

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER &
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

I.T.A. No.1785/Ahd/2012
(Assessment Year: 2009-10)

Corrtech International Pvt. Ltd. 22, Dhara Centre, Vijay Char Rasta, Navrangpura, Ahmedabad- 380009	Vs.	The Assistant Commissioner of Income Tax (OSD) Range-1, Ahmedabad
[PAN No.AAACC0134G]		
(Appellant)	..	(Respondent)

I.T.A. No. 1871/Ahd/2012
(Assessment Year: 2009-10)

DCIT(OSD), Range-1, Ahmedabad	Vs.	Corrtech International Pvt. Ltd. 22, Dhara Centre, Vijay Char Rasta, Navrangpura, Ahmedabad-380009
[PAN No.AAACC0134G]		
(Appellant)	..	(Respondent)

I.T.A. No. 2578/Ahd/2014
(Assessment Year: 2010-11)

DCIT(OSD), Range-1, Ahmedabad	Vs.	Corrtech International Pvt. Ltd. 22, Dhara Centre, Vijay Char Rasta, Navrangpura, Ahmedabad-380009
[PAN No.AAACC0134G]		
(Appellant)	..	(Respondent)

I.T.A. No.2652/Ahd/2014
(Assessment Year: 2010-11)

Corrtech International Pvt. Ltd. 22, Dhara Centre, Vijay Char Rasta, Navrangpura, Ahmedabad- 380009	Vs.	The Assistant Commissioner of Income Tax (OSD) Range-1, Ahmedabad
[PAN No.AAACC0134G]		
(Appellant)	..	(Respondent)

*ITA No. 1785/Ahd/2012 & 08 others
Corrtech International Pvt. Ltd. vs. ACIT(OSD)
Asst.Years-2009-10, 2010-11, 2008-09, 2014-15 & 2015-16*

- 2 -

I.T.A. No. 821/Ahd/2015
(Assessment Year: 2008-09)

Corrtech International Pvt. Ltd. 22, Dhara Centre, Vijay Char Rasta, Navrangpura, Ahmedabad- 380009	Vs.	The Dy. Commissioner of Income Tax (OSD) Range-1, Ahmedabad
[PAN No.AAACC0134G]		
(Appellant)	..	(Respondent)

I.T.A. No. 1129/Ahd/2015
(Assessment Year: 2008-09)

DCIT, Circle-1(1)(2), Ahmedabad	Vs.	Corrtech International Pvt. Ltd. 22, Dhara Centre, Vijay Char Rasta, Navrangpura, Ahmedabad-380009
[PAN No.AAACC0134G]		
(Appellant)	..	(Respondent)

I.T.A. No. 1358/Ahd/2017
(Assessment Year: 2010-11)

DCIT, Circle-1(1)(2), Ahmedabad	Vs.	Corrtech International Pvt. Ltd. 22, Dhara Centre, Vijay Char Rasta, Navrangpura, Ahmedabad-380009
[PAN No.AAACC0134G]		
(Appellant)	..	(Respondent)

I.T.A. No. 2406/Ahd/2017
(Assessment Year: 2014-15)

Corrtech International Pvt. Ltd. 22, Dhara Centre, Vijay Char Rasta, Navrangpura, Ahmedabad- 380009	Vs.	The Addl. Commissioner of Income Tax Officer, TDS Range, Ahmedabad-380014
[PAN No.AAACC0134G]		
(Appellant)	..	(Respondent)

I.T.A. No. 2408/Ahd/2017
(Assessment Year: 2015-16)

Corrtech International Pvt. Ltd. 22, Dhara Centre, Vijay Char Rasta, Navrangpura, Ahmedabad- 380009	Vs.	The Addl. Commissioner of Income Tax Officer, TDS Range, Ahmedabad-380014
[PAN No.AAACC0134G]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Tushar Hemani, Sr. Adv. & Shri Parimalsinh B. Parmar, A.R.
Respondent by:	Shri Purushottam Kumar, Sr. D.R.

Date of Hearing	07.09.2022
Date of Pronouncement	19.10.2022

ORDER

PER Ms. SUCHITRA KAMBLE - JM:

This bunch of appeals filed by the assessee and Revenue are filed against the orders passed by the Ld. CIT(A)-6, 1 & 8, Ahmedabad on different dates for different Assessment Years.

2. The grounds of appeal raised by the assessee in ITA No. 1785/Ahd/2012 for A.Y. 2009-10 read as under:

- “1. The Ld. CIT(A) has erred, both in law and on facts of the case, in confirming disallowance of Rs.8,23,935/- made in respect of dead stock expenses.
2. The Ld. CIT(A) has erred, both in law and on facts of the case, in confirming disallowance of Rs.30,68,621/- made u/s 14A of the Act.
3. The Ld. CIT(A) has erred, both in law and on facts of the case, in partly confirming proportionate disallowance under section 26(1)(iii) of the Act with a direction to AO to work out proportionate disallowance based on a formula specified in the appellate order.

Appellant craves to add, amend, alter, change, delete and edit the above ground of appeal before or at the time of the hearing of the appeal.”

