.Year 2021-22.

14.1 The ground no.1 reads as under:

1. *Disallowance in relation to administrative expenses u/s 14A read with Rule 8D of the Income-tax Act, 1961 (Tax effect – Rs.1,73,27,477)*

    1.1 *The learned AO and the Hon'ble CIT(A) erred in disallowing the expenses u/s 14A r.w. Rule 8D over and above the suo-moto disallowance of administrative expenses of Rs. 0.49 crores.*

    1.2 *The learned AO and the Hon'ble CIT(A) erred in rejecting the arithmetic quantification of suo moto disallowance made by the Appellant and by upholding the automatic enforceability of Rule 8D from AY 2008-09 onwards without appreciating that the formula under Rule 8D can only be resorted to if the AO is not satisfied about the claim of expenditure in relation to exempt income as made by the Appellant and only if there is a direct and proximate nexus of the expenditure proposed to be disallowed and the exempt income.*

1.3 The learned AO and the Hon'ble CIT(A) erred in not appreciating that the suo moto disallowance made by the Appellant was on a conservative basis and without prejudice to the position of the Appellant that the expenses debited to the profit and loss account do not have any direct or proximate nexus with the exempt income.

1.4 The learned AO and the Hon'ble CIT(A) erred in not appreciating the fact that the all the exempt income yielding investments made by the Appellant are in the nature of stock in trade (i.e. tax free bonds and debentures) and accordingly, the provisions of section 14A shall not be applicable to such investments in line with judicial precedents.

1.5 The learned AO and the Hon'ble CIT(A) erred in not relying upon favourable judgements of Hon'ble Tribunal and Gujarat HC up to AY 2009-10 and Supreme Court judgement for AY 2003-04 in the Appellant's own case. Further, the learned AO and the Hon'ble CIT(A) erred in not relying upon favourable latest judgement of the Hon'ble Tribunal in Appellant's own case for AY 2018-19, wherein the Tribunal had deleted entire addition u/s 14A in the same facts as involved in the year under consideration.

1.6 The learned AO and the Hon'ble CIT(A) erred in not appreciating that the Appellant has sufficient own funds which are far more than the amount of investment in securities which yield exempt income and thereby erred in holding that a portion of expenses should be attributable to investments which fetch exempt income.

1.7 The learned AO and the Hon'ble CIT(A) erred in misinterpreting the decision in the case of Maxopp Investments Ltd. (402 ITR 640 (SC)) for apportioning the disallowance u/s 14A in the ratio of taxable and exempt income while the said decision provides for non-applicability of section 14A in the case of shares and securities held as stock in trade.

1.8 Without prejudice to the para 1.7, the Hon'ble CIT(A) erred in observing that the learned AO has apportioned the disallowance u/s 14A r.w. Rule 8D between taxable and tax free quantum of earnings, while no such apportionment has been made by the learned AO in the assessment order for the year under consideration and the entire amount computed as per Rule 8D has been disallowed.

1.9 The Hon'ble CIT(A) erred in relying on the order in the appellate proceedings for AY 2012-13 to AY 2015-16 and the Appellant's alleged acceptance to section 14A disallowance methodology in assessment proceedings for AY 2020-21, where the disallowance u/s 14A r.w. Rule 8D was apportioned in the ratio of taxable and exempt income for upholding the disallowance for AY 2021-22 without considering the merits of the case while no such apportionment has been made by the learned AO in the assessment order for the year under consideration and the entire amount computed as per Rule 8D has been disallowed.

14.2 This ground, it was common ground, is identical to ground no.1 raised in the assessee's appeal for Asst.Year 2020-21, wherein we have deleted the disallowance made under section 14A of the Act at para 5 to 5.5 of our order above. Following the same, we delete the disallowance made under section 14A of the Act amounting to Rs.6,88,47,254/-.

14.3 Ground no.1 is allowed.

15. Ground No.2 reads as under:

2. Disallowance of interest in respect of capital work in progress under proviso to section 36(1)(iii) of the Income-tax Act, 1961 (Tax effect – Rs.3,62,19,017)

2.1 The learned AO and the Hon'ble CIT(A) erred in invoking proviso to section 36(1)(iii) in respect of amounts capitalized to capital work in progress (CWIP), representing advance payments for purchase of fixed assets but not put to use by previous year end and other payments to contractors etc., particularly for opening of new branches, and making addition of proportionate interest expense of Rs. 14.39 crores under proviso to section 36(1) (iii).

2.2 The learned AO and the Hon'ble CIT(A) erred in not appreciating that the Appellant has not availed any specific borrowing in respect of CWIP and where own funds of the Appellant were in excess of amount capitalized as CWIP, the presumption would be that the Appellant has used its own funds, and no disallowance of interest expenses was warranted in such case.

2.3 The learned AO and the Hon'ble CIT(A) erred in incorrectly taking resort to the amendment in proviso to section 36(1)(iii) by the Finance Act, 2015, which deleted the phrase "for extension of existing business or profession", when the said amendment has no bearing in the case of the Appellant since the Appellant has sufficient interest free funds out of which CWIP may be said be funded and consequently, there would not be any interest attributable to CWIP.

2.4 The learned AO and Hon'ble CIT(A) erred in not considering explanatory notes to the provisions of The Finance Act, 2015 wherein it is clarified that the amendment in the proviso to section 36(1)(iii) merely to remove the inconsistency between the section 36(1)(iii) and ICDS-IX so that that the borrowing cost incurred for acquisition of an asset shall be capitalised up to the date the asset is put to use without making any distinction as to whether an asset is acquired for extension of existing business or not.

2.5 The learned AO and the Hon'ble CIT(A) erred in not relying on the earlier own favourable case laws in the case of the Appellant quashing the disallowance u/s 36(1)(iii) in case of sufficient own funds and in not appreciating that the amendment in the proviso to section 36(1)(iii) would have no bearing on the position of law laid down in the said decisions.

15.1 This ground, it was common ground, is identical to ground no.2 raised in the assessee's appeal for Asst.Year 2020-21 has been dealt with by us, wherein we have allowed the claim of the assessee in respect of capital work-in-progress on the ground that the ITAT on the similar issue in preceding years allowed the claim of the assessee, and we directed the AO to delete the impugned disallowance at para 8 to 8.9 of our order above. Therefore, the issue raised in the above ground being identical, the decision rendered in Asst.Year 2020-21 will apply to the present ground raised by the assessee as well, following which, we delete the disallowance of Rs.14,39,09,000/-.

15.2 This ground of the assessee is allowed.

16. The ground no.3 reads as under:

3. Reclassification of long term capital gains as business income (Tax effect – Rs. 14,61,68,974)

3.1 The learned AO and the Hon'ble CIT(A) erred in treating gains arising on the sale of investments in Max New York Life insurance Co. Ltd. and Yes Bank Limited as business income instead of capital gains.

3.2 The learned AO and the Hon'ble CIT(A) erred by failing to appreciate that not all investments of a banking concern are business investment, and it is possible for an assessee to have two portfolios viz. investment portfolio as well as trading portfolio stock in trade simultaneously.

3.3 The learned AO and the Hon'ble CIT(A) erred in applying the rationale of the decision in the case of CIT vs. Nawanshahar Central Cooperative Bank Ltd. [2007] 160 Taxman 48 SC which was in the context of classification of income arising from the investments which are made for fulfilling statutory requirements of RBI and are made in the approved securities without appreciating that the investment made by the Appellant in Max New York Life insurance Co. Ltd. and Yes Bank Limited was not pursuant to any statutory requirements.

3.4 The learned AO and the Hon'ble CIT(A) erred in not following CBDT Instruction F No. 225/12/2016/ITA.II dated 2.5.2016 for classification of gains on sale of unlisted shares of Max New York Life Insurance Co. Ltd. as capital gains even though CBDT Instructions are binding on the tax department.

3.5 The learned AO and the Hon'ble CIT(A) erred in not appreciating that investment in Max New York Life Insurance Co. Ltd. was for strategic purposes and the Appellant had significant influence through voting power and representation on the Board of Directors of Max New York Life Insurance Co. Ltd., is categorized as a co-promoter thereof and Max qualifies as an associate of the Appellant and thus, such shares constituted capital asset for the Appellant.

3.6 The learned AO and the Hon'ble CIT(A) erred in not appreciating that the investment in Yes Bank Limited was also made pursuant to a scheme of reconstruction notified by the Central Government and part of the investment was locked-in and thus, the investment was not made for trading purposes.

16.1 This ground is identical to ground no.3 raised in the assessee's appeal for Asst.Year 2020-21 has been dealt with by us, wherein we have allowed the claim of the assessee in respect of capital work-in-progress on the ground that the ITAT on the similar issue in preceding years allowed the claim of the assessee, and we directed the AO to delete the impugned disallowance at para 9.9 to 9.14 of our order above. Therefore, the issue in the above ground being identical, the

decision rendered in Asst.Year 2020-21 will apply to the present ground raised by the assessee as well, following which, we delete the disallowance of Rs.14,61,68,974/-.

17. The ground no.4 reads as under:

4. Non grant of Foreign Tax Credit on taxes paid outside India (Tax effect – Rs. 10,15,79,090)

4.1 The Ld. AO and the Hon'ble CIT(A) erred in not appreciating the fact that the Appellant had rightly claimed credit of additional taxes of Rs. 10,15,79,090/- paid towards Singapore branch of the Appellant without verifying the details of additional taxes so paid by the Appellant.

4.2 The Ld. AO and the Hon'ble CIT(A) erred in not appreciating that the Appellant had paid the additional tax relating to Singapore branch on 6.1.2023 and could not have filed a revised return for claiming the foreign tax credit since the time limit for the revision of return had expired.

4.3 The Ld. AO and the Hon'ble CIT(A) erred in not appreciating that as per Rule 128, the credit for foreign taxes is allowable in the year in which the corresponding income is offered to tax and accordingly the Appellant is eligible for the credit of taxes paid in Singapore for AY 2021-22.

4.4 The Ld. AO and the Hon'ble CIT(A) erred in rejecting the claim of the Appellant merely for non-filing of Form 67 without appreciating that filing of Form 67 for claiming of foreign tax credit is not a mandatory requirement but merely a directory requirement and foreign tax credit ought not to be disallowed where the same has not been claimed in Form 67 and the said position is also supported by judicial precedents.

4.5 The Ld. AO and the Hon'ble CIT(A) erred in not appreciating that Rule 128 merely prescribed procedural requirements for claiming of foreign tax credit and could not impose conditions subject to which foreign tax credit would be allowed.

4.6 The Ld. AO and the Hon'ble CIT(A) erred in not appreciating that the claim of foreign tax credit is available pursuant to Article 25 of India – Singapore DTAA without any limitation with respect to timeline and where the provisions of the DTAA are more beneficial than the Act and corresponding Rules, the same should prevail.

4.7 The Ld. AO and the Hon'ble CIT(A) erred in not appreciating that judicial precedents have upheld claim of foreign tax credit made during the course of assessment proceedings even if the same was not claimed in the return / revised return of income.

4.8 The Appellant is consequently also aggrieved by the levy of interest u/s 234C of the Act without considering the effect of additional Foreign Tax Credit in accordance with Ground No. 4 above.

17.1 The issues involved in the above ground relates to disallowance of claim of foreign tax credit of Rs.72,70,934/- on account of requisite form no.67 not having been filed by the assessee.

17.2 The facts relating to the issue are that the assessee had claimed foreign tax credit of Rs.72,70,934/- in the return of income which included Rs.30,84,097/- towards tax paid by Singapore branch, which was reflected in Form No.67 filed on 10.1.2022. The assessee thereafter made claim of additional foreign tax credit of Rs.10,15,79,090/- before the AO vide letter dated 27.06.2023 on account of additional tax paid by Singapore branch amount to SGD 16,76,775/-, equivalent to INR 10,15,79,090/- on 6.1.2023. The AO and the CIT(A) rejected the claim for not making such claim in revised return, and not filing form 67. Before us, the ld.counsel for the assessee submitted that on the date of payment of additional tax by the Singapore Branch i.e. 6.1.2023, due date of revised return had already expired on 31.3.2022. He further contended that the assessee has filed revised form no.67 on 12.3.2024 revising the claim of tax credit, by the ld.CIT(A) ignored the same. He contended that it is settled law that the assessee can make an additional claim before the assessment order assessment/appellate authorities, and referred to the decision of the Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. Vs. CIT, (1998) 229 ITR 383 (SC) and Jute Corporation of India Vs. CIT, (1991) 187 ITR 688 (SC). He contended that the delay in claiming foreign tax credit was beyond the control of the assessee, and he referred to the decision of ITAT, Hyderabad Bench in the case of Baburao Atluri Vs. DCIT, (2022) 143 taxmann.com 243 (Hyd-Trib.) in this regard. He further contended that it is settled law that the filling of Form No.67 is directory and not mandatory, and

hence, the delay filing Form No.67 cannot effect the statutory right of the assessee claim foreign tax credit. The reliance is placed on the following decisions in this regard:

- *Vinodkumar Lakshmiputhi v. C1T(A) - [2022J 145 taxmann.com 235(Bangalore - Trib.) 42*
- *Hertz Software India P. Ltd. v. AC1T - [2022] 139 taxmann.com 448 (Bangalore - Trib.*
- *Duraiswamy Kumaraswamy v. PCIT - [2024] 460 ITR 615 (Madras) ACIT v. Reliance Retail Ltd. - [2025] 175 taxmann.com 206 (Mumbai-Trib.)*
- *Bhagwandas Tikamdas Khinani v. CIT(A) - [2022] 145 taxmann.com 265 (Mumbai-Trib.)*
- *Sonakshi Sinha v. C1T(A) - [2022] 142 taxmann.com 414 (Mumbai -Trib.)*

17.3 The assessee, accordingly, contended that disallowance of claim of additional foreign credit of Rs.10,15,79,090/- was not justified in law.

18. The ld.DR, however, relied on the order of the authorities below and contended that the assessee had failed to make the claim in its revised return, and had also delayed in filing of Form no.67 and that the authorities below justified in not allowing the claim of foreign credit tax to the assessee.

19.1 Having heard both the parties, we are not in agreement with the ld.CIT(A) on this issue of claim of foreign tax credit. Undoubtedly, the courts repeatedly and consistently have held the requirement of filing of form no.67 for the purpose of claiming foreign tax credit to be a directory requirement and not a mandatory requirement. The ld.counsel for the assessee has referred to number of cases, as noted above by us, of the ITAT in this regard. The ld.DR has not brought to

our notice any contrary decision of any higher judicial authorities on this count. Therefore, denial of claim of foreign tax credit on account of delay of filing of the Form NO.67 is not justified. Other reason given by the Revenue authorities for denying this claim is, because, the assessee failed to make the claim by filing revised return. As rightly pointed out by the ld.counsel for the assessee, it is settled law that the assessee can make additional claim before the AO or appellate authority. Hon'ble Apex Court has held so in the case of National Thermal Power Co. Ltd. And Jute Corporation of India (supra). The ld.DR was unable to controvert the settled position of law in this regard before us.

In the light of the same, denial of claim by the ld.CIT(A) for the reasons that the assessee has not claimed by way of revising refused return, was held to be not justified in law.

19.2 In view of the above, we hold that the assessee is entitled to claim additional foreign tax credit which he has claimed during the assessment proceedings before the AO and had filed the revised form no.67 before the ld.CIT(A).

19.3 Ground No.4 is accordingly allowed.

20. In effect, the appeal of the assessee is partly allowed.

21. We now take up the Revenue's appeal in ITA No.564/Ahd/2025.

> *1. Whether the CIT(A) has justified in law and on facts in allowing the deduction of ESOP cost of Rs.85,43,02,205/- made by the assessee merely only on the basis of the SEBI guidelines when the deduction is not permissible under the Income-tax Act unless a liability has either been paid or arisen during the year?*
>
> *2. Whether, given the facts and circumstances of the case and in accordance with the law, the Hon. ITAT is justified in deleting the addition of*

Rs.280,31,38,390/- made under rule 6EA r.w.s. 43D of the Act, without appreciating the fact that RBI Guidelines on non-performing assets do not override the provisions of Income tax Act.

21.1 Ground no.1 and 2 of the Revenue's appeal, it was common ground, are identical to Ground no.1 to 2 of the Revenue's appeal in ITA No.563/Ahd/2025 for the Asst.Year 2020-21, wherein we dismissed both the grounds of the Revenue. Therefore, for the reasons rendered therein, similar ground raised in A.Y. 2021-22 also stands dismissed.

21.2 In effect, the appeal of the Revenue is dismissed.

22 In the combined result, appeals of the assessee are allowed and the appeals of the Revenue are dismissed.

Order pronounced in the Court on 20.05.2026 at Ahmedabad.

Sd/-	**Sd/-**
(SANJAY GARG)	**(ANNAPURNA GUPTA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad, dated 20/05/2026

True Copy

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

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

आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad