IN THE INCOME TAX APPELLATE TRIBUNAL
"RAIPUR" BENCH, RAIPUR

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI N. K. CHOUDHRY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 62/RPR/2018)

(**निर्धारण वर्ष /** Assessment Year : 2013-14)

Asstt. Commissioner of Income tax (Central)-2 Central Revenue Building, Civil Lines, Raipur (C.G.) - 492001	**बनाम**/ Vs.	**Mahamaya Steel Industries Ltd.** B-8 & 9, Sector-C, Urla Industrial Area, Sarona, Raipur (C.G.)
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCR0695Q		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

अपीलार्थी ओर से /**Appellant by :**	Shri P. K. Mishra, CIT.DR
प्रत्यर्थी की ओर से/**Respondent by :**	Shri Veekaas S Sharma, A.R.

सुनवाई की तारीख / **Date of Hearing**	02/08/2021
घोषणा की तारीख /**Date of Pronouncement**	21/10/2021

आदेश/O R D E R

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income Tax(Appeals)-II, Raipur ('CIT(A)' in short), dated 02.02.2018 arising in the assessment order dated 30.03.2016 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2013-14

2. The grounds of appeal raised by Revenue read hereunder:

"1. "On the facts and in the circumstances of the case the Ld. CIT(A) erred in not appreciating that there existed incriminating seized material which showed that the assessee company has indulged in unaccounted production by suppressing its yield, particularly in Steel Melting Shop(SMS). "

2. "On the facts and in the circumstances of the case the Ld. CIT(Appeal) erred in not appreciating that the books of accounts are not reliable in view of the evidence seized during the course of search reflecting suppression of production yield. Therefore when there is no change in the business and the modus operandi the CIT(A) ought to have accepted 89% as the yield also.

3. "On the facts and in the circumstances of the case the Ld. CIT(Appeal) erred in deleting the disallowance made by the AO u/s.14A of Rs.11,61,305/- particularly when the assessee did not discharge the onus to prove that the interest expenditure claimed was out of own interest bearing funds or non-interest bearing fund, even if it has sufficient cash profit."

3. Ground nos. 1 & 2 concern addition on account of lower yield of production compared to industrial average.

4. Briefly stated, the assessee is engaged in the manufacturing of re-rolled products such as heavy steel structures, joist, ingots, girders etc. It has two divisions namely Furnace division which is also known as Steel Melting Shop (SMS) and Rolling Mill Division (RMD). Furnace/SMS division uses sponge iron, pig iron, scrap and end cutting (end cutting is basically output of RMD) as raw material to manufacture billets and blooms and the RMD Divisions uses these billets and blooms as raw material to produce further re-rolled products such as heavy steel structural etc.

4.1 A search operation was carried out in the case of assessee on 17.10.2011 at the main office and the factory premises of the assessee company. Consequently, the assessment of A.Y. 2012-13 and preceding six years were subjected to search assessment proceedings. In the search assessment, the AO rejected the books of accounts of the assessee and alleged that the assessee company has suppressed its yield of SMS/Furnace division. The AO assumed the

average yield of the industry at 89% in the SMS/ Furnace division and consequently, the difference between actual yield shown by the assessee *vis-à-vis* standard yield of 89% assumed by the AO was treated as unaccounted production/unrecorded sales in those years. In the first appeal against the search assessment, the additions on account of alleged lower yield of production declared was deleted and reversed. The Revenue preferred appeal against the aforesaid first appellate order. However, the co-ordinate bench of Tribunal also did not see any merit in such additions towards lower yield made by AO in *ITA Nos. 232 to 235/RPR/2014* order dated *07.11.2019* concerning AYs. 2009-10 to 2012-13.

4.2 The present appeal in question relates to A.Y. 2013-14 which is subsequent to the year covered in the search assessment proceedings. It is noticed that the additions have been made by the AO in the instant case in the same manner by comparing yield declared by the assessee in SMS/ Furnace division with the average industry yield of 89% assumed by the AO and for this purpose the AO has referred to the conclusion drawn by his predecessor AO in search assessment completed in relevant to A.Y. 2006-07 to 2012-13 wherein also the similar additions were made on account of alleged suppression of yield. The AO has simply continued with the additions towards lower yield as shown in the search assessment on the ground that the deletion of addition in first appellate order in those years have not been agreed by the department and an appeal has been preferred against the first appellate order before the ITAT which is pending for adjudication.

5. Aggrieved by the additions made towards lower yield, the assessee preferred appeal before the CIT(A). The CIT(A), after taking note of attendant facts and circumstances, deleted the

additions so made for which the concluding operative para is reproduced for ready reference:

> *"I have considered the grounds of appeal, gone through the order of the AO and seen the submissions of the appellant as well as the remand report of the AO and comments of the appellant on the remand report. I observe that the AO has rejected the books of accounts of the appellant u/s 145 of the Act and doing so the AO has mentioned that the GP rate of the appellant has gone down drastically as compared to the preceding years and the appellant has not satisfactorily explained the reasons for decline in the GP and NP rates. The AO further stated that the yield declared by the appellant in steel melting shop i.e. SMS division is nearly 85% which is much below the average yield in the last 7 assessment year taken by 85% which is much below the average yield in the last 7 assessment years taken by the erstwhile AO and thereafter the AO calculated the amount of suppression in production and sales by taking the yield of 89% and worked out the amount of suppression in sales and an income and made addition of Rs.19,09,67,165/-. The AO further stated that the basis for adopting yield of 89% has been discussed at length in the assessment order for the AYs 2006-07 to 2012-13 and that appeal has been preferred before the ITAT against the order passed by my ld. Predecessor in the appellant's own case.*
>
> *10 Vide this office letter dated 07.12.2017 in F.No.CIT(A)-II/RPR/Appeal Proceed/2017-18 dated 07.12.2007 and the AO was asked to explain the basis behind adoption of yield at 89%. Vide her letter dated 21.12.2017 the AO enclosed the assessment order of the appellant for the AY 2006-07 to 2012-13 and relied upon the findings and conclusions by her predecessor in the search assessment proceedings completed in the case of the appellant. I also observe that the addition made in the assessment by adopting 89% yield in the SMS division stands deleted by my ld. Predecessor in his order. As regards decline in GP rate the appellant contended that the iron and steel sector had been going through a challenging phase owing to sluggish domestic demand and constraints of iron ore supply along with rise in steep rising iron or prices. It will brought to my notice that the cost power in SMS division has increased by nearly 56% in comparison to the FY 2009-10 and in the case of Rolling Mill Division it has increased by nearly 52%. My attention was also invited to the increase in cost of raw material and inputs in the Rolling Mill Division such as blooms and billets as well as the increase in the cost of inputs of SMS division.*
>
> *I observe that the AO has made the addition by estimating the yield at 89% of the total raw material consumed in the SMS division after rejecting the books of accounts of the appellant. The only reason for rejection of books of accounts adduced by the AO is that the appellant had declared yield in the SMS division less than 89%. In the opinion of the AO as can be seen, the yield of the appellant company should have been same in all the years as the nature of the business is the same as it was during the period covered under the search proceedings. In the assessment order the AO has not brought on record any irregularity on defect in the books of accounts bills and vouchers and other*

documentary evidences pertaining to year under consideration. What can be noticed from the assessment order is that the AO has based his assessment on the outcome of the assessment proceedings for the search period covered during action u/s 132 of the Act and extended the same to the impugned assessment year i.e. 2013-14 which is my opinion had no bearing for the assessment proceedings for the improved AY.

There is no merit in the contention of the AO that the conclusions drawn in the search assessment proceedings are enhancement made, which in fact were deleted, can be made basis for assessing the income of other subsequent years without considering in facts and circumstances of earlier years are the year in question. Each year assessment is a separate assessment which attains finality for the area unless disturbed by cogent facts and materials and does not govern later years. The facts and circumstances of each year are to be considered separately and must find reference in the assessments completed.

11. I further observe that the books of accounts of the appellant was subject to tax audit and since the appellant is dealing excisable products it has filed excise returns on monthly basis as well as the VAT returns as per sales tax laws. The evidence of which were produced before the AO who examined the same including the bills and vouchers. With a view to bring on record the basis behind adoption of yield at 89% the AO was asked to convey the bases for doing so. From the remand report of the AO I find that reliance has been placed by her on the assessment order passed u/s 153A r.w.s. 143(3) for the search period i.e. AY 2006-07 to 2012-13. Importantly even in the assessment order pertaining to search period there is no reference of any seized material or any other documentary evidences to establish the fact that the appellant had indulged in unaccounted production and unaccounted sales. The additions were made mainly on the pretext that the average yield in the industry is it nearly 89% and the yield declared by the appellant is low as compared to the yield shown by other manufacturers of Chhattisgarh. There could be several reasons for variation of GP and NP but the variation per se is not sufficient to draw an inference that the books of accounts are liable to be rejected u/s 145 until and unless specific defect or irregularity are pointed out and brought on record pertaining to the books of accounts of the appellant.

12. I have seen the appellate order in A.No.718 to 722 for AY 2008-09 to 2012-13 for my ld. predecessor who has adjudicated the search assessment of the appellant for all the years and deleted the additions made. It is fruitful to reproduce his observation as under:

> *It is seen that A.O has not pointed out any suppression of production based on any cogent and incriminating material against the appellant. Material showing financial nexus can only be a valid basis for holding suspicion or making the addition. Unfortunately, not a single document showing any financial dealings by the appellant has been referred to either in the assessment order, or even during the course of hearing, despite the liberty granted vide this office Letters on 28.04.2014 and 16.05.20214. The facts and circumstances of the present case reveal that the A.O just brushed aside the objections/submissions*

and contentions raised by the appellant and evidences placed on record. The A.O has made mechanical addition of the difference between the unaccounted production/sales worked out on the basis of 89% yield suspected by the A.O that must have been achieved by the appellant. The A.O. has not brought any material on record to disbelieve the book result shown by the appellant. If there is no suppression of material facts, the authority cannot embark upon a speculative assessment of national profits. The assessment should be based on cogent facts and there should be no vindictiveness or arbitrariness in passing the assessment order. The estimated addition made by the A.O do not bear any relationship with the specific defect in books of accounts and the A.O cannot be permitted to make arbitrary addition. The care thing to be seen is the evidence found which will be the basis for making the assessment. Coming to the facts of the case, the AO estimated the unaccounted production and sales on benchmark yield of 89% in case of SMS Division. The entire estimated suppressed sales has been treated as profit. I am convinced that the determination of undisclosed income in this case is merely on the basis of presumption and an on estimate basis. Search assessment has to be framed on the basis of some material, which in this case is raw material consumed in SMS Division for manufacturing of blooms and billets in furnace. No other materials or asset details were found during the course of search. On the contrary, the appellant had provided all the requisite details regarding its production activity. The items of raw material purchased are excisable products, the quantity of raw material purchased as mention in Excisable and Commercial invoice was test checked with the entries in the Excise Record for row material i.e. RG-1 and the same was found to be in order. The quantity appearing in the Excise Registers was cross checked with the entries in the Excise Returns and the same was found to be in order and tallying with the excise Records. The inventory appearing in the Excise Records and Excise Returns was found to be the same as in financial records i.e. the books of accounts and audited financial statements. Undisputedly, the production was meticulously routed through the appellant's daily production register/ Excise Records. The entries therein were definitely co-relatable to the entries in the stock register, enabling on easy stock tally, if one was so required. However, the AO did not deem it fit to carry out the exercise of tallying the stock as per these entries in the two types of books. He merely went by the alleged suppressed yield. Various submissions regarding reasons for variation in consumption of power, furnace oil, yield etc were duly furnished by the appellant. The appellant did furnish the comparable instances and also demonstrated with technical details of production. These copious evidences were wrongly ignored by the AO. Commissioner of Income Tax vs. Hindustan Tin Work Ltd. (2007) 291 ITR 290 (Del) : (2007) 164 TAXMAN 529.

13. From the above observations of my ld. Predecessor was adjudicated the search assessments for the relevant assessment years converted in action u/s 132 there was no seized material leading to the conclusion that the appellant has suppressed the yield and hence

adoption of 89% yield is justified. When there is no material for adopting 89% even during the search assessments there is no basis for relying on the assessments in adapting 89% yield for the AY 2013-14. I also observed that in the appellate order my ld predecessor has tabulated comparable instances of GP and NP of industry average wherein the GP and NP of the appellant is much higher than the others. The case laws related upon in the appellate order of my predecessor some of which are reproduced as under are relevant to the facts in question.

(a) ACIT vs. M/s Balajee Structurals (I) Pvt. Ltd. (supra), the jurisdictional Bench Hon'ble ITAT;
(b) ACIT vs M/s Super Iron & Steel Pvt. Ltd., ITA No.139 to 141/BLPR2010;
(c) Lalchand Bhagat Ambica Ram vs. CIT: (1959) 37 ITR 288;
(d) Income Tax Officer vs. W.D. Estae P. Ltd. (1993) 46 TTJ (Bom) 143 : 45 ITD 473;
(e) Commissioner of Income Tax vs. Discovery Estates Pvt. Ltd. (2013) 356 ITR 159 (Delhi);
(f) Mangilal Rameshwarlal Soni (HUF) vs. Assistant Commissioner of Income Tax (2004) 83 TTJ (Jd) 770 : (2004) 4 SOT 680 (Jd);
(g) Bansal Strips (P) Ltd & Ors. vs. Assistant Commissioner of Income Tax (2006) 100 TTJ (Del) 665 : (2006) 99 ITD (Del) by the Hon'ble ITAT, Delhi "A" Bench;
(h) Dhakeswari Cotton Mills Ltd. vs. Commissioner of Income tax (1954) 26 ITR 775 (SC);

14. In totality of the facts discussed above I find no basis for adopting 89% yield and hence the addition of Rs.19,09,67,165/- is deleted and grounds No. 2 & 3 are allowed."

6. Aggrieved by the relief granted by the CIT(A), the Revenue is in appeal before the Tribunal.

7. When the matter was called for hearing, the learned DR for the Revenue relied upon the observations made by the AO in the assessment order.

8. Per contra, learned counsel for the assessee placed reliance upon the findings in the order of the CIT(A). The learned counsel further submitted that issue is squarely covered in favour of the assessee by the order of the co-ordinate bench of Tribunal in the case of the assessee for A.Y. 2009-10 to 2012-13 in *ITA Nos. 232 to 235/RPR/2014* order dated *07.11.2019*. The learned counsel

submitted that the issue being only a continuation of the old controversy without any factual deviation, the conclusion already arrived at by the co-ordinate bench on the subject in issue requires to be followed.

9. We have carefully considered the rival submissions and perused the orders of the authorities below as well as material placed before us by way of paper book referred to and relied upon at the time of hearing. We observe that the basis of additions towards lower yield of production by the assessee in its SMS/Furnace division is on account of comparison with average industry yield of 89% assumed by the AO. Significantly, in this regard, we observe that the CIT(A), on objection raised by the assessee to such presumed yield, wrote letter dated 07.12.2017 to the AO for the purposes of understanding the basis behind adoption of yield at 89%. The AO, however, vide letter dated 22.12.2017 merely enclosed the assessment order for AY 2006-07 to 2012-13 for the purposes of adopting such standard yield. It is evident that the AO in the instant case has merely proceeded on the findings arrived at by the AO in A.Y. 2006-07 to 2012-13. At this stage, it would be pertinent to take note of decision of the co-ordinate bench concerning A.Ys. 2009-10 to 2012-13 on the same very issue in the case of the assessee in *ITA Nos. 232 to 235/RPR/2014* order dated *07.11.2019*. The co-ordinate bench after taking note of the relevant facts emerging on record, found substantial merit in the decision rendered by the CIT(A) in those years and thus endorsed the action of the CIT(A) in deleting such additions on account of lower yield. The relevant operative para of the order of the ITAT is reproduced here for ready reference:

> *"8. We have perused the case records and heard the rival contentions. We have also analyzed the judicial pronouncements placed before us. The facts on records clearly demonstrates that the Assessing Officer*

has failed to bring any cogent reasons/evidences for making addition in the case of the assessee. He has arrived at various mathematical calculations and has derived the yield at 89%. All these were done by the Assessing Officer without bringing on record any single document which indicates that the assessee has suppressed its yield or has indulged in any unaccounted sales. It is also on record that though the Assessing Officer has estimated production at 89% in SMS division and had made various mathematical calculations at Pages 7 to 11 of the assessment order regarding Rolling Mill Division, however, it is seen from the assessment order that the Assessing Officer has not drawn any adverse inference as regards Rolling Mill Division and nor did the Assessing Officer find yield of Rolling Mill Division to be lower. The Assessing Officer has not substantiated the relevance and significance of these mathematical calculations pertaining to Rolling Mill Division.

8.1 We further observe that the Ld. CIT(A) on his own conducted specific enquiry in order to find out the percentage of yield declared by the other assessee engaged in similar line of business. It is noted from such comparison that the yield declared by the different assessees in the same year is not uniform, conversely every assessee declared different yield. Not even a single comparable instance was found declaring yield of 89%. That further, action of the Assessing Officer in rejecting the books of accounts merely due to the reason that the yield achieved by the assessee is less than the yield percentage i.e.89% which has not been achieved even by other assessees engaged in similar line of business. The Assessing Officer has not brought on record the manner in which he has worked out yield of 89% in SMS Division.

9. In the case of ***M/s. Ramesh Steel Industries Vs. DCIT-1(1), Raipur, ITA No.48 of 2015,*** *the Hon'ble Chhattisgarh High Court has held and observed that "the power of the Assessing Officer under Section 145(3) is not absolute but was regulated and circumscribed by statutory provisions." That further "power consumption in an industry may vary for various reasons. Under Section 145(3) of the Income Tax Act, the jurisdiction of the Assessing Officer arises if he was not satisfied about the correctness of the accounts of the assessee. However, the Assessing Officer should give specific reasons for rejecting books of accounts."*

10. In the instant case, the Assessing Officer calculated yield of 89% and has also calculated consumption of power and difference thereto pertaining to production and has held that the books of accounts are therefore not reliable and rejected the books of account while resorting to Section 145(3) of the Act. As per the legal principles laid down by the Hon'ble Chhattisgarh High Court (supra.) that this power is not unfettered and it has to be used judicially by giving specific reasons which in the instant case, the Assessing Officer has not complied with.

11. In the case of ***ACIT-1(1), Raipur Vs. Siyaram Rice Mill in ITA No.59/BLPR/2011****, the Raipur Bench of the Tribunal has observed that "in a case where the Assessing Officer had applied a mathematical formula and made addition but however, rejected all the submissions of the assessee without passing speaking or reasoned order". The Raipur Bench of the Tribunal further held that regarding mathematical calculation, the Assessing Officer has not referred to any comparable cases that could prove that the stand taken by him was based on*

scientific and logical basis. That further "a reasoned order cannot be passed without considering the reply of the assessee filed by the assessee and without giving reasons as to why the reply was not acceptable."

12. In the instant case, the Ld. CIT(A) had made exercise to bring out the percentage of yield declared by the other assessee engaged in similar line of business and nowhere the yield was 89%. The Assessing Officer also gave no basis for its calculation of the yield at 89%. There was no scientific or logical basis in the exercise conducted by the Assessing Officer. The submissions made by the assessee, were also summarily rejected by the Assessing Officer which is therefore, not in accordance with judicial principle as herein above enshrined in the various judicial pronouncements. We have also observed in the case of ***ACIT-1(1) Raipur Vs. Ramesh Steel Industries in ITA No.95/BLPR/2011,*** *the Assessing Officer made addition as he noted that in the year under appeal, the assessee had consumed more units of power as compared to the last two assessment years. The Tribunal observed that "consumption of power in itself is not an evidence to prove or disprove the production of finished goods." We further observe that in the case of St. Teressa's Oil Mill (761 ITR 365) and Sulabh Marbles (P.) Ltd. (205 CTR 464) decided by the Hon'ble Kerala and Rajasthan High Court has held that "disparity in electricity consumption cannot be the criteria for rejection of accounts and for making ad-hoc additions. The assessee had maintained regular books of account and the Assessing Officer had not come across any unaccounted purchase or suppressed sale. In these circumstances, only on the basis of power consumption, no addition could be or sustained."*

13. It is apparent from the records that the Assessing Officer has not brought on record any evidence stating lower or suppression of sales by the assessee. He tried to support his case by showing deficiency in power consumption by the assessee. But the Hon'ble High Courts have held without any direct corroborative evidences on low yield or suppressed sales, the disparity of power consumption cannot be the sole ground or reason for making addition by the Assessing Officer.

14. In view of the aforesaid examination of facts and judicial pronouncements, we find the order of the Ld. CIT(A) is absolutely correct and therefore, the same does not call for any interference. Thus, ground relating to ***"issue of the lower yield declared by the assessee" in all the appeals for all the assessment years are therefore dismissed."***

10. In the light of the view taken by the co-ordinate bench in the case of assessee in earlier assessment years, the issue is no longer *res integra*. It is evident that issue is squarely covered by the decision of the co-ordinate bench in assessee's own case for AYs. 2009-10 to 2012-13 wherein also the appeal of the Revenue was dismissed after elaborate discussion on factual and legal matrix.

The Revenue could not bring any cogent reason to take a departure from the earlier view. Thus, in consonance with the view expressed earlier, we do not see any merit in the plea of the Revenue for restoration of the additions deleted by the CIT(A) on this score.

11. In the result, Ground Nos. 1 & 2 of the Revenue's appeal towards alleged lower yield of production is dismissed.

12. Next ground concerns disallowance under s.14A of the Act. The additions made by resorting to Section 14A of the Act were deleted by the CIT(A) on the following reasonings:

> *"19. I have considered the grounds of appeal, perused the assessment order of the assessing officer and gone though the submissions made by the appellant. I observe that the appellant has claimed that no expenditure was incurred in relation to exempt income and that the investments were made in the preceding years and not during the year under consideration. The appellant has claimed that the cash profits earned by the appellant in the year in which the investments were made in the shares of group companies was more than the amount of investment in shares.*
>
> *The details of cash profits earned by the appellant and amount of investment made in shares is reproduced here under:*

Particulars	*31.03.2006*	*31.03.2009*	*31.03.2010*	*31.03.2011*	*31.03.2012*	*31.03.2013*
PBT	*770.52*	*1329.26*	*1336.16*	*1572.94*	*1119.26*	*289.27*
Less: Current Tax	*0.00*	*137.00*	*228.04*	*357.79*	*272.30*	*69.41*
Less: Income tax related to previous year	*0.00*	*0.87*	*15.00*	*0.18*	*-0.02*	*7.73*
Less: Fringe benefit tax	*1.12*	*1.90*	*0.00*	*0.00*	*0.00*	*0.00*
PAT	*769.40*	*1189.49*	*1093.12*	*1214.97*	*846.98*	*212.13*
Add: Depreciation	*161.78*	*328.26*	*865.20*	*731.82*	*542.46*	*527.22*
Cash Profit	*931.18*	*1517.75*	*1958.32*	*1946.79*	*1389.44*	*739.35*

Table Showing Proportion of Investment to Cash Profit earned by the assessee during the F.Y in which investments were made

F.Y	*Investment (Rs.in Lacs)*	*Cash Profit during the year (Rs. in Lacs)*	*Investment to Cash Profit Ratio(%)*

2005-06	*30.01*	*931.18*	*3.22*
2008-09	*200.00*	*1517.75*	*13.17*
2010-11	*10.00*	*1946.79*	*0.51*
2012-13	*282.00*	*739.35*	*38.14*

On going through the above submissions and details of cash profits earned in the respective years and proportion thereof utilized by the appellant in investment in shares I find that there was sufficient cash profits available with the appellant for making the investment in shares. What is important in this regard is that the appellant had sufficient non interest bearing funds for making the investments in shares of the group companies. The disallowance of Rs.11,61,306/- by invoking section 14A is unwarranted and hence ground no. 4 is allowed."

13. On perusal of the records and having regard to the representation made by both sides, we find two reasons to agree with the conclusion drawn by the CIT(A). Firstly, it emerges that the assesse has not derived any exempt income *per se*. It is well settled that in the absence of any exempt income, no disallowance under s.14A of the Act is permissible in view of the decision of the Hon'ble Gujarat High Court in the case of *CIT vs. Corrtech Energy P. Ltd. 372 ITR 97 (Guj.)*. In another judgment in the case of *CIT vs. Vision Finstock Ltd. Tax Appeal No. 486 of 2017 dated 31.07.2017* the Hon'ble Gujarat High Court has once again expressed the similar view and held that disallowance of expenditure in terms of Section 14A r.w. Rule 8D cannot exceed the exempt income itself. It is noticed that *SLP(Civil) [Diary No. 13152/2018*] filed by the Revenue against the judgment of the Hon'ble Gujarat High Court in *Vision Finstock Ltd. (supra)* has been dismissed on merits by the Hon'ble Supreme Court vide order dated 07.05.2018. The reference is also made to the decision of Hon'ble Supreme Court of India in *CIT vs. Chettinad Logistics (P.) Ltd. (2018) 95 taxmann.com 250 (SC).*

13.1 Secondly, the assessee has demonstrated sufficient net worth from which a presumption would naturally arise that investment for

the purposes of earning exempt income is out of such own interest free funds available at the disposal of the assessee. A reference in this regard has been made on behalf of the assessee to the several judicial precedents including *CIT vs. HDFC Bank Ltd. (2014) 89 CCH 0185 (Bombay High Court); CIT vs. Suzlon Energy Ltd. (2013) 354 ITR 630 (Guj.).*

13.2 Thus, having regard to absence of any exempt income as well as availability of sufficient net worth of interest free nature, we do not see any reason to differ with the view taken by the CIT(A). Thus, no interference with the order of the CIT(A) is called for. Consequently, ground no.3 of Revenue's appeal is dismissed.

14. In the result, appeal of the Revenue is dismissed.

Order **pronounced on 21/10/2021** by placing the result on the Notice Board as per Rule 34(4) of the Income Tax (Appellate Tribunal) Rule, 1963.

Sd/-	Sd/-
(N. K. CHOUDHRY)	(PRADIP KUMAR KEDIA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

True Copy

S. K. SINHA

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

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर / DR, ITAT, RAIPUR
6. गार्ड फाइल / Guard file.

By order,

Sr. Private Secretary
ITAT, Raipur (on Tour)