

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।**

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
& SMT. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No. 57/Ahd/2018

WITH

Cross Objection No. 29/Ahd/2019

(निर्धारण वर्ष / Assessment Year: 2014-15)

<b>DCIT</b> Circle-1(1)(1), Ahmedabad	<b>बनाम/</b> Vs.	<b>Adani Logistics Ltd.</b> Adani House, Near Mithakhilai Six Roads, Navrangpura, Ahmedabad- 380009
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAB CI4 157 J</b>		
<b>(Appellant/ Respondent)</b>	..	<b>(Respondent/Cross Objector)</b>

अपीलार्थी ओर से /Appellant by :	Shri S. K. Dev, Sr. DR
प्रत्यर्थी की ओर से / Respondent by :	Shri Biren Shah, AR

सुनवाई की तारीख / Date of Hearing	26/07/2019
घोषणा की तारीख /Date of Pronouncement	22/10/2019

**आदेश/ORDER**

**PER MADHUMITA ROY- JM:**

Both the appeal and cross objection filed by the Revenue and the assessee are directed against the order dated 23.10.2017 passed by the CIT(A)-1, Ahmedabad arising out of the order dated 30.11.2016 passed by the Ld. DCIT Circle-1(1)(1), Ahmedabad Under Section 143(3) of the Income Tax Act, (hereinafter referred to as 'the Act') for Assessment Year 2014-15.

ITA No. 57/Ahd/2018(A.Y. 2014-15):-

2. The Revenue has challenged the following grounds:-

*“(1) That the ld. CIT(A) has erred in law and on facts in deleting the disallowance of Rs. 89,72,884/- made u/s. 14A of Rule 8D.*

*(2) That the ld. CIT(A) has erred in law and on facts in holding that addition of Rs. 89,72,884/- is not to be made while computing the book profit u/s. 115JB of the Act.*

*(3) That the ld. CIT(A) has erred in law and on facts in deleting disallowance of Forex loss of Rs. 2,12,05,000/-.”*

Ground No. 1:-

3. This ground relates to deleting of addition of Rs. 89,72,884/- made Under Section 14A r.w.r. 8D. At the very outset of the hearing of the matter the Ld. Counsel appearing for the assessee submitted before us that the issue is squarely covered in assessee's own case by an order dated 28.05.2019 in appeal preferred by the Revenue being ITA No. 2077/Ahd/2017 with Cross Objection No. 55/Ahd/2018 for A.Y. 2013-14. The copy of the said order dated 28.05.2019 has also been submitted before us. The assessee prayed for the similar relief on the identical issue.

4. The Ld. DR, however, has not raised any serious objection to that of the contentions made by the Ld. AR.

5. Heard the parties and perused the relevant material available on record including the order passed by the Hon'ble Tribunal in ITA No. 2077/Ahd/2017 with Cross Objection No. 55/Ahd/2018

for A.Y. 2013-14 the relevant portion whereof is reproduced hereunder below:-

*“3. At the very outset, the ld. counsel for the assessee submitted that in the case of CIT Vs. Corrttech Energy Ltd., 372 ITR 97 (Guj) Hon'ble Gujarat High Court has held that in the absence of any exempt income being claimed by the assessee provisions of section 14A r.w.r 8D could not be invoked. It is pertinent to observe that expenses relatable to earning of exempt income deserve to be disallowed under section 14A of the Income Tax Act. In case the assessee failed to pin point the expenses relatable to earning of such income, then formula given in Rule 8D of the Income Tax Rules, 1962, disallowance is to be worked out. The Hon'ble Gujarat High Court has held that in case there is no exempt income, then no expenses could be considered for disallowance. In the present case, the ld.CIT(A) has held that the assessee has no exempt income in this year. In view of the above situation, we find that no merit in the first ground of appeal raised by the Revenue. It is rejected.”*

6. Hence, in the absence of any changed circumstances respectively relying upon the same we confirm the order passed by the Ld. CIT(A). Hence, Revenue's appeal is dismissed.

7. The next ground of appeal is directed against the order passed by the Ld. CIT(A) in holding that addition of Rs. 89,72,884/- is not to be made while computing the book profit Under Section 115JB of the Act.

8. It appears that the Learned AO disallowed Rs.89,72,884/- u/s 14A of the Act by applying provision of Rule 8D while calculating income under the provision of section 115JB – MAT. It is the case of the assessee that the Learned AO erroneously disallowed u/s 14A by applying the provision of Rule 8D while calculating the income under provision of Section 115JB – MAT when it has been decided in number of judgments that so far as computation of adjusted book profit is concerned provision of section 2 and sub section 3 of section 14A cannot be imported into clause (f). In support of his argument the Ld. AO has also relied

upon the judgment passed by the Special Bench of ITAT at Delhi in the matter of ACIT, Circle 17(1)-vs-Vireet Investment (P.) Ltd. On the other hand, Learned DR relied upon the order passed by the authorities below.

9. Heard the respective parties, perused the relevant materials available on record. We have also carefully considered the judgment in the matter of Vireet Investment (P.) Ltd. The relevant portion whereof is as follows:

- “■ *The question is, whether the amount or amounts of expenditure relatable to exempt income as contemplated in clause (f) to Explanation 1 to section 115JB(2) could be arrived at by resorting to provisions of section 14A or not. The department, contention, is that the object of section 14A and clause (f) to Explanation 1 to section 115JB(2) is same and, therefore, it cannot be disputed that section 14A can be resorted to for finding out the expenditure relatable to any income which is exempt. [Para 6.2]*
- *When the question arises as to the applicability of similar provisions in different parts of the statute, then it is not only legitimate but proper to read both the provisions in their context. If context is same, different meaning cannot be assigned. It is to be found out that what mischief was intended to be remedied by inserting a particular section. The intention of the legislature once is manifested in a particular section in the statute then said intention cannot be given a different meaning, if a similar provision has been incorporated in a different section in the statute. The intention of the Legislature must be found out by reading the statute as a whole. [Para 6.3]*
- *Literal meaning cannot always be followed logically, because sometimes it tends to defect the obvious intention of the Legislature and results in producing a wholly unreasonable result. [Para 6.4]*
- *Thus, the submission of Department is that when basic object and purpose of section 14A and clause (f) to Explanation 1 to section 115JB(2) is same, then it cannot be said that merely because section 14A has not been mentioned in clause (f), it has no application. The mode of computation with same purpose cannot be differently made merely because section 115JB creates a deeming section. The object of deeming provisions is to substitute the total income computed under normal provisions by that computed under MAT provisions. Submission of department is that this cannot be extended to computation for same items under normal as well as MAT provisions. Under the provisions of*

*section 14A, both direct and indirect expenses in relation to earning of exempt income are to be reduced. Therefore, different meaning cannot be ascribed in clause (f) and, therefore, the submission of the assessee that only directly relatable expenditure is to be reduced, cannot be accepted. [Para 6.10]*

- *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.”*

We find from the issue citation that in the same set of facts the computation under clause (f) of explanation 1 to section 115JB as has been done by the authorities below u/s 14A r.w.r. 8D of the Income Tax Act, 1962 is not permissible and hence the Ld. CIT(A) deleted such disallowance without any ambiguity so as to warrant interference. Hence, this ground of appeal preferred by the Revenue is devoid of any merit and thus dismissed. This ground of appeal preferred by the assessee is thus allowed.

10. The next ground of appeal relates to deletion of disallowance of Forex loss of Rs. 2,12,05,000/-. At the very outset the Ld. AR submitted before us that the issue is squarely covered in assessee's own case in favour of the assessee in ITA No. 2077/Ahd/2017 with Cross Objection No. 55/Ahd/2018 for A.Y. 2013-14 a copy whereof has been submitted before us.

11. The Ld. DR however, has not been able to rebut such contentions made by the Ld. AR.

12. Heard the respective parties, and perused the relevant materials available on record.

We have also carefully considered the judgment and order passed by the Id. Co-ordinate Bench in ITA No. 2077/Ahd/2017 with Cross Objection No. 55/Ahd/2018 for A.Y. 2013-14 the relevant portion whereof is as follows:-

*“4. In the next ground of the Revenue has pleaded that the ld.CIT(A) has erred in deleting disallowance of Forex loss of Rs.1,70,45,000/-.*

*5. Brief facts of the case are that the assessee has filed its return of income on 28.11.2013 declaring total income at NIL after claiming unabsorbed depreciation loss of Rs.23,48,193/- for the current year. On scrutiny of the accounts, the ld.AO found that has debited a sum of Rs.170.45 lakhs in the profit & loss account. He confronted the assessee as to why this loss should not be disallowed. The assessee filed written submissions. The ld.AO was not convinced with the explanation of the assessee and disallowed its claim. Dissatisfied with the disallowance, the assessee carried the matter in appeal before the ld.CIT(A). It has filed written submissions justifying the allowance of this loss, and how this loss has been worked out by it. The assessee has compiled details in tabular form and all such details have been reproduced by the ld.CIT(A) from page nos.19 to 38 the impugned order. The ld.CIT(A) thereafter accepted the claim of the assessee. In order to appreciate the contentions of the assessee, we deem it appropriate to take note of relevant explanation given to the CIT(A) and reproduced on page nos. 20 to 27, which reads as under:-*

*4.1 Regarding Amortization of the FCMITDA for Rs. 1,74/27,501/-:*

*During the course of the assessment proceedings, the ld. Assessing Officer vide notice dated 20.01.2016 asked the appellant to furnish details in respect of Amortization of Foreign Currency Monetary Transition Difference in response to the which the required details were submitted vide submission dated 27.01.2016 submitted the following facts:*

*(i) The appellant company during the year under consideration has capitalized the foreign exchange loss of Rs. 1080.38 lakhs to the cost of fixed assets (the same is evident from Note 2.11 of the Audited Financial Statements)*

*(ii) Further as sum of Rs. 80.63 lakhs to the Capital Work in Progress (the same is evident from Note 2.13 of the Audited Financial Statements).*

*(iii) Further, it has also deferred foreign exchange loss of Rs. 168.82 lakhs in “Foreign Currency Monetary Item Transaction Difference Account” (herein after referred as FCMITDA) in accordance with the*

*amendment dated 28.12.2011 to Accounting Standard (AS 11) on "Effects of changes in Foreign exchange Rates" issued by Ministry of Corporate Affairs (MCA) vide GSR Notification dated 29.12.2011. The Assessing Officer's attention was brought to the Note 2.31 of Audited Financial Statements wherein the fact was clearly mentioned.*

*(ii) As regards to Foreign exchange loss of Rs. 170.45 lakhs charged to Profit & Loss Account, it was submitted that out of such amount the Forex Loss amounting to Rs. 174.28 lakhs pertains to the amortization of the FCMITDA which represents the Foreign exchange Loss on the portion of Foreign Currency Borrowings that were not utilized for purpose of acquisition of assets and hence parked as deposits with the banks.*

*However, the Id. Assessing Officer straight away rejected the appellant's contention and disallowed the loss on following grounds:*

*(i) It has failed to produce any material on record to show that the said loss was not in relation with the fixed assets or CWIP rather it has already submitted that the loss was arising out of the foreign currency loan in respect of fixed assets.*

*(ii) The said loss was not a realized one and occurred on account of revaluation of amount parked in deposits as per the submission of the assessee, and therefore, the same was notional loss and not allowable.*

*(iii) The case law relied upon by the assessee is not applicable in the case of the assessee, as the facts of the case of the assessee company are different of the case it has relied upon. The difference on account of conversion of foreign currency loan taken in respect of fixed assets is very much liable to be treated as per the provisions of Section 43A of the I. T. Act.*

*As can be observed from the above submitted facts submitted during of the course of Assessment Proceedings and the facts forming the germane of addition the Id. Assessing Officer rejected the appellant's claim contending that it is not a realized one and occurred on account of revaluation of amount parked in deposits and treated the same as notional loss. In this respect it is submitted that that the Id. Assessing Officer failed to consider the fact that the foreign exchange fluctuation loss of Rs. 170.45 lakhs is not related to any fixed assets or CWIP. However, the Id. Assessing Officer considered it as notional loss contrary to the fact that the Assessing Officer has himself factually accepted that the loss pertains to amounts parked as fixed deposits.*

*4.2 Treatment of Foreign Exchange Loss in accordance with the amended AS-11:*

*In light of the above explained factual position, the appellant company finds it necessary to explain the entire methodology in accordance to*

*which it has claimed the Forex loss amounting to Rs. 174.28 lakhs during the year under consideration. Hence, in regards to the above addition the following facts explaining the accounting treatment of the Forex Loss in accordance with amended AS-11 and supporting the claim of appellant are submitted:*

*(A) On the harmonious consideration of amendment dated 29.12.2011 to Accounting Standard (AS 11) on "Effects of changes in Foreign exchange Rates" issued by Ministry of Corporate Affairs (MCA) vide GSR Notification dated 29.12.2011 it can be deduced that the corporate are allowed to avail the option under Para 46A mentioned in the said notification in accordance to which the foreign exchange loss arising on restatement of any Foreign Currency Borrowing can be accumulated in FCMITDA and deferred over the period of long term liability, if such borrowings are utilized for the purpose other than that relating to the fixed assets. This means, that where a company have acquired any Foreign loan with a purpose to acquire or construct the asset and if due to any movement in the exchange rates of the foreign currency and the reporting currency the revaluation of balance of loan is made, then any gain or loss arising out of such revaluation can be adjusted to the cost of asset so acquired or constructed. However, the amount of loss pertaining to the balance of loan not utilized for acquisition or construction of fixed assets can be accumulated in FCMITDA and deferred over the period of loan and the portion of accumulated loss can be written off in the Profit & Loss Account annually.*

*(B) In the earlier years the Appellant has taken two External Commercial Borrowings (ECB) from State Bank of India and Export Import Bank of India.*

*1. The loan taken from Export Import Bank of India (EXIM) was entirely utilized for the purpose of acquisition of fixed assets. Total Loss on account of the Foreign Exchange Fluctuation amounted to Rs. 5,28,77,147/- (working of the same is provided below in Table 2) and as the entire loan proceeds were utilized for the acquisition of the asset therefore no portion of foreign exchange loss on the loan was transferred to FCMITDA during the year under consideration.*

*2. In respect of loans from State Bank of India, it is stated that the Total Loss on account of the Foreign Exchange Fluctuation amounted to Rs. 8,01,05,450/- (working of the same is provided below in Table 3) and as the appellant had partly utilized such loan for acquisition or construction of fixed assets and such portion is capitalized and the unutilized portion of loan is parked as fixed deposits, the foreign exchange loss arising on this ECB utilized for parking of fixed deposit was transferred to FCMITDA.*

*In accordance with the Accounting Treatment mentioned in Para 46A and the factual matrix of the case, the appellant has arrived at the quantum of the Forex Loss debited in the P&L Account at Rs. 170.45 lakhs in the following manner:*

6. *Apart from the above explanation, the assessee has appraised the ld.CIT(A) about the quantification of such loss. All these details in tabular form have been produced before the ld.CIT(A) and are available on pages no.22 to 33 of the CIT(A)'s order. We have gone through this working. It is also pertinent to observe that in the explanation extracted (supra), the assessee has reproduced reasons assigned by the AO for rejecting its contentions and disallowing the loss. The ld. Sr.DR relied upon the order of the AO. On the other hand, the ld. counsel for the assessee submitted that identical loss was disallowed to the assessee in the Asstt. Year 2012-13. The dispute travelled upto the Tribunal in ITA No.2007/Ahd/2016. This appeal of the Revenue has been dismissed vide order dated 29.3.2019. He placed on record copy of the Tribunal's order and submitted that in the Asstt. Year 2011-12 the loss of Rs.1.23 crores on account foreign exchange loss was claimed. It was allowed by the CIT(A) and Tribunal has upheld the order of the CIT(A).*

7. *We have duly considered rival contentions and gone through the record carefully. Basically, the stand of the assessee is that Ministry of Corporate Affairs (MCA), Govt. of India has issued a notification on 29.12.2011 explaining effects of changes in foreign exchange rates; how these facts are to be considered under Accountant Standard 11 (AS-11). According to this notification, if a company has acquired any foreign loan with a purpose to acquire or construct asset, and if due to any movement in the exchange rates of the foreign currency and the reporting currency the revaluation of balance of loan is made, then any gain or loss arising out of such revaluation can be adjusted to the cost of asset so acquired or constructed. However, the amount of loss pertaining to the balance of loss not utilized for acquisition or construction of fixed assets can be accumulated in Foreign Currency Monetary Item Transition Difference Account (FCMITDA). It may be deferred over a period of loan and the portion of accumulated loss can be written off in the profit & loss account annually. On the strength of this circular, the assessee has worked out un-utilised loan for capital assets, and how that has been accumulated and deferred over the period of loan. This working has been reproduced by the ld.CIT(A) while taking cognizance of the assessee's submission. In this background, if we examine the order of the ld.CIT(A), then it would reveal that the ld.CIT(A) has examined the facts in right prospective while deleting the disallowance. The AO was of the view that such loss arose out of foreign currency loan acquired in respect of fixed assets. He failed to appreciate real transaction, and how the loss has been worked out by the assessee. In earlier year, the Tribunal has upheld deletion, and therefore, we do not see any reason to interfere in the order of the ld.CIT(A)."*

13. In the absence of any change circumstances respectively relying upon the order passed by the Ld. Tribunal we do not find any reason to interfere with the order passed by the Ld. CIT(A) in favour of the assessee on the identical issue and hence, the same is hereby confirmed. In the result, this ground of appeal preferred by the Revenue is dismissed.

14. In the result, Revenue's appeal is dismissed.

Cross Objection No. 29/Ahd/201(A.Y. 2014-15):-

15. By and under the cross objection the assessee has challenged the order passed by the Ld. First Appellate Authority in confirming the finding of the AO that the employees' contribution amounting to Rs. 2,55,876/- to Provident Fund and ESIC Act not allowable Under Section 36(1)(va) of the Act. The assessee, in this regard, relied upon the judgment passed by the Hon'ble Tribunal in ITA No. 1585/Ahd/2018 for A.Y. 2015-16 passed by the Co-ordinate Bench.

16. On the other hand, the Ld. DR relied upon the order passed by the authorities below.

17. Heard the parties, perused the relevant materials available on record.

It has already been decided by the jurisdictional High Court in the matter of CIT vs. Gujarat State Road Transport Corporation that employees' Provident Fund and ESIC welfare fund contribution is only allowable as a deduction Under Section 36 (1)(va) in the event if it is paid by the due date prescribed in the

concerned Act. In that view of the matter the authorities below has disallowed such contribution made by the assessee. Argument has been advanced by the Ld. Counsel appearing for the assessee that since the issue is pending adjudication before the Hon'ble Supreme Court this matter may be remitted to the Ld. AO for adjudication of the same afresh after the issue is decided by the Hon'ble Apex Court and, therefore, the order passed by the Co-ordinate Bench has been relied upon. However, We find no such justification in passing such an order since the matter at the present moment is covered against the assessee by the jurisdictional High Court in the matter of CIT vs. Gujarat State Road Transport Corporation reported in 366 ITR 170as discussed above. Hence, we find no merit in the Cross Objection preferred by the assessee. Thus, the same is hereby dismissed.

18. In the combined result, both the appeal filed by the Revenue and the Cross Objection filed by the assessee, are dismissed.

**This Order pronounced in Open Court on 22/10/2019**

Sd/-

(WASEEM AHMED)  
ACCOAUNTANT MEMBER

Ahmedabad: Dated 22/10/2019

TANMAY

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

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

Sd/-

(MADHUMITA ROY)  
JUDICIAL MEMBER

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।