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

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

I.T.A. No.1608/Ahd/2018
(Assessment Year: 2015-16)

JCIT(OSD), Cricle-1(1)(2), Ahmedabad	Vs.	M/s. Adani Logistics Ltd. 9th Floor, Shikhar Building Nr. Mithakhali Six Road, Navrangpura, Ahmedabad-380009

And

CO No. 93/Ahd/2019
(in I.T.A. No. 1608/Ahd/2018)
(Assessment Year : 2015-16)

M/s. Adani Logistics Ltd. 9th Floor, Shikhar Building Nr. Mithakhali Six Road, Navrangpura, Ahmedabad-380009	Vs.	JCIT(OSD), Cricle-1(1)(2), Ahmedabad

[PAN No. AAB CI4 157 J]

(**Appellant**) .. (**Respondent**)

Appellant by	**:**	Shri Satish Solanki, Sr. D.R.
Respondent by	**:**	Shri Varthik Chokshi & Biren V. Shah, A.R.

Date of Hearing	22.01.2020
Date of Pronouncement	31.01.2020

O R D E R

PER Ms. MADHUMITA ROY – JUDICIAL MEMBER:

Present appeal is at the instance of the Revenue against the order of Ld.CIT(A)-1, Ahmedabad dated 27.4.2018 passed for the assessment year 2015-16, which arose out of the order DCIT, Cir.1(1)(2), Ahmedabad dated 20.12.2017 under section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to "the Act") for the

Assessment Year (A.Y.) 2015-16. On receipt of notice on Revenue's appeal, assessee also filed the above Cross Objection. Both are disposed of by this common order.

2. First we take Revenue's appeal in ITA No.1608/Ahd/2018. The grievances of the Revenue are given in the following grounds attached to the appeal memo.

> *"(1) That the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 4,80,00,000/- made u/s. 35D of the I.T. Act, 1961.*
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> *(2) That the ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 2,00,390/- made u/s. 14A r.w. Rule 8D.*
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> *(3) That the ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 2,00,390/- made u/s. 14A r.w. Rule 8D while computing book profit u/s. 115JB of the I.T. Act.*
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> *(4) The appellant craves, to leave, to amend and/or to alter any ground or add a new ground which may be necessary."*

First Ground:-

Deletion of addition of Rs. 4,80,00,000/- made u/s. 35D of the Act:-

3. During the course of assessment proceedings the AO observed that the appellant has incurred an amount of Rs. 6,00,00,000/- on account of legal and professional fees paid to one M/s. Emerging India Investment Advisors Pvt. Ltd. It was further found by the Ld. AO that such expenditure has been incurred for preparation of feasibility study for improvement and set up of coal logistic business in terms of agreement by and between the appellant and the service provider. It was observed that such feasibility study would primarily involve a feasibility study for set up of new facilities or services. Such expenditure, according to the Ld. AO is covered under the provision of Sec. 35D and the same should be amortized to the extent of 1/5th of the expenditure during that year. On that basis 1/5th of the said expenditure to the tune of Rs. 6,00,00,000/- to Rs. 1,20,00,000/- was allowed as a deduction and balance of Rs. 4,80,00,000/- was added to the total income of the assessee to be

amortized in subsequent years. In appeal the addition was deleted by the Ld. CIT(A), hence, Revenue is before the Tribunal.

4. At the time of the hearing of the instant appeal the Ld. Advocate appearing for the assessee while supporting the order of the Ld.CIT(A) submitted before us that the Ld. AO preceded on wrong premise that the feasibility and advisory services are set up for new logistic business and the appellant since is already in the business of logistic, the said expenditure has been incurred for extension of the said business and thus allowed Rs. 1,20,00,000/- under section 35D of the Act for the current year and the balance amount to be allowed in subsequent years. But the case of the assessee is this that such expenditure was for improvement of Coal logistic business and since the appellant is already in such business, professional fees paid cannot be considered as expenditure for extension of existing business and hence Provision of Sec. 35D is not applicable. He further relied upon the judgment passed by the Hon'ble Apex Court in the case of Taparia Tools Ltd. reported in 55 taxmann.com 361.

5. On the other hand, the Ld. DR relied upon the order passed by the Ld. AO.

6. Heard the parties, perused the orders we find that while allowing the claim of the assessee the Ld. CIT(A) observed as follows:-

> *" On careful consideration of entire facts it is observed that Appellant Company is in the business of logistics since 2005, which included coal logistic business. The Appellant has entered into consultancy agreement with Emerging India Investment Advisors Private Limited on 8th May, 2014 and scope of consultancy services clearly provides "the consultant undertakes to provide the Company consultancy services toward feasibility study for improvement/set up of coal logistics business". Further, scope of consultancy business includes evaluation of existing logistic business and providing improvement in such business and advising on set-up of any new facilities/services to increase customer stake. Thus, there is no expansion of any existing unit as Appellant is engaged in logistic business which includes coal logistics business and services are obtained for improvement in such business. It is not the case of Appellant that it is in the business of export of goods and it was in process of starting logistics business which can be held as setting up of new unit. The improvement in coal logistics business cannot be termed as extension of undertaking as envisaged in Section*

35D of the Act. The Appellant has incurred entire expenditure for improving its coal logistics business and genuineness of such expenditure is not doubted by the Assessing Officer. Even he has not treated such expenditure as capital expenditure and there is no concept of differing the expenditure over a period of 5 years or ten years under the Income Tax Act. If the expenditure is allowable revenue expenditure in one year, entire expenditure is required to be allowed as revenue expenditure in view of decision of Hon'ble Supreme Court in the case of Taparia Tools Limited 55 taxman.com 361. The Hon'ble Mumbai ITAT in the case of Pan India Food Solutions (P) Ltd. reported in 53 taxmann.com 520 wherein it is held as under:

> *"The expenditure incurred on the feasibility report paid constitutes legal expenses incurred by the assessee to ensure the proper acquisition of the "brand". This is in the nature of consultancy. The assessee is already in the line of chain of restaurants and food joints. The acquisition relating to "brand" of Blue Foods P. Ltd. is also with respect to a food chain, therefore, expenditure is incurred by the assessee in the existing line of its business. The expenditure incurred on consultancy has been held by the Delhi High Court in the case of CIT v. Shell Bitumen India (P) Ltd. [IT Appeal No. 815 of 2010, dated 11-8-2010] to be on account of revenue expenditure. Therefore, there is no infirmity in the order of the Commissioner (Appeals) vide which it has been held that the expenditure were in the nature of revenue and could not be disallowed as capital expenditure. [Para 6]."*

Considering the facts discussed herein above and in view of decisions referred to above, the entire disallowance of Rs. 4,80,00,000/- is deleted. ***This ground of appeal is allowed.****"*

7. Question before us is, whether the impugned expenditure is allowable under section 35D or under section 37 of the Income Tax Act. We find that the appellant has incurred the expenditure for improving its coal logistic and the genuineness whereof has not been doubted by the AO when the said expenditure is allowable as revenue expenditure in one year without differing the same for a further period of 5 years or so on. The nature of expenditure was for the improvement of regular day-to-day working of the assessee-company and wholly and exclusively for the business purpose. Therefore, the entire expenditure ought to have been allowed by the AO as revenue expenditure taking into consideration the ratio laid down by the Hon'ble Apex Court in the case of Taparia Tools Ltd. (Supra) as also decision of ITAT in the case of Pan India Food Solutions P.Ltd., as relied upon by the ld.CIT(A) in the impugned order. Therefore, deletion of disallowance by the Ld. CITT(A) is,

therefore, in our considered view is just and proper without any ambiguity so as to warrant our interference. Hence, the order is in the affirmative i.e. in favour of the assessee, and against the Revenue. This ground of Revenue is dismissed.

Ground No. 2:-

This ground of appeal relates to deletion of addition of ▪ 2,00,390 made under section 14A read with rule 8D of the Act.

8. Upon verification of the balance sheet it is found that the assessee company has made investment in shares and having some exempt income. The assessee has claimed expenditure on account of interest payment on loans as also reflecting from the Profit and Loss account of the assessee as observed in the order passed by the Learned AO. The assessee since not identified any expense in relation to the exempt income not included in the total income of the assessee a notice dated 20.11.2017 was issued by the revenue asking the assessee to explain as to why the provision of Section 14A of the I.T. Act read with Rule 8D of the I.T Rules are not be applicable in the instant case.

9. The assessee replied that when there is no exempt income earned by the assessee, the question of application of Section 14A read with rule 8D of the I.T. Rule does not arise. However, the explanation of the assessee was not found acceptable by the Learned AO. He, therefore, made and addition of Rs.2,00,390/- against the assessee which was deleted by the Learned CIT(A). Hence the instant appeal filed before the Tribunal.

10. At the time of hearing, the Learned Advocate appearing for the assessee submitted before us that it is an admitted position that the assessee has not having any exempt income in the year under consideration which is also available from the audited financial statements and the return of income. In that view of the matter he relies upon the order passed by the Learned CIT(A) in deleting such disallowance. He

also relied upon the judgment passed by the jurisdictional High Court in the case of CIT vs. Corrtech Energy Private Ltd. reported in [45 Taxmann.com 116] (2014). Apart from that in support of his case, it was also contended by the Learned Advocate appearing for the assessee that even otherwise no disallowance under 14A of the Act can be made, if the assessee has sufficient interest free funds to cover the investment out of which exempt income is generated. The ld.CIT(A) has noticed break up of interest free funds available with the assessee in his impugned order. It is demonstrated in the following table:

S. No.	*Particulars*	*Amount (Rs. Lakhs)*	
		AS ON 31.03.2014	*AS ON 31.03.2013*
1	*Share Capital & Reserves and Surplus*	*34809.20*	*29,859.54*
	TOTAL INTEREST FREE FUNDS	*34809.20*	*29,859.54*
2	*Investment in equity shares*	*26.54*	*26.54*
3	*Investment in Preference Shares*	*-.*	*-*
	TOTAL INVESTMENTS	*26.54*	*26.54*

11. On the other hand the Learned DR relied upon the order passed by the Learned AO.

12. Heard the parties, perused the relevant materials available on record including the order passed by the First Appellate of Authority. As the facts emerge from the record, we find no exempt income was claimed by the assessee. A finding to that effect also recorded by the Ld.CIT(A) in the impugned order which is also evident from the audited financial statements submitted during the assessment proceedings. The ld.CIT(A) also analysised break up of funds available with the assessee and found that assessee was having sufficient interest funds, and a proportionate disallowance of

interest expenditure was not justified. It was further the case of the assessee that it has sufficient interest free funds so as to cover the investment and it is a well established fact that no disallowance under section 14A is warranted in case the assessee is having own funds to cover the investment out of which exempt income is earned. The decision of Hon'ble Jurisdictional High Court in the case of CIT Vs. Corretech Energy P.Ltd., (supra) relied upon the ld.counsel for the assessee support the case of the assessee. The relevant portion of the judgment reads as under:

> *"5.4 On careful consideration of observation of Assessing officer and contention of Appellant, it is observed that during the year under consideration Appellant has not earned any exempt income from investments made by it which is apparent from Audited Annual Accounts as well as computation of total income as submitted before as well as in Appellate Proceedings. The Hon'ble Gujarat High Court in the case of Corrtech Energy Pvt. Ltd. 45 taxmann.com 116, on identical disallowance under Section 14A when no dividend income is earned by Assessee, the Court has held as under:*
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> > *"4. Counsel for the Revenue submitted that the Assessing Officer as well as CIT(Appeals) had applied formula of rule 8D of the Income Tax Rules, since this case arose after the assessment year 2009-2010. Since in the present case, we are concerned with the assessment year 2009-2010, such formula was correctly applied by the Revenue. We however, notice that sub-section(1) of section 14A provides that for the purpose of computing total income under chapter IV of the Act, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. In the present case, the tribunal has recorded the finding of fact that the assessee did not make any claim for exemption of any income from payment of tax. It was on this basis that the tribunal held that disallowance under section 14A of the Act could not be made. In the process tribunal relied on the decision of Division Bench of Punjab and Haryana High Court in case of CIT v Winsome Textile Industries Ltd. [2009] 319 ITR 204 in which also the Court had observed as under:*
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> > > *"7. We do not find any merit in this submission. The judgement of this court in Abhishek Industries Ltd (2006) 286 ITR 1 was on the issue of allowably of interest paid on loans given to sister concerns, without interest. It was held that deduction for interest was permissible when loan was taken for business purpose and not for diverting the same to sister concern without having nexus with the business. The observations made therein have to be read in that context. In the present case, admittedly the assessee did not make any claim for exemption. In such a situation section 14A could have no application."*

5. We do not find any question of law arising, Tax Appeal is therefore dismissed."

Further, Hon'ble Ahmedabad ITAT in case of Shah Alloys Ltd [2315/Ahd/2010], dated 27/03/2015 following the decision of Corrtech Energy Private Ltd (referred supra), held as under:

"The Authorized Representative of the assessee has relied on the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Corrtech Energy (P) Ltd, reported in (2014) 272 CTR 262 (Guj.)(HC), wherein it has been held that where the assessee has not made any claim for exemption of any income from payment of tax, no disallowance could be made u/s 14A of the Act. The Departmental Representative has not disputed the submission of the assessee that during the assessment years under consideration the assessee has not claimed any income as exempt from tax in its Return of Income filed. Therefore, respectfully following the decision of Hon'ble Gujarat High Court in the case of Corrtech Energy (P) Ltd (supra), we delete the disallowance of expenditure made u/s 14A read with Rule 8D of Rs. 1,60,45,77 5/- in the Assessment Year 2007-08 and Rs. 2,04,30,860/- in the Assessment Year 2008-09. Thus, this ground of appeal of the assessee is allowed in both the years under appeal."

Further, Hon'ble Delhi High Court in case of Holcim India Private Ltd. (ITA No. 486/2014 & ITa No. 299/2014), Hon'ble Allahabad High Court in the case of CIT Vs. Sivam Motors Private Ltd. in I.T. Appeal No. 88 of 2014 dated 5.5.2014 on identical facts decided the issue in favour of assessee. Considering, the facts of appellatn's case as discussed herein above along with decisions referred supra, it is held that disallowance u/s. 14A r.w. Rule 8D cannot be made as appellant has not earned any exempt income. In the nutshell, disallowance u/s. 14A made by Assessing Officer for Rs. 2,00,390/- is deleted. In the result, ***this ground of appeal is allowed.****"*

13. 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 and 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 this ground raised by the Revenue. It is rejected.

14. This ground of appeal relates to deletion of addition of Rs.2,00,390/- made under section 14A of the Income Tax Act, 1961 read with Rule 8D of the I.T rules while computing book profit under section 115JB of the Income Tax Act. The Learned Assessing Officer has in addition to the disallowance has enhanced the book profit under section 115 JB of the Act by the amount of disallowance under section

14A read with Rule 8D of the act the case of the assessee is this that merely because disallowance has been made under section 14A of the Act it cannot *suo motto* result in an addition while computing the book profit. However, such plea of the assessee was not found acceptable to the Learned AO and he, therefore, enhanced the book profit under section 115 JB of the Act of Rs.2,00,390/- which was in turn deleted by the Ld. CIT(A). Against this deletion, Revenue is before the Tribunal.

15. At the time of hearing of the instant appeal the Learned Advocate appearing for the assessee submitted before us that it is a settled position of law that is that if the balance sheet and the profit and loss have been prepared in accordance with the parts II and III of Schedule-VI of the Companies Act, 1956 no adjustments can be made by the Assessing Officer while computing book profit except such which may be permissible under the explanation of Section 115JB. In support of his contentions, he relied upon the decision of Special Bench in the case of ACIT Vs. Vireet Investments P.Ltd., 165 ITD 27 (SB). He therefore supported the order passed by the First Appellate Authority.

16. On the other hand, the Learned DR relied upon the order passed by the Learned AO.

17. Heard the parties, perused the relevant materials available on records including the order passed by the Special Bench of the Tribunal in the case of ACIT Vs. Vireet Investments P.Ltd. (supra). We are of the view that Special Bench of the ITAT in the case of Vireet Investment P.Ltd. (supra) has formulated following question for adjudication on this issue:

> *"Whether the expenditure incurred to earn exempt income computed u/s.14A could not be added while computing book profit u/s.115JB of the Act."*

18. Special Bench answered this question in favour of the assessee and held that computation for the purpose of clause (f) of Explanation 1 to Section 115JB(2) is to be made without resorting to the computation as contemplated under section 14A r.w. rule 8D. Respectfully following the above decision of the Special Bench, we allow this ground of appeal and direct the AO not to make adjustments in book profit for the purpose of MAT liability on the basis of calculations made with Rule 8D of the Income Tax Rules.

19. We find no justification in reversing the order passed by the Learned CIT(A) in deleting the enhancement of book profit made by the Learned AO to the extent of exempt, hence the Revenue's appeal is found to be devoid of any merit, and therefore ground no.3 is dismissed.

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

21. Now we take cross objection filed by the assessee.

22. At the time of hearing of the matter, the Learned Counsel for the assessee submitted before us that he is not pressing the CO. In view of this submission of the assessee, CO filed by the assessee stands dismissed for want of prosecution.

23. In the combined result, both Revenue's appeal and assessee's CO are dismissed.

This Order pronounced in Open Court on 31/01/2020

Sd/-	Sd/-
(WASEEM AHMED)	**(Ms. MADHUMITA ROY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 31/01/2020

TANMAY, Sr.PS