

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

Before: Shri Mahavir Prasad, Judicial Member
And Shri Amarjit Singh, Accountant Member

ITA Nos. 2009 & 2013 /Ahd/2016
Assessment Year 2012-13

The DCIT, Circle-1(1)(2), Ahmedabad (Appellant/Respondent)	Vs	D.B. Corp. Ltd., 280, Sarkhej Gandhinagar Highway, Makarba, Ahmedabad PAN: AACCM5772G (Respondent/Appellant)
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Revenue by: Shri Prasoon Kabra, Sr. D.R.
Assessee by: Shri Dhinal Shah, A.R.

Date of hearing : 01-05-2018
Date of pronouncement : 27-06-2018

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This cross appeal filed by Revenue and assessee for A.Y. 2012-13, arise from order of the CIT(A)-1, Ahmedabad dated 27-05-2016, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. The revenue has raised following grounds of appeal:-

“(1) That the Id. LCIT(A) erred in law and on facts in deleting the addition of Rs.68,82,683/- made on account of disallowance u/s 14A r.w.r. 8B of the Act.

(2) That the Id. LCIT(A) has substantially erred by not appreciating and considering the finding of the AO as per the provision of Section 14 A of the Act, no deduction is allowable in respect to expenditure incurred by the assessee in relation to income that does not form part of total income.”

3. The brief fact of the case is that return of income declaring income of Rs. 287,68,71,221/- was filed on 28.09.2011. Subsequently, the case was selected under scrutiny by issuing of notice u/s. 143(2) on 10th Sep, 2013. The assessee

company carries on the business of publication of newspaper and wind farm. On scrutiny of the details filed, the assessing officer noticed that assessee has made investment to the tune of Rs. 82,76,73,700/- as on 31st March, 2012 while the value of investment was Rs. 50,03,27,800 as on 31st March, 2011. On the basis of above details, the assessing officer has asked the assessee to why not disallowance u/s. 14A should be made for exempt income. The assessee stated that all the investments have been made out of owned funds and borrowed funds have been used totally for the purpose of fixed asset and expansion/set up of business units. In view of this, it has requested that no disallowance u/s. 14A should be made. The assessing officer has not accepted the submission of the assessee. He has stated that assessee has taken unsecured loan on which it has paid interest and observed that motive of the assessee in investing in shares and securities is amply clear to earn dividend income which is exempt from tax. He has further stated that assessee has failed to substantiate with evidences that it has not incurred any expenditure in the investment activities of the company. The assessing officer has also stated that assessee must have incurred administrative expenditure such as documentation, salaries of employees, handling the investment portfolio, administrative overhead like stationary, telephone, computer etc. During the year, the assessee has not earned exempt income but the assessee has made huge investment, therefore, the assessing officer has computed the disallowance of expenditure u/s. 14A according to the rule 8D of the act at Rs. 68,82,683/-.

4. Aggrieved assessee filed appeal before the Id. CIT(A). The Id. CIT(A) has allowed the appeal of the assessee by observing as under:-

“3.3. I have carefully considered the assessment order and the submission filed by the appellant. It is noticed that Assessing Officer has made disallowance by invoking provisions of section 14A read with Rule 8D and same is worked out as under:

<i>Particulars</i>	<i>Amount (Rs.)</i>
<i>Interest expenditure</i>	<i>3512679</i>
<i>Administrative expenditure</i>	<i>3370004</i>

Total	6882683
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The Assessing Officer has observed that appellant has made investment to the tune of Rs. 82,76,73, 800/- as at 31/03/2012 while the value of investment was Rs. 52,03,27,800/- as at 31/03/2011, hence, following the decision of Hon'ble Bombay High Court in case of Godrej & Boyce mfg. Co. Ltd., disallowance u/s 14A r.w. Rule 8D is required to be made. He has further observed that appellant must have incurred administrative expenditure which is attributable to investment portfolio. He has relied upon decision of Delhi ITAT special bench in case of Cheminvest Ltd. and observed that for the purpose of disallowance u/s 14A, there is no requirement that actual income need to be earned. On the other hand, appellant has argued that since no exempt income is earned from investment made by it, following decision of Hon'ble Gujarat High Court in case of CIT v/s Corrttech Energy Pvt. Ltd. (45 Taxmanh.com 116), no disallowance should be made. It was argued that it has sufficient interest free own funds to cover above investments hence proportionate disallowance of interest expenditure cannot be made. So far as disallowance of administrative expenditure, appellant has contended that entire expenditure is incurred for the purpose of its business hence such disallowance of presumptive basis cannot be made.

The appellant has submitted that recently **Hon'ble Delhi High Court** in the case of **Cheminvest Ltd. v. CIT (ITA 749/2014)** has very specifically held that if no exempt income is received during the relevant previous year, section 14A of the Act will not apply. The relevant observations of the Hon'ble High Court are as under:

"23. In the context of the facts enumerated hereinbefore the Court answers the question framed by holding that the expression "does not form part of the total income" in Section 14A of the envisages that there should be an actual receipt of income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. In other words, Section 14A will not apply if no exempt income is received or receivable during the relevant previous year."

3.4. The Appellant submits that in the Appellants own case for AY 2009-10, the Hon'ble ITAT Ahmedabad while remanding the matter back to the file of the AO for verification, has held that if the Appellant has not earned any exempt income during the year, no disallowance shall be made under Section 14A of the Act and if the Appellant has earned any exempt income, disallowance shall be restricted to exempt income. While rendering its decision, the Hon'ble ITAT has relied on the jurisdictional Gujarat High Court ruling of Corrttech Energy (P) Limited. Further, the CIT (A) in the order passed for AY 2010-11 in the Appellant's own case have also relied on the Hon'ble Jurisdictional Gujarat High Court ruling in the case of Corrttech Energy [supra] and have deleted the disallowance under Section 14A of the Act. More recently, the CIT (A) vide its order dated 30 March 2016 in respect of AY 2011-12, in the Appellant's own case, has followed the ruling of the Ahmedabad ITAT pronounced in the case of the Appellant for AY 2009-10 and have restricted the disallowance under Section 14A of the act to the amount of exempt income.

The appellant has further submitted that it may also be noted that various High Courts have consistently held that no disallowance under Section 14A of the Act is warranted where no exempt income has been earned during a particular year. Illustratively, reliance can be placed on the following judicial precedents:

- CIT v Hiren Aluminium Ltd [Tax Appeal No. 171 Oof 2010] [GUJ];
- CIT v Lakhani Marketing [ITA No. 970 of 2008] [P&H]
- CIT v Shivam Motors (P) Ltd [ITA No. 88 of 2014] [ALL]
- CIT v/ Ho/c/m India P. Ltd [90 CCH 81] [DEL]

3.5. On careful consideration of observation of Assessing Officer and contention of appellant, it is observed that during the year under consideration, appellant has not earned any exempt income from investments made by it which is apparent from audited annual accounts as well as computation of total income as submitted before Assessing Officer as well as in appellate proceedings. **The Hon'ble Gujarat High court in the case of C/T V/s Corrtch Energy Pvt Limited (45 Taxmann.com 116)**, on identical issue of disallowance u/s 14A when no dividend income is earned by assessee, has held as under:

"4. Counsel for the Revenue submitted that the Assessing Officer as well as CIT(Appeals) had applied formula of rule 8D of the Income Tax Rules, since this case arose after the assessment year 2009-2010. Since in the present case, we are concerned with the assessment year 2009-2010, such formula was correctly applied by the Revenue. We however, notice that sub-section(l) of section 14A provides that for the purpose of computing total income under chapter IV of the Act, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. **In the present case, the tribunal has recorded the finding of fact that the assessee did not make any claim for exemption of any income from payment of tax. It was on this basis that the tribunal held that disallowance under section 14A of the Act could not be made.** In the process tribunal relied on the decision of Division Bench of Punjab and Haryana High Court in case of CIT v Winsome Textile Industries Ltd. [2009] 319 ITR 204 in which also the Court had observed as under:

"7. We do not find any merit in this submission. The judgement of this court in *Abhishek Industries Ltd (2006) 286 ITR 1* was on the issue of allowability of interest paid on loans given to sister concerns, without interest. It was held that deduction for interest was permissible when loan was taken for business purpose and not for diverting the same to sister concern without having nexus with the business. The observations made therein have to be read in that context. **In the present case, admittedly the assessee did not make any claim for exemption. In such a situation section 14A could have no application.**"

14. We do not find any question of law arising, Tax Appeal is therefore dismissed."

Further, Hon'ble Ahmedabad IT AT in case of *Shah Alloys Ltd [2315/Ahd/2010]*, dated 27/03/2015 following the decision of *Corrtch Energy Pvt. Ltd. (referred supra)*, held as under:

"The Authorized Representative of the assessee has relied on the decision of the Hon'ble Gujarat High Court in the case of *CIT vs. Corrtch Energy (P) Ltd*, reported in (2014) 272 CTR 262 (Guj.)(HC), wherein it has been held that where the assessee has not made any claim for exemption of any income from payment of tax, no disallowance could be made u/s 14A of the Act. The Departmental Representative has not disputed the submission of the assessee that during the assessment years under consideration the assessee has not claimed any income as exempt from tax in its Return of Income filed. Therefore, respectfully following the decision of Hon'ble Gujarat High Court in the case of *Corrtch Energy (P) Ltd (supra)*, we delete the disallowance of expenditure made u/s 14A read with Rule 8D of Rs.1,60,45,775/- in the Assessment Year 2007-08 and Rs.2,04,30,869/- in the Assessment Year 2008-09. Thus, this ground of appeal of the assessee is allowed in both the years under appeal."

Further, Hon'ble Delhi High Court in case of *Holdm India Pvt. Ltd. (ITA No. 486/2014 & IT A No. 299/2014)*, Hon'ble Allahabad High Court in the case of *CIT v/s Sivam Motors Pvt. Ltd. in IT. Appeal No.88 of 2014 dated 5.5.2014* on identical facts decided the issue in favour of assessee.

Considering the facts of appellant's case as discussed herein above along with decisions referred supra, it is held that disallowance u/s 14A r.w. Rule 8D cannot be made as appellant has not earned any exempt income. In the nutshell, disallowance u/s 14A fiade by Assessing Officer for Rs. 58,82,683/- is deleted. In the result, **this ground of appeal is allowed.**"

ITA No. 3013/Ahd/2016

5. The assessee has raised following grounds of appeal:-

"On the facts and circumstances of the case, aggrieved by the order passed by the Commissioner of Income-tax (Appeals) - 1, Ahmedabad [hereinafter referred to as 'CIT(A)'], under Section 250 of the Income-tax Act, 1961 ('Act'), D.B. Corp. Limited (hereinafter referred to as the 'Appellant') respectfully submits as under:

Ground No 1

The Learned CIT(A) has erred in making addition under section 2(24)(x) of the Act amounting to INR Rs.17,22,750/-"

6. During the course of assessment proceedings, the assessing officer has noticed from the audit report that assessee has made late payment of employees' contribution towards PF/ESIC as mentioned below:-

Provident Fund		
Month	Date of payment	Amount
May-2011	26/08/201 1	100336
June-2011	26/08/2011	214922
June-2011	08/09/201 1	13356
July-2011	26/08/201 1	164235
July-2011	08/09/201 1	31064
August-2011	08/09/2011	109523
Sept.-2011	21/09/2011	107906
October-201 1	21/10/2011	114115
October-2011	21/10/2011	76749
March-2012	24/04/2012	44280
March-2012	26/04/2012	68051

March-2012	26/04/2012	34874
March-2012	22/04/2012	35520
Provident Fund		1114931
Payment of ESIC		
May-201 1	21/05/2011	40550
May-2011	21/05/2011	9025
May-2011	21/05/2011	38395
May-2011	21/05/2011	11701
May-2011	23/05/0011	13205
May-2011	23/05/2011	6789
May-2011	26/05/201 1	26513
May-2011	26/05/2011	4736
May-201 1	30/05/2011	9250
June-201 1	21/06/2011	39674
June-2011	21/06/2011	18044
June-2011	21/06/2011	1095
June-2011	21/06/2011	7692
June-201 1	21/06/2011	7946
June-2011	22/06/2011	7306
June-2011	22/06/201 1	895
June-2011	26/06/201 1	8741
June-2011	26/06/201 1	25952
July-2011	22/07/201 1	23544
July-2011	26/07/201 1	5494
August-2011	21/08/2011	3417
August-2011	21/08/2011	2012

August-2011	21/08/2011	737
August-2011	26/08/201 1	772
August-2011	26/08/201 1	19447
August-2011	26/08/201 1	22959
August-2011	26/08/2011	33296
September-2011	30/09/201 1	25396
September-2011	26/09/2011	22964
September-2011	26/09/201 1	40276
October-2011	21/10/2011	1626
October-2011	24/10/2011	2647
October-2011	24/10/2011	3188
October-2011	24/10/2011	7956
October-2011	24/10/2011	1230
October-2011	24/10/2011	13293
November-2011	22/11/2011	25205

November-2011	22/11/2011	14509
November-2011	22/11/2011	6947
November-2011	28/11/2011	19363
November-2011	28/11/2011	7050
November-2011	30/11/2011	9383
January-2012	24/01/2012	3468
January-2012	24/01/2012	744
Feb-2012	24/02/2012	9849
March-2012	24/04/2012	3538
ESIC TOTAL		607819

TOTAL - PF & ESIC - 1114931 + 607819 = 1722750
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After examination of the above details, the assessing officer noticed that assessee has failed to make payment of PF/ESIC contribution received from the employees to the government account within the due date as prescribed in the PF/ESIC. In this connection, the assessing officer has also placed reliance on the decision of the jurisdictional high court in the case of CIT vs. Gujarat State Road Transport in IT Appeal No. 637 of 2013. Consequently, the assessing officer stated that assessee has failed to make compliance with the provision of section 2(24)(10) of the act and disallowed the amount of Rs. 17,22,750/-

7. Aggrieved assessee filed appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee by observing as under:-

"4.3 I have carefully considered the assessment order and the submission filed by the appellant. The Assessing Officer has observed that appellant has failed to deposit employees contribution to Provident Fund and ESIC before due date prescribed under relevant provisions of the said Acts hence he relied upon provisions of section 36(1)(va) r.w.s 2(24)(x) and decision of Hon'ble Gujarat High court in the case of State Road Transport Corporation and made disallowance of Rs 17,22,7507-. On the other hand, appellant has argued that as employees contribution to Provident Fund and ESIC are made before due date of filing of return of income and even before completion of financial year, disallowance cannot be made.

4.4. On carefully consideration of observation of Assessing Officer and contention of appellant, i observe that entire issue is covered against appellant by decision of Hon'ble Gujarat High court in case of State Road Transport Corporation (366 ITR 170) wherein it is held as under:

"Section 43B, read with section 36(1)(va) of the Income-tax Act, 1961 - Business disallowance - Certain deductions to be allowed on actual payment (Employees contribution) - Whether where an employer has not credited sum received by it as employees' contribution to employees' account in relevant fund on or before due date as prescribed in Explanation to section 36(1)(va), assessee shall not be entitled to deduction of such amount though he deposits same before due date prescribed under section 43B i.e., prior to filing of return under section 139(1) -Held, yes - Assessee State transport corporation collected a sum being provident fund contribution from its employees - However, it had deposited lesser sum in provident fund account - Assessing Officer disallowed same under section 43B -However, Commissioner (Appeals) deleted disallowance on ground that employees contribution was deposited before filing return - Whether since assessee had not deposited said contribution in respective fund account on date as prescribed in Explanation to section 36(1)(va), disallowance made by Assessing Officer was just and proper - Held, yes [Para 8] [in favour of revenue]

4.5. Considering the above decision of Hon'ble Juhisdictional High court in the case of State Road Transport Corporation (366 ITR 170) addition made by Assessing Officer is upheld. It is pertinent to note that appellant has taken new plea before undersigned that due date for payment of Provident Fund and ESIC is required to be computed from the payment of salary and not from the dose of the month to which salary pertains. However, appellant has not raised this contention before Assessing Officer nor provided details relating to such plea before Assessing Officer hence this argument of appellant is not accepted. In the nutshell, the disallowance made by Assessing Officer for Rs 17,22,750/- is upheld. This Ground of appeal is dismissed.”

8. During the course of appellate proceedings before us, Id. counsel has furnished paper book containing following pronouncements.

Maxopp Investment Limited Vs. CIT (Civil Appeal Numbers 104-109 of 2015) (SC)

PCIT vs. D.B. Corp Ltd (Tax Appeal No. 206 of 2016) (Gujarat High Court)

CIT Vs. Corrttech Energy (P) Limited [2014] 45 taxmann.com 116 (Gujarat High Court)

DB Corp Limited Vs. ACIT (OSD) (ITA No. 1850/Ahd/2012)

The Id. counsel has also submitted written submission reproduced as under:-

“2. Submission of DB Corp before your Honour’s:

2.1. Ground on disallowance of Rs. 68,82,683/- under section 14A of the Act-
Department Appeal

2.1.1. DB Corp submits that during AY 2012-13, it has not earned any exempt income. The said fact has been acknowledged by the learned AO at page 12 of the assessment order. Further the learned CIT (A) has also acknowledged this fact at para 3,5 38 in his order.

2.1.2. Decision of Hon'ble Supreme Court in DB Corps own case of A.Y. 2009-10
During AY 2009-10, on similar facts where no exempt income was earned by DB Corp during that year, the co-ordinate bench of this ITAT in no. 185D/Ahd/2012 relying upon the Hon'ble Gujarat High Court ruling in the case of Corrttech Energy P. Ltd (45 Taxmann.com 116) has inter-alia that no disallowance is warranted in absence of exempt income. (Refer 9 on page 61 of the legal book).

Against the order of Hon'ble ITAT, the department preferred an before the Hon'ble Gujarat High Court, who in its Tax Appeal No. 208 of 2016 vide its order 16 February 2016 has held that no question of law arises from the order of Hon'ble ITAT and hence has refused to admit the ground of appeal on Section 14A (Refer para 3 on page 53 of legal book).

Against the order by Hon'ble Gujarat High Court, department filed an SLP before the Hon'ble Supreme Court. Recently Hon'ble Supreme Court has given its decision in the of Maxxop Investment Limited Vs. CIT (Civil Appeal Nos. 104 -109 of 2015). In the said case, in the batch of appeals, one of the appeal was the appeal filed by the department in the case of DB Corp. The question in the said department appeal was whether the provisions of Section 14A are applicable even when no exempt income is exempt (Refer 8 of paper book filed). The Hon'ble Supreme Court while passing its judgement has dismissed department's SLP (Refer 44(b) at page 51 of the book) filed in the case of DB Corp's own case.

In view of the above, it is humbly submitted that in view of the fact that the Hon'ble Supreme Court in the SLP filed by the department in DB Corp's own case has dismissed the department's SLP, the issue regarding disallowance under Section 14A of the Act even where no exempt income is earned has attained finality in DB Corp's case.

Given the above, though in the present appeal the concerned AY is AY 2012-13 and the ruling of Hon'ble Supreme Court pertains to AY 2009-10, the is squarely applicable to the current AY since there has not been any change in the facts vis-a-vis AY 2009-10.

2.1.3. Decision jurisdictional Gujarat High Court in the case of CIT Vs. Corttech Energy (P) Limited [2014] 45 taxmann.com116

Hon'ble Jurisdictional Gujarat High Court in the of CIT Vs. Corttech Energy Private Limited has that no disallowance under Section 14A is warranted in of any exempt income earned during the year (Refer 4 at page 56 of legal paper book).

2.14. Decision of Hon'ble Ahmedabad ITAT in DB Corp's own case in A Y 2009-10

Hon'ble Ahmedabad ITAT in DB Corp's own case of AY 2009-10 has also held that in absence of any exempt income earned during the year, no disallowance under Section 14A is warranted (Refer para 9 on page 61 of legal paper book)

2.1.5. Incorrect reliance placed by the learned D.R. on the ruling of Hon'ble Supreme Court in the case of Maxxop Investment Ltd.

During the course of proceedings your Honour's, the learned DR relied on the ruling of Hon'ble SC in the case of Maxxop. The learned DR relied upon para 33, 34 and 35 of the order to justify that going forward after the ruling of Maxxop, wherever the investments have been made by the assessee in other companies, whether any exempt income has been earned or not, Section 14A becomes applicable.

In this regard, DB Corp humbly submits that the learned DR is in error in relying on ruling of Supreme Court has dismissed Department's SLP in DB Corp's own case and other where there is no exempt income earned during the year.

In fact at para 33 of the order, the Hon'ble Supreme Court has held that the entire dispute is on the interpretation of the words 'in relation to' in the scenario where the exempt income is earned by the assessee. The relevant extract of para 33 is as under:

"33. There is no quarrel in assigning this meaning to Section 14A of the Act. in fact, all the High Courts, whether it is Delhi High Court on the one hand or the Punjab & Haryana High Court on the other hand have agreed in providing this interpretation to Section 14A of the Act. The entire dispute is as to what interpretation is to be given to he words 'in relation to' in the given scenarios, viz. where the dividend income on the shars is earned though the dominant purpose for subscribing inthose shares of the investee company was not to earn dividend....."

Accordingly it can be said that where the assessee has any exempt income during the year, Section 14A will be applicable and the purpose of holding the investment would not be required to be seen. However in a scenario where no dividend income has earned by the assessee during the year, the position still remains that no disallowance under section 14A is required to be made.

The above fact has also recently upheld by the co-ordinate bench of this Hon'ble ITAT in the case of ACIT Vs. Torrent Private Limited (ITA 737 & 1671/Ahd/2012). In the said case the assessee had earned exempt income during the year. The department on the ruling of Hon'ble Supreme Court to contend that an assessee's expenditure in case of exempt income is to be apportioned for the purposes of computing Section 14A disallowance (kindly refer para 9 of the order). This Hon'ble ITAT at para 11 of the order upheld that Hon'ble Supreme Court order now makes it clear that the relevant expenditure has to be apportioned in case of exempt and taxable income. However in the facts of the present case before your Honours, DB Corp has not earned any exempt income and hence there is no question of apportionment of expenditure between exempt and taxable income. Hence this Hon'ble ITAT has also held that the ruling of Hon'ble Supreme Court cannot be directly to each and every case.

2.1.6. In view of the above, it is humbly prayed ;that as no exempt income has been by DB Corp during AY 2012-13, no disallowance under Section 14A is warranted. Further, it is re-iterated that a specific SLP filed by the department in DB Corp's own case has been dismissed by the Hon'ble Supreme Court as part of batch of appeals in the decision rendered in the case of Maxopp investment (supra).

Appeal

2.2. Ground on addition of Rs. 17,22,750/- under section 2(24) (x) of the Act-D.B. Corp's Appeal

2.2.1. During AY 2012-13, certain payments towards employee contribution to PF and ESIC were made by DB Corp after the due date prescribed under the Act but before the due date of filing of return of income. The said payments were considered by DB Corp to be an allowable expenditure relying upon several judicial precedents.

2.2.2. However the learned AO relying on the jurisdictional Gujarat High Court ruling of CIT Vs. Gujarat Road Transport Corporation (ITA No. 637 of 2013) held that delayed employee contribution to PF of Rs 11,14,931 and ESIC of Rs 6,07,819 are not allowable expenditure (Refer page 14 to 17 of learned AO's order). The learned CIT (A) upheld the leaned AO's order (Refer para 47 & 48 of CIT (A)'s order).

2.2.3.DB Corp humbly submits that the prescribed due date of payment of ESIC is 21st of the next month and hence out of the disallowance made of Rs 6,07,819 towards ESIC, below payments have made by DB Corp within time and hence have wrongly been added to the total income by the learned AO:

Contribution to ESIC

Month	Amount (Rs)	Due date of	of payment
April 2011	40,550	21/05/2011	21/05/2011
April 2011	9,025	21/05/2011	21/05/2011
April 2011	38,395	21/05/2011	21/05/2011
April 2011	11,701	21/05/2011	21/05/2011
June 2011	26,513	21/07/2011	15/07/2011
May 2011	39,674	21/06/2011	21/06/2011
May 2011	18,044	21/06/2011	21/06/2011
May 2011	1,095	21/06/2011	21/06/2011
May 2011	7,692	21/06/2011	21/06/2011
May, 2011	7,946	21/06/2011	21/06/2011
May 2011	8747	121/06/2011	21/06/2011
April 2011	3,417	21/05/2011	21/05/2011
April 2011	2,012	21/05/2011	21/05/2011

2.2.4. The above shows that payments towards ESIC have been made by DB Corp with in time and hence the same have wrongly back to the total income by the learned AO. The same is also evident from the tax audit report of DB Corp.

2.2.5. Hence it is prayed that this ground of appeal be remanded back to the file of the learned AO and the learned AO be directed to again verify the payments made and allow those payments as allowable expenditure which have been made in time."

On the other hand, Id. departmental representative placed reliance on the decision of ITAT Bench in ITA No. 218/Asr/2017 dated 12-04-2018 in the case of Lally Motors India (P.) Ltd. vs. Pr. CIT and Co-ordinate Bench of ITAT, Ahmedabad in ITA No. 1850/Ahd/2012 dated 29-09-2015 in the case of DB Corp Ltd. vs. ACIT.

9. We have heard both the issues and perused the material on record carefully. We have noticed that it is undisputed fact that assessee has not earned any exempt income during the year under consideration. Vide a number of judicial pronouncements the Co-ordinate Benches of the ITAT Ahmedabad have held that the no disallowance shall be made under section 14A of the act if the assessee has not earned any exempt income and the disallowance shall be restricted to the exempt income. We have perused the judicial pronouncements referred by the Id. counsel and Id. departmental representative. Section 14A(1) provides that for the purpose of computing total income under chapter IV, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of other total income under the act. However, in the case of the assessee, it has not made any claim or exemption of any income from payment of tax for the year under consideration. We have noticed that Id. CIT(A) has followed the decision of the Co-ordinate Bench of the ITAT in the case of Shah Alloys Ltd. (2315/Ahd/2010 dated 27-03-2015 and the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Corretech Energy Pvt. Ltd. (45 Taxmann.com 116) on identical issue of disallowance u/s. 14A when no dividend income is earned by the assessee. The judicial findings of the Hon'ble jurisdictional High Court and the decision of the Co-ordinate Bench of the ITAT have been elaborated in the decision of the Ld. CIT(A) has cited supra

in this order on identical facts decided in favour of the assessee. In view of the above mentioned facts and circumstances and following the decision of the Hon ϕ le jurisdictional High Court of Gujarat, we consider that the disallowance u/s. 14A r.w.s Rule 8D cannot be made as the assessee has not earned any exempt income. Therefore, this ground of appeal of the Revenue is dismissed. Regarding the appeal of the assessee relating to the addition of employees' contribution to the provident fund of Rs. 17,22,750/- u/s. 2(24)(x) of the act, we have heard both sides and perused the material on record carefully. We consider that the contribution received by the assessee from the employees are to be paid within the time allowed by the PF/ESIC Act. It is clearly demonstrated in the findings of the assessing officer and the Id. CIT(A) that the assessee has failed to pay the required amount as per the due date of payment provided under these specific Acts. We have perused the detailed finding of the Id. CIT(A) stating that entire impugned issue is covered against the assessee by the decision of jurisdictional Hon ϕ le Gujarat High Court in the case of State Road Transport Corporation (336 ITR 170). We consider that in the above cited decision, the Hon ϕ le High Court of Gujarat has held that wherein the assessee had not deposited the said contribution in respective fund account as per the due date prescribed in explanation to section 36(1)(va) then disallowance made by the assessing officer was just and proper. In view of the above and after following the decision of the Hon ϕ le High Court of Gujarat, we do not find any infirmity in the decision of the Ld. CIT(A). Accordingly, the appeal of the assessee is dismissed.

10. In the result, the cross appeals of revenue and the assessee are dismissed.

Order pronounced in the open court on 27-06-2018

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad : Dated 27/06/2018

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश क० तालम अ० षत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलालय आधिकरण,
अहमदाबाद