

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
“ B ”BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
And SHRI WASEEM AHMED, ACCOUNTANT MEMBER

Sr. No	ITA No(s)	Asst. Year(s)	Appeal(s) by	
			Appellant	Respondent
1.	Income Tax Appeal No.1115/Ahd/2011	2007-08	DCIT, Gandhinagar Circle, Block – 14, 4 th Floor, Udhyog Bhavan, Sector-11, Gandhinagar – 382 011.	M/s. Gujarat Industrial Investment Corp. Ltd., Block – 14, 6 th Floor, Udhyog Bhavan, Sector-11, Gandhinagar – 382 011 PAN:AAACG 5304 Q
2.	Income Tax Appeal No.1170/Ahd/2011	2007-08	M/s. Gujarat Industrial Investment Corp. Ltd.	DCIT, Gandhinagar Circle, Gandhinagar.
3.	Income Tax Appeal No.208/Ahd/2012	2008-09	-do-	ACIT, Gandhinagar Range, Gandhinagar.
4.	Income Tax Appeal No.419/Ahd/2012	2008-09	The ACIT	M/s. Gujarat Industrial Investment Corp. Ltd.
5.	Income Tax Appeal No.2473/Ahd/2012	2009-10	M/s. Gujarat Industrial Investment Corp. Ltd.	The JCIT, Gandhinagar Range, Gandhinagar.
6.	Income Tax Appeal No.2556/Ahd/2012	2009-10	ACIT	M/s. Gujarat Industrial Investment Corp. Ltd.
7.	Income Tax Appeal No.2889/Ahd/2013	2010-11	ACIT, Circle – 12, Ahmedabad	-do-
8.	Cross Objection No.106/Ahd/2014 in ITA No 2899/A/13	2010-11	M/s. Gujarat Industrial Investment Corp. Ltd.	The DCIT, Gandhinagar Circle, Gandhinagar.

Assessee by :	Shri Surendra Kumar, CIT-DR
Revenue by :	Shri Sanjay R. Shah, A.R.

सुनवाई की तारीख/Date of Hearing : 24/07/2018

घोषणा की तारीख /Date of Pronouncement: 18/09/2018

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

These are seven appeals by the assessee and revenue along with one cross objection by the assessee against separate orders of the Ld. CIT(A). Out of seven appeals, three appeals are

filed by the assessee, and four appeals are filed by the Revenue. Assessment years involved in these appeals are 2007-2008, 2008-09, 2009-10 & 2010-2011. Since issues involved in all these appeals are interconnected with each other, for the sake of convenience we proceed to dispose of all these appeals by way of this common order.

2. First, we take up appeals filed by the assessee and revenue pertaining to the assessment year 2007-08.

2.1 The assessee has raised the following grounds of appeal in ITA No. 1170/Ahd/2011 for Assessment Year 2007-08.

“Your Appellant being dissatisfied with the order passed by the Learned Commissioner of Income Tax (Appeals) -- Gandhinagar, Ahmedabad, presents this appeal against the same on the following amongst other grounds of appeal which are without prejudice to each other.

1. The order passed by the Commissioner of Income Tax (Appeals) is erroneous and requires to be modified. It is submitted that be so done now.

2. The learned CIT (A) erred in law and on facts in upholding the disallowance U/S.14A of the Income Tax Act, 1961 (hereinafter referred to as the "Act") in respect of administration and promotion expenses to the extent of Rs. 25,00,000/- on an adhoc basis. It is submitted that the appellant has not incurred any expenditure for earning exempt income. It is submitted that it be so held now.

2.1 Without prejudice to the above, the learned CIT (A) erred in law and on facts in not considering the details of expenses furnished by the appellant to be considered as having been incurred in relation to exempt income. It is submitted that it be so held now.

2.2 Without prejudice to the above, the learned CIT (A) erred in law and on facts in considering the entire amount of administrative and promotion expenses of Rs. 5 Crores debited to profit & loss account while apportioning the expenses relating to exempt income. It is submitted that the aforesaid amount includes expenses which are in no way directly or indirectly relating to earning exempt dividend income and therefore the same cannot be included while apportioning expenses relating to exempt income. It is submitted that it be so held now.

2.3 Without prejudice to any of the foregoing, if at all it is held that some amount out of administrative and promotion expenses are to be disallowed u/s 14A of the Act, the disallowance confirmed by CIT (A) at Rs. 25,00,000/- is highly excessive and arbitrary and the same may please be suitably reduced.

3. The learned CIT(A) erred in law and on facts in directing the A.O. that dividend income net of adjustment of expenses made for earning it, being disallowance u/s 14A of the Act, be reduced from the book profits computed u/s 115)13 of the Act. It is submitted that the appellant, has not incurred any expenses for the purpose of

earning dividend income and thereby the entire dividend income is required to be reduced from book profits computed u/s 115JB of the Act. It is submitted that it be so held now.

3.1 The learned CIT(A) erred in law and on facts in directing the A.O. to reduce net exempt income, net of expenses incurred on earning such income, which have been computed by way of apportionment of administration and promotion expenses. It is submitted that clause (f) to Explanation 1 to Section 115B requires actual expenses rclatable to exempt income to be added to the book profits and not expenses which have been apportioned by some way or the other. It is submitted that it be so held now.

3.2 The learned CTT(A) erred in holding that the expenses disallowed u/s 14A of the Act, are not notional expenses but actual expenses which have been correctly apportioned. It is submitted that it be so held now.

4 The learned CIT(A) erred in law and on facts in not directing the A.O. to exclude the interest waived by Vijaya bank amounting to Rs. 13,72,02,294/- & written back in books of accounts, from the book profits u/s 115JB of the Act, since it was write back of provision for contingent liability which was not allowed as deduction in the year of provision from the book profit and thereby was required to be reduced from the book profits in accordance with Explanation to Section 115JB of the Act. It is submitted that it be so held now.

5. The learned CIT(A) erred in holding that the interest u/s 234B & 234C is mandatory. In the facts and circumstances of the case, it is submitted that appellant had become liable to tax on account of retrospective amendment to Explanation to Section 1 15JB of the Act & therefore interest u/s 234B & 234C is not chargeable. It is submitted that it be so held now.

Your appellant prays for leave to add, to alter and/ or to amend all or any of the grounds before the final hearing of appeal.”

2.2 Revenue has raised the following grounds of appeal in ITA No.1115/Ahd/2011 for Assessment year 2007-08.

- 1. The learned CIT(Appeals) has erred in law and on facts in deleting the addition made u/s.43B of the IT Act amounting to Rs.13,72,02,294/-*
- 2. The learned CIT(Appeals) has erred in law and on facts in restricting the disallowance u/s.14A of the Act from R.7,10,64,678/- to Rs.25,00,000/- thereby deleting the addition to the extent of Rs.6,85,64,678/-*
- 3. The learned CIT(Appeals) has erred in law and on facts in directing the AO to allow deduction of Fringe Benefit Tax of Rs. 30,27,000.00 from the book profit calculated u/s 115JB of the IT Act.*
- 4. The learned CIT(Appeals) has erred in law on facts in directing the AO to allow deduction of dividend income from the book profit calculated u/s.115JB of the IT Act.*
- 5. On the facts and circumstances of the case the "Ld.AO".CIT(A) ought to have upheld the order of the Assessing Officer.*

6. *It is therefore prayed that the order of the learned CIT(Appeals) may be set aside and that of the A.O be restored to the above extent.*

First, we take up assessee's appeal in ITA No. 1170/Ahd/2011 for Assessment year 2007-08.

The first issue raised by the assessee is that Ld. CIT(A) erred in restricting the disallowance of Rs.25,00,000/- on an ad-hoc basis for earning exempted income.

3. Briefly stated facts are that assessee is a limited company and engaged in the financing activities. It provides finance to industries by way of the term loan, financial services and implementation of joint and associated sector projects in the state of Gujarat. Assessee during the year has earned exempted income amounting to Rs. 3,25,15,594/- which was claimed exempted u/s 10(34) of the Act. The assessee has not made any disallowance of the expenses incurred in relation to such dividend income u/s 14A of the Act.

3.1 The AO during the assessment proceedings observed that the assessee has invested in shares worth of Rs.1,67,68,09,656/ and simultaneously has incurred interest cost of Rs.11,01,92,468/- on the loans during the year. Accordingly the AO of the view that the expenditure incurred in relation to exempted income in the form of interest expenses and administrative expenses need to be disallowed u/s 14A of the Act. Accordingly, an explanation was sought by the AO from the assessee vide order sheet entry dated 15/12/2009 for making the disallowance of the expenses u/s 14A of the Act.

3.2 The assessee accordingly made a reply as detailed under:-

- i. It has not incurred any administrative expenses in the earning of such dividend/exempted income.
- ii. Its fund exceeds the investment in shares. Therefore it can be presumed that no borrowed fund attributes/allotted to such investment in shares.
- iii. The provisions as specified in Rule 8D of Income Tax Rule are not applicable for the year under consideration.
- iv. It was also submitted that the Ld CIT(A), as well as the Hon'ble ITAT, had decided the issue in earlier years in favor of the assessee.

3.3 However, the AO disagreed with the submission of the assessee by observing that there was no one to one correlation between the fund and investment made in such shares. Accordingly, the AO worked out disallowance of the expenses in relation to exempted income as detailed under:-

I	Amount of expenditure directly relating to the income which does not form part of total income		NIL
	(A) Amount of expenditure by way of interest	11,01,92,468	
	(B) Average value of investment on which tax free income is received for receivable	169,62,85,491	
	(C) Average value of total assets as appearing in the Balance Sheet.	298,67,07,812	
II	(A)X(B)/(C)		Rs.6,25,83,251
III	5% of the average value of investment on which tax free income is received or receivable.		Rs.84,81,427
IV	Total		Rs.7,10,64,678

3.4 In view of the above, AO disallowed expense of Rs. 7,10,64,678/- under the provision of section 14A of the Act and added to the total income of the assessee.

4. Aggrieved assessee preferred an appeal before Ld.CIT(A). The reply of the assessee before Ld. CIT(A) is two folds as detailed under:-

4.1 Disallowance of administrative expenses

4.1.1 The assessee submitted that the AO had taken the gross value of the investment for making the disallowance as per the formula, given in Rule 8D of the Income Tax Rule. As per the assessee, the AO has failed to consider the provision made in the books of accounts in respect of non-performing asset.

4.1.2 The Rule 8D was not applicable for the year under consideration. Therefore, the same cannot be invoked while making the disallowance u/s 14A of the Act.

4.1.3 The assessee before Ld. CIT(A) also submitted that the certain expenses could be considered on an estimated basis for disallowance on account of exempted income as detailed under :

Sr. No	Particulars	Amount
1.	Project	30,000/-
2.	Salary	25,000/-
3.	Conveyance	3,000/-
Total		58,000/-

4.2 Disallowance of interest

4.2.1 The assessee submitted that its fund exceeds the amount of investment in shares & securities. Therefore the question of making the disallowance of interest expenses u/s14A of the Act does not arise.

4.2.2 The Ld.CIT(A) after considering the submission of the assessee deleted the amount of interest disallowance and partly confirmed the administrative expenses by observing as follows:-

“Disallowance of interest

6.3 *I have considered the facts of the case and the submissions of the assessee. I follow the decision of Hon’ble Mumbai High Court in the case of Godrej & Boyce Mfg. Co. Ltd. that Rule 8D is not applicable for A.Y 2007-08. However, the expenses which are incurred in relation to earning such income were still to be apportioned, as held by the Hon’ble High Court. The assessee has been able to show from the past record that the investments were made from its own funds. These investments were made prior to 1997-98. In the earlier assessment years upto AY 1996-97 the disallowance of interest expenses on deduction claimed u/s.80M was deleted by the ITAT. Therefore, it is held that no interest expenses u/s.14A is required.*

Disallowance of administrative expenses

“The assessee has failed to give any basis for the working. I have considered the facts that at the closing of the year there were investment on which exempt dividend was earned/could have been earned amounting to Rs.117.69 crores. Besides there were exempt capital gains on sale of such investments. The expenditure related to it is also not allowable and is to be disallowed u/s.14A, because long term capital gains on sale of such equity is exempt. The assessee has started taking decisions about sale of such equity is also. All this requires considerable management time and expenses. Looking to and prom expenses are over Rs.5 crores and other expenses also requires to be proportioned; I uphold a disallowance of Rs.25,00,000/- u/s.14A of the Act. The balance addition is deleted.”

Being aggrieved by the order of Ld.CIT(A) both the assessee and Revenue are in appeal before us. The assessee is in appeal against the confirmation of disallowance made by the Ld.CIT(A) for Rs.25,00,000/- on account of administrative expenses.

5. On the other hand, the Revenue is in appeal against the reduction of disallowance made by the Ld.CIT(A) from Rs.7,10,64,678/- to Rs.25,00,000/- only i.e. 6,85,64,678.00. The Revenue has raised the ground N. 2 of appeal as detailed under:

“The learned CIT(Appeals) has erred in law and on facts in restricting the disallowance u/s.14A of the Act from R.7,10,64,678/- to Rs.25,00,000/- thereby deleting the addition to the extent of Rs.6,85,64,678/-.”

6. The Learned AR for the assessee before us submitted as under:

6.1 The submission of the assessee for the confirmation of disallowance of Rs. 25,00,000/-

“The exempt dividend income was earned from investment made prior to 97-98 and no expenditure had been incurred by the appellant for earning such exempt income. The appellant had incurred administrative and promotional expenses of Rs.508.84 Lakhs out of which Rs.84.81 Lakhs had been disallowed by the Ao which was worked out as per the formula prescribed under Rule 8D. Since Rule 8D was not applicable to AY 2007 2008 the CIT(Appeals) confirmed disallowance of Rs.25 Lakhs out of administrative and promotional expenditure as having been incurred for purposes of earning exempt income. Neither the AO nor CIT(Appeals) has provided any reasoning while working out administrative and promotional expense relating to exempt income. Adhoc disallowance has been made by AO and part of which has been confirmed by the CIT(A) in an adhoc manner. In absence of any material/evidence by the appellant for earning exempt income, the disallowance should be deleted. No expenditure should be notionally apportioned to exempt income in view of the fact that no expenditure has been incurred by the appellant for earning exempt income. NO disallowance has been made in respect of administrative expenses in any of the earlier years by apportioning it to exempt income. Copy of Assessment order for following assessment years enclosed herewith whereby only interest expenditure has been disallowed.

2004-07(1st year of disallowance under section 14A)

2005-06 (2nd year)

2006-07 (3rd year)

Since during the year under consideration, no new investment has been made by the appellant, the facts of the case are similar to the aforesaid years and accordingly, no disallowance of administrative expenses should be made under section 14A of the Act.

CIT Vs. Catholic Syrian Bank (2011) 9 taxmann.com 148(Ker.)

ACIT Vs. M/s.Vepar Pvt. Ltd. in ITA No.1374/Ahd/2009

Submission before the CIT(Appeals)

Appellant had submitted vide aforesaid submission an estimate of administrative expenses that could be considered to have been incurred in relation to the exempt income before the CIT(Appeals). However, the same was not considered by Hon'ble CIT(Appeals)

Without prejudice to the submission at ground no. 2.1 above, it is submitted that at most disallowance of Rs.58,000 as per the computation provided by the appellant be confirmed by the CIT (Appeals) be deleted.”

7. On the other hand the Ld. DR submitted that the exempted income could not be earned without incurring the expenses. Therefore the expenses incurred in relation to such income needs to be disallowed. The ld. DR in support of his claim extended his reliance on the judgment of the Hon'ble Supreme Court in the case of Maxopp Investment Limited Vs. CIT reported in 402 ITR 640.

8. We have heard the rival contention and perused the materials available on record. The issue in the instant case relates to the disallowance made by the Ld.CIT(A) for Rs. 25,00,000/- on account of the expenditure incurred in relation to exempted income. It is an undisputed fact that the Ld CIT-A made the disallowance on the ad-hoc basis. There is also no ambiguity that provisions of Rule 8D are applicable from the assessment year 2008-09. In this regard, we rely on the judgment of Bombay High Court in the case of *Maxopp Investment Limited (supra)* wherein it was held as under :

“Few appeals are filed by the revenue against the assesseees which pertained to the period prior to the introduction of rule 8D of the Rules. Here, the case is decided in favour of the assesseees also on the ground that rule 8D of the Rules is prospective in nature and could not have been made applicable in respect of the assessment years prior to 2007 when this rule was inserted. This view has already been upheld by this Court in CIT v. Essar Teleholdings Ltd. [2018] 90 taxmann.com 2 (SC), that the said Rule is prospective in nature. On this ground alone, these appeals of the revenue fail as it is not necessary to go into the other issues.”

8.1 Thus we hold that the disallowance as per the provision of Rule 8D cannot be made for the year under consideration. However, the possibility of incurring the expenses in relation to exempted income on account of administrative expenses cannot be ruled out. Therefore some expenses on reasonable basis should be disallowed in pursuance of the provision of section 14A of the Act.

8.2 In this regard we find support & guidance from the judgment of the Hon'ble Calcutta HC in the case of **GA No. 3019 of 2012** in ITAT No. 243 of 2012 of *CIT v. M/s R.R.Sen & Brothers (P) Ltd.*, wherein it was held as under:

“The assessee did not show any expenditure incurred by him for the purpose of earning the money which is exempted under the income tax. The Tribunal has computed expenditure at 1 per cent of such dividend income which, according to them, is the thumb rule applied consistently. We find no reason to interfere. The appeal is dismissed.”

8.3 Therefore, respectfully following the same we direct the AO to make disallowance on account of administrative expenses at the rate of 1% of the exempted/dividend income. We also note that the judgments relied on by the Id. AR, as discussed in his submission, is distinguishable from the present facts of the case. Therefore we do not rely on the same. Thus the appeal of the assessee is **partly allowed**.

Coming to the Revenue appeal in ITA No.1115/Ahd/2011.

9. The Ld. DR before us submitted that the assessee was using mix fund. Therefore, some disallowance on account of interest expenses should be made as there was no one to one correlation between the own fund of the assessee and investment made in the shares.

9.1 Regarding the administrative expenses, the Id. DR submitted that the expenses incurred in relation to such income need to be disallowed. The Id. DR in support of his claim placed his reliance on the judgment of the Hon'ble Supreme Court in the case of *Maxopp Investment Limited Vs. CIT* reported in 402 ITR 640. The Id. DR vehemently supported the order of the AO.

10. On the other hand, the Ld AR before us submitted as under:

“It is submitted that the entire investment are from interest free own funds and that no borrowed funds have been utilized in respect of the same. In this regard, in similar facts and circumstances in appellant's won case, the Hon'ble ITAT has deleted disallowance of proportionate interest expenditure in AY 2005-06 and AY 2006-07 holding that no borrowed funds have been invested in tax free income yielding shares. (page 13-14, para 6 for AY 2005-06 and page 25-26, para 18 for AY 2006-07). During the year under consideration, in fact there is a reduction in investment and hence findings of the earlier year's ITAT order are applicable to the current assessment year i.e 2007-08. Further Hon'ble Gujarat High Court in appellant's own case for AY 2004-05 has held that investment had been made from own funds and disallowance of proportionate interest expenditure in not justified in the facts of the case. Further, in A.Y 2005-06 and 2006-07 the Hon'ble High Court

in appellant's own case has not admitted any question in respect of disallowance under section 14A."

10.1 The Ld AR vehemently supported the order of Ld. CIT(A).

11. We have heard the rival contentions and perused the materials available on record. At the outset, we find that the Hon'ble Gujarat High Court in the own case of the assessee has decided the impugned issue in Tax Appeal No. 492 of 2012 in favor of the assessee by observing as under:-

"The Tribunal rightly held that the nexus between borrowed fund and the investment can be said to be established only when the interest free funds are not available with the assessee. It further held that no nexus of such kind was proved before the Assessing Officer. Thus, when there was sufficient interest free funds available with the assessee and when the department failed to establish the link between the borrowed fund and the investment made by the assessee in the equity shares, addition made on account of disallowance of Rs.6,62,50,000/- by Assessing Officer has been rightly deleted by both the CIT(A) and the Tribunal."

11.1 There is no change in the facts of the present case except the amount involved. Therefore, respectfully following the same, we do not find any infirmity in the order of Ld. CIT(A). Accordingly, we decline to interfere in the order of Ld.CIT(A).

11.2 Coming to the deletion of administrative expenses made by the AO, in this regard we note that we have already deleted the addition made by the AO on account of administrative expenses in part in the assessee's appeal in ITA NO.1170/Ahd/2011 vide paragraph no. 8 of this order. Hence, respectfully following the same, the ground of appeal of Revenue is **dismissed**.

12. The second issue raised by the assessee in ground No. three is that Ld. CIT(A) erred in directing the AO to reduce the amount of dividend income while determining the profit u/s.115JB of the Act after adjusting the expenses of disallowance made u/s 14A of the Act.

13. The AO while working out the tax liability under the provision of section 115JB of the Act has added the amount of disallowance made u/s 14A r.w.r. 8D of the Income Tax Rule by Rs. 7,10,64,768/- only

14. Aggrieved assessee preferred an appeal before Ld CIT(A) who has confirmed the order of AO by observing as under:

“It has already been decided that certain part of expenses have been incurred for earning the exempt income. These expenses are not notional but part of actual expenses which have been incurred, and have been correctly apportioned. Clearly net exempt income i.e net expenses incurred on earning it is only required to be reduced. The AO is accordingly directed to reduce this amount from the book profit subject to adjustment of expenses made for earning it.”

Being aggrieved by the order of the Ld. CIT(A) assessee is in appeal before us.

15. The ld. AR for the assessee before us submitted as under:

“Dividend income of Rs.3,25,15,594/- is exempt under section 10(34) of the Act. The appellant has contended that it has not incurred any expenses relatable to income exempt from tax. Hence the appellant has not added any amount to profit and per profit and loss account while computing book profit u/s.115JB of the Act. Provisions of section 14A of the Act apply only to the computation of income chargeable to tax under chapter iv of the Act and not to the computation of book profit under chapter XII B of the Act. In this regard, we produce the relevant provision of section 14A of the Act as hereunder for ready reference: ‘(1) For the purpose of computing the total income under this Chapter, 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 this Act. Further to above the provision of chapter XII-B of the Act are special provisions and complete code in itself and hence do not require importing of the Act into computation of book profit is extra jurisdictional on the part of the learned AO and ultra vires the scheme of the Act. Hence, in view of the above, the amount of disallowance computed u/s.14A of the Act cannot be adjusted for computing book profit u/s. 115JB of the Act.”

16. On the other hand the Ld. DR vehemently supported the order of authorities below.

17. We have heard the rival contention and perused the material available on record. In the instant case, the Assessing Officer made the addition of disallowance made u/s 14A read r.w.r. 8D of the Income-tax Rules while determining the book profit under Section 115JB of the Act. It is settled law that the amount of disallowance made by the AO u/s 14A of the Act cannot be imported while determining the book profit u/s 115JB of the Act. In this regard, we rely on the judgment Hon’ble Gujarat High Court in the case of *Alembic Ltd.* in Tax Appeal No. 1249/2014 where the following question was raised:

“(iii) Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in holding that adjustment made on account of disallowance u/s 14A of the Act in computation of book profit u/s115JB of the Act is not as per law without appreciating that the amount disallowable under section 14A is covered

under clause (f) of Explanation to section 115JB (2) and, thus said amount has to be added back while computing amount of book profits?”

17.1 The above question raised before the Hon’ble Gujarat High Court was answered as below:

“8. Taking into consideration the evidence on record and considering the decision of this court in the case of Commissioner of Income Tax – I vs. Gujarat State Fertilizers & Chemicals Ltd. (supra), we are of the opinion that issue Nos. (iii) and (iv) required to be answered in favour of the assessee and against the revenue. In that view of the matter, we answer questions (iii) and (iv) referred to us in favour of the assessee and against the revenue. The appeal of revenue is dismissed.”

17.2 We also note that in the recent judgment of Special Bench of Hon’ble Delhi Tribunal in the case of ACIT vs. Vireet Investment Pvt. Ltd. reported in 82 Taxmann.com 415 held that the disallowances made u/s 14A r.w.r. 8D cannot be the subject matter of disallowances while determining the book profit u/s 115JB of the Act. The relevant portion of the said order is reproduced below:

“In view of above discussion, the computation under clause (f) of Explanation 1 to section 115JB(2), is to be made without resorting to the computation as contemplated under section 14A, read with rule 8D of the Income-tax Rules, 1962.”

17.3 The ratio laid down by the Hon’ble Tribunal is squarely applicable to the facts of the case. Thus it can be concluded that the provisions of section 14A r.w.r. 8D cannot be resorted while determining the expenses as mentioned under clause (f) to explanation 1 to section 115JB of the Act.

17.4 However, in our considered view the disallowance needs to be made as per Clause (f) to Section 115JB of the Act independently on account of dividend/ exempted income as specified. The judgment of Hon’ble Gujarat High Court relied on in the case of *Alembic Ltd. (supra)*, does not deny for making the disallowance as per clause (f) u/s 115JB of the Act for the expenses incurred in relation to dividend income.

17.5 Thus it is clear that the disallowance needs to be made in terms of the provisions of clause (f) to section 115JB of the Act while determining the book profit. In holding so, we draw our support from the judgment of Hon’ble Calcutta High Court in the case of *CIT Vs. Jayshree Tea Industries Ltd.* in GO No.1501 of 2014 (ITAT No.47 of 2014) dated 19.11.14 wherein it was held that the disallowance about exempted income needs to be made as per

the clause (f) to Explanation-1 of Sec. 115JB of the Act independently. The relevant extract of the judgment is reproduced below:-

“We find computation of the amount of expenditure relatable to exempted income of the assessee must be made since the assessee has not claimed such expenditure to be Nil. Such computation must be made by applying clause (f) of Explanation 1 under section 115JB of the Act. We remand the matter for such computation to be made by the learned Tribunal. We accept the submission of Mr. Khaitan, learned Senior Advocate that the provision of section 115JB in the matter of computation is a complete code in itself and resort need not and cannot be made to section 14A of the Act.”

17.6 Given above, we hold that the disallowances made under the provisions of Sec. 14A r.w.r. 8D of the IT Rules, cannot be applied to the provision of Sec. 115JB of the Act as per the direction of the Hon'ble Calcutta High Court in the case of *CIT Vs. Jayshree Tea Industries Ltd.* (Supra).

17.7 Now the question arises to determine the disallowance as per the clause (f) to Explanation-1 of Sec. 115JB of the Act independently on account of dividend income. However, we also note that there is no mechanism given under the clause (f) to Explanation-1 of Sec. 115JB of the Act to workout/ determine the disallowance. Therefore in the given facts & circumstances, we feel that ad-hoc disallowance will serve the justice to the Revenue and assessee. Therefore to put the dispute to rest in given facts & circumstances, we direct for the ad-hoc disallowance to avoid the multiplicity of the proceedings and unnecessary litigation.

17.8 We also feel to bring this fact on record that we have restored other cases involving identical issues to the file of AO for making the disallowance as per the clause (f) to Explanation-1 of Sec. 115JB of the Act independently. But now we are of the view that as there is no mechanism provided under the clause (f) to Explanation-1 of Sec. 115JB of the Act to make the disallowance independently, therefore there would be unnecessarily further litigation if the matter is sent back to the file of AO.

17.9 Thus, considering the peculiar circumstances of the case, we propose to limit the disallowance on an ad-hoc basis @ 1% of the dividend/exempt income as per the clause (f) to Explanation-1 of Sec. 115JB of the Act. Thus the ground of appeal of the assessee is **partly allowed.**

18. The third issue raised by the assessee in ground 4 in this appeal is that the Ld. CIT(A) erred in confirming the order of the AO by sustaining addition of Rs.13,72,02,294/- on account of a provision written back u/s 115JB of the Act.

19. The assessee during the year has written back the provision created for the amount of interest expenses payable to Vijaya bank for Rs. 13,72,02,294.00 only. Such amount was credited in the profit and loss. As per the assessee, such interest expenses pertains to the earlier years which were not allowed as deduction u/s provision 43B of the Act. Therefore the same should not be added back in the book profit under section 115JB of the Act. However, AO without excluding the provision written back in respect of interest payable to Vijaya Bank determined the book profit under the provision of section 115JB of the Act.

20. Aggrieved assessee preferred an appeal before the Ld. CIT(A). The assessee before Ld. CIT(A) submitted that the provision was created for contingent liabilities i.e., representing the interest payable to Vijaya bank was not allowed as a deduction under normal computation of income as well as under the MAT provision in earlier years. Therefore the same cannot be added in book profit u/s 115JB of the Act. However, the Ld. CIT(A) disregarded the contention of the assessee and confirmed the order of AO by observing as under:

“(i) The amount of Rs.13,72,02,294/- pertaining to interest was waived by Vijaya Bank Ltd. and it was no longer payable by the company, hence it was correctly credited to profit and loss account by the assessee.

(ii) Interest on accrual basis was never shown earlier as provision for a continental liability, but was correctly shown as an expense in the earlier profit and loss accounts. Only for income tax purposes, for calculation of total income normal provision of the act, was it correctly added back u/s.43B.

(iii) The assessee has not actually added back the expense in earlier years, it is just raising and hypothetical question saying that it would not have affected the taxable book profits if these were considered as provision for contingent liabilities. Actually the interest were accruing as per the contract with the Vijaya Bank, were actually accrued liability and was hence correctly debited to the profit and loss account. The fact that it was not paid is material only with respect to section 43B. In the absence it would have been deductible expense even under normal provisions of income tax act. Assessee's claims fails on all accounts, it is neither being contingent liability nor a provision made but an actual claim debited to the profit and loss account.

(iv) *The Hon'ble Supreme Court in the case of Apollo Tyres 255 ITR 273, had held that no adjustments to the book profits as per the audited accounts are permissible, beyond what is specifically mandated in section 115JA/JB. No remission of an expense, correctly credited to the profit and loss account by the assessee as its income; forming part of its profit as per audited account can be allowed as deduction later on.*

The AO's decision on this account is fully justified and is upheld. The assessee's plea to this extent raised in the ground is rejected."

20.1 Aggrieved by the order of Ld. CIT(A) assessee is in appeal before us. The Ld. AR before us submitted as under :

"During AY 2007-08 appellant has credited to profit & Loss Account of Rs.13,72,02,294/- which represents reversal of interest payable to Vijaya Bank which was provided during AY 2003-04 to 2006-07. The said reversal is in the nature of withdrawal from a provision which has been credited to Profit accordingly has to be reduced from computation of book profit for AY 2007-08 as per clause (i) of Explanation 1 to Section 115JB of the Act. There were no book profits in AY 2003-04 to 2006-07 even after making addition of the aforesaid provisions, on the contrary there was a book loss. Hence even after making addition of this provision in respective years there was position to book loss and hence the requirement of proviso to clause(i) of Section 115JB should be deemed to have been made. The aforesaid facts were brought to the notice of the CIT(Appeals) vide additional submissions before him enclosed herewith. A computation of book profit/loss for AY 2003004 to AY 2006-07 is enclosed herewith to establish that even after making addition of this provision in respective years, there would be a book loss in all those years. Accordingly, no income should be taxed in AY 2007-08 on account of reversal of a provision made for aforesaid liability which has not adversely affected tax payable for earlier years in which such provision was made."

21. On the other hand the Ld. DR submitted that there is no evidence available justifying that the amount of provision written back was disallowed in the earlier years while determining book profit under MAT provision. The Ld DR vehemently supported the order of authorities below.

22. We have heard rival contentions and perused the materials available on record. In the present case, the assessee has written back the provision created in the earlier years on account of interest payable to Vijaya Bank. As such the amount of interest was waived off by the Vijaya bank, therefore, assessee has written back such provision by crediting the profit and loss account as it was no longer required to be paid. However, the AO while determining the book profit under MAT provision did n't exclude the amount written back

on account of such interest expenses. The view of the AO was subsequently confirmed by the Ld CIT(A).

22.1 The controversy before us relates whether the provisions written back by the assessee are allowable for deduction u/s 115JB of the Act while computing the book profit under MAT provision. At this juncture we find important & relevant to refer to the provision of the clause (i) of explanation to 115JB of the Act which reads as under:

“⁷⁹[**Special provision for payment of tax by certain companies.**⁸⁰

115JB. (1) XX

(2) XX

*Explanation*⁸⁶[1].—XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

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,—]]]

⁹⁴*[(i) the amount withdrawn from any reserve or provision (excluding a reserve created before the 1st day of April, 1997 otherwise than by way of a debit to the profit and loss account), if any such amount is credited to the profit and loss account:*

***Provided** that where this section is applicable to an assessee in any previous year, the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this Explanation or Explanation below the second proviso to section 115JA, as the case may be; or]*”

22.2 The plain reading of the above provision making it clear that the assessee is eligible for deduction for the provision written back if the same was offered to tax under the provision of section 115JB of the Act in the earlier year. For this purpose, we need to refer the earlier years where the assessee has paid tax under the provision of MAT. In this regard, assessee has filed detail of taxes paid under the provision of MAT which is place on page 196 of the paper book. On perusal of the details filed by the assessee, we note that the assessee was not paying the tax under the provision of MAT for the Assessment Years 2003-04 to 2006-07. The assessee has also filed the computation of income in respect of AYs pertaining to 2003-04 to 2006-07 which are placed on pages 198 to 206 of the paper book. As such tax liabilities under the normal computation income was greater than MAT provision therefore the assessee was not under the obligation to pay taxes under the MAT

provision. In such a case it can be safely presumed that the effect of provision created for interest expenses in the earlier years have been duly given and offer to tax under the provision of MAT. Accordingly, the assessee cannot be made liable for paying tax under the provision of MAT for the year in which it was written back. In holding so, we find support and guidance from the order of Mumbai Tribunal in the case of Kochi Refinery Ltd. Vs. DCIT reported in 4 ITR (Trib) 95. The relevant extract of the order is reproduced below:

“33. We have considered the arguments of learned counsel and the learned Departmental representative. It is an admitted fact that the provision for bad and doubtful debts was made in the financial year relevant to the assessment year 1998-99 and the same amount was added back in the regular computation. By virtue of law, it is the duty of the Assessing Officer to compute the normal total income and also the book profit under section 115JA in that year and then compare and decide to invoke the normal provisions of the Act or special provisions of book profit under section 115JB. Once the Assessing Officer invokes the normal provisions of tax, it indirectly means that he has compared the computation under section 115JA and decided that the income under normal provisions was more. In that situation it is to be presumed that the provision was added back to the book profit of that year. Even by means of Explanation (g) introduced to section 115JA by the Finance (No. 2) Act, 2009, with retrospective effect from April 1, 1998 the provision for bad and doubtful debts would be deemed to have been added back in computing the book profit in that year and so the amount, now credited to the profit and loss account, is to be reduced by virtue of the provision of section 115TB. In view of this there is justification in the assessee's contention in claiming the provision as deduction in the computation of book profit in this year. On the fact that the assessee had been disallowed in that year under the normal computation and by virtue of the amendment now brought with retrospective effect from April 1, 1998, the provision for bad debt is deemed to have been added back in that year withdrawal and crediting into the profit and loss account now results in double taxation. Consequently, the assessee is correct in excluding the amount while computing the income under section 115JB. Accordingly the ground is allowed.”

22.3 In the light of the above decision we hold that the effect of the provision created for the interest payable to Vijaya Bank has been duly given while determining the book profit u/s 115JB of the Act. The Id. DR has also not brought anything contrary to the arguments advanced by the Id. AR for the assessee. Accordingly, we have no hesitation in reversing the order of the authorities below. Thus the ground of appeal of the assessee is allowed.

23. The fourth issue raised by the assessee in the ground no. 5 in this appeal is that the Ld.CIT(A) erred in holding that the interest u/s 234B and 234C is mandatory in nature even in case of the retrospective amendment brought to section 115JB of the Act.

24. The assessee during the year has created the provision of Rs. 30,87,00640/- on account of diminution in the value of the investment. However, the same was disallowed by the AO while determining the book profit under the provision of MAT on account of retrospective amendment effective from 1.4.2001 by the Finance Act No. 2 of 2009. Accordingly the assessee voluntarily offer the same to tax during the assessment proceedings. However, the AO has worked out interest u/s 234B and 234C on account of less payment of advance tax.

25. The aggrieved assessee preferred an appeal before the Ld. CIT(A) who confirmed the order of AO by observing as under

“I have considered the submission of the assessee. After the amendment to sec.234B by way of Expln. 1 and similar explanation in sec. 234C, the interest has to be computed based on assessed tax which would mean the tax on the total income determined on regular assessment. The section is mandatory and unambiguous. The interest is consequent to the determination of assessed of assessed tax. The ground of assessee is dismissed.”

25.1 Being aggrieved by the order of Ld. CIT(A) assessee is in appeal before us.

26. The ld. AR before us submitted as under:

“The appellant had filed an original and revised return of income at NIL under the normal provision of the Act and loss as per section 115JB of the Act. However the explanation 1 to section 115JB of the Act was amended by Finance (No.2) with retrospective effect from 1st April, 2001 and per the amendment the profit and loss account is to be increased by the provision made for diminution in the value of asset. The appellant had made provision for NPA of Rs.30,87, 00,640/- which as per the amended provisions was required to be added back to the profit and loss account. The appellant voluntarily offered the same to tax during course of assessment proceedings. Hence the book profit has been arrived after considering the retrospective amendment to Section 115JB of the Act. Interest under section 234B and 234C has arisen purely due to the addition of provision for NPA of Rs.30.87 Crores made consequent to the retrospective amendment. In absence of retrospective amendment referred above, no advance tax would have been payable by the appellant. The appellant couldn't be expected to pay advance tax based upon the total income computed having regard to a retrospective amendment made several months after it filed its return of income. Accordingly, the levy of interest u/s.234B and 234C is not justified in the facts of the case.

*Reliance is placed on the following decisions
Decision of Hon'ble ITAT Chandigarh on case of Hindson International Vs. Income Tax Officer [2010] 33 TTJ 83 (CHD)
Decision of Hon'ble Kolkatta High Court in the case of Emami Ltd Vs CIT in ITA NO.199 of 2006”*

27. On the other hand the Ld. DR vehemently supported the order of authorities below.

28. We have heard the rival contention and perused the material available on record. At the outset, we note that the Hon'ble Gujarat High Court in the case of CIT Vs. National Diary Development Board reported 83 taxman 109 has held that no interest can be charged from the assessee u/s 234B and 234C of the Act on account of retrospective amendment. The relevant extract of the judgment is reproduced as under:

“In terms of section 207, advance tax is payable in respect of total income of the assessee, which would be chargeable to tax in the assessment year immediately following the financial year in question. Thus, the computation of advance tax would be made in advance and deposited with the Government revenue as per the provisions contained in the said chapter. In absence of the amendment in section 43(6), at the relevant time no liability to pay tax in case of assessee existed. Such liability arose by virtue of a subsequent amendment brought into the statute with retrospective effect. Therefore, at the relevant time when liability to pay advance tax arose, there was no short fall as per the statutory provisions prevailing. No interest can be charged on the ground that by virtue of subsequent amendment with retrospective effect the tax liability arose, the law does not expect the person to perform the impossible.”

28.1 From the above, it is clear that there was a shortfall in the payment of advance tax on account of the retrospective amendment, but there will be no interest liability u/s 234B and 234C of the Act in terms of judgment as discussed above. Thus the ground of the assessee is **allowed**.

29. In the result, the appeal of the assessee is **partly allowed**.

Coming to Revenue appeal in ITA No.1115/Ahd/2011.

30. The first issue raised by the Revenue in ground No. 1 is that Ld.CIT(A) erred in deleting the addition made by the AO for Rs.13,72,02,294/- on account of a provision written back.

31. Assessee during the year has written back the provision created for the interest payable to Vijaya Bank for Rs. 13,72,02,294/- by crediting the profit and loss account. The amount of interest charged in the profit & loss account pertains to the AYs 2003-04 to 2006-07. The assessee claims that it has offered/ disallowed the said interest expenses

under the provision of section 43B of the Act under the relevant year. Thus such amount of interest expenses has suffered the taxes in the earlier years. Therefore the same should be allowed as deduction while determining the total income of the assessee under normal computation of income.

31.1 However, the AO disagreed with the submission of the assessee and made disallowance of the deduction claim by it for Rs. 13,72,02,294/- only.

32. Aggrieved assessee preferred an appeal before Ld.CIT(A). The assessee before the Ld.CIT(A) submitted that it has already offered the impugned amount of interest expenses written back to tax by virtue of the provisions of section 43B of the Act.

32.1 The Ld.CIT(A) called for the remand report from the AO on the submission filed by the assessee. The AO in his remand report has not admitted the claim of the assessee by observing that there was no detail available justifying that the interest was payable to Vijaya Bank. The assessee in response to the remand report filed letter from C.A. certifying that the impugned interest expenses are representing the liabilities payable to Vijaya Bank which has been offered to tax in the earlier years. The assessee also filed the copies of the correspondence exchanged between it and Vijaya Bank.

32.2 Ld.CIT(A) further call for remand report from the AO vide letter dated 13/01/2011 on the additional details filed by the assessee but the AO failed to make any reply. Therefore the Ld.CIT(A) deleted the addition made by the AO by observing as under :

“5.5 I have considered the facts of the case, the submissions of the assessee, the assessment order and the remand report submitted by the assessing officer. The interest which was payable to the Vijaya Bank was correctly debited to the profit and loss account. However as it was not paid therefore as per the provisions of section 43B these were not claimed and added back while computing the total income as per the Income tax Act.

Now when amount of Rs.13,72,02,294/- pertaining to interest was waived by Vijaya Bank ltd. and it was no longer payable by the company ,hence it was correctly credited to profit and loss account. The appellant has claimed exclusion of interest waived during the year under consideration under the premise that the amount when charged to profit and loss account was offered for tax by disallowing the same u/s. 43B(e) of the Act. Hence, in the year of written back of such provisions for interest, the amount has been claimed as exclusion. I agree with the assessee that the amount/expense which was not allowed in earlier years or current year; remission thereof should not be taxed u/s. 41(1) of the Act.

*I do not find any merit in the assertion of the assessing officer that it is not clear whether interest waived of was to payable to Vijaya bank. This is a company owned by the government, the books of accounts are audited and the relevant Ledger accounts of the earlier years and the current year were produced before the assessing officer. Later, even a certificate from a chartered accountant has been produced in this regard. The communications with Vijaya bank also prove taking of loans by the assessee and subsequent settlement. **The interest which was debited to P&L account but was voluntarily added back while working out the total income to be taxed in that year; the writing back of such interest in subsequent year would not have resulted any taxable income in the year in which it was written back. Therefore, the addition made by the assessing officer cannot be sustained and is deleted.***

32.3 Being aggrieved by the order of Ld.CIT(A) Revenue is in appeal before us.

33. The ld. DR before us vehemently supported the order of the AO.

34. On the contrary, the ld. AR for the assessee before us submitted as under:

“The amount of Rs.13,72,02,294/- is a part of Rs.3207.53 lacs which has been written back to profit and loss account as remission of interest. The amount of Rs.13,72,02,294/- pertains to interest waived by Vijaya Bank Ltd. and no longer payable by the company and hence credited to profit and loss account. The amount of interest payable to Vijaya Bank has been disallowed by the assessee in all respective assessment years from A.Y. 2002-03 to A.Y. 2006-07 u/s.43B(e) of the Act. The assessee has claimed exclusion of interest waived during the year under the premise that the amount when charged to profit and loss account was offered to tax by disallowing the same u/s 43B (e) of the Act. Hence in the year of written back of such provision for interest the amount has been claimed as exclusion from income. Further, without prejudice to the above, the assessee also contends that no allowance was granted in any of the earlier assessment years in respect of interest provision for Vijaya Bank, remission thereof should not be taxed u/s.41(1) of the Act and the same should be excluded from total income of the appellant. Moreover, during the course of assessment proceedings wherein a detailed clarification was submitted to CIT(A) and the same was forwarded by CIT(A) to AO for his comments. Copy of remand report of the AO enclosed. IN the rejoinder to remand report the appellant had submitted . Letter from Chartted Accountant, certifying the amount of Rs.13,72,02,294/- as representing write back of interest, recognized in earlier years and disallowed in those years, payable to Vijaya Bank. Communication exchanged with Vijaya Bank with regard to transaction.”

35. We have heard the rival contention and perused the material available on record. On perusal of statement of total income placed on pages 198 to 206 of the paper book, we note that the amount of interest expenses payable to Vijaya Bank was duly offered to tax

by virtue of the provision of section 43B of the Act. The Ld. DR before us has not brought anything on record contrary to argument/details filed by the learned counsel for the assessee. Therefore in our considered view if the amount of the provision for the interest payable to the Vijaya Bank is not allowed as deduction than it will lead double addition. Therefore we do not find any infirmity in the order of Id. CIT-A and accordingly we decline to interfere in the order of "Ld.CIT(A). Hence the ground appeal of the Revenue is dismissed.

36. The second issue raised by the Revenue in ground number 2 is that Ld.CIT(A) erred in reducing disallowances made u/s 14A of the Act from Rs.7,10,64,678/- to Rs.25,00,000/-.

37. We have already adjudicated the impugned issue vide paragraph No. 11 of this order. Thus the ground of appeal of Revenue is **dismissed**.

38. The third issue raised by the Revenue in the ground no. three is that Ld.CIT(A) erred in allowing deduction of fringe benefit tax of Rs.30,27,000/- while determining the book profit under section 115JB of the Act.

39. The AO while determining the book profit under section 115JB of the Act has made the addition of the fringe benefit tax of Rs. 30,27,000.00.

39.1 However Ld.CIT(A) deleted the same by observing as under:

“The AO disallowed Fringe benefit tax of Rs.30,27000/- claimed as expenses when it is explicitly allowable as per CBDT circular no.8/2005 dated 29/08/2005. In answer to FAQ no.103, CBDT has answered that ‘Accordingly, the FBT is an allowable deduction in the computation of ‘book profit’ under section 115JB of the Act.’ The expense is clearly a business expense and only for the purpose of computation of income under the head income from business profession this has been made not allowable, by a specific provision. This is allowable deduction while working the book profit, which has been correctly done by the assessing. The disallowance by the directed to be deleted.”

39.2 Being aggrieved by the order of the Ld. CIT(A) Revenue is in appeal before us.

40. At the outset, we find that the CBDT in its circular no.8/2005 dated 29/08/2005 has held that the FBT is an allowable deduction in the calculation of book profit under the provision of section 115JB of the Act. Therefore, we do not find any reason to interfere in the findings of Ld.CIT(A). Hence this ground of appeal of the Revenue is dismissed.

41. The fourth issue raised by the Revenue in this appeal in the ground no. 4 is that Ld.CIT(A) erred in allowing deduction of dividend income from book profit calculated u/s 115JB of the Act.

42. At the outset, we find that the AO in his order u/s154 of the Act dated 05/10/2010 allowed the deduction of dividend income while calculating the profit u/s115JB of the Act. The relevant extract of the order is reproduced below

“(d) Dividend Income exempt u/s.10(34):

It is submitted by the assessee that the dividend income of Rs.3,25,15,594/- which is exempt u/s.10(34) has to be deducted as per Explanation I to Sec.115JB of the Act. The assessee’s claim has been examined. It is seen that the P&L A/c. has been created by the aforesaid sum which is exempt u/s.10(34). Therefore, the assessee’s claim is found to be correct in view of Clause (ii) of the explanation, therefore, the same is accepted.”

42.1 Once the AO has deleted the addition in the order passed under section 154 of the Act for the addition as discussed above, then in our view, the ground of appeal filed by the Revenue becomes infructuous. Accordingly, we do not find any reason to interfere in the order of Ld. CIT(A). The ground of appeal of the Revenue is **dismissed**.

43. In the result, the appeal of the Revenue is **dismissed**.

44. ***Now coming to the ITA No.208/Ahd/2012 for A.Y.2008-09 appeal by assessee and ITA No.419/Ahd/2012 A.Y. 2008-09 Appeal by the Revenue.***

44.1 The assessee has raised the following grounds of appeal in ITA No.208/Ahd/2012 for A.Y 2008-09:

1. *The order passed by the Commissioner of Income Tax (Appeals) is erroneous and requires to be modified. It is submitted that be so held now.*

2. *The learned CIT(A) erred in law and on facts in confirming the disallowance of Rs. 71,00,603/ on account of proportionate administrative expenditure related to exempt income computed by the learned A.O. as per Rule 8D in spite of the fact that the A.O. had made the disallowance without establishing that indirect expenditure was in fact incurred by the appellant which warranted proportionate disallowance . It is submitted that it be so held now.*
- 2.1 *The learned CTT(A) erred in law and on facts in confirming disallowance of Rs.71,00,603/ on account of proportionate administrative expenditure related to exempt income inspite of the fact that the A.O. had not: recorded satisfaction that disallowance of Rs.1,00,000/- made by the appellant at the time of filing of return of income was incorrect. It is submitted that it be so held now.*
- 2.2 *The learned CIT(A) erred in law and on facts in rejecting the disallowance of administrative expenditure related to exempt income of Rs.1,00,000/- made by appellant in its return of income on the ground that no basis for working of disallowance made was provided by the appellant and the estimate was ad hoc. It is submitted that it be so held now.*
- 2.3 *While computing disallowance under section 14A as per Rule 8D, the learned CIT(A) erred in not considering the average investment at net of Provision for NPA. In the facts & circumstances of the case the same have to be considered net of provision. It is submitted thai it be so held now.*
3. *The learned CIT(A) erred in making addition by way of the disallowance of Rs. 71,00,603/ made under section 14A r.w.r. 8D to the book profit while computing deemed total income u/s 115JB of the Act. It is submitted that it be so held now.*
4. *The learned CIT(A) erred on facts and in law in not directing the A.O. to reduce the book profit u/s 115JB by Rs. 15,46,64,446/- being provision for diminution in value of investment written back in view of clause (i) to Explanation 1 to Section 115JB but instead directing the A.O. to adjudicate the rectification application for AY 2006-07 and if the same was found to be correct then reduce the book profit following clause (i) of Explanation 1 to Section 115JB. It is submitted that it be so held now.*

Your appellant prays for leave to add, to alter and/ or to amend all or any of the grounds before the final hearing of appeal.

45. The first issue raised by the assessee in this appeal in the ground no. 2 is that Ld.CIT(A) has erred in confirming the disallowance of administrative expenses for Rs.71,00,603/- under clause (iii) of Rule 8D r.w.s 14A of the Act.

46. The assessee during the year has earned dividend income of Rs. 1,30,24,813/- which was claimed to be the exempted u/s 10(34) of the Act. The assessee in relation to such income has made disallowance of Rs. 1,00,000/- as expenditure incurred in connection with dividend income.

46.1 The assessee also submitted that the own fund of it exceeds amount of investment shown in the balance sheet as on 31/03/2007. Therefore there is no question of making disallowance of interest expenses. However, the AO disregarded the contention of the assessee by observing that the assessee has not substantiated its argument by demonstrating the source of fund used in the investment.

46.2 AO was also of the view that the provisions of Rule 8D are applicable with effect from the assessment year 2008-09, i.e. the year under consideration and accordingly made disallowance as under:

Sr.No.	Particulars	Amount
1.	Contract Expenses under Rule 8D(2)(i)	Nil
2.	Interest expenses under Rule 8D(2)(ii)	Rs.7,75,39,195/-
3.	Administrative Expenses under Rule 8D(2)(iii)	Rs.76,30,294/-
Total		Rs.8,51,69,489/-

46.3 The AO in view of the above-made disallowance of Rs.8,50,69,489/- (Rs.85169489 - amount already disallowed Rs.1,00,000/-) under the provision of section 14A r.w.r. Rule 8D of the income tax Rule and added to the total income of the assessee.

47. Aggrieved assessee preferred an appeal to Ld.CIT(A). The assessee before the Ld. CIT(A) submitted that there was no borrowed fund invested in the impugned investment. Therefore there should not be any disallowance on account of interest expenses.

47.1 The assessee also submitted that the AO had taken the gross value of investments without considering the provision made for NPA in respect of such investment while making the disallowance under section Rule 8D of Income Tax Rule.

47.2 The assessee also submitted that the income earned from the investment in Gujarat Venture Capital Fund is not free from tax. Therefore the same should not be considered while working out disallowance under Rule 8D of the Income Tax Rule.

47.3 The assessee also submitted that it had offered the long-term capital gain income from Gujarat Venture Capital Fund for Rs.3,61,67,899/- to tax.

47.4 Similarly the dividend income from the Gujarat Venture Capital Fund is not exempt from the provision of income tax Act.

47.5 In view of above the assessee contended that only net investment should have been taken for the purpose of disallowances.

47.6 Without prejudice to above the assessee also contended that at the most disallowance under Rule 8D r.w.s 14A of the Act can be made for Rs. 50,87,804/- out of which sum of Rs.1,00,000/- has already been disallowed. Therefore the remaining amount of Rs.49,87,804/- should have been disallowed under the normal computation of income.

47.7 The Ld. CIT(A) after considering the submission of assessee deleted the addition in part by observing as under:

“5.2.1 As far as the disallowance of Rs.7,75,39,195/- towards interest while I applying formula under Rule 8D by A.O. is concerned, I find that all the investments yielding tax free income are held by the appellant from the years prior to A.Y. 1997-98 and there are no new investments in equity shares made in the year under consideration and therefore the finding by the Hon'ble ITAT for A.Y. 1996-97 in appellant's own case holds good for the year under consideration also. Following said ITAT decision in the earlier A.Y. 2007-08 also I had deleted the disallowance of interest in my order for A.Y. 2007-08 holding that no interest expenses are attributable to earning tax free income. No new investments, earning tax free income, have been alleged to be made during the year. Following the earlier decisions, for the year under consideration also I hold that no disallowance u/s 14A r.w. Rule 8D requires to be made in connection with the interest expenses incurred by the appellant.

5.2.2 As regards, the factual mistakes committed by the learned A.O. while computing amount of average investments which are pointed out by the appellant in ground No.3.2 and 3.3, I do not agree with the stand of the appellant that only the amount of investment after considering the provision for NPA has to be considered. Further the appellant has given no basis for working of the disallowance made by it, i.e., of Rs 100,000/- and the estimate is ad hoc and without any basis and is rejected. The investments are huge and require considerable energy and time to be spent on managing them. Under the Rule 8D, it is only mentioned average value of investments and it is not mentioned that such investment should be considered after deducting provision for NPA. However, the investment in Gujarat venture Capital Fund is not yielding tax free income but in facts any income from it is taxable; and therefore the same should not have been considered while working out average value of investment on which tax free income is receivable. Therefore, correct amount to be worked out by way of disallowance for the purpose of Rule 8D comes to Rs.72,00,630/- as mentioned in succeeding para 5.2.3..

5.2.3 As regards other expenses, since the assessment under consideration is A.Y. 2008-09, Rule 8D would be applicable, which was not the case for A.Y. 2007-08 and therefore the disallowance of other expenses is required to be made on the basis of the formula specified in Rule 8D, which amounts to Rs.72,00,630/- after the appellant's estimate has been held to be correctly rejected (refer para 5.2.2) as under:

<i>Proportionate indirect expenses</i>	
(i) value of investment on 31/03/2007 [paper book page 33]	16,76,810
Less: Investments in Gujarat Venture Capital Fund income from which is taxable.	1,18,158
Value of Investment on 31/03/2007	<u>15,58,658</u>
(ii) Value of investment on 31/03/2008 [paper book page 33]	<u>13,75,308</u>
Less: Investments in Gujarat Venture Capital Fund income from which is taxable.	53,708
	<u>13,21,600</u>
Value of investment on 31/03/2008 (ii)	(i) + (ii)
Average value of investments	2
= <u>Rs.15,58,652 + Rs.13,21,600</u>	
2	
=Rs.14,40,126(000)	
0.5% of its Rs.72,00,603/-	Rs.
Less: Already disallowed in statement of income	72,00,603
Balance disallowance under Rule 8D	<u>1,00,000</u>
	<u>71,00,603</u>

Since the appellant has already disallowed Rs.1,00,000/- a further disallowance of Rs.71,00,630/- is required to be made u/s.14A r.w. Rule 8D. The A.O is directed to disallow Rs.71,00,630/- u/s.14A r.w Rule 8D as against Rs.8,50,69,489/- worked out by him in his assessment order. This ground of appeal is this partly allowed.”

47.8 Being aggrieved by the order of Ld. CIT(A) both the assessee and Revenue are in appeal before us. The assessee is in appeal against the confirmation of the disallowances made by the AO for Rs.71,00,603/- whereas the Revenue is in appeal against the deletion of the addition made by the AO for Rs.7,79,68,859/-

48. Ld.AR before us file a paper book running from page 1 to 147 and submitted as under :-

“During the year under consideration, the appellant has earned dividend income of Rs.1,30,24,813/-. The appellant has already disallowed Rs.100,000/- as administrative expenditure relatable to exempt income. The exempt income is earned from investment made prior to 97-98, when the appellant was generating

good amounts of profits and has sufficient amounts of owned funds. The own funds which comprises of the share capital plus post tax cash profits till date (ie before provision of NPA and depreciating) is more than investments. The value of share capital during the year under consideration is itself Rs.256.98 crores as against investment of Rs.103 crores which evidently shows that the company had made investments out of it own funds. The investment have reduced during the year under consideration from Rs.117.69 crores to 103 crores. Hence, the appellant has sold investment during the year under consideration. The manner of investments is a business decision and should not be questioned in absence of any material to the contrary. The "Ld.AO had made the disallowance without establishing that indirect expenditure was in fact incurred by the appellant which warranted proportionate disallowance. CIT(A) has erred in confirming the action of the AO. Moreover, no satisfaction has been recorded by "Ld.AO regarding the incorrectness of disallowance made by the appellant in the statement of computation of total income of Rs.100,000/- (which is the requirement of computation of total income of Rs.100,000/- (which is the requirement for computing disallowance under section 14A as prescribed under rule 8D) and has resorted to the computation mechanism provided in Rule 8D r.w section 14A (2) of the Act. Accordingly, when no satisfaction recorded by the AO to the effect that the disallowance made by the appellant in the return of income is incorrect, no further disallowance should have been made. The Hon'ble CIT(A) has failed to understand that the investments have been made out of won funds and therefore, no expenses have been incurred to earn the income which is not includible in the total income of the appellant. CIT(A) has erred in rejecting the disallowance made by the appellant in its return of income on the ground that no basis for working of disallowance made was provided by the appellant. In this regards, attention is invited to the submission dated 20/08/2010 made by the appellant to the AO wherein the computation of disallowance under section 14A has been submitted. CIT(A) has erred in not considering the average investment at net of provision for NPA while computing the disallowance under section. In view of the definition of term 'total assets' as defined under sub-rule (3) to Rule 8D of the Rules for the purpose of computation of disallowance under the said provisions, average value of investment should have been computed by excluding provision for diminution in value in investment."

49. The Ld. DR before us submitted that the disallowance on account of expenses incurred in relation to dividend income needs to be made. Similarly there was no correlation between the investments made and sources of funds. Both the parties relied on the order of authorities below as favorable to them.

50. We have heard the rival contentions and perused the material available on record.

Adjudication of Revenue ground of appeal:

50.1 In the present case the AO made the addition of the following amount:

S.No.	Particulars	Amount (Rs.)
1.	Rule 8D(2)(ii)	7,75,39,195.00

2. Rule 8D(2)(iii) 75,30,294.00

50.2 However the Id. CIT-A restricted the above disallowance as under

S.No.	Particulars	Amount (Rs.)
1.	Rule 8D(2)(ii)	NIL
2.	Rule 8D(2)(iii)	71,00,630.00

50.3 Regarding the deletion of interest expenses, we at the outset note that the own fund of assessee exceeds the investment as shown in the balance sheet as on 31/03/2008. In the identical facts & circumstances in the own case of the assessee, we have already deleted the addition made by the AO in ITA no.1115/Ahd/2011 vide paragraph no. 11 of this order.

50.4 Regarding the deletion of administrative expenses for Rs. 4,29664.00, we have already restored this issue to the file of AO for fresh adjudication as per the provision of law and direction given in ITA No. 208/Ahd/2012 an appeal filed by the assessee vide paragraph no. 51 of this order.

50.5 Respectfully following the same we do not want to disturb the findings of Ld. CIT(A). Hence the ground appeal of the Revenue is **dismissed**.

Adjudication of assessee ground of appeal:

51. Now coming to the disallowance under Rule 8D(2)(iii) of the Income Tax Rule, we note that the Rule 8D has been made applicable from the year under consideration. The assessee has not provided the basis of making disallowance of Rs.1,00,000/- in the computation of income in relation to such exempted income. Therefore we hold that the AO has derived his satisfaction for making the disallowance as per the Rule 8D by observing as follows:

“6.4 It may be pointed out that consequent to the decision of Special Bench in the case of ITO vs. Daga Capital Management Pvt. Ltd. (119 TTJ 289) regarding the applicability of Section 14A wherein it was held by Special Bench of Hon'ble ITAT that Rule 8D would come into operation with retrospective effect when the Assessing officer is not satisfied with the correctness of the claim in respect of such expenditure, there is material difference to the legal approach of the matter. After insertion of sub-sections (2) 85 (3) to Section 14A and the decision of the Special

Bench in the case of Daga Capital Management Pvt. Ltd. (supra) that Rule 8D is operative retrospectively, the onus to prove nexus between the borrowed funds and investments giving tax free returns, has shifted to the assessee. As has been stated by Hon'ble Special Bench, what is relevant is to work out the expenditure in relation to exempt income and to examine whether expenditure incurred by the assessee has resulted into exempt income or taxable income. In the assessee's case, admittedly the investment made has resulted into exempt income or possible exempt income. In view of the above facts and circumstances of the case, I hold that Section 14A read with Rule 8D is applicable in the assessee's case. Accordingly, the expenditure in relation to the exempt income is computed as under”

51.1 Thus in view of the above we hold that the AO has correctly invoked the provision of section 14A Rule 8D of the Income Tax Rule for the disallowance of the administrative expenses.

51.2 However we further note that the AO should have taken the net amount of investment after reducing the following amount from the gross value of the investment.

1. The provision created for NPA investment.
2. The investment from which income was chargeable to tax i.e Gujarat Venture Capital Fund.

51.3 In view of above we direct the AO to compute the disallowance under Rule 8D of Income Tax Rule after considering to the above stated direction. This ground of appeal of the assessee is partly allowed for the statistical purposes.

52. The second issue raised by the assessee in the ground no. 3 is that Ld.CIT(A) erred in making the addition of Rs.71,00,603/- disallowed under the provision of section 14A r.w.r. 8D while calculating book profit under the provision of MAT.

53. At the outset we note that the identical issue raised by the assessee in ITA 1170/Ahd/2011 has already been adjudicated by us vide Para no. 17 of this order. Respectfully following the same, we direct the AO to calculate book profit after making the disallowance as directed herein above. Thus the ground of appeal of the assessee is partly allowed.

54. The third issue raised by the assessee in this appeal in the ground no. 4 is that Ld. CIT(A) erred in making the addition of Rs.15,46,64,446/- being the provision for

diminution in the value of investment written back while calculating profit u/s.115JB of the Act.

55. The assessee during has written back the provision created on account of the diminution in the value of investments for Rs. 15,46,64,446.00. The assessee created such provision in the assessment year 2006-07 and claimed that the same was disallowed in the normal computation of income.

55.1 The assessee further submitted that such provision was added in the computation of book profit as per the retrospective amendment under (i) of Explanation 1 to section 115JB of the Act.

55.2 However the AO disregarded the contention of the assessee and added the same to the total income and the book profit computed under normal and MAT provisions of the Act.

56. Aggrieved assessee preferred an appeal to Id. CIT-A. The assessee before the Id. CIT-A submitted that as under:

Under Normal computation of Income

56.1 The assessee filed the computation of income pertaining to the AY 2006-07 evidencing that the provisions were offered to tax under normal computation of income. Therefore the same has suffered the tax in the AY 2006-07. In the year under consideration the relevant investment was sold, and hence the corresponding provision was written back. Therefore the same should not be disallowed.

Under MAT computation of Income

56.2 The assessee submitted that it had made the addition on account of such provisions made for the diminution in the value of assets in the revised computation of income filed along with the rectification application under 154 of the Act pertaining to the AY 2006-07.

56.3 The Id. CIT-A after considering the submission of the assessee adjudicated the issue as under :

Under Normal computation of Income

“4.2 I have carefully considered the submissions made by the A.Y. and contentions raised by him in respect of above grounds and also carefully gone through the relevant pages of paper book referred by him in connection with the above ground of appeal. As far as the ground No.2 regarding the deduction on account of Rs.15,46,64,446/- in respect of write back of provision for diminution in value of investment made in A.Y. 2006-07 is concerned, I find that the same was not claimed as deduction in the computation of income filed for A.Y. 2006-07 attached at page No, 20 and 21 of the paper book and since the same was not claimed as deduction, the same has to be excluded while computing the income for the year under consideration and therefore the same is liable to be excluded in the computation of income accordingly. Any provision debited to P&L Account but not allowable or claimed in the Tax Return can not result in income when such provision is written back. Therefore, this ground of appeal of the appellant is allowed.”

Under MAT computation of Income

“4.2.2 As regards ground No.2.2, the A.R. of the appellant has raised a legal contention that since due to retrospective amendment in law w.e.f. A.Y. 2001-02, the book profit of the earlier A.Y. 2006-07 is required to be rectified by making addition to that year's book profit and the same has to be excluded while computing book profit u/s 115JB in the year under consideration being the year of write back in view of clause (i) of Explanation to section 115JB. I find from the paper book at page No.59 to 61 that the appellant has preferred rectification application for A.Y. 2006-07, which appears to be pending before A.O. The A.O. is directed to adjudicate the said rectification application and thereafter if the same is found to be correct and the amount is considered as liable to addition in the A.Y, 2006-07; then in that case he is directed to reduce the book profit of the year under consideration following clause(i) of Explanation to section 115JB. With this direction, ground no.2.2 is disposed of.”

56.4 Being aggrieved by the order of Ld.CIT(A) both the assessee and Revenue are in appeal before us. The assessee is in appeal against the direction given to the AO to adjudicate the rectification application for the AY 2006-07.

57. On the other hand, the Revenue is in appeal against the deletion of the addition for Rs. 15,46,64,446.00 on account of written back the provision for the diminution of the value of investments under normal computation of income. The Revenue has raised the ground No. 1 of appeal as detailed under:

1. *The learned CIT(Appels) has erred in law and on facts in directing to delete the disallowance made by the AO of Rs.15,46,64,446/- being provision for diminution*

in value of investments without considering the facts that major amount of long term capital gain arisen on sale of these investments is claimed exempt u/s 10(38) on account of payment of Security transaction Tax on the same.

First we take up the Assessee appeal ITA No. 208/Ahd/2012

58. The Id. AR before us submitted as under:

- *The provision for amount of Rs. 15,46,64,446/- written back was made during A.Y. 2006-07.*
- *The entire provision for NPA (including provision for diminution in value of Investment) had been added back in statement of total income for A.Y. 2006-07 and thus disallowed in that year.*
- *Since in the year in which the provision was made i.e. A.Y. 2006-07 in the books of accounts of the appellant the same was not claimed as deduction and was added to the total income of the appellant, the write back of the provision during the year under consideration is not taxable as income.*
- *A computation of book profit for A.Y. 2006-07 after adding the provision for NPA made during that year (including that made for diminution in value of investment) of Rs. 82.70 Crores is enclosed. As per the said computation, even if the entire provision for NPA as above is added for computing book profit under Section 115JB of the Act for A.Y. 2006-07, the book profit under Section 115JB of the Act for A.Y. 2006-07 would be 'nil'.*
- *The write back of provision for diminution in value of investment of Rs. 15,46,64,446/- is nothing but withdrawal from the provision and since such amount has been credited to profit and loss account the same is required to be reduced while computing book profit in accordance with clause (i) of Explanation 1 to Section 115JB as reproduced above.*
- *Therefore, the book profit for A.Y. 2006-07 must be considered to have been increased by Rs.82.70 crores being provision for NPA (including the above amount of Rs. 15.46 crores) for A.Y. 2006-07 and therefore the condition as specified by proviso to clause (i) as reproduced above is also fulfilled.*
- *The appellant has also vide rectification application for A.Y. 2006-07 dated 19/08/2010 (and subsequent reminder dated 22/12/2010 to dispose off the rectification application dated 19/08/2010) has requested the A.O. to add the provision for NPA of Rs. 82.70 Crores (including provision for diminution in value of investment of Rs, 15.46 Crores) to the book profit for A.Y. 2006-07 in view of the retrospective amendment brought to Explanation 1 to Section 115JB by Finance (No. 2) Act, 2009 as per which provision for diminution in value of an asset is required to be added back while computing book profit. It is submitted that this action on the part of the appellant should be considered to have fulfilled the condition envisaged by proviso to clause (i) of Explanation 1 to Section 115JB.*
- *However, the CIT(A) erred in not directing the learned Assessing Officer ("ACT) to reduce the book profit under Section 115JB by Rs.15,46,64,446/- being provision for diminution in value of investment written back in view of clause (i) to Explanation 1 to Section 115JB but instead directed the AO to adjudicate the rectification application for AY 2006-07 and if the same was found to be correct then reduce the book profit following clause (i) of Explanation 1 to Section 115JB."*

59. On the other hand the Id. DR relied on the order of lower authorities.

60. We have heard the rival contentions and perused the materials available on record. At this juncture we are inclined to reproduce the revised computation of income in relation MAT computation for the AY 2006-07 which reads as under:

REVISED STATEMENT OF TOTAL INCOME

	Amount Rs.	Amount Rs.
<u>Computation of Book Profit u/s.115JB</u>		
Net profit as per profit and loss Account		139,640,216
<u>Add/(Less) : Adjustments as per Explanation</u>		
Write back of provision of contingent Liability added to Book Profit in earlier years	(427,233,890)	
Dividend exempt u/s. 10(34)	(11,966,238)	
Profit on sale of Investment exempt u/s. 10(38)	<u>(547,643,825)</u>	
		(986,843,953)
Book Profit as per section 115JB		(847,203,737)
7.5% thereon		(63,540,280)
<u>Commission of tax liability:</u>		
(a) Tax on Normal Income		
(b) 7.5% of Book Profit		(63,540,280)

60.1 On perusal of the same we note that there was a loss under MAT computation for Rs.84,72,03,737.00. Accordingly, we are of the view that the assessee not liable to pay tax under MAT even after making the addition of the provisions made in the AY for Rs. 15,46,64,446.00. Thus it is implied that the assessee has offered the provision created in the AY 2006-07 for the diminution in the value of assets to tax under MAT provision. In holding so we find support and guidance from the order of Mumbai Tribunal in the case of

Kochi Refinery Ltd. Vs. DCIT reported in 4 ITR (Trib) 95. The relevant extract of the order is reproduced below:

“33. We have considered the arguments of learned counsel and the learned Departmental representative. It is an admitted fact that the provision for bad and doubtful debts was made in the financial year relevant to the assessment year 1998-99 and the same amount was added back in the regular computation. By virtue of law, it is the duty of the Assessing Officer to compute the normal total income and also the book profit under section 115JA in that year and then compare and decide to invoke the normal provisions of the Act or special provisions of book profit under section 115JB. Once the Assessing Officer invokes the normal provisions of tax, it indirectly means that he has compared the computation under section 115JA and decided that the income under normal provisions was more. In that situation it is to be presumed that the provision was added back to the book profit of that year. Even by means of Explanation (g) introduced to section 115JA by the Finance (No. 2) Act, 2009, with retrospective effect from April 1, 1998 the provision for bad and doubtful debts would be deemed to have been added back in computing the book profit in that year and so the amount, now credited to the profit and loss account, is to be reduced by virtue of the provision of section 115TB. In view of this there is justification in the assessee's contention in claiming the provision as deduction in the computation of book profit in this year. On the fact that the assessee had been disallowed in that year under the normal computation and by virtue of the amendment now brought with retrospective effect from April 1, 1998, the provision for bad debt is deemed to have been added back in that year withdrawal and crediting into the profit and loss account now results in double taxation. Consequently, the assessee is correct in excluding the amount while computing the income under section 115JB. Accordingly the ground is allowed.”

60.2 In the light of the above decision we hold that the effect of the provision created for the diminution in the value of assets has been duly given while determining the book profit u/s 115JB of the Act. The ld. DR has also not brought anything contrary to the arguments advanced by the ld. AR for the assessee. Accordingly, we have no hesitation in reversing the order of the authorities below. Thus the ground of appeal of the assessee is **allowed**.

Now Coming to the Revenue Appeal in ITA 419/Ahd/2012

61. The ld. DR relied on the order of AO.

62. On the other hand the ld. AR supported the order of the ld. CIT-A.

63. We have heard the rival contentions and perused the materials available on record. On perusal of the revised computation of income we note that the provision has already been added by the assessee to the total income as evident from the same which is reproduced as under:

REVISED STATEMENT OF TOTAL INCOME

	Amount Rs.	Amount Rs.
1. <u>BUSINESS INCOME:</u>		
Net profit as per Profit and Loss Account		139,640,216
<u>Add: Disallowances/Items treated separately:</u>		
Depreciation	3,853,921	
Unpaid Leave Salary	1,291,978	
Unpaid Interest on Bank Line of Credit	24,609,375	
Preliminary Expenditure written off	3,985,000	
VRS Expenditure	6,912,699	
Fringe Benefit Tax	442,160	
Donations	-	
Investments written off	1,342,000	
Prior Period Expenses	979,496	
Provision on Non Performing Assets	<u>827,002,427</u>	
		<u>870,419,056</u>
		1,010,059,272
<u>Less: Amounts not taxable/considered separately:</u>		
Dividend received from Domestic Company	11,966,238	
Profit on sale of Fixed Assets	3,783	
Profit on sale of Investments	<u>555,242,195</u>	
		567,212,216
<u>Less: Expenses/Claims allowable:</u>		
Amount allowable under Section 43B of the Act on the basis of payments made		
Disallowance u/s 43B In earlier years now written Back	1,103,934,501	
Depreciation as per Income Tax Act	3,483,803	
VRS Expenditure (1/5th)	6,912,699	
Premium on pre-payment		
Excess provision written back		
Preliminary Expenditure u/s. 35D [1 /10th]	<u>797,000</u>	

63.1 Thus there is no ambiguity that the impugned provision has suffered the tax in the AY 2006-07. Therefore we do not want to disturb the finding of the Id. CIT-A. Hence the ground of appeal of the Revenue is **dismissed**.

64. In the result, the appeal of the assessee is **partly allowed**.

Now coming to ITA No. 419/Ahd/2012 for A.Y. 2008-09.

65. The Revenue has raised the following remaining grounds of appeals

- 1 *The learned CIT(Appeals) has erred in law and on facts in directing to delete the disallowance made by the AO of Rs.15,46,64,446/- being provision for diminution in value of investments without considering the facts that major amount of long term capital gain arisen on sale of these investments is claimed exempt u/s 10(38) on account of payment of Security transaction Tax on the same.*
- 2 *The learned CIT(Appeals) has erred in law and on facts in restricting the disallowance made u/s 14A of the I T Act from Rs.8,50,69,489/- to Rs.71,00,630/- by holding that no disallowance to be made in connection with the interest expenses although assessee has incurred interest expenses of Rs.12,13,25,930/- during the year and also directing that investments in Gujarat Venture Capital Fund to be reduced for working out the disallowance.*
- 3 *The teamed CIT(Appeals) has erred in law and on facts in directing the AO to modify addition to book profit of disallowance made u/s 14A of the Act from Rs.8,51,69,489/-to Rs.72,00,630/- after restricting the addition to that extent.*
- 4 *The learned CIT(Appeals) has erred in law and on facts in directing the AO to allow deduction of Fringe Benefit Tax of Rs.3.13.655/- and Security Transaction Tax of Rs.38,031/- from the book profit calculated u/s 115JB of the IT Act.*
- 5 *On the facts and circumstances of the case the Ld.CIT(A) ought to have upheld the order of the Assessing Officer.*
- 6 *It is therefore prayed that the order of the learned CIT(Appeals) may be set aside and that of the A. O. be restored to the above extent*

66. The First issue raised by Revenue in this appeal is that the Ld.CIT(A) erred in deleting the addition for Rs.15,46,64,446/- being provision for diminution in the value of the investment.

67. At the outset, we note that the impugned issue has already been decided along with the appeal of the Assessee in the ground no. 4 in ITA 208/Ahd/12 in favor of assessee vide Para No. 63 of this order. Therefore, respectfully following the same, we do not find any

reason to interfere in the findings of Ld. CIT(A). Hence the ground of appeal of Revenue is **dismissed**.

68. The second issue raised by Revenue in the ground no. 2 and 3 is that Ld.CIT(A) erred in restricting disallowances made by the AO for Rs.8,50,69,489/- to Rs.71,00,630/-

69. At the outset, we note that the impugned ground of appeal has already been adjudicated along with the ground of appeal raised by the assessee in ground no.2 in ITA No. 208/Ahd/2012 vide para no. 50 of this order. Therefore respectfully following the same we **dismiss** the ground of appeal raised by Revenue.

70. Next issue raised by the Revenue in this appeal is that Ld.CIT(A) erred in directing the AO to allow deduction of fringe benefit tax and security transaction tax amounting to Rs.3,13,655/- and Rs.38,031/- respectively while computing book profit u/s.115JB of the Act.

71. At the outset, we note that the issue of fringe benefit tax has already been adjudicated by us in the ground of appeal no.3 raised by the Revenue pertaining to the assessment year 2007-08 in ITA 1115/Ahd/2011. The issue was decided in favor of the assessee by us vide Para No. **40** of this order.

71.1 Therefore respectfully following the same we do not find any infirmity in the order of Ld. CIT(A).

71.2 Similarly we note that there is no provision in explanation 1 to section 115JB of the Act to add the Security Transaction Tax to the book profit. Therefore in our considered view, the same cannot be added while determining book profit in the provision u/s.115JB of the Act. In holding so, we also find support and guidance from the Judgment of Hon'ble SC in the case of CIT Vs. Apollo Tyres Ltd. reported in 255 ITR 273.

71.3 Therefore we are of the view that no addition on account of Security Transaction Tax can be made in calculating book profit u/s 115JB of the Act. In view of above we do not find any reason to interfere in the findings of Ld.CIT(A). Hence the ground of appeal of the Revenue is **dismissed**.

72. In the result, the appeal of the Revenue is **dismissed**.

73. *Now coming to the ITA No.2473/Ahd/2012 appeal by the assessee and ITA No.2556/Ahd/2012 appeal by the Revenue for A.Y 2009-10.*

73.1 *First we take up the appeal filed by the assessee in ITA No. 2473/Ahd/2012.*

73.1.1 *Assessee has raised the following grounds of appeal:*

“Your Appellant being dissatisfied with the order passed by the Learned Commissioner of Income Tax (Appeals) - Gandhinagar presents this appeal against the same on the following amongst other grounds of appeal which are without prejudice to each other:

1. *The order passed by the Commissioner of Income Tax (Appeals) is erroneous and requires to be modified. It is submitted that it be so held now.*
2. *The learned CIT(A) erred on facts and in law in confirming disallowance of Rs. 76,95,549/- under section 14A read with rule 8D. It is submitted that it be so held now.*
 - 2.1. *The learned CIT(A) erred on facts and in law in confirming disallowance of Rs. 76,95,549/- under section 14A read with rule 8D despite the fact that the A.O. had not recorded satisfaction that disallowance of Rs. 1,00,000/- made by the appellant in the return of income was incorrect. It is submitted that it be so held now.*
 - 2.2 *The learned CIT(A) erred on facts and in law in confirming disallowance of Rs. 12,39,069/- on account of proportionate interest expenditure relatable to exempt income by not accepting the contention of the appellant that new investments of Rs. 248 Lacs made in exempt income yielding securities during the year under consideration have been made from own funds and not borrowed funds and that appellant had sufficient generation of own funds by way of cash inflow during the year. It is submitted that it be so held now.*
 - 2.3 *The learned CIT(A) erred on facts and in law in not considering the net interest expenditure (interest expenditure - interest income) for computing disallowance as per Rule 8D but instead considering gross interest expenditure debited to profit and loss account for computing such disallowance. It is submitted that it be so held now.*
 - 2.4 *The learned CIT(A) erred on facts and in law in excluding investments yielding exempt income held to be made from own funds from total assets while applying formula prescribed under Rule 8D. In the facts & circumstances of the case and the provisions of Rule 8D no such exclusion while computing total assets is justified. It is submitted that it be so held now.*
 - 2.5 *The learned CIT(A) erred on facts and in law in confirming disallowance of Rs. 64,56,480 on account of proportionate administrative expenditure relatable to exempt income computed as per Rule 8D despite the fact that the A.O. had made the*

disallowance without establishing that indirect expenditure was in fact incurred by the appellant which warranted proportionate disallowance . It is submitted that it be so held now.

2.6 While computing disallowance under section 14A as per Rule 8D, the learned CIT(A) erred in not considering the average investment at net of Provision for NPA. In the facts & circumstances of the case the same have to be considered net of provision. It is submitted that it be so held now.

3 The learned CIT(A) erred in making addition by way of the disallowance of Rs. 76,95,549/- made under section 14A r.w.r. 8D to the book profit while computing deemed total income u/s 115JB of the Act. It is submitted that it be so held now.

4 The learned CIT(A) erred on facts and in law in not directing the A.O. to reduce the book profit u/s 115JB by Rs. 10,05,64,804/- being provision for diminution in value of investment written back in view of clause (i) to Explanation 1 to Section 115JB but instead subject to the AO adjudicating the rectification application for AY 2006-07 and if the same was found to be correct then reduce the book profit following clause (i) of Explanation 1 to Section 115JB. It is submitted that in the facts and circumstances of the case the learned CIT(Appeals) should have granted such deduction in terms of clause (i) of explanation 1 to Section 115JB without making it subject to the AO passing necessary rectification order for AY 2006-07. It is submitted that it be so held now.

Your appellant prays for leave to add, to alter and/ or to amend all or any of the grounds before the final hearing of appeal.”

73.2 Appeal filed by the Revenue in ITA N0.2556/Ahd/2011.

73.2.1 The Revenue has raised following grounds of appeal.

1. The learned CIT(Appeals) has erred in law and on facts in deleting the addition made by the AO of Rs.10,05,64,804/- in respect of provision for non performing assets written back made in AY 2006-07.

2. The learned CIT(Appeals) has erred in law and on facts in deleting the addition made by the AO of 10,05,64,804/- u/s.115JB, stating that the Assessee has started the computation of Book Profit in its statement of total income filed at Rs.131124852/- which includes Rs.10,05,64,804/-.

3. The learned CIT(Appeals).has erred in law and on facts in deleting the addition made by the AO by disallowing an amount of expenditure of Rs.7,05,34,961/- u/s.14A read with Rule 8D by being the expenditure incurred, to earn income which was-exempt from tax.

4. *The learned CIT(Appeals) has erred in law and on facts in deleting the addition made by the AO u/s.14A of the Act being disallowance under Rule 8D amounting to Rs.64,56,480/-.*

5. *The learned CIT(Appeals) has erred in law and on facts in restricting the addition made by the AO of Rs.77,95,549/- (Rs.65,56,480/- plus Rs.12,39,069/-) towards disallowance of expense's U/S.14A, to Rs.7,05,34,961/-.*

6. *The learned CIT(Appeals): has erred in law and on facts in deleting the addition made by the AO for Rs.3,01,590/- being fringe benefit tax and Rs.72,131/- being security transaction tax being added to the book profits.*

7. *On the facts and circumstances of the case the Ld.CIT(A) ought to have upheld the order of the Assessing Officer.*

It is therefore prayed that the order of the learned CIT(Appeals) may be set aside and that of the A.O. be restored to the above extent.

First we take up Assessee appeal in ITA No. 2473/Ahd/2012

74. The first issue raised by the assessee in this appeal is that Ld.CIT(A) has erred in confirming the disallowance of administrative expenses for Rs.64,56,480/- and Interest expenses of Rs. 12,39,069/- under clause (iii) & (ii) of Rule 8D r.w.s 14A of the Act.

Regarding the disallowance of administrative expenses Rs. 64,56,480.00

74.1 At the outset we note that the issue of the disallowance of administrative expenses under rule 8D(2)(iii), has already been adjudicated by us in the ground of appeal no.1 raised by the Assessee pertaining to assessment year 2008-09 in ITA 208/Ahd/2012. The issue was decided partly in favor of the assessee for statistical purposes by us vide Para No.51 of this order.

74.2 Therefore respectfully following the same we allow the ground of appeal of the assessee in part in terms of the direction as stated above.

Regarding the disallowance of interest expenses Rs. 12,39,069.00

74.3 At the outset we note that the owned fund of the assessee exceeds the investment. Thus there cannot be any disallowance on account of interest expenses. We have already adjudicated the issue in favor of assessee in the ground of appeal no. 2 raised by the

Revenue pertaining to the assessment year 2007-08 in ITA 1115/Ahd/2011 vide Para No.11 of this order.

74.4 Therefore respectfully following the same the ground of appeal of the assessee is **allowed**.

75. The next issue raised by the assessee in the ground no. 3 is that Ld.CIT(A) erred in making the addition of Rs.76,95,549/- disallowed under the provision of section 14A r.w.r. 8D while calculating book profit under the provision of MAT.

76. At the outset, we note that we have already adjudicated the identical issue raised by the assessee in ITA 1170/Ahd/2011 vide Para no. 17 of this order. Respectfully following the same, we direct the AO to calculate book profit after making the disallowance as directed hereinabove. Thus the ground of appeal of the assessee is partly allowed.

77. The next issue raised by the assessee in this appeal is that Ld. CIT(A) erred in making the addition of Rs.10,05,64,804/- being the provision for diminution in the value of investment written back while calculating profit u/s 115JB of the Act.

78. At the outset, we note that the identical issue has been decided by us in favor of assessee in its own case in ITA no. 208/Ahd/2012 vide Para No. 60 of this order. Therefore respectfully following the same the ground of appeal raised by the assessee is **allowed**.

79. In the result, the appeal of the assessee is partly **allowed**.

Coming to Revenue's appeal ITA No. 2556/Ahd/2012 AY 2009-10

80. The First issue raised by Revenue in this appeal is that the Ld.CIT(A) erred in deleting the addition for Rs.10,05,64,804/- being provision for diminution in the value of the investment.

81. At the outset, we note that the identical issue in the ground no. 1 of appeal of the Revenue pertaining to assessment year 2008-09 in ITA 419/Ahd/12 has been adjudicated in favor of assessee vide Para No. 67 of this order. Therefore, respectfully following the

same we do not find any reason to interfere in the findings of Ld. CIT(A). Hence the ground of appeal of Revenue is **dismissed**.

82. The second issue raised by Revenue in this appeal is that the Ld.CIT(A) erred in deleting the addition for Rs.10,05,64,804/- being provision for diminution in the value of investment while working out the profit under MAT.

83. At the outset, we note that the amount of the provisions written back by the assessee for Rs. 10,05,64,804 was already included in the net profit taken for the computation of book profit under MAT provision. Therefore there was no need to make the further addition in the book profit.

83.1 Similarly, we note that the identical issue in the ground no. 4 of the appeal of the assessee pertaining to the assessment year 2008-09 in ITA 208/Ahd/12 has been adjudicated in favor of assessee vide Para No. 60 of this order. Therefore, respectfully following the same, we do not find any reason to interfere in the findings of Ld. CIT(A). Hence the ground of appeal of Revenue is **dismissed**.

84. The third issue raised by Revenue in the ground no. 2, 3 and 4 is that Ld.CIT(A) erred in restricting disallowances made by the AO for Rs. 7,05,34,961/- to Rs. 77,95,549/- .

85. At the outset, we note that the impugned ground of appeal has already been adjudicated along with the ground of appeal raised by the assessee in ground no.2 & 3 ITA No. 419/Ahd/2012 vide Para No. 69 of this order. Therefore respectfully following the same we **dismiss** the ground of appeal raised by Revenue.

86. Next issue raised by the Revenue in this appeal is that Ld.CIT(A) erred in deleting the addition made on account of fringe benefit tax and security transaction tax amounting to Rs. 3,01,590/- and Rs. 72,131/- respectively while computing book profit u/s.115JB of the Act.

87. At the outset, we note that the issue of fringe benefit tax and security transaction tax has already been adjudicated by us in the ground no. 4 of appeal ITA No. 419/Ahd/2012 raised by the Revenue pertaining to the assessment year 2008-09. The issue

was decided in favor of the assessee by us vide Para No.71 of this order. Therefore respectfully following the same, the ground of appeal raised by the Revenue is **dismissed**.

88. In the result, the appeal of the Revenue is **dismissed**.

89. **Now coming to the CO No. 106/Ahd/2014 by the assessee and ITA No. 2899/Ahd/2013 appeal by the Revenue for A.Y 2010-11.**

89.1 First we take up the CO filed by the assessee:

89.1.1 Assessee has raised the following grounds in its Cross Objection:

“Your appellant wishes to place on record following Cross Objections against Grounds mentioned in the appeal filed by Revenue for Assessment year 2010-11 numbered as I.T.A. No.2899/Ahd-2013:

1. The Hon'ble Commissioner of Income Tax (Appeals) [hereinafter referred to as "CIT(A)"] erred on facts and in law in confirming the disallowance of Rs. 62,76,481/- on account of proportionate administrative expenditure related to exempt income to the extent of 0.5% of the average value of investment by applying formula under Rule 8D read with section 14A without appreciating the fact that the Assessing officer had not recorded satisfaction that the appellant had in fact incurred expenditure for earning exempt income in excess of what had been disallowed by the appellant in its return of income. It is submitted that it be so held now.

1.1 Without prejudice to the above, the Hon'ble CIT(A) erred on facts and in law in not accepting the contention of the appellant that for computing average value of investment for computing disallowance under Rule 8D of the Rules read with Section 14A(2) of the Act, investment after reducing provision for diminution in value of investment thereof should be considered. It is submitted that it be so held now.

1.2 The learned CIT(A) erred on facts and in law in confirming adjustment of Rs. 62,76,481/- to the book profit computed u/s 115JB of the Act in respect of proportionate expenditure related to exempt income computed in accordance with the formula prescribed under Rule 8D r.w.s. 14A(2) of the Act. It is submitted that the provisions of section 14A of the Act read with rule 8D of the rules is applicable to computation of total income under chapter IV whereas the book profit is being calculated under chapter XII-B of the Act, which is an independent code in itself. It is submitted that it be so held now.

2. In the event that income from Sales Tax Deferral Scheme of Government of Gujarat of Rs. 4.49 crores is held to be taxable during the year under consideration for which department is in appeal vide Ground no. 2, a direction should be given to the learned AO to exclude the same from the total income of the appellant in AY 2004-05 so as to avoid double taxation of the same income in the hands of the appellant. It is submitted that it be so held now.

The Cross objector prays for leave to add, alter and/or amend all or any of the grounds before final hearing of the Cross objection.”

90. The first issue raised by the assessee in its CO in its ground No. 1 & 1.1 is that Ld.CIT(A) has erred in confirming the disallowance of administrative expenses for Rs. 62,76,481/- under clause (iii) of Rule 8D r.w.s 14A of the Act.

91. At the outset, we note that the issue of the disallowance of administrative expenses under rule 8D(2)(iii), has already been adjudicated by us in the ground of appeal no.1 raised by the Assessee pertaining to the assessment year 2008-09 in ITA No. 208/Ahd/2012. The issue was decided partly in favor of the assessee for statistical purposes by us vide Para No. 51 of this order.

91.1 Therefore respectfully following the same we **allow** the ground of appeal of the assessee in part in terms of the direction as stated above.

92. The second issue raised by the assessee in its CO in its ground No. 1.2 is that Ld.CIT(A) has erred in confirming the adjustment of the disallowance of administrative expenses for Rs. 62,76,481/- under clause (iii) of Rule 8D r.w.s 14A of the Act while working out the book profit under the provisions of MAT.

93. At the outset, we note that the issue of the disallowance of administrative expenses under rule 8D(2)(iii), has already been adjudicated by us in the ground No. 3 of appeal ITA No. 1170/Ahd/2011 raised by the Assessee pertaining to the assessment year 2007-08. The issue was decided partly in favor of the assessee by us vide Para No. 17 of this order.

93.1 Therefore respectfully following the same we **allow** the ground of appeal of the assessee in part in terms of the direction as stated above.

94. The assessee in its CO in ground No. 2 is pleading to give the direction to the AO to exclude the income of Rs. 4.49 crores for the AY 2004-05 if taxable in the year under consideration.

95. It is settled law that the Revenue cannot tax the same income twice. Therefore we direct the AO to exclude the income of Rs. 4.49 crores from the taxable income if the same

suffered the tax in the AY 2004-05. Thus the ground of appeal of the assessee is **allowed** for statistical purposes.

96. In the result, the appeal of the assessee is **partly allowed**.

Appeal filed by the Revenue in ITA NO. 2899/Ahd/2013.

97. The Revenue has raised the following grounds of appeal.

- “1. *The learned CIT(Appeals) has erred in law and on facts in deleting the addition made by the AO amounting to Rs.24,64,63,140/- on account of NPA provisions written back of earlier years.*
2. *The Learned CIT(Appeals) ought to have held that the assessee is not entitled to relief twice in AY 2004-05 and 2010-11 in the same way he has held that same income cannot be taxed twice.*
3. *The learned CIT(Appeals) has erred in law and on facts in allowing the assessee to reduce Rs.24,64,63,140/- on account of NPA provisions written back, while computing the book profits u/s.115JB.*
4. *The learned CIT(Appeals) has erred in law and on facts in directing the AO to give the benefit for prior period adjustment of Rs.4,82,975/- while computing income u/s.115JB.*
5. *On the facts and circumstances of the case the Ld.CIT(A) ought to have upheld the order of the Assessing Officer.*

It is therefore prayed that the order of the learned CIT(Appeals) may be set aside and that of the A.O. be restored to the above extent.”

98. The First issue raised by Revenue in this appeal is that the Ld.CIT(A) erred in deleting the addition for Rs.24,64,63,140/- being provision for diminution in the value of the investment.

99. At the outset, we note that the identical issue in the ground no. 1 of appeal of the Revenue pertaining to the assessment year 2008-09 in ITA 419/Ahd/12 has been adjudicated in favor of assessee vide Para No. 67 of this order. Therefore, respectfully following the same, we do not find any reason to interfere in the findings of Ld. CIT(A). Hence the ground of appeal of Revenue is **dismissed**.

100. The second issue raised by Revenue in this appeal is that the Ld. CIT(A) ought to have held that the assessee is not entitled to the relief twice in the AY 2004-05 and 2010-11.

101. We have already adjudicated this issue in the ground No. 2 of the CO No. 106/Ahd/2014 raised by the assessee vide Para No 95 of this order.

102. Therefore respectfully following the same we **allow** the ground of appeal of the Revenue in terms of the direction as stated above.

103. The third issue raised by Revenue in this appeal is that the Ld. CIT(A) erred in deleting the addition for Rs. 24,64,63,140.00 on account of NPA written back while calculating the profit under section 115JB of the Act.

104. At the outset, we note that the identical issue in the ground no. 4 of the appeal of the assessee pertaining to the assessment year 2008-09 in ITA 208/Ahd/12 has been adjudicated in favor of assessee vide Para No. 60 of this order. Therefore, respectfully following the same, we do not find any reason to interfere in the findings of Ld. CIT(A). Hence the ground of appeal of Revenue is **dismissed**.

105. The fourth issue raised by Revenue in this appeal is that the Ld. CIT(A) erred in directing the AO to reduce the book profit for Rs. 4,82,975.00 while calculating the profit under section 115JB of the Act on account of the adjustment of the prior period items.

106. At the outset, we note that there is no provision in explanation 1 to section 115JB of the Act to add the prior period expenses/adjustment to the book profit. Therefore in our considered view, the same cannot be added while determining book profit in the provision u/s 115JB of the Act. In holding so, we also find support and guidance from the Judgment of Hon'ble SC in the case of CIT Vs. Apollo Tyres Ltd. reported in 255 ITR 273. We also extend our reliance on the order of the Tribunal in the case of Shiv shahi punar vasan prakalp vs. ITO reported in 15 taxmann.com 352 wherein it was held as under:

“We have perused the records and considered the rival contentions carefully. The dispute is regarding addition made on account of disallowance of prior period expenses amounting to Rs. 1,93,061/- while computing book profit under section 115JB. Under the provisions of section 115JB, book profit has to be the profit disclosed as per P&L account prepared in accordance with the provisions of Part II and III of Schedule-6 of the Companies Act, 1956 and laid before the company in its AGMs and to the said profit, only adjustments as specified in Explanation-1 to

section 115JB could be made. There is no dispute that claim on account of prior period expenses had been debited in the P&L Account prepared under the Companies Act and laid before AGM. There is no provision for any adjustment on account of prior period expenses in Explanation-1 to Section 115JB(2). Therefore, any addition on account of disallowance of prior period expenses while computing book profit is not permitted in view of the judgment of Hon'ble Supreme Court in the case of Apollo Tyres Ltd. (supra). We, therefore, set aside the order of CIT(A) and delete the addition made.”

107. Therefore we are of the view that no addition on account of prior period adjustment can be made in calculating book profit u/s 115JB of the Act. In view of the above we do not find any reason to interfere in the findings of Ld.CIT(A). Hence the ground of appeal of the Revenue is **dismissed**.

108. In combine results, the appeals of the Assessee and cross objections are partly allowed and the Revenue are dismissed.

Order pronounced in the Court on_18th_ September, 2018 at Ahmedabad.

**Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated 18/09/2017

आदेश की प्रतिलिपि ग्रेषित/Copy of the Order forwarded to :

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

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आदेशानुसार/BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad**