**आयकर अपीलीय अधिकरण, विशाखापटणम पीठ**
**IN THE INCOME TAX APPELLATE TRIBUNAL**
**Visakhapatnam Bench, Visakhapatnam**

**Before Shri Ravish Sood, Judicial Member**
**and**
**Shri Balakrishnan S., Accountant Member**

आ.अपी.सं /**ITA No.314/Viz/2025**
(निर्धारण वर्ष/Assessment Year:2014-15)

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| Deputy Commissioner of Income Tax, Circle-3(1), Visakhapatnam. | Vs. | Nord Anglia Education Infrastructure Private Limited, Visakhapatnam. PAN: AABCV2255L |
| (Appellant) | | (Respondent) |
| निर्धारिती द्वारा/Assessee by: | 1.Shri Karnjot Singh Khurana, Advocate, 2. Shri Snehal Rajan Shukla, Advocate, 3. Shri Avar Lamba, Advocate. | |
| राजस्व द्वारा/Revenue by: | Shri Badicala Yadagiri, CIT-DR | |

आ.अपी.सं /**ITA No.205/Viz/2025**
(निर्धारण वर्ष/Assessment Year: 2017-18)

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| Deputy Commissioner of Income Tax, Circle-3(1), Visakhapatnam. | Vs. | M/s. Nord Anglia Education Infrastructure Private Limited, Visakhapatnam. PAN: AABCV2255L |
| (Appellant) | | (Respondent) |
| निर्धारिती द्वारा/Assessee by: | 1. Shri Karnjot Singh Khurana, Advocate, 2. Shri Snehal Rajan Shukla, Advocate, 3. Shri Avar Lamba, Advocate. | |
| राजस्व द्वारा/Revenue by: | Shri Badicala Yadagiri, CIT-DR | |

आ.अपी.सं /**ITA No.206/Viz/2025**
(निर्धारण वर्ष/Assessment Year: 2018-19)

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| Deputy Commissioner of Income Tax, Circle-3(1), Visakhapatnam. | Vs. | M/s. Nord Anglia Education Infrastructure Private Limited, Visakhapatnam. PAN: AABCV2255L |
| (Appellant) | | (Respondent) |

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| निर्धारिती द्वारा/Assessee by: | Shri S. Venugopal, CA |
| राजस्व द्वारा/Revenue by: | Shri Badicala Yadagiri, CIT-DR |
| सुनवाई की तारीख/Date of Hearing: | 04/09/2025 |
| घोषणा की तारीख/Date of Pronouncement: | 26/11/2025 |

## आदेश / **ORDER**

**PER. RAVISH SOOD, JM:**

The captioned appeals filed by the Revenue are directed against the respective orders passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, dated 10/03/2025, 25/02/2025 and 12/02/2025 for AY 2014-15, AY 2017-18 and AY 2018-19, which in turn arises from the respective orders passed by the AO under section 143(3) of the Income Tax Act, 1961 (for short, "the Act") dated 29/12/2016, 27/12/2019 and 20/09/2021. As common issues are involved in the present appeals, therefore, the same are being taken up and disposed of vide a consolidated order. We shall, as requested by

the assessee's counsel, first take up the appeal filed by the revenue for the AY 2018-19 in ITA No. 206/Viz/2025, and the order therein passed shall apply *mutatis mutandis* to the remaining two appeals. The revenue has assailed the impugned order passed by the CIT(A) on the following grounds of appeal before us:

> "Ground 1. The Order of the Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi is erroneous in law and to the facts of the case.
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> Ground 2.1. The Ld. CIT(A) erred in not calling for remand report from the Assessing Officer on the additional evidence submitted by the assessee by filing application before Ld.CIT(A) for admission of additional evidence viz., copy of lease deed dated 02.02.2017 for leasing 12103 sq. yards of land to M/s. Oakbridge Education Society, copy of security services agreement dated 22.09.2017, copy of lease deed for transport management services dated 22.09.2017, copy of Housekeeping and bus maintenance service agreement dated 22.09.2017 between the assessee and M/s.0akbridge Education Society, during the course of appeal proceedings, which is in violation of Rule 46A(3) of Income-tax Rules, 1962.
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> Ground 2.2. The Ld. CIT(A) erred in adjudicating that the absence of joint venture between appellant and lessee cannot be sufficient ground to hold that the receipts are not in nature of business receipts. The Ld. CIT(A) also erred in adjudicating that the absence of sharing agreement cannot be sufficient ground in itself to hold that the receipts are not in nature of business receipts. The Ld. CIT(A) erred in not appreciating the fact that the assessee during the course of assessment proceedings, failed to demonstrate with any credible evidence that the lease rent received by it was from exploitation of property by way of complex commercial activities. The exploitation of the property by the group concerns could not be construed as commercial exploitation of the property by the assessee company and the commercial assest has to be exploited by the assessee in the course of its business activity for the purpose of claiming the income as business income. Hence, the rental income received by the assessee during the year is assessable as income from house property and not as business income.

Ground 2.3. The Ld. CIT(A) erred in deleting the addition by holding that the facts of the case in the judgment of Hon'ble Apex court in the case of Shambhu Investment (P) Ltd. reported in 263 ITR 143) that the A0 relied upon, are different and not applicable as there are separate agreements between appellant and the lessee in nature of housekeeping agreement, security services agreement, transport services, maintenance of playground etc. and hence, the rental income of Rs.42,94,42,496/- forms part of business income and not house property income. However, the Ld. CIT(A) erred in not observing the fact that the income of Rs. 11,10,30,631/- derived by the assessee on 'sale of services and fee receipts' was considered as 'business income' only in the assessment order.

Ground 2.4. The Ld. CIT(A) erred in not appreciating the fact that providing maintenance of the building and other amenities/infrastructure is an integral part of the lease of buildings and as such maintenance services/infrastructure services, if any, do not constitute a separate activity. Hence, the finding of Ld. CIT(A) that the facts of the case in the judgment of Apex court in the case of Shambhu Investments are different and not applicable, is not acceptable

Ground 2.5 The Ld. CIT(A) ought to have appreciated the fact that as the owner of the building, the rental income received by the assessee on exploiting the property by letting out the same was liable to be assessed under the head 'Income from house property' but not as business income.

Ground 3. The Ld. CIT(A) erred in allowing the ground of appeal on the addition of Rs. 17,37,69,180/- made towards interest disallowed on capital borrowed to construct properties, by holding that this interest income is allowed as incurred for business purpose since the receipts from lessee has been held to be income from business and profession. This adjudication of Ld. CIT(A) is not acceptable as the lease rental income offered by the assessee is income from house property and not business income. Further, the Ld. CIT(A) erred in not appreciating the fact that the said addition was made in the absence of requisite information such as copy of sanction letters of local authority and details of plans approved by the local authority, working of income and expenses of these projects and requisite approvals

Ground 4. The Ld. CIT(A) erred in restricting the disallowance made u/s.14A of Rs. 15,42,448/- to Rs. 20,585/- merely by relying on the judicial pronouncements of various courts relied by the assessee. This decision of Ld.CIT(A) is not in accordance with Section 14A of

the Income-tax Act, 1961, Explanation to Section 14A and Board's Circular No.5/2014 which clarifies in exercise of its powers under section 119 of the Act that Rule 8D read with section 14A of the Act provides for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income.

Ground 5. The appellant craves leave to add or delete or amend or substitute any ground of appeal before and/or at the time of hearing of appeal For these and other grounds that may be urged at the time of appeal hearing, it is prayed that all these above additions be restored

Ground 6. The Ld. CIT(A), NFAC has erred in deleting the addition of Rs. 42,94,42,496/- made in the assessment order towards 'Income from House Property' by treating the income from letting out assessable as business income and not as income from house property. 2.1. The Ld. CIT(A) erred in deleting the addition by treating the rental income as business income without appreciating the fact that the Assessing Officer has rightly assessed such income as income from house property based on the data as per Schedule 22 - Revenue from operations (net) to the P&L a/c for the year wherein, the income of Rs.42,94,42,496/- was shown as 'Rental income-premises' and also based on the TDS certificates issued by the licensees/lessees wherein the nature of payment made to the assessee is “rent”.

2. Succinctly stated, the assessee company, which is engaged in the business of providing land and buildings and other infrastructure to educational institutions, had filed its original return of income for AY 2018-19 on 18/09/2018, declaring an income of Rs. 20,24,67,750/-. Subsequently, the case of the assessee company was selected for scrutiny assessment under section 143(2) of the Act.

3. During the course of the assessment proceedings, it was observed by the AO that the assessee company had let out its buildings to its associate entities and received from them rental income of Rs.

42,94,42,496/- that was offered as revenue from operations under the head “Income from business”. On being confronted with the fact that, as its financial statements did not reveal that the assets from which rental income was being derived were being commercially exploited as an adventure in the nature of trade, therefore, on what basis the subject receipts were disclosed under the head “business income”, the assessee company filed its reply. It was submitted by the assessee company that the services rendered to Vikas Educational Society and other associate entities were of the nature of infrastructure services and not mere simpliciter rental services, and therefore, the subject receipts were assessable as business receipts/operational income and not as income from house property. Emphasizing on the fact that the term “business” as defined in Section 2(13) of the Act included any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture, the assessee company submitted that, the activities systematically undertaken by the assessee company which had no control over the premises that were offered on rent to its associate entities along with bouquet of amenities, viz., providing plant and equipment for providing education from kindergarten to high school, hostel building facility, building of manpower, maintenance of schools/campuses, infrastructural facilities, search for excellent faculty

across the globe, training the existing faculty of renowned persons/eminent persons etc., being of the nature of an adventure was liable to be assessed under the head business income. Apart from that, it was the claim of the assessee company that as it had not allowed the use of the buildings for purpose of any joint venture business between the assessee company and the licensees/lessees, therefore, in the absence of any sharing of revenue or loss, in any manner, between the assessee and the licensees in respect of income or loss generated by the licensees from their activities in the said premises, the subject receipts were rightly disclosed as its “business income”.

4. However, the aforesaid explanation of the assessee company did not find favour with the AO, who was apparently swayed by the fact that the TDS certificates issued by the licensees/lessees indicated that the nature of payments made to the assessee company was towards “rent”. Accordingly, the AO held a conviction that, as the assessee company was not exploiting the subject properties for its commercial business activity, therefore, it could not be said that any business activity was the primary objective and letting out of the property was a secondary one. Also, the AO observed that mere availing of a term loan from the bank and purchase of land and/or construction of a building and showing the

building as a fixed asset in the balance sheet of the assessee company would not alter the character of the income when the intention, as was evident from the lease agreements and financials was to let out the buildings and earn rent by way of license fees/rent.

5. The AO referring to the financial statements of the assessee company for the subject year, observed that as per the “Schedule 22” of its Profit & Loss Account for the said year, the assessee company had disclosed its entire income of Rs. 42,94,42,496/-, as “rental income-premises” and the maintenance income or income from other claimed services, if any, were not separately reflected in the said financial statements. The AO further took note of the fact that, as per “Note-25” of the annual accounts, the infrastructure business of the assessee company was transferred to and stood vested with M/s People Combine Hospitality Private Limited (PCHPL) w.e.f 01/04/2011. Apart from that, the AO observed that as providing maintenance of the buildings and other amenities/infrastructure was an integral part of the lease of the buildings, therefore, the same could not be brought within the meaning of a separate activity carried out by the assessee company. Accordingly, the AO was of the view that the maintenance income received by the assessee company was also assessable under the head “Income from

house property" along with lease rent. The AO to fortify his view had drawn support from the judgment of the Hon'ble Supreme Court in the case of Shambhu Investment (P.) Ltd. Vs. CIT (2003) 263 ITR 143 (SC), wherein the Hon'ble Apex Court had approved the view taken by the Hon'ble High Court of Calcutta, that as the assessee company before them had let out a portion of its property to various occupants by giving them an additional right of using furniture and fixtures and other common facilities for which rent was being paid month by month in addition to the security free advance covering the entire cost of the said immovable property, the income derived from the said property was liable to be assessed as "Income from house property". Also, the AO relied upon the judgment of the Hon'ble High Court of Madras in the case of CIT Vs. Chennai Properties & Investments Ltd Vs. (2004) 266 ITR 685 (Madras), wherein it was held that the rental income received by the assessee company on exploiting the property by letting out the same was liable to be assessed under the head "Income from house property".

6. Accordingly, the AO observed that as the assessee company was exploiting the property as an owner by leasing out the same and realizing the income as license fee/rent, and had failed to demonstrate based on any credible evidence that the lease rent so received was from

exploitation of property by way of complex commercial activities, therefore, its main intention in letting out the property or any portion of the same was to earn rental income, which, thus, was liable to be assessed as “Income from house property” and not as “business income”.

7. Apropos, the claim of the assessee company that as the rental income that was disclosed was all along accepted by the department in the preceding years as its business income, therefore, it was not appropriate to adopt an inconsistent approach and recharacterize the said income by assessing the same during the subject year under the head “Income from house property”, the AO did not find any merit in the said contention. The AO observed that there was no estoppel or res judicata in the income tax proceedings, and the claim of the assessee company in a particular assessment year, based on the facts and legal position existing in that year, could independently be examined. Also, the AO observed that during the year under consideration, the assessee company as per “Note-25” of its annual accounts, had pursuant to the scheme of amalgamation reported that its infrastructure business was transferred to and vested in PCHPL w.e.f 01/04/2011, therefore, its claim that its receipts were for infrastructure services was required to be

examined in the backdrop of the said “Note” forming part of its annual accounts for the subject year and thus, merely because its claim was accepted by the AO in the earlier years, it cannot be said that such claim should also be accepted during the year under consideration irrespective of the nature of transactions. Accordingly, the AO, based on his aforesaid deliberations, concluded that the subject receipts were assessable in the hands of the assessee company under the head “Income from house property”.

8. The AO, based on his aforesaid observations brought the subject receipts to tax under the head “Income from house property”, and allowed standard deduction under section 24 of the Act, along with other permissible deductions like municipal taxes paid and interest on the borrowed capital that was utilized for acquisition/construction of buildings from which rental income was declared by the assessee company.

9. The AO, further observed that as loans/cash credit facility aggregating to Rs. 17.37 crores (approx) that were availed by the assessee company were not utilized towards construction of the properties from which rental income was being offered, but were availed for some other purposes, therefore, in absence of any evidence which

would establish any nexus between the borrowings and acquisition and/or construction of the subject properties, the assessee's claim for deduction of the interest corresponding to the said loans was not allowable as deduction under section 24 of the Act, i.e., under the head "Income from house property".

10. Further, the AO observed that though the assessee company had during the subject year disclosed in its "balance sheet" under the head "Current assets", the investments it had made in unlisted and listed equities to an extent of RS. 15,42,44,890/-, but had not attributed any portion of the expenditure debited in its Profit & Loss account towards earning of the exempt income on such tax-free investments, thus, called upon the assessee company to put forth an explanation regarding the same. In reply, it was claimed by the assessee company that no disallowance under Section 14A was called for in its case as it had not earned any exempt income during the year under consideration. On the contrary, the AO observed that the assessee company had, during the subject year, earned dividend income of Rs. 20,585/-. The AO held a conviction that, as the assessee company had maintained a common Profit & Loss account for all its activities, therefore, debiting of certain expenses attributable to the exempt income yielding investments, viz. (i).

making of fresh investments; (ii). maintaining or continuing with the existing portfolio of investments; and (c). deciding even the time when to exit from one investment to another; were all coordinated and well-informed management decisions, involving not only inputs from various sources but also involved acumen of senior personnel, therefore, could safely be related to the earning of exempt income. Thereafter, the AO worked out the disallowance under Section 14A r.w Rule 8D of Rs. 15,42,448/-.

11. Accordingly, the AO vide his order passed under section 143(3) r.w.s 144B of the Act, dated 20/09/2021, determined the income of the assessee company at Rs. 50,14,81,765/-.

12. Aggrieved, the assessee company carried the matter in appeal before the CIT(A), who after deliberating at length on the facts involved in the case before him, in the backdrop of the contentions advanced by the assessee company and the judicial pronouncements that were pressed into service before him, concurred with the claim of the assessee company that the rental receipts were to be assessed as its "business receipts" and not as its income under the head house property. For the sake of clarity, we deem it apposite to cull out the observations of the CIT(A), as under:

"**6. Discussion and decision**:

I have carefully examined Statement of Facts, Grounds of appeal, order u/s. 143(3) r.w.s. 144B of the Income Tax Act, written submissions of the appellant, Income Tax Return and related judicial rulings on the subject matter.

**6.1. Ground of Appeal No.1 & 2** – general in nature and not adjudicated.

**6.2. Ground of Appeal No.3 – rental or business income**.

The appellant claimed that the rental income should be considered under the head business income due to the provision of additional infrastructure and services like housekeeping, security, and transport to educational institutions. AO observed that the receipt of Rs 42,94,42,496/- should be assessed under the head House property income.

AO observed that the assessee is not at all involved in the day to day business activity or any activity being carried on by the tenants. AO noted that this is not the case where the assessee has allowed the use of the buildings for purpose of joint venture business of the assessee and the licensees/lessees. AO also observed that there is no sharing of revenue or loss in any manner between the assessee and the licensees in respect of income or loss generated by the licensees from their activities in the premises except fixed rent and variable rent payable per sq.ft. of the built-up area.AO also noted that TDS certificates issued by the licensees/lessees indicate that nature of payment made to the assessee is 'rent'. AO noted that availing of term loan from the bank for the purchase of the land and/or construction of the building and showing the building as fixed asset in the balance sheet of the company does not alter the character of the income. AO noted that as per schedule 22 ,Revenue from operations(net) to the P&L a/c for the year, entire income of Rs. 42,94,42,496 /- is shown as 'rental income premises' and the maintenance income or income from other claimed services, if any, is not reflected separately in the financials. AO observed that as per Note submitted of Annual accounts, the infrastructure business of the company was transferred to and vested in People Combine Hospitality Private Limited (PCHPL) with effect from April 1, 2011. AO held that providing maintenance of the buildings and other amenities/infrastructure is an integral part of the lease of buildings and as such maintenance services/infrastructure services, if any, do not constitute a separate activity. AO held that the maintenance of the let out building is to run concurrently with the term for which the premises

were given on lease and therefore maintenance income is also assessable under the head 'Income from House Property'. AO held that the assessee failed to demonstrate with any credible evidence that the lease rent received by it was from exploitation of property by way of complex commercial activities.

Appellant submitted that services rendered by the company to Vikas Educational Society and other associate entities were in the nature of infrastructure services and not mere rental services. It also submitted that such rental income was all along admitted as business income and the same was accepted by the department. It submitted that the finding of the Ld. AO that the Appellant transferred its infrastructure assets to PCHPL with effect from 01.04.2011 is factually Incorrect and there is no note to this effect in the annual accounts/audited financial statements of the Appellant for the FY 2017-18 (Annexure 6).

In view of above differences the various points are discussed as below:

AO observed in the assessment order –

*"..the assessee-company is engaged in the activity of acquiring of land and building, furniture, transport vehicles and to provide infrastructural facilities to the schools and educational institutions and revenue is generated from the rental income on premises and operation of pre-primary schools…"*

AO observation that this is not the case where the assessee has allowed the use of the buildings for purpose of joint venture business of the assessee and the licensees/lessees is not in itself a determinant factor as there could be a case where the receipts are in nature of business receipts despite there being no joint venture between lessor and lessee. The absence of joint venture between appellant and lessee cannot be sufficient ground to hold that the receipts are not in nature of business receipts.

AO observed that there is no sharing of revenue or loss in any manner between the assessee and the licensees in respect of income or loss generated by the licensees from their activities in the premises except fixed rent and variable rent payable per sq.ft. of the built-up area. However, the absence of sharing agreement cannot be sufficient ground in itself to hold that the receipts are not in nature of business receipts. The business receipts can be a fixed amount on monthly basis

also. Absence of sharing agreement is not sufficient ground to hold that the receipts are not business receipts.

AO observed that TDS certificates issued by the licensees/lessees indicate that nature of payment made to the assessee is 'rent'. However the issue is covered by various judgments wherein it has been held that the true nature of income is not determined by TDS certificate as held by Hon'ble Hyderabad ITAT in case of M/s Zelan Projects P Ltd vs DCIT (ITA No 946/Hyd/2012).

AO noted that availing of term loan from the bank for the purchase of the land and/or construction of the building and showing the building as fixed asset in the balance sheet of the company does not alter the character of the income. However, the existing of loans shows that the appellant intend to commercially exploit the premise.

AO observed that the maintenance of the let out building is to run concurrently with the term for which the premises were given on lease thus showing that the rental is not independent of maintenance and other services. In fact, alternatively it shows that the services provided has a nexus with rental agreement.

AO observation that the maintenance income or income from other claimed services, if any, is not reflected separately in the financials is factually incorrect. In audited financials in schedule 22 shows break up of different receipts –fee income of Rs 6.3 crores, house keeping income of Rs 3.79 crores, transport management receipt of Rs 58 lacs , security charges of Rs 36.75 lacs.

AO held that the assessee failed to demonstrate with any credible evidence that the lease rent received by it was from exploitation of property by way of complex commercial activities. However, the appellant submitted that services rendered by the company to Vikas Educational Society and other associate entities were in the nature of infrastructure services and not mere rental services. Also appellant relied on Hon'ble Supreme Court decision in case of Universal Plast Ltd. Vs CIT (237 ITR 454 ) wherein Hon'ble Court held that whether income received by an assessee from leasing or letting out of assets would fall under head 'Profits and gains of business or profession' is a mixed question of law and fact and has to be determined from point of view of a businessman in that business on facts and circumstances of each case including true interpretation of agreement under which assets are let out. In view of same the facts of the case are discussed below to ascertain the true nature of receipt of the appellant. Appellant

have submitted various agreement for services facilities. Letter of Axis bank dated 05/08/2017 mentions Appendix – I. The said appendix in other common terms – point 2 – borrower's undertaking mentions service agreement besides lease agreement.

Appellant has submitted lease deed copy dated 01/03/2017 between appellant and M/s Oakbridge Education Society wherein the appellant has been shown in business of infrastructure development, construction, hostel facilities, boarding facilities, its operation and maintenance services; operating, managing and running playschools & early childhood learning centres; planning, operating , managing and running educational resources; etc. The appellant has constructed 1,28,677 sq ft and educational infrastructure at Ranga Reddy district. M/s Oakbridge Education Society has taken 65000 sq ft on lease @ Rs 54.60/- per sq ft from appellant for purpose of running Oakbridge International school for a period of 11 months (01/03/2017 to 31/01/2018). M/s Oakbridge Education Society shall have the right of first refusal in case appellant want to lease the property to any third party.

Another lease deed copy dated 02/02/2017 was submitted for leasing 12103 sq yards of land at same place to M/s Oakbridge Education Society. Clause D mentions that appellant have created required educational infrastructure/resources on the said land.

Appellant has submitted security services agreement copy dated 22/09/2017 between appellant and M/s Oakbridge Education Society wherein the appellant is to provide security services in relation to the Oakbridge International school being run by M/s Oakbridge Education Society in consideration for service fees. The nature of services include determination of places for installation of CCTV & other security installations, determining entry and exit points to school, guidance on installation of CCTV, monitoring the CCTV feeds , conducting mock security drills , etc. clause 2.3 of the agreement also states that the appellant can provide these services to any other third parties. The total service fees is Rs 64 lacs per annum. Para 5.2 of the agreement states that the appellant shall engage trained and qualified personnel , provide badges , uniform , identity cards , insurance cover to the personnel engaged. It also states that appellant shall ensure cleanliness, decorum, safety , good behaviour of the security staff. The building covered by the agreement is 1,95,000 sq ft of building with 74 class rooms , 20 multi purpose hall , 22 wash rooms , and sports facilities like tennis court , basket ball , swimming pool , splash pool ,

soccer ground , cricket , skating , table tennis , rock climbing , badminton , throw ball , volley ball , jungle gym.

Another lease deed copy dated 22/09/2017 was submitted for transport management services for a fee of 15 % of total collection by M/s Oakbridge Education Society.

Appellant has submitted House keeping and bus maintenance service agreement copy dated 22/09/2017 between appellant and M/s Oakbridge Education Society wherein the appellant is to provide cleaning services 12 times in a month; furniture cleaning 4 times a month; exterior services like wall cleaning, building façade cleaning, washing and cleaning of curtains, aprons, sheets, etc 2 times a month; playground cleaning – swimming pool, splash pool, tennis court, basket ball, skating rink , football, jungle gym 4 times a month. The total fees for a month is Rs 19,32,800/- for the house keeping services which comes to Rs 2.32 crores per year. Infact appellant has debited house keeping and security cost of Rs 81.13 lacs , transport charges of Rs 20.24 lacs in its P/L a/c as seen from schedule 26 of the P/L a/c.

AO relied on decision of the Hon'ble Apex court in the case of Shambhu Investment (P.P Ltd. reported in 263 ITR 143) wherein the Supreme Court declined to interfere with the conclusion arrived at by Calcutta High Court on identical facts that the prime object of the assessee under the agreement was to let out portion of said property to various occupants by giving them additional right of using furniture and fixtures and fixtures and other common facilities for which rent was being paid month by month in addition to the security free advance covering the entire cost of the said immovable property and the income derived from the said property was an income from property. However, the facts of the case here are different. Here there are separate agreements between appellant and the lesee in nature of housekeeping agreement, security services agreement, transport services, maintenance of playground etc. It is not merely giving additional rights to use furniture and fixtures of common facilities. The entire structure has been designed in nature of school like playground, classrooms etc. and hence the judgment of Hon'ble Apex court in the case of Shambhu Investment (Supra) is not applicable in the instant case.

Appellant submitted that such rental income was all along admitted as business income and the same was accepted by the department. However, AO noted that there is no estoppel or res-judicata in Income-tax proceedings. However various courts have ruled that AO should take a consistent approach to the nature of income if the facts of

the case are same in different AYs. Reliance is placed on Hon'ble Delhi High court ruling in case of PCIT vs Power Links Transmission Ltd (ITS 87/2022). Reliance is also placed on Hon'ble Supreme High court ruling in case of PCIT vs Maruti Suzuki India Ltd (107 com 375).

Appellant also relied on various judgments which are summarized below:

Hon'ble Supreme Court decision in case of Chennai Properties & Investments Ltd vs CIT (373 ITR 673 ) wherein Hon'ble Court held that where the main object of assessee-company was to acquire properties and earn income by letting out same, said income was to be brought to tax as business income and not as income from house property. It also relied on Hon'ble Supreme Court decision in case of Rayala Corporation (P.) Ltd. Vs ACIT (386 ITR 500) wherein Hon'ble Court held that the assessee company is in business of renting its properties and is receiving rent as its business income, the said income should be taxed under the Head "Profits and gains of business or profession".

Hon'ble Supreme Court decision in case of Karanpura Development Co. Ltd. Vs CIT (44 ITR 362) wherein Hon'ble Court held that where a company acquires properties which it leases out with view to acquiring other properties to be dealt with in same manner, company is not treating them as properties to be enjoyed in shape of rents which they yield but as a kind of circulating capital leading to profits of business, which profits may be either enjoyed or put back into business to acquire more properties for further profitable exploitation then the said income should be taxed under the Head "Profits and gains of business or profession".

Hon'ble Supreme Court decision in case of CIT vs National Storage (P.) Ltd (66 ITR 596) wherein Hon'ble Court held that assessee not only constructed vaults of special designs and special doors and electrical fittings but also rendered other services to vault holder – Fire alarm was installed and expenditure incurred for its maintenance was paid to municipality - Two railway booking offices were opened for dispatch and receipt of film parcels - Regular staff was kept on salary to render services to vault holders - hence on facts assessee carried on an adventure or concern in nature of trade and the said income should be taxed under the Head "Profits and gains of business or profession".

Hon'ble Kerala High Court decision in case of CIT vs Oberon Edifices & Estates (P.) Ltd (263 Taxman 377) wherein Hon'ble Court

held that in cases where income received is not from bare letting out property but on account of facilities and services rendered, operations involved in such letting out is in nature of business and income derived therefrom has to be treated as business income and not income from property.

Hon'ble Karnataka High Court decision in case of CIT vs Velankani Information Systems (P.) Ltd (265 CTR 250) wherein Hon'ble Court held that where agreements for letting out of building and provision of services were entered into contemporaneously and object was to enjoy entire property as a whole, which was necessary for carrying on business, income could not be separated on basis of separate agreements and therefore, income from letting out was assessable as business income and not as income from house property.

It is seen that the case laws discussed above are applicable to the facts of the case of the appellant and hence respectfully following above decisions of various courts the addition of AO is deleted. AO to treat the receipt as business receipt and not rental receipts.

**Without prejudice Ground 3 - Interest disallowed Rs 17.37 crores on capital borrowed to construct properties**.

AO added back on ground that appellant did not submit details of buildings constructed, plan approval of local authorities, income – expense working of these buildings. Appellant submitted certificate of CA regarding utilization of loan for construction of the properties as additional evidence. The certificate stated that appellant has taken Rs 39 crores from Axis Bank. Appellant has constructed 38,564.72 sq ft at Oakbridge International school, Bachupally for cost of Rs 28 crores. The balance 56176.72 sq ft will be constructed in AY 19-20. Out of the Rs 28 crores utilized for construction Rs 19 crores have been utilized from Axis bank loan.

Since the receipts from lessee has been held to be income from Business & profession the interest income is allowed as incurred for business purpose. **Hence, this ground of appeal without prejudice is allowed**.

**6.3. Ground of Appeal No. 4 – claim of depreciation of Rs 13.74 crores.**

Since the receipts from lessee has been held to be income from Business & profession the depreciation is allowed. Hence, this ground of appeal without prejudice is allowed.

**6.4. Ground of Appeal No. 5– 14A disallowance of Rs 15.42 lacs**

The Appellant had earned dividend income of Rs. 20,585/- from investments made in quoted equity shares. Appellant submitted that no expenditure has been incurred for earning the exempt income. AO made an addition of Rs. 15,42,448/- (calculated as 1% of the value of investments in subsidiaries amounting to Rs.15,42,44,890) in accordance with rule 8D(2)(ii) of the Income Tax Rules, 1962 (the "Rules") read with section 14A of the Act. Appellant submitted that to invoke section 14A and rule 8D, AO must record lack of satisfaction about the expenditure claim made by an assessee, or the nil expenditure claim made by the assessee. It further submitted that without prejudice AO cannot disallow an amount higher than the exempt income earned by the Appellant.

It is seen from paragraph 5.3 of assessment order that AO has given his satisfaction about expenditure not being made by the appellant under section 14A. AO noted *"…noticed from the record that, one common profit and loss a/c was filed for all the activities of the assessee and the expenses incurred for all the activities were debited to the common P & L account. Needless to emphasize that (a) making of fresh investments, (b) maintaining or continuing with existing portfolio of investments, (c) deciding even the time when to exit from one investment to another are well coordinated and well informed management decisions, involving not only inputs from various sources but also it involves acumen of senior management personnel. Thus, having regard to the facts and circumstances of the present case, it is a fit case for invoking provisions of section 14A read with Rule 8D.."*. Thus this limb of section 14A(2) of the Act is satisfied that AO has made a satisfaction regarding expenditure not being made by the appellant under section 14A. However relying on various decision of Hon'ble courts relied by appellant in its submission the disallowance is restricted to Rs 20,585/-. The balance disallowance is deleted.

**6.5. Ground of Appeal No. 6– disallowance u/s 43B**

Appellant submitted that provision of gratuity and leave encashment has been disallowed in the computation of income. However, Rs 20 lacs was erroneously reported in Form 3CD and hence disallowed during processing of ITR u/s 143(1). Similarly form 3CD has

reported wrong figure of Rs 6.77 lacs as non compliance with chapter XVII-B in coloumn 21(b)(i)(A).

**AO to verify and delete the said addition if submission of appellant is found correct**. Appellant to be given adequate opportunity of being heard on the same. Appellant to produce documents to satisfy its claim before AO.

**6.6. Ground of Appeal No. 7**– linked to ground 5 & 6 and hence disposed along with these grounds of appeal. **Hence this ground of appeal is allowed.**

**6.7. Ground of Appeal No. 8– TDS credit shortfall of Rs 7250/-**

AO to verify and give credit of TDS if submission of appellant is found correct. **Hence this ground of appeal is allowed.**
6.8. **Ground of Appeal No. 9– interest u/s 234B**, is consequential in nature and not adjudicated.

