IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD C BENCH, AHMEDABAD

[Coram: Pramod Kumar AM and Mahavir Prasad JM]

ITA No.182/Ahd/2012
Assessment year: 2008-09

Adani Agro Private Limited .....Appellant
Shikhar, 8th floor, Nr Mithakali Circle, Navrangpura
Ahmedabad 380006 [PAN: AABCA3183G]

Vs.

Assistant Commissioner of Income Tax
Circle 1, Ahmedabad .....Respondent

ITA No. 557/Ahd/2012
Assessment year: 2008-09

Assistant Commissioner of Income Tax
Circle 1, Ahmedabad .....Appellant

Vs.

Adani Agro Private Limited .....Respondent
Shikhar, 8th floor, Nr Mithakali Circle, Navrangpura
Ahmedabad 380006 [PAN: AABCA3183G]

ITA No.1916/Ahd/2012
Assessment year: 2006-07

Deputy Commissioner of Income Tax
Circle 1, Ahmedabad. .....Appellant

Vs.

Adani Agro Private Limited .....Respondent
Shikhar, 8th floor, Nr Mithakali Circle, Navrangpura
Ahmedabad 380006 [PAN: AABCA3183G]

Appearances by:

S N Soparkar *for the appellant*
Vibha Bhalla *for the respondent*

Date of concluding the hearing: March 17, 2017
Date of pronouncing the order: May 31, 2017

O R D E R

Per Pramod Kumar AM:

Assessment year 2008-09

1. These cross appeals are directed against the order dated 7th December 2011 passed by the learned CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act, 1961, for the assessment year 2008-09.

2. We will first take up the appeal filed by the assessee.

3. In the first ground of appeal, the assessee has raised the following grievance:

> **On the facts and in the circumstances of the appellant's case, the learned CIT(A) erred in confirming disallowance of Rs 88,21,450 made by the Assessing Officer under section 14A of the Income Tax Act.**

4. To adjudicate on this appeal, only a few material facts need to be taken note of. During the course of assessment proceedings, the Assessing Officer rejected the offer of the assessee with regard to disallowance of Rs 10 lakhs, offered *suo motu* under section 14A, and proceeded to make a disallowance on the basis of rule 8D. There was no dispute that no direct expenses incurred in earning of tax exempt income, and, as such, no amount was held to be disallowable under rule 8D(2)(i). The total interest paid by the assessee being Rs 42,18,273, the proportionate interest was disallowed a Rs 25,27,200 under rule 8D(2)(ii), and finally .5% of average value of investments yielding tax exempt income, which worked out to Rs 62,94,250, was disallowed under rule 8D(2)(iii). The total disallowance thus worked out to Rs 88,21,450. Aggrieved, assessee carried the matter in appeal before the CIT(A) but without any success. The assessee is not satisfied and is in further appeal before us.

5. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

6. We have noted that so far as interest disallowance under section 14A is concerned, it is not in dispute that the assessee had sufficient interest free funds available to the assessee, and, as such, no part of interest payment can be attributed to the investments yielding tax exempt investments. It is by now a settled legal position that in such a situation, i.e interest free funds available to the assessee being in excess of the investments of in investments yielding tax exempt income, presumption has to be that such investments are out of the interest free funds. For this short reason, no disallowance can be made, in respect of interest payment, under section 14A on the facts of this case. In any case, as is undisputed position, there is a net interest credit in this case. As held by a coordinate bench of the case of Morgan Stanley Securities India Pvt Ltd Vs ACIT [(2011) 55 DTR 177 (Mum)], disallowance under section 14 A is to be made on the basis of net interest. Therefore, interest being a credit figure in this case, no part of interest can be disallowed in this case. For this reason also, disallowance under section 14A cannot be made under section 14A in respect of interest. In any event, once one proceeds on the basis that no interest bearing funds are used in investments, no part of interest can be disallowed irrespective of the wordings employed in formulae set out in rule 14A as was held by another coordinate bench of the Tribunal in the case of ACIT Vs Champion Commercial Co Ltd [(2012) 139 ITD 108 (Kol)]. This decision, which now stands specifically approved by Hon'ble Delhi High Court in the case of

PCIT Vs Bharti Overseas Pvt Ltd [(2015) 64 taxmann.340 (Del)] has inter alia observed as follows:

> ***9.*** *The next issue is whether the computation of disallowance, as reworked by the learned CIT(A), is correct. On the face of it, based on a plain reading of rule 8D, the computation of disallowance may be viewed incorrect inasmuch as one of the variables in formula sect out in rule 8D(2)(ii) seems to have been wrongly adopted as 'interest paid in the relevant previous year which cannot be directly related to any of the asset' in the place of 'amount of interest paid in the relevant previous year, other than interest included in direct expenses incurred for earning tax exempt income', but, for the reasons we will now set out, in our considered view, this action of the CIT(A) is, even if somewhat serendipitously, in accordance with the correct legal position.*
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> ***10.*** *We find that in terms of the provisions of section 14A(2), "(t)he Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed" and rule 8D prescribes this method as follows:*
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> > *Method for determining amount of expenditure in relation to income not includible in total income.-*
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> > |---|---|---|
> > | *(1)* | **** | ** |
> >
> > *(2) The expenditure in relation to income which does not form part of the total income shall be the aggregate of following amounts, namely :-*
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> > *(i) the amount of expenditure directly relating to income which does not form part of total income;*
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> > *(ii) in a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the follos*
> >
> > *A= B/C*
> >
> > *Where A = amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year; B = the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year; C = the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;*
> >
> > *(iii) an amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year."*
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> > *(3) For the purposes of this rule, the 'total assets' shall mean, total assets as appearing in the balance sheet excluding the increase on account of revaluation of assets but including the decrease on account of revaluation of assets.*
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> ***11.*** *There is no dispute about working of this method so far as rule 8D(2)(i) and (iii) is concerned. It is only with regard to the computation under rule 8D(2)(ii) that the Assessing Officer and the CIT(A) have different approaches. This provision*

admittedly deals with a situation in which "the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt". Clearly, therefore, this sub clause seeks to allocate 'common interest expenses' to taxable income and tax exempt income. In other words, going by the plain wordings of rule 8D(2)(ii) what is sought to be allocated is "expenditure by way of interest .which is not directly attributable to any particular income or receipt" and the only categories of income and receipt, so far as scheme of rule 8D is concerned, are mutually exclusive categories of 'tax exempt income and receipt' and 'taxable income and receipt'. No other classification is germane to the context in which rule 8D is set out, nor does the scheme of Section 14 A leave any ambiguity about it.

12. *Ironically, however, the definition of variable 'A' embedded in formula under rule 8D(2)(ii) is clearly incongruous inasmuch while it specifically excludes interest expenditure directly related to tax exempt income, it does not exclude interest expenditure directly related to taxable income. Resultantly, while rule 8D(2)(ii) admittedly seeks to allocate "expenditure by way of interest, which is not directly attributable to any particular income or receipt" it ends up allocating "expenditure by way of interest, which is not directly attributable to any particular income or receipt, plus interest which is directly attributable to taxable income" [Emphasis supplied]. This incongruity will be more glaring with the help of following simple example:*

> *In the case of A & Co Ltd, total interest expenditure is Rs. 1,00,000, out of which interest expenditure in respect of acquiring shares from which tax free dividend earned is Rs. 10,000. Out of the balance Rs. 90,000, the assessee has paid interest of Rs. 80,000 for factory building construction which clearly relates to the taxable income. The interest expenditure which is "not directly attributable to any particular receipt or income" is thus only Rs. 10,000.*
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> *However, in terms of the formula in rule 8D(2)(ii), allocation of interest which is not directly attributable to any particular income or receipt will be for Rs. 90,000 because, as per formula the value of A (i.e. such interest expenses to be allocated between tax exempt and taxable income) will be "A = amount of expenditure by way of interest other than the amount of interest included in clause (i) [i.e. direct interest expenses for tax exempt income] incurred during the previous year".*
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> *Let us say the assets relating to taxable income and tax exempt income are in the ratio of 4:1. In such a case, the interest disallowable under rule 8D(2)(ii) will be Rs. 18,000 whereas entire common interest expenditure will only be Rs. 10,000.*

13. *The incongruity arises because, as the wordings of rule 8D(2)(ii) exist, out of total interest expenses, interest expenses directly relatable to tax exempt income are excluded, interest expenses directly relatable to taxable income, even if any, are not excluded.*

14. *The question then arises whether we can tinker with the formula prescribed under rule 8D(2)(ii) of the Income Tax Rules, or construe it any other manner other than what is supported by plain words of the rule 8D(2)(ii).*

15. *We find that notwithstanding the rigid words of Rule 8D(2)(ii), the stand taken by the revenue authorities about its application, as was before Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. v. Dy. CIT [2010] 328 ITR 81 / 194 Taxman 203 when constitutional validity of rule 8D was in challenge, is that "It is only the interest on borrowed funds that would be apportioned and the amount of expenditure by way of interest that will be taken (as 'A' in the formula) will exclude*

any expenditure by way of interest which is directly attributable to any particular income or receipt (for example-any aspect of the assessee's business such as plant/machinery etc.)". Therefore, it is not only the interest directly attributable to tax exempt income, i.e. under rule 8D(2)(i), but also interest directly relatable to taxable income, which is to be excluded from the definition of variable 'A' in formula as per rule 8D(2)(ii), and rightly so, because it is only then that common interest expenses, which are to be allocated as indirectly relatable to taxable income and tax exempt income, can be computed. This is clear from the following observations made by Their Lordships of Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. (supra):

> *60. In the affidavit-in-reply that has been filed on behalf of the Revenue an explanation has been provided of the rationale underlying r. 8D. In the written submissions which have been filed by the Addl. Solicitor General it has been stated, with reference to r. 8D(2)(ii) that since funds are fungible, it would be difficult to allocate the actual quantum of borrowed funds that have been used for making tax-free investments. It is only the interest on borrowed funds that would be apportioned and the amount of expenditure by way of interest that will be taken (as 'A' in the formula) will exclude any expenditure by way of interest which is directly attributable to any particular income or receipt (for example-any aspect of the assessee's business such as plant/machinery etc.)â€¦â€¦â€¦â€¦ The justification that has been offered in support of the rationale for r. 8D cannot be regarded as being capricious, perverse or arbitrary. Applying the tests formulated by the Supreme Court it is not possible for this Court to hold that there is writ on the statute or on the subordinate legislation perversity, caprice or irrationality. There is certainly no 'madness in the method'.*

16. *Once the revenue authorities have taken a particular stand about the applicability of formula set out in rule 8D(2)(ii), and based on such a stand constitutional validity is upheld by Hon'ble High Court, it cannot be open to revenue authorities to take any other stand on the issue with regard to the actual implementation of the formula in the case of any assessee. Viewed thus, the correct application of the formula set out in rule 8D(2)(ii) is that, as has been noted by Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. (supra), "amount of expenditure by way of interest that will be taken (as 'A' in the formula) will exclude any expenditure by way of interest which is directly attributable to any particular income or receipt (for example-any aspect of the assessee's business such as plant/machinery etc.)". Accordingly, even by revenue's own admission, interest expenses directly attributable to tax exempt income as also directly attributable to taxable income, are required to be excluded from computation of common interest expenses to be allocated under rule 8D(2)(ii).*

17. *To the above extent, therefore, we have to proceed on the basis that rigour of rule 8D(2)(ii) is relaxed in actual implementation, and revenue authorities, having taken that stand when constitutional validity of rule 8D was in challenge before Hon'ble High Court, cannot now decline the same. Ideally, it is for the Central Board of Direct Taxes to make the position clear one way or the other either by initiating suitable amendment to rule 8D(2)(ii) or by adopting an interpretation as per plain words of the said rule, but even on the face of things as they are at present, in our humble understanding, revenue authorities cannot take one stand when demonstrating lack of 'perversity, caprice or irrationality' in rule 8D before Hon'ble*

> *High Court, and take another stand when it comes to actual implementation of the rule in real life situations. Therefore, even as we are alive to the fact that the stand of the learned Departmental Representative is in accordance with the strict wording of rule 8D(2)(ii), we have to hold that, for the reasons set out above, this rigid stand cannot be applied in practice.*

7. In this view of the matter, so far as interest disallowance under rule 8D(2)(ii) is concerned, it must stand deleted. Coming to the disallowance under 8D(2)(iii), we find that admittedly total expenditure incurred by the assessee is Rs 30,22,749 but then we are to go by the forumulae under rule 8D(2)(iii), the disallowance comes to Rs 62,94,250. That will be an absurdity to be permitted, and, in any case, disallowance of administrative expenses for earning tax exempt income cannot be more than actual administrative expenses. The prescribed formulae thus fails on the facts of this case. What the assessee has offered for suo motu disallowance on the facts of this case is Rs 10,00,000 which is almost one third of total administrative expenses. When it was pointed out to the learned Departmental Representative and she was asked as to whether given the peculiar facts of this case, how the suo motu disallowance offered by the assessee cannot be considered reasonable, she did not have much to say. We agree with the learned counsel that the disallowance so offered cannot be considered to be unreasonable by any standard nor has that been alleged before us either. In view of these discussions, as also bearing in mind entirety of the case, we disapprove the additional disallowance by invoking rule 8D, particularly 8D(2)(iii) as well, and delete the impugned additional disallowance so restored to by the Assessing Officer. The assessee succeeds on this point.

8. Ground no. 1 is thus allowed.

9. In ground no. 2, the assessee has raised the following grievance:

On the facts and in the circumstances of the appellant's case, the learned CIT(A) erred in confirming the addition of Rs 88,21,450, being disallowance under section 14A, while computing book profit under section 115JB of the Income Tax Act.

10. Learned representatives fairly agree that the above issue is now covered, in favour of the assessee, by Hon'ble jurisdictional High Court's judgment in the case of CIT Vs Alembic Ltd [judgment dated 20.7.2016 in Tax Appeal No. 1249 of 2014]. In this view of the matter, we uphold the plea of the assessee, and direct the Assessing Officer to grant resultant relief.

11. Ground no. 2 is also thus allowed.

12. In the result, the appeal filed by the assessee is allowed.

13. In the appeal filed by the Assessing Officer, grievance is as follows:

The learned CIT(A) has erred in law and on facts in partly allowing the set off of speculation loss.

14. The relevant material facts are like this. During the course of scrutiny assessment proceedings, the Assessing Officer noted that the assessee has earned speculation profits aggregating to Rs 36,23,094 and set off the same against brought forward speculation losses of Rs 77,06,75,597. It was also noted that the speculation loss, which was so set off, had actually incurred in the assessment year 2001-02. The Assessing Officer was of the view that since in terms of section 73(4), as it then stood, loss could be carried forward to only four years, this claim of set off was clearly incorrect. When assessee was put to notice on this aspect, it was submitted by the assessee that the law as it stood, at the point of time when speculation loss was incurred, permitted carry forward for eight assessment years, and that the carry forward for four years came into play only with effect from 1st April 2006. This plea,

however, was rejected by the Assessing Officer. He was of the view that the law regarding set off will be as in force at the point of time when set off is claimed and not when loss was incurred. He found support from the judgment of Hon'ble Supreme Court in the case of Reliance Jute Industries Ltd Vs CIT [(1959) 120 ITR 921 (SC)]. The set off was thus declined. Aggrieved, assessee carried the matter in appeal before the CIT(A) who upheld the claim of the assessee on the basis of a decision of this Tribunal in the case of Virendra Kumar Jain Vs ACIT [ITA No. 1009/Mum/2010; order dated 31st May 2010] which was directly on the issue. The Assessing Officer is aggrieved of the relief so granted by the CIT(A) and is in appeal before us.

15. We have heard the rival submissions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

16. Learned Commissioner (DR) does not dispute that coordinate bench decision, in the case of Virendra Kumar Jain *(supra),* is directly on the issue before us, but her grievance is essentially confined to the fact that the said decision does not take into account the law laid down by Hon'ble Supreme Court in the case of Reliance Jute (supra). That objection is not really sustainable for the reason that neither Reliance Jute *(supra)* decision is directly on the issue which came up before the coordinate bench, or is before us, nor that is the only view expressed by Hon'ble Supreme Court on that issue in view of a subsequent decision, by a bench of equal strength in the case of CIT Vs Shah Sadiq & Sons [(1987) 166 ITR 102 (SC)]. It cannot, therefore, be said that not following the Reliance Jute decision was a clear mistake and, for that reason, coordinate bench decision is required to be treated as per

incurium. We find that the coordinate bench, speaking through the then Sr Vice President (later Justice) Shri R V Easwar, had observed as follows:

> *5. On a careful consideration of the rival contentions, we are of the view that the assessee is entitled to succeed. It is a well settled rule of interpretation that any vested right can be taken away only by express language or by necessary implication. This is settled by the decision of the Privy Council in Delhi Cloth & General Mills Company Ltd. Vs. Income Tax Commissioner, AIR 1927 (PC) 242 and the same has been cited with approval by the Supreme Court in the case of Jose Dacosta Vs. Bascora Sadashiv Sinai Narcomin, AIR (1975) SC 1843. In CIT, UP Vs. Shah Sadiq & Sons, (1987) 166 ITR 102, the Supreme Court was concerned with section 24(2) of the Income Tax Act, 1922, which provided for a right to set off speculation losses against speculation profits and it further stated that to the extent the speculation loss could not be absorbed, the assessee had a right to carry forward the losses for the future years to be set off against speculation profits. This section applied to all assessees including a partnership firm. However section 75(2) of the 1961 Act stated that where the assessee is a registered firm, any loss which cannot be set off against any other income of the firm shall be apportioned between the partners and they alone shall be entitled to have the loss set off and carried forward for set off to the future years. Section 75(2) also provided that no registered firm can have the speculation loss carried forward and set off under the provisions of section 73. As a result of these provisions, there was a prohibition in the new Act against a registered firm to carry forward its losses including speculation losses. The assessee before the Supreme Court had speculation losses quantified in its assessments for the assessment years 1960-61 and 1961-62 and claimed that the same should be set off against the speculation profits for the assessment year 1962-63, from which year the Income Tax Act, 1961 came into force. The claim was resisted by the income-tax authorities, who contended that in view of the coming into operation of the 1961 Act from 01.04.1962 as well as section 75 thereof, even if the assessee can be said to have a vested right to carry forward the speculation loss for previous years under section 24(2) of the 1922 Act, that right came to an end when the new Act came into force. This contention was rejected by the Supreme Court. At page 108 of the report, it was held as follows:-*
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> *"In our opinion, the right given to the assessee for the assessment year 1961-62 under section 24(2) of the 1922 Act was an accrued right and a vested right. It could have been taken away expressly or by necessary implication. It has not been so done. Neither section 297(2)(b) nor any other sub-clauses of sub-section (2) of section 297 indicates a contrary intention of the Legislature regarding any vested right of the assessee under the 1922 Act. On the contrary, section 6(c) of the General Clauses Act indicates that that right should be preserved."*
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> *Again at page 109 of the report, the Supreme Court observed as under:-*

"The fact that the right created by the operation of section 24(2) is a vested right cannot, in our opinion, be disputed. See in this connection the observations of this court in Gujarat Electricity Board Vs. Shantilal R.Desai (1969) 1 SCR 580, 587 and Isha Valimohamad Vs. Haji Gulam Mohamad & Haji Dada Trust (1975) 1 SCR 720, 723.

Under the Income-tax Act of 1922, the assessee was entitled to carry forward the losses of the speculation business and set off such losses against profits made from that business in future years. The right of carrying forward and set off accrued to the assessee under the Act of 1922. A right which had accrued and had become vested continued to be capable of being enforced notwithstanding the repeal of the statute under which that right accrued unless the repealing statute took away such right expressly. This is the effect of section 6 of the General Clauses Act, 1897."

Again at page 110 of the report, the impact of section 6(c) of the General Clauses Act, 1897 was considered and it was observed as under:-

"In this case, the "savings" provision in the repealing statute is not exhaustive of the rights which are saved or which survive the repeal of the statute under which such rights had accrued. In other words, whatever rights are expressly saved by the "savings" provision stand saved. But, that does not mean that rights which are not saved by the "savings" provision are extinguished or stand ipso facto terminated by the mere fact that a new statute repealing the old statute is enacted. Rights which have accrued are saved unless they are taken away expressly. This is the principle behind section 6(c) of the General Clauses Act, 1897. The right to carry forward losses which had accrued under the repealed Income-tax Act of 1922 is not saved expressly by section 297 of the Income Tax Act, 1961. But it is not necessary to save a right expressly in order to keep it alive after the repeal of the old Act of 1922. Section 6(c) saves accrued rights unless they are taken away by the repealing statute. We do not find any such taking away of the rights by section 297 either expressly or by implication."

It was ultimately held that the assessee was entitled to set off the speculation losses brought forward from the assessment years 1960-61 and 1961-62 against the speculation profits for the assessment year 1962-63 notwithstanding the provisions of section 75 of the Income Tax Act, 1961. In our opinion, this judgement covers the present case entirely. In sub-section (4) of section 73 or in any other provision, there is no express language or any implication to the effect that the right of the assessee to carry forward the speculation loss for a period of eight subsequent assessment years has been taken away. The amendment made by the Finance Act, 2005 with effect from 01.04.2006 is merely to substitute the words "four assessment years" for the words "eight assessment years". In our opinion, the assessee's contention that any speculation loss computed for the assessment year 2006-07 and later assessment years alone would be hit by the amendment and such loss can be carried forward only for four subsequent assessment years is correct. The vested right of the assessee has not been taken away.

6. It is also significant, as rightly pointed out on behalf of the assessee, that sub-section (4) of section 73 refers only to the loss to be carried forward to the subsequent years. It does not say anything about the set off of the speculation loss brought forward from the earlier years. There is a distinction between a loss brought forward from the earlier years and a loss to be carried forward to the subsequent years. The sub-section deals only with the speculation loss to be carried forward to the subsequent years and in the very nature of things it cannot apply to speculation loss quantified in any assessment year before the assessment year 2006-07. The Income Tax Rules which prescribe the return form for individuals having proprietary business (ITR 4) also makes a distinction between the loss brought forward and loss to be carried forward. Reference may be made to page 1.369 of the Income Tax Rules by Taxman (2009 - 46th Edition). In Schedule BFLA, the assessee is required to give "details of income after set off of brought forward losses of earlier years". Schedule CFL requires the assessee to give "details of losses to be carried forward to future years". Herein we are concerned with the assessee's right to set off the brought forward speculation losses against the speculation profits for the assessment year 2006-07. Sub-section (4) of section 73 does not deal with this situation. Hence, it has no application.

7. The learned Senior D.R. referred to the judgement of the Hon'ble Bombay High Court in Ultramarine & Pigments Ltd. Vs. O.P.Srivastava, CIT, (2006) 286 ITR 86. In this case it was held that section 214(1A) is procedural in nature and applied to all pending actions. We are not concerned with a procedural provision. We have already seen that the assessee had acquired a vested right to have the speculation loss computed for the assessment year 2001-02 carried forward to the subsequent eight years as per section 73(4) as it stood before the amendment made by the Finance Act, 2005. That such a right is a vested right cannot be doubted after the judgement of the Supreme Court in the case of CIT Vs. Shah Sadiq & Sons (supra). Since we are concerned with the substantive or vested right, the judgement of the Hon'ble Bombay High Court dealing with procedural provision can have no application.

8. In the result, the assessee's contentions are upheld and the Assessing Officer is directed to allow set off of the speculation loss brought forward from the assessment year 2001-02 against the speculation profits for the year under appeal. The appeal is allowed with no order as to costs.

17. We are in considered agreement with the views so expressed by the coordinate bench and we are also of the considered view that these views, which were taken in the light of Hon'ble Supreme Court's decision in the case of Shah Sadiq (supra), cannot be said to be per incurium either. We, therefore, approve the conclusions arrived at by the learned CIT(A) and decline to interfere in the matter.

18. The appeal of the Assessing Officer is thus dismissed.

Assessment year 2006-07

19. This appeal is directed against the order dated 27th June 2012 passed by the CIT(A) in the matter of assessment under section 143(3) r.w.s. 263 of the Income Tax Act, 1961, for the assessment year 2006-07.

20. Grievance of the Assessing Officer is against the relief granted by the CIT(A) in respect of set off of speculation profits against speculation losses incurred before four years.

21. In view of our findings earlier in the order for the assessment year 2008-09, this plea must be upheld. Learned representatives had fairly agreed that whatever we decide for the assessment year 2008-09 will apply mutatis mutandis here as well. We, therefore, uphold the order of the CIT(A) on this issue and decline to interfere in the matter.

22. The appeal of the Assessing Officer for the assessment year is also dismissed. To sum up, both the files filed by the Assessing Officer are dismissed and the appeal filed by the assessee is allowed. Pronounced in the open court today on the 31st day of May, 2017.

Sd/-	*Sd/-*
Mahavir Prasad	**Pramod Kumar**
(Judicial Member)	(Accountant Member)

Ahmedabad, the 31st day of May, 2017

Copies to: *(1)* *The appellant*
(2) *The respondent*
(3) *Commissioner*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad