IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "**A**" BENCH *AHMADABAD*
आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'ए'

Before: Shri Pramod Kumar, Accountant Member
Shri Rajpal Yadav, Judicial Member

ITA No. 251/Ahd/2016 Assessment Year : 2011-12

Shreno Limited, Alembic Road, Baroda - 390003	**Vs.**	ACIT, Circle-4 Now Asstt. CIT, Circle-2 (1) (1), Aayakar Bhavan, Race Course Circle, Vadodara-390007
PAN No. AABCA7953Q		
(Appellant)	..	(Respondent)

आवेदक की ओर से/By Assessee	Shri S. N. Soparkar, A.R.
राजस्व की ओर से /By Revenue	Shri Mudit Nagpal, Sr. D.R.
सुनवाई की तारीख/Date of Hearing	06.03.2018
घोषणा की तारीख/Date of Pronouncement	06.06.2018

O R D E R

PER : Rajpal Yadav, Judicial Member

The assessee is in appeal before Tribunal against the order of learned CIT(A)-2, Vadodara, dated 19.11.2015 passed for A.Y. 2011-12.

2. The grounds of appeal taken by the assessee are not in consonance with Rule 8 of ITAT Rules, they are descriptive and argumentative in nature. In brief, in the first fold of grievance, assessee pleaded that the learned CIT(A) has erred in confirming the disallowance required to be made u/s. 14A of the Income Tax Act, 1962 read with Rule 8D of the Income Tax Rules. Learned counsel for the

assessee at the very outset submitted that the issue in dispute is fairly covered in favour of assessee by the order of ITAT passed in assessment years 2008-09 to 2010-11. He further pointed out that order of ITAT passed in ITA No.1452/Ahd/2012 in assessment year 2008-09 has been confirmed by the hon'ble Gujarat High Court in Tax Appeal No. 557 of 2017. On the other hand learned Departmental Representative is unable to controvert this contention.

3. The brief facts of the case are that assessee has filed its return of income on 29.09.2011 declaring nil income. The case of the assessee was selected for scrutiny assessment and a notice u/s.143(2) was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the Assessing Officer that assessee has received dividend income of Rs.98,39,301/-, out of the above amount, it has claimed a sum of Rs.97,18,731/- as exempt u/s.10(34) of the Income Tax Act. The assessee has disallowed a sum of Rs.1lakh at its own u/s.14A towards administrative expenses. Learned Assessing Officer made an analysis of the accounts and thereafter observed that it is quite difficult to find out exact expenditure incurred by the assessee for earning exempt income therefore with the help of Rule 8D he worked out the disallowance at Rs.1,19,21,511/- an addition of this amount was made.

4. Dissatisfied with the disallowance of the impugned amount, assessee carried the matter before the learned CIT(A). Learned First Appellate Authority has not recorded any independent finding rather observed that the facts are identical as were available in assessment year 2010-11, she confirmed the disallowance partly and directed the Assessing Officer to exclude the interest expenditure of Rs.64.5lakhs from the total interest considered for working out disallowance under Rule 8D. This direction was given for the reason that assessee has borrowed certain funds for specific purpose i.e. a payment was required to be made to ONGC. Thus, interest expenditure incurred on this loan was excluded at the threshold from the computation of disallowance required to be made under Rule 8D. Similarly, the interest expenditure incurred on income

amounting to Rs.44,29,417/- was also directed to be excluded because assessee already offered taxes on that income with these directions, she confirmed the order of the Assessing Officer.

5. With the assistance of learned representatives, we have gone through the record carefully. A perusal of the written submissions filed before the learned Revenue authorities, it reveals that the case of the assessee is that it has more interest free funds than interest bearing funds. According to the assessee, a presumption is to be drawn that interest free funds were used by it for investment and therefore no disallowance is required to be made. The assessee has specifically demonstrated the details on the strength of hon'ble Gujarat High Court's decision in the case of Gujarat Power Corporation Ltd. that no interest expenditure is disallowable in its case. The submissions being placed in the paper books and its imperative to take note of relevant submissions which read as under:

"1.3 With the factual details available and given below, it can be clearly seen that own funds have been used for the purpose of investments. We would like to make a reference to the chart at Annexure B enclosed herewith which shows the quantum of investments and borrowings as well as the incremental borrowings and investments from A. Y. 2005-06 to A. Y. 2011-12. The summary of the quantum of investments and borrowings as well as the incremental investments and borrowings from 31.03.2005 to 31.03.2011 is reproduced as under:

(Amount in Rs.)

Year Ended	*Investments*	*Increase / (Decrease)*	*Borrowings*	*Increase / (Decrease)*
31 -Mar-05	*27,80,20,332*	*9,82,78,400*	*18,44,83,772*	*(5,44,16,447)*
31 -Mar-06	*27,80,20,171*	*(161)*	*17,45,82,420*	*(99,01,352)*
31 -Mar-07	*32,55,68,485*	*4,75,48,314*	*65,22,20,000*	*47,76,37,580*
31 -Mar-08	*34,50,41,480*	*1,94,72,995*	*64,30,84,000*	*(91,36,000)*
31 -Mar-09	*34,49,07,480*	*(1,34,000)*	*73,76,07,000*	*9,45,23,000*
31 -Mar-10	*34,49,07,480*	-	*43,83,72,000*	*(29,92,35,000)*
31 -Mar- 11	*34,49,07,480*	-	*45,33,83,000*	*1,50,11,000*

1.4 The following facts correlating the borrowed funds and the investments made for various years clearly establishes that the borrowed funds have not been used for making the investments. These details were already submitted with the Assessing Officer during assessment proceedings but the same have not been considered. We again reiterate the facts cotrelating the borrowed funds and the investments made for various years:

- *The total investments in shares covered under section 14A amounted to Rs. 3449.07 Lacs as on 31st March 2011.*

- *As against this the total borrowings as on 31.03.2011 was Rs. 4533.83 lacs.*

- *As against this the own funds of the Appellant were Rs. 8166.72 lakhs as on 31.03.2011.*

- *As on 31.03.2005 there was a decrease in borrowings by Rs. 5,44,16,447/- whereas the investments increased by Rs. 9,82,78,400/-. Thus, it is clearly evident that the incremental investments have been made out of own funds.*

- *As on 31.03.2006 there has been a. decrease in borrowings by Rs, 99,01,352/- with no increase in investments.*

- *As on 31.03.2007 there has been a substantial increase in borrowed funds by Rs.47,76,37,580 /- and whereas the investments merely increased by Rs. 4,75,48,314/-.*

  The said increase in borrowings was for paying off the liabilities towards ONGC amounting to Rs. 45,39,90,000/-. Also, during A. Y. 2007-08, the Assessing Officer has verified the fact that the ONGC payments were made out of borrowed funds. Since a major part of the borrowings was made for paying the liability towards ONGC, the same cannot be considered for the purpose of disallowance u/s. 14A.

  The Assessing Officer also allowed the benefit of exclusion of interest paid on ONGC liability while working out disallowance u/s. 14A read with rule 8D in A. Y.200V-08, A. Y.2008-09, A. Y. 2009-10 and AY. 2010-11

  Thus, it is very clear that the incremental investment amounting to Rs. 4,75,48,314/- have been made out of interest free own funds of the Appellant.

- *As on 31.03.2008, borrowed funds have decreased by Rs. 91,36,000/- and the investments increased by Rs. 1,94,72,995/-.Thus, the incremental investments have clearly not been totally funded out of the borrowings but from own funds.*

- *As on 31.03.2009, borrowed funds have increased by Rs. 9,45,23,000/- and the investments have decreased by Rs. 1,34,000/-.*

- *As on 31.03.2010, the borrowed funds have substantially reduced from Rs. 7,376 lacs to Rs. 4,383 lacs and no fresh investments have been made by the Appellant.*

- *As on 31.3.2011, the borrowed funds have increased by Rs. 150.11 lacs and no fresh investments have been made by the Appellant.*

It is apparent from the above table and summary that the movement in investments do not correspond to the movement in borrowings which goes to prove that not all

the borrowings are utilized for the purposes of investments but for business purposes.

In this regard we point out to the relevant observations in the case of the jurisdictional high court specified above Gujarat Power Corporation Limited (2011) 44 taxmann.com 359 (Guj), where the Hon'ble Gujarat High Court has observed as under:

"8. Having thus heard learned counsel for both sides and having perused the orders on record, we find that in the present case assesses had sufficiently explained its investment for borrowed funds pointing out that loan was obtained in the assessment year 1997-1998 and its majority of the investment for tax free security were made before the said period. Only a small portion of investment was made subsequently. Assesses had demonstrated that it had other sources of investment and that therefore, according to assessee no part of the borrowed funds could be stated to have been diverted to earn tax free income. When CIT(Appeals) and the tribunal both on facts in the present case found that the assessee did not invest borrowed funds the for earning interest free income, we are of the view that not applying provision of Section 14A of the Act for taxing such interest was justified. No question of law therefore, is arising for our consideration. With respect to the second question, we find that total impact on revenue is Rs.10,700/-. Only on this ground, we are not inclined to consider the question raised. "

We respectfully submit that the above decision is squarely applicable in the present case since as per details submitted above, major borrowings were made after almost 80% of the investments were made. Hence the major portion of the borrowings, could not have been said to have utilized for making of investments.

1.5 Also a perusal of schedule of investment in Balance Sheet reveals that there are no purchase and sale of investments during the year. Further dividend is credited to the bank account of the Assessee through ECS (Electronic Clearing Service) and no human intervention is required and hence, the question of incurring any administrative expenses does not arise.

1.6 The_AppelIant's interest free funds i.e. Share Capital and Reserves and Surplus are sufficient to cover the cost price of the shares. Thus there could not be any disallowance of interest because none of the interest bearing funds has been used for the purpose of investment in shares. The details of interest free funds available with the Appellant are as under:

Particulars	31.03.2011 (Rs. In lacs)
Share Capital	3401.38
Reserves and Surplus (Excluding Revaluation Reserve and reducing debit balance of Profit & Loss account)	4765.34
Total Own Funds	8166.72
Cost of Investments made	3449.07

1.7 *It is evident from the above that there are sufficient interest free funds to cover the costs of the shares. The Assessing Officer has, at page 4 of the*

assessment order, alleged that the Appellant has failed to prove the real and specific source of fund in the investment of the shares. Thus, the Assessing Officer contends that the Assessee was not able to prove the nexus between its own funds and the investments made in shares. In rebuttal of the same, we wish to state that in the absence of the direct nexus between funds deployed and shares purchased, the interest free funds should be considered first for the purpose of the shares acquired. If the cost of shares is higher than the interest free funds then only for the balance amount, interest bearing funds _should be considered. We rely on the following decisions in this regard:

- *Reliance is placed on a very recent decision of Gujarat High Court in case of India Gelatine and Chemicals Limited (276 and 277 of 2015). The High Court has held that:*

- *"...However, it is required to lie noted that both, the CIT(A) as well as the Tribunal have categorically found on the basis of the material on record that as such the assesses was having interest free funds out of which the investment was made. Therefore, Tribunal has deleted the entire disallowance of Rs.12,06,954/- made by the AO u/s 14A. We are in complete agreement with the view taken by the Tribunal and the reasons given by the Tribunal while deleting the disallowance of interest expenses u/s 14A. Now, so far as the contention on behalf of the appellant with respect to applicability of Rule 8D of the Rules with effect from 31.03.2006 is concerned, there cannot be any dispute about the same. However, it is required to be noted that* ***the AO made the disallowance u/s .14 A solely on the ground that the assessee failed to justify that the investment was made out of the interest free funds. However, both the CIT(A) as well as the Tribunal have found otherwise****. Therefore, we confirm the impugned judgment and order passed by the Tribunal insofar as deleting the disallowance of interest expenses u/s 14A in its entirety..." Copy of decision is enclosed as Annexure C(i).*

- *We invite reference to the judgment of the Jurisdictional Gujarat High Court in the case of Gujarat Industrial /Development Corporation Limited - 84 CCH 87. In this case, the Assessee obtained unsecured Government loans and paid interest on such loan. The Assessee also invested in shares and received dividend u/s 10(34). AO made disallowance u/s 14A and made addition of interest expenditure on exempted income(guarantee Fee and service charges) u/s 14A. CIT(A) allowed Assessee's appeal and deleted addition. ITAT upheld CIT(A)'s decision. Held, assessee had not used borrowed funds for investment in equity shares. Revenue failed to establish that assessee had incurred any expenses for earning dividend income from amount borrowed. Tribunal had held that since sufficient interest free funds were available with assessee and revenue had failed to establish link between borrowed fund and investment made by assessee in equity shares, addition made on account of disallowance by AO was not justified. Both CIT(A) and Tribunal had rightly allowed interest free expenses incurred for earning dividend and allowed deduction on net income received. Revenue's Appeal dismissed. Copy of decision is enclosed as Annexure C(ii)."*

6. It is pertinent to observe that Section 14A contemplates that expenditure attributable to earning of exempt income would be disallowed to assessee. There is no dispute with regard to the proposition that if assessee demonstrated that it has more interest free funds than the investment then interest expenditure not to be considered for disallowance. With the help of above details, it has been demonstrated that there was incremental decline in the borrowed funds right from 31st March, 2005 up to 31st March, 2011. The details compiled in the table shows that as on 31st March, 2008 borrowed funds have decreased for Rs.91,36,000/- and the investment increased by Rs.1,94,72,995/- from 31st March, 2009, there was no change in the investment figure whereas borrowings have a reducing trend on 31st March, 2009 borrowings stood at 73.76crores which has gone down to 42.83 and 45.33 crores as on 31st March, 2010 and 31st March, 2011. Thus, these figures indicate that the assessee has not used interest bearing funds. This aspect has been elaborately examined by the ITAT in assessment year 2008-09 and order of the ITAT has been upheld by the hon'ble Gujarat High Court. Respectfully following these two orders, we allow this ground of appeal and delete the disallowance made by the Assessing Officer.

7. In the next ground of appeal, grievance of the assessee is that learned CIT(A) has erred in confirming the inclusion of disallowance u/s.14A while computing book profit. Learned counsel for the assessee at the very outset submitted that this issue is fairly covered in favour of assessee by the order of the ITAT passed in assessment year 2008-09 which has been upheld by the hon'ble High Court. The ground raised by the assessee in present year read as under:

> *"2. Disallowance u/s. 14A in computing book profits u/s.115JB:*
>
> *2.1 On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in upholding the action of the Assessing Officer making addition of the amount disallowed u/s.14A r.w.rule 8D in computing the book profits u/s.115JB.*
>
> *2.2 On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the action of the Assessing Officer by disallowing u/s14A read with rule 8D without appreciating that the Appellant had sufficient own funds*

for making the investments and most of the borrowing were taken for the purpose of business and not for making investments."

The order of tribunal in assessment year 2008-09 on this issue read as under:

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

*"2. **Addition of expenses disallowed u/s 14A while computing book profits u/s. 115JB:***

2.1 On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the action of the Assessing Officer by making addition of the expense of Rs.79.30 lacs disallowed u/s 14A read with rule 8D while computing book profits u/s. 115JB without considering that the Assessing Officer had not recorded satisfaction as to how the amount of claim in respect of disallowance is incorrect.

2.2 On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the action of the Assessing Officer by making addition of the expense of Rs.79.30 lacs disallowed u/s 14A read with rule 8D while computing book profits u/s 115JB without appreciating that the Appellant had sufficient own funds for making the investments and most of the borrowings were taken for the purpose of business and not or making investments."

*13. This issue, as learned representatives fairly agree, is covered by decision of a coordinate bench of this Tribunal, in the case of **DCIT Vs Sobha Developers [(2015) 58 taxmann.com 107 (Guj)]**, even as learned Departmental Representative relied upon and justified the stand of the authorities below. In the case of Sobha Developers (supra), the coordinate bench has, inter alia, observed as follows:*

29. We have given a very careful consideration to the rival submissions. The relevant provisions of Sec.115JB(2) and Explanation thereto need to be seen. The said provisions read thus:

'Sec.115JB: Special provision for payment of tax by certain companies.

115JB. (1) Notwithstanding anything contained in any other provision of this Act, where in the case of an assessee, being a company, the income-tax, payable on the total income as computed under this Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2012, is less than eighteen and one-half per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of eighteen and one-half per cent.

(2) Every assessee, -

(a) being a company, other than a company referred to in clause (b), shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of Part II of Schedule VI to the Companies Act, 1956 (1 of 1956); or

(b) being a company, to which the proviso to sub-section (2) of section 211 of the Companies Act, 1956 (1 of 1956) is applicable, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of the Act governing such company:

Provided that while preparing the annual accounts including profit and loss account, -

(i) the accounting policies;

(ii) the accounting standards adopted for preparing such accounts including profit and loss account;

(iii) the method and rates adopted for calculating the depreciation, shall be the same as have been adopted for the purpose of preparing such accounts including profit and loss account and laid before the company at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956 (1 of 1956) :

Provided further that where the company has adopted or adopts the financial year under the Companies Act, 1956 (1 of 1956)97b, which is different from the previous year under this Act, -

(i) the accounting policies;

(ii) the accounting standards adopted for preparing such accounts including profit and loss account;

(iii) the method and rates adopted for calculating the depreciation, shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts including profit and loss account for such financial year or part of such financial year falling within the relevant previous year.

Explanation [1]. - For the purposes of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), as increased by –

(a) the amount of income-tax paid or payable, and the provision therefor; or
(b) the amounts carried to any reserves, by whatever name called [, other than a reserve specified under section 33AC]; or
(c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or

(d) the amount by way of provision for losses of subsidiary companies; or
(e) the amount or amounts of dividends paid or proposed ; or
(f) the amount or amounts of expenditure relatable to any income to which section 10 (other than the provisions contained in clause (38) thereof) or section 11 or section 12 apply; or
(g) the amount of depreciation,
(h) the amount of deferred tax and the provision therefor,
(i) the amount or amounts set aside as provision for diminution in the value of any asset,
(j) the amount standing in revaluation reserve relating to revalued asset on the retirement or disposal of such asset.

if any amount referred to in clauses (a) to (i) is debited to the profit and loss account or if any amount referred to in clause (j) is not credited to the profit and loss account, and as reduced by, -

(i)

or

(ii) the amount of income to which any of the provisions of section 10 (other than the provisions contained in clause (38) thereof)] or section 11 or section 12 apply, if any such amount is credited to the profit and loss account;

or

(iia) ..... '

[other portions of the section are not relevant for the present case].

30. A reading of the provisions of Sec.115JB(1) shows that when an Assessee is a company and the income-tax, payable on the total income as computed under this Act (under the normal provisions of the Act) in respect of any previous year relevant to the assessment year is less than prescribed percentage (this percentage keeps changing for various AYs) of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of eighteen and one-half per cent. Book profit for the purpose of Sec.115JB of the Act has been defined by Expln.-1 below Sec.115JB(2) as net profit as shown in the profit and loss account for the relevant previous year prepared in accordance with the provisions of Part II of Schedule VI to the Companies Act, 1956 (1 of 1956). Expln.1 below Sec.115JB(2) also provides for certain additions and deductions from the said profit where such sums have either been added or reduced while arriving at the profit as per profit and loss account for the relevant previous year prepared in accordance with the provisions of Part II of Schedule VI to the Companies Act, 1956 (1 of 1956).

31. In the present case we are concerned with one item which needs to be added to the total income laid down in the first part of Expln.1 clause (f) viz.,

the amount or amounts of expenditure relatable to any income to which section 10 (other than the provisions contained in clause (38) thereof) or section 11 or section 12 apply. Another item which needs to be excluded to the total income laid down in the second part of Expln.1 clause (ii) viz., the amount of income to which any of the provisions of section 10 (other than the provisions contained in clause (38) thereof) or section 11 or section 12 apply, if any such amount is credited to the profit and loss account.

32. On the issue of reducing/excluding the share of profits from the profit as per the P&L account, in view of clause (ii) to Explanation (1) to section 115JB(2) of the Act, viz., the amount of income to which any of the provisions of section 10, we are of the opinion that the contentions put forth by the assessee are acceptable. In this regard, we are also of the view that decision rendered by the Bangalore Bench of the Tribunal referred to by the ld. counsel for the assessee clearly supports the stand taken by the assessee. We, therefore, concur with the view of the CIT(Appeals) on this issue and find no merit in ground No.4 raised by the revenue.

33. As far as ground No.3 is concerned, viz., the addition to the net profit as per profit and loss account expenditure incurred in earning income which does not form part of the total income under the Act, u/s.10 of the Act, it is seen that the quantum of expenditure disallowed by the AO by invoking the provisions of Sec.14A of the Act while computing total income under the normal provisions of the Act has not been challenged by the Assessee and the said disallowance has been accepted by the Assessee. The provisions of section 115JB Explanation 1(f) lay down that the amount of expenditure relatable to income to which section 10 applies, should be added to the profit as per the P&L account. Section 14A of the Act r.w. Rule 8D of the Rules is a reasonable method of calculating the amount of expenditure, in a case where the Assessee has not been able to satisfy the AO regarding the quantum of expenditure incurred in earning income which does not form part of the total income under the Act. If the Assessee satisfies the AO regarding the quantum of expenditure incurred in earning income which does not form part of the total income under the Act than that can be adopted for the purpose of addition under clause (f) of Expln.1 below Sec.115JB(2) of the Act. Rule 8D of the rules come into play only when there is no other basis for arriving at the quantum of expenditure incurred in earning income which does not form part of the total income under the Act.

34. In our opinion, the question formulated by the CIT(A) whether Sec. 14A of the Act read with Rule 8D of the rules can be imported into the provisions of clause (f) to Explanation (1) to section 115JB of the Act, is itself erroneous. The question to be asked is as to how to give effect to the provisions of clause (f) to Explanation (1) to section 115JB of the Act. We do not think that there is any prohibition to adopt the disallowance made by the AO u/s.14A of the Act read with Rule 8D of the rules, while computing total income under the normal provisions of the Act. The argument of the learned counsel for the Assessee that section 14A of the Act is very specific and is applicable only for the purpose of computing total income under Chapter IV of the Act and that section 115JB appears in Chapter XII-B of the Act dealing with specific provisions relating to certain companies and therefore

the provisions of Sec.14A read with Rule 8D of the Rules cannot be applied while making addition to net profit as per profit and loss account u/s.115JB Expln.1 clause (f) of the Act, because the expression "expenditure relatable" is used in sub-clause (f) of Explanation (1) to section 115JB of the Act whereas expression with the expression used in 14A of the Act is "expenditure incurred by the assessee in relation to" and therefore only direct expenditure attributable to earning of income which does not form part of the total income under the Act can be added under clause(f) of Expln.1 below Sec.115JB(2) of the Act, cannot be accepted. In our view, there is no difference between the expression "expenditure relatable" and the expression "expenditure incurred by the Assessee in relation to". Both the expressions mean that whatever expenditure are incurred to earn income which does not form part of the total income under the Act, both direct and indirect expenditure, have to be disallowed. There is no basis for the argument u/s. 115JB of the Act, it is only direct expenses that are contemplated as capable of being added to the profits as per P&L account under clause (f) to Expln.1 below Sec.115JB(2) of the Act.

35. As we have already seen, the quantum of expenditure disallowed by the AO by invoking the provisions of Sec.14A of the Act while computing total income under the normal provisions of the Act has not been challenged by the Assessee and the said disallowance has been accepted by the Assessee. In such circumstances, we do not see any reason why the same disallowance cannot be adopted while arriving at the book profits u/s.115JB (2) of the Act read with Explanation 1(f) thereto. In our view the CIT(A) has fallen into an error in coming to a conclusion contrary. We therefore reverse the order the CIT(A) and restore the order of the AO in this regard.

14. We are in considered agreement with the views so expressed by the coordinate bench. Respectfully following the same, we uphold the grievance of the assessee and direct the Assessing Officer not to make any disallowance under section 14A while computing book profit under section 115JB."

There is no disparity on facts. Therefore, respectfully following the order of the Tribunal in assessment year 2008-09, we allow this ground of appeal and direct the Assessing Officer not to make any disallowance u/s.14A while computing book profit u/s.115JB.

8. In the next ground of appeal, grievance of the assessee is that learned CIT(A) has erred in upholding the disallowance of foreign travel expenditure to the extent of 75%. With the assistance of learned representatives, we have gone through the record carefully, it emerged out from the record that similar

expenditure was made in assessment year 2008-09 and dispute travelled up to the Tribunal. The Tribunal has deleted the disallowance by observing as under:

"16. In ground no.3, the assessee has raised the following grievance :-

"3. Disallowance of foreign travel expenditure Rs.9,74,612/- :

3.1 On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming 75% of the disallowance made by the Assessing officer of expenditure on foreign travel incurred by the Appellant presuming it to be for non business purposes."

*17. So far as this disallowance is concerned, the relevant material facts are like this. During the course of the assessment proceedings, the Assessing Officer noted that the assessee has incurred expenditure of Rs 12,99,483 on UK and USA visit undertaken by Ms Y R Amin. It was stated by the assessee that this visit was undertaken to understand opportunities available in expanding and diversifying in the markets. It was also stated that Ms Amin had visited various manufacturing plants and interacted with key personnel, technology professionals and consultants et. The Assessing Officer was, however, not convinced with these explanations. He was of the view that "no tangible ad reliable evidence was filed to prove that the foreign visit of Ms Y R Amin was for any business purpose". The expense was thus disallowed. In appeal, learned CIT(A) held that "in the present case, the details of visit were furnished but the same are not supported by the vouchers and other documentary evidences which could show that assessee actually carried out certain business activity during the course of visit" but "considering the submissions made, the entire visit cannot be termed as personal". He also noted that as per decisions of Hon'ble jurisdictional High Court in the case of **CIT Vs Shahibag Entrepreneurs [(1995) 215 ITR 810 (Guj)],** a visit which is wholly personal and gratuitous can be disallowed. Based on the decision of this Tribunal in the case of **Parkar Securities Ltd VS DCIT [(2006) 8 SOT 257 (Ahd)]**, which was on its own facts, disallowed 75% of the expenses and allowed the deduction for 25% of the expenses. The assessee is aggrieved and is in appeal before us.*

18. 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.

*19. We have noted that there is no dispute, as the Assessing Officer is not in appeal against the order of the CIT(A), that the visit is undertaken for some business purpose even though the director of the assessee has used for personal purposes as well. It is not thus even the case of the revenue authorities that the visit is wholly personal and gratuitous, and is disallowable for this reason- as was the case before Hon'ble jurisdictional High Court in the case of Shahibag Entrepreneurs (supra). In this case at best there is an element of personal expense but then, as is the settled legal position in the light of Hon'ble jurisdictional High Court in the case of **Sayaji Iron & Engineering Co Ltd Vs CIT [(2002) 253 ITR 749 (Guj)]** , no disallowance can be made for the reason that the expenses are personal in nature. Even if an expense incurred in the course of business gives personal benefit to a director, it is incurred in the course of business and is allowable as such and cannot be viewed as a personal expense. In the light of the findings of the CIT(A), which have not been*

challenged by the Assessing Officer, the foreign visit was at least partly for business purposes and, therefore, just because this visit resulted in, assuming it is correct, personal benefit to the director, the expenses incurred on the visit cannot be disallowed as personal expenses. This is at best expense of the assessee company which resulted in benefit to the director. In any event, there is no material whatsoever to come to the conclusion that 75% time on this trip was used for personal purposes of the director. The case relied upon by the CIT(A) was a case in which a detailed analysis of the activities of the director was carried out and then this conclusion was drawn. There is no such material on record in this case. Once the CIT(A) came to the conclusion that the trip was for some business purposes, it was not open to him to deny any part of deduction for these expenses- particularly when there is no material to hold that the visit was for personal purposes. In view of these discussions, as also bearing in mind entirety of the case, we uphold the grievance of the assessee and direct the Assessing Officer to delete the impugned disallowance of Rs. 9,74,612."

There is no disparity on facts. Therefore, respectfully following the order of the Tribunal, we delete the disallowance in this year also.

9. In the result, appeal of the assessee is allowed.

This Order pronounced in open Court on 06/06/2018

Sd/- Sd/-

(Pramod Kumar) **(Rajpal Yadav)**

Accountant Member **Judicial Member**

Ahmedabad: Dated 06/06/2018

True Copy

S.K.Sinha

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

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

By order/आदेश से,

उप/सहायक पंजीकार

आयकर अपीलीय अधिकरण, अहमदाबाद ।