**6.9. Ground of Appeal No. 10**– claim of education cess u/s 37(1) of the Act of Rs 17.13 lacs.

The issue is covered by decision of Hon'ble Supreme Court in the case of M/s Chambal fertilizers & Chemicals Ltd vs JCIT against the appellant. **Hence, this ground of appeal is dismissed.**

**6.10 Ground of Appeal No. 11**– initiation of penalty, is consequential in nature and not adjudicated.

**6.11 Ground of Appeal No.12 & 13** – is general in nature and not adjudicated.

**7. Result:**
In the result, the appeal is **"Partly allowed"**."

13. The revenue, aggrieved with the order of the CIT(A), has carried the matter in appeal before us.

14. We have heard the Learned Authorized Representatives of both parties, perused the orders of the lower authorities and the material

available on record, as well as considered the host of judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

15. Shri. Badicala Yadagiri, Ld. CIT-Departmental Representative (for short, “DR”), at the threshold of hearing of the appeal, took us through the facts of the case. The Ld. CIT-DR submitted that the indulgence of the Tribunal was sought for adjudicating three issues, viz. (i). the sustainability of the CIT(A)’s view that the amounts received by the assessee company from its associate entities, viz. (a). Oakbridge Educational Society; and (b). Vikas Educational Society was assessable under the head “Income from business” in the hands of the assessee company, as against that assessed by the AO under the head “income from house property”; (ii). sustainability of the CIT(A) view that the disallowance under Section 14A of the Act was liable to be restricted to the extent of the exempt income received by the assessee company during the subject year; and (iii). sustainability of the CIT(A) order, in the backdrop of the fact that he had, in the course of hearing of the appeal, admitted certain “additional evidence”, viz. (a). copy of the lease deed dated 02.02.2017 for leasing 12103 Sq. yards of land to M/s Oakbridge Education Society, (b). copy of the security service agreement dated

22.09.2017, (c). copy of lease deed for transport management services dated 22.09.2017, and (d). copy of housekeeping and bus maintenance service agreement dated 22.09.2017 between the assessee company and M/s Oakbridge Education Society, without confronting the same to the AO and thus, dispensing with the statutory requirement of calling for a "remand report" as was mandatorily required before admitting the same U/rule 46A of the Income-tax Rules, 1962.

16. The Ld. CIT-DR had thereafter drawn our attention to Page 56-57 of the CIT(A) order, wherein the said respective "agreements" were referred to and considered by the CIT(A). The Ld. CIT-DR submitted that as the CIT(A) had admitted the aforesaid "additional evidence" in contravention of the statutory requirement contemplated U/rule 46A, therefore, his order cannot be sustained and is liable to be set aside on the said count itself.

17. On merits, the Ld. CIT-DR submitted that the CIT(A) had grossly erred in law and facts of the case in accepting the claim of the assessee company that the rental receipts from its associates, viz. (a). Oakbridge Educational Society; and (b). Vikas Educational Society were assessable under the head "Income from business" in the hands of the assessee company, as against that assessed by the AO under the head

"Income from house property". The Ld. CIT-DR relied upon the observations of the AO. The Ld. CIT-DR submitted that, as the assessee company was exploiting the respective properties as an owner, therefore, the income that it had received by way of license fees/rent from letting out the subject properties was rightly brought to tax by the AO as the income of the assessee company under the head "Income from house property". Elaborating further on his contention, the Ld. CIT-DR submitted that as the main intention of the assessee company in letting out the subject properties was to earn rental income, therefore, the subject rental receipts were assessable as its income from house property and not as business income. The Ld. CIT-DR submitted that as the primary object of the assessee company was to let out the respective properties to its associates, therefore, the provision of additional services to them based on independent agreements, i.e., infrastructure services, hostel facilities, boarding facilities, planning, operating, managing, and running educational resources, security services, housekeeping, transport management services etc., had no bearing on characterizing the nature of the rental income, which continued to be in the nature of rental income that was assessable under the head "Income from house property". The Ld. CIT-DR, in support of his aforesaid contention, had drawn support from the judgment of the Hon'ble Supreme Court in the

case of Shambhu Investment (P.) Ltd. Vs. CIT (2003) 263 ITR 143 (SC). The Ld. CIT-DR submitted that the Hon'ble Apex Court in its aforesaid order, had observed, that as the assessee company before them had though let out a portion of its property to various occupants by giving them an additional right of using furniture and fixtures and other common facilities for which rent was being paid month by month in addition to the security free advance covering the entire cost of the said immovable property, the income derived from the said property was still liable to be assessed as income from house property. The Ld. CIT-DR had further drawn our attention to the assessment order and submitted that, as observed by the AO, the assessee company had, as per its Profit & Loss account, "Schedule 22" – "Revenue from operations (net)" disclosed the entire amount of its receipts of Rs. 42.94 crores (supra) as "rental income-premises", and the maintenance income or income from other claimed services, if any, were not reflected separately in the financials. Elaborating further on his contention, the Ld. CIT-DR submitted that as the assessee company had in itself admitted the subject receipts as having been received as rental income of the premises, therefore, it cannot claim that the subject amount was not liable to be assessed as its income under the head "Income from house property". Apart from that, the Ld. CIT-DR supported the AO's order, wherein the latter had

observed that in “Note 25” of the Annual Accounts of the assessee company, it was reported that pursuant to the scheme of amalgamation the infrastructure business of the assessee company was transferred to and vested in “People Combine Hosiptality Private Limited” (PCHPL) w.e.f 01.04.2011. The Ld. DR submitted that as the infrastructure business of the assessee company was w.e.f 01.04.2011 transferred to PCHPL, its claim that as the subject receipts in the earlier years was assessed in its case as “business income”, therefore, in light of consistency, a different view regarding the nature of such receipts could be not taken, did not merit acceptance. The Ld. CIT-DR submitted that the AO had rightly observed that the claim of the assessee company, i.e., the head of income under which the subject receipts were to be assessed was to be examined in the light of “Note 25” (supra) for the subject year. It was, thus, the Ld. CIT-DR’s contention that, as the facts in the case of the assessee company for the subject year were distinguishable as against those for the preceding years, wherein the aforesaid material aspect of the scheme of amalgamation of the assessee company (as reported in the annual accounts) was not considered, therefore, the principle of consistency will not carry the case of the assessee company any further.

18. The Ld. CIT-DR, based on his contentions, submitted that as the CIT(A) had grossly erred in law and facts of the case in setting aside the well-reasoned order of the AO who had rightly brought the subject receipts to tax in the hands of the assessee company under the head "Income from house property", and had wrongly concluded that the same was rightly disclosed by the assessee company as its "business income", cannot be sustained and is liable to be set aside.

19. Apropos the disallowance made by the AO under Section 14A r.w Rule 8D of Rs. 15,42,448/- that was scaled down by the CIT(A) to the extent of the exempt income of Rs. 20,585/- that was received by the assessee company during the year under consideration, the Ld. CIT-DR relied on the assessment order. The Ld. CIT-DR submitted that, as observed by the AO, as per the CBDT Circular No. 5/2014, dated 11/02/2014, the disallowance of the expenditure as per Section 14A r.w Rule 8D has to be made, based on the investments made by the assessee for earning of exempt income, irrespective of the fact whether or not any exempt income was actually earned during the year. Accordingly, the Ld. CIT-DR submitted that the CIT(A) had erred in substituting the disallowance under Section 14A of Rs. 15,42,488/-

made by the AO by an amount of Rs. 20,585/-, i.e., the exempt income earned by the assessee company during the subject year.

20. Per Contra, Shri. Karanjot Singh Khurana, Advocate – Ld. Authorized Representative (for short, "AR") for the assessee company, at the threshold of hearing of the appeal, took us through the facts of the case. The Ld. AR rebutted the claim of the revenue that the CIT(A) had violated Rule 46A of the Income-tax Rules, 1962, and had admitted certain documents that were allegedly produced before him as additional evidence, viz. (i). copy of the lease deed dated 02.02.2017 for leasing 12103 Sq. yards of land to M/s Oakbridge Education Society, (ii). copy of security service agreement dated 22.09.2017, (iii). copy of lease deed for transport management services dated 22.09.2017, and (iv). copy of housekeeping and bus maintenance service agreement dated 22.09.2017 between the assessee company and M/s Oakbridge Education Society, without confronting the same to the AO and calling for his objections regarding admission of the same as mandated U/rule 46A of the Income-tax Rules, 1962. The Ld. AR submitted that all the subject "agreements", viz. building, playfield, housekeeping, security, and transport management agreements, were filed with the AO in the course of the assessment proceedings, vide reply letter dated

30.03.2021, i.e., in compliance to his notices u/s 142(1) of the Act, dated 15.03.2021 and 30.03.2021, Page 520 to 529 of APB. The Ld. AR submitted that though the assessee company had filed before the CIT(A) an application for admission of "additional evidence" U/rule 46A of the Income-tax Rules, 1962, but the same was w.r.t seeking admission of a certificate issued by a registered chartered accountant providing a detailed account of utilization of the loan/borrowed capital towards construction of properties, Page 32/Para 2.33 of the CIT(A) order. It was, thus, the Ld. AR's contention that, as the subject "agreements" were filed by the assessee company in the course of the assessment proceedings, therefore, the grievance of the revenue, that the CIT(A) had admitted the said documents as additional evidence, being based on misconceived facts, is misplaced.

21. The Ld. AR to buttress his contention had drawn our attention to the submissions of the assessee company dated 30.08.2025 filed before us, wherein the assessee company had rebutted the "Ground of appeal No. 2.1" raised by the revenue, and had stated that the respective 'agreements" were filed in the course of the assessment proceedings. However, the assessee company had pointed out that the observations of the CIT(A), while referring to the respective "agreements", suffered

from two typographical mistakes, viz. (i). the CIT(A) while referring to the lease and service agreements executed by the assessee company to provide infrastructural facilities (including leasing of premises) for running educational institutes, had erroneously mentioned at Page 56-57 of his order that the said agreements were entered into between the assessee company and "M/s Oakbridge Education Society", while for the assessee company had entered into the agreements with "M/s Oakbridge Educational Society"; and (ii). the CIT(A) while referring to the lease and service agreements executed by the assessee company for leasing 12103 Sq. yards of land to M/s Oak Bridge Education Society had at Page 57 of his order, wrongly mentioned the date of the lease deed as 02.02.2017 instead of 02.03.2017.

22. Apropos the merits of the case, the Ld. AR submitted that as observed by the AO, the assessee company is engaged in the activity of acquiring of land and building, furniture, transport vehicles, and providing of infrastructural facilities to the schools and educational institutions, and generates revenue from its systematic and organized activity of providing educational infrastructure facilities to the schools and educational institutions, including but not limited to buildings, classrooms, laboratories, sports facilities, transportation facilities,

security services, housekeeping services and allied services required for the operation of educational institutions. The Ld. AR submitted that the assessee company would construct custom-built educational infrastructure with a built up area as required by the lessesse educational society, i.e., large educational campuses, including buildings, playgrounds, sports complexes, auditoriums, housekeeping blocks, transport systems, CCTV installations, and other specialized assets, and thereafter enter into lease agreements with the said educational societies for land and buildings and also simultaneously execute multiple service agreements such as housekeeping agreements, security services agreements, transport management agreements, playground and sports-facility maintenance agreements, CCTV monitoring agreements and other operational services agreements, which enabled the lessee's, i.e., the educational institutions to run the schools. The Ld. AR submitted that the assessee company had, as in the earlier years, disclosed its receipts from the bouquet of inextricably interwoven set of services that collectively enabled the educational institutions to run the schools, i.e., provision of educational premises, service income, viz. housekeeping, security, transport, and other services, as its "business income" for the subject year. Elaborating further on his contention, the Ld. AR submitted that the AO, by losing sight of the fact that the

assessee company, which was rendering its services in a systematic and organized manner, i.e., as a full-fledged educational infrastructure operator rather than as a passive landlord, had wrongly recharacterized and assessed the subject receipts in the hands of the assessee company under the head “income from house property”.

23. The Ld. AR had thereafter taken us through the sample lease agreements, which revealed that the assessee company would as per the requirement of the lessee -educational institution construct, develop the educational infrastructure and lease the same to the latter along with a bouquet of other services that would enable it to run the educational institution, viz. (i). Lease agreement, dated 01/03/2017 executed between the assessee company and M/s Oakbridge Educational Society (wherein the assessee company on being approached by the lessee had constructed, developed educational infrastructure to run an international school on 1,28,677 Sq. Ft of the Scheduled land, i.e., Acre 3 – 0 Guntas, with a built-up area of 65000 Sq. ft, as requested by the lessee), and had thereafter leased the same to the said lessee, Page 178-209 of APB; (ii). Housekeeping and bus maintenance agreement, dated 22.09.2017 executed between the assessee company and M/s Oakbridge Educational Society (which revealed that the assessee company had

agreed to provide the housekeeping and maintenance services as defined in “Schedule-1” of the agreement, viz. intensive cleaning services, furniture and other cleaning services, exterior services, swimming pool maintenance, splash pool maintenance, tennis courts maintenance, football ground maintenance, basketball courts maintenance, jungle gyms maintenance, skating ring maintenance, traffic park maintenance, school building house-keeping and maintenance, bus cleaning and maintenance services Page 210-223 of APB; (iii). Security service agreement (which revealed that the assessee company was required to determine, viz. (i). the entry points and exit points of the school; (ii). determination of points of installation of CCTV cameras (as per laws/police governing surveillance and privacy); and (iii). determination of the place of installation of other security devices). Also, the assessee company remained under the obligation to depute security guards, providing guidance on the installation of CCTV cameras, and monitoring the CCTV feeds. Further, as per the “agreement” the assessee company remained under an obligation to conduct mock drills of the security personnel. Also, a perusal of the “agreement” revealed that the lessee was divested of all its rights to obtain on its own the security services from any other party, and the right to engage the services of the security provider remained exclusively

vested with the assessee company. Also, it was the responsibility of the assessee company to provide uniforms, badges, and identity cards for the staff provided for the performance of services at the school premises, and also obtain adequate insurance cover for all the personnel deployed at the school for the performance of the services. The assessee company was also obligated to ensure that its employees/personnel, while on the premises of the school or while performing the services, observed the standards of cleanliness, decorum, safety, good behaviour, and general discipline laid down by the school. Page 224-253 of APB.

24. The Ld. AR based on the aforesaid facts, submitted that as the assessee company was a full-fledged educational infrastructure operator rather than a passive landlord, which based on its systematic and organized activity was engaged in the business of providing educational infrastructure facilities to the schools and educational institutions, including but not limited to buildings, classrooms, laboratories, sports facilities, transportation facilities, security services, housekeeping services and allied services required for the operation of educational institutions, therefore, it had rightly disclosed the revenue therein generated as its “business income”. Elaborating further on his

contention, the Ld. AR submitted that, as it was not a case of simpliciter letting out of property, and receipt of rent as a passive landlord, therefore, the same could not have been assessed under the head "Income from house property". The Ld. AR to support its contention that now when the assessee company before us was in receipt of income from complex commercial exploitation of properties, therefore, the same was liable to be assessed as its "business income" instead of "income from house property", had relied on a host of judicial pronouncements of the Hon'ble Supreme Court, viz. (i). East India Housing and Development Trust Ltd. Vs. CIT (1961) 42 ITR 49 (SC); (ii). Chennai Properties & Investments Ltd. Vs. CIT (2015) 373 ITR 673 (SC); (iii). CIT, Bombay City 1 Vs. National Storage Private Limited (1967) 66 ITR 596 (SC); (iv). S.G. Mercantile Corporation (P) Ltd. Vs. CIT (1972) 83 ITR 700 (SC); and the judgment of the Hon'ble High Court of Karnataka in CIT Vs. Velankani Information Systems (P) Ltd. (2013) 35 taxmann.com 1 (Kar). Further, the Ld. AR submitted that the nature of income in the hands of the assessee company, i.e., the payee, cannot be made dependent upon the nomenclature used in the TDS certificates issued by the payer, and in support thereof had relied on certain judicial pronouncements, viz. (i). DCIT Vs. Zelan Projects Private Limited, ITA No. 946/Hyd/2012; (ii). ITO Vs. Tejmalbhai & Co. (2006) 99 ITD 399

(Rajkot); (iii). DCIT Vs Tewari Warehousing Co. (2018) 92 taxmann.com 168 (Kolkata); and (iv). ITO Vs. RR Industries, ITA Nos. 2194-2199/Mad/2010.

25. The Ld. AR further submitted that the claim of the assessee company, wherein it had in its income-tax returns for AY 2015-16 and AY 2016-17 disclosed the subject receipts as its "business income", had been accepted by the revenue u/s 143(1) of the Act, Page 1050, 1062, 1064 & 1125 of APB. Also, the Ld. AR submitted that the disclosure of the subject receipts by the assessee company as its "business income' in its return of income for the subsequent year, i.e., AY 2019-20, had been accepted by the department under Section 143(1) of the Act, Page 1230 of APB, while for those for two succeeding years, i.e., AY 2020-21, Page 1347-1348 of APB and AY 2021-22, Page 1446 of APB had been accepted by the AO in the respective assessments framed by him under Section 143(3) r.w.s 144B of the Act. The Ld. AR vehemently submitted that now when the subject receipts disclosed by the assessee company in the assessment years, i.e., AY 2015-16, AY 2016-17, and AY 2019-20, as "business receipts" had been accepted by the revenue and not thereafter dislodged or discturbed by the revenue under Section 143(1) of the Act, and all the more those for AY 2020-21 and AY 2021-22 had

been accepted after being subjected to scrutiny assessment under Section 143(3) of the Act, therefore, as per the principle of consistency as had been emphasized by the Hon'ble Supreme Court in Radhasoami Satsang Vs. CIT (1992) 193 ITR 321 (SC), there was no justification for the AO to have adopted a diametrically contrary view during the year under consideration and assessed the subject receipts under the head "Income from house property".

26. Coming to the observation of the Ld. DR that the AO in the assessment order had observed, that as per "Note-25" of the Annual Accounts of the assessee company, pursuant to the scheme of amalgamation, the infrastructure business of the assessee company was transferred to and vested in M/s People Combine Hospitality Private Limited (PCHPL) w.e.f 01.04.2011, therefore, it could safely be concluded that the subject receipts in the hands of the assessee company for the year under consideration were only on account of rent as the other services were being provided by PCHPL, the Ld. AR rebutted the same. The Ld. AR submitted that the observation of the AO that the assessee company had transferred its infrastructure assets to PCHPL w.e.f 01.04.2011 was factually incorrect. Elaborating on his contention, the Ld. AR submitted that there was no "Note" to the said

effect in the Annual Accounts of the assessee company for the subject year, i.e., year ending 31.03.2018. Elaborating further on his contention, the Ld. AR submitted that prior to the scheme of arrangement between the assessee company (for short, "respondent") and (i). M/s People Combine Hospitality Pvt. Ltd; and (ii). M/s People Combine Amenities Pvt. Ltd (for short, "Petitioners"), vide the order of the Hon'ble High Court of Andhra Pradesh, dated 24.01.2012, the assessee company was engaged in three streams of businesses, viz. (i). hospitality business undertaking; (ii). infrastructure business undertaking; and (iii). infra school business undertaking. The Ld. AR submitted that as per the scheme of arrangement as was referred by the AO, the assessee company had transferred the business of "hospitality business undertaking" and "infrastructure business undertaking" to M/s People Combine Hospitality Pvt. Ltd and M/s People Combine Amenities Pvt. Ltd., respectively. However, the stated corporate restructuring had no impact on the nature of the services provided by the assessee company to the educational institutions, because the entire mechanism and manner of earning income from educational institutions, in lieu of Educational Infrastructure Facility Services (including leasing of land and building), remained the same before and after the restructuring. The Ld. AR submitted that as the assessee company continues to operate the

school infrastructure business, therefore, the aforesaid wrong observation of the AO, which had also weighed in his mind for re-characterizing the subject receipts as the assessee's income under the head "Income from house property" being based on misconceived facts was misplaced and thus, devoid and bereft of any substance.

27. Apropos the AO's observation that the maintenance receipts received by the assessee company, if any, were not separately reflected in its financials, the Ld. AR rebutted the same and claimed that it was was factually incorrect. The Ld. AR submitted that the "Schedule 22" of the audited financials of the assessee company clearly provided a break-up of the different receipts. The Ld. AR submitted that the aforesaid fact was brought to the notice of the CIT(A), who had duly taken cognizance of the same at Page 56 of his order.

28. The Ld. AR submitted that as the assessee company had rightly disclosed the revenue generated from its systematic and organized activity of providing educational infrastructure facilities to the schools and educational institutions, including but not limited to buildings, classrooms, laboratories, sports facilities, transportation facilities, security services, housekeeping services, and allied services required for the operation of educational institutions as its "business receipts",

therefore, the CIT(A) had after considering the facts of the case in the backdrop of the settled position of law concluded that the subject receipts were rightly disclosed by the assessee company as its "business receipts".

29. Apropos the disallowance made by the AO under Section 14A of the Act of Rs. 15,42,448/-, the Ld. AR supported the CIT(A) order, wherein the same was restricted by him to Rs. 20,585/-, i.e., to the extent of the exempt income that was received by the assessee company during the subject year. Apart from that, the Ld. AR submitted that as the AO had failed to record his satisfaction as to why the assessee's claim that no part of the expenditure claimed as a deduction was attributable to the earning of the subject exempt income, therefore, no disallowance was called for in its case under Section 14A of the Act.

30. We have thoughtfully considered the contentions advanced by the Ld. Authorised Representatives of both parties in the backdrop of the orders of the authorities below.

31. At the threshold, we may herein observe that there is no substance in the claim of the revenue that the CIT(A) had admitted certain documents that were allegedly produced before him as additional

evidence, viz. (i). copy of the lease deed dated 02.02.2017(*sic*) for leasing 12103 Sq. yards of land to M/s Oakbridge Education Society (*sic*); (ii). copy of security service agreement dated 22.09.2017; (iii). copy of lease deed for transport management services dated 22.09.2017; and (iv). copy of housekeeping and bus maintenance service agreement dated 22.09.2017 between the assessee company and M/s Oakbridge Education Society, without confronting the same to the AO and calling for his objections regarding admission of the same as mandated U/Rule 46A of the Income-tax Rules, 1962. As stated by the Ld. AR, and rightly so, we find on a perusal of the record that the subject "agreements", viz. building, playfield, housekeeping, security, and transport management agreements, were filed by the assessee company with the AO in the course of the assessment proceedings, vide letter dated 30.03.2021, i.e., in compliance to his notice(s) issued u/s 142(1) of the Act, dated 15.03.2021 and 30.03.2021, Page 520 to 529 of APB. For the sake of clarity, we deem it apposite to cull out the relevant extract of the letter dated 30.03.2021 filed by the assessee company in the course of the assessment proceedings, as under (Page 529 of APB):

> "2. Please give copy of lease agreements entered by you with tenants for earning rental income from immovable properties.

> The Copy of the agreements for building, house-keeping, security and transport management agreement are enclosed on sample basis as Annexure 1"

Further, it would be relevant to point out that though the assessee company had filed before the CIT(A) an application for admission of additional evidence U/rule 46A of the Income-tax Rules, 1962, but the same was w.r.t seeking admission of a certificate issued by a registered chartered accountant providing a detailed account of utilization of the loan/borrowed capital towards construction of properties, Page 32/Para 2.33 of the CIT(A) order. We, thus, are of a firm conviction that, as the subject agreements were filed by the assessee company in the course of the assessment proceedings, therefore, the grievance of the revenue, that the CIT(A) had admitted the same as additional evidence, which, in turn, is based on misconceived facts, does not merit acceptance. The **Ground of appeal No. 2** is dismissed.

32. We shall now deal with the core issue involved in the present appeal, i.e., as to whether or not the CIT(A) is right in law and facts of the case in observing that the assessee company had correctly disclosed the subject receipts as its "business receipts", and the same could not have been assessed as its income under the head "Income from house property".

33. As observed by us at length hereinabove, the assessee company is engaged in systematic commercial exploitation of large educational infrastructure along with providing of multiple associated commercial services, wherein it establishes, develops, constructs, maintains, operates, manages and carries on the business of educational infrastructure, and provides all kinds of educational facilities including but not limited to buildings, classrooms, laboratories, sports facilities, transportation facilities, security services, housekeeping services and allied services required for the operation of educational institutions. The assessee company, during the subject year, had provided educational infrastructure along with a bouquet of educational facilities for the operation of four schools spread over two cities, viz. (i). Oakbridge International School, Bachupally, Hyderabad; (ii). Oakbridge International School, Gachibowli, Hyderabad; (iii). Vikas Vidyaniketan, Vishakapatnam; and (iv). Oakridge International School, Visakhapatnam.

34. We find that the assessee company is engaged in the inextricably interwoven activities of acquiring of land and building, furniture, transport vehicles, and providing of infrastructural facilities to the schools and educational institutions, and generates revenue from its said systematic

and organized activities, including but not limited to buildings, classrooms, laboratories, sports facilities, transportation facilities, security services, housekeeping services and allied services required for the operation of educational institutions. On a perusal of the record, we find that the assessee company constructs custom-built educational infrastructure with a built up area as required by the lessesse – educational society, i.e., large educational campuses, including buildings, playgrounds, sports complexes, auditoriums, housekeeping blocks, transport systems, CCTV installations, and other specialized assets, and thereafter would enter into lease agreements with the said educational society for land and buildings, along with multiple service agreements such as housekeeping agreements, security services agreements, transport management agreements, playground and sports-facility maintenance agreements, CCTV monitoring agreements and other operational services agreements, which enabled the lessee's, i.e., the educational institution to run the school. Accordingly, the assessee company, in a systematic and organized manner, constructs custom-built educational infrastructure with a built-up area as required by the lessesse - educational society, and thereafter commercially exploits the same by executing lease agreements with the said educational society for land and buildings, alongwith multiple service

agreements such as housekeeping agreements, security services agreements, transport management agreements, playground and sports-facility maintenance agreements, CCTV monitoring agreements and other operational services agreements, and by providing such bouquet of services enabled the lessee, i.e., the educational institution to run the school.

35. In our view, for a better understanding of the operating model of the assessee company, it would be apposite to refer to the sample "lease agreements", which reveals that the assessee company would as per the requirement of the lessee, i.e., the educational society, construct and develop a custom-built educational infrastructure with a built-up area as required by the lessesse, and thereafter execute lease agreement with the said educational society for land and buildings alongwith a bouquet of other services that would enable it to run the educational institution, viz. (i). Lease agreement, dated 01/03/2017 executed between the assessee company and M/s Oakbridge Educational Society - wherein the assessee company, on being approached by the lessee, had constructed and developed the educational infrastructure to run an International School on 1,28,677 Sq. Ft of the Scheduled land, i.e., Acre 3 – 0 Guntas, with a built-up area of 65000 Sq. ft, as was requested by

the lessee, and had thereafter leased the same to the said lessee, Page 178-209 of APB; (ii). Housekeeping and bus maintenance agreement, dated 22.09.2017 executed between the assessee company and M/s Oakbridge Educational Society - which reveals that the assessee company had agreed to provide the housekeeping and maintenance services as defined in “Schedule-1” of the agreement, viz. intensive cleaning services, furniture and other cleaning services, exterior services, swimming pool maintenance, splash pool maintenance, tennis courts maintenance, football ground maintenance, basketball courts maintenance, jungle gyms maintenance, skating ring maintenance, traffic park maintenance, school building house-keeping and maintenance, bus cleaning and maintenance services Page 210-223 of APB; (iii). Security service agreement - which reveals that the assessee company was required to determine, viz. (i). the entry points and exit points of the school; (ii). determination of points for installation of CCTV cameras (as per laws/police governing surveillance and privacy); and (iii). determination of the place of installation of other security devices). Also, the assessee company remained under the obligation to depute security guards, provide guidance on the installation of CCTV cameras, monitor the CCTV feeds, and conduct mock drills of the security personnel. Also, a perusal of the “agreement” revealed that the lessee

was divested of all its rights to obtain on its own the security services from any other party, and the right to engage the services of the security provider remained exclusively vested with the assessee company. Also, it was the responsibility of the assessee company to provide uniforms, badges, and identity cards for the staff provided for the performance of services at the school premises, and also obtain adequate insurance cover for all the personnel deployed at the school for the performance of the services. The assessee company was further obligated to ensure that the employees/personnel, while on the premises of the school or while performing the services, observed the standards of cleanliness, decorum, safety, good behaviour, and general discipline laid down by the school. Page 224-253 of APB.

36. Considering the operating model of the assessee company, i.e., constructing and developing a custom-built educational infrastructure with a built-up area as required by the lessesse, and thereafter executing a lease agreement with the said educational society for land and buildings, alongwith multiple agreements for providing bouquet of services, viz. housekeeping, security services, transport management services, playground and sports services, maintenance agreements, CCTV monitoring agreements and other operational services, that would

enable the lessee, i.e., the educational society, to run the school, we concur with the CIT(A) that the assessee company is a full-fledged educational infrastructure operator engaged in a systematic and organized complex commercial exploitation of large scale educational infrastructure along with associated services, and is not a passive landlord.

37. We shall now, in the backdrop of our aforesaid observation, that the assessee company is a full-fledged educational infrastructure operator, which in a systematic and organized manner is engaged in complex commercial exploitation of large-scale educational infrastructure along with associated services, and is not a passive landlord, herein refer to the judicial pronouncements that have been pressed into service by the Ld. Authorized Representatives of both parties, as under:

**(A). Chennai Properties & Investments Ltd. Vs. CIT (2015) 373 ITR 673 (SC)**

In its aforesaid order, the Hon'ble Supreme Court had observed that where the main object of the assessee company was to acquire properties and earn income by letting out the same, said income was to be brought to tax as "business income" and not as "income from house

property". The Hon'ble Apex Court, had after referring to the *dicta* laid down by the Constitution Bench in the case of Sultan Brothers (P) Ltd. Vs. CIT (1964) 51 ITR 353 (SC), observed as under:

> "**11.** We are conscious of the aforesaid *dicta* laid down in the Constitution Bench judgment. It is for this reason, we have, at the beginning of this judgment, stated the circumstances of the present case from which we arrive at irresistible conclusion that in this case, letting of the properties is in fact is the business of the assessee. The assessee therefore, rightly disclosed the income under the Head Income from Business. It cannot be treated as 'income from the house property'. We, accordingly, allow this appeal and set aside the judgment of the High Court and restore that of the Income Tax Appellate Tribunal. No orders as to costs."

As in the case of the present assessee company before us, a full-fledged educational infrastructure operator, which in a systematic and organized manner constructs custom-built educational infrastructure with a built-up area as required by the lessesse - educational society, and thereafter commercially exploits the same by executing lease agreements with the said educational society for land and buildings, along with multiple service agreements, thus, is carrying on the business of leasing custom-built properties along with bouquet of services to enable the educational society to run the school, and, therefore, the revenue generated from its said multi-facet activities had rightly been disclosed as "business receipts".

**(B). CIT, Bombay City 1 Vs. National Storage Private Limited (1967) 66 ITR 596 (SC)**

(i). In the said case, the assessee company was promoted due to the promulgation of the Cinematograph film Rules 1948, by the Government of India. The rules required the distributor to store films only in godowns constructed strictly in conformity with the specifications laid down in the Film Rules and in a place to be approved by the Chief Inspector of Explosives. The assessee company purchased a plot of land and constructed 13 units. Each unit was divided into four vaults. The ground floor of the vaults was utilized to rewind the films, and the upper floor was used for the storage of films. The units were constructed in conformity with the requirements of and the specifications laid down in the film rules. The key to each vault was retained by the vault holder, but the Key to the entrance was kept in the exclusive possession of the assessee company. A fire alarm was installed, and an annual amount was paid to the municipality towards fire services. The assessee company opened in the premises two railway booking offices free of charge, for the convenience of the members and for the dispatch and receipt of film parcels. A canteen was also run for the benefit of the vault holders. The assessee company entered into an agreement with the film distributors. In terms of said agreement, the film distributors were given a licence to use the vaults only for the purpose of storing cinema films on payment of monthly amounts. The ITO assessed the rental income

accrued to the assessee company as its “Income from house property” under section 9 of the 1922 Act.

(ii). On appeal, the Hon’ble Supreme Court observed that the assessee company was carrying on an “adventure or concern in the nature of trade”, as it had not only constructed vaults of special design and special doors and electric fittings, but also rendered other services to the vault-holders, viz. (i). installed fire alarm and was incurring charges for its maintenance by paying to the municipality; (ii). had opened two railway booking offices in the premises for the dispatch and receipt of film parcels; (iii). it had maintained a regular staff consisting of a secretary, a peon, a watchman, and a sweeper, and apart from that it paid for the entire staff of the Indian Motion Picture Distributor’s Association an amount of Rs. 800/- per month for services rendered to the licensees, thus, the amounts received by the assessee company from hiring out the specially built vaults and providing special services to the licensees was not the income derived from the exercise of property rights but was derived from carrying on an “adventure or concern in the nature of trade”. For the sake of clarity, we deem it apposite to cull out the observations of the Hon’ble Apex Court, as under:

> “In our view, the High Court was right in holding that the assessee was carrying on an adventure or concern in the nature of trade. The

> assessee not only constructed vaults of special design and special doors and electric fittings, but it also rendered other services to the vault-holders. It installed fire alarm and was incurring expenditure for the maintenance of fire alarm by paying charges to the municipality. Two railway booking offices were opened in the premises for the despatch and receipt of film parcels. This, it appears to us, is a valuable service. It also maintained a regular staff consisting of a secretary, a peon, a watchman and a sweeper, and apart from that it paid for the entire staff of the Indian Motion Picture Distributors' Association an amount of Rs. 800 per month for services rendered to the licensees. These vaults could only be used for the specific purpose of storing of films and other activities connected with the examination, repairs, cleaning, waxing and rewinding of the films.

