IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH MUMBAI

BEFORE: SHRI MAHAVIR SINGH, VP
&
SHRI M.BALAGANESH, AM

ITA No.251/Mum/2010
(Assessment Year: 2015-16)
ITA No.252/Mum/2020
(**Assessment Year :2016-17**)
ITA No.253/Mum/2020
(**Assessment Year :2017-18**)

M/s. Sinnar Thermal Power Ltd., (Formerly Rattan India Nasik Power Ltd, A-150-151, Ground Floor K.H.No.407A Block Mahipalpur Extension New Delhi	Vs.	Dy. CIT CC 6(4) 19th Floor, Air India Building Mumbai – 400 021
PAN/GIR No.AABCI6188D		
(Appellant)	..	**(Respondent**)

ITA No.68/Mum/2020
(Assessment Year: 2011-12)
ITA No.69/Mum/2020
(Assessment Year: 2012-13)
ITA No.70/Mum/2020
(Assessment Year: 2014-15)
ITA No.71/Mum/2020
(Assessment Year: 2015-16)
ITA No.72/Mum/2020
(Assessment Year: 2016-17)
&
ITA No.152/Mum/2020
(Assessment Year: 2017-18)

Dy. CIT CC 6(4) 19th Floor, Air India Building Mumbai – 400 021	Vs.	M/s. Sinnar Thermal Power Ltd., (Formerly Rattan India Nasik Power Ltd, A-150-151, Ground Floor K.H.No.407A Block Mahipalpur Extension

		New Delhi
PAN/GIR No.AABCI6188D		
(Appellant)	..	**(Respondent**)

ITA No.243/Mum/2020
(**Assessment Year :2014-15**)
ITA No.244/Mum/2020
(**Assessment Year :2015-16**)
ITA No.245/Mum/2020
(**Assessment Year :2016-17**)
&
ITA No.246/Mum/2020
(**Assessment Year :2017-18**)

M/s. Rattan India Power Limited A-49, Ground Floor Road No.4, Mahipalpur New Delhi- 100 037	Vs.	Deputy Commissioner of Income Tax, Central Circle – 6(4) 19th Floor Air India Building, Nariman Point, Mumbai
PAN/GIR No.AALCS2063D		
(Appellant)	..	**(Respondent**)

ITA No.62/Mum/2020
(**Assessment Year :2012-13**)
ITA No.63/Mum/2020
(Assessment Year: 2013-14)
ITA No.64/Mum/2020
(Assessment Year: 2014-15)
ITA No.65/Mum/2020
(Assessment Year: 2015-16)
ITA No.66/Mum/2020
(Assessment Year: 2016-17)
ITA No.67/Mum/2020
(Assessment Year: 2017-18)

Deputy Commissioner of Income Tax, Central Circle – 6(4) 19th Floor Air India Building, Nariman Point, Mumbai	Vs.	M/s. Rattan India Power Limited 5th Floor, Tower-B, Worldmark-1 Aerocity, New Delhi-110037

PAN/GIR No.AALCS2063D/ AALCS2063D		
(Appellant)	..	**(Respondent)**

ITA No.247/Mum/2020
(**Assessment Year :2014-15**)
ITA No.248/Mum/2020
(**Assessment Year :2015-16**)
ITA No.249/Mum/2020
(**Assessment Year :2016-17**)
&
ITA No.250/Mum/2020
(**Assessment Year :2017-18**)

M/s. IIC Ltd., 90/A-207, Khasra No.412 Ground Floor Mahipalpur Extension New Delhi-110037	Vs.	Deputy Commissioner of Income Tax, Central Circle – 6(4) 19th Floor, Air India Building, Nariman Point Mumbai – 400 021
PAN/GIR No.AACCI2448B		
(Appellant)	..	**(Respondent)**

ITA No.153/Mum/2020
(**Assessment Year :2011-12**)
ITA No.154/Mum/2020
(**Assessment Year :2012-13**)
ITA No.155/Mum/2020
(**Assessment Year :2013-14**)
ITA No.156/Mum/2020
(**Assessment Year :2014-15**)
ITA No.157/Mum/2020
(**Assessment Year :2015-16**)
ITA No.158/Mum/2020
(**Assessment Year :2016-17**)
&

ITA No.159/Mum/2020
(**Assessment Year :2017-18**)

Deputy Commissioner of Income Tax, Central Circle – 6(4)	Vs.	M/s. IIC Ltd., 90/A-207, Khasra No.412 Ground Floor

19th Floor, Air India Building, Nariman Point Mumbai – 400 021		Mahipalpur Extension New Delhi-110037
PAN/GIR No.AACCI2448B		
(Appellant)	..	**(Respondent)**

Assessee by	Shri S.K. Tulsiyan / Shri Sashi Tulsiyan
Revenue by	Shri V. Sreekar
Date of Hearing	**30/03/2021**
Date of Pronouncement	**05/05/2021**

आदेश / O R D E R

***PER M. BALAGANESH (A.M)*:**

ITA No.251/Mum/2020 (A.Y.2015-16), 252/Mum/2020 (A.Y.2016-17) & 253/Mum/2020 (2017-18)

These appeals in ITA No.251/Mum/2020, 252/Mum/2020 & 253/Mum/2020 for A.Y.2015-16,2016-17 & 2017-18 arise out of the order by the ld. Commissioner of Income Tax (Appeals)-54, Mumbai in appeal No.CIT(A)-54/IT-10227/DC.CC-6(4)/2018-19, CIT(A)-54/IT-10229/DC.CC-6(4)/2018-19 & CIT(A)-54/IT-10236/DC.CC-6(4)/2018-19, CIT(A)-54/IT-10227/DC.CC-6(4)/2018-19 dated 24/01/2019 & 16/10/2019 respectively (ld. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 153A of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 30/12/2018 & 29/12/2018 respectively by the ld. Dy. Commissioner of Income Tax, Central Circle-6(4), Mumbai (hereinafter referred to as ld. AO).

ITA No. 68/Mum/2020 (A.Y.2011-12), 69/Mum/2020 (A.Y.2012-13), 70/Mum/2020 (A.Y.2014-15), 71/Mum/2020 (A.Y.2015-16), 72/Mum/2020 (A.Y.2016-17) & 152/Mum/2020 (A.Y.2017-18)

These appeals in ITA Nos.68/Mum/2020, 69/Mum/2020, 70/Mum/2020, 71/Mum/2020 & 152/Mum/2020 for A.Y. 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18, arise out of the order by the ld. Commissioner of Income Tax (Appeals)-54, Mumbai in appeal No. CIT(A)-54/IT-10218/DC.CC-6(4)/2018-19, CIT(A)-54/IT-10220/DC.CC-6(4)/2018-19, CIT(A)-54/IT-10224/DC.CC-6(4)/2018-19, CIT(A)-54/IT-10227/DC.CC-6(4)/2018-19, CIT(A)-54/IT-10229/DC.CC-6(4)/2018-19 & CIT(A)-54/IT-10236/DC.CC-6(4)/2018-19 dated 16/10/2019 (ld. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 153A of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 29/12/2018 & 30/12/2018 by the ld. Dy. Commissioner of Income Tax, Central Circle-6(4), Mumbai (hereinafter referred to as ld. AO).

ITA No.243/Mum/2020 (A.Y.2014-15), 244/Mum/2020 (A.Y.2015-16), 245/Mum/2020 (2016-17) & 246/Mum/2020 (2017-18)

These appeals in ITA No.243/Mum/2020, 244/Mum/2020, 245/Mum/2020 & 246/Mum/2020 for A.Y., 2014-15, 2015-16, 2016-17 & 2017-18 arise out of the order by the ld. Commissioner of Income Tax (Appeals)-54, Mumbai in appeal No.CIT(A)-54/IT-10208/DC.CC-6(4)/2018-19, CIT(A)-54/IT-10201/DC.CC-6(4)/2018-19, CIT(A)-54/IT-10204/DC.CC-6(4)/2018-19 & CIT(A)-54/IT-10200/DC.CC-6(4)/2018-19 dated 15/10/2019 & 22/10/2019 respectively (ld. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 29/12/2018 by the ld. Dy.

Commissioner of Income Tax, Central Circle-6(4), Mumbai (hereinafter referred to as ld. AO).

ITA No.62/Mum/2020 (A.Y.2012-13), 63/Mum/2020 (A.Y.2013-14), 64/Mum/2020 (2014-15), 65/Mum/2020 (A.Y.2015-16), 66/Mum/2020 (A.Y.2016-17) & 67/Mum/2020 (A.Y.2017-18)

These appeals in ITA No.62/Mum/2020, 63/Mum/2020, 64/Mum/2020, 65/Mum/2020, 66/Mum/2020, 67/Mum/2020, for A.Y. 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 & 2017-18 arise out of the order by the ld. Commissioner of Income Tax (Appeals)-54, Mumbai in appeal No.CIT(A)-54/IT-10198/DC.CC-6(4)/2018-19, CIT(A)-54/IT-10199/DC.CC-6(4)/2018-19, CIT(A)-54/IT-10200/DC.CC-6(4)/2018-19, CIT(A)-54/IT-10201/DC.CC-6(4)/2018-19, CIT(A)-54/IT-10204/DC.CC-6(4)/2018-19, CIT(A)-54/IT-10208/DC.CC-6(4)/2018-19, dated 14/10/2019, 15/10/2019, & 22/10/2019 respectively (ld. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 153A of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 29/12/2018 & 30/10/2018 by the ld. Dy. Commissioner of Income Tax, Central Circle-6(4), Mumbai (hereinafter referred to as ld. AO).

ITA No.247/Mum/2020 (A.Y.2014-15), 248/Mum/2020 (A.Y.2015-16), 249/Mum/2020 (A.Y.2016-17) & 250/Mum/2020 (2017-18)

These appeals in ITA No.247/Mum/2020, 248/Mum/2020, 249/Mum/2020 & 250/Mum/2020 for A.Y.2014-15, 2015-16, 2016-17 & 2017-18 arise out of the order by the ld. Commissioner of Income Tax (Appeals)-54, Mumbai in appeal Nos.CIT(A)-54/IT-10264/DC.CC-6(4)/2018-19, CIT(A)-54/IT-10266/DC.CC-6(4)/2018-19 & CIT(A)-54/IT-

10265/DC.CC-6(4)/2018-19, CIT(A)-54/IT-10267/DC.CC-6(4)/2018-19 dated 31/10/2019 (ld. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 153A of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 31/12/2018 by the ld. Dy. Commissioner of Income Tax, Central Circle-6(4), Mumbai (hereinafter referred to as ld. AO).

ITA No.153/Mum/2020 (A.Y.2011-12), 154/Mum/2020 (A.Y.2012-13), 155/Mum/2020 (A.Y.2013-14), 156/Mum/2020 (A.Y.2014-15), 157/Mum/2020 (A.Y.2015-16), 158/Mum/2020 (A.Y.2016-17) & 159/Mum/2020 (A.Y.2017-18)

These appeals in ITA Nos. 153/Mum/2020, 154/Mum/2020, 155/Mum/2020, 156/Mum/2020, 158/Mum/2020 & 159/Mum/2020 for A.Y.2011-12, 2012-13, 2013-14 2014-15, 2015-16, 2016-17 & 2017-18 arise out of the order by the ld. Commissioner of Income Tax (Appeals)-54, Mumbai in appeal Nos. CIT(A)-54/IT-10245/DC.CC-6(4)/2018-19, CIT(A)-54/IT-10246/DC.CC-6(4)/2018-19, CIT(A)-54/IT-10263/DC.CC-6(4)/2018-19 CIT(A)-54/IT-10264/DC.CC-6(4)/2018-19 & CIT(A)-54/IT-10265/DC.CC-6(4)/2018-19, CIT(A)-54/IT-10266/DC.CC-6(4)/2018-19 & CIT(A)-54/IT-10267/DC.CC-6(4)/2018-19 dated 31/10/2019 (ld. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 153A of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 31/12/2018 by the ld. Dy. Commissioner of Income Tax, Central Circle-6(4), Mumbai (hereinafter referred to as ld. AO).

2. Identical issues are involved in all these appeals and hence they are taken up together and disposed of by this common order for the sake of convenience.

3. We find that M/s M/s. IIC Limited, M/s. Sinnar Thermal Power Limited (formerly known as M/s. Rattanindia Nasik Power Limited) and M/s. Rattanindia Power Limited belong to the same group of companies. A search and seizure action u/s. 132 of the Act was conducted on these group concerns on 13.07.2016. Pursuant to the search action, notices u/s. 153A of the Act were issued in the case of group entities for the Asst Years 2011-12 to 2016-17.For the Asst Year 2017-18, notice u/s 143(2) of the Act was issued, being the year in which the search action was conducted.

4. M/s Rattanindia Power Limited was incorporated on 08.10.2007. It is engaged in the business of dealing in power generation, distribution, trading and transmission and other ancillary and incidental activities thereto.

4.1. M/s Sinnar Thermal Power Limited (formerly known an Rattanindia Nasik Power Limited) was incorporated on 03.01.2007 with the object of generation, distribution and trading of power. During the assessment years under consideration, it was in the process of setting up a Thermal power plant in the Sinnar district of Maharashtra. The construction of the aforesaid power plant began in the financial year 2011-12 and the last phase of the same was yet to be completed in the financial year 2016-17.

4.2. M/s IIC Limited was incorporated on 11.03.2010. The main and object of this company was to undertake Engineering, Procurements and

Construction (EPC) Contracts. During the assessment years under consideration, the assessee company was engaged in the business activity of Engineering, Procurement and Construction (EPC) Contract for Rattanindia Power Ltd and Sinnar Thermal Power Limited (formerly known as Rattanindia Nasik Power Ltd) for carrying out construction work at their respective sites.

4.3. The above said business of the company is conducted by it directly as well as indirectly through subsidiaries, joint ventures, partnership firms and associate concerns either through equity investments, advances, loans or through debt instruments such as Optionally Convertible Debentures (OCDs), Compulsorily Convertible Debentures (CCDs) , Non-Convertible Debentures (NCDs) etc.

5. In view of innumerable number of issues spread over various assessees and various assessment years, we feel that it would be desirable to proceed with each of the issues involved in all these appeals independently for the sake of convenience. However, due care has been taken by us to make proper reference to the concerned name of the assessee, grounds involved thereon together with the relevant assessment years.

5.1. The various issues involved in all these appeals may be summarized as under:-

(A) Whether any addition / disallowance could be made in an assessment framed u/s 153A of the Act in respect of unabated / concluded assessments on the date of search in the absence of any incriminating material found during the search relating to such unabated assessment year ?

(B) Whether disallowance u/s 14A of the Act read with Rule 8D(2) of the Rules could be made in the facts and circumstances of the case under normal provisions of the Act ?

(C) Whether disallowance u/s 14A of the Act read with Rule 8D(2) of the Rules could be made in the facts and circumstances of the case while computing book profits u/s 115JB of the Act ?

(D) Whether any addition u/s 69A of the Act could be made in respect of cash found at the time of search in the facts and circumstances of the case ?

(E) Whether the disallowance could be made on account of write off of business advances given to the subsidiary company in the facts and circumstances of the case ?

(F) Whether any disallowance of expenditure could be made on account of alleged bogus purchases in the facts and circumstances of the case ? The interconnected issue involved therein is as to whether the disallowance of depreciation thereon could be made in the facts and circumstances of the case?

(G) Whether the business loss incurred by the assessee on conversion of investment into stock in trade could be disallowed in the facts and circumstances of the case ?

(H) Whether the learned AO is justified in allowing deduction on account of preliminary expenses by amortising it equally over a period of 10 years instead of 5 years ignoring the amendment brought in the statute, in the facts and circumstances of the case?

6. <u>No additions could be made in assessments framed u/s 153A of the Act in respect of concluded / unabated assessments on the date of search, in the absence of any incriminating material found during the course of search.</u>

6.1. We find that for the entities M/s. IIC Limited in the Asst Years 2011-12, 2012-13, 2013-14 ; in the case of M/s. Sinnar Thermal Power Limited (formerly known as Rattanindia Nasik Power Limited) in the Asst Years 2011-12 & 2012-13 and in the case of M/s. Rattanindia Power Limited in the Asst Years 2012-13 & 2013-14, the issue under consideration is that no disallowances / additions could be made in the assessments framed u/s 153A of the Act in the absence of any incriminating material found during the search relatable to the concluded assessments on the date of search. The various additions made during the assessment years under consideration pertained to disallowance of preliminary expenses, expenses incurred for increase in share capital, disallowance on account of section 14A of the Act, disallowances on account of alleged bogus purchases etc. We find that the Ld. CITA granted relief to the assessee companies on the ground that no incriminating material has been found during the course of search with respect to the disallowances / additions made by the ld AO in the various Asst Years which are not abated and had become final in as much as the period for issue of notice u/s 143(2) of the Act had already elapsed for the respective assessment years and / or that the assessment orders u/s. 143(3) of the Act had already been passed.We find that Section 153A of the Act provides that where a search is initiated u/s 132 of the Act the ld AO shall "assess or reassess the total income of **six assessment years** immediately preceding the assessment year" relevant to the previous year in which the search is conducted or requisition is made. The 1st Proviso states that the ld AO shall "assess or reassess the **total income** in respect of each assessment year falling within such six assessment years", while the 2nd Proviso states that the assessment or reassessment relating to the said six assessment years "**pending**" on the date of initiation of the search u/s 132 of the Act shall

"**abate**". **It thus follows that assessments or reassessments which are not pending on the date of initiation of search shall not abate**. We find that the ld AR placed reliance on the following chart at the time of hearing which is reproduced hereinbelow for better understanding of the list of dates with various events:-

Chart showing assessment yars which have not abated and are final / concluded on the date of search in Rattanindia Group of Cases

Sr No	Particulars	Sinnar Thermal Power Ltd. (Rattanindia Nasik Power Ltd)		Rattanindia Power Ltd		IIC Limited		
1	Assessment Year	2011-12	2012-13	2012-13	2013-14	2011-12	2012-13	2013-14
2	Departmental Appeal No.	68/Mum/2020	69/Mum/2020	62/Mum/2020	63/Mum/2020	153/Mum/2020	154/Mum/2020	155/Mum/2020
3	Date of Search	13.07.2016	13.07.2016	13.07.2016	13.07.2016	13.07.2016	13.07.2016	13.07.2016
4	Original Return of Income was filed on	27.09.2011	30.03.2013	27.09.2012	29.11.2013	26.03.2012	25.02.2013	30.09.2013
5	Due date for issue of notice u/s 143(2) for framing assessment u/s 143(3)	30.09.2012	30.09.2013	30.09.2013	30.09.2014	30.09.2012	30.09.2013	30.09.2014
	(six months from the end of the financial year in which the return is furnished)							
6	Order passed u/s 143(3) / Intimation u/s. 143(1)	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Date of Order u/s 143(3) / Intimation u/s. 143(1)	10.01.2012	09.02.2015	30.03.2015	24.02.2016	31.03.2014	09.02.2015	28.03.2016
	Remark	Intimation u/s. 143(1)	Order u/s. 143(3)	Order u/s. 143(3)	Order u/s. 143(3)	Order u/s. 143(3)	Order u/s. 143(3)	Order u/s. 143(3)
	Page No Reference of the Paperbook	2 to 7	8 to 12	13 to 15	16 to 17	18 to 27	28 to 34	35 to 39
7	Status of Assessment on the date of	Concluded/Not Pending	Concluded/Not Pending	Concluded/Not Pending	Concluded/Not Pending	Concluded/Not Pending	Concluded/Not Pending	Concluded/Not Pending

	Search							

6.2. The various dates and events tabulated in the aforesaid table were not disputed by the revenue before us as they are borne out from the records available before us. At the cost of repetition, we find that the ld CIT(A) had deleted all the disallowances and additions made in the assessments framed u/s 153A of the Act for the Asst Years 2011-12 , 2012-13 and 2013-14 in the case of IIC Limited ; Asst Years 2011-12 & 2012-13 in the case of Sinner Thermal Power Limited (formerly known as Rattanindia Nasik Power Limited) and Asst Years 2012-13 and 2013-14 in the case of Rattanindia Power Limited, by giving a categorical finding that these assessments are concluded assessments and no incriminating materials relatable to such assessment years were found during the course of search. The ld DR before us was not able to bring any contrary evidence in this regard before us. We find that the ld DR before us vehemently argued that the provisions of section 153A of the Act does not mandate finding of incriminating materials during the course of search and hence they are not relevant for the purpose of framing assessment u/s 153A of the Act. He also stated that section 153A of the Act speaks about determination of total income and hence the ld AO has got every right to determine the total income , irrespective of existence of any incriminating material found during the course of search.We find that the *Hon'ble Jurisdictional High Court in the case of CIT vs Continental Warehousing (Corporation) Nhava Sheva Ltd reported in 374 ITR 645 (Bom)* on the impugned issue before us, had held as under:-

29. *We are not in agreement with Mr. Pinto that these observations are made in passing or that they are not binding on us because the essential controversy before the Bench was somewhat different. He urges that was only in relation to the legality and validity of the order of the Commissioner under section 263 of the IT Act. Had that been the case, the Division Bench was not required to trace out the history of section 153A of the IT Act and the power that is conferred thereunder. When the Revenue argued before the Division Bench that the power under section 153A can be invoked and exercised even in cases where the second proviso to sub-section (1) is not applicable that the Division Bench was required to express a specific opinion. The provision deals with those cases where assessment or reassessment, if any, relating to the assessment years falling within the period of six assessment years referred to in sub-section (1) of section 153A were pending. If they were pending on the date of the initiation of the search under section 132 or making of requisition under section 132A, as the case may be, they abate. It is only pending proceedings that would abate and not where there are orders made of assessment or reassessment and which are in force on the date of initiation of the search or making of the requisition. As that specific argument was canvassed and dealt with by the Division Bench and that is how it was called upon to interpret section 153A of the IT Act, then, each of the above conclusions rendered by the Division Bench would bind us.*

30. *Even otherwise, we agree with the Division Bench when it observes as above with regard to the ambit and scope of the powers conferred under section 153A of the Act. Since we are not required to trace out the history and we can do nothing better than to reproduce the observations and conclusions as above that we are not repeating the same. Even if the exercise of power under section 153A is permissible still the provision cannot be read in the manner suggested by Mr. Pinto. Not only the finalised assessment cannot be touched by resorting to those provisions, but even while exercising the power can be exercised where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after 31st March, 2003. There is a mandate to issue notices under section 153(1)(a) and assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made. Thus, the crucial words "search" and "requisition" appear in the substantive provision and the provisos. That would throw light on the issue of applicability of the provision. It being enacted to a search or requisition that its construction would have to be accordingly. That is the conclusion reached by the Division Bench in Murli Agro Products Ltd. (supra) with which we respectfully agree. These are the conclusions which can be reached and upon reading of the legal provisions in question.*

31. *We, therefore, hold that the Special Bench's understanding of the legal provision is not perverse nor does it suffer from any error of law apparent on the face of the record. The Special Bench in that regard held as under :*

> *"48. The provision under section 153A is applicable where a search or requisition is initiated after 31.5.2003. In such a case the AO is obliged to issue notice u/s 153A in respect of 6 preceding years, preceding the year in which search etc. has been initiated. Thereafter he has to assess*

or reassess the total income of these six years. It is obligatory on the part of the AO to assess or reassess total income of the six years as provided in section 153A(1)(b) and reiterated in the 1st proviso to this section. The second proviso states that the assessment or reassessment pending on the date of initiation of the search or requisition shall abate. We find that there is no divergence of views in so far as the provision contained in section 153A till the 1st proviso. The divergence starts from the second proviso which states that pending assessment or reassessment on the date of initiation of search shall abate. This means that an assessment or reassessment pending on the date of initiation of search shall cease to exist and no further action shall be taken thereon. The assessment shall now be made u/s 153A. The case of Ld. Counsel for the assessee is that necessary corollary to this provision is that completed assessment shall not abate. These assessments become final except in so far and to the extent as undisclosed income is found in the course of search. On the other hand, it has been argued by the Ld. Standing Counsel that abatement of pending assessment is only for the purpose of avoiding two assessments for the same year, one being regular assessment and the other being assessment u/s 153A. In other words these two assessments coalesce into one assessment. The second proviso does not contain any word or words to the effect that no reassessment shall be made in respect of a completed assessment. The language is clear in this behalf and therefore literal interpretation should be followed. Such interpretation does not produce manifestly absurd or unjust results as section 153A (i)(b) and the first proviso clearly provide for assessment or reassessment of all six years. It may cause hardship to some assesses where one or more of such assessments has or have been completed before the date of initiation of search. This is hardly of any relevance in view of clear and unambiguous words used by the legislature. This interpretation does not cause any absurd etc. results. There is no casus omissus and supplying any would be against the legislative intent and against the very rule in this behalf that it should be supplied for the purpose of achieving legislative intent. The submissions of the Ld. Counsels are manifold, the foremost being that the provision u/s 153A should be read in conjunction with the provision contained in section 132(1), the reason being that the latter deals with search and seizure and the former deals with assessment in case of search etc, thus, the two are inextricably linked with each other.

49. Before proceeding further, we may now examine the provision contained in sub-section (2) of section 153, which has been dealt with by Ld. Counsel. It provides that if any assessment made under sub-section (1) is annulled in appeal etc., then the abated assessment revives. However, if such annulment is further nullified, the assessment again abates. The case of the Ld. Counsel is that this provision further shows that completed assessments stand on a different footing from the pending assessments because appeals etc. proceedings continue to remain in force in case of completed assessments and their fate depends upon subsequent orders in appeal. On consideration of the provision and the

submissions, we find that this provision also makes it clear that the abatement of pending proceedings is not of such permanent nature that they cease to exist for all times to come. The interpretation of the Ld. Counsel, though not specifically stated, would be that on annulment of the assessment made u/s 153(1), the AO gets the jurisdiction to assess the total income which was vested in him earlier independent of the search and which came to an end due to initiation of the search.

50. The provision contained in section 132 (1) empowers the officer to issue a warrant of search of the premises of a person where any one or more of conditions mentioned therein is or are satisfied, i.e. - (a) summons or notice has been issued to produce books of account or other documents but such books of account or documents have not been produced, (b) summons or notice has been or might be issued, he will not produce the books of account or other documents mentioned therein, or (c) he is in possession of any money or bullion etc. which represents wholly or partly the income or property which has not been and which would not be disclosed for the purpose of assessment, called as undisclosed income or property. We find that the provision in section 132 (1) does not use the word "incriminating document". Clauses (a) and (b) of section 132(1) employ the words "books of account or other documents". For harmonious interpretation of this provision with provision contained in section 153A, all the three conditions on satisfaction of which a warrant of search can be issued will have to be taken into account.

51. Having held so, an assessment or reassessment u/s 153A arises only when a search has been initiated and conducted. Therefore, such an assessment has a vital link with the initiation and conduct of the search. We have mentioned that a search can be authorised on satisfaction of one of the three conditions enumerated earlier. Therefore, while interpreting the provision contained in section 153A, all these conditions will have to be taken into account. With this, we proceed to literally interpret to provision in 153A as it exists and read it alongside the provision contained in section 132(1).

52. The provision comes into operation if a search or requisition is initiated after 31.5.2003. On satisfaction of this condition, the AO is under obligation to issue notice to the person requiring him to furnish the return of income of six years immediately preceding the year of search. The word used is "shall" and, thus, there is no option but to issue such a notice. Thereafter he has to assess or reassess total income of these six years. In this respect also, the word used is "shall" and, therefore, the AO has no option but to assess or reassess the total income of these six years. The pending proceedings shall abate. This means that out of six years, if any assessment or reassessment is pending on the date of initiation of the search, it shall abate. In other words pending proceedings will not be proceeded with thereafter. The assessment has now to be made u/s 153A (1)(b) and the first proviso. It also means that only one assessment will

be made under the aforesaid provisions as the two proceedings i.e. assessment or reassessment proceedings and proceedings under this provision merge into one. If assessment made under sub-section (1) is annulled in appeal or other legal proceedings, then the abated assessment or reassessment shall revive. This means that the assessment or reassessment, which had abated, shall be made, for which extension of time has been provided under section 153B.

53. The question now is - what is the scope of assessment or reassessment of total income u/s 153A (1) (b) and the first proviso ? We are of the view that for answering this question, guidance will have to be sought from section 132(1). If any books of account or other documents relevant to the assessment had not been produced in the course of original assessment and found in the course of search in our humble opinion such books of account or other documents have to be taken into account while making assessment or reassessment of total income under the aforesaid provision. Similar position will obtain in a case where undisclosed income or undisclosed property has been found as a consequence of search. In other words, harmonious interpretation will produce the following results :-

(a) In so far as pending assessments are concerned, the jurisdiction to make original assessment and assessment u/s 153A merge into one and only one assessment for each assessment year shall be made separately on the basis of the findings of the search and any other material existing or brought on the record of the AO,

(b) in respect of non-abated assessments, the assessment will be made on the basis of books of account or other documents not produced in the course of original assessment but found in the course of search, and undisclosed income or undisclosed property discovered in the course of search.

54. It may be mentioned here that Ld. Counsel for All Cargo Global Logistics Ltd. was questioned about the scope of pending assessments as it was his contention that all six assessments are to be made, if necessary, on the basis of undisclosed income discovered in the course of search. He was specifically questioned about the jurisdiction of the AO to make original assessment along with assessment u/s 153A, merging into one. However he took an evasive view submitting that this question need not be decided in his case although the question of jurisdiction u/s 153A was vehemently pressed on account of which ground No.1 in the appeal for assessment year 2004-05 was admitted as additional ground. He also wanted the additional ground to be retained in case of any future contingency."

32. *We would be failing in our duty if we do not note the reliance placed by Mr. Pinto on the judgments rendered by the High Court of Delhi at New Delhi and the High Court of Karnataka. Mr. Pinto would submit that the above observations and conclusions of the Special Bench and reproduced by us are*

specifically disapproved in CIT v. Anil Kumar Bhatia [2012] 24 taxmann.com 98/211 taxman 453 (Delhi) by the Delhi High Court. We do not find this argument to be accurate. In Anil Kumar Bhatia (supra) as well the assessment involved the years 2000-01, 2002-03 and 2005-06. One of the questions and which was termed as substantial question of law was the correctness of the Tribunal's order holding that the Assessing Officer wrongly invoked section 153A of the IT Act. The facts as noted were that in the case of an individual assessee and who was carrying on business in the name and style of M/s. A.K. Traders, there was a search of his residence and business premises on 13th December, 2005 under section 132 of the Act. Pursuant to the search, the Assessing Officer issued notice under section 153A of the IT Act and called upon the assessee to file the return of income for the six years as envisaged in that section. Notices under section 142(1) and 143(2) alongwith a detailed questionnaire were issued in response to which the assessee submitted an explanation. After consideration thereof, the Assessing Officer made additions to the income returned in respect of the assessment years under consideration which included an amount of Rs.1,50,000/- given by the assessee as a loan to Smt. Mohini Sharma on 10th December, 2003. This information was made available but the loan was not reflected in the return of income filed by the assessee for the assessment year 2003-04. The Assessing Officer, therefore, concluded that this loan was given out of unaccounted income of the assessee. Accordingly, the same was added in the income of the assessee for the assessment year 2003-04 and an order was made to that effect. Against this addition, the appeal was preferred before the Commissioner of Income Tax contending, inter alia, that the seized paper on the basis of which the addition was made did not contain the signature of the assessee; that no loan was given to Mohini Sharma. There was no admission of the statement of Mohini Sharma to that effect and there was only a proposal. The Commissioner of Income Tax confirmed this addition in the Assessing Officer's order. In respect of assessment years 2004-05 and 2005-06 there were appeals before the Commissioner of Income Tax (Appeals) questioning the additions made in the assessment orders for those years. While disposing of these appeals, the Commissioner of Income Tax directed the Assessing Officer to assess the notional interest on the loan given to Mohini Sharma which addition he confirmed in his appellate order. These two orders of the Commissioner were carried in appeal to the Tribunal and thereafter the Delhi High Court noted the Tribunal's conclusions. It noted the arguments before the Tribunal and thereupon the Tribunal having deleted these additions and the notional interest, the matter was taken in appeal to the High Court of Delhi under section 260A of the IT Act by the Revenue.

***33.** The arguments, therefore, have been noted and from paragraphs 16, section 153A was analysed.*

***34.** Mr. Pinto heavily relied on paragraphs 18, 19 and 20 of the judgment of the Hon'ble High Court of Delhi. He also relied on paragraph 21 to contend that the Special Bench decision has not been approved by the High Court of Delhi.*

***35.** The Delhi High Court's judgment must be seen in the context of the essential controversy before it. Pertinently, that controversy arose because of a search*

being conducted at the residence and business premises of the assessee. Foundation of the action under section 153A being the search that the High Court of Delhi was required to consider the ambit and scope of the powers. Further, pertinently the Delhi High Court did not ignore any of the provisions. Those are correctly understood by the Delhi High Court. We do not see how and where the Delhi High Court disapproves the view taken by the Tribunal that its observations can be read torn from the context. Once these observations and noted by us from the paragraphs cited by Mr. Pinto are read as a whole and in entirety, it is not possible to agree with Mr. Pinto that the High Court of Delhi reached a conclusion different than the view taken by our Division Bench.

36. *Similar is the case with the Division Bench judgment of the High Court of Karnataka at Bangalore. There as well a real estate firm was the assessee. A return of income was filed and when an order under section 143(3) of the Act came to be passed on 31st December, 2010, for assessment year 2008-09 that a search took place in the premises of the assessee on 12th April, 2011. In the course of search, incriminating material leading to undisclosed income was seized. Therefore, the proceedings under section 153A of the Act calling upon the assessee to file return of income under section 153A(1)(a) came to be initiated by a notice dated 13th January, 2012. Return of income was filed pursuant to receipt of such notice and for six years as required by the provision. When this return was under consideration on 14th March, 2013, the Commissioner of Income Tax initiated proceedings under section 263 of the Act on the ground that the order dated 31st December, 2010 in relation to the return of income for assessment year 2008-09 and holding that the same is erroneous and prejudicial to the interest of the Revenue came to be passed. The assessee filed his objection but the Commissioner maintained his action under section 263. That is how the aggrieved assessee carried the matter in appeal to the Tribunal and before the Tribunal it was contended that once section 263 of the Act has been invoked during the pendency of proceedings under section 153A of the Act, then, that was impermissible. That was impermissible for the assessments including for the assessment year 2008-09 stand reopened. Once they are reopened, then, there is no order of assessment in force and in regard to which any action under section 263 of the IT Act can be initiated. It is in dealing with this argument and which was negatived by the Tribunal that all the observations of the High Court of Karnataka have been made. In paragraphs 5 and 6, the arguments have been noted and thereafter the provision has been reproduced. In paragraph 9, extensive reference has been made to the judgment in Anil Kumar Bhatia (supra) of the High Court of Delhi (supra) and then the following observations in paragraphs 10 and 11 are made :*

> *"10. Section 153A of the Acts start with a non obstante clause. The fetters imposed upon the Assessing Officer by the strict procedure to assume jurisdiction to reopen the assessment under Sections 147 and 148, have been removed by the non obstante clause with which sub section (1) of Section 153A opens. The time-limit within which the notice under Section 148 can be issued, as provided in Section 149 has also been made inapplicable by the non obstante clause. Section 151 which requires sanction to be obtained by the Assessing Officer by issue of notice to*

reopen the assessment under Section 148 has also been excluded in a case covered by Section 153A. The time-limit prescribed for completion of an assessment or reassessment by Section 153 has also been done away with in a case covered by Section 153A. With all the stops having been pulled out, the Assessing Officer under Section 153A has been entrusted with the duty of bringing to tax the total income of an assessee whose case is covered by Section 153A, by even making reassessments without any fetters, if need be. Therefore, it is clear even if an assessment order is passed under Section 143(1) or 143(3) of the Act, the Assessing Officer is empowered to reopen those proceedings and reassess the total income taking note of the undisclosed income, if any, unearthed during the search. After such reopening of the assessment, the Assessing Officer is empowered to assess or reassess the total income of the aforesaid years. The condition precedent for application of Section 153A is there should be a search under Section 132. Initiation of proceedings under Section 153A is not dependent on any undisclosed income being unearthed during such search. The proviso to the aforesaid section makes it clear the assessing officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years. If any assessment proceedings are pending within the period of six assessment years referred to in the aforesaid sub-section on the date of initiation of the search under Section 132, the said proceeding shall abate. If such proceedings are already concluded by the assessing officer by initiation of proceedings under Section 153A, the legal effect is the assessment gets reopened. The block assessment roped in only the undisclosed income and the regular assessment proceedings were preserved, resulting in multiple assessments. Under Section 153A, however, the Assessing Officer has been given the power to assess or reassess the "total income" of the six assessment years in question in separate assessment orders. The Assessing Officer is empowered to reopen those proceedings and reassess the total income, taking note of the undisclosed income, if any, unearthed during the search. He has been entrusted with the duty of bringing to tax the total income of an assessee whose case is covered by Section 153A, by even making reassessments without any fetters. This means that there can be only one assessment order in respect of each of the six assessment years, in which both the disclosed and the undisclosed income would be brought to tax. When once the proceedings are initiated under Section 153A of the Act, the legal effect is even in case where the assessment order is passed it stands reopened. In the eye of law there is no order of assessment. Re-opened means to deal with or begin with again. It means the Assessing Officer shall assess or reassess the total income of six assessment years. Once the assessment is reopened, the assessing authority can take note of the income disclosed in the earlier return, any undisclosed income found during search or and also any other income which is not disclosed in the earlier return or which is not unearthed during the search, in order to find out what is the "total income" of each year and then pass the assessment order. Therefore, the Commissioner by virtue of the power conferred under Section 263 of the Act gets no jurisdiction to initiate

proceedings under the said provision because the condition precedent for initiating proceedings under Section 263 is any order passed under the Act by the Assessing Officer is erroneous insofar as it is prejudicial to the interest of the revenue. Once the order passed by the Assessing Officer gets reopened, there is no order which can be said to be erroneous insofar as it is prejudicial to the interest of the revenue which confers jurisdiction on the Commissioner to exercise the power of the jurisdiction.

11. The Tribunal has proceeded on the assumption by virtue of the judgment of the special bench of the Mumbai, the scope of enquiry under Section 153A is to be confined only to the undisclosed income unearthed during search and if there is any other income which is not the subject matter of search, the same cannot be taken into consideration. Therefore, the revisional authority can exercise the power under Section 263. In the entire scheme of 153A of the Act, there is no prohibition for the assessing authority to take note of such income. On the contrary, it is expressly provided under Section 153A of the Act the Assessing Officer shall assess or reassess the "total income" of six assessment years which means the said total income includes income which was returned in the earlier return, the income which was unearthed during search and income which is not the subject matter of aforesaid two income. If the commissioner has come across any income that the assessing authority has not taken note of while passing the earlier order, the said material can be furnished to the assessing authority and the assessing authority shall take note of the said income also in determining the total income of the assessee when the earlier proceedings are reopened and that income also shall become the subject matter of said proceedings. In that view of the matter the reasoning given by the Tribunal is not justified. The Commissioner did not have jurisdiction to initiate any proceedings under Section 263 of the Act."

37. *We do not see as to how while allowing the appeal of the assessee and setting aside the order of the Commissioner under section 263 could the judgment be said to be laying down a proposition and as canvassed by Mr. Pinto. True it is that the assessment which has to be made in pursuance of the notice is in relation to the six years. An order will have to be made in that regard. While making the order the income or the return of income filed for all these assessment years is to be taken into account. A reference will have to be made to the income disclosed therein. However, the scope of enquiry, though not confined as held by the High Court of Karnataka, it essentially revolves around the search or the requisition under section 132A as the case may be. We do not find anything in these observations and reproduced above which would enable us to conclude that the Division Bench judgment of this Court in the case of Murli Agro Products Ltd. (supra) requires reconsideration or does not lay down a correct principle of law. We cannot, therefore, accede to the submissions of Mr. Pinto and revisit any of the conclusions rendered by the Division Bench of this Court.*

38 to 48. ……..

> ***49.*** *We, therefore, dismiss the Revenue appeals and answer the substantial questions of law against the Revenue and in favour of the assessee. There shall be no order as to costs.*

6.2.1. We further find that against the aforesaid decision of Hon'ble Bombay High Court, the revenue had preferred Special Leave Petition (SLP) before the Hon'ble Supreme Court only on merits of the issue and not on the legality of making additions in the absence of incriminating material in the assessments u/s 153A of the Act . This is the main contention raised by the revenue in its appeals for various Asst Years as listed above as far as this legal issue is concerned.We find that the ld AR rightly brought to our notice that *(SLP No. 18506/2015) Civil Appeal No. 8546 of 2012 in the case of CIT vs Continental Warehousing Corporation (Nhava Sheva) Ltd* was directed to be listed along with *Civil Appeal No. 8900 of 2012.* We find that the *Civil Appeal No. 8900 of 2012 was disposed of by the Hon'ble Supreme Court in the case of CIT vs Container Corporation of India Ltd reported in 93 taxmann.com 31 (SC)* wherein only the issue of claim of deduction u/s 80IA of the Act on merits was subject matter of adjudication. Hence the decision of Hon'ble Bombay High Court in the case of Continental Warehousing Corporation (Nhava Sheva) Ltd in 374 ITR 645 on the aspect of necessity of incriminating material for making additions in concluded assessments u/s 153A of the Act was not even challenged by the revenue before the Hon'ble Supreme Court and accordingly the decision of Hon'ble Bombay High Court in 374 ITR 645 on legality, had attained finality.

6.2.2. Moreover, we find that the *Hon'ble Supreme Court in the case of CIT vs. Sinhgad Technical Education Society reported in 397 ITR 344 (SC)* has already dealt with the issue under consideration. In the aforesaid

case, it was held that in order to initiate a valid assessment proceeding u/s 153C of the Act, the seized document must be incriminating in nature and must relate to the Assessment Year whose assessment is sought to be reopened. Hence, if no incriminating material is found during the course of search in respect of an assessment year then the AO does not have any jurisdiction to invoke the provisions of section 153C of the Act. Though this decision was rendered in the context of provisions of section 153C of the Act, the principle involved thereon could very well be applied to the assessments framed u/s 153A of the Act.

6.2.3. In view of the above observations and respectfully following the various judicial precedent relied upon hereinabove, it could be safely concluded that no addition / disallowance could be validly made in the assessments framed u/s 153A of the Act in respect of concluded assessments on the date of search, unless any incriminating materials were found during the course of search relatable to such assessment year, enabling the ld AO to disturb the earlier stand taken by him in either in the intimation u/s 143(1) of the Act or in the scrutiny assessment u/s 143(3) of the Act, as the case may be. Hence the issue framed hereinabove in Para 5.1. (A) is decided in favour of the assessee. Accordingly, the following grounds in the revenue appeals in the case of following assessees are dismissed :-

Sr. No.	**Particulars**	**A. Y.**	**Grounds of Appeal Nos.**
1.	M/s. IIC Limited	2011-12	1 to 5

2.		2012-13	1 to 4
3.		2013-14	1 to 6
4.	M/s. Sinnar Thermal Power Ltd (formerly known as Rattanindia Nasik Power Limited)	2011-12	1 to 5
5.		2012-13	1 to 5
6.	M/s. Rattanindia Power Limited	2013-14 2012-13	1 to 3 1 to 3

7. In the result, the appeals of the revenue, in ITA Nos. 62 & 63/Mum/2020 for the Asst Years 2012-13 & 2013-14 respectively in the case of Rattanindia Power Limited are dismissed ; in ITA Nos. 68 & 69/Mum/2020 for the Asst Years 2011-12 & 2012-13 respectively in the case of Sinnar Thermal Power Ltd and in ITA Nos. 153 to 155/Mum/2020 for the Asst Years 2011-12, 2012-13 & 2013-14 respectively in the case of IIC Limited, are dismissed. Accordingly, the issue framed in para 5.1. (A) above is decided in favour of the assessee.

8. Disallowance u/s 14A of the Act read with Rule 8D(2) of the Income Tax Rules (in short 'Rules') under normal provisions of the Act

We find that the ld AO had resorted to make disallowance u/s 14A of the Act read with Rule 8D(2) of the Rules in the case of IIC Limited in the Asst Years 2013-14 to 2017-18 ; in the case of Sinnar Thermal Power Limited (formerly known as Rattanindia Nasik Power Ltd.) in the Asst Years 2011-12, 2012-13, 2015-16 to 2017-18 and in the case of

Rattanindia Power Ltd. in the Asst Years 2012-13 to 2017-18. We find that the assessee companies have earned exempt income during the assessment years under consideration. We find that the claim of the assessee companies is that they have not incurred any direct or indirect expenditure for earning the aforesaid income. However, despite the same, the assessee companies had suo-moto made disallowance u/s. 14A by identifying certain expenses that could be made attributable for the purpose of earning exempt income, in the returns of income filed by them for various assessment years. The dividend income earned by the assessee companies, suo-moto disallowance made by the assessee companies and the disallowance made by the ld AO is tabulated hereunder:

Sr. No.	**Assessee Company**	**Assessment Year**	**Dividend Income Earned by the Assessee Amount (Rs.)**	**Suo-moto Disallowance u/s. 14A made by the assessee company Amount (Rs.)**	**Disallowance u/s. 14A calculated by the Assessing Officer Amount (Rs.) before reducing the disallowance made by the Assessee**
1.	**IIC Limited**	2013-14	14,09,664/-	Nil	7,56,78,510/-
2.		2014-15	3,09,015/-	Nil	11,71,03,509/-
3.		2015-16	36,11,905/-	Nil	5,58,50,389/-
4.		2016-17	15,76,822/-	15,768/-	2,96,35,676/-
5.		2017-18	29,62,700/-	6,33,424/-	2,36,03,712/-
6.	**Sinnar**	2011-12	9,39,343/-	4,23,754/-	2,53,18,569/-

7.	**Thermal Power Limited (formerly known as Rattanindia Nasik Power Ltd.)**	2012-13	15,38,52,428/-	4,23,684/-	1,28,13,395/-
8.		2015-16	23,54,779/-	23,548/-	9,38,680/-
9.		2016-17	1,05,523/-	1,055/-	31,10,474/-
10.		2017-18	68,69,000/-	24,80,674/-	1,33,02,861/-
11.	**Rattanindia Power Ltd.**	2012-13	21,82,81,554/-	14,99,842/-	9,00,64,920/-
12.		2013-14	3,36,87,651/-	11,93,075/-	10,38,71,224/-
13.		2014-15	1,04,73,474/-	19,21,500/-	37,40,48,735/-
14.		2015-16	1,39,94,301/-	21,13,760/-	90,11,10,498/-
15.		2016-17	1,67,82,861/-	21,83,742/-	2,23,79,62,970/-
16.		2017-18	65,02,000/-	6,33,424/-	31,57,94,799/-

8.1. We find that the ld CITA in principle upheld the disallowance made by the ld AO but gave a direction to restrict the same to the extent of exempt income, as he was of the opinion, that the disallowance cannot exceed the exempt income. We find that the ld CITA also directed the ld AO to consider only those investments which had actually yielded exempt income while working out the disallowance. Pursuant to the partial relief granted by the ld CITA, both the assessee as well as the revenue are in appeals before us for various assessment years for various companies, with regard to the issue of disallowance u/s 14A of the Act read with Rule 8D(2) of the Rules under normal provisions of the Act. We are any way not concerned with the disallowance made for the Asst Years 2012-13 & 2013-14 in the case of Rattanindia Power Ltd ; Asst Years 2011-12 & 2012-13 in the case of Sinnar Thermal Power Limited (formerly known as Rattanindia Nasik Power Ltd) and Asst Year 2013-14 in the case of IIC Ltd, as it has already been held hereinabove that they being unabated

assessments and there is no incriminating material found during the course of search. Hence our finding with regard to the issue of disallowance u/s 14A of the Act read with Rule 8D(2) of the Rules under normal provisions of the Act is confined to other remaining assessment years only.

8.2. We find that the main plea of the ld AR before us was that the ld AO had not recorded any satisfaction as to how the suo moto disallowance made by the assessee companies voluntarily in the return of income was incorrect by pointing out certain defects thereon. It was argued that the ld AO ought to have arrived at the satisfaction having regard to the books of accounts of the assessee companies which is a clear mandate of law provided in Section 14A(2) of the Act read with Rule 8D(1) of the Rules. It was vehemently argued that without recording such objective satisfaction with cogent reasons, the ld AO cannot resort to proceed directly with the computation mechanism provided in Rule 8D(2) of the Rules. Reliance in this regard was placed on the decision of *Hon'ble Supreme Court in the case of Maxopp Investment Ltd vs CIT reported in 402 ITR 640 (SC)*. Per Contra, the ld DR argued that the ld AO had duly reviewed the Note 23 to the financial statements and proceeded to apply Rule 8D thereon , which clearly tantamounts to recording dissatisfaction of the ld AO on the claim made by the assessee companies. It was further argued by the ld AR that the assessee companies were flooded with sufficient own and interest free funds for making investments and that no borrowed funds were utilised for making investments. Accordingly, it was pleaded that no disallowance of interest under Rule 8D(2)(ii) of the Rules could have been made in the instant case. Reliance in this regard was placed on the decision of *Hon'ble Jurisdictional High Court in the case of HDFC Bank reported in 366 ITR 505 (Bom)*.

8.3. We find that the ld AR had furnished the following chart which clearly provides the availability of interest free funds with the assessee companies for various assessment years as under:-

Sr. No.	**Assessee Company**	**Assessment Year**	**Position of the shareholders fund as on 31st March Year End Amount (Rs.)**	**Investment in Exempt Income Yielding Investment on 31st March Year End Amount (Rs.)**
1.	IIC Limited	2013-14	644,22,79,468/-	Nil
2.		2014-15	624,78,23,454/-	Nil
3.		2015-16	643,28,75,173/-	Nil
4.		2016-17	644,37,17,183/-	Nil
5.		2017-18	644,31,90,000/-	Nil
6.	Sinnar Thermal Power Limited (formerly known as Rattanindia Nasik Power Ltd.)	2011-12	710,93,64,000/-	Nil
7.		2012-13	1240,98,56,511/-	12,50,00,000/-
8.		2015-16	1963,00,67,083/-	Nil
9.		2016-17	2006,27,04,525/-	Nil
10.		2017-18	2022,73,59,000/-	Nil
11.	Rattanindia Power Ltd.	2012-13	4235,56,84,664/-	7,28,53,56,060/-
12.		2013-14	5355,93,64,407/-	Nil
13.		2014-15	5290,27,70,137/-	Nil
14.		2015-16	5314,50,59,274/-	Nil
15.		2016-17	5486,86,46,299/-	Nil
16.		2017-18	4957,95,96,530/-	Nil

8.3.1. The aforesaid chart when corroborated with the audited financial statements, which are part of the paper books filed before us, clearly

prove that the assessee companies were having sufficient own funds in its kitty for making investments and hence by placing reliance on the decision of Hon'ble Jurisdictional High Court in the case of HDFC Bank reported in 366 ITR 505 (Bom), there cannot be any disallowance of interest under Rule 8D(2)(ii) of the Rules.

8.4. We are in complete agreement with the arguments advanced by the ld AR that the ld AO had not recorded any objective satisfaction with cogent reasons for rejecting the suo moto disallowance made by the assessee companies. The basis of suo moto disallowance of expenses u/s 14A of the Act was duly submitted before the lower authorities by the assessee companies. We find tha the ld AO had rejected the same and had simply stated that he is not satisfied with the suo moto disallowance made by the assessee, without adducing any reasons. Hence the decision of Hon'ble Supreme Court in the case of Maxopp Investment reported in 402 ITR 640 (SC) clearly supports the case of the assessee, wherein it was held that :-

> ***41.*** *Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO.*

8.5. We further find that the Co-ordinate Bench of this Tribunal in the case of

Arnav Gruh Ltd. vs. DCITreported in 168 ITD 518 (Mum.), wherein this Tribunal has held that Assessing Officer was not justified in making disallowance under s. 14A r/w r. 8D without recording his satisfaction as mandated under s. 14A of the Act read with Rule

8D(1) that the claim of assessee was not acceptable. The relevant portion of the order is reproduced hereunder for ready reference:

> *"8. We have heard the rival contentions and perused the material on record in the context of relevant statutory provisions as contained under s. 14A r/w r. 8D. As could be seen from the factual matrix of the case, the assessee in the relevant previous year has earned interest income from the capital invested in the joint venture which has been offered to tax in the return of income filed. That besides, the assessee has shown his portion of the share in the loss suffered by the joint venture during the year. It is also a fact that assessee has suo-motu disallowed an amount of Rs. 1,08,00,000 under s. 14A of the Act in asst. yr. 2009-10. In the course of assessment proceedings, in response to the query raised by the AO, the assessee has justified the disallowance made by it under s. 14A through detailed submissions. However, the AO except recording a vague and general observation that the submissions of the assessee was not found tenable has not recorded any satisfaction as to why the claim of the assessee with regard to the disallowance made by it under s. 14A is not correct having regard to its books of account. Sec. 14A(2) of the Act which has been introduced to the statute w.e.f. 1st April 2007 by Finance Act, 2006 mandates recording of satisfaction by the AO on the correctness of assessee's claim having regard to its accounts. Even, r. 8D(1) also postulates similar recording of satisfaction by the AO. The Hon'ble Jurisdictional High Court in Godrej & Boyce Mfg. Co. Ltd. vs. Dy. CIT &Anr. (2010) 234 CTR (Bom) 1 : (2010) 43 DTR (Bom) 177 : (2010) 328 ITR 81 (Bom) has held that recording of satisfaction under s. 14A(2) of the Act is a sin qua non for making disallowance of expenditure attributable to earning of exempt income. The Hon'ble Delhi High Court in case of Maxopp Investment Ltd. vs. CIT ITA No. 687 of 2009 has also expressed similar view. Undisputedly, in the facts of the present case, the AO has not recorded any satisfaction as per the mandate of s. 14A(2) r/w r. 8D(1). ……. That being the case, the AO could not have done any further disallowance under s. 14A r/w r. 8D."*

8.6. We also find from the perusal of the aforesaid factual chart that the disallowance u/s 14A of the Act had been made in excess of the exempt income itself for the various Asst Years for all the assessees, except in the case of Sinner Thermal Power Limited (formerly known as Rattanindia Nasik Power Limited) for the Asst Years 2012-13 and 2015-16 and in the case of Rattanindia Power Limited for the Asst Year 2012-13, which is in gross violation of the principles laid down by the Hon'ble Apex Court in the case of Maxopp Investment reported in 402 ITR 640 (SC). Further

we find that the assessee companies are also having sufficient interest free funds in its kitty which would source the investments made by the assessee and hence in any case, there could be no disallowance of interest under second limb of Rule 8D(2) of the Rules. Reliance in this regard has been rightly placed on the decisions of Hon'ble Jurisdictional High Court in the case of Reliance Utilities and Power Limited reported in 313 ITR 340 (Bom) ; HDFC Bank Ltd reported in 366 ITR 505 (Bom) and 383 ITR 529 (Bom). With regard to Asst Year 2017-18 is concerned, we find that the ld AO had resorted to compute the disallowance u/s 14A of the Act read with Rule 8D(2) of the Rules by not applying the revised computation mechanism provided in the said rule with effect from 2.6.2016.

8.7. Respectfully following the aforesaid decisions, we hold that the ld AO grossly erred in making disallowance u/s 14A of the Act read with Rule 8D(2) of the Rules without recording the mandatory satisfaction in terms of section 14A(2) of the Act read with Rule 8D(1) of the Rules. **Hence the suo moto disallowance of expenses, wherever made by the assessee, voluntarily in the return of income alone would survive.** Similarly, the principle of recording objective satisfaction with cogent reasons would squarely apply for cases falling under section 14A(3) of the Act also , where assessee claims that no expenditure was incurred for earning exempt income as was the facts in the case of IIC Limited before us. The decision rendered for other cases i.eRattanindia Power Limited and Sinner Thermal Power Ltd on the non-recording of objective satisfaction with cogent reasons, would squarely apply to the similar issue in the case of IIC Limited.

8.8. The grounds raised by the assessee as well as by the revenue on the issue of disallowance u/s 14A of the Act under normal provisions of the Act (issue framed in para 5.1 (B) above) are disposed off in the aforementioned terms.

9. Disallowance u/s 14A of the Act while computing book profits u/s 115JB of the Act

We find that the ld AO had resorted to make disallowance u/s 14A of the Act read with Rule 8D(2) of the Rules while computing book profits u/s 115JB of the Act, in the case of IIC Limited in the Asst Years 2013-14 to 2017-18 ; in the case of Sinnar Thermal Power Limited (formerly known as Rattanindia Nasik Power Ltd.) in the Asst Years 2011-12, 2012-13, 2015-16 to 2017-18 and in the case of Rattanindia Power Ltd. in the Asst Years 2012-13 to 2017-18. We find that the assessee companies have earned exempt income during the assessment years under consideration. We find that the claim of the assessee companies is that they have not incurred any direct or indirect expenditure for earning the aforesaid income. However, despite the same, the assessee companies had suo-moto made disallowance u/s. 14A by identifying certain expenses that could be made attributable for the purpose of earning exempt income, in the returns of income filed by them for various assessment years.

9.1. We find that the ld CITA had deleted the disallowance u/s 14A of the Act while computing book profits u/s 115JB of the Act by following the order of the Special Bench of Delhi Tribunal in the case of ACIT vs Vireet Investments Pvt Ltd reported in 165 ITD 27. Pursuant to the relief granted by the ld CITA, the revenue is in appeal before us for various assessment years for various companies. We are any way not concerned with the disallowance made for the Asst Years 2012-13 & 2013-14 in the

case of Rattanindia Power Ltd ; Asst Years 2011-12 & 2012-13 in the case of Sinnar Thermal Power Limited (formerly known as Rattanindia Nasik Power Ltd) and Asst Year 2013-14 in the case of IIC Ltd, as it has already been held hereinabove that they being unabated assessments and there is no incriminating material found during the course of search. Hence our finding with regard to the issue of disallowance u/s 14A of the Act while computing the book profits u/s 115JB of the Act is confined to other remaining assessment years only.

9.2. We find that the Special Bench of Delhi Tribunal in the case of Vireet Investments reported in 165 ITD 27 referred to supra had categorically held that the computation mechanism provided in Rule 8D(2) of the Rules would not apply for making disallowance in terms of clause(f) of Explanation (1) to section 115JB(2) of the Act. But it no where restricted the ld AO to identify the actual expenses incurred for the purpose of earning exempt income which has to be disallowed in terms of clause (f) of Explanation (1) to section 115JB(2) of the Act. **We find that the assessee itself had made suo moto disallowance of expenses by identifying the actual expenses incurred thereon which were attributable for the purpose of earning exempt income. These expenses voluntarily disallowed by the assessee in the normal computation should be treated as actual expenditure and be considered for disallowance in terms of clause (f) of Explanation (1) to section 115JB (2) of the Act, wherever disallowance has been made by the assessee. But in the case of IIC Limited, there was no voluntary disallowance of expenses made by the assessee in the returns of income for the Asst Years 2014-15 and 2015-16. Hence we direct the ld AO to identify the actual expenditure incurred thereon, if any, for the purpose of earning**

exempt income in the similar fashion as was done in the case of other two assessee M/s. Rattanindia Power Limited for the Asst Years 2014-15 to 2017-18. In any case, the said disallowance shall not exceed the exempt income for the respective years. This would meet the ends of justice in our considered opinion. However, for the Asst Year 2013-14 in the case of IIC Limited, no disallowance u/s 14A of the Act could be made as it falls in unabated assessment year and we have already held that no incriminating material was found during search relatable to that assessment year.

9.3. The grounds raised by the revenue on the issue of disallowance u/s 14A of the Act while computing book profits u/s 115JB of the Act (issue framed in para 5.1 (C) above) are disposed off in the aforementioned terms.

10. Addition towards cash found during the course of search u/s 69A of the Act

We find that this addition towards cash found during the course of search was made in the hands of IIC Limited for the Asst Year 2017-18. Admittedly this addition has been made u/s 69A of the Act by the ld AO. The brief facts of this addition are that during the course of search conducted on the assessee, cash amounting to Rs. 1,81,18,710/- was found at the office premises *'5th Floor, East Wing, Tower-B, Worlmark -1, Aerocity, New Delhi'* of the assessee and various other group companies. **It was submitted by the assessee company that the said premises was shared by 100 other group companies and the admitted position of cash in hand combined was of Rs.**

3,66,94,809/- which was in excess of the cash found at the said premises. That cash amounting to Rs. 33,39,000/- was also found at the residence of Mr. Hitendar Rana, who is a director is various entities of Rattanindia Group. He was responsible for handling the finance, taxation and other administration in the group. The cash amounting to Rs. 33,00,000/- was kept at his residence for safe keeping and the balance amount of Rs. 39,000/- belonged to him. Further, with respect to the same, an addition of Rs. 1,81,18,710/- was made u/s. 69A of the Act by the ld AO with respect to cash found of Rs. 1,81,18,710/- found at the premises of Aerocity office of M/s. IIC Limited. The assessee company had produced the following documentary evidences positions of cash in hand of all the group companies before the ld AO in support of its contention:

i. List of various companies of Rattanindia Group wherein Mr. Hitendra Rana was a director – enclosed in page 1350 of the paper book 1C.
ii. Copy of cash book from 01.04.2016 to 13.07.2016 of the various group companies – enclosed in pages 1351 to 1432 of the paper book 1C.
iii. List of all group companies showing their cash-in-hand as on 13.07.2016 i.e. the date of search.

10.1. We find that the ld AO had duly acknowledged the receipt of all these documents in his assessment order and in para 4.1. of his order had even stated that the cash balance as per the books of accounts, on the date of search, in the hands of the various group companies was Rs. 3,66,94,809/-. Therefore, it was an admitted fact that the cash balance as per the books of accounts was more than sufficient to explain the cash-in-hand found during the course of search and seizure action. Strangely, we

find that the ldAO hadalleged that that the difference between the cash in hand as per RattanIndia Group of companies as on the date of search and cash found at the Aerocity office premises was a negative difference. This inference drawn by the ld AO is factually incorrect as could be seen from the aforesaid details submitted by the assessee that the cash balance as per books of accounts on the date of search of various group companies of Rattanindia was Rs 3,66,94,809/-. It is not in dispute that the same office premises (i.eAerocity office, being only one commercial / registered / correspondence office) is being used by 100 companies in the group and hence it would be practicable to hold the cash balance in different locations thereon including keeping the cash balance in the premises of the director for safe custody. The cash found during search was only Rs 1,81,18,710/- as against Rs 3,66,94,809/- found in its books of accounts. While this is so, there can only be a positive difference and not negative difference as observed by the ld AO in his order.

10.2. We find that the ld AO had contended that the bundles of money found at the Aerocity office had staples on them while RBI directives prohibited banks from stapling notes and thus the money was not earned through regular banking channels. He had also contended that the bundles were wrapped in slips on which certain notings were made. These are absolutely irrelevant observations for the purpose of assessment of income under the Act. The department is not here to sermonise how a taxpayershould keep its currency.What is relevant is whether the cash found during the course of search has been duly accounted by the assessee and its group companies sharing the common office.

10.3. We find that the ld CITA had rightly appreciated the contentions of the assessee and granted relief to the assessee in respect of addition made u/s 69A of the Act in respect of cash found during the course of search. The observations of the ld CITA could be summarised as under:-

i. A sum of Rs. 1,81,18,710/- was found from the Aerocity premises of the appellant company, which is also shared & used by over 100 other group companies.

ii. Admittedly, the cash position of the group companies across all premises was Rs. 3,66,94,809/- which is in excess of the cash found at the Aerocity office premises.

iii. Thus, the finding of the ld AO that there existed a negative difference in the cash in hand and cash found is factually incorrect, as the difference was positive.

iv. For explaining the source of cash found at the Aerocity office, the assessee company had produced the positions of cash-in-hand of all companies using the premises and the same has also been accepted by the ld AO.

v. A perusal of section 69A of the Act will make it clear that the section primarily requires recording of the money in the books of accounts of an assessee. In the case of the assessee, the said requirement has been met inasmuchas the money found was duly accounted in the books of accounts of each company which used the Aerocity office.

vi. In light of the above, the contentions of the assessee are accepted and the cash found at the Aerocity office and the residential premises of the director are considered as explained.

10.4. In view of the above, we hold that the ld CIT(A) had rightly granted relief to the assessee in the instant case , on which , we do not find any infirmity. Accordingly, the issue framed in para 5.1 (D) hereinabove is decided in favour of the assessee.

11. Disallowance of write off of advance given to subsidiary

We find that the ld AO had disallowed the claim of write off of advance given to subsidiary company M/s Indiabulls CSEB Bhaiyathan Power Limited by Rattanindia Power Limited for the Asst Years 2013-14 and 2014-15. We find that this was deleted by the ld CITA for both Asst Years 2013-14 and 2014-15, against which, the revenue is in appeals before us. We are any way not concerned with the deletion of disallowance made for the Asst Year 2013-14 in the case of Rattanindia Power Ltd, as it has already been held hereinabove that it being unabated assessment, and there is no incriminating material found during the course of search. Hence our finding with regard to the issue of disallowance of write off of advance given to subsidiary company is confined to Asst Year 2014-15 only herein.

11.1. We find that the assessee company M/s. Rattanindia Power Limited had given a business advance of Rs. 79,02,59,727/- to its subsidiary M/s. Indiabulls CSEB Bhaiyathan Power Limited in the earlier years. On the legal advice received by the assessee company, the amount of Rs. 27,12,44,950/- for the Asst Year 2013-14 and Rs. 21,26,79,190/- in the Asst Year 2014-15 was considered to be irrecoverable and written off by the assessee company. We find that the assessee had submitted that it had provided a business advance to its subsidiary company for expansion of its business through the subsidiary by setting up of a thermal power

plant in Chhattisgarh. In this regard, the assessee company drew the attention of the ld AO in drawing reference to its Memorandum of Association, wherein it has been clearly stated in the 'Main Objects' that the company is to undertake or carry out on its own or through any other entity the business of generating, developing, transmitting, distributing, trading and supplying all forms of electrical power, energy from any source whatsoever. Hence, the act of the assessee company of granting advance to the subsidiary for setting up a thermal power plant through the said subsidiary was within the objects for which the assessee company was incorporated. Accordingly, the assessee pleaded that the advance was given by it in its normal course of business. The relevant portion of the Memorandum of Association is reproduced hereunder for ready reference:

"The main objects to be pursued by the company on its incorporation are:

1. ***To promote, undertake, carry on either on its own or through any other entity*** *or to enter into agreements, contracts, partnerships, alliance or any other entity for technical, financial and operational assistance or sharing of the profits / losses with any person / body / bodies / corporate incorporated in India or abroad either under a strategic alliance or joint venture or any other arrangement in India or any part of the world,* ***the business of generating, developing, transmitting, distributing, trading and supplying all forms of electrical power / energy from any source whatsoever*** *and to construct, lay down, establish, fix and carry out necessary power stations, cables, wires, lines, accumulators, lamps and works and to carry on the business of electrical and mechanical engineers, traders, suppliers of electricity for the purposes of light, heat, motive power or otherwise and manufacturers of and dealers in apparatus and things required for or capable of being used in connection with the generation, distribution, trading, supply, accumulation and employment of electricity, galvanism, magnetism or otherwise ……. "*

11.2. We find that the assessee company also submitted that the inter-company agreement entered into by the assessee company with its

subsidiary company would show that it was the intention of the assessee company to advance to the subsidiary and the purpose for which such advance was to be utilised. The said amount was considered to be irrecoverable since the subsidiary company was not able to take of its project due to rejection from Ministry of Environment & Forest and it became evident that the project will not be implemented. The copy of letter dated 15.10.2010 was placed on record from the Ministry of Environment & Forests (FC Section) has in para 2 to 5 observed that ***'after discussing the proposal in detail, the FAC did not recommend the proposal as number of trees to be felled is very high, which does not justify diversion from the conservation point of view.'*** This is enclosed in pages 802 to 805 of the paper book IB filed before us. In view of the same, the management of the assessee company obtained a legal advice that out of Rs. 79,02,59,727/-, an amount of Rs. 27,12,44,950/- in Asst Year 2013-14 and an amount of Rs. 21,26,79,190/- in the Asst Year 2014-15 would be irrecoverable and the same should be written off. We find that the assessee submitted that the write off ought to be allowed as an expenditure since the debt given to the subsidiary was in the nature of business debt. It was an act in furtherance of its set object and accordingly considered as an advance in the routine course of business of the assessee company. Accordingly these sums were written off in the books of accounts as irrecoverable business advance in the respective assessment years and claimed as business loss by the assessee company in the return of income.

11.3. Before the ldAO, it was prayed by the assessee company that factually the assessee company had suffered a loss and the same ought to be allowed as a 'loss allowable under the head business or profession' or alternatively as a capital loss. We find that the ld AO disallowed the

business loss claimed by the assessee company for the Asst Years 2013-14 and 2014-15 and did not allow the same as capital loss as well.The said disallowance was challenged by the assessee company before the Ld. CIT(A). We find that the ld CIT(A) had granted relief to the assessee on merits of the case for the Asst Year 2014-15 by duly appreciating the aforesaid contentions of the assessee. We find that no relief has been granted by the ld CIT(A) for the Asst Year 2014-15 on the legal issue u/s 153A of the Act for want of incriminating material, as the same was not pursued by the assessee before the ld CIT(A) for the Asst Year 2014-15.

11.4. In the factual backdrop of the case, let us look into the grounds raised by the revenue for the Asst Year 2014-15 contesting the deletion of disallowance in this regard. For the sake of convenience, the grounds raised by the revenue for the Asst Year 2014-15 in ITA NO. 64/Mum/2020 in the case of Rattanindia Power Limited with regard to this issue are reproduced hereunder:-

> *"3. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in deleting the addition made on account of disallowance of advances written off, relying upon a decision of the Hon'ble Bombay High Court in the case of Continental Warehousing (Nhava Sheva) Ltd despite the fact that the Hon'ble Supreme Court has admitted department's SLP vide order dated 12.10.2015 in Civil Appeal No. 18506/2015 reported in 64 taxmann.com 34 (SC) against the Bombay High Court order in the above said case.*
> *4. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in holding that in unabated cases, addition(s) on any issue can be made only on the basis of incriminating material found during the search action."*

11.5. As stated earlier, the ld CIT(A) had granted relief by deleting the disallowance made on account of write off of irrecoverable business advance given to the subsidiary allowing it to be a business loss , on merits of the case. We find that the revenue had not raised any ground before us contesting the deletion of disallowance by the ld CIT(A) on

merits. As we have already stated earlier, the assessee had not pursued the legal issue u/s 153A of the Act before the ld CIT(A) for the Asst Year 2014-15 and no relief has been granted by the ld CIT(A) on the same. **Therefore, the aforesaid ground raised by the revenue for the Asst Year 2014-15 in ITA No. 64/Mum/2020 becomes infructuous as not emanating from the records. Accordingly, the grounds raised by the revenue in this regard deserve to be dismissed. The issue framed in Para 5.1 (E) above is decided in favour of the assessee.**

12. Disallowance of alleged bogus expenditure on protective basis in the case of IIC Limited and disallowance of depreciation on alleged bogus expenditure capitalised on substantive basis

We find that an addition has been made in the hands of IIC Limited with respect to alleged bogus expenditure on protective basis and in the case of RattanindiaPower Limited, addition has been made on substantive basis by disallowing the depreciation component thereon on the alleged bogus expenditure.

12.1. Infact similar disallowances were also made in the case of IIC Limited for the Asst Years 2011-12, 2012-13 & 2013-14 on alleged bogus expenditure on protective basis. However, the same need not be adjudicated herein as we have already held that the Asst Years 2011-12, 2012-13 & 2013-14, being concluded assessments on the date of search, in the absence of any incriminating material found during search, no disallowance / addition could be made relatable to those assessment years in the assessments framed u/s 153A of the Act. Hence our

findings and observations are given only for other remaining assessment years before us.

12.2. We find that the ld AO had made the aforesaid disallowance on account of bogus expenditure by alleging that the transactions had by the assessee company i.e. IIC Limited with the following five vendors were not genuine :-

Sr No	**Name of the contractor/ service provider**	**Amount paid in Financial Years (Rs in Crores)**						**Total**
		2010-11	**2011-12**	**2012-13**	**2013-14**	**2014-15**	**2015-16**	
1	M/s Shri Ram Builders						25.48	25.48
2	M/s Ruby Constructions				2.39	1.70		4.89
3	M/s Varun Earth Movers	2.02		0.86				2.88
4	M/s J K Constructions		3.16	2.08				5.18
5	M/s Shree Infra					14.54	14.69	29.23
	Total	**2.02**	**3.16**	**2.94**	**2.39**	**16.24**	**40.17**	**66.86**

12.3. We find that the assessee companies had submitted before the ld AO that M/s. Rattanindia Nasik Power Limited was setting up a thermal power plant in the Nasik district of Maharashtra State. The construction of the said power plant had begun in Financial Year 2011-12 and was on-

going during the time of assessment proceedings. The said power plant comprised of five turbines of 270 MW each aggregating to 1350 MW. The major items of plant & machinery were purchased from M/s. Bharat Heavy Electricals Limited (a public sector company). The plant was set up with one of the lowest per MW cost including cost of plant and machinery and civil works. The per MW cost was Rs 7.27 crores as against the prevailing industry norm of Rs 8 crores per MW. During the course of assessment proceedings, the assessee submitted copies of project costs of recently completed thermal power plants before the ld AO for his reference.

12.3.1. It was submitted that M/s. IIC Limited was an EPC Contractor and had undertaken various projects on behalf of different customers and executed projects from time to time including construction of the Real Estate Projects. M/s. IIC Limited has also undertaken Infrastructure Projects i.e. Amravati Thermal Power Plant, Nasik Thermal Power Plant, Solar Projects etc. It was submitted that M/s IIC Limited had procured raw materials from hundreds of vendors aggregating to over Rs 2307 crores during the period from financial years 2011-2017. Further, the payments were made only by account payee cheques or through RTGS. It was pleaded that the purchases made from the aforesaid five suppliers are duly verifiable in as much as the entire payments were made through regular banking channels by account payee cheques.

12.3.2. During the course of post search inquiries, the investigation wing had conducted independent verification of various vendors that were spread over various parts of the country. While most of the vendors were verified and were categorised as genuine or bogus, 5 vendors who were still undergoing independent verification were categorised as Suspicious

Purchase Transactions. The assessee was given to understand that each of such 5 vendors had also duly responded to the queries of the investigation wing. Infact, the largest of such contractors being M/s Shree Infra had duly appeared before the jurisdictional authorities in Jodhpur and presented incontrovertible evidence before the investigation wing, which was resultantly accepted by the investigation wing.

12.3.3. The materials purchased from these five vendors were duly consumed in the construction of the power project undertaken by the assessee companies. It was specifically brought to the notice of the ld AO that but for the consumption of the materials bought from the aforesaid five vendors, it was not possible to complete the work undertaken. Further the assessee companies furnished all the documentary evidences including copies of bills, their names & addresses, PAN details, VAT TIN numbers and other corroborative evidences to prove the genuineness of purchases as under with specific reference to the page numbers of the paper book filed before us for the purpose of cross verification :-

Sr. No.	**Party Name**	**Documents Submitted**	**Paperbook – IC Pg. No.**
1.	Ruby Constructions	i. Copy of invoice raised by M/s Ruby Constructions on IIC Limited showing its service tax registration details, VAT registration details, address, contact details, PAN etc. ii. Details of jurisdictional AO of M/s Ruby Constructions iii. Contact information of M/s Ruby Constructions available in the	929-933 934-937 938-947

			public domain on websites such as Justdial, showing the existence, current contact details and reviews of independent customers about the said contractor	948 949
		iv.	Copy of certificate of registration of M/s Ruby Constructions with ISO 9001:2015 vide certificate number 910116032110	950-951 952-992 993-1024
		v.	Copy of ITR acknowledgment of proprietor of M/s Ruby Constructions	
		vi.	Copy of service tax registration of M/s Ruby Constructions	
		vii.	Copy of ledger account of M/s Ruby Constructions in the books of IIC Limited along with narrations	
		viii.	Relevant extracts of bank statement of IIC Limited showing payments made to M/s Ruby Constructions	
2.	Shree Infra	i.	Copy of invoice raised by M/s Shree Infra on IIC Limited showing its service tax registration details, VAT registration details, address, contact details, PAN etc.	1025-1031
		ii.	Details of jurisdictional AO of M/s Shree Infra	
		iii.	Copy of ledger account of M/s Shree Infra in the books of IIC Limited along with narrations	1032-1033 1034-1120
		iv.	Relevant extracts of bank statement of IIC Limited showing payments made to M/s Shree Infra	1121-1146
3.	Varun Earth Movers	i.	Copy of invoice raised by M/s Varun Earth Movers on IIC Limited showing its service tax registration details, address, contact details,	1147 1148-1149

		PAN etc. ii. Copy of PAN Card and Aadhar Card of proprietor of M/s Varun Earth Movers iii. Details of jurisdictional AO of M/s Varun Earth Movers iv. Contact information of the M/s Varun Earth Movers available in the public domain on websites such as Justdial, showing the existence, current contact details and reviews of independent customers about the said contractor v. Copy of ledger account of M/s Varun Earth Movers in the books of IIC Limited along with narrations vi. Relevant extracts of bank statement of IIC Limited showing payments made to M/s Varun Earth Movers	1150-1151 1152-1155 1156-1277 1278
4.	J K Constructions	i. Copy of invoice raised by M/s J K Constructions on IIC Limited showing its service tax registration details, VAT registration details, address, contact details, PAN etc. ii. Details of jurisdictional AO of M/s J K Constructions iii. Contact information of the M/s J K Constructions available in the public domain on websites such as Justdial, showing the existence, current contact details and reviews of independent customers about the said contractor iv. Copy of ledger account of M/s J K Constructions in the books of IIC Limited along with narrations v. Relevant extracts of bank statement of IIC Limited showing payments made to M/s J K	1279-1280 1281-1282 1283-1286 1287 1288-1289

		Constructions	
5.	Shree Ram Builder	i. Copy of invoice raised by M/s Shri Ram Builders on IIC Limited showing its service tax registration details, VAT registration details, address, contact details, PAN etc.	1290-1291 1292-1293
		ii. Details of jurisdictional AO of M/s Shri Ram Builders	1294-1295
		iii. Copy of service tax registration of M/s Shri Ram Builders	1296-1322
		iv. Copy of ledger account of M/s Shri Ram Builders in the books of IIC Limited along with narrations	1323-1349
		v. Relevant extracts of bank statement of IIC Limited showing payments made to M/s Shri Ram Builders	

12.4. We find that the ld AO did not find any adverse inference on the aforesaid documents submitted by the assessee. We find that the ld AO merely stated without any basis that the parties are not traceable and hence the exact nature of work performed by them together with the evidence of capability and resources to execute the work done could not be verified. We find that the ld AO had also alleged that these parties are new comers and that they don't command payment of mobilisation advance of crores of rupees to carry out the work done at site, without actually entering into any legally binding contract. The ld AO observed that no formal contract was entered into by these vendors with either IIC Limited or with Rattanindia Power Limited or with Sinner Thermal Power Limited (formerly known as Rattanindia Nasik Power Limited). The ld AO also place reliance on the report received from Investigation wing of Income Tax Department wherein the representative of IIC Limited had expressed his inability to provide documentary evidence to substantiate the claim of such expenses / purchases recorded in the books of IIC Limited. The ld AO further observed that IIC Limited is only a pass

through entity and that the goods have been directly supplied at the work site by the vendors and since IIC Limited had lent its name as a pass through entity, it had claimed a margin of 25% on the value of such purchases from the assessee company i.eRattanindia Power Limited and Sinner Thermal Power Limited. The ld AO also admitted the fact that IIC Limited had indeed paid due taxes on 25% margin retained by it on these transactions. In response, we find that the assessee company i.e Sinner Thermal Power Limited (formerly Rattanindia Nasik Power Limited) had stated that the actual purchases have been made from the vendors and the same were duly capitalised under the head Plant and Machinery in its books and depreciation claimed on the same at the rate of 15% on cost thereon.

12.5. We find that the ld AO made a **disallowance of depreciation @ 15% in the hands of M/s. Sinner Thermal Power Limited** (formerly known as Rattanindia Nasik Power Ltd)[after 25% markup] on the expenditure incurred on **substantive basis**. Parallely, the ld AO in the hands of **IIC Limited,**made **disallowance of 100% of the aforesaid expenses on protective basis** on the pretext that the transactions between IIC Limited and Sinner Thermal Power Limited (formerly known as Rattanindia Nasik Power Limited) were not genuine.

12.6. We find that the Ld. CIT(A) has granted relief to the assessee company by deleting the aforesaid additions, both protective in the hands of IIC Limited and substantive in the hands of Sinner Thermal Power Limited (formerly known as Rattanindia Nasik Power Limited). Aggrieved, the revenue has filed an appeal before us for the respective assessment years in the hands of IIC Limited and Sinner Thermal Power Limited (formerly known as Rattanindia Nasik Power Limited) . We find that the

ld AO had not conducted any enquiry in any manner whatsoever with those five vendors to examine the veracity of the transactions carried out by the assessee companies with them. We find that the various documents were submitted by the assessee to even prove the existence of those suppliers including their latest contact details. Even the jurisdictional assessing officer details were also furnished for all the vendors by the assessee. While it is so, the ld AO cannot simply come to the conclusion that these five vendors are not in existence at all and that their transactions with the assessee companies are ingenuine. We find that the representative of Sinner Thermal Power Limited (formerly known as Rattanindia Nasik Power Limited) had categorically stated that the suppliers had supplied the materials directly at their work site and that the said materials were duly consumed in the power project of the assessee companies. It was also submitted that the without the consumption of those materials, the project could not be undertaken at all. These factual submissions made on behalf of the assessee companies were not even controverted by the ld AO in his orders or even by the ld DR before us. Apart from that, we find that the assessee had filed various documentary evidences to prove the genuineness of purchases made from the aforesaid five vendors. If there be any doubt in the mind of the ld AO, nothing prevented him from making any enquiry of the said five vendors in the manner known to law. Absolutely no enquiries were carried out by the ld AO in this regard. We find that each of the allegations levelled by the ld AO in his assessment order were duly met by the assessee companies before the ld CITA by giving proper explanation with regard to these additions either on substantive or protective basis. We find that the ld AO had stated that the assessee companies had admitted that the transactions between these five vendors and IIC limited were not genuine. This statement of the ld AO was submitted to be

factually incorrect as there was no occasion for the representative of the assessee company to even make such statement. Infact we find that the ld AO did not even resort to make basic enquiries to understand as to whether these five vendors had actually executed the said works at the site of the assessee company. We find that the assessee had time and again submitted that without the consumption of those materials bought from these five vendors, the project could not have been undertaken at all by the assessee companies. Hence we find that the entire allegations of the ld AO in this regard is factually incorrect and legally unsustainable in the eyes of law. We further find that the assessee had also requested the ld AO to carry out a site inspection to understand the veracity of the transactions. This was not acted upon by the ld AO. We find that the vendors had duly deposed either in person or by replying directly before the investigation wing in respect of post search enquiries conducted by the investigation wing on the various vendors through out the country which admittedly included these 5 disputed vendors. The ld AR stated before us that the investigation wing had concluded that the transactions of these five vendors with the assessee companies were genuine and though these replies and statements had been reportedly forwarded to the ld AO, the same were neither furnished to the assessee companies by the ld AO nor considered by the ld AO while framing the assessments. The ld AR stated that the assessee companies had sought for those replies given u/s 133(6) of the Act that were reportedly forwarded by the investigation wing to the ld AO. The ld AR vehemently argued that the ld AO neither provided the copies of such responses to notice u/s 133(6) of the Act nor did he allow an opportunity to the assessee to cross examine the aforesaid vendors.

12.7. There is absolutely no dispute that IIC Limited had worked as an EPC Contractor for Sinner Thermal Power Limited (formerly known as Rattanindia Nasik Power Limited). Hence the purchases made by it from these five vendors were claimed as business expenditure in the books of IIC Limited and the same were supplied at the site of Sinner Thermal Power Limited with a mark up of 25%. Admittedly this margin of 25% was duly offered to tax by IIC Limited and hence by disallowing the purchases made by it from the aforesaid 5 vendors, it would result in entire sales value getting taxed in the hands of IIC Limited. So even if the allegation of the ld AO that IIC limited is only a pass through entity is to be accepted for a moment, still the fact remains that the materials supplied by these five vendors had ultimately reached the work site of Sinner Thermal Power Limited (formerly known as Rattanindia Nasik Power Limited) and consumed in their project. The 25% margin retained by IIC Limited had already been offered to tax by IIC Limited, which is not disputed by the revenue. Hence the purchase cost of materials in the hands of Sinner Thermal Power Limited (formerly known as Rattanindia Nasik Power Limited) would be excessive by 25% of cost. But we find that it is not the case of the revenue before us that the purchase value made in the books of Sinner Thermal Power Limited (formerly known as Rattanindia Nasik Power Limited) is excessive or unreasonable so as to be disallowed in its hands. Hencewe hold that the entire allegation that IIC Limited had acted as a pass through entity is of absolutely no relevance for adjudication of the subject matter before us.

12.8. Yet another allegation levelled by the ld AO in his assessment order was the absence of contract between the contractor and IIC Limited and subsequently the absence of provisions such as liquidated damages and defect liability. In this regard, we find that the assessee had met this

allegation before the ld CIT(A) by stating that neither the law nor the Act mandates two parties to enter into written legal contracts before commencing work or for booking an expenditure. A verbal agreement between parties with an identified scope of work, the conduct of such work and the payment thereof through banking channels is sufficient proof of genuineness of a transaction and of the work done. With regard to the absence of provisions such as liquidated damages and defect liability alleged by the ldAO, we find that the assessee had met this allegation before the ld CIT(A) by stating that the underlying work done by the contractor was in the nature of excavation / earthwork and not in the nature of development of a tangible product. Further these provisions are enabled only in case of defects or deficiency in the work done and thus come into action only if the work is insufficient / unsatisfactory or incomplete. Yet another allegation levelled by the ld AO in his assessment order was that the alleged inability of an employee of IIC Limited to furnish documentary evidence before the investigation wing. In this regard, we find that the assessee had met this allegation before the ld CIT(A) by stating that the ld AO did not provide a copy of the report received from the investigation wing to the assessee to verify the said allegation. Without prejudice to the same, IIC Limited had duly submitted all the invoices and proof of payment to the said contractor before the ld AO which have not been disregarded by the ld AO. No defects were identified by the ld AO in the said documentary evidences.

12.9. We find that during the course of assessment proceedings, the assessee company i.e IIC Limited had duly explained its role of an EPC contractor for setting up a thermal power plant for Sinner Thermal Power Limited (formerly known as Rattanindia Nasik Power Limited) , and that in

order to undertake such work , certain portions were to be done by IIC Limited while remaining work was to be conducted by further contractors. It was also submitted that amongst the contractors with whom IIC Limited had sub-contracted their work, the parties identified by the ld AO happened to be contractors who were introduced to IIC Limited by Sinner Thermal Power Limited (formerly known as Rattanindia Nasik Power Limited) as having relevant experience and expertise in their respective domains. As the entire project was being undertaken for Sinner Thermal Power Limited (formerly known as Rattanindia Nasik Power Limited), the assessee had sub-contracted such works to such contractors. However, only upon satisfactory completion of work did IIC Limited make the necessary payments through regular banking channels and after deducting the applicable TDS. In order to make the project commercially viable for IIC limited, it used to charge a profit mark up on the payments made by it to sub-contractors and thereafter charge the marked up amount to Sinner Thermal Power Limited (formerly known as Rattanindia Nasik Power Limited). Thus the profits arising from transactions undertaken with such contractors were embedded in the invoicing done by IIC Limited on Sinner Thermal Power Limited (formerly known as Rattanindia Nasik Power Limited) over the years, which have duly been accepted by the ld AO himself. Hence we find that there is absolutely no case made out by the revenue for disallowance of business expenditure in the hands of IIC Limited.

12.10. We also find that the ld AO while making disallowance of expenditure in the hands of IIC Limited for the Asst Year 2014-15 in respect of purchases made from Ruby Constructions had heavily relied upon the reply given by Ruby Constructions, wherein the proprietor had stated that he had not conducted any business with Sinner Thermal

Power Limited (formerly known as Rattanindia Nasik Power Limited) or with IIC Limited during financial years 2009-10 to 2011-12. We find that when the transactions had been carried out with Ruby Constructions only in Asst Years 2014-15 and 2015-16 , there is nothing wrong in the reply given by Ruby Constructions that no business had been carried out during financial years 2009-10 to 2011-12.Infact the ld AO specifically records in his assessment order that no comment was offered by the said party for financial year 2013-14 under consideration relevant to Asst Year 2014-15. Where is the reason to draw a negative or adverse inference against the assessee companies in this regard ? We find that the said party i.e Ruby Constructions did not say that they never had any transactions with the assessee companies. It is well settled that the party deposing before an authority either in person or replying to query raised by the ld AO or by the investigation wing u/s 133(6) of the Act, is expected to answer only to those specific questions that were put before him.

12.11. We find that the ld AR time and again pleaded that independent enquiry was conducted by the Investigation Wing, with respect to various vendors including the five vendor parties and that these five vendors had duly responded to the queries of the Investigation Wing. In fact, the largest of vendor in terms of value, M/s. Shree Infra, had duly appeared before the authorities in Jodhpurand presented incontrovertible evidence before the Investigation Wing which was accepted. With respect to M/s J K Constructions, it has been alleged by the ld AO that the party was not present at the given address and that they had been closed for the last several years. In this regard, at the outset it was submitted that even according to ldAO,the transaction between IIC Limited and the said party had taken place in Financial Years 2011-12 and 2012-13 i.e more than 3 years prior to the post search investigation. It was argued that it is very

much possible that in such time, the said party may have shifted its address or in fact amalgamated or liquidated etc.Further it has been alleged by the ld AO that the party M/s. Varun Earth Movers has not replied to the Investigation Wing. In this regard, it was submitted that lack of response does not tantamount to the party being non-existent or the transaction being non-genuine. All payments were made through regular banking channels and were duly accounted for in the books of accounts. It was further alleged that the said party was not traceable. In this regard, it was reiterated that the assessee was given to understand that the said contractor had duly responded to all notices u/s 133(6) issued to it. The assessee company had time and again extended its cooperation to the ld AO to visit the site of Sinner Thermal Power Limited (formerly known as Rattanindia Nasik Power Limited) and examine the work done by the said contractor, but the ld AO has merely raised suspicions based on conjectures and surmises in the absence of any valid basis of such suspicions. It was submitted that the ld AO has failed to appreciate that such payments were made in 2013 i.e. a period more than 6 years ago, and the work performed by the said contractors worth Rs. 2.94 crore was miniscule (i.e. only 0.07%) in comparison to the capital work in progress of Rs. 4029 crores recorded in the books of Sinner Thermal Power Limited (formerly known as Rattanindia Nasik Power Limited) till 31.03.2013. Copies of all invoices raised by the said contractor on the assessee company were duly submitted before the ld AO and the ld AO has not identified any defect or deficiency in them.

12.12. To conclude , we find that the ld AO had merely relied upon the report of the investigation wing (which was not even provided to the assessee despite written requests for its rebuttal, if any) to classify transactions with 5 vendors as bogus transactions. We find that the

assessee had furnished all the necessary documentary evidences in this regard with regard to these 5 vendors which were not subjected to any examination by the ld AO. As stated earlier, no independent examination or enquiry in any manner whatsoever was carried out by the ld AO to test the evidences submitted by the assessee , in the manner known to law. Moreover, the report of the investigation wing, which was relied upon by the ld AO for drawing adverse inference against the assessee , were never furnished to the assessee for its rebuttal and cross -examination, if found necessary. This violates the basic principle of natural justice. We find that the Hon'ble Supreme Court in the case of CIT vs Odeon Builders Pvt Ltd reported in 110 taxmann.com 64 (SC) had observed as under:-

> ***3.*** *However, on going through the judgments of the CIT, ITAT and the High Court, we find that on merits a disallowance of Rs. 19,39,60,866/- was based solely on third party information, which was not subjected to any further scrutiny. Thus, the CIT (Appeals) allowed the appeal of the assessee stating:*
>
> *"Thus, the entire disallowance in this case is based on third party information gathered by the Investigation Wing of the Department, which have not been independently subjected to further verification by the AO who has not provided the copy of such statements to the appellant, thus denying opportunity of cross examination to the appellant, who has prima facie discharged the initial burden of substantiating the purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques, & VAT Registration of the sellers & their Income Tax Return. In view of the above discussion in totality, the purchases made by the appellant from M/s Padmesh Realtors Pvt. Ltd. is found to be acceptable and the consequent disallowance resulting in addition to income made for Rs. 19,39,60,866/-, is directed to be deleted."*
>
> ***4.*** *The ITAT by its judgment dated 16th May, 2014 relied on the self-same reasoning and dismissed the appeal of the revenue. Likewise, the High Court by the impugned judgment dated 5th July, 2017, affirmed the judgments of the CIT and ITAT as concurrent factual findings, which have not been shown to be perverse and, therefore, dismissed the appeal stating that no substantial question of law arises from the impugned order of the ITAT.*
>
> ***5.*** *In these circumstances, the Review Petitions are dismissed.*

We find that the ratio decidendi of the aforesaid decision of Hon'ble Supreme Court would squarely apply to the facts of the instant cases before us.

12.12.1. Moreover, we find that the ld AO on one hand disallowed the entire purchases made by IIC Limited from the aforesaid 5 vendors totalling to Rs 66.86 crores as non-genuine purchases, spread over different assessment years as tabulated supra, on protective basis, and on the other hand, simultaneously disallowed the depreciation on such expenditure along with profit thereon, in the hands of Sinner Thermal Power Limited (formerly known as Rattanindia Nasik Power Limited) at the rate of 15% on substantive basis. We find that the nature and principle of the substantive and protective disallowance are also totally different. Hence the basic principles of substantive vs protective disallowance itself has been violated by the ld AO in the instant case.

12.13. We find that the ld AR also placed reliance on the Co-ordinate Bench of Kolkata Tribunal in the case of SPML Infra Ltd vs DCIT in ITA No. 1228 & 1211/Kol/2018 dated 17.1.2020 in support of its contentions with regard to the issue raised in para 5.1. (F) above. We find that the ld AR placed reliance on the decision of Kolkata Tribunal to drive home the point the statutory provisions contained in section 142(1), 142(2) and 142(3) of the Act which had been given a complete go by in the instant case by the revenue while framing the assessment. We find that a query was raised by the ld AO in terms of section 142(1) of the Act, which was duly replied by the assessee by filing voluminous documents with supporting evidences thereon. Thereafter the ld AO is bound to carry out inquiries on the said documents and evidences in terms of section 142(2) of the Act, which was admittedly not carried out in the instant case. Hence the applicability of provisions of section 142(3) of the Act does not arise in the instant case since no enquiries were conducted by the ld AO to test the documentary evidences submitted by the assessee.

Therefore the question of any adverse material against the assessee does not arise. The principle laid down in the aforesaid decision of Kolkata Tribunal on the statutory provisions of section 142(1), 142(2) and 142(3) of the Act would apply to the facts of the instant appeals before us.

12.13. In view of the aforesaid elaborate observationson facts together with the relevant statutory provisions and respectfully following the various judicial precedents relied upon hereinabove, we find that the ld CITA had rightly deleted the disallowance of business expenditures made on protective basis in the hands of IIC Limited and had rightly deleted the disallowance of depreciation on such expenditure made on substantive basis in the hands of Sinner Thermal Power Limited (formerly known as Rattanindia Nasik Power Limited). **Accordingly, the issue framed in para 5.1 (F) above is decided in favour of the assessee and grounds raised by the revenue in the case of IIC Limited and Sinner Thermal Power Limited (formerly known as Rattanindia Nasik Power Limited) are dismissed for various assessment years in this regard.**

13. Disallowance of business loss in the case of IIC limited for the Asst Year 2017-18

This disallowance was made for the Asst Year 2017-18 in the case of IIC Limited. The ld AO observed that the assessee company i.e IIC Limited filed a revised computation of income during the course of assessment proceedings declaring total income of Rs 24,89,579/- and long term capital loss at Rs 51,40,86,582/-. The assessee company furnished the reasons for the said revised computation of income. It was submitted before the ld AO that assessee was also engaged in investing in direct

equity, OCDs, ICDs and other financial instruments and loans to group companies as part of its business activities. Therefore the assessee has always showing the income earned from interest and dividend under the head 'income from business & profession'. The assessee company had invested Rs. 85,35,40,000/- in Optionally Convertiable Debentures (OCDs) of M/s. Yantra Energetics Pvt Ltd. in earlier years which was disclosed under the category of 'Investments'.

13.1. We find that the assessee submitted the financial statements of Yantra Energetics Pvt. Ltd which showed that losses have resulted in large negative reserves, thereby resulting in significant reduction in the intrinsic value of its debentures. The copy of financial statements of M/s. Yantra Energetics Pvt. Ltd. for the financial years ending 31.03.2015 and 31.03.2016 are enclosed in pages 806 to 836 of the Paper Book I B filed before us. The status of shareholder funds of Yantra Energetics Pvt Ltd from 31.03.2015 to 31.03.2016 is tabulated below:

Particulars	**31.03.2015**	**31.03.2016**
Share Capital	100,000	100,000
Reserves and Surplus	(226,01,52,788)	(239,40,86,259)
Total Net Worth	**(226,00,52,788)**	**(239,39,86,259)**
Net Worth per share	**(22,600.52)**	**(23,939.86)**

13.1.1. These were also duly disclosed by Yantra Energetics in its return of income for Asst Years 2015-16 and 2016-17, copies of which are enclosed in Page Nos. 837 to 906 of the Paper Book I B filed before us. Herein, it is pertinent to note that the books of accounts and return of income of Yantra Energetics were duly scrutinized by the ITO Ward 27(4) Delhi and after thorough verification of books of accounts and return of income , the returned income/ loss was duly accepted by the AO for each of these years. Copies of orders u/s 143(3) of the Act for Asst Year 2015-16 dated 22.09.2017 and for Asst Year 2016-17 dated 10.12.2018 are

enclosed in Page Nos. 907 to 912 of the Paper Book I B filed before us. A perusal of the audit report for the financial year 2018-19 of M/s. Yantra Energetics Pvt. Ltd. would show that it is still suffering from losses and has a negative networth, proof of which is enclosed in Page Nos. 913 to 927 of the Paper Book I B filed before us.

13.2. As stated earlier, we find that the assessee company had invested Rs. 85,35,40,000/- in Optionally Convertible Debentures (OCDs) of M/s. Yantra Energetics Pvt Ltd. in earlier years which was disclosed under the category of 'Investments'. However, keeping in mind the commercial expediency, the board of directors of the assessee company passed a resolution on 01.04.2016 and reclassified the said 'Investment' as 'Stock-in-Trade' at cost in the books of accounts. The copy of board resolution is enclosed in Page No. 928 of the Paper Book IB filed before us. Accordingly, provisions of section 2(47)(iv) of the Act was attracted on the date of conversion and the assessee company offered deemed long term capital loss of Rs. 51,40,86,582/- on conversion of capital asset into stock-in-trade. Thereafter, the assessee on the actual sale of OCD's to M/s Tupelo Consultancy LLP at a price of Rs 24,35,00,000/- , it incurred a loss of Rs. 61,00,40,000/-. This was duly disclosed by the assessee company in its profit and loss account. The fair market value on the date of conversion of investment into stock in trade on 1.4.2016 was Rs 85,35,40,000/- on which consideration, there is no dispute. The assessee had also furnished the ledger account showing the relevant entries passed in its books of accounts as on 1.4.2016 while converting investments into stock in trade, copies of relevant ledger accounts of stock in trade and evidence in the form of bank statements for the relevant period showing the sale of stock in trade to M/s Tupelo Consultancy LLP on 29.3.2017.

13.3. Infact in the return filed by the assessee on 28.3.2018 for the Asst Year 2017-18, the assessee had claimed long term capital loss of Rs 112,41,26,582/-. This was reduced to Rs 51,40,86,582/- on conversion of investment (i.e OCDs) into stock in trade in the revised computation of income filed during the course of assessment proceedings before the ld AO, which was accepted by the ld AO. Later the assessee had sold such converted stock in trade (i.e OCDs) to M/s Tupelo Consultancy LLP on 29.3.2017 for Rs 24,35,00,000/- which resulted in a business loss of Rs 61,00,40,000/- (85,35,40,000 – 24,35,00,000) which was duly disclosed in the profit and loss account of the assessee in the audited financial statements.

13.4. The ld AO observed that when the assessee was pointed out regarding the non-availability of set off of brought forward losses to the extent of available business income of Rs 61,34,25,335/- for the year having regard to the provisions of section 79 of the Act as there was a change in the shareholding pattern of the assessee company during the financial year 2014-15 relevant to Asst Year 2015-16, the assessee has, with an intention to set off its loss incurred on sale of OCDs during the year amounting to Rs 61,00,40,000/- against its business income of Rs 61,34,25,335/- , has revised its computation of income during the assessment proceedings on 27.12.2018 , wherein the assessee has withdrawn its claim of set off of brought forward losses amounting to Rs 61,34,25,335/- and then set off its loss of Rs 61,00,40,000/- incurred on sale of OCDs under the garb of conversion of investment into stock in trade resulting into net income from business of Rs 33,85,335/-. Accordingly, the ld AO held that the theory of conversion of investments into stock in trade as on 1.4.2016 is totally an after thought and a concocted story and treated the loss of Rs 61,00,40,000/- as capital loss

instead of business loss claimed by the assessee. Thereafter, the ld AO allowed the total long term capital loss to be carried forward as under:-

Long Term Capital loss as per assessee's revised Computation filed on 27.12.2018 – i.e the loss On conversion of investment into stock in trade	51,40,86,582
Add: Business loss on sale of OCDs on 29.3.2017 Treated as long term capital loss by the ld AO	61,00,40,000
Total Long Term Capital Loss allowed to be Carried forward by the ld AO	112,41,26,582

13.5. We find that the ld CIT(A) has granted relief to the assessee company on this ground by holding that

> *"In light of the above, the two separate, independent and distinguishable events arising from a bonafide transaction resulted in capital and business loss in the hands of the appellant, which has rightly been disclosed by the appellant in its revised return of income. Having failed to point out any error in the tax treatment of the transactions that had already taken place more than two and a half years ago in the books of accounts of the appellant, the AO has put forth an unsustainable allegation of an afterthought which cannot be upheld".*

13.6. We find that the assessee had always submitted that as part of its business operations over the years, it had carried out its objects (main, other and ancillary objects as per the Memorandum of Association) either itself or through its subsidiaries or through Joint Ventures / Partnerships etc. It was always pleaded that the assessee company was also engaged in investing in Direct Equity, OCDs, ICDs and other Financial Instruments and loans to Group Companies as part of its business activities. Therefore, the interest and dividend income earned by the assessee company from such investments was disclosed as business income over the years. We find that the revenue in the past having accepted the receipt of interest

income on these investments as 'income from business' cannot take a contrary stand in the year under consideration by stating that the assessee company's main business was to undertake EPC contract only and thus the investment in OCDs was not made for business. In fact the investment made in OCDs of Yantra Energetics Private Limited was made for the furtherance of the assessee company's business objects.

13.7. We find that the assessee company had invested Rs. 85,35,40,000 in Optionally Convertible Debentures ("OCD") of Yantra Energetics Private Limited in earlier years, which was disclosed under the category of Investments. As on 01.04.2016 the appellant had reclassified the said amount as Inventory (being stock-in-trade) at par in its books of accounts. This was duly documented by way of a board resolution passed by the Board of Directors of the assessee company, and relevant journal entries were also passed in the assessee company's books of accounts. Admittedly these entries in the books of accounts were passed way back on 1.4.2016 and that the assessment proceedings commenced later, at which point in time only the assessee company was informed by the ld AO about the violation of provisions of section 79 of the Act and thereby making it ineligible for set off of the brought forward business losses with available business income. Obviously the assessee could not have pre-empted the mind of the ld AO as on 1.4.2016 while passing entries in its books of accounts for conversion of investment (OCDs) into stock in tradewhich is also supported by a Board Resolution dated 1.4.2016. The intention of the assessee company gets duly reflected in the entries in the books of accounts of the assessee company which forms the basis for preparation of financial statements and thereafter the computation of income. The said books of accounts were duly subjected to scrutiny by the statutory auditors while conducting the audit in August 2017, whereas

the scrutiny assessment had taken place in December 2018. This is not a case wherein the revenue had sought to treat the entries in the books of accounts as incorrect or defective. It is practically not possible for any limited company to go back to its books of accounts and pass entries thereon after it is approved and adopted by the shareholders in the annual general meeting , for which necessary annual returns and balance sheet were also already filed with the Registrar of Companies. When the entries in the books of accounts were passed way back as on 1.4.2016 itself, the version of the ld AO that the aspect of conversion of investment into stock in trade is an afterthought and concocted story, cannot be accepted and deserves to be rejected at once.

13.8. We find that the ld AO had further alleged that the assessee company made an attempt to set off its long term capital loss against business income. We find that this allegation of the ld AO to be baseless and devoid of any merits.We find that the assessee company had duly converted the investment in OCDs which were earlier held as Investment to stock in trade as on 01.04.2016. As per due compliance of provisions of section 2(47)(iv) of the Act, the said conversion of asset to stock-in-trade was deemed to be a transfer chargeable to tax under the head Income from Capital Gains, resulting in a long term capital loss of Rs. 51,40,86,582. Subsequently, during the year such stock-in-trade was sold by the assessee to M/s Tupelo Consultancy LLP at a price of Rs. 24,35,00,000, which resulted in a business loss of Rs. 61,00,40,000. Thus, the event of capital loss and that of business loss arising to the assessee were two separately identifiable, distinct and distinguishable events. During the course of assessment proceedings, the assessee company had duly submitted all documentary evidences to substantiate the occurrence of these events before the ld AO. No defect or deficiency

has been identified by the ld AO on the same.Hence this main contention of the assessee which has been one of the main reason for the ld CITA to grant relief to the assessee does not warrant any interference.

13.9. We further find that the ld AO had contended that upon him pointing out non-allowability of set off of brought forward loss, the assessee company with an intention to set off its loss incurred on sale of OCDs, revised its return of income. In this regard, we find that once the ld AO pointed out the non-allowability of the losses to the assessee company, immediately the assessee company realized the discrepancy in the return of income submitted for Asst Year 2017-18 in terms of loss on sale of OCDs. Immediately upon realizing the said error, the assessee company ,with a view to present a true and fair status of its transactions for determining its tax liability, submitted a revised return of income u/s 139(5). As per provisions of section 139(5) as applicable for Asst Year 2017-18, a revised return could have been submitted either before one year from the end of the assessment year or before the end of completion of assessment proceedings, whichever was earlier. Thus, in accordance with provisions of 139(5) of the Act, upon discovering the error in the return filed for Asst Year 2017-18, the assessee had submitted a revised return u/s 139(5) of the Act. It was pointed out by the ld AR that such revision was made by the assessee to disclose truly and fully all facts of its books of accounts and their relevant tax incidence.

13.10. We find that the revised computation of income filed by the assessee company on 27.12.2018 has been accepted by the ld AO as permissible. Once the same is done, the ld AO cannot go back to the original return of income. It is a fact that various claims made by the

assessee company in the original return of income had been subsequently withdrawn by it in the revised return u/s 139(5) of the Act / revised computation of income and hence what is to be seen while determining the total income is only the revised computation of income filed on 27.12.2018. This stand is further strengthened by the decision of *Hon'ble Allahabad High Court in the case of Dhampur Sugar Mills Ltd vs CIT reported in 90 ITR 236 (All)*. Infact we find that the ld AO had taken due cognizance of the revised computation of income filed on 27.12.2018 in the determination of total income while allowing the long term capital loss to be carried forward as tabulated supra.

13.11. It is pertinent to reproduce the aforesaid table once again wherein the ld AO while determining the total income of the assessee company for the Asst Year 2017-18 had specifically allowed the long term capital loss to be carried forward to subsequent years :-

Long Term Capital loss as per assessee's revised Computation filed on 27.12.2018 – i.e the loss On conversion of investment into stock in trade	51,40,86,582
Add: Business loss on sale of OCDs on 29.3.2017 Treated as long term capital loss by the ld AO	61,00,40,000
Total Long Term Capital Loss allowed to be Carried forward by the ld AO	112,41,26,582

13.11.1. We find that the ld AO had accepted the first step in the aforesaid transaction by accepting the deemed long term capital loss of Rs 51,40,86,582/- arising on account of conversion of investment into stock in trade. Later we find that the ld AO considered this conversion of investment into stock in trade to be an afterthought and denied the loss on actual sale of OCDs amounting to Rs 61,00,40,000/- as business loss

in the hands of the assessee company and considered the same as capital loss. We find that the various evidences submitted by the assessee company in this regard were not controverted by the ld AO or by the ld DR before us. It was argued vehemently that once the first step in the transaction of conversion of investment into stock in trade resulting in long term capital loss of Rs 51,40,86,582/- has been accepted by the ld AO by duly appreciating the evidences in that regard, the ld AO cannot take a divergent stand in the second step of the transaction when it comes to allowability of business loss arising on actual sale of stock in trade (i.e OCDs). Had there been business income on actual sale of stock in trade (i.e OCDs), whether the ld AO would have treated the same as long term capital gains and not tax the same as business income which would be taxable at the rate of 30%. When one event has been accepted as long term capital loss and the capital asset (i.e investment in OCDs) had already been converted into stock in trade, hence any gain or loss arising on actual sale of such converted OCDs in the second step would only result in business income or business loss. In the instant case, it has resulted in business loss. There is absolutely no dispute on the computation of figures for business loss i.e the sale consideration of OCDs and the cost of acquisition of the same after the conversion is not in dispute before us. If the entire contentions raised by the ld AO are to be accepted, then he should not have resorted to any bifurcation of long term capital loss into Rs 51.40 crores and Rs 61 crores separately and instead should have resorted to directly determine the long term capital loss at Rs 112.40 crores.

13.12. In view of the aforesaid observations, we hold that incurrence of long term capital loss of Rs 51,40,86,582/- on conversion of investment

into stock in trade (which has been accepted by the ld AO in the assessment order itself) and incurrence of loss of Rs 61,00,40,000/- on sale of such stock in trade is to be treated as business loss and hence they are separate, independent and distinguishable events arising from a bonafide transaction. **The said business loss of Rs 61,00,40,000/- cannot be treated as capital loss in the facts and circumstances of the instant case. Hence the issue framed in Para 5.1. (G) above is decided in favour of the assessee and accordingly, the ground raised by the revenue for the Asst Year 2017-18 in the case of IIC Limited is dismissed**.

14. Disallowance of deduction with respect to Preliminary expenses in the hands of IIC Limited for the Asst Years 2011-12 to 2017-18

We find that this disallowance is made by the ld AO only in the case of IIC Limited for the Asst Years 2011-12 to 2017-18. We find that the assessee company had incurred Preliminary Expenses in prior years amounting to Rs.1,16,210/- and had claimed amortization of Preliminary Expenses incurred in earlier years at the rate of 1/5th amounting to Rs. 23,242/- in its computation of income for the Asst Year 2010-11 till Asst Year 2014-15. The assessee company had claimed 1/5 of such expenditure i.e. Rs.23,242 in accordance with provisions of Section 35D(2) read with proviso to 35D(1). However, the ld AO erroneously applied the provisions of section 35D(1) and restricted such expenditure to 1/10, thereby making a disallowance of Rs.58,105. In other words, we find that the ld AO granted deduction towards preliminary expenses at the rate of 1/10th of expenditure every year as against the claim of 1/5th every year by the assessee company. We find that the assessee company had filed the chart showing details of preliminary expenses incurred together with its supporting evidences in pages 1433 to 1435 of the paper book IC filed

before us. We find that preliminary expenses are incurred by the assessee company solely as fees for registering the company under the provisions of the Companies Act, 1956. We find that the law is amended after 31.3.1998 in the proviso to section 35D(1) of the Act which stipulates grant of deduction at the rate of 1/5th of expenditure incurred thereon. We find that this has been set right by the ld CITA by granting deduction in accordance with the amended law. **Hence we do not find any infirmity in the said order of the ld CITA granting relief in this regard. Accordingly, the issue framed in para 5.1 (H) above is decided in favour of the assessee.**

15. To sum up,

In the case of Rattanindia Power Limited

Asst Year	ITA No.	Appeal By	Result
2012-13	62/M/2020	Revenue	Dismissed
2013-14	63/M/2020	Revenue	Dismissed
2014-15	64/M/2020	Revenue	Partly allowed
2015-16	65/M/2020	Revenue	Partly allowed
2016-17	66/M/2020	Revenue	Partly allowed
2017-18	67/M/2020	Revenue	Partly allowed
2014-15	243/M/2020	Assessee	Allowed
2015-16	244/M/2020	Assessee	Allowed
2016-17	245/M/2020	Assessee	Allowed
2017-18	246/M/2020	Assessee	Allowed

In the case of Sinner Thermal Power Limited (formerly known as Rattanindia Nasik Power Limited)

Asst Year	ITA No.	Appeal By	Result
2011-12	68/M/2020	Revenue	Dismissed
2012-13	69/M/2020	Revenue	Dismissed
2014-15	70/M/2020	Revenue	Dismissed
2015-16	71/M/2020	Revenue	Partly Allowed
2016-17	72/M/2020	Revenue	Partly Allowed
2017-18	152/M/2020	Revenue	Partly Allowed
2015-16	251/M/2020	Assessee	Allowed
2016-17	252/M/2020	Assessee	Allowed
2017-18	253/M/2020	Assessee	Allowed

In the case of IIC Limited

Asst Year	**ITA No.**	**Appeal By**	**Result**
2011-12	153/M/2020	Revenue	Dismissed
2012-13	154/M/2020	Revenue	Dismissed
2013-14	155/M/2020	Revenue	Dismissed
2014-15	156/M/2020	Revenue	Partly Allowed
2015-16	157/M/2020	Revenue	Partly Allowed
2016-17	158/M/2020	Revenue	Partly Allowed
2017-18	159/M/2020	Revenue	Partly Allowed
2014-15	247/M/2020	Assessee	Allowed
2015-16	248/M/2020	Assessee	Allowed
2016-17	249/M/2020	Assessee	Allowed
2017-18	250/M/2020	Assessee	Allowed

Order pronounced on 05/05/2021 by way of proper mentioning in the notice board.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 05/05/2021
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai