

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, AHMEDABAD**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER  
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. Nos.1926 & 1745/Ahd/2014 & 2010/Ahd/2015

(निर्धारण वर्ष / Assessment Years:2002-03& 2003-04)

<b>ITO</b> Ward-4(3), Ahmedabad	<b>बनाम/</b> Vs.	<b>Labh Construction &amp; Industries Ltd.</b> 104-Shantanu, Opp. Hotel Klassic Gold, Sardar Patel Nagar, E.B., Ahmedabad- 380006
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAA CL2 648 G		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

<b>Labh Construction &amp; Industries Ltd.</b> 104-Shantanu, Opposite Sardar Patel Nagar, Ellisbridge, Ahmedabad-380009	<b>बनाम/</b> Vs.	<b>ACIT</b> Circle- 4, Ahmedabad
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAA CL2 648 G		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

<b>Labh Construction &amp; Industries Ltd.</b> 104-Shantanu, Opposite Sardar Patel Nagar, Ellisbridge, Ahmedabad-380009	<b>बनाम/</b> Vs.	<b>DCIT</b> Circle- 4, Ahmedabad (Present jurisdiction with Range-2 Ahmedabad)
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAA CL2 648 G		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Shri Sakar Sharma, A.R.
प्रत्यर्थीकीओरसे / Respondent by:	Shri L. P. Jain, Sr. DR

सुनवाईकीतारीख/Date of Hearing	15/07/2019
घोषणाकीतारीख /Date of Pronouncement	30/07/2019

आदेश/ORDER

**PER AMARJIT SINGH - AM:**

In these three appeals two appeals have been filed by the assessee and one by the Revenue for A.Ys. 2002-03 & 2003-04, arise from order of the CIT(A)-VIII, Ahmedabad and CIT(A)-2, Ahmedabad dated 31.03.2014 & 30.04.2015, in proceedings under section 143(3) of the Income Tax Act, 1961; in short "the Act".

ITA No. 1926/Ahd/2014 (A.Y. 2002-03) (Revenue's Appeal):-

2. The fact in brief is that return of income declaring loss of Rs. 1,47,30,830/- was filed on 31.10.2002. The case was subject to scrutiny. The assessee was a public limited company engaged in the business of the construction. The assessment u/s. 143(3) of the Act was finalized on 31.03.2005 and total income was assessed at Rs. 3,85,36,831/-. The remaining fact of the case are discussed while adjudicating the various grounds of appeal filed by the Revenue as under:-

*"1. i) The Ld. CIT(A) has erred in law and on facts in directing the AO to allow the claim of the assessee for bad debts of Rs. 1,03,54,617/- without appreciating the fact that the AO rejected the assessee's claim for the prime reason that no evidence was furnished by the assessee to prove that the amount being claimed as bad debts offered as income in earlier year.*

*ii) The Ld. CIT(A) has erred in law and on facts in allowing the assessee's claim of bad debts of Rs. 55,99,506/- accepting the assessee's submission that the amount was offered while filing the revised return when no such claim was made by the assessee in the first appellate stage and the assessee also failed to produce any evidence of filing the revised return.*

*2. The Ld. CIT(A) has erred in law and on facts in deleting the addition made on account of disallowance of Rs. 4,69,735/- being capital expenditure as certified by the auditor, accepting the assessee's submission that the expenditure is revenue in nature.*

*3. The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 17,81,469/- made in the work-in-progress relating to administrative expenses incurred by the assessee.*

*4. The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 2,51,60,000/- made in the work-in-progress on account of proportionate interest payable by the assessee on bank loan obtained.*

5. *On the facts and in the 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 Ld. CIT(A) may be set aside and that of the Assessing Officer may be restored to the above extent."*

Ground No. 1& 1.1:-

Claim of bad debt of Rs. 1,03,54,617:-

3. During the course of assessment the AO has noticed that out of total bad debt of Rs. 7,50,134,338/- claimed on account of Shilalekh Project the assessee company itself has added back the amount to Rs. 5,93,49,497/- in the statement of total income on the ground that it has obtained relief from A.Y. 1996-97 to 2000-01. On further verification the AO observed that assessee has claimed bad debt to the amount of Rs. 1,82,74,615/- on account of Shilalekh Project. The assessee was asked to substantiate the claim of bad debt in respect of the Shilalekh Project. The assessee has submitted the submission and stated that the project was in loss and income shown in earlier year was on the basis of realisation of receipt from the member and the construction cost which were not realisable the same was reversed during the year and claimed as bad debt. The AO has not agreed with the submission of the assessee and has stated that assessee has not furnished any evidence to demonstrate that amount claimed in the bad debt was offered as income in the earlier years. Therefore, the AO has rejected the claim of bad debt to the amount of Rs. 1,56,64,841/- and added to the total income of the assessee. The AO further noticed that assessee has debited Rs. 55,99,506/- to the Profit and Loss Account claiming that the amount represents the income credited in the books in earlier year which was no more realisable. The AO has observed that assessee has not furnished any evidence to show that it was really difficult to recover the amount and the genuineness of write off could not be established. The AO has stated that assessee has not furnished complete explanation with regard to each and every entry under this head, therefore, the claim of write off amounting to Rs. 55,99,506/- was disallowed.

4. Aggrieved assessee file before the Ld. CIT(A). Ld. CIT(A) has partly allowed the appeal of the assessee and the claim of bad debt of the assessee to the extent of Rs. 1,03,54,617/- was held to be allowed after verification of the AO.

We have heard the rival contention on this issue. After perusal of the finding of the Ld. CIT(A) it is noticed that each item of bad debt claimed by the assessee and disallowed by the AO was discussed elaborately in the finding of the Ld. CIT(A). The relevant part of the finding of the CIT(A) is reproduced as under:-

**“2.3 Decision:**

*I have carefully considered the facts of the case, the assessment order and the written submission of the appellant. The appellant had claimed certain bad debts in the return of income which have been disallowed by the AO. A disallowance of Rs.2,24,73,405/- has been made which consisted of bad debts in respect of three different items. Each item, for which the bad debt has been claimed and disallowed by the AO, is discussed separately for the sake of convenience and clarity.*

**1. Bad debts in respect of Shilalekh project: -**

*The AO had made disallowance of Rs. 1,56,64,843/- in respect of Shilalekh Project, as in his opinion the appellant did not furnish any evidence to show that amount was offered as income in earlier years. Further no copies of account to show whether the amount had actually been written off or not and also that the genuineness of write off was also doubted by the AO.*

*It has been claimed by the appellant that it had accounted the income from Shilalekh project in the form of organizing fees and remuneration for the project at the rate of 12% and 8% respectively. But at the time of showing the income it did not verify whether the appellant was entitled to such remuneration as per the terms of development agreement. There were differences in computation of work in progress which was accounted by the appellant after considering the income element whereas the Chartered Accountant of the project accounted the work in progress without considering the organizing fees and remuneration. On discovering the difference the issue was raised by the appellant for the first time in A.Y. 96 - 97 and 98 -99. While the appeals were pending, the appellant filed a revised return under section 264 for A.Y.1997-98. The revision petition under section 264 was allowed by CIT and he directed to exclude the income shown hypothetical basis from the return as well as assessed income of the appellant. On that basis the appellant got relief in the years for which the appeal was filed before CIT(A). Subsequently the similar relief was allowed in assessment year 1999 -2000 also. The matter for these years went before honourable ITAT and the appellant succeeded before ITAT for A.Ys. 1996 - 97, 1997 - 98, 1998 - 99 and 1999 -2000. The appellant has explained that the entire income which was offered in those years was not excluded as there was*

some difference between the working of the Chartered Accountant and the appellant and certain amount still remained in the books of account of the company as receivable on account of the profit. It is these profits, which have not been written off in earlier years, which are now claimed by the appellant as bad debt during the year under consideration. The appellant has given a working showing the difference of income shown in the books of accounts and the amount claimed under revision in earlier years and the difference which is still remaining in the books of accounts. For the sake of convenience and clarity the chart given by the appellant is reproduced hereunder.

A.Y.	8% Organising Fees as per Books & Assessed	12% Remuneration as per Books & Assessed	Total as per Books	8% Organising Fees as per CA Certificate	Remuneration as per CA Certificate	Total as per CA Certificate	Difference
1995-96*	1118558	2116473	3235031	1118558	2116473	3235031	0
1996-97	4860083	11131874	15991957	4860083	11131394	15991477	480
1997-98	2841227	16324814	19166041	2841227	15790984	18632211	533830
1998-99	12131101	10174927	22306028	12131101	9114247	21245348	1 060680
1999-00	5603372	5145660	10749032	5603372	3187314	8790686	1958346
2000-01**	2609774	956476	3566250	2609774	0	2609774	956476
<b>Total</b>	<b>29164115</b>	<b>45850223</b>	<b>75014339</b>	<b>29164115</b>	<b>41340411</b>	<b>70504527</b>	<b>4509812</b>

The appellant has also explained that in amount of Rs. 2609774/- for A.Y. 2000 - 01 was also added back by it for the current assessment year with the assumption that the amount was based on CA certificate and would be excluded from the returned income of 2000 - 01 by the AO during the course of assessment proceedings, but the request of the appellant was not accepted and accordingly the same was not allowed. Therefore, this amount is also therefore, written off. The appellant has accordingly given a final table showing the amount of income which pertained to different assessment years which are now been written off by him as bad debt: -

A.Y.	Total amount written off as per Books	Amount for which relief has been availed in earlier assessments either through appeal of through revision order	Difference to be allowed as Bad Debts in the year of actual written off in the books
1995-96	3235031	0	3235301
1996-97	15991957	15991477	480
1997-98	19166041	21245348	1060680
1999-00	10749032	8790686	1958346
2000-01	3566250	0	3566250
<b>Total</b>	<b>75014338</b>	<b>64659722</b>	<b>10354617</b>

*It is seen from the above table that there is a variation between the claim of the appellant which was at Rs. 1,56,64,843/- whereas the total from the above table comes to Rs. 1,03,54,617/-. Therefore, there is a difference of Rs. 53,10,226/-. The appellant has explained that this difference is arising as there were some differences in adoption of various figures. For the sake of clarity the chart given by the appellant is reproduced hereunder:-*

<b>A.Y. for which income pertains</b>	<b>Amount which was required to be added back in STI</b>	<b>Amount which was actually added back in STI</b>	<b>Amount Short added back in STI</b>
1996-97	15991477	15991477	0
199798	18632211	18632211	0
1998-99	21245348	21245348	0
1999-00	8790686	870686	7920000
2000-01	0	2609774	(2609774)
<b>Total</b>	<b>64659722</b>	<b>59349496</b>	<b>5310226</b>

*The appellant has explained that the variation was due to adoption of figure of Rs. 26,09,774/- in competition of income which was not required to be considered as no relief was granted by the AO for 2000-01. It is further submitted that for A.Y. 1999-00 the difference occurred due to typographical mistake wherein the amount of Rs.87,90,686/- was taken as against the current amount of Rs.8,70,686/-for A.Y.1999-2000 was taken. Therefore, the claim of deduction which should be actually allowed comes to Rs. 10354617/-.*

*After considering the entire gamut of facts, the orders of ITAT for earlier assessment years as well as the other related orders, it is noted that the appellant has already shown the income which is now being written off by it in its profit and loss account in earlier years. Part of the income shown in profit and loss accounts have been reduced by way of revision of returns. The income which has not been reduced in earlier year is still being shown as outstanding and receivable from Shilalekh project. Since the income is not being realized from that project the appellant wants to write that off in the current year as bad debt.*

*The law related to write off of bad debt has since been settled by the honourable Supreme Court by the decision in the case of TRF Ltd 323 ITR 327. It has been held by the honourable Supreme Court that after 01/04/1989 it was not necessary for the appellant to establish that the debt, in fact, has become irrecoverable. It was enough if the bad debt is written off as irrecoverable in the accounts of the appellant. Therefore, the appellant has to only establish now that the amount has actually been written off in the books of accounts. It is noted that the amounts have duly been written off in the books of accounts and therefore, respectfully following the judgment of honourable Supreme Court in the case of TRF Ltd the claim of the appellant in respect of bad debts is to be allowed. The facts which are relevant for the present issue are whether the amount which is being written off in the current year was offered by the appellant in the return of income in earlier year, it is still shown as receivable in the books of accounts of the company in the current financial year and the appellant has duly written off the same in the books of accounts. All these conditions are being satisfied and therefore, the claim of bad debt of the appellant to the extent of Rs. 1,03,54,617/- is directed to be allowed in principle. The AO is further directed to verify, from records, once again whether the*

*amounts that have now been written off were shown by it in the income in earlier year and part of it has been allowed in those years and only the remaining amount is now being written off. The addition made by the AO to this extent is directed to be deleted.”*

The Ld. CIT(A) has discussed the various difference of income shown in the books of account and the amount claimed under revision in the earlier years and the difference which was still remaining in the books of account. The Ld. CIT(A) has also placed reliance on the decision of the Hon'ble Supreme Court in the case of TRF Ltd. 323 ITR 327 that the assessee has to only that the amount has actually been returned in the books of account. It is clear from the finding of the Ld. CIT(A) that the amount which was written off in the year under consideration was offered by the assessee in the return income in earlier year and same was still shown as receivable in the books of account of the assessee. In addition to the above the Ld. CIT(A) has directed the AO to verify from record once again whether the amount that have not been written off was shown by the assessee as income in the earlier year and part of it has been allowed in those year and only the remaining amount was now being written off. In view of the above direction of the Ld. CIT(A), we do not find any merit in the appeal of the Revenue. Therefore, the same is dismissed.

Ground No. 2:-

Addition of Rs. 4,69,735 being capital expenditure:-

5. At the time of assessment the AO has noticed that assessee company has claimed an amount of Rs. 4,69,735/- as Revenue expenditure. On verification of the detail filed AO was of the view that nature of aforesaid expenditure was of capital nature. Therefore, he has disallowed the claim of expenditure treating as capital expenditure and added to the total income of the assessee.

6. Aggrieved assessee has filed appeal before the Ld. CIT(A). Ld. CIT(A) has deleted the disallowance on verification of the supporting material furnish by the assessee which demonstrate that the expenditure was of Revenue nature pertaining to routine repair and maintenance as elaborated at Page No. 27 of the CIT(A)

order. In the light of the above facts we do not find any substance in the appeal of the Revenue. The same is dismissed.

Ground No. 3:-

Addition of Rs. 17,81,469 as work-in-progress:-

7. During the course of assessment the AO has noticed that assessee has claimed administrative expenses to the amount of Rs. 1,18,76,462/-. The AO observed that these expenses have not been taken into consideration for computing work-in-progress of various projects. Therefore, the AO has considered 15% of such administrative expenditure pertain to work-in-progress for various project and made addition of Rs. 17,81,469/- pertaining to not showing in work-in-progress and added the same to the total income of the assessee.

8. Aggrieved assessee has filed appeal before the Ld. CIT(A). The Ld. Cit(A) has allowed the appeal of the assessee.

We have heard the rival contention on this issue. It is noticed that aforesaid administrative expenditure was of the following nature:-

<i>Nature of expenses</i>	<i>Amount</i>
<i>Payment to staff</i>	<i>3719791</i>
<i>Payment to Directors</i>	<i>981509</i>
<i>Travelling &amp; Conveyance</i>	<i>741525</i>
<i>Electricity Expenses</i>	<i>258440</i>
<i>Postage, Telegram and Telephone</i>	<i>426438</i>
<i>Printing &amp; Stationery</i>	<i>255509</i>
<i>Membership Fees and Subscription</i>	<i>3389</i>
<i>Legal &amp; Professional Expenses</i>	<i>1665633</i>
<i>Rent, Rates &amp; Taxes</i>	<i>1774907</i>
<i>Repairs &amp; Maintenance</i>	<i>1810599</i>
<i>Insurance</i>	<i>2740</i>
<i>Other Expenses</i>	<i>219283</i>
<i>Donation</i>	<i>16700</i>
<i>Total</i>	<i>11876462</i>

After perusal of the nature of aforesaid expenditure it is observed that this expenditure were not connected to the construction project undertaken by the assessee. The Ld. CIT(A) has elaborated in his finding that these expenses were mainly related to the Head Office which cannot be allocated to any specific construction activity. In the light of the above facts and findings of CIT(A) we observed that these expenses were in the mandatory nature and have nothing to do with the construction project undertaken by the assessee company. Therefore, we do not find any infirmity in the decision of Ld. CIT(A). Accordingly, this appeal of the Revenue is dismissed.

Ground No. 4:-

Addition of Rs. 2,52,60,000 in the work-in-progress on account of interest payable:-

9. During assessment proceeding the AO has noticed that assessee company has claimed interest expenses to the amount of Rs. 92,88,453/- only. As per assessee company out of these expenses and amount of Rs. 78,35,725/- was further Sun City Project Flat therefore portion of such interest expense was allocated toward work-in-progress. However, on further verification the AO has noticed that on several term loan the assessee has not provided the interest expenses in the Profit and Loss Account. Therefore, AO was of the view that interest expenses have not been considered for computation of work-in-progress as the interest was not debited to the Profit and Loss Account. The AO further observed that why this action the assessee company has reduced the value of work-in-progress. The AO has further stated that assessee has not provided complete figures of work-in-progress of various project. Therefore, the AO considered that total interest payment of term loan on various project was to the amount of Rs. 781.11 lakh and the proportionate interest toward work-in-progress of all project was computed at Rs. 251.6 lakh. Therefore, this interest expenses of Rs. 251.6 lakh was added to work-in-progress of various projects and to the total income of the assessee.

10. Aggrieved assessee has filed appeal before the Ld. CIT(A). Ld. CIT(A) has allowed the appeal of the assessee.

We have heard the rival contention on this issue and perused the material on record. It is undisputed fact that assessee has not provided the interest expenses in the Profit and Loss Account in respect of several term loan availed by the assessee. The assessee has explained to the AO that such interest expenses would be claimed on actual payment basis. The AO was of the view that why not debiting the interest on term loan to the Profit and Loss Account the assessee company has reduced the value of work-in-progress. Therefore, on the basis of detail of interest given by the assessee company AO has made addition of 32.21% of the interest not provided in the books of account and made addition of Rs. 251.6 lakh out of the total interest of Rs. 788.11 lakh toward the work-in-progress. During the appellate proceeding before Ld. CIT(A) the assessee has submitted that the interest liability which was not provided for secured loan on having to do with the Sun City Project and this project was exclusively finance by Rajkot Nagrik Sahakari Bank Ltd. and partly by Gruh Finance. Therefore, the interest which was not provided cannot be allocated to the value of work-in-progress on the basis of hypothetical working. It is noticed that Ld. CIT(A) has stated that assessee has borrowed money from Rajkot Nagrik Sahakari Bank Ltd. and the interest payment on debt loan has already been accounted for in the work-in-progress related to Sun City Project. With the assistance of Ld. Representative we have gone through the material on record and it is observed that in respect of loan obtained from Rajkot Nagrik Sahakari Bank Ltd. and Gruh Finance Ltd. toward Sun City Project as mentioned at Page No. 81 of the order of the CIT(A) the detail of interest amount accounted in the books of account has not been specified in the report of the auditor. Therefore, we are of the view, that it will be appropriated to restore this issue to the file of AO for deciding the same a Denovo after verification of the detail of loan and amount of interest accounted by the assessee for the work-in-progress. Therefore, appeal of Revenue is allowed for statistical purpose.

11. In the result, appeal of the Revenue is partly allowed for statistical purpose.

ITA No. 1745/Ahd/2014 (A.Y. 2002-03)(Assessee's Appeal):-

12. The grounds of appeal raised by the assessee are reads as under:-

*“1. The Ld. CIT(A) erred on facts and in law in confirming disallowance of Rs. 1,29,115/- (Rs. 89,075/- + 40,040/-) by invoking provisions of section 40A(3) of the Act.*

*2. The Ld. CIT(A) erred on facts and in law in not directing to the Assessing Officer to make adjustment in the opening work in progress of next assessment year for sustained addition of Rs. 54,21,853/-.*

*3. The Ld. CIT(A) erred on facts and in law in confirming disallowance of Rs. 1,20,000/- by invoking section 14A of the Act.”*

Ground No. 1:-

Disallowance of Rs. 1,29,115 u/s. 40A(3) of the Act:-

13. During the assessment the AO has noticed that as per statement of income the assessee has claimed expenditure to the amount of Rs. 23,41,87/- despite the disallowance made by the auditor u/s. 40A(3). The assessee has stated that in spite of this amount was desirable as per audit report but still to be allowable on the basis of past appellate order. The AO has rejected the contention of the assessee and disallowed the same u/s. 40A(3) of the Act.

14. Aggrieved assessee has filed appeal before Ld. CIT(A). Ld. CIT(A) has partly allowed the appeal of the assessee after allowing certain payment which were not claimed as donation as expenses.

We have heard the rival contention on this issue. The assessee has stated that these payments were made in cash as the assessee was passing through a liquidity crisis and there was pressure of banking institutions and it is most of bank accounts were attached. After perusal of the material on record we consider that the assessee has failed to demonstrate the circumstances according to Rule 6DD of the IT Rule. The circumstances have under which it has been covered for making the payment in cash. After considering the provision of Rule 6DD and submission

of the assessee we consider that assessee's case is not covered under the specific provision of Rule 6DD. Therefore, we do not find any error in the decision of CIT(A). Accordingly, this appeal of the assessee is dismissed.

Ground No. 2:-

Adjustment of opening work-in-progress:-

15. During the course of assessment the AO has noticed that in respect of Sun City Project the assessee has debited expenditure pertaining to road to the project but did not consider the same for computation of work-in-progress. The AO has also introduced that assessee has paid interest to the amount of Rs. 78,35,725/- on account of Sun City Project, however, the proportionate interest expenses was not added to the work-in-progress. Therefore, the assessee has computed amount of Rs. 54,21,853/- pertaining to aforesaid expenses toward work-in-progress of Sun City Project and added to the total income of the assessee.

16. Aggrieved assessee has filed appeal before the Ld. CIT(A). The Ld. CIT(A) has partly allowed the appeal of the assessee and also directed the assessee to provide credit of the amount added in the opening stock of the work-in-progress.

We have heard the rival contention on this issue. The AOP had made addition of Rs. 54,21,853/- in the work-in-progress as the assessee had not included the proportionate cases of loan and interest in the work-in-progress value at the end of the year. The assessee had debited expenditure pertaining to construction of road to the project but had not considered the same for computation of work-in-progress of flats. Out of the aforesaid addition the Ld. CIT(A) has deleted the addition to the extent of Rs. 29,36,700/- on the ground that said addition was made in assessment year 2001-02 on the same ground. It is also noticed that the assessee has submitted before the AO that it has no objection in making adjustment in the work-in-progress provided appropriate adjustment in the opening stock of work-in-progress of subsequent year should be also allowed to be made. After taking into consideration the Ld. CIT(A) has held that since the

assessee himself has agreed for such adjustment provided the credit should be given in the subsequent year the action of the AO by including the proportionate cost of interest and construction of road was justified. In the light of the facts and circumstances, we do not find any merit in the appeal of the assessee. Therefore, the same is dismissed.

Ground No. 3:-

Disallowance of Rs. 1,20,000 u/s. 14A:-

17. The AO has noticed that assessee has made investment to the amount of Rs. 3,57,29,042/- in the shares and mutual funds and in the beginning of the year such investment was to the amount of Rs. 7,10,73,558/-. After taking into consideration the submission of the assessee that no interest expenses has been claimed during the year under consideration the AO has made disallowance of Rs. 1,20,000/- for administrative expenditure incurred toward earning exempt income.

18. The assessee has filed appeal before the Ld. CIT(A). Ld. CIT(A) has dismissed the appeal of the assessee.

We have heard the rival contention. During the course of appellate proceeding before us the Ld. CIT(A) has contended that assessee has earned dividend income which is less than Rs. 1,20,000/-. IN view of the above and after considering the various decision of Co-ordinate Bench of ITAT Ahmedabad we restore this issue to the file of the AO to restrict the disallowance u/s. 14A to the extent of dividend income earned by the assessee. Therefore, this ground of appeal is allowed for statistical purpose.

Ground No. 4:-

Disallowance of personal expenses of Rs. 3,75,373:-

19. During the course of appellate proceeding before us Ground No. 4 is not pressed. Therefore, the same is stand dismissed.

ITA No. 2010/Ahd/2015 (A.Y.2003-04) (Assessee's Appeal):-

20. Grounds of Appeal are raised by the assessee reads as under:-

*"1. The Ld. CIT(A) erred n facts and in law in confirming addition made u/s. 68 amounting to Rs. 8,40,164/- accounted in the name of Smt. Sushila Kak.*

*2. The Ld. CIT(A) erred on facts and in law in confirming addition of Rs. 39,47,052/- in the value of work in progress by including administrative expenses incurred by the appellant.*

*3. The Ld. CIT(A) erred on facts and in law in confirming disallowance of Rs. 5,86,641/- u/s. 40A(3) being electricity payments made to Gujarat Electricity Board."*

Ground No. 1:-

Addition of Rs. 8,40,164 u/s. 68 of the Act:-

21. During the course of assessment the AO has noticed that assessee has received unsecured loan of Rs. 8,40,164/- from Smt. Sushila Kak. The assessee was asked to produce confirmation letter and proof the genuineness of the transaction and creditworthiness of the party. Since the assessee has not furnished confirmation letter along with PAN and Smt. Sushila Kak who was the wife of project consultant, therefore, the amount was added u/s. 68 of the Act as assessee given furnished evidence to proof the creditworthiness of the party and genuineness of the transaction.

22. Assessee has filed appeal before the Ld. CIT(A). Ld. CIT(A) has dismissed the appeal of the assessee.

23. Since in spite of giving ample amount of opportunity the assessee has failed to furnish the basic and primary information to substantiate the genuineness of the loan transaction.

We have heard the rival contention on this issue and considered that since the assessee has failed to furnish the confirmation letter and the PAN of the lender therefore, we observed that creditworthiness of the aforesaid loan transaction was

not proved by the assessee. Therefore, we do not find any error in the decision of the Ld. CIT(A). Accordingly, this appeal of the assessee is dismissed.

Ground No. 2:-

Addition of Rs. 39,47,052 as work-in-progress:-

24. During assessment the AO has noticed that assessee has not included the administrative expenses amounting to Rs. 39,47,052/- in the valuation of closing stock of work-in-progress of various projects. The AO observed that administrative expenses have to be included in the valuations of work-in-progress to arrive at the correct valuation of work-in-progress of the project. Therefore, the AO has made addition of Rs. 39,47,052/- on account of inclusion of administrative expenses in valuation of closing stock of work-in-progress.

25. The assessee has filed appeal before the Ld. CIT(A). Ld. CIT(A) has dismissed the appeal of the assessee.

We have heard the rival contention and perused the material on record. The Ld. CIT(A) has held that it is clear from the accounts of the assessee that administrative expenses has been incurred for specific project therefore, the same has to be considered for computing the work-in-progress of the particular project. We observe that these administrative expenses have direct nexus with the construction of particular project therefore such expenses have rightly been included in the closing work-in-progress of the project. These administrative expenses were originated on account of construction of the projects referred in this order which clearly demonstrate that such expenses have direct nexus and direct bearing in relation to construction of the project. Therefore, we do not find any infirmity in the decision of Ld. CIT(A) in including these expenses in valuation of closing stock of work-in-progress. However, we direct the AO to make adjustment in value of opening work-in-progress of subsequent assessment year accordingly. Therefore, this ground of appeal of the assessee is partly allowed.

Ground No. 3:-

Disallowance of Rs. 5,86,641 u/s. 40A(3):-

26. During the course of assessment the AO has noticed that out of Rs. 4,54,296/- an amount of Rs. 5,86,641/- has been paid to the Gujarat Electricity

Board in cash, therefore, the same was disallowed by the AO u/s. 40A(3) of the Act.

27. The assessee has filed appeal before the Ld. CIT(A). Ld. CIT(A) has dismissed the appeal of the assessee.

We have heard the rival contention on this issue and noticed that assessee has failed to demonstrate the circumstances under which it has made cash payment to the aforesaid party how it is covered under Rule 6DD of the I.T. Rule. Therefore, we do not find any merit in the file of the assessee. The same is dismissed.

28. In the result, the appeal of the Revenue is partly allowed for statistical purpose and appeal of the assessee vide ITA No. 1745/Ahd/2014 is partly allowed for statistical purpose and appeal of the assessee vide ITA No. 2010/Ahd/2015 is partly allowed.

**This Order pronounced in Open Court on 30/07/2019**

Sd/-

**(RAJPAL YADAV)**  
**JUDICIAL MEMBER**

Ahmedabad: Dated 30/07/2019

TANMAY

*TRUE COPY*

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

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)

Sd/-

**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,अहमदाबाद ।