

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM**

आयकर अपील सं./ITA No.274 & 307/SRT/2022

(निर्धारण वर्ष /Assessment Years: (2013-14 & 2017-18)

(Virtual Court Hearing)

Assistant Commissioner of Income-tax, Circle-1(1)(1), Surat, Room No.108, 1 st Floor, Aayakar Bhawan, Majura Gate, Surat	Vs.	Enviro Control Pvt. Ltd., Enviro House, Opp. Bank of Maharashtra, Ghod Dod Road, Surat-395007
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAACE 8700 C		
(Assessee)		(Respondent)

निर्धारिती की ओर से /Assessee by	Shri Ankur A Shah, AR
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr. DR
सुनवाई की तारीख /Date of Hearing	03.01.2023
घोषणा की तारीख /Date of Pronouncement	18.01.2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned two appeals filed by the Revenue, pertaining to Assessment Years (AY) 2013-14 & 2017-18, are directed against the separate orders passed by the Learned National Faceless Appeal, Centre (“NFAC” for short) / Id. CIT(A), which in turn arise out of separate assessment orders passed by the Assessing Officer under section 143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

2. Since, both the appeals of the Revenue, relate to the same assessee, therefore we have clubbed these and heard together and a consolidate order is being passed for the sake of convenience and brevity.

3. First, we shall take up Revenue’s appeal in ITA No.274/SRT/2022 for assessment year 2013-14, wherein grounds of appeal raised by the Revenue are as follows:

“(i) On the fact and circumstances of the case and in law, the ld. CIT(A) has erred in deleting the disallowance of Rs.12,91,383/- in accordance with the provision of sub-section (3) of Section 14A of the Act, 1961 r.w.s.8D of the I T Rules on the ground that the assessee has inadvertently offered the exempt income for taxation and that the assessee had also disallowed a lumpsum amount of Rs.10,000/- u/s 14A of the Act..

(ii) On the fact and circumstances of the case and in law, the ld. CIT(A) has erred in holding that disallowance u/s 14A of the Act cannot exceed the amount of exempt income without appreciating the clarification issued by the Hon'ble CBDT in Circular No.05/2014 dated 11.02.2014 that Section 14A of the Act, r.w.s. 8D provides for disallowance of expenditure even where the assessee in particular has not earned any exempt income.

(iii) On the fact and circumstances of the case and in law, the ld. CIT(A) ought to have upheld the order of the Assessing Officer.

(iv) It is therefore prayed that the order of the Ld. CIT(A) may kindly be set aside and that of the Assessing Officer be restored.

(v) The assessee craves leave to add, alter, amend and/or withdraw any grounds of appeal either before or during the course of hearing of the appeal.”

4. Succinct facts are that during the assessment proceedings, the assessing officer observed that profit and loss account, balance sheet, computation of income, filed by the assessee revealed that assessee-company disallowed Rs.10,000/- on account of exempted income. It was further noticed from Norte P-5 of profit and loss account that assessee had claimed interest expenses of Rs.1,31,41,414/-. Therefore, assessing officer was of the view that disallowance was not computed as per Rule 8D of the Income Tax Rules, hence Assessing Officer was issued a show cause notice dated 31.10.2018 asking assessee as to why the disallowance should not be made u/s 14A r.w.s. 8D and should not be added back to the total income of the assessee-company.

5. In response to the said show cause notice, the assessee filed its reply vide letter dated 02.11.2018. In its reply, the assessee also relied upon various judiciary pronouncements and stated that provision of section 14A of the Act are not applicable in the assessee`s case. However, assessing officer rejected the contention of the assessee and held that assessee has not computed the disallowance as per provisions of section 14A of the Act, read with Rule 8D of the Rules. Therefore, assessing officer has computed the disallowance as follows:

Sr.No	Particulars	Amounts (Rs)
1	Value of investment as on 31.03.2012	6,63,63,876
2	Value of investment as on 31.03.2013	6,63,63,876
3	Average value of investment	6,63,63,876
4	Value of assets as on 31/03/2012	78,68,01,989
5	Value of assets as on 31.03.2013	1,01,21,81,590
6	Average value of assets	89,94,91,789
7	Interest expense	1,31,41,414
8	Disallowance u/s 14A read with Rule 8D	9,69,564
9	Average value of investment x interest expense/ average value of assets	9,69,564
10	0.5% of investment (0.5% of 6636876)	3,31,819
11	Total disallowable amount	13,01,383
12	Amount disallowed	10,000
13	Amount short disallowed	12,91,383

Therefore, Assessing Officer disallowed Rs.12,91,383/- in accordance with the provisions of sub-section (3) of Section 14A of the Act.

6. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before Ld. CIT(A) who has deleted the addition made by the Assessing Officer.

7. Learned DR for the Revenue, argued a lot, and stated that the addition u/s 14A of the Act, can be sustained, even if the taxpayer has not earned any exempt income in a particular assessment year. Besides, Id DR has also primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

8. On the other hand, Learned Counsel for the assessee, submitted before us written submission, which is reproduced below:

“To justify the said fact, we are enclosing herewith computation of income Annexure-12. On going through the same, your honours would be convinced that the respondent has not claimed dividend income of Rs.85,228 as exempt.

5. Further, even after not claiming the income as exempt, the respondent has inadvertently disallowed of Rs.10,000 as incurred for earning exempt income, which fact can be verified from computation of income.

Moreover, on going through the computation of income as enclosed in Annexdure-1 and relevant extract from audited financials enclosed as Annexure-3, your honours may note that profit includes dividend income and again inadvertently dividend income was added to total income and thus eventually double dividend income was offered to tax, least to mention about claiming the same as exempt.

6. Summarily, your honours may kindly note that

- firstly, dividend income was not claimed as exempt and thus, amount of Rs.85,228 was offered to tax

- secondly, once again inadvertently dividend income of Rs.85,228 was added to total income and offered to tax while filing tax return (as the same was forming part of total income), and

- thirdly, disallowance of Rs.10,000 was also made u/s 14A of the Act and, thus eventually against dividend income of Rs.85,228 an amount of Rs.1,80,456 is already offered to tax.

7. Further, effect of claiming dividend income as exempt or not can be explained by below table:

<i>Particulars</i>	<i>Dividend income claimed as exempt</i>	<i>Dividend income not claimed as exempt (as done by respondent)</i>
<i>Dividend income</i>	85,228	85,228
<i>Less: claimed as exempt</i>	85,228	Nil
<i>Offered to tax</i>	Nil	85,228
<i>Disallowance u/s 14A (can't exceed exempt income)</i>	85,228	Not required
<i>Income ultimately offered to tax</i>	85,228	85,228

8. Respondent places reliance of following judgments, which holds the view that disallowance u/s 14A cannot exceed exempt income earned or reported by the assessee;

(a) *PCIT vs. M/s Moderate Leasing and Capital Services Pvt. Ltd. (SLP No. 38584/2018)*

(b) *PCIT vs. Caraf Builders & Constructions (P.) Ltd. [2019] 112 taxmann.com 322 (SC)*

(c) *PCIT vs. GVK Project and Technical Services Ltd. [2019] 106 taxmann.com 181 (SC)*

(d) *PCIT vs. Oil Industry Development Board [2019] 103 taxmann.com 326 (SC)*

(e) *PCIT vs. State Bank of Patiala [2018] 99 taxmann.com 286 (SC)*

Similar view was given in following judgments after referring to Circular No5/2014 dated 11-02-2014.

(a) *CIT vs. Chettinad Logistics (P.) Ltd. [2017] 80 taxmann.com 221 (Mad), SLP against the said order was dismissed by Hon'ble Apex Court in [2018] 95 taxmann.com 250 (SC)*

- (b) *PCIT vs.IL & FS Energy Development Company Ltd. [2017] 84 taxmann.com 186 (Del) CBDT Circular No.5/2014 dated 11-2-2014 cannot override express provisions of Section 14A, read with rule 8D. Where no exempt income was earned in relevant assessment year, merely because tax auditor had suggested in tax audit report that there ought to be such disallowance,*
- (c) *PCIT vs. Delhi International Airport (P.) Ltd. [2022] 144 taxmann.com 80 (Del). Further to this, even after applying Circular No.5/2014, disallowance u/s 14A cannot exceed exempt income received or reported during the year.*

9. Department in its appeal has also taken recourse to amend in section 14A by Finance Act, 2022 which is again being clarificatory in nature can be applied prospectively only cannot be applied retrospectively. In this regard, reliance is placed on following judgments:

- (a) *PCIT vs. Era Infrastructure (India) Ltd. [2022] 141 taxmann.com 289 (Del)*
- (b) *PCIT vs. Delhi International Airport (P.) Ltd [2022] 144 taxmann.com 80 (Del)*
- (c) *ACIT vs. Williamson Financial Services Ltd [2022] 140 taxmann.com 164 (Guwahati-Trib.)”*

9. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. In our considered view, since the assessment year involved is the A.Y. 2013-14, and amendment in Rule 8D came in 2016 with effect from 02.06.2016, which is not applicable to the assessee under consideration. It is submitted by the Id Counsel that there was dividend income of Rs.85,228/- which was not claimed as exempt in computation of income. It is further submitted that even after not claiming the income as exempt, the assessee has inadvertently disallowed Rs.10,000/- as incurred for earning exempt income. We note that before Id CIT(A), assessee has furnished copy of computation of income and Profit and Loss account and balance sheet. On perusal of Profit and Loss account, it is noted that dividend income of Rs.85,228/- has been included in other income of Rs.1,40,44,301/-. Therefore, the dividend income has been included in the income of the assessee and has been offered to tax. The said dividend income has not been claimed as exempt. It is also noted that the dividend income of Rs.85,228/- was again added to total income and offered to tax as per computation of income filed by the assessee. It is further noted that in computation of income, the assessee has disallowed Rs.10,000/- on account of

expenses related to exempt income. Therefore, Id Counsel submitted that disallowance u/s 14A cannot exceed exempt income.

10. We note that Id CIT(A) has relied upon the decision of the Hon'ble Supreme Court in the case of PCIT vs. Moderate Leasing and Capital Services Pvt. Ltd. (SLP No.38584/2018 dated 5.12.2018). The above issue as to whether disallowance u/s 14A cannot exceed exempt income has been decided against the Revenue in the case of Caraf Builders & Constructions (P.) Ltd. [2019] 101 taxmann.com 167 (Del). The court held that upper disallowance under section 14A cannot exceed the exempt income of that year as held in Pr. CIT v. McDonalds India (P.) Ltd. ITA725/2018 decided on 22nd October, 2018, where the court followed the ratio and judgment of Supreme Court in the case of Maxopp Investments Ltd. v. CIT [2018] 402 ITR 640/254 Taxman 325/91 taxmann.com 154 and the earlier judgments of the Delhi High Court in Cheminvst vs. CIT [2015] 378 ITR 33/234 Taxman 761/61 taxmann.com 118 and CIT vs. Holcim (P.) Ltd [2015] 57 taxmann.com 28 (Del). Department's SLP (Dy.No.25130 of 2019) against the decision of High Court in PCIT-2 vs. Caraf Builders & Constructions (P.) Ltd.(2019) (101 txmann.com 167) (Del), where this issue was involved, has been dismissed by Supreme Court on 30.08.2019 in a summary manner and without any speaking order.

The Id CIT(A) has also referred the decisions in the case of Principal Commissioner of Income-tax, Patiala vs. State Bank of Patiala (ITA No.270 of 2016)(F/2 [2017] 88 taxmann.com 667 (Punjab & Haryana), the issue decided was that assessment order could not be held to be erroneous under section 263 where Assessing Officer restricted disallowance under section 14A to amount of exempt dividend income, even though he had computed disallowance under rule 8D to be at a higher figure. In the case of Principal Commissioner of Income-tax, Patiala v. State Bank of Patiala ((ITA No.359 of 2017) [2018] 99 taxmann.com 286 (Punjab & Haryana), where the amount of disallowance under Section 14A was restricted to the amount of exempt income only and not at a higher figure. In the case of Indiabulls Capital Services Ltd. [2020] 114 taxmann.com 647 (SC), Hon'ble Supreme Court has dismissed

departmental SLP against High Court's decision that disallowance calculated under section 14A could not exceed amount of tax free income. The Court held that the question of law urged in respect of section 14A in this case was squarely covered by the decision of this court in *ACB India vs. Assistant Commissioner of Income Tax*, [2015] 374 ITR 108 (Del). Furthermore, the disallowance calculated exceeded the amount of tax free income and was therefore held to be contrary to the ruling in *Cheminvest Ltd. vs. Commissioner of Income Tax* [2015] 378 ITR 33 (Del). Thus, Id CIT(A) noted that there is dividend income of Rs.85,228/- earned during the year, which is not claimed as exempt, therefore deleted the addition. We note that above conclusion reached by Id CIT(A) is correct, therefore does not require interference, hence we dismiss the ground raised by the Revenue.

11. In the result, appeal filed by the Revenue is dismissed.

12. Now we shall take Revenue's appeal in ITA No.307/SRT/2022, for assessment year 2017-18, wherein the grounds of appeal raised by the Revenue are as follows:

“(i) On the facts and circumstances of case and in law, the Ld. CIT(A) has erred in deleting the disallowance made on account of deduction claimed u/s 80IA(4) of the Act of Rs.23,64,79,700/- as the assessee has failed to prove that he is not a contractor but a developer and the assessee, doing the business in the nature of 'Works Contract', is not eligible for deduction u/s 80IA(4) of the Act.

(ii) On the facts and circumstances of case and in law, the Ld. CIT(A) has erred in deleting the disallowance on account of deduction claimed u/s 80IA(4) of the Act as the decision of the Hon'ble ITAT, Ahmedabad in assessee's own case on identical issue for the earlier A.Y. 2003-04 to 2009-10 and A.Y 2011-12, A.Y 2012-13 and A.Y 2014-15 have not been accepted by the Department and further appeal have been filed before the Hon'ble High Court where decision is pending.

(iii) On the facts and circumstances of case and in law, the Ld. CIT(A) has erred in deleting the disallowance on account of deduction claimed u/s 80IA(4) of the Act as the assessee enterprise was not directly engaged in the business of the developing or operating and maintaining or developing, operating and maintain any infrastructural facility. The assessee enterprise was only executing the contract works awarded by the Central and State Government and, therefore, not entitled to claim the deduction u/s 80IA(4) of the Act.

(iv) On the basis of the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.

(v) It is therefore prayed that the order of the Ld. CIT(A) may kindly be set aside and that of the Assessing Officer be restored.

(vi) The assessee craves leave to add, alter, amend and or withdraw any grounds of appeal either before or during the course of hearing of the appeal.”

13. At the outset, Ld. Counsel for the assessee submits before the Bench that issue raised by the Revenue is squarely covered in favour of assessee, in assessee's own cases, by the judgment of Co-ordinate Benches of Ahmedabad in ITA No.2679/Ahd/2014, order dated 15.06.2017. The ld Counsel submitted that there is no change in assessee's facts and the law applicable to assessee's facts and the assessee under consideration was granted deduction u/s 80IA(4) of the Act by the Co-ordinate Benches of Ahmedabad. Therefore, ld Counsel contended that since the issue under consideration, is squarely covered by assessee's own case, hence the order of Ld. CIT(A) should be affirmed.

14. On the other hand, Ld. CIT-DR for the Revenue submitted that assessee is not developer but it is a contractor. Therefore, deduction should not be allowed to assessee.

15. We have heard both the parties and perused the materials available on record. We note that Ld. CIT(A) has allowed the deduction u/s 80-IA(4) of the Act taking into account the order of Hon'ble Co-ordinate Benches of Ahmedabad in assessee's own case (supra) observing as follows:

“4. Decision-

4.1 I have considered the assessment order and written submission of the assessee. Ground no.1,2 and 3 related to disallowance of deduction of Rs.23,64,79,700/- claimed u/s 80IA(4) made in the assessment order u/s 143(3) for the A.Y 2017-18. The AO has given the finding that the assessee has claimed deduction of Rs.23,64,79,700/- u/s 80IA(4) in respect of profit from infrastructure development and there operations and maintenance activities. Disallowed the said deduction claimed by the assessee on the ground that the assessee has also observed that in the present case, the funds are provided by the state government and hence no own funds are invested by the assessee and the only entrepreneurial risk is that

assessee has to guarantee the completion of the work in timely manner with specified requirement as mentioned in the documents.

4.2 The assessee filed the written submission dated 18.11.2021, in which it is mentioned that 'The Hon'ble ITAT Ahmedabad and Hon'ble CIT(A) vide orders have consistently allowed the claim of deduction u/s 80[A of the Act having same set of facts for the following AY's:

<i>Assessment Year</i>	<i>ITAT Order date</i>
<i>2003-04 & 2004-05</i>	<i>20-03-2009</i>
<i>2005-06 to 2007-08 & 2009-10</i>	<i>30-04-2013</i>
<i>2008-09</i>	<i>16-11-2016</i>
<i>2010-11</i>	<i>24-07-2017</i>
<i>2011-12</i>	<i>15-06-2017</i>
<i>2012-13</i>	<i>29-05-2018</i>

4.3 Further, in the written submission dated 02.08.2022, the assessee submitted a table in which work orders for earlier years wherein Hon'ble ITAT has allowed assessee's claim of deduction u/s 80IA(4) of the Act and the extract of work order for relevant AY 2017-18 have been compared. the said table is reproduced as under-

<i>Type of contract</i>	<i>Extract from AY 2011-12 works orders</i>	<i>Extract from AY 2017-18 work order</i>
<i>WTP</i>	<i>Tender for work of Design, Construction, Testing and commissioning of 78