

IN THE INCOME TAX APPELLATE TRIBUNAL

RAJKOT BENCH, RAJKOT

[Conducted through E-Court at Ahmedabad]

(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

& SHRI WASEEM AHMED, ACCOUNTANT MEMBER)

ITA. No: 379/Rjt/2016 & C.O. No. 06/Rjt/2018
(Assessment Year: 2011-12)

Assistant Commissioner of Income Tax, Gandhidham Circle, Gandhidham- Kutch	V/S	M/s.Rishi Kiran Logistics Pvt. Ltd. Plot No. 8, Sector- 8, Gandhidham-Kutch
M/s.Rishi Kiran Logistics Pvt. Ltd. Plot No. 8, Sector-8, Gandhidham- Kutch	V/S	Assistant Commissioner of Income Tax, Gandhidham Circle, Gandhidham-Kutch
(Appellant)		(Respondent)

ITA. No: 349/Rjt/2016 & C.O. No. 07/Rjt/2018
(Assessment Year: 2012-13)

Assistant Commissioner of Income Tax, Gandhidham Circle, Gandhidham- Kutch	V/S	M/s.Rishi Kiran Logistics Pvt. Ltd. Plot No. 8, Sector- 8, Gandhidham-Kutch
M/s.Rishi Kiran Logistics Pvt. Ltd. Plot No. 8, Sector-8, Gandhidham- Kutch	V/S	Assistant Commissioner of Income Tax, Gandhidham Circle, Gandhidham-Kutch
(Appellant)		(Respondent)

ITA. No: 160/Rjt/2015
(Assessment Year: 2010-11)

M/s.Rishi Kiran Logistics Pvt. Ltd. Plot No. 8, Sector-8, Gandhidham-Kutch	V/S	Joint Commissioner of Income Tax, Gandhidham Range, Gandhidham
(Appellant)		(Respondent)

PAN: AADCR 4880P

Appellant by : Shri Jitendra Kumar, CIT/DR
Respondent by : Shri M.J. Ranpura, A.R.

(आदेश)/ORDER

Date of hearing : 17-01-2019
Date of Pronouncement : 31 -01-2019

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. These three appeals out of which in ITA No. 160/Rjt/2015 has been filed by the assessee and ITA Nos. 379/Rjt/2016 & 349/Rjt/2016 have been filed by the Revenue against the orders of the ld. CIT(A) and two C.Os. have been filed by the assessee.
2. Since issues are common in all the appeals but appeal filed by the assessee in ITA No. 160/Rjt/2015 orders were based by the lower authorities as ex parte because of some reason, assessee could not appear before the lower authorities. Therefore, in order to reach to reasonable a justify conclusion. We would like to dispose of all three appeals together along with Cross Objection filed by the

assessee. First of all we will take up the ITA No. 349/Rjt/2016. The revenue has taken following grounds have been taken:

1. *The Ld. CIT(A) has erred in deleting the addition made by the A.O. on account of disallowing of deduction u/s.80IA(4)(i) on storage tank-MDI of Rs. 1,14,31,020/- and storage tank-EDA of Rs.76,04,753/-.*
2. *The Ld. CIT(A) has erred in law and on facts in deleting the addition made U/S.14A of Rs.31,40,255/- though the assessee had investment of Rs.4.65 crore in Shares for which no expenses have been allocated by the assessee.*
3. *The Ld. CIT(A) has erred in deleting the addition of Rs.4,37,18,888/- made by the A.O. u/s.40A(2)(a) r.w.s.40A(2)(b) in respect of Terminal Handling & Storage Charges paid to Shreeji Power & Insulator Pvt. Ltd. (SPIPL).*
4. *The Ld. CIT(A) has erred in deleting the addition of Rs.2,27,867/- made by the A.O. on account of disallowance of depreciation on land purchased, or land related expenses under the windmill.*
5. *The Ld. CIT(A) has erred in deleting the addition of Rs.2,61,000/- made by the A.O. on account of disallowance of share issue expenses.*
6. *It is therefore prayed that the order of Ld.CIT(A) be set aside and that of AO be restored to the above extent.*

3. In this case, the appellant, a Private Limited Company is assessed to tax by the Deputy Commissioner of Income-tax, Gandhidham. It is engaged in the business of clearing, forwarding, storage and warehousing, cargo handling through cranes and other equipments, wind mill power generation and manufacturing of salt. Regular books of account are being maintained and are duly audited under the provisions of the Companies Act, 1956 as also u/s. 44AB of the Income-Tax Act.
4. Return of income for the assessment year under consideration was e-filed on 30.09.2012 declaring therein total income at Rs. Nil after claiming deductions of (i) Rs. 2,25,43,715/- u/s 80IA(4)(i) of the Act in respect profit from enterprise carrying on business of developing, maintaining & operating Port

- and (ii) Rs. 37,92,260/ being profit from undertaking of generation and distribution of power through Wind Mill u/s. 80IA(4)(iv) of the Act.
5. During assessment proceeding u/s. 143(3) of the Act, the appellant produced books of account, banking records, bills, invoices etc and also submitted all the relevant details explanations / clarifications as desired by the A.O. from time to time. The appellant has also moved an application u/s 144A of the Act before the Id. Joint Commissioner of Income tax for necessary direction.
6. The AO vide order u/s. 143(3) of the Act dated 26.03.2015 assessed the total income of the appellant at Rs. 10,52,75,630/- wherein he made following variations to the returned income:
- (i) Disallowed the claim of deduction of Rs. 2,25,43,715/- (Rs.1,34,66,469/- from MDI storage tank plus Rs. 90,77,2467- from EDI storage tank) made u/s 80IA(4) of the Act from profit of developing/operating/maintaining MDI and EDI storage tanks at port by alleging that the appellant failed to fulfill necessary conditions for claiming such deductions u/s 80IA(4) of the Act.
- (ii) The AO also alleged that the interpretation of initial year has taken by the assessee from the start of year in which appellant starts exercising its option is wrong and initial assessment year has to be understood as the year in which undertaking starts functioning. He alleged that eligible profit for MDI and EDI storage tank, after considering earlier year's losses and depreciation would be NIL and disallowed the claim of deduction u/s 80IA of the Act.
- (iii) Disallowed the claim of deduction u/s 80IA of Rs. 37,92,256/- by alleging that profit of wind mill, eligible for deduction u/s 80IA(4) of the Act becomes NIL after absorption of earlier years' losses/depreciation.

- (iv) Alleged that the assessee had incurred share issue expenses of Rs. 2,61,000/- in normal course and the same is not fit into criteria laid down u/s. 35D of the Act and accordingly disallowed the same.
- (v) Disallowed Rs. 30,94,549/- by invoking provisions of section 14A of the Act on the alleged ground that appellant failed to prove one-to-one nexus from bank account that investment has been done entirely from its own funds.
- (vi) Alleged that assessee (i) paid excessive terminal handling charges to Shreeji Power and Insulators Pvt. Ltd. [SPIPL] and (ii) paid for the quantities which have not been used by the appellant. He also alleged that the appellant shifted profit from marketing & other activities to SPIPL for which no service has been provided by the SPIPL. Thus, the AO alleged that appellant routed the transactions from SPIPL at arbitrary & hypothetical rates and saved its tax on Rs.6,22,78,406/- and saved dividend distribution tax. In total disregards to the submissions of the appellant, the AO alleged that the payment made by appellant to SPIPL in excess of what SPIPL has paid to owners and warehouse is unreasonable and disallowed the same.
- (vii) Alleged that expenses for providing free access to land and keeping area vacant surrounding to the land on which windmill is erected is not necessary for function of windmill and therefore not qualify for depreciation and thereby disallowed depreciation at Rs. 1,20,81,572/- and added the same to the returned income.
- (viii) Disallowed Rs. 16,29,230/- being lease rent paid for the land where wind mills have been installed by treating the same in capital nature.
7. Against the order of the ld.A.O, assessee preferred first statutory appeal before the ld. CIT(A) and ld. CIT(A) made detailed enquiry and partly allowed the appeal of the assessee.

8. By way of second appeal, Revenue has come before us.
9. In this case, the appellant, a Private Limited Company is assessed to tax by the Deputy Commissioner of Income-tax, Gandhidham. It is engaged in the business of clearing, forwarding, storage and warehousing, cargo handling through cranes and other equipments, wind mill power generation and manufacturing of salt. Regular books of account are being maintained and are duly audited under the provisions of the Companies Act, 1956 as also u/s. 44AB of the Income-Tax Act.
10. Now we come to ground no. 1 related to deleting the addition made by the A.O. on account of disallowance of deduction u/s. 80IA(4)(i) on storage tank-MDI of Rs. 1,34,66,469/- and storage tank-EDA of Rs. 90,77,246/-.
11. In this case, AO's allegation is that storage tank is devoid of loading and unloading facility and same are not within the premises of Kandla Port Trust and held that MDI-storage tank, for which assessee has claimed deduction is not an enterprise as (a) it is incapable of doing independent business in absence of loading & unloading facility (b) no separate accounts has been maintained, as most of expenses are allocated on pro-rate basis.
12. In reply before the lower authorities, assessee stated that that there is difference in the nature of business in case of MDI storage tank and other tanks at the tank farm. The full nomenclature of MDI means "Diphenylmethane Diisocyanate chemical product. It is to submit that the chemical 'MDI' needs to be storage in a separate tanks built at the port as per MOU with DOW Chemical International Pvt. Ltd. and is fully dedicated to that party only which

- is used by them for storage of a specific cargo at a specific temperature required to be maintained for that particular tank and the cargo of Dow Chemical International Private Limited is only stored as per the agreement with the party and assessee has filed copy of the agreement before the lower authorities.
13. And assessee stated that storage facility is for loading and unloading of chemical, a copy of storage and terminal agreement with M/s Dow Chemical International Pvt. Ltd, dated 22.10.2007 is also filed. And the storage tanks are connected with associated pumps, pipelines, connecting hoses, valves, metering and control devices and auxiliary equipment to carry out the loading and unloading functions. Thus, the MDI tanks are special tanks for specific liquid cargo hence has separate dedicated pipeline and pump for the same has been installed. The tanker vessels carrying on the specific chemicals come to Kandla Port for discharge of the cargo. The vessels are berthed at Oil Cargo Jetty and after necessary customs formalities; the cargo is unloaded in the storage tank through pipelines as per permission of Kandla Port Trust.
14. As we can see, that case of the assessee case is squarely falls under the clarification provided in Circular No. 10 of 2005. It is fact that storage tanks are an integral part of Port operations and it can't be utilized for any other non-port operations, Moreover, in AY 2013-14, the AO in his order u/s. 143(3) dated 28.03.2016, after physical verification of; the structure, categorically given his finding that the respondent qualified the condition of new infrastructural facility of having structures at the port for storage, loading and unloading.
15. Satellite image / map on the wikimapia.org clearly show the area / boundaries

of Kandla Port, within which the Respondent has developed the structure, i.e., storage tanks. The AO's observation that the structure of Respondent is not part of port is incorrect and for Kandla port trust, commissioner of Custom has notified assessee as custodian and therefore the same is stipulated within the Custom Bonded Area i.e. port and same is part of paper book at page 285 to 287. Therefore, in our considered opinion, assessee is entitled for deduction u/s. 80IA(4)(i) of Rs. 2,25,43,715/- being the profit from enterprise carrying on the business of developing/operating/maintaining infrastructure facilities i.e. port and also entitled for deduction. Thus, this ground of appeal is dismissed.

16. Now we come to ground related to deleting the addition made u/s. 14A of Rs. 28,70,910/- though the assessee had investment of Rs. 4.65 crore in Shares for which no expenses have been allocated by the assessee.

17. As we can see, assessee had made investment of Rs. 4.65 crores in Shares. Out of total investment in shares / securities reflected in the balance sheet of the respondent at Rs. 4,47,27,718/-, investment of Rs.4,45,75,000/-represents strategic investment made in the subsidiary company of the respondent namely Mis. Shreeji Power & Insulators Private Limited. Copy of relevant extract of the investment schedule from the audited financial statement are filed and same are at page 387 of Paper Book. This investment in the subsidiary is made with a view to gain majority control over the management and board of the subsidiary so as to save the subsidiary from hostile takeover. Therefore, investment was not made with a view to earn any exempt income or to earn dividend and hence, in such scenario provision of section 14A of the Act cannot be invoked - Hon'ble High Court of Delhi in the case of Cheminvest Ltd. vs. CIT (2015) 378 ITR 33 has held if no exempt income has been earned by the assessee in

the relevant assessment year then no disallowance can be made u/s. 14a of Income Tax Act..

18. As we can see, assessee was having substantial interest free funds, it is fact that as per paper book interest free funds went into investment, which generated exempt income. Therefore, no disallowance can be made u/s. 14A as no interest bearing funds has been deployed to earn exempt income. And ld. A.O. had not demonstrated any nexus between the earning of exempt income for such income. Therefore, in our considered opinion, ld. CIT(A) has rightly granted relief to the assessee.
19. But disallowance made under Rule 8D(iii) of Rs. 2,23,639/- are confirmed by lower authorities because assessee has not been able to prove one to one nexus of interest free funds as well as investment in securities because such investment require bank charges, clerical work and time of directors. Therefore, we are of the opinion that ld. CIT(A) has rightly confirmed the addition of Rs. 2,23,639/-
20. Now we come to ground related to deleting the addition of Rs. 5,71,01,606/- made by the A.O. u/s. 40A(2)(a) r.w.s. 40A(2)(b) in respect of Terminal Handling & Storage Charges paid to Shreeji Power & Induslator Pvt. Ltd.
21. Ld. A.O's contention was that assessee has routed the payments to owners of tanks and warehouses through SPIPL, just by arranging the bills from them to SPIPL and from SPIPL to himself, wherein assessee has paid at the rate excessive of fair market value and even for the quantities which has not been ever used by the assessee, it has shifted his own earned profit of Rs.

6,22,78,406/- from marketing and other allied activities related to terminal handling & storage and ware houses.

22. On the other hand, assessee's contention is that "excessive" would mean something more than what is being considered as normal having regard to the general market policy. In the given case, the respondent has paid to the unrelated third parties at the same rate at which it has paid to related party i.e. SPIPL. The respondent has paid to SPIPL @ Rs. 140/- KL per month which is the same rate at which the payment is made to third unrelated parties, (i) Kesar Terminals & Infrastructure Limited; (ii) Friends Salt Works & Allied Industries and; (iii) CRL Terminal Pvt. Ltd. In fact, the payment made to SPIPL is on lower side when compared to Friends Salt Works & Allied Industries as follows:

<i>Sr. No.</i>	<i>Name & Address of the party</i>	<i>Bill No.</i>	<i>Bill date</i>	<i>Rate per KL per month</i>
1	Kesar Terminal & Infrastructure Ltd.	DTC/10-11/347	17.11.2010	140/-
2	Friends Salt Works & Allied Industries	FSWAI-TP-384	08.05.201	165/-
3	CRL Terminal P. Ltd.	1985	30.10.2010	140/-

23. In support of its contention assessee has filed detailed documents before the lower authorities when matter went before the Id. CIT(A), he held that assessee has not made excessive payment to the related party.

24. As we can see, that payment made to persons other than persons covered u/s. 40A(2)(b) were comparable and interalia payment to the persons covered

u/s.40A(2)(b) was not excessive either in comparison to the other independent parties as well as to the market rate which can assumed as to nearer to the rates at which the said third parties are being paid. Therefore, in our considered opinion, ld. CIT(A) has rightly granted part relief to the assessee.

25. Now we come to ground related to deleting the addition of Rs. 1,20,81,572/- made by the A.O. on account of disallowance of depreciation on windmill.

26. The assessee has claimed depreciation of Rs. 1,13,85,840/-in respect of the common power evacuation charges. The above charges were paid to the Suzlon Energy for common power Evacuation infrastructure facility on sharing basis and these charges were not refundable. It is also clear from this bill that respondent has not acquired any asset by paying these charges on which it can claim depreciation. Assessee has claimed depreciation on wind mill inclusive of civil & electric work as well.

27. And ld. A.O. held that in such circumstances, assessee cannot claim depreciation @ 80% on windmill but assessee stated that in respect of the entire windmill inclusive of civil, electrical items because a powerful thrust of air at any point of time. Specialized foundation and specialized area specifically ear-marked to facilitate a flow of wind without hindrance, and specialized electrical fittings and high-tension lines are all basic requirements for a wind mill plant. None of these requirements including the premises can be seen detached from what is called a 'wind mill' since a wind mill to work these are essential.

28. As we can see, the ld. A.O. has unnecessarily adopted a very restrictive view wherein he has resorted to dissect the purchase value of the entire windmill assembly in various sub components i.e. land, machinery, labour charges, right to access, etc. and has opined that 80% depreciation will be available only to the windmill proper mentioned in the Depreciation Schedule in the IT Rules. Erecting and operating windmill assembly is not limited to installing a windmill turbine only. Bringing windmill in existence and making it operational requires fulfillment of various sub components like installing and fabricating accessory machineries, electric fitting, civil constructions, hiring labours, getting permission, documentations, getting access to the land, getting power connecting, getting power output connection, getting access to pooling station.

29. In support of its contention, assessee also cited a judgment of Hon'ble Gujarat High Court in the case of CIT vs. parry Engineering and Electronics Pvt. Ltd. in Tax Appeal No. 604/2012 wherein it is held that windmill are entitled for depreciation and decided the matter on favour of the assessee and operative para of Hon'ble Gujarat High Court order is reproduced:

5. We are of the opinion that the approach of both the authorities is perfectly justified. Windmill would require a scientifically designed machinery in order to harness the wind energy to the maximum potential. Such device has to be fitted and mounted on a civil construction, equipped with electric fittings in order to transmit the electricity so generated. Such civil structure and electric fittings, therefore, it can be well imagined, would be highly specialized. Thus, such civil construction and electric fitting would have no use other than for the purpose of functioning of the windmill. On the other hand, it can be easily imagined that windmill cannot function without appropriate installation and electrification. In other words, the installation of windmill and the civil structure

and the electric fittings are so closely interconnected and linked as to form the common plant. As already noted, the legislature has provided for higher rate of depreciation of 80 per cent on renewable energy devises including windmill and any specially designed devise, which runs on windmill. The civil structure and the electric fitting, equipments are part and parcel of the windmill and cannot be separated from the same. The assessee s claim for higher depreciation on such investment was, therefore, rightly allowed.

30. Therefore respectfully following the order of Jurisdictional High Court, we upheld the order of ld. CIT(A) and dismissed the ground of Revenue.

31. Now we come to ground related to deleting the addition of Rs. 12,920/- made by the A.O. on account of disallowance of expenditure incurred on consideration for lease land.

32. As we can see, assessee has made this payment to Kandla Port Trust as Windmill land charges and same are for business purpose. Therefore, such amount cannot be disallowed and ld. CIT(A) has rightly allowed the claim of the assessee.

33. Now we come to ITA No. 379/Rjt/2016. The Revenue has taken following grounds of appeal.

1) *The Ld. CIT(A) has erred in deleting the addition made by the A.O. on account of disallowing of deduction u/s.80IA(4)(i) on storage tank-MDI of Rs.1,14,31,020/- and storage tank-EDA of Rs.76,04,753/-.*

2) *The Ld. CIT(A) has erred in law and on facts in deleting the addition made U/S.14A of Rs.31,40,255/- though the assessee had investment of Rs.4.65 crore, in Shares for which no expenses have been allocated by the assessee.*

- 3) *The Ld. CIT(A) has erred in deleting the addition of Rs.4,37,18,888/- made by the A.O. u/s.40A(2)(a) r.w.s.40A(2)(b) in respect of Terminal Handling & Storage Charges paid to Shreeji Power & Insulator Pvt. Ltd. (SPIPL).*
- 4) *The Ld. CIT(A) has erred in deleting the addition of Rs.2,27,867/- made by the A.O. on account of disallowance of depreciation on land purchased, or land related expenses under the windmill.*
- 5) *The Ld. GIT(A) has erred in deleting the addition of Rs.2,61,000/- made by the A.O. on account of disallowance of share issue expenses.*
- 6) *It is therefore prayed that the order of Ld.CIT(A) be set aside and that of AO be restored to the above extent.*

34. Now we come to ground no. 1 related to deleting the addition made by the A.O. on account of disallowing of deduction u/s. 80IA(4)(i) on storage tank-MDI of Rs. 1,14,31,020/- and storage tank-EDA of Rs. 76,04,753/-.

35. In connected ITA No. 349/Rjt/2016, we have already granted relief to the assessee and dismissed ground of Revenue. So, this ground of appeal is dismissed.

36. Now we come to ground related to deleting the addition made U/S.14A of Rs.31,40,255/- though the assessee had investment of Rs.4.65 crore, in Shares for which no expenses have been allocated by the assessee.

37. Since, we have confirmed the order of the ld. CIT(A) in connected appeal in ITA No. 349/Rjt/2016, therefore, we dismiss this ground of appeal.

38. Now we come to ground related to deleting the addition of Rs.4,37,18,888/- made by the A.O. u/s.40A(2)(a) r.w.s.40A(2)(b) in respect of Terminal Handling & Storage Charges paid to Shreeji Power & Insulator Pvt. Ltd. (SPIPL).

39. Since already we have confirmed the order of the ld. CIT(A) and dismissed the appeal of Revenue and granted part relief to the assessee. Therefore, this ground of appeal is dismissed.
40. Now we come to ground related to deleting the addition of Rs.2,27,867/- made by the A.O. on account of disallowance of depreciation on land purchased, or land related expenses under the windmill.
41. Since the Hon'ble High Court has already held that Windmill are subject to depreciation and in connected appeal in ITA No. 349/Rjt/2016. We have decided the matter in favour of assessee. Therefore, this ground of appeal is dismissed.
42. Now we come to ground related to deleting the addition of Rs.2,61,000/- made by the A.O. on account of disallowance of share issue expenses is concerned an amount of Rs. 2,61,000/- on account of amortization of share issue expenses u/s.35D were debited by the assessee its Profit and Loss account. But ld.A.O. disallowed the same on the ground that assessee company is a Private Limited company and has made expenses in relation to normal issue of shares, not for public issue, and expenses has been done after startup of business and are not related to expansion of undertaking or setting up of new unit.
43. In appeal before the ld. CIT(A), ld. CIT(A) granted relief to the assessee.
44. We have gone through the relevant record and impugned order. The above said expenses has been incurred before the commencement of business and same are in the capital in nature. In our considered opinion, assessee has rightly

claimed its amortization. Therefore, we dismiss this ground of appeal by holding that above expenses were incurred for business purpose and same are allowable.

45. In the result, this ground of appeal of the Revenue is dismissed.

ITA No. 160/Rjt/2015 Assessee's appeal for A.Y. 2010-11

46. In said appeal, assessee has taken following grounds of appeal:

- 1.0 The grounds of appeal mentioned hereunder are without prejudice to one another.*
- 2.0 The Id. Commissioner of Income Tax (Appeals)-S, Rajkot [hereinafter referred to as the "CIT(A)"] erred on facts as also in law in dismissing the appeal without allowing sufficient opportunities of being heard. The appeal may kindly be restored before the Id. CIT(A).*
- 3.0 The Id. CIT(A) erred on facts as also in law in not allowing claim of deduction u/s. 80IA of the Income Tax Act, 1961 (hereinafter referred to as Act") of Rs. 56,58,655/-. The rejection of claim is totally unjustified on facts also in law and claim of deduction u/s. 80IA(4) may kindly be directed to be allowed.*
- 4.0 The Id. CIT(A) erred on facts as also in law in not allowing claim of deduction u/s. 80IA of the Act of Rs. 29,33,517/-. The rejection of claim of deduction u/s. 80IA is totally unjustified on facts also in law and may kindly be deleted.*
- 5.0 The Id. CIT(A) erred on facts as also in law in not allowing share expenses of Rs. 2,61,000/- u/s. 35D of the Act. The disallowance made may kindly be deleted.*
- 6.0 The Id. CIT(A) erred on facts as also in law in confirming addition of Rs. 10,07,333/-u/s. 41(2) of the Act. The addition made was based on conjectures and surmises and may kindly be deleted.*
- 8.0 The Id. CIT(A) erred on facts as also in law in retaining disallowance out of staff welfare expense at Rs. 50,096/- and travelling expense of Rs. 20,208/- on the alleged ground of personal element. The disallowance may kindly be deleted.*
- 9.0 The Id. CIT(A) erred on facts as also in confirming disallowance of interest Expenses of Rs. 30,04,841/- u/s. 14A of the Act. The disallowance may kindly be deleted.*

47. First ground of assessee is that since ld. CIT(A) has not given sufficient opportunity of being heard, therefore, appeal may kindly be restored to ld. CIT(A). Since We have decided the similar grounds in connected appeals which have been taken by the assessee in its appeal in ITA No. 379/Rjt/2016. Therefore, we would also dispose of this appeal on merit. Thus, this ground of appeal of the Assessee is dismissed.
48. Now we come to ground relating to not allowing the claim of deduction u/s. 80IA(4) of the Act of 56,58,655/-.
49. Since in connected appeals, we have decided against the revenue and granted relief to the assessee. Therefore, this ground of appeal is allowed.
50. Now we come to ground relating to claim of deduction u/s. 80IA of the Act of Rs. 29,33,517/-.
51. Same ground has been allowed by us in connected appeal in ITA No. 379/Rjt/2016 & ITA 349/Rjt/2016 in favour of assessee and against the revenue. Therefore in parity with those orders, we allow this ground of appeal.
52. Now we come to ground relating to shares expenses of Rs. 2,61,000/- u/s. 35D.
53. In ITA No. 379/Rjt/2016, in this case, this amount was allowed by the ld. CIT(A) in the order for assessment year 2011-12. Thereafter appeal was filed by the revenue against the order of ld. CIT(A). Now we have allowed this ground of appeal of the assessee. Since already order of the ld. CIT(A) has been confirmed with regard to Rs. 2,61,000/- u/s. 35D. Since this ground is already covered by our order as discussed above. Hence ground of assessee is allowed..

54. Now we come to addition of Rs. 10,07,333/- u/s. 41(2) of the Act is concerned, assessee was asked by the lower authorities for outstanding of followings:

<i>Sr. No</i>	<i>Name of the Assessee</i>	<i>Amount</i>
1	<i>Anita International</i>	<i>37047</i>
2	<i>Deva m Dafda</i>	<i>70181</i>
3	<i>Dupoly marketing Pvt Ltd</i>	<i>97365</i>
4	<i>Emerson Process Mangment Pvt Ltd</i>	<i>1522</i>
5	<i>Friends and Chemical Terminls</i>	<i>16369</i>
6	<i>Heat Max Engineering</i>	<i>120781</i>
7	<i>INOX India Limited</i>	<i>9619</i>
8	<i>Jindal International</i>	<i>43110</i>
9	<i>K. R Shipping Agencies</i>	<i>18831</i>
10	<i>Karya Siddhi Blower System Pvt Ltd</i>	<i>10417</i>
11	<i>Khodiyar Fabricators</i>	<i>109976</i>
12	<i>KSA Sale Consideration</i>	<i>114589</i>
13	<i>Modern Inspection Services</i>	<i>4906</i>
14	<i>Oriental Tradelink</i>	<i>37703</i>
15	<i>Pertoleum Oils & Chemicals</i>	<i>114522</i>
16	<i>R. Pfoam</i>	<i>3894</i>
17	<i>Radient Trading</i>	<i>12480</i>
18	<i>Sandhya Construction</i>	<i>4750</i>
19	<i>Sarjan Realities</i>	<i>11000</i>

20	<i>Sciencetech Consultants & Engineering</i>	4776
21	<i>Supreme Elevtors (1) Pvt. Ltd</i>	29953
22	<i>United Engineering Works</i>	127293
23	<i>Vishwas Aircon</i>	6249
	<i>Total</i>	1007333

55. But before lower authorities and before us, assessee could not submit any explanation that why these amounts had been shown outstanding for such a long period and what steps have been taken by the assessee to recover these amounts and even before us assessee could not explain about the list in details. Therefore, we dismiss this ground of appeal by the assessee.

56. Now we come to depreciation amount was of Rs. 11,39,336/- is concerned, same was claimed apart from wind mill as follows

<i>Description in ledger</i>	<i>Date & No. of invoice/debit note issued by</i>	<i>Description in bill/Debit note</i>	<i>Amount</i>	<i>First time put to use</i>	<i>Depreciation claimed in year under consideration</i>
<i>Land Processing fee</i>	<i>Debit note raised by Subham realties, dated 17.02.2006</i>	<i>Consideration for providing free & easy access and keeping are vacant.</i>	870770	<i>2nd half of 2006</i>	3344
		<i>Being the amount of land administration</i>	1000000	<i>2nd half of</i>	19200

<i>Land administration Sinfrastrucure charges</i>	<i>debit note issued by Suzlon Gujarat wind park -ltd dated 17.03.2007</i>	<i>& infrastrcutural charges</i>		<i>2007</i>	
<i>To easy & free access</i>	<i>Debit note raised by Subham realties, dated 09.01.2009 D.N.3435,3426/09</i>	<i>Consideration for providing free & easy access and keeping are vacant.</i>	<i>23,26,650</i>	<i>2nd part of 2009</i>	<i>1116792</i>
<i>Total Depreciation claimed on these ground in year under considering</i>					<i>1139336</i>

57. Since this amount has been spent for the installation of wind mill and without above expenses wind mill could not be installed and in connected ITA No. 379/Rjt/2016. We have allowed claim of the assessee and dismissed the ground of the Revenue. Therefore, in our considered opinion, this depreciation is allowable. Therefore, we allow Rs. 11,39,336/- as depreciation.

58. Now we come to disallowance out of staff welfare expenses at Rs. 50,096/- and travelling expense of Rs. 20,208/- on the alleged ground of personal element.

59. Since assessee has not submitted any details with lower authorities and even before us, assessee has not submitted any plausible explanation for not submitting details of expenditure of this amount. Therefore, we dismiss this ground of appeal.

60. Now we come to disallowance of interest expenses of Rs. 30,04,841/- u/s. 14A.

61. Since in connected appeals in ITA No. 379/Rjt/2016, since already we have given relief to the assessee and dismiss the ground of the revenue for addition made u/s. 14A of Rs. 3140255/-

62. In the result, appeal filed by the assessee is partly allowed.

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63. Assessee has filed these cross objections beyond the limitation period and there is a delay of 494 days but assessee has not given any cogent reason and plausible explanation for filing of delayed cross objection in support of its contention. Therefore, we are not inclined to entertain cross objections filed by the assessee. Thus, both the CO's are dismissed.

Order pronounced in Open Court on 31 - 01 - 2019

Sd/-

(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 31/01/2019

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad