

आयकर अपीलिय अधिकरण, अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, AHMEDABAD
BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
And SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

Sl. No(s)	ITA No(s)	Asset. Year(s)	Appeal(s) by	
			Appellant vs. Respondent	
			Appellant	Respondent
1.	217/Ahd/2014	2006-07	Shree Rama Multi –Tech Ltd. 603, Shikhar Building, Navrangpura, Ahmedabad-380009 PAN No. AAJ CS1 563 N	ACIT(OSD), Circle-8, Ahmedabad
2.	1510/Ahd/2009	2003-04	Shree Rama Multi-Tech. Ltd. Ram Nivas No.1, Khanpur, Ahmedabad PAN No. AAJ CS1 563 N	ITO Ward-8(4), Ahmedabad
3.	1511/Ahd/2009	2004-05	Shree Rama Multi-Tech. Ltd. Ram Nivas No.1, Khanpur, Ahmedabad PAN No. AAJ CS1 563 N	DCIT(OSD), Circle-8, Ahmedabad
4.	1890/Ahd/2009	2003-04	ACIT(OSD), Circle-8, Ahmedabad	Shree Rama Multi-Tech. Ltd. Ram Nivas No.1, Khanpur, Ahmedabad PAN No. AAABS0322F

Assessee by :	Shri S. N. Soparkar, Sr. Advocete, with Shri Parin Shah
Revenue by :	Shri L. P. Jain, Sr. DR & Ms. A Khan, CIT DR

सुनवाई की तारीख/Date of Hearing : 08.01.2020

घोषणा की तारीख /Date of Pronouncement : 20.01.2020

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

In these four appeals, three appeals have been filed by the assessee and one by the Revenue for A.Ys. 2003-04, 2004-05 &2006-07, arise from order of the

CIT(A)-XVI, Ahmedabad and CIT(A)-XIV, Ahmedabad dated 21.11.2013 & 26.03.2009, in proceedings under section 143(3) of the Income Tax Act, 1961 (in short “the Act”).

2. First we take up ITA No. 1510/AHD2009, the assessee has raised the following grounds of appeal:

“5. The learned CIT(A) has grossly erred in law and on facts in confirming disallowance of Rs. 9,94,421/- made by the ld. AO u/s 35D of the Act.

6. The learned CIT(A) has grossly erred in law and on facts in confirming disallowance of Rs. 9,13,861/- made by the ld. AO in respect of Public Issue expenses.”

3. The Hon’ble Gujarat High Court has set aside the ground Nos. 5 and 6 for fresh adjudication in its Tax Appeal No. 509 of 2012 vide order dated 12th February 2013. Accordingly, we proceed to hear the ground Nos. 5 and 6 for fresh adjudication.

4. The interconnected issue raised by the assessee is that the learned CIT (A) erred in confirming the disallowance of ₹994421/- and 913861/- under section 35D of the Act on account of public issue expenses.

5. The facts in brief are that the assessee in the present case is a limited company and engaged in the business of Manufacturing of Multi – layer Tubes, Printed products incl. Labels / Stickers and other Specialty Packing & Plastic Products. The assessee in the Assessment Year 2000-01 has incurred public issue expenses amounting to ₹10,63,81,582/- only. The assessee accordingly claimed 1/5th of such expenses for Rs. 2,12,76,316/- under the provisions of section 35D of the Act. However, the AO found that there are certain expenses amounting to Rs. 49,72,106/- incurred towards the conference and seminar expenses, guest entertainment expenses, travelling expenses, postage and courier expenses etc

which were not eligible for deduction under section 35D of the Act. Accordingly, the AO disallowed the proportionate expenses of ₹9,94,421/- being 1/5th of Rs. 49,72,106/- which was claimed in the relevant year i.e. AY 2000-01 and added to the total income of the assessee.

6. The AO for the under consideration following the order for the assessment year 2000-01 has also disallowed the similar expenses of ₹9,94,421/- and added to the total income of the assessee.

7. However, the AO further found that the assessee has claimed an expense of Rs. 2,21,19,0177/- whereas it should have claimed a sum of Rs. 2,12,76,316/- as claimed in the earlier assessment years. Accordingly, the AO found that there was an excess claim of ₹9,13,861/- by the assessee. Thus, the AO disallowed the same and added to the total income of the assessee.

8. Finally the AO disallowed the sum of Rs. 19,08,282.00 (9,94,421.00 plus 9,13,816.00) and made the addition to the total income of the assessee.

9. Aggrieved assessee preferred an appeal to the learned CIT (A) who confirmed the order of the AO.

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

10. The learned AR before us, at the outset conceded that the issue is covered against the assessee.

11. On the other hand, the learned DR vehemently supported the order of the authorities below.

12. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that the learned AR for the assessee has considered the fact that the issue is covered against the assessee. As, the learned AR for the assessee has conceded for the disallowance, therefore, we do not find any reason to probe it further. Accordingly, we confirm the disallowance made by the authorities below. Hence, the grounds of appeal of the assessee are dismissed.

13. In the result, the appeal filed by the assessee is disposed of as indicated above.

Coming to the ITA No. 1511/Ahd/2009 A.Y. 2004-05(Assessee' Appeal):-

14. The assessee has raised the following grounds of appeal:

“2. The learned CIT(A) has grossly erred in law and on facts in confirming disallowance of Rs. 9,13,861/- made by the ld. AO in respect of Public Issue expenses.”

15. At the outset, we note that, the identical issue raised by the assessee in ITA No. 1510/AHD/2009 has been decided by us against the assessee vide paragraph No. 11-12 of this order. For the detailed discussion, please refer the relevant paragraph. Respectfully following the same with do not find any infirmity in the order of the authorities below. Hence, the ground of appeal of the assessee is dismissed.

16. In the result, the appeal filed by the assessee is disposed of as indicated above.

Coming to ITA No. 1890/AHD 2009 A.Y. 2003-04(Revenue's Appeal):-

17. At the outset, the learned Counsel for the assessee before us submitted that, the impugned appeal filed by the Revenue has wrongly been listed for the hearing. As such this appeal was not restored back by the Hon'ble Gujarat High Court for fresh adjudication. Accordingly, the learned AR prayed before us for dismissing the impugned appeal of the Revenue as the same has already been disposed of by the ITAT vide order dated 06.01.2012.

18. On the contrary, the learned DR conceded to the argument made by the learned AR for the assessee.

19. In view of the above, we hold that the impugned appeal filed by the Revenue has wrongly been listed for hearing. Accordingly, we dismiss the same. Hence the appeal filed by the Revenue is dismissed.

20. In the result, the appeal filed by the Revenue is disposed of as indicated above.

Coming to ITA No. 217/Ahd/2014 A.Y. 2006-07(Assessee's Appeal):-

21. The assessee has raised the following ground of appeal:-

"1. Ld. CIT(A) erred in law and on facts in confirming addition made by AO of Rs. 1,75,39,681/- rejecting books of account invoking section 145 of the Act and adopting GP @40% of the turnover in place of 37% as worked out by the appellant. Ld. CIT(A) failed to appreciate detailed submissions, evidences and supporting place on record to substantiate fall in GP by the appellant. Ld. ought to have accepted correction of the books and deleted addition made by AO. It be so held now.

2. *Confirming levy of interest u/s 234B/234C &234D is not justified.*

3. *Initiation of penalty u/s 271(1)(c) of the Act is not justified."*

The assessee has also raised the following additional ground of appeal vide letter dated 06.01.2020.

“1. Ld. CIT(A) erred in law and on facts in confirming disallowance of depreciation of Rs. 3,67,46,232/- out of depreciation disallowed by AO of Rs. 6,11,31,472/- and further directing AO to disallow amount in excess of Rs. 3,67,46,232/- after verification.”

22. At the outset, the Ld. AR for the assessee before us submitted that the additional ground raised vide letter dated 06.01.2020 is legal in nature, and all the relevant details in respect of such ground are available on record. Accordingly, the Ld. AR prayed before us for the admission of the additional ground of appeal.

23. On the other hand, the Ld. DR did not raise any objection on the admission of the additional ground of appeal raised by the assessee.

24. We have heard both the parties and perused the materials available on record. It is a fact on records that all the informations related to the issue raised by the assessee in the additional grounds of appeal are available in the order of the authorities below. As such, there is no need to make any reference to any additional document.

25. Besides the above, we also note that the issue raised by the assessee in the additional ground of appeal is legal in nature which can be admitted at any stage during the proceedings. In this regard, we find support and guidance from the judgment of the Hon'ble Supreme Court in the case of NTPC Ltd Vs.CIT reported in 229 ITR 383 wherein it was held as under:

“Under section 254, the Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal,

it is found that a non-taxable item is taxed or a permissible deduction is denied, there is no reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of that item. There is no reason to restrict the power of the Tribunal under section 254 only to decide the grounds which arise from the order of the Commissioner (Appeals). Both the assessee as well as the department have a right to file an appeal/cross objections before the Tribunal. There is no reason why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier.

The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner (Appeals) takes too narrow a view of the powers of the Tribunal. Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings there is no reason why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.

In the instant case, therefore, the Tribunal had jurisdiction to examine a question of law which arose from the facts as found by the lower authorities and having a bearing on the tax liability of the assessee”.

In view of the above, we admit the additional ground of appeal raised by the assessee and proceed to adjudicate the same.

26. The first issue raised by the assessee in ground no.1 is that the learned CIT (A) erred in confirming the rejection of books of account and further making the addition of Rs. 1,75,39,681/- by adopting GP @ 40% of the turnover.

27. Briefly stated fact are that the assessee is a public limited company and engaged in business of manufacturing of multi layer tubes, printed products including labels/stickers and other packaging and plastics product. The AO during the assessment proceedings observed that the turnover and GP ratio declared by the assessee for the year under consideration has declined substantially as compared to the immediately preceding financial year. Accordingly the AO sought an explanation from the assessee for the decline in GP and turnover.

28. The assessee in response submitted that:-

- i. Its turnover declined due to the change in management and business model specially in relation to allowing the credit period to its customers to avoid the bad debts. It reduced margin on sale in order to reduce credit period.
- ii. Further its GP ratio reduced due to decline in sale price and increased in expenses such as consumption of spares & stores for repairs, maintenance and replacement of parts of machinery. The assessee in its support submitted copy of invoices having value more than Rs. 1,00,000/-.
- iii. The assessee further claimed that its GP also declined due to increase in the price of electricity and fuel in comparison to immediate previous year. The assessee in support of its claim filed copy of electricity and fuel bills having bill value of 1,00,000/- and more.
- iv. The assessee also claimed that its account were audited by independent auditor, internal auditor and tax auditor and all the details were examined but there was no adverse comment by them. The assessee in support of its contention filed the copy of quantitative details of opening & closing inventory, raw material purchased & consumed, finished goods produced and sales made during the year under consideration. It also submitted monthly sales and purchase details along with the name and address of debtors and creditors.

29. The AO issued notices under section 136(6) of the Act to four different suppliers/creditors but received no response from three suppliers. The assessee has made aggregate purchases of Rs. 51,53,778/- only from three parties. The AO in absence of any reply in response to the notice issued u/s 136(6) of the Act held

the same as unexplained expenses u/s 69C of the Act and added the same to the total income of the assessee.

30. The AO, on account of non response of notice from suppliers as discussed above, further held that the assessee has inflated the purchases and therefore the books of accounts maintained by it are not reliable and accurate. Accordingly the AO rejected the books of accounts under section 145(3) of the Act and estimated the GP @ 40% instead of 37% declared by the assessee. Thus the AO added the sum of Rs. 1,75,39,681/- to the total income of the assessee.

31. Aggrieved assessee preferred an appeal before learned CIT (A).

32. The assessee before learned CIT (A) submitted that it has filed all the details of sale purchase and invoices, goods carrier details, quantitative detail of inventory, payment ledgers, copy of supplier's account along with bank statement showing payment made by cheques. But the AO without pointing/bringing any defects in all these documentary evidences, made the impugned addition merely on the basis of reply not received from the 3 suppliers in response to notice under section 136(6) of the Act and decline in GP ratio.

33. The learned CIT (A) after considering the order of the AO and submission made by the assessee deleted the addition of Rs. 51,53,778/- made under section 69C of the Act but confirmed the rejection of books of account by sustaining the addition of Rs. 1,75,39,681/- by holding as under:

“5.3 I have carefully considered the submissions made by the appellant and the argument taken by the assessing officer in the light of material available on records. The argument of the appellant the GP has fallen on account of reduction in turnover are actually self defeating since reduction in turnover will lead to increase in GP unless profit margins have been reduced. The appellant on his part has not able to adduce any evidence that the profit margins were reduced. Without prejudice the argument that new management was working towards a new business module prima facie indicate that the new management was working towards a business module aimed at increasing the profit

*margins or to say the profitability per se. The argument that the new management evolved a new system by not dealing with traders and dealers, since it was facing the problem of bad debts, are also not convincing as claim of bad debts effect profit and loss account and will reduce the net profit and not gross profit which is primarily a entry of the trading account. It is further seen that the gross profit has fallen from 43% in preceding year to 37% leading to a fall of 6% whereas the AO has only added GP at the rate of 3%. The estimation made by the AO has thus been found to be fairly reasonable and does not requires any interference at his stage. **Consequently the addition of Rs. 1,75,39,681/- made on account of low GP ratio is confirmed and the ground of appeal No. 3 is therefore dismissed.**"*

Being aggrieved by the order of the ld. CIT-A, the assessee is in appeal before us.

34. The learned AR before us submitted that all the details were furnished before the authorities below and there was no defect pointed out by them. As such, the non-response from the supplier and decline in GP cannot be the ground for the rejection of the books of accounts.

35. On the other hand, the learned DR vehemently supported the order of authorities below.

36. We have heard the rival contentions and gone through the facts and circumstances of the case, including the materials available on record. As per section 145 of the Act, the AO is empowered to reject the books of accounts of the assessee and make best judgment assessment in the manner as specified under section 144 of the Act if he is not inter-alia satisfied with the completeness or correctness of the books of accounts of the assessee. Generally, the instances for the rejection of books of account include when entries in respect of certain transactions are altogether omitted or incorrect or where the accounts show an abnormally low rate of profit or where there is an inherent lacuna in the system of accounting.

37. However, the AO cannot use this power as a tool to reject the books of accounts merely due to non-maintenance of the stock register, variation in gross profit and non-furnishing of certain vouchers or its explanation or non-confirmation of sundry creditors. Anyway, before rejecting the books of accounts, the AO must record the specific reason for rejecting the books of accounts. Such satisfaction has to be established and substantiated based on facts and figures, which further depends on the circumstances of each case. Mere minor mistakes/typological errors/absence of stock registers/lower GP may not ipso facto amount to incorrectness/ incompleteness of accounts in terms of section 145(3) of the Act. But the case would be different where the above-mentioned mistakes are coupled with other findings.

38. In the given case, AO has rejected the book results of the assessee based on the facts and figured culled out by him as detailed hereunder:

- i. Lower gross profit in comparison to the last year
- ii. Non-confirmation from the sundry creditors in response to the notices issued under section 133(6) of the Act.

In the light of the above facts, the AO invoked the provisions of section 145(3) of the Act and thereby made upward addition of Rs. 1,75,39,681/-. In doing so, the AO has drawn authority given to him under section 145(3) of the Act. The learned CIT (A) subsequently confirmed the findings of the AO. Now we analyze each of the findings of the AO.

39. The decline in the GP rate in comparison to the immediately preceding assessment year cannot be criteria to reject the books. It is because the assessee explained that it had reduced the sale price to achieve an instant recovery of sale proceeds or reduced the risk of bad debts. The assessee also explained that its

expenditure such as electricity & fuel and spares consumption has also increased from immediate previous year. The explanation provided by the assessee for the fall in GP was nowhere controverted by the authorities below. Lower gross profit as compared to earlier year cannot be the ground to reject the books of accounts. In this regard we take the support from the case of Malani Ramjivan Jagannath Vs Asstt. CIT reported 316 ITR 120 where the Hon'ble Rajasthan High Court held as detailed under:

“The Tribunal committed basic error in not appreciating the reasoning given by the Commissioner (Appeals). It was trite to say that in the facts and circumstances of the instant case, account books were maintained as they were ordinarily maintained year after years and which were found to yield a fair result. Mere deviation in gross profit rate cannot be a ground for rejecting books of account and entering realm of estimate and guesswork. Lower gross profit rate shown in the books of account during current year and fall in gross profit rate was justified and also admitted by the Assessing Officer as well as Commissioner (Appeals) as well as the Tribunal. Therefore, fall in gross profit rate lost its significance. Having accepted the reason for fall in gross profit rate, namely, stiff competition in market and also that huge loss caused in particular transaction, neither the rejection of books of account was justified nor resort to substitution of estimated gross profit by rule of thumb merely for making certain additions was justified. Therefore, the findings arrived at by the Tribunal suffered from basic defect of not applying its mind to the existing material which were relevant and went to the root of the matter. When all the data and entries made in the trading account were not found to be incorrect in any manner, there could not have been any other result except, what had been shown by the assessee in the books of account. Therefore, the order of the Tribunal, was unsustainable. [Para 11]”

Regarding the non-response of the notice from the suppliers, we find that it cannot be ground for rejection of the books. It is because that the assessee has furnished Sales and purchase detail, Inventory register, copy of electricity and fuels bill, copy of spares & stores bills, ledgers etc. The AO did not point out any defect in all the details submitted before by the assessee. Therefore in our considered view, the books of accounts of the assessee cannot be rejected until and unless the AO point out the specific mistakes. In this respect we find guidance and support from the principle laid down by the Hon'ble Punjab & Haryana High Court in case of CIT vs. Om overseas where it was held as under:

“We find no force in the arguments raised by the learned counsel for the revenue. While allowing the appeal of the assessee, the CIT(A) has given a finding of fact that the additions have been made by the Assessing Officer without pointing out any specific defect in the books of account. The said finding has been further upheld by the Tribunal. During the course of arguments, learned counsel was unable to point out any illegality or perversity in the said finding of fact. Thus, we find no infirmity in the order of the Tribunal. No substantial question of law is arising for determination of this Court in this appeal and the same is hereby dismissed.”

A similar principle has been laid down by the Hon’ble Allahabad High Court in case of Awadhesh Pratap Singh Abdul Rehman & Bros v/s. CIT 201 ITR 404(All) which reads as;

“It is difficult to catalogue the various types of defects in the account books of an assessee which may render rejection of account books on the ground that the accounts are not complete or correct from which the correct profit cannot be deduced. Whether presence or absence of stock register is material or not, would depend upon the type of the business. It is true that absence of stock register or cash memos in a given situation may not per se lead to an inference that accounts are false or incomplete. However, where a stock register, cash memos, etc., coupled with other factors like vouchers in support of the expenses and purchases made are not forthcoming and the profits are low, it may give rise to a legitimate inference that all is not well with the books and the same cannot be relied upon to assess the income, profits or gains of an assessee. In such a situation the authorities would be justified to reject the account books under section 145(3) and to make the assessment in the manner contemplated in these provisions.”

We also find support and guidance from the order of ITAT Bench in the case of Haridas Parikh Vs. ITO reported in 113 TTJ 274 wherein it was held as under:

“Unless the Assessing Officer is able to point out certain transactions which have been left to be entered in the books of account or that the assessee has sold some of the items at a price higher than what is disclosed in the books of account or if proper particulars, bills, vouchers are not forthcoming, etc., the books of account cannot be rejected without assigning specific reasons.”

Accordingly, we note that the reasons basing on which the AO for rejected the books of accounts are not sufficient enough and cogent to disregard the books of accounts.

40. In view of the above and after considering the facts in totality, we are of the view that the books of accounts of the assessee are not liable to be rejected as per the provisions of section 145 of the Act. Accordingly, we conclude that once the books of accounts of the assessee are not liable to be rejected then its book profit should be accepted in the given facts and circumstances. Accordingly, in the backdrop of the aforesaid discussion and precedent, we set aside the order of the learned CIT (A) and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

41. The 2nd issue raised by the assessee in the additional ground is that the learned CIT (A) erred in confirming the disallowances of depreciation of Rs. 3,67,46,232/-.

42. The assessee during the year under consideration (i.e. A.Y. 2006-07) has claimed depreciation of Rs. 14,84,04,104/- out which Rs. 6,11,31,472/- represents depreciation on assets which were purchased by the assessee during A.Y. 2002-03 from its sister concern.

43. The brief history of the case is that there was the survey action u/s 133A dated 15/03/2005 at the premise of the assessee wherein the assessee failed to file the documentary evidence such as Fixed Assets register, purchase bills etc. with regard to such assets actually purchased in the AY 2002-03. Therefore the AO disallowed the depreciation on such assets from the A.Y. 2002-03 to 2005-06. Accordingly the AO following the same also disallowed the depreciation of Rs.

6,11,31,472/- in the current year with respect to the assets purchased by the assessee in the AY 2002-03.

Aggrieved assessee preferred an appeal before the learned CIT (A) who partly allowed the appeal of the assessee by restricting the disallowance up to Rs. 3,67,46,232/- only.

Being aggrieved, the assessee is in appeal before us.

44. At outset, we note that the Hon'ble ITAT in second round of appeal related to A.Y 2002-03 to 2005-06 allowed the claim of the assessee in ITA Nos. 1140, 1342 to 1344/AHD/2015 in its own case vide order dated 25.11.2019 by holding as under:

“8. We have gone through the relevant record and impugned order. Now question before us is that whether on the basis of survey conducted by the Income Tax Department claim of the assessee for depreciation should be allowed or not. After detailed deliberations and both the parties we heard in detail in support of its contention, Ld. A.R. submitted all the details with regard to purchase of machines. On the other hand, revenue contention was that machines were not purchased on the given date and payment was made through journal entry. When we specifically asked about the payment made in order to purchase machinery. Ld. A.R. shown us the payment detail and they were made through banking channels and relevant details of the said payment were shown to us and list of suppliers with invoices of machinery purchased were also submitted before the lower authorities. And ledger account of M/s. Vimpsan Precision Pvt. Ltd. was also submitted before the lower authorities. Apart from that reconciliation chart of plant and machinery with Dalal Mott Macdonald report were also submitted to the effect that machines were very much there and inspection was duly carried out by the surveyor. And Valuation Report certificate dated 26.05.2003 wherein before granting loan IDBI Bank carried out inspection and Valuation Report was duly prepared wherein details of all the machines were given.

9. The assessee requested Assessing Officer on 4th May, 2015 and on 12.08.2012 and on 19.09.2012 requesting the Assessing Officer to carry out the physical inspection of the machines. But ld. A.O. did not bother to inspect the same for the reason that ITAT did not give him direction to physically inspect the machines wherein in department appeal filed before the ITAT directed the ld. A.O. that he shall pass reasoned order by giving reasonable sufficient opportunity to the assessee considering the valuation report of Dalal Mott Macdonald and the

evidences produced by the assessee for purchase of tangible assets. As we can see, ld. A.O. did not bother to carry out the physical inspection and valuation report of Dalal Mott Macdonald and did not consider evidences such as photograph of the plant and machinery submitted before the ld. A.O. in pursuant to the ITAT direction.

10. We draw support from the case of Hon'ble Supreme Court in the matter of CIT vs. S. Khader Khan Son (2013) 352 ITR 480 (SC) wherein Hon'ble Supreme Court has held that only on the basis of statement recorded during the survey proceeding u/s. 133A cannot be basis of addition. There has to be corroborative evidence in support of the contention of the ld. A.O.. In our considered opinion, assessee has complied with all the direction given by the ITAT and submitted all the proof/documentary evidence as per the direction of the Co-ordinate Bench and since it is a second chance before the ITAT and we cannot make more miserable condition of the assessee in the hands of the revenue."

45. The facts involved in the present appeal is identical to the facts as discussed above in ITA Nos. 1140, 1342 to 1344/AHD/2015 . The Ld. DR has also not brought anything on record contrary to the argument advanced by the Ld. AR for the assessee. Respectfully, following the same and to maintain parity with the findings, we allow the ground raised by the assessee in its favour.

46. In the result the appeal of the assessee is allowed.

47. In the combined result, the appeals of the assessee bearing ITA Nos. 1510/Ahd/2009 & 1511/Ahd/2009 are dismissed and 217/Ahd/2014 is allowed. The appeal of the Revenue bearing ITA No. 1890/Ahd/2009 is dismissed.

Order pronounced in the Court on 20th January, 2020 at Ahmedabad.

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

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

Ahmedabad; Dated 20/01/2020
Tanmay, Sr. PS

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

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

आदेशानुसार / BY ORDER,

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