(iii). As the present assessee company before us, i.e., a full-fledged educational infrastructure operator rather than a passive landlord, during the subject year was engaged in the business of educational infrastructure and providing all kinds of educational facilities including but not limited to buildings, classrooms, laboratories, sports facilities, transportation facilities, security services, housekeeping services and allied services required for the running of a school by the educational institution, i.e., the lessee, therefore, its multi-facet activities as per the aforesaid judgment of the Hon'ble Apex Court would fall within the meaning of an "adventure or concern in the nature of trade".

**(C). Rayala Corporation Ltd. Vs. ACIT**
**(2016) 386 ITR 500 (SC).**

(i). In the said case, the assessee company was in the business of renting its properties and was receiving rent as its business income. The assessee company claimed that the said income should be taxed under the head “Profits and gains of business or profession” and not under the head “Income from house property”.

(ii). On appeal, the Hon’ble Supreme Court relied on its earlier order in the case of *Chennai Properties & Investment Ltd. (supra)* and held, that as the assessee company was in the business of leasing out its house properties to earn rent, the income so earned as rent should be treated as “business income” and not as “Income from house property”. For the sake of clarity, we deem it apposite to cull out the observations of the Hon’ble Apex Court, as under:

> **“12.** In view of the law laid down by this Court in the case of *Chennai Properties & Investment Ltd.* (*supra*) and looking at the facts of these appeals, in our opinion, the High court was not correct while deciding that the income of the assessee should be treated as Income from House Property.
>
> **13.** We, therefore, set aside the impugned judgments and allow these appeals with no order as to costs. We direct that the income of the assessee shall be subject to tax under the head "Profits and gains of business or profession".”

(iii). As the assessee company before us is in the solitary business of leasing educational infrastructure and providing all kinds of educational

facilities, therefore, the subject receipts had rightly been disclosed as its "business receipts".

**(D). CIT Vs. Velankani Information Systems (P) Ltd. (2013) 35 taxmann.com 1 (Karnataka)**

In the said case, the Hon'ble High Court had observed that the rental income was received by the assessee company from specialized buildings with comprehensive facilities that were inseparable, therefore, irrespective of the fact that there were two separate rental deeds, the same was assessable as its "business income". For the sake of clarity, we deem it apposite to cull out the observations of the Hon'ble High Court, as under:

> "**But if the assessee is in the business of taking land, putting up commercial buildings thereon and letting out such buildings with all furniture as his profession or business, then notwithstanding the fact that he has constructed a building and he has also provided other facilities and even if there are two separate rental deeds, it does not fall within the heading of income from house property.** Therefore, firstly what is the intention behind the lease and secondly what are the facilities given along with the buildings and documents executed in respect of each of them is to be seen. Thirdly it is to be found out whether it is inseparable or not. If they are inseparable and the intention is to carry on the business of letting out the commercial property and carrying at complex commercial activity and getting rental income therefrom, then such a rental income falls under the heading of profits and gains of business or profession. In fact, any other interpretation would defeat the very object of introduction of Section 80-IA as well as the scheme which is framed by the Government for development of industrial parks in the country. In that view of the matter, the finding recorded by the Appellate Authority as well as the Tribunal is in accordance with law and does not suffer from any legal infirmity which calls for interference. Accordingly, the substantial questions 1 and 2 are answered in favour of the assessee and against the revenue."

**(emphasis supplied by us)**

**E). CIT, Thiruvananthapuram Vs. Oberon Edifices & Estates (P) Ltd. (2019) 103 taxmann.com 413 (Kerala)**

The Hon'ble High Court had observed that, where the primary intention of the assessee company by letting out shops in a mall was commercial exploitation of property, income so derived from the same would be assessed as income from business and not as income from house property. For the sake of clarity, we deem it fit to cull out the observations of the Hon'ble High Court, as under:

> **27. In the instant case, it is not a letting out of property simpliciter, without anything more. A host of services are being provided by the assessee at the shopping mall. The assessee is engaged in a complex set of activities at the shopping mall. Management of the shopping mall is done by the assessee. The basic purpose is commercial exploitation of the property. The assessee has earned the income not merely by letting out the shop rooms but also by providing amenities and facilities at the shopping mall. Such amenities and facilities are not the basic facilities required for occupation of a shop room by a tenant. They are the special facilities for running the shopping mall and are meant to attract the customers and provide them the comfort and convenience of shopping. In cases where the income received is not from the bare letting out the property but on account of the facilities and services rendered, the operations involved in such letting out is in the nature of business and the income derived therefrom has to be treated as business income and not income from property. The income derived by the assessee cannot be regarded as simply from the exercise of property right. Where the assessee company has developed the shopping mall and let out the same by providing a variety of services, facilities and amenities in the mall, it can be found that the primary intention of the assessee was commercial exploitation of the property and where it has derived substantial part of its income by such activity, which constitutes its main business, the income so derived would be business income of the assessee. We, therefore, agree with the view of the Tribunal that the income derived by the assessee by letting out the**

**shops in the mall has to be assessed as income from business and not as income from house property.**

**28.** On the basis of the discussion above, we find that the amount received by the assessee company on letting out the shop rooms in the mall constructed by it has to be treated as business income and it has to be assessed to tax under the head "profits and gains of business" and not under the head "income from house property". The substantial question of law is answered in favour of the assessee and against the revenue.

**29.** Consequently, the appeal is dismissed. No costs.

**(emphasis supplied by us)**

38. Apropos the judgment of the **Hon'ble Supreme Court** in the case of **Shambhu Investment (Pvt) Ltd. Vs CIT (2003) 263 ITR 143 (SC)**, as was relied upon by the AO, we concur with the CIT(A) that the same is distinguishable on facts. In Shambhu Investment (Pvt) Ltd. Vs CIT (supra), the Hon'ble Supreme Court was dealing with letting out of premises with minimal amenities like furniture, AC, and security, and it was in the backdrop of the said fact that the Hon'ble Court held that the letting was the primary object. In contrast, in the present case, the assessee company provided services far beyond minimal amenities. The campus could not function without the services provided. Rather, the services provided by the assessee company constituted the core activity. As observed by us at length hereinabove, the assessee company employed security personnel, housekeeping staff, administrators, and managers. It operated transport systems,

maintained sports infrastructure, including swimming pools, tennis courts, basketball courts, and ensured compliance with educational requirements. We, thus, are of the view that as the assessee company before us is carrying out complex activities which are intrinsically commercial in nature, and provided bouquet of services that were indispensably required for running the school by the educational society, i.e., the lessee, therefore, the facts involved in the present case are substantially distinguishable as against those that were before the Hon'ble Supreme Court in the case of Shambhu Investment (Pvt) Ltd. Vs CIT (supra).

39. We thus, in the backdrop of the facts involved in the present case, read in light of the aforesaid settled position of law, are of a firm conviction that, as the assessee company is engaged in complex commercial exploitation of large-scale educational infrastructure along with multi-facet associated services and is not a passive landlord, i.e., is engaged in constructing and developing custom-built educational infrastructure with built-up area as required by the lessesse – educational society, and thereafter execute a lease agreement with the said educational society for land and buildings, along with multiple agreements for providing bouquet of services, viz. housekeeping,

security services, transport management services, playground and sports services, maintenance agreements, CCTV monitoring agreements and other operational services, that would enable the lessee - educational society, to run the school, therefore, the subjects receipts from its said multi-facet activities clearly falls within the meaning of "business receipts" and cannot be assessed as its income under the head "Income from house property".

40. Apropos the observation of the AO that the maintenance receipts, if any, were not separately reflected in its financials, we concur with the Ld. AR that the same is factually incorrect. As stated by the Ld. AR, and rightly so, the "Schedule 22" of the audited financials of the assessee company clearly provides a break-up of the different streams of service receipts, viz., (i). fees income: Rs. 6.3 crore (approx.); (ii). housekeeping income: Rs. 3.79 crores (approx.); (iii). transport management fees: Rs. 58.03 lacs (approx.). We find that the CIT(A), who was informed about the aforesaid anomaly in the observation of the A.O., had rightly taken cognizance of the same at Page 56 of his order, and had observed as under:

> "AO observation that the maintenance income or income from other claimed services, if any, is not reflected separately in the financials is factually incorrect. In audited financials in schedule 22 shows break up of different receipts – fee income of Rs 6.3 crores, house keeping

income of Rs 3.79 crores, transport management receipt of Rs 58 lacs ,security charges of Rs 36.75 lacs."

41. Apropos the observation of the AO in the assessment order that, as per "Note-25" of the Annual Accounts of the assessee company, pursuant to the scheme of amalgamation, the infrastructure business of the assessee company was transferred to and vested in M/s People Combine Hospitality Private Limited (PCHPL) w.e.f 01.04.2011, therefore, it could safely be concluded that the subject receipts in the hands of the assessee company during the year under consideration were only towards rent, as the other services were being provided by PCHPL, we are unable to persuade ourselves to concur with the same. In our view, the observation of the AO that the assessee company had transferred its infrastructure assets to PCHPL w.e.f 01.04.2011 is factually incorrect. Admittedly, there was a scheme of arrangement between the assessee company (for short, "respondent"); and (i). M/s People Combine Hospitality Pvt. Ltd; and (ii). M/s People Combine Amenities Pvt. Ltd (collectively referred as, "Petitioners"), vide the order of the Hon'ble High Court of Andhra Pradesh, dated 24.01.2012. On a perusal of the order of the Hon'ble High Court, we find that before the aforesaid scheme of arrangement, the assessee company was engaged in three streams of businesses, viz. (i). hospitality business undertaking;

(ii). infrastructure business undertaking; and (iii). infra school business undertaking. We find that, as per the scheme of arrangement (as had been referred by the AO), the assessee company had transferred the business of “hospitality business undertaking” and “infrastructure business undertaking” to M/s People Combine Hospitality Pvt. Ltd and M/s People Combine Amenities Pvt. Ltd., respectively. However, the stated corporate restructuring had no bearing on the nature of the services provided by the assessee company to the educational institutions, because the entire mechanism and manner of earning income from educational institutions in lieu of Educational Infrastructure Facility Services (including leasing of land and building) remained the same before and after the restructuring. We thus, are of the view, that as the assessee company even after the aforesaid corporate restructuring continued to operate the school infrastructure business, therefore, the AO based on his wrong observation, that had also weighed in his mind for re-characterizing the subject receipts as the assessee’s income under the head “Income from house property”, thus, had based on misconceived facts had arrived at a wrong view cannot be sustained and is liable to be vacated.

42. Apropos the observation of the AO that the TDS certificates issued by the licensees/lessees indicated the nature of the subject payments made by them to the assessee company as “rent”, therefore, it cannot be said that the assessee company was exploiting the subject properties for its commercial business activity, and such business activity was the primary objective and letting out the property was secondary one, we are unable to concur with the same. In our view, the nature of income in the hands of the assessee company, i.e., the payee, cannot be made dependent upon the nomenclature used by the payers in the TDS certificates issued by the payee. Our aforesaid view is supported by the order of the **ITAT, Hyderabad Bench “B”** in **DCIT Vs. Zelan Projects Private Limited, ITA No. 946/Hyd/2012**. It was observed by the Tribunal that, only on the basis of the TDS certificate enclosed by the assessee in the return of income, the AO had concluded that the amount received by the assessee from the payer was a contract receipt and accordingly proceeded to estimate the income. The Tribunal observed that though it may be a fact that in the TDS certificate, the deductee had mentioned it as payment towards professional charges but, that itself was not conclusive enough to prove the fact that the amount received was not an advance but towards work executed. Also, support is drawn from the order of a coordinate bench of the **ITAT, Rajkot** in **ITO Vs. Tejmalbhai**

**& Co. (2006) 99 ITD 399 (Rajkot)**. In the said case, facts identical to those involved in the case of the present assessee before us were involved. The assessee firm was providing storage facilities measured in square feet on specific charges for a specific period to its various customers. In addition to space in the warehouse, the assessee firm provided services like electricity, telephone, staff for managing the loading and unloading of goods, and keeping a watch over goods stored in the warehouse, along with other services required from time to time by concerned customers. The issue before the Tribunal was that as to whether the entire activity undertaken by the assessee was an "adventure in the nature of trade" and, therefore, liable to be assessed as "business income" and not as "income from house property". It was while answering the said issue that, the Tribunal had observed that though the customers-payers who had made the payments to the assessee firm had booked the expenditure in their books of accounts under the head "Rental expenditure/payment" and deducted tax at source (TDS) under Section 194-I of the Act, yet the income so received was assessable in the hands of the assessee firm as its "Income from business" and not as "Income from house property". Also, a similar view had been taken by a coordinate bench of **ITAT, Kolkata** in the case of **DCIT Vs Tewari Warehousing Co. (2018) 92 taxmann.com 168**

**(Kolkata)**, wherein it was observed that merely because one of the contracting parties had wrongly deducted tax at source (TDS) under section 194-1, same would not change the character of income, i.e., business receipts to rental income. In our view, the reliance of the AO on the TDS certificates is fundamentally misplaced, because the nomenclature in TDS certificates does not determine taxability, and the legal character of income depends upon the underlying arrangement. We thus, in terms of our aforesaid observations, concur with the CIT(A), who had rightly observed that the nature of payment mentioned in the TDS certificates issued by the payers is not determinative of the nature of income. The **Grounds of appeal Nos. 3 to 8 and 10** are dismissed in terms of our aforesaid observations

43. Although we have based on deliberations on the facts involved in the present case before us, read in the backdrop of the judicial pronouncements concluded, that the subject receipts have rightly been disclosed by the assessee company in its return of income as its “business receipts”, but, even otherwise, we find substance in the Ld. AR’s contention that as the claim of the assessee company that the subject receipts were to be assessed as its “business receipts”, had not only been accepted by the department in certain years under Section

143(1) of the Act, i.e., AY 2015-16 & AY 2016-17 (Page 1050, 1062, 1064 & 1125 of APB) and AY 2019-20; but also in the succeeding years where scrutiny assessments were framed in its case under Section 143(3) r.w.s 144B of the Act, viz. (i). AY 2020-21 (Page 1347-1348 of APB) and (ii). AY 2021-22 (Page 1443-1447 of APB), wherein despite the fact that the AO while framing the respective assessments for the succeeding years, viz., (i). AY 2020-21, vide order u/s 143(3) r.w,s 144B of the Act, dated 31.08.2022; and (ii). AY 2021-22, vide order u/s 143(3) r.w.s 144B of the Act, dated 19.12.2022, had before him the view taken by his predecessor during the subject years before us i.e., AY 2014-15, AY 2017-18 and AY 2018-19, wherein the subject receipts had been assessed under the head “Income from house property”, had consciously chosen to take a diametrically contrary and inconsistent view as against that was adopted during the subject years before us, i.e., AY 2014-15, AY 2017-18 & AY 2018-19, which, thus, would be hit by the principle of consistency. Looking at the issue from another view, now when the revenue after scrutinizing the case of the assessee company for the subsequent years, i.e., (i). AY 2020-21, vide order u/s 143(3) r.w,s 144B of the Act, dated 31.08.2022 and (ii). AY 2021-22, vide order u/s 143(3) r.w.s 144B of the Act, dated 19.12.2022, had accepted its claim that the subject receipts were liable to be assessed as its “business

receipts", then it cannot in the backdrop of the said admitted state of affairs thereafter challenged the view taken by the CIT(A), who had taken the same view and had concurred with the assessee company that the subject receipts for the years under consideration, i.e., AY 2014-15, AY 2017-18 and AY 2018-19 were rightly disclosed as "business receipts" by filing appeals before us, viz. (i). AY 2014-15 (appeal filed on 19.05.2025); (ii) AY 2017-18 (appeal filed on 03.04.2025); and (iii). AY 2018-19 (appeal filed on 03.04.2025). We are of firm conviction that such conflicting views of the revenue based on cherry picking of years, i.e., in some years accept the claim of the assessee company that the subject receipts were assessable as "business receipts", while for in some years, take a view to the contrary, will be hit by the principle of consistency. To sum up, when the revenue after duly scrutinizing the cases of the assessee company for AY 2020-21 and AY 2021-22, despite there being no shift in the facts of the case as involved in the preceding years, had accepted the claim of the assessee company that the subject receipts were liable to be assessed under the head "business income", then it is difficult to comprehend that on what basis the same view of the CIT(A) for the subject years before us, i.e., AY 2014-15, AY 2017-18 & AY 2018-19 is being challenged by the revenue before us? Our aforesaid view that the revenue cannot be permitted to adopt inconsistent views is

supported by the judgment of the **Hon'ble Supreme Court** in **Radhasoami Satsang Vs. CIT (1992) 193 ITR 321 (SC).** Accordingly, we are of the view that as the department, after having scrutinizing the claim of the assesse company that had disclosed the subject receipts as its "business income" in AY 2020-21 and AY 2021-22, had accepted the same vide respective orders passed under Section 143(3) of the Act, therefore, it cannot justifiably based on a diametrically inconsistent and rather self-contradictory approach challenge the same view taken by the CIT(A), by filing before us the subject appeals for AY 2014-15, AY 2017-18 and AY 2018-19. Accordingly, the present appeals filed by the revenue, in our considered view, will also be hit by the principle of inconsistency.

44. We shall now deal with the Ld. DR's contention that the CIT(A) had erred in substituting the disallowance made by the AO under Section 14A r.w Rule 8D of Rs. 15,42,44,890/- by the amount of exempt income that was received by the assessee company during the subject year, i.e., Rs. 20,585/-. Although the Ld. AR has assailed before us the validity of the disallowance sustained by the CIT(A), in the backdrop of the fact that, no satisfaction of the AO as to why the claim of the assesse company that no disallowance under the said statutory provision was

called for in its case was not to be accepted is discernible from the assessment order, but in absence of any cross-objection or preliminary objection having been raised by the assessee company/respendent before us, we refrain from dealing with the same.

45. Coming back to the issue in hand, i.e., the sustainability of the CIT(A) view that the disallowance under Section 14A cannot exceed the amount of exempt income earned by the assessee company during the subject year, i.e., Rs. 20,585/-, we concur with the view taken by him. Our aforesaid is supported by the judgments of the **Hon'ble High Court of Delhi** in the case of, viz. (i). **Pr. CIT Vs. McDonalds India Pvt. Ltd., ITA No. 725/2018, dated 22.10.2018; (ii). Cheminvest Vs. CIT (2015) 378 ITR 33 ((Delhi); (iii). CIT Vs. Holicim India (P) Ltd. (2015) 57 taxmann.com 28 (Delhi); (iv). Joint Investments Pvt. Ltd. Vs. CIT (2015) 372 ITR 694 (Delhi); (v). CIT Vs. Takisha Engg. India Ltd. (2015) 370 ITR 338 (Delhi);** and **(vi). Pr. CIT Vs. Caraf Builders & Constructions (P) Ltd. (2019) 101 taxmann.com 167 (Delhi)**. The "SLP" filed by the revenue has thereafter been dismissed in **Pr. CIT Vs, Caraf Builders & Constructions (P) Ltd. (2019) 112 taxmann.com 322 (SC).** Also, the aforesaid view is supported by the judgment of the **Hon'ble Supreme Court** in **Maxopp Investments Ltd. Vs. CIT (2018)**

**402 ITR 640 (SC).** Further, a similar view has been taken by the **Hon'ble High Court of Madras** in the case of **Pr. CIT Vs. Envestor Ventures Ltd. (2021 123 taxmann.com 378 (Madras)** and **CIT Vs. Tidel Park Limited, Tax Case No. 732 & 733 of 2018, dated 07.07.2020.** Also, we find that the **Hon'ble High Court of Karnataka** in the case of **Pragathi Krishna Gramin Bank Vs. Jt. CIT (2018) 95 taxmann.com 41 (Kar)**, has held that disallowance u/s 14A beyond and in excess of actual exempted income is *per se* absurd and hypothetical and cannot be made.

46. We thus, in terms of our aforesaid deliberations, finding no infirmity in the view taken by the CIT(A) that the disallowance under Section 14A of the Act was liable to be restricted to the extent of Rs. 20,545/-, i.e., the exempt income earned by the assessee company during the subject year, uphold the same. **The Ground of appeal No 8** is dismissed in terms of our aforesaid observations.

47. The **Grounds of appeal Nos. 1 & 9**, being general, are dismissed as not pressed.

**ITA No. 314/Viz/2025 (AY: 2014-15)**
**ITA No. 205/Viz/2024 (AY 2017-18)**

48. As the facts and the issue involved in the captioned appeals filed by the revenue remain the same as was there before us in its appeal for AY 2018-19 in ITA No. 206/Viz/2025, therefore, our order therein passed shall apply *mutatis mutandis* for the purpose of disposing of the said appeals.

49. Resultantly, the captioned appeals filed by the revenue are on the same terms dismissed.

50. In the result, all the appeals filed by the revenue, viz. (i). ITA No. 206/Viz/2025 for AY 2018-19; (ii). ITA No. 205/Viz/2025 for AY 2017-18; and (iii). ITA No. 314/Viz./2025 being devoid and bereft of any substance are dismissed in terms of our aforesaid observations.

Order pronounced in the open court on 26/11/2025.

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|---|---|
| **Sd/-**<br>**(BALAKRISHNAN S.)**<br>**ACCOUNTANT MEMBER** | **Sd/-**<br>**(RAVISH SOOD)**<br>**JUDICIAL MEMBER** |

Hyderabad,
Dated: 26th November, 2025
**OKK / SPS*

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| S.No | Addresses |
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| 2 | DCIT, Circle-3(1), 50-92-35, Income Tax Office, Infinity Tower, Sankara Matam Road, Visakhapatnam, Andhra Pradesh-530016.<br>(ii) DCIT, Circle-3(1), 35, 50-92-35, Sankara Matam Road, Opposite Realiance Fresh, Beside Reliance Fresh, Near by Main Road, Madhuranagar, Dwaraka Nagar, Visakhapatnam, Andhra Pradesh-530016. |
| 3 | The Pr. Commissioner of Income Tax, Visakhapatnam. |
| 4 | The DR, ITAT, Visakhapatnam Bench |
| 5 | Guard File |

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ITAT, VISAKHAPATNAM