3. The assessee company engaged in the business of undertaking of turnkey projects for construction of pipeline contracts, cathodic protection system on such pipelines and other engineering services and contracts, sales and other allied services. The return of income for A.Y. 2009-10 was filed on 30.10.2009 declaring total income at Rs. 12,18,08,170/-. The Assessing Officer made addition of Rs. 1,61,81,024/- towards land restoration expenses, addition of Rs. 17,72,324/- towards late payment of Provident Fund dues, disallowance of Rs. 8,23,935/- towards dead stock, disallowance under Section 14A amounting to Rs. 30,68,621/-, disallowance of Rs. 18,19,266/- relating to expenses of rent income, disallowance of Rs. 13,75,400/- towards interest free funds of group concerns, disallowance of Rs. 14,74,315/- towards stamp duty and share capital expenses and disallowance of Rs. 3,04,74,181/- towards depreciation on plant and machinery. The AO assessed the total income of the assessee at Rs. 17,87,96,235/-. Being aggrieved by the assessment order the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

4. As regards, Ground No. 1 of assessee's appeal related to disallowance of Rs. 8,23,935/- with respect to dead stock expenses, the Ld. A.R. submitted that this issue is covered against the assessee by the decision of the Tribunal in assessee's own case for A.Y. 2008-09 in ITA No. 926 & 1118/Ahd/2012 order dated 11.05.2022.

5. The Ld. D.R. relied upon the decision of the Tribunal and the order of the CIT(A) as well as assessment order.

6. We have heard both the parties and perused all the relevant material available on record. The Ld. A.R. fairly submitted that the issue is covered against the assessee in assessee's own case for A.Y. 2008-09 as well as assessment order 2007-08 being ITA No. 3076/Ahd/2010 order dated 25.10.2011. Therefore, Ground No. 1 of assessee's appeal is dismissed.

7. As regards Ground No. 2 relating to disallowance of Rs. 30,68,621/- under Section 14A, the Ld. A.R. submitted that both the authorities failed to appreciate that the assessee has earned exempt income being dividend income of Rs. 1,900/-. The Ld. A.R. further submitted that disallowance under Section 14A cannot exceed exempt income which happens to be Rs. 1,900/- i.e. dividend in assessee's case. The Ld. A.R. relied upon the decision of the Tribunal in case of Madhusudan Industries Ltd. (ITA No. 1715/Ahd/2011) and Vishal Engg. & Galvanizers (ITA No. 2316/Ahd/2014).

8. The Ld. D.R. submitted that the assessee derived interest expenses at Rs. 4,18,04,489/- and the average value of investment at Rs. 8,00,77,800/-. The average assets impugned to Rs. 125,46,17,734/- and therefore, the disallowance under Section 14A Rule 8D comes to Rs. 30,68,621/-. Thus, the Ld. D.R. relied upon the assessment order in the order of the CIT(A).

9. We have heard both the parties and perused all the relevant material available on record. The assessee company has made investment in current assessment year. The company was having huge share capital and reserves and surplus meaning thereby that in earlier years to the said investments were made out of own funds and not out of borrowed funds. There was no unsecured loan at all in the current assessment year and thus the disallowance made by the Assessing Officer is not just and proper. The expenses as mentioned by the Ld. A.R. that there was no expenditure incurred in earning the dividend which is only Rs. 1,900/- appears to be correct. Therefore, the CIT(A) was not correct in affirming the disallowance under Section 14A of the Act. Ground No. 2 of assessee's appeal is allowed.

10. As regards to Ground No. 3 related to partly confirming the disallowance under Section 36(1)(iii) the Ld. A.R. submitted that the assessee has made interest free advance on which no interest was charged. In fact, the assessee has interest free funds which are almost higher to that of interest free advances. The Ld. A.R. relied upon the decision of the Tribunal for A.Y. 2008-09 bearing ITA No. 1118/Ahd/2012.

11. The Ld. D.R. relied upon the assessment order and the order of the CIT(A).

12. We have heard both the parties and perused all the relevant materials available on record. It is not disputed by the Revenue that the

interest free funds are lesser than the interest free advances. The CIT(A) was not correct in giving part relief thereby directing the Assessing Officer to work out the proportionate interest on specific formula envisaged by the CIT(A) in the order. In fact, the assessee has substantial interest free funds as against the interest free advances, therefore, disallowance u/s 36(1)(ii) of the Act is not just and proper. This issue is already decided in A.Y. 2008-09 in ITA No. 1118/Ahd/2012 filed by the Revenue. Hence, Ground No. 3 of the assessee's appeal is allowed.

13. Therefore, ITA No. 1785/Ahd/2012 filed by the assessee is partly allowed.

14. The grounds of appeal raised by the Revenue in ITA No. 1871/Ahd/2012 for A.Y. 2009-10 read as under:

“1. That the ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.1,61,81,024/- towards Land Restoration Expenses despite the fact that the same is clearly capital expenditure.

2. That the ld. CIT(A) has erred in law and on facts in allowing deduction towards Employees Contribution to PF despite the fact that the same was paid after due date and hence to be treated as income of the assessee u/s 2(24)(x) read with section 36(1)(va) of the Act

3. That the ld. CIT(A) has erred in law and on facts in allowing the excess deduction claimed against rent income despite the fact that the assessee had claimed standard deduction u/s 24 as well as various other deductions in the P&L account towards rent expenses.

4. That the ld. CIT(A) has erred in law and on facts in deleting the disallowance of interest expenses to the extent of Rs.13,75,400/- despite the fact that the assessee had given interest free loans to its subsidiaries without establishing any commercial expediency.

5. *That the ld. CIT(A) has erred in law and on facts in deleting the disallowance of Stamp Duty and Share Capital expenses despite the fact that these were capital expenses.*

6. *That the ld. CIT(A) has erred in law and on facts in allowing the depreciation on Plant and Machinery despite the findings that the same was not put to use during the year.”*

15. As regards Ground No. 1 Revenue’s appeal relating to deletion of disallowance of Rs. 1,61,81,024/- made in respect of land restoration expenses. The Ld. D.R. submitted that the CIT(A) has ignored the finding of the Assessing Officer and these expenses were disallowed in A.Y. 2007-08 as well as for A.Y. 2008-09. The Assessing Officer has rightly treated the same as capital expenditure. The Ld. D.R. relied upon the assessment order.

16. The Ld. A.R. submitted that this issue is covered in favour of the assessee by the Tribunal in A.Y. 2008-09. The Ld. A.R. further submitted that the Assessing Officer stated in the report dated 11.05.2012 that in all the projects where land restoration expenses were claimed, corresponding income was disclosed during the year under consideration. The Ld. A.R. relied upon the order of the CIT(A).

17. We have heard both the parties and perused all the relevant material available on record. The issue is identical to the present Assessment Year to that of A.Y. 2007-08 and 2008-09 wherein the Tribunal has observed that if corresponding income has been offered for tax, therefore, these corresponding expenses should also be allowed. The finding of the CIT(A) in assessee’s favour for A.Y. 2008-09 is correct

and the same is applied in A.Y. 2009-10 as no distinguishing facts were pointed out by the Ld. DR. Thus, Ground No. 1 of Revenue's appeal is dismissed.

18. As regards Ground No. 2 of Revenue's appeal relating to deletion of disallowance under Section 36(1)(va) with respect to employees' contribution to Provident Fund, the Ld. D.R. submitted that the Hon'ble Gujarat High Court in case of CIT vs. GSRTC, 366 ITR 170 has decided this issue against the assessee.

19. We have heard both the parties and perused all the relevant material available on record. Since the issue is decided against the assessee in case of GSRTC (Supra) Ground No. 2 of Revenue's appeal is allowed.

20. As regards Ground No. 3 relating to allowing standard deduction under Section 24(1), the Ld. D.R. submitted that treating the rent income as house property income when the assessee has claimed expenses relevant to leased house property as business expenditure amounts to double deduction and therefore, the Assessing Officer has rightly made this addition.

21. The Ld. A.R. submitted that this issue is decided in favour of the assessee by the Tribunal in A.Y. 2008-09. We have heard both the parties and perused all the relevant materials available on record. The facts are identical in A.Y. 2009-10 to that of A.Y. 2008-09. The CIT(A)

has rightly observed that rental income was on account of leasing out part of its business and factory building and not on plant and machinery or other equipments. Since the assessee has not changed the head of income at all i.e. “rental income” as “income from house property”, the same cannot be changed income from any subsequent year. The CIT(A) was right in deleting the addition. Ground No. 3 of Revenue’s appeal is dismissed.

22. As regards Ground No. 4 of Revenue’s appeal relating to deletion of disallowance of Rs. 13,75,400/- under Section 36(1)(iii) the issue has also decided in Ground No. 3 of assessee’s appeal for A.Y. 2009-10 hereinabove. Therefore, Ground No. 4 is dismissed.

23. As relates to Ground No. 5 of Revenue’s appeal regarding deletion of disallowance of stamp duty and share capital expenses, the Ld. D.R. submitted that the said expenses are not allowable and relied upon the assessment order.

24. The Ld. A.R. submitted that the assessee has incurred stamp paper expenses on working out capital facilities avail during the year under consideration. Schedule 3 of Balance Sheet reveals that the assessee has availed following fresh credit facilities during the year under consideration:

Working capital:

UCO Bank – Rs.6,64,95,213/-

Axis Bank – Rs.13,36,87,119/-

Other loans:

Tata Capital Ltd. – Rs.2,73,02,122/-

Axis Bank Ltd. – Rs.4,02,22,000/-

For availing working capital facilities, stamp papers are required for executing various documents. Hence, such expenses have been incurred. Such expenses have not been incurred for increase in authorized share capital and there is no increase in authorized share capital during the year under consideration as evident from Schedule 1 of Balance Sheet. The Ld. A.R. further submitted that details of stamp duty expenses, relevant ledger and documentary evidences in support of such claim are at placed on record during the assessment proceeding. Since working capital is day-to-day business requirement expenses incurred for procuring such facilities is revenue in nature. Accordingly, impugned addition has been rightly deleted by the CIT(A). The Ld. A.R. relied upon the decision of the Hon'ble Apex Court in case of India Cement Ltd. vs. CIT, 60 ITR 52 (SC) wherein it has been held that incidental expenditure incurred for obtaining loan from a financial institution is revenue expenses.

25. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the stamp duty and share capital expenses were the requirement of the business activity on day-to-day basis and the same was properly documents by the assessee through ledger and other supporting documents which was present before the Assessing Officer. This is a incidental expenditure and therefore, cannot be held as capital expenses. The decision of

Hon'ble Apex Court in case of India Cement Ltd. (Supra) is apt in the present case. Therefore, Ground No. 5 of Revenue's appeal is dismissed.

26. As regards Ground No. 6 of Revenue's appeal relating to allowing depreciation on Plant and Machinery, the Ld. D.R. relied upon the assessment order and submitted that if the Plant and Machinery have been put to use either the operational income would have been incurred of sub-contractor and equipment hiring charges would have reduced while the same has never happened during the year in assessee's case. Therefore, the Ld. D.R. submitted that the AO has rightly disallowed the said claim of depreciation.

27. The Ld. A.R. submitted that the assessee is engaged in the business of undertaking turnkey projects for laying and construction pipelines. Assessee purchased substantial equipments used for construction and infrastructure work. The copies of purchase bills were furnished during the assessment proceedings. In fact, the factum of ownership was never disputed by the Revenue. As regards such assets being to use, the assessee vide letter dated 12.12.2011 furnished project-wise details of machines, name of vendor, date of capitalization, bill reference, page number, rate of depreciation, net value of asset and project in which such assets were utilized. The description of items also appears in the order of the CIT(A). Such machines are in the nature of moving and ready to use machines without requiring any elaborate installation at any place like any plant and machinery. Such assets are moving from one project to another and working for construction and infrastructure projects. Thus,

the assets in question were just like vehicle which can be put to use immediately when brought on road. In view of the above, it cannot be said that though the asset in question were purchased the same were not put to use. In fact, there is no requirement of installation in respect of such assets. The Ld. A.R. submitted that the Assessing Officer was not correct in disallowing the claim of depreciation on the count that such assets were not put to use. It is a settled law that one an asset is ready to use then irrespective of the fact as to whether such asset has been put to use or not depreciation is allowable on the same. The Ld. A.R. relied upon the decision of Capital Bus Service Pvt. Ltd. vs. CIT, 123 ITR 404 (Del.), ACIT vs. Ashima Syntex Ltd., 251 ITR 133 (Guj.).

28. We have heard both the parties and perused all the relevant material available on record. It is not a disputed fact that the ownership of the said movable assets such as moving and ready to use machines are owned by the assessee. The assessee has made use of these assets related to construction and infrastructure activity conducted by the assessee and submitted the project wise details to the Assessing Officer. Machines were purchased before the end of accounting year i.e. March, 2009 and therefore, the use for the purpose of business cannot be doubted when such type of machine does not require any installation. The CIT(A) has rightly observed that depreciation cannot be disallowed just on the presumption that the assessee did not use the machines purchased by it much before the end of accounting year. As per Explanation 5 to Section 32 (1) it is mandatory on the part of the Assessing Officer to allow depreciation even if it is not claimed by the assessee if assets are owned

and put to use by the assessee. Thus, Ground No. 6 of Revenue's appeal is dismissed.

29. Thus, ITA No. 1871/Ahd/2012 filed by the Revenue for A.Y. 2009-10 is partly allowed.

30. The grounds of appeal raised by the Revenue in ITA No. 2578/Ahd/2014 for A.Y. 2010-11 read as under:

“1. The CIT(A) erred in law and on facts in deleting the addition to the extent of Rs.3,25,39,891/- despite the fact that the same is clearly capital expenditure.

2. The CIT(A) erred in allowing the expenditure under section 24 treating the rent income as house property income, when the assessee claimed expenses relevant to leased out property as business expenditure as pointed out by the AO in the order, which resulted in double deduction.

3. The CIT(A) has erred in law and on facts in deleting the disallowance of interest expenses to the extent of Rs.51,10,672/- despite the fact that the assessee had given interest free loans to its subsidiaries without establishing any commercial expediency.

4. The CIT(A) has erred in law and on facts in deleting the disallowance of Stamp Duty and Share Capital expenses to the extent of RS.20,96,388/- despite the fact that these were capital expenses.

5. The CIT(A) has erred in deleting the addition in respect of reimbursement of Service Tax of Rs.2,35,16,841/- receivable from GAIL as per Arbitration award. The CIT(A) has further erred to the extent of admitting the claim of assessee that the payment was stayed by Delhi High Court despite the fact that the income towards arbitration award has already been accrued during the financial year.”

31. As regards to Ground No. 1 relates to disallowance made in respect of land restoration which is identical to A.Y. 2009-10 and CIT(A) also followed the same assessment year. This issue is identical to

Ground No. 1 of Revenue's appeal for A.Y. 2009-10 being ITA No. 1871/Ahd/2012 and hence, Ground No. 1 is dismissed.

32. As regards Ground No. 2 of Revenue's appeal relating to standard deduction under Section 24(1), the same is identical to Ground No. 3 of Revenue appeal for A.Y. 2009-10. Hence, Ground No. 2 is dismissed.

33. As relates to Ground No. 3 of Revenue's appeal relating to disallowance of Rs. 51,10,672/- u/s. 36(1)(iii), the same is identical to Ground No. 3 of assessee's appeal for A.Y. 2009-10 being ITA No. 1785/Ahd/2012. Hence, Ground No. 3 is dismissed.

34. As regards to Ground No. 4 relating to disallowance of stamp duty and share capital expenses, the same is identical to Ground No. 5 of Revenue's appeal for A.Y. 2009-10. Hence, Ground No. 4 is dismissed.

35. As regards to Ground No. 5 of Revenue's appeal related to deletion of addition of Rs. 2,35,16,841/- in respect of reimbursement of Service Tax receivable from GAIL, the Ld. D.R. submitted that in the assessee's case after the assessee obtained legally enforceable right. The assessee has not brought material on record to indicate that the GAIL has taken stay against the award. Simply filing of appeal has no bearing upon such legally enforceable right. Thus, the Ld. D.R. submitted that the AO rightly made addition on this.

36. The Ld. A.R. submitted that the said amount of court settlement was offered for tax in F.Y. 2015-16 and therefore, the same cannot be

taken into account in this assessment year. The Ld. A.R. submitted that it is a well settle that only real income can be taxed by the Revenue and not notional income. The Ld. A.R. submitted that the Hon'ble Apex Court in case of Godhra Electricity Co. Ltd. vs. CIT, 225 ITR 746 (SC) has also stipulated the said principle.

37. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the addition is made on the amount which was not received by the assessee during the present assessment year. Subsequently, the assessee has offered the said amount/settlement amount for taxation in F.Y. 2015-16. Therefore, the addition was rightly deleted by the CIT(A). Ground No. 5 of Revenue's appeal is dismissed.

38. Thus, ITA No. 2578/Ahd/2014 filed by the Revenue for A.Y. 2010-11 is dismissed.

39. The grounds of appeal raised by the assessee in ITA No. 2652/Ahd/2014 for A.Y. 2010-11 read as under:

*"1. The learned CIT(A) has erred in law and on facts in confirming the addition of Rs.6,58,289/- on account of late remittance of employees contribution to P.F. relying upon the decision of the Hon'ble Gujarat High Court in the case of Gujarat State Road Transport Corporation [2014] 41 taxmann.com 100 (Guj.). It is submitted with due respect to the above decision that subsequently the **Hon'ble Karnataka High Court in the case of Essae Teraoka (P.) Ltd. vs. DCIT [2014] 43 taxmann.com 33 (Karnataka)** has taken a view in favor of the assessee while disagreeing with the decision of the Hon'ble Gujarat High Court. That apart, since the SLP filed against the said decision before the Hon'ble Supreme Court having been admitted, the issue in dispute being addition of Rs.6,58,289/- be decided accordingly.*

2. The learned CIT(A) has erred in confirming the addition of Rs.25,60,675/- made by the AO while treating the entire expenses under the head "Site Expenses" as capital in nature on the ground that the items purchased pertains to Furniture and Fixtures without proper verification and consideration of the explanation furnished and the items debited under the said head while following the CIT(A)'s order of earlier year i.e. A.Y.2009-10 passed in case of the appellant.

2.1 The appellant states that in view of the elaborate facts, explanation and details filed, more particularly the fact that the basis of addition in earlier years being different than that of the year in dispute i.e. A.Y.2010-11, the ld. CIT(A) erred in confirming the addition while wrongly assuming that the basis of addition/disallowance in earlier years and the year in dispute was identical. Accordingly, the very basis of confirming the impugned addition of Rs.25,60,675/- being incorrect and contrary to facts, the same requires to be deleted and the expenditure in question requires to be treated as allowable revenue expenses as claimed by the appellant.

2.2 The learned CIT(A) has further erred in not adjudicating the alternate ground of the appellant that the addition be restricted to only the actual expenditure on furniture and fixtures and in case the said expenses are treated as capital expenses, the appellant is entitled to depreciation on the said amount as per the provisions of Section 32 of the Act.

3. The learned CIT(A) has erred in law as well as on facts in confirming the addition of Rs.39,72,461/- made by the AO while applying the provisions of Section 14A of the IT. Act, 1961 read with Rule 8D of the I.T. Rules, 1962. In view of facts and elaborate submissions filed coupled with settled legal position, the impugned addition of Rs.39,72,461/- requires to be deleted.

3.1 The learned CIT(A) has further erred in not appreciating the fact that during the year under consideration neither any exempt income has been earned or claimed by the appellant apart from the fact that no new investments have been made during the year at all and hence, the question of applicability of the provisions of Section 14A does not arise at all as held by the **Hon'ble Gujarat High Court in case of group concern of the appellant namely Corrtech Energy Pvt. Ltd. in Tax Appeal No 239 of 2014**. Therefore, the impugned addition of Rs.39,72,461/- even otherwise requires to be deleted.

4. The learned CIT(A) has erred in law and on facts in directing the AO to work out the disallowance on account of interest on the interest free funds on the basis of formula suggested by the CIT(A) in earlier years in respect of the addition of Rs.51,10,672/-being notional interest on loans granted to

*sister concerns. In view of the fact that the appellant has sufficient interest free funds available at its disposal, the entire addition of Rs.51,10,672/- ought to have been deleted keeping in view the facts of the case and the legal position in support thereof following the decision of **Hon'ble ITAT Ahmedabad Bench in the case of Torrent Financier's vs. Asstt. CIT (2001) 73 TTJ 624 (Ahd.)**.*

5. *The learned CIT(A) has erred in law and on facts in confirming the disallowance on account of difference in TDS vis-a-vis income credited in books of account to the extent of Rs.12,67,467/- without proper consideration and appreciation of the facts of the case and more particularly the fact that identical addition in previous year i.e.A.Y.2008-09 has been deleted by the Id. CIT(A).*

The appellant craves leave to add, amend, alter, modify or delete any of the above grounds as well as to submit additional grounds at the time of hearing of the appeal.”

40. As regards to Ground No. 1 relates to late payment of employees' contribution to Provident Fund and ESI which is covered against the assessee by the Hon'ble Jurisdictional High Court in case of GSRTC (Supra).Hence Ground No. 1 of assessee's appeal is dismissed.

41. As regards Ground No. 2 of assessee's appeal relating to site expenses the same is identical to Ground No. 1 for A.Y. 2009-10 of assessee's appeal. No contrary facts were pointed out by the Ld. DR. Hence, Ground No. 2 of assessee's appeal is allowed.

42. As regards Ground No. 3 relating to disallowance under Section 14A the same is allowed as no exempt income has been earned during the year. The reliance of the assessee's own case by the decision of Hon'ble Gujarat High Court reported in 372 ITR 97 (Guj.) is relevant in this year. Ground No. 3 of assessee's appeal is allowed.

43. As regards Ground No. 4 relating to disallowance of Rs. 51,10,672/- under Section 36(1)(iii), the same is identical to Ground No. 3 of assessee's appeal for A.Y. 2009-10 which is decided by us. Hence, Ground No. 4 is allowed.

44. As regards Ground No. 5 of assessee's appeal related to disallowance of Rs. 12,67,467/- on account of difference in income as per TDS certificate and books of accounts, the Ld. AR submitted that the same is decided against the assessee by the Tribunal in A.Y. 2008-09 as the CIT(A) has granted the relief to the assessee. Hence, Ground No. 5 is dismissed.

45. Thus, ITA No. 2652/Ahd/2014 filed by the assessee for A.Y. 2010-11 is partly allowed.

46. The grounds of appeal raised by the assessee in ITA No. 821/Ahd/2015 for A.Y. 2008-09 read as under:

“1. The learned CIT(A) has grossly erred in law and on facts in confirming the levy of penalty u/s. 271(1)(c) of the Act in respect of addition/disallowance of Rs. 38,70,749/- (although AO has levied penalty on addition of Rs. 23,84,449/-, the Ld. CIT(A) has rectified the amount at Rs. 38,70,749/-) made by the A.O. on account of income reflected in TDS Certificates but not recorded in the books of account. In view of facts, submission and evidences filed coupled with legal position vis-à-vis facts of the appellant's case, the impugned penalty confirmed on the addition of Rs. 38,70,749/- ought to have been deleted.

2. The learned CIT(A) has grossly erred in law and on facts in confirming the levy of penalty u/s. 271(1)(c) in respect of addition/disallowance of Rs. 42,48,118/- made by the A.O. on account of bogus purchases. In view of facts, submissions and evidences filed coupled with legal position vis-à-vis facts of the appellant's case, the impugned

penalty confirmed on the addition of Rs. 42,48,118/- ought to have been deleted.

3. The learned CIT(A) further failed to appreciate the fact that as held by the Hon'ble Supreme Court in the case of Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR 158 (SC), a mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars."

47. As regards to penalty imposed under Section 271(1)(c) in respect of disallowance on account of income reflected in TDS certificate but not recorded in books of accounts and on account of bogus purchases, the Ld. A.R. submitted that difference in receipt to that of Form 26AS cannot be the reason for making the addition, the penalty was on the non-furnishing of particulars of income which is not just and proper. The Ld. A.R. further submitted that the addition on account of bogus purchase was on ad-hoc basis and cannot be the criteria for levying the penalty. The Ld. A.R. relied upon the decision of Hon'ble Apex Court in case of Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR 158 (SC) wherein it is held that mere making of claim which is not sustainable in law, by itself, will not amount to furnish inaccurate particulars regarding the income of the assessee.

48. The Ld. D.R. submitted that the assessee failed to bring the parties before the Assessing Officer and to controvert the findings of the Assessing Officer that sales shown was bogus in nature. Thus, the penalty imposed by the Assessing Officer was correct and there is no need to interfere with the findings of the CIT(A).

49. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that both the addition on which the penalty is imposed is on the ground that the assessee filed inaccurate particulars of income. But the records were there at the stage of assessment proceedings and the same cannot be treated as inaccurate furnishing of income. The reliance of Hon'ble Apex Court decision in case of Reliance Petroproducts Pvt. Ltd. (Supra) is apt in the present case.

50. Hence, ITA No. 821/Ahd/2015 for A.Y. 2008-09 filed by the assessee is allowed.

51. The grounds of appeal raised by the Revenue in ITA No. 1129/Ahd/2015 for A.Y. 2008-09 read as under:

“1. The CIT(A) erred in law and on facts in deleting the penalty levied on the following additions/disallowances out of the total penalty levied of Rs.51,73,081/- u/s 271(1)(c) of the Act despite the fact that the ld. CIT(A) has confirmed these additions/disallowances.

<i>(a) Clam of Short Term capital loss</i>	<i>Rs. 21,87,518/-</i>
<i>(b) Payments to Axis PE for due diligence</i>	<i>Rs.41,54,372/-</i>
<i>(c) Dead Stock</i>	<i>Rs.6,23,810/-</i>
<i>(d) Disallowance u/s 40(a)</i>	<i>Rs.4,18,631/-</i>
<i>(e) Disallowance u/s 14A</i>	<i>Rs.8,74,323/-</i>
<i>(f) Interest on diversion of funds</i>	<i>Rs.10,95,150/-</i>
<i>(g) Land Restoration expenses</i>	<i>Rs.1,07,375/-</i>

(2) The ld. CIT(A) erred in not appreciating the fact that the assessee failed to substantiate the reasons for making wrong claim in the returned income in terms of Clause (B) to Explanation 1 of Section 271(1)(c) of the Act.

(3) The ld. CIT(A) ought to have upheld the order of the Assessing Officer to the extent mentioned above.”

52. ITA No. 1129/Ahd/2015 for A.Y. 2008-09 filed by the Revenue is below the tax limit prescribed by the CBDT Circular No. 05/2018 and hence dismissed on the same count.

53. The grounds of appeal raised by the assessee in ITA No. 1358/Ahd/2017 for A.Y. 2010-11 read as under:

“1. That the ld.CIT(A) erred in law and on facts in deleting the addition of Rs.1,86,94,551/- made u/s 145A of the I.T.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.”

54. ITA No. 1358/Ahd/2017 for A.Y. 2010-11 filed by the Revenue, Ground No. 1 is related to addition of Rs. 1,86,94,551/- made under Section 145A. The Ld. D.R. relied upon the assessment order.

55. The Ld. A.R. submitted that the AO found that opening balance of "CENVAT credit" was Rs. 1,65,68,670/-whereas closing balance of CENVAT credit was Rs.3,52,63,221/- and thus, there was an increase of Rs.1,86,94,551/- (Rs.3,52,63,221 - Rs.1,65,68,670) in CENVAT credit. AO further found that "closing stock" ought to have been valued as per "Inclusive method" which was admittedly not done since assessee had followed "Exclusive method". Thus, AO took a view that if "closing stock" is valued as per "Inclusive method", value of "closing stock" is to

be increased by Rs.1,86,94,551/- and hence, AO made the impugned addition u/s 145 A of the Act. The Ld. AR further submitted that the AO failed to appreciate that assessee has been consistently following the "Exclusive method" of valuing opening and closing stock. Further, if the amount in question is added to "closing stock"1, then similar adjustment must be made to "opening stock" as well as "purchases" and if that is done, then the entire transaction will be "revenue neutral". The Ld. AR submitted that the AO failed to appreciate that it is mandatory for an assessee to follow "Exclusive method" of accounting for the purpose of valuation of inventories in light of AS-2 on "Valuation of Inventories" issued by ICAI. However, as per S. 145 A, an assessee is to follow "Inclusive method" of accounting. Thus, there is no impact on profitability whether an assessee follows "Exclusive method" or "Inclusive method". Accordingly, the Ld. AR submitted that no addition is called for u/s 145A. The Ld. AR relied upon the followings decisions:

- CIT vs. Indo Nippon Chemicals Ltd. - 261ITR 275 (SC);
- ACIT vs. Narmada Chematur Petrochemicals - 327 ITR 369 (Guj);
- ITO vs. Mamata Brampton Engg. P. Ltd. - ITA 2387/Ahd/2013

In light of the above, the Ld. AR submitted that the CIT(A) has rightly deleted the impugned addition.

56. We have heard both the parties and perused all the relevant material available on record. The Assessing Officer has not taken cognizance that the assessee has followed "exclusive method" on accounting for the purpose of valuation of inventories in light of AS-2 on

“Valuation of Inventories” issued by ICAI. However, as per Section 145A and the assessee has to follow “Inclusive Method” of accounting. There is no impact on profitability whether the assessee followed “Exclusive Method” or “Inclusive Method”. It is a prerogative of the assessee in the business parlance that the assessee has followed the same method. Thus, the CIT(A) rightly delete the said addition. There is no need to interfere with the findings of the CIT(A). Hence, Revenue’s appeal is dismissed.

57. Thus, ITA No. 1358/Ahd/2017 for A.Y. 2010-11 filed by the Revenue is dismissed.

58. The grounds of appeal raised by the assessee in ITA No. 2406/Ahd/2017 for A.Y. 2014-15 read as under:

“1. The ld. CIT(A) has grievously erred in law and on facts in passing an ex-parte appeal order without proper consideration and appreciation of the elaborate written submission dated 11/05/2016 filed before his predecessor during the course of appeal hearing. The ld. CIT(A) was thus not justified in passing an ex-parte order in violation of the principles of natural justice and equity.

2. The ld. CIT(A) has erred in law and on facts in not appreciating the fact that the AO had levied penalty of Rs.1,38,600/- u/s. 272A(2)(g) of the Act in a mechanical manner in respect of delay in filing TDS returns without proper consideration and appreciation of the facts of the case. In view of the facts and explanation filed for the default ranging between 67 to 303 days aggregating to 1386 days, the default, if any, being on account of reasonable cause, the impugned penalty of Rs.1,38,600/- u/s.272A(2)(g) of the Act required to be deleted.

3. the ld.CIT(A) failed to appreciate the fact that since there was delay in depositing the TDS in view of liquidity problems, which was evident from the huge loss of Rs.62crores incurred by the company, the delay in filing the TDS returns was merely consequential and was thus neither intentional nor willful

and at best it can be termed as mere technical or venial breach of law. The impugned penalty is thus even otherwise unjustified and bad in law and accordingly required to be deleted.

The appellant craves leave to add, amend, alter, modify or delete any of the above grounds as well as to submit additional grounds at the time of hearing of the appeal.”

59. The Ld. A.R. submitted that the AO levied penalty of Rs. 1,38,600/- U/s 272A(2)(g) of the Act on the count that assessee failed to file statements in Form 24Q / 26Q for F/Y. 2013-14 within the prescribed time limit. The Ld. AR submitted that such penalty came to be confirmed by CIT(A) as well. The Ld. AR submitted that Section 272A(2)(g) is not at all applicable in this case. Section 272A(2)(g) of the Act provides for levy of penalty in a case where a person fails to furnish a certificate as required by Section 203 or Section 206C. Section 272A(2)(k) of the Act provides for levy of penalty in a case where a person fails "to deliver or cause to be delivered a copy of statement within the time specified in sub-section (3) of section 200 or the proviso to sub-section (3) or section 206C. In this case, the AO has levied penalty of Rs.1,38,600/- u/s 272A(2)(g) of the Act on the count that the assessee failed to file statements in Form 24Q / 26Q for F/Y.2013-14 within the prescribed time limit. Penalty for the so-called default referred to by the AO has been prescribed u/s 272A(2)(k) and not u/s 272A(2)(g). There is no default, as contemplated us 272A(2)(g) of the Act. Hence, no penalty could have been levied u/s 272A(2)(g) of the Act. On this short count, penalty in question deserves to be deleted. The Ld. AR further submitted that the TDS returns were filed much before issuance of show cause notice. At the outset, it is clarified that the "show cause notice" for levy

of penalty u/s 272A(2)(g) was issued on 11.12.2014. The Assessee had filed all TDS returns (Form 24Q & 26Q) much before the issuance of show cause notice. This shows that there is no mala fide intention on the part of the assessee in filing TDS returns belatedly. The Ld. AR further submitted that there is a reasonable cause for delay in furnishing TDS returns. In any case, there is a reasonable cause for delay in filing statutory forms (Form 24Q & 26Q) within the prescribed time limit. The Ld. AR submitted that the Assessee incurred heavy losses (i.e. loss of Rs.62.88 crore) during the year under consideration. Thus, assessee was facing "liquidity crisis". The ld. AR pointed out the said fact from the followings records:

- Acknowledgment of ITR and STI - Pgs.1-10 @ 1 of P/B;
- Annual Accounts-Pgs.28-72@ 37 of P/B;

The Ld. AR further submitted that unless date of challan in respect of depositing TDS to the Govt. treasury is entered in Form 24Q / 26Q, TDS return cannot be generated and consequently, Form 27A (i.e. form for furnishing information with the return or statement of deduction of tax at source filed on computer media) also cannot be generated. Section 273B provides that in case reasonable cause is shown, penalty u/s 272A(2) must not be levied. The Assessee could not file TDS returns in time on account of reasons discussed hereinabove. Since the same is a reasonable cause, penalty cannot be levied. The Ld. AR relied upon the decision of the Hon'ble Apex Court in case of CIT vs. Eli Lilly And Co. (India) P. Ltd. - 312 ITR 225(SC). The Ld. AR further submitted that there is no loss to the revenue. The Assessee has deposited TDS along with interest.

Thus, it has compensated the Government for late payment of TDS which, in turn, has ensured that there is no loss to the revenue. Since there is no loss to the revenue, penalty u/s 272A(2) of the Act cannot be levied. The Ld. AR further relied upon the decision of the Hon'ble Gujarat High Court in case of CIT vs. Harsiddh Construction Pvt. Ltd. – 244 ITR 417 (Guj.)”. The Ld. AR further submitted that it is merely a technical or venial breach. In any case, late filing of TDS returns is merely a technical or venial breach which does not warrant levy of penalty u/s 272 of the Act. The Ld. AR relied upon the decision of the Hon'ble Supreme Court in case of Hindustan Steel Ltd. vs. State of Orissa – 83 ITR 26 (SC). Thus, the Ld. AR submitted that the issue is cover in favour of the assessee in decision of Ahmedabad Tribunal in the case of Kiri Industries Ltd. vs. ACIT wherein it is held that penalty u/s 272A is not warranted. Thus, the Ld. AR prayed that the penalty be deleted.

60. The Ld. D.R. relied upon the penalty order and order of the CIT(A).

61. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee though failed to file statements in Form 24Q / 26Q for F/Y. 2013-14 within the prescribed time limit, yet there are reasonable circumstances which was pointed out by the Ld. AR during the hearing for the said delay. Further it is a matter of fact that Penalty for the said default referred to by the Assessing Officer has been prescribed u/s 272A(2)(k)

and not u/s 272A(2)(g). Besides, the assessee has paid/deposited TDS along with interest. Thus, it has compensated the Government for late payment of TDS which, in turn, has ensured that there is no loss to the revenue. This shows that there is no mala fide intention on the part of the assessee in filing TDS returns belatedly. Therefore, the CIT(A) was not right in confirming the penalty and it has to be deleted. The appeal of the assessee is allowed.

62. Thus, ITA No. 2406/Ahd/2017 for A.Y. 2014-15 filed by the assessee is allowed.

63. The grounds of appeal raised by the assessee in ITA No. 2408/Ahd/2017 for A.Y. 2015-16 read as under:

“1. The ld. CIT(A) has grievously erred in law and on facts in passing an ex-parte appeal order without proper consideration and appreciation of the elaborate written submission dated 14/07/2016 filed before his predecessor during the course of appeal hearing. The ld. CIT(A) was thus not justified in passing an ex-parte order in violation of the principles of natural justice and equity.

2. The ld. CIT(A) has erred in law and on facts in not appreciating the fact that the AO had levied penalty of Rs.22,900/- u/s. 272A(2)(g) of the Act in a mechanical manner in respect of delay in filing TDS returns without proper consideration and appreciation of the facts of the case. In view of the facts and explanation filed for the default ranging between 20 to 113 days aggregating to 229 days, the default, if any, being on account of reasonable cause, the impugned penalty of Rs.22,900/- u/s.272A(2)(g) of the Act required to be deleted.

3. The ld.CIT(A) failed to appreciate the fact that since there was delay in depositing the TDS in view of liquidity problems, which was evident from the huge loss of Rs.36crores incurred by the company, the delay in filing the TDS returns was merely consequential and was thus neither intentional nor willful and at best it can be termed as mere technical or venial breach of law.

The impugned penalty is thus even otherwise unjustified and bad in law and accordingly required to be deleted.

The appellant craves leave to add, amend, alter, modify or delete any of the above grounds as well as to submit additional grounds at the time of hearing of the appeal.”

64. The issue relating to penalty u/s 272A (2)(g) is identical to that of A.Y. 2014-15. Hence, the appeal filed by the assessee being ITA No. 2408/Ahd/2017 for A. Y. 2015-16 is allowed.

65. In result, ITA No. 1785/Ahd/2012 for A.Y. 2009-10, ITA No. 2652/Ahd/2014 for A.Y. 2010-11 filed by the assessee are partly allowed. In result, ITA No. 821/Ahd/2015 for A. Y. 2008-09, ITA No.2406/Ahd/2017 for A.Y. 2014-15 and ITA No. 2408/Ahd/2017 for A. Y. 2015-16 filed by the assessee are allowed. In result, ITA No. 1871/Ahd/2012 for A.Y. 2009-10 filed by the Revenue is partly allowed. In result, ITA No. 2578/Ahd/2014 for A.Y. 2010-11, ITA No. 1129/Ahd/2015 for A.Y. 2008-09 and ITA No. 1358/Ahd/2017 filed by revenue for A.Y. 2010-11 are dismissed.

This Order pronounced in Open Court on	19/10/2022
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Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 19/10/2022

TANMAY, Sr. PS

TRUE COPY

आदेश की प्रतिलिपि अद्योषित/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)-

Sd/-
(Ms. SUCHITRA KAMBLE)
JUDICIAL MEMBER

*ITA No. 1785/Ahd/2012 & 08 others
Corrtech International Pvt. Ltd. vs. ACIT(OSD)
Asst.Years–2009-10, 2010-11, 2008-09, 2014-15 & 2015-16*

- 30 -

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**