

आयकर अपील अाधिकरण, अहमदाबाद ँयायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
"C" BENCH, AHMEDABAD
BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI Ms MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./ITA No.2173/AHD/2015

अाधरण वष/Asstt. Year: 2011-2012

Adani Infrastructure and Developers Pvt. Ltd. Adani House, Nr. Mithkhali Six Road, Navrangpura, Ahmedabad-3800009. PAN: AAFC9521J	Vs.	D.C.I.T, Circle-1, Ahmedabad.
--	-----	-------------------------------------

आयकर अपील सं./ITA No.2345/AHD/2015

अाधरण वष/Asstt. Year: 2011-2012

D.C.I.T., Circle1(1)(1), Ahmedabad	Vs.	Adani Infrastructure and Developers Pvt. Ltd. Adani House, Nr. Mithkhali Six Road, Navrangpura, Ahmedabad-3800009. PAN: AAFC9521J
--	-----	--

(Applicant)	(Respondent)
Assessee by :	Shri S.N. Soparkar & Shri V.R. Chokshi, A.Rs
Revenue by :	Shri L.P. Jain, Sr.D.R

सुनवाई का तारख/Date of Hearing : 31/07/2019

घोषणा का तारख /Date of Pronouncement: 16/10/2019

आदेश/O R D E R

PER SHRI WASEEM AHMED ACCOUNTANT MEMBER:

The captioned Cross appeals have been filed at the instance of the Revenue and Assessee against the order of the Commissioner of Income Tax (Appeals)- 1, Ahmedabad [Ld.CIT(A) in short] dated 31/05/2015 arising in the matter of assessment order passed under s.143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 29/03/2014 relevant to Assessment Year (AY) 2011-12.

First, we take Revenue's appeal bearing no.2345/Ahd/2015 for A.Y. 2011-12. The Revenue has raised the following grounds of appeal:

1. *The CIT(A) has erred in law and on facts in partly deleting the disallowance made u/s.14A of the Act.*
2. *The CIT(A) has erred in law and on facts in partly deleting the addition made of disallowance made u/s.14A of the Act while computing Book Profit u/s.115JB of the Act.*

On the fact and in the circumstances of the case and in law, the CIT(A) ought to have upheld the order of the Assessing Officer to the extent mentioned above since the assessee has failed to disclose his true income/book profit.

The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored to the above extent. The appellant craves, to leave, to amend or alter any ground or add a new ground which may be necessary.

The first issue raised by the Revenue is that the "Ld.CIT (A)" erred in deleting the disallowances made by the AO in part amounting to Rs.3,84,43,112/- only u/s.14A r.w.Rule 8D of the Act.

2. Briefly stated facts are that the assessee is a private limited company and engaged in the business of Real estate development and financial activity. The assessee in the year under consideration has earned dividend income of Rs.30,03,63,727/- which was claimed as exempted income u/s 10(34) of the Act. The assessee against such income has not made any disallowance of expenses in pursuance to the provision of section 14A r.w. Rule 8D of the Act. The assessee *inter-alia* submitted before the AO that interest expenses are less than interest income shown by it. As such, the assessee has not claimed any interest expenditure in the profit and loss account.

2.1 The assessee also submitted that the disallowance of administrative expenses cannot be made on an estimated basis. It is because it has not incurred any administrative expenses for the earning of such exempt income.

2.2 However, the AO dis-agreed with the contention of the assessee by observing that the assessee must have incurred some expenses by way of interest and administrative expenses for the earning of such exempt income. Therefore, he invoked the provision of section 14A r.w.Rule 8D of the Rules and made the disallowance as under:

Sr.	Particular	Amount
1.	Direct expenditure u/s.Rule 8D (i)	Nil
2.	Interest Expenditure u/s.Rule 8D (ii)	4,01,30,089/-
3.	Administrative Expenses u/s. Rule 8D (iii)	50,42,189/-
	<i>Total</i>	4,51,72,278/-

The aforesaid amount was disallowed and added to the total income of the assessee.

Aggrieved assessee preferred an appeal to the "Ld.CIT (A)".

3. The assessee before the Id. "Ld.CIT (A)" among other things submitted that its net interest income exceeds interest expenses. Therefore there cannot be any disallowance of interest expenses under Rule 8D(2)(ii) of the Rules.

3.1 The assessee regarding the administrative expenses submitted that it has received the amount of dividend through ECS without incurring any administrative expenses for the earning of such dividend income. The assessee also claimed that if any expenditure needs to be disallowed in connection with the exempted income, then it would be of very nominal value.

3.2 However, the "Ld.CIT (A)" dis-regarded the contention of the assessee and confirmed the order of the AO in part by observing as under:

(B)5.3 These facts clearly reflect that interest bearing funds were utilized both for its business including investment as well as for advancing loan to subsidiaries companies. The appellant claimed interest payment but reflected interest interest receipt from such loan & advances. It is therefore I am partly inclined with appellant's contention as well as ratio of my predecessor that netting of interest has to be considered for disallowances under rule 8D(2)(ii). But, such netting of interest cannot be made in a general manner. The A.O. white computing such interest disallowances of Rs. 4,01,30,0897- on gross interest expenses of Rs. 312321261/-considered average investment including investment in partnership firm M/s. ATREG and average of total assets. As against this appellant claimed that in view of netting of interest and there being effectively no net interest claim, there should not be any disallowances under rule 8D(2)(ii). It is in this regard, as discussed above, the investment in shares & securities by appellant in F.Y. 09-10 of Rs. 4.26 crore remained at Rs. 4.21 crore in F.Y. 10-11 but such investment cannot be held as that of made with interest free fund. On the other hand, appellant made investment in partnership firm M/s. ATREC which has increased from Rs. 59.94 crore to Rs. 133.76 crore but appellant received interest of Rs. 3.40 crore. It is therefore, such investment and allocation of interest be excluded from rule 8D(2)(ii). This left with the status of interest (gross) income of Rs. 32.06 crore against the claim of interest of Rs. 31.23 crore. It is therefore considering the mixed fund, interest disallowances has to be made in respect of investment in shares & securities, the income in the form of dividend is exempt. The same can

appropriately done by adopting the ratio of such investment with that of total assets out of total interest claim as follows:

		Rs.
(i)	<i>The interest claimed</i>	312321261
(ii)	<i>Av. Investment in share & securities (investment in prop. Concern M/s. ATREC excluded from total investment) [1/2 (42142410 + 42642419)]</i>	42392410
(iii)	<i>Av. Of total assets [as per A.O taken in working of disallowance in rule 8D(2)(ii)]</i>	7848390042

$$\begin{aligned} & \text{It is therefore disallowable interest} \\ & = \frac{42392410 \times 312321262}{7848390042} \\ & = 1686977 \end{aligned}$$

It is therefore as against the disallowance of Rs.40130089 by A.O., such disallowance is restricted to Rs.1686977 under rule 8D(2)(ii) or interest relatable to investment in shares & securities.

3.3 The Id. CIT-A regarding the administrative expenses confirmed the order of the AO by observing that the assessee has not justified its stand based on documentary evidence that it has not incurred any expense in the earning of such exempt income.

4. Being aggrieved by order of the "Ld.CIT (A)" the Revenue and the assessee are in appeal before us.

5. The Revenue is in appeal before us against the deletion of the addition made by the AO for Rs. 3,84,43,112/- whereas the assessee is in an appeal against the confirmation of the addition of Rs. 67,29,166/- in ITA No. 2173/Ahd/2015. The grounds of appeal of the assessee reads as under:

1. *On the facts and in the circumstances of the case, the learned CIT(A) erred in confirming disallowance u/s.14A of the I.T. Act, to the extent of Rs.67,29,166/- while computing total income of the appellant-company under the normal provisions of the I.T. Act.*

6. Both the Ld.DR and the Ld.AR, before us, relied before the order of the authorities below to the extent favorable to them.

7. We have heard the rival contentions of both the parties and perused the materials available on records. The assessee in the instant case has earned dividend income of Rs. 30,03,63,727/- which was received from its subsidiary company namely Adani Mundra SEZ Infrastructure Pvt. Ltd. and from the mutual fund. The assessee against such income has not made any disallowance of the expenses. Therefore the AO made the disallowance of the expenses amounting to Rs. 4,51,72,278/- in pursuance to the provision of section 14A r.w. Rule 8D fo the Act.

7.1 On appeal the "Ld.CIT (A)" was pleased to delete the addition made by the AO for Rs. 3,84,43,112/- in part on account of interest expenses. Thus the "Ld.CIT (A)" restricted the addition on account of interest expenses amounting to Rs. 16,86,977/- only. The "Ld.CIT (A)" also upheld the addition made by the AO on account of administrative expenses amounting to Rs. 50,42,189/-.

7.2 Regarding the disallowance of the interest expenses, admittedly the interest income exceeds interest expenditure claimed in the profit and loss accounts. In fact there was no interest expenditure claim by the assessee in the profit and loss account. The disallowance of the interest income and interest expenditure stands as under:

Particulars	Amount Rs.
<i>Interest income</i>	<i>32,05,71,036/-</i>
<i>Interest income from partnership firm</i>	<i>3,40,45,823</i>
<i>Less: Interest expenses</i>	<i>31,51,07,023</i>
Net interest income/(expenses)	3,95,09,836

7.3 We further note that the ITAT in the own case of the assessee bearing no.1623/Ahd/2013 vide order dated 06/09/2018 has deleted the addition made by the AO on account of interest expenses by observing that the interest income exceeds interest expenses. The relevant extract of the order is reproduced as under:

10. In the course of scrutiny proceedings, the AO inter alia noticed that the assessee has earned dividend income to the tune of Rs.30,42,833/- which is exempt from tax. The AO accordingly invoked the provisions of Section 14A of the Act and computed disallowance of expenditure attributable to such exempt income by resorting to formula provided in the Rule 8D of the Income Tax Rules, 1962. The disallowance under Rule 8D also included disallowance of interest amounting to Rs.28,38,6477- in terms of Rule 8D(2)(ii) of the IT Rules which is subject matter of controversy.

11. In first appeal, the CIT(A) granted relief to the assessee against the aforesaid action of proportionate disallowance of interest of the AO and deleted such disallowance.

12. Aggrieved, the Revenue preferred appeal before the Tribunal.

13. We have carefully considered the rival submissions on the issue. We notice the plea on behalf of the assessee on gross outgo of interest is Rs.126.49 Crores whereas the assessee has also earned interest income simultaneously of a bigger sum of Rs.130.02 Crores. Thus, essentially, there is excess of interest earned over interest expenditure. It is the contention on behalf of the assessee that in view of these facts it cannot be said that the assessee has claimed any expenditure on interest per se. It is thus the case of the assessee that netting of interest income and outgo is required to be done while invoking Rule 8D (2)(ii) of the IT Rules in the light of the decision of the Hon'ble Gujarat High Court in the case of Pr.CIT vs. Nirma Credit & Capital (P.) Ltd.[2017 85 taxmann.com 72 (Gujarat). In view of the decision of the Hon'ble Gujarat High Court holding that interest earned by the assessee is required to be factored for the purpose of ascertaining the amount of expenditure incurred by the assessee by way of interest, we find merit in the plea of the assessee that Rule 8D(2)(ii) shall have no application in the given facts where the interest income earned outweigh the interest expenditure. In consonance with the decision of the Hon'ble Gujarat High

Court, we decline to interfere with the conclusion drawn by the CIT(A) on the issue in favour of the assessee.

7.4 Respectfully following the same we delete the addition confirm by the "Ld.CIT (A)" on account of interest expense of Rs. 16,86,977/-

7.5 Regarding the administrative expenses, we note that the assessee claimed that it has not incurred any expenses. However, the learned AR for the assessee before us has not demonstrated based on the documentary evidence that the assessee has not incurred any expenses in connection with the exempted income. Accordingly, we do not find any reason to interfere in the finding of the authorities below. Hence, the ground of appeal of the Revenue is dismissed and ground of appeal of the assessee is partly allowed.

The next issue raised by the Revenue is that the "Ld.CIT (A)" erred in deleting the addition made by the AO in part u/s 14A r.w. Rule 8D while determining the book profit u/s.115JB of the Act.

8. The AO during the assessment proceedings made the disallowance as per the clause -f0 to explanation 1 of section 115JB of the Act for the amount which was disallowed u/s.14A r.w Rule 8D of the Act while determining the income under normal computation. Accordingly, the amount was disallowed under normal computation of income was also added to the book profit u/s.115JB of the Act.

9. Aggrieved assessee preferred an appeal to the "Ld.CIT (A)" who has partly confirmed the order of the AO in the same proportion in which the profit under normal computation of income was determined.

10. Being aggrieved by the order of the "Ld.CIT (A)" the Revenue and the Assessee are in appeal before us.

11. The Revenue is in appeal before us against the deletion of the addition of Rs.3,84,43,112/- whereas assessee is in appeal against the addition of Rs.67,29,166/- in the book profit determined u/s.115JB of the Act.

12. Both the Ld.DR, and Ld.AR, before us, relied upon the order of the authorities below to the extent favorable to them.

13. We have heard the rival contentions of both the parties and perused the material available on records.

13.1 At the outset we note that the identical issue in the own case of the assessee bearing ITA No. 2895/AHD/2014 for the AY 2010-11 vide order dated 06/09/2018 (supra) has been decided in its favor by the ITAT. The relevant extract of the order is reproduced as under:

26. The CIT(A) in first appeal however did not agree with the adjustments so made by the AO. We find that identical issue came up for consideration before the co-ordinate bench in case of Arvind Ltd. vs. DCIT ITA No.1816/Ahd/2011 order dated 08.03.2018 cited on behalf of the assessee. The relevant operative part of the aforesaid decision of the co-ordinate bench is reproduced hereunder:

"5. We have carefully considered the rival submissions and perused the orders of the authorities below and also several judicial precedents cited. In the present case, we are concerned with the limited controversy as to whether, for the purposes of computation of 'book profit' under s.115JB, the AO is entitled to increase 'book profit' by the equivalent amount of disallowances as found attributable to exempt income under normal provisions or not. While it is the case of the assessee that in view of long line of judicial precedents, such adjustment in 'book profit' is not permissible, it is the case of revenue that in view of codified law in this regard, the 'book profit' under 115JB has been rightly increased by the revenue.

6. We notice that issue is evolved and developed by certain judicial precedents. We find at the first instance that the identical issue came up for consideration before the Hon'ble Gujarat High Court in the case of *Alembic Ltd. (supra)* where the substantial question of law on the point as to whether adjustment made on account of disallowance under S.14A of the can be similarly made for the purposes of computation of 'book profit' under s.IISJB of the Act was answered against the Revenue and in favour of the assessee. We also take note of decision of the Special Bench rendered in *ACIT vs. Vireet Investment Pvt.Ltd. & Anr. !65 ITD 27 (Delhi)[SB]* where it was held that the AO was not entitled to tinker with book profits contemplated under s.IISJB towards disallowance made under S.14A of the Act. We similarly find that judgement of Hon'ble Bombay High Court in *C/T vs. Bengal Finance and Investments Pvt.Ltd. in ITA No.337 of 2013 order dated 10/02/2015* also complements the issue. Thus, seen on the anvil of the judicial fiat available squarely on the issue, we are disposed to assign merits to the contentions on behalf of the assessee. At this juncture, we pause to note the concern of revenue seeking to plead possible redundancy of clause(f) to Explanation to S.II5JB in the event of disagreement with the action of AO. We are alive to such concerns. However, as noted, we are governed by the superior wisdom available in this regard. Hence, remedy to revenue, if any, perhaps lies elsewhere. Accordingly, respectfully following the decisions governing the field, we direct the AO to delete the adjustments made on account of estimated disallowance determined under S.14A of the Act while computing 'book profit' under u/s.II5JB of the Act.

7. In the result, appeal of the assessee is allowed. By the same token, the appeal of the Revenue integrated to sme point requires to be decided in negative and against the Revenue''

27. In the light of the aforesaid decision of the co-ordinate bench relied upon by the assessee, we do not see any error in the conclusion drawn by the CIT(A).

13.2 However, we note that admittedly the amount disallowed under section 14A r.w. Rule 8D under normal computation of income cannot be imported while calculating the book profit u/s 115JB of the Act as held in the recent judgment of Special Bench of Honøble Delhi Tribunal in the case of *ACIT vs. Vireet Investment Pvt. Ltd. (supra)*.

13.3 However, it is also clear that the disallowance needs to be made with respect to the exempted income in terms of the provisions of clause (f) to section 115JB of the Act while determining the book profit. In holding so, we draw support from the judgment of Honøble 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 regarding the 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.”

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).

13.4 Now the question arises to determine the disallowance as per the clause (f) to Explanation-1 of Sec. 115JB of the Act independently. In this regard, we note that there is no mechanism/ manner given under the clause (f) to Explanation-1 of Sec. 115JB of the Act to workout/ determine the expenses with respect to the exempted income. Therefore in the given facts & circumstances, we feel that ad-hoc disallowance will service the justice to the Revenue and assessee to avoid the multiplicity of the proceedings and unnecessary litigation. Thus we direct the AO to make the disallowance of 1% of the exempted income as discussed above under clause (f) to Explanation-1 of Sec. 115JB of the Act. 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 note that there is no mechanism provided under the clause (f) to Explanation-1 of Sec. 115JB of the Act to make the disallowance independently. Therefore our action for

restoring back the issue to the file of AO would unnecessarily cause further litigation. Thus we limit the disallowance on an ad-hoc basis @ 1 % of the exempted income as per the clause (f) to Explanation-1 of Sec. 115JB of the Act. Thus the ground of appeal of the Revenue and the assessee are partly allowed.

In the result, the appeal filed by the Revenue is partly allowed.

Coming to the ITA No. 2173/Ahd/2015 for A.Y. 2011-12. The assessee has raised following grounds of appeal.

1. *On the facts and in the circumstances of the case, the learned CIT(A) erred in confirming disallowance u/s.14A of the I.T. Act, to the extent of Rs.67,29,166 while computing total income of the appellant-company under the provisions of the I.T. Act.*
2. *On the facts and in the circumstances of the case, the learned CIT(A) erred in confirming disallowance u/s.14A of the I.T. Act, to the extent of Rs.67,29,166 while computing book profit u/s.115JB of the I.T. Act.*
- 3.(A) *On the facts and in the circumstances of the case, the learned CIT(A) erred in confirming addition made by the Assessing Officer in respect of Professional Fees of Rs.25,04,970, subject to verification of the correct amount to be added as directed by the learned C.I.T. (Appeals).*

(B) *Alternatively and without prejudice to the above ground, the learned C.I.T. (Appeals) ought to have directed the Assessing Officer to exclude the Professional Fees from the total income for the immediately succeeding Assessment Year 2012-13, as otherwise it would amount to double addition of the same income.*
4. *On the facts and in the circumstances of the case, the learned CIT(A) erred in confirming addition to the extent of Rs.2,35,338 out of total development expenses of Rs.12,89,839 in spite of the fact that these expenses were neither debited to the Profit and Loss Account nor claimed by the appellant company by way of deduction while computing total income.*
5. *The appellant craves leave to add, alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.*

The first issue raised by the assessee in grounds no.1 is that "Ld.CIT (A)" erred in confirming the disallowance u/s 14A r.w. Rule 8D of the Act in part amounting to Rs.67,29,166/- only.

14. At the outset, we note that the impugned issue raised by the assessee has already been decided along with the appeal of the Revenue bearing ITA No.2345/Ahd/2015 vide paragraph no. 7 of this order. For the detailed discussion please refer to the relevant paragraph. Accordingly, the ground of appeal of the assessee is partly allowed.

The next issue raised by the assessee is that the "Ld.CIT (A)" erred in confirming the disallowance of Rs.67,29,166/- while determining the book profit u/s.115JB of the Act.

15. At the outset, we note that the impugned issue raised by the assessee has already been decided along with the appeal of the Revenue bearing ITA No. 2345/Ahd/2015 vide paragraph no. 13 of this order. For the detailed discussion please refer to the relevant paragraph. Accordingly, the ground of appeal of the assessee is partly allowed.

The next issue raised by the assessee is that the "Ld.CIT (A)" erred in confirming the addition of Rs. 25,04,970/- on account of Professional Fees.

16. The AO during the assessment proceedings observed that the assessee has received sum of Rs. 25,04,970/- from Gujarat Adani Institute of Medical Services on account of professional Services. The said receipt was subjected to TDS u/s 194 J of the At. However, the assessee has not shown the same as

income in its books of accounts whereas it has claimed the credit of TDS amount without showing corresponding income.

16.1 However, the assessee claim that the said income has been shown in the subsequent assessment year. But, the AO dis-regarded the contentions of the assessee by holding that the impugned income pertains to the year under consideration and accordingly the same is liable to tax in the year under consideration. Thus, the AO added the sum of Rs. 25,04,970/- to the total income of the assessee.

17. Aggrieved assessee preferred an appeal to the "Ld.CIT (A)" the assessee before the "Ld.CIT (A)" submitted that it had filed its reconciliation chart justifying that the impugned income does not pertain to the year under consideration. The AO without appreciating the reconciliation statement disregarded the contention of the assessee.

17.1 The assessee without prejudice to the above also submitted that in case the addition is confirmed on account of impugned income then the same should be reduced from the income of the subsequent year in which such income was offered to tax.

17.2 However, "Ld.CIT (A)" dis-regarded the contention of the assessee by observing that the income is to be offered in the year under consideration as per the matching principle. Once the assessee has taken the benefit of TDS amount then the corresponding income should also be offered to tax.

17.3 The "Ld.CIT (A)" also rejected the plea of the assessee by observing that the case of the subsequent assessment year 2012-13 is not before him.

Therefore he cannot give such direction to the AO to exclude the impugned income from the Professional Fees in the subsequent assessment year.

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

19. The Id.AR, before us, submitted that the impugned professional income has already been offered to tax in the subsequent assessment year and accordingly prayed for the direction to exclude such income from the subsequent assessment year.

19.1 The Ld.AR, also submitted that the assessee had paid taxes for the year under consideration under MAT and therefore even the impugned income is added to the total income of the assessee, there will not be any impact on the amount of tax. Therefore adding the professional receipts to the income of the year under consideration will be tax neutral exercise.

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

21. We have heard the rival contentions of both parties and perused the relevant materials available on records. Admittedly there is no provision under the Act to tax the same income twice as done in the instant case. The contention of the assessee that the impugned income has been offered to tax in the subsequent year has not been disregarded by the authorities below. Therefore we are of the considered view that if any addition is made in the year under consideration, then it will amount to double addition which is against the provision of law.

21.1 The income tax has to be levied in the hands of the right assessee and the right assessment year, but the fact of the present case are different so far as the assessee is liable to pay tax under the provision of MAT. Thus we agree with the contention of the "Ld.AR, that even if the impugned income is added to the total income of the assessee then also it will be tax neutral exercise. It is because there will not be any change on the tax amount as the assessee is paying tax under the provision of MAT.

21.2 There is no dispute that the impugned income is taxable under the Act, and therefore the same has been offered to tax in the subsequent assessment year. Thus there cannot be any benefit to the Revenue by adding the impugned income to the total income of the assessee in the year under consideration. Hence we are not inclined to uphold the findings of the authorities below. Accordingly we set aside the order of the "Ld.CIT (A)" and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

The next issue raised by the assessee is that the "Ld.CIT (A)" erred in confirming the addition of Rs. 2,35,338/- out of the total development expenses of Rs.12,89,839/- despite the fact the same was not debited in the profit and loss accounts.

22. The assessee in the year under consideration has incurred an expense of Rs. 12,89,838/- which was added to the site development expenses classified as work in progress in the balance sheet. However, the AO during the assessment proceeding found that the assessee is not engaged in any

development activity. Therefore the same was disallowed and added to the total income of the assessee.

Aggrieved assessee preferred an appeal to the "Ld.CIT (A)".

23. The assessee before the "Ld.CIT (A)" submitted that it has incurred expenses for the safety and security of land purchased for Real Estate Development. The assessee further submitted that it had added the impugned expenses to the work in progress shown in the financial statement.

24. The "Ld.CIT (A)" after considering the submission of the assessee concluded that the assessee is engaged in land development activity and therefore the expenditure incurred in relation to the land development are eligible to be the part of inventory. However, the "Ld.CIT (A)" found that expenditure of Rs. 2,35,338/- out of total expenditure of Rs. 12,89,838/- was not based on any documentary evidence. Therefore the "Ld.CIT (A)" confirmed the addition of Rs.2,35,338/- in part.

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

25. The Ld.AR, before us, submitted that it had not claimed any expenditure in the profit and loss account and therefore the same cannot be disallowed by adding to the total income of the assessee.

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

27. We have heard both the parties and considered the materials available on record. The assessee in the year under consideration has incurred an expense of ₹ 12,89,839.00 only which was shown as part of closing inventory of the work in progress. Out of such expenses, an amount of ₹ 2,35,338.00 was shown as a payment to the caretaker, for the patrol and other expenses in the ledger filed by the assessee. However, the learned CIT (A) could not verify the genuineness of the expenses and the applicability of the TDS provisions in the absence of sufficient documentary evidence. Therefore, the learned CIT (A) confirmed the addition of ₹ 2,35,338.00 and deleted the balance amount of ₹ 10,54,500.00 only.

27.1 Admittedly, the assessee did not claim the deduction of such expenditure in its profit and loss account in the year under consideration. As such the impugned expenditure was shown as part of work-in-progress on revenue account. There is no dispute regarding the facts as under:

- i. The impugned expenses were not claimed in the profit and loss account as a deduction. Thus, the profit shown by the assessee cannot be enhanced by disallowing such expenditure.
- ii. The impugned expenses being revenue in nature would be claimed as a deduction in the future year by the assessee in which such work in progress will be sold by it.

27.2 Now, the question arises whether the amount of profit declared by the assessee can be enhanced by the amount of expenditure incurred by it which were not claimed as deduction being part of closing inventory. To our mind, the answer stands in favour of assessee i.e. the impugned expenses were never claimed as deduction. Therefore, there is no reason to enhance the profit

declared by the assessee. At most, the Revenue can reduce the amount from the closing inventory and disallowed the corresponding expenses.

27.3 For example, the assessee has claimed an expense of ₹ 100 in connection with the inventory by debiting the profit and loss account and simultaneously, adding the same to the closing inventory. As a result, there cannot be any impact on the profit declared by the assessee. Thus in case, the revenue is not satisfied with the value of the closing inventory on account of such expenses, then it can reduce the same from the value of the closing inventory as well as it can disallow the impugned expenses debited in the profit and loss account. In effect, the entire exercise will be tax neutral, having no impact on the profit declared by the assessee.

27.4 To our mind, the analogy as discussed above applies to the case on hand. Therefore, in our considered view, the AO should reduce the impugned expenses from the amount of closing inventory and disallow the corresponding expenses debited in the profit and loss account, leaving the profit as declared by the assessee intact.

27.5 In the backdrop of the above discussion, we proceed to adjudicate the issue on merit whether the impugned expenses needs to be added as a part of the closing inventory. There is no ambiguity that the expenditures incurred by the assessee in connection with the inventories needs to be added in its value. But such expenditure must be based on the documentary evidence. In the case on hand, the learned CIT (A) has given very clear finding that the assessee has not produced the documentary evidence in support of such expenses except a ledger which is not sufficient enough to justify the genuineness of the expenses. The learned AR for the assessee has also not produced any

supporting document in connection with such expenses. Therefore, in the absence of documentary evidence, we concur with the finding of the learned CIT (A).

27.6 However, before parting we make it clear that there cannot be any addition to the total income of the assessee on account of such expenses for the reasons as discussed in the preceding paragraph. Accordingly, we direct the AO to reduce the value of the inventory for the work in progress as well as disallow the corresponding expenses debited by the assessee in the profit and loss account. Hence, the ground of appeal of the assessee is allowed in terms of the above.

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

28. In the combined results, both the appeals of the Revenue and assessee are partly allowed.

Order pronounced in the Court on 16/10/2019 at Ahmedabad.

-Sd-
(Ms MADHUMITA ROY)
JUDICIAL MEMBER

-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated **True Copy**
16/10/2019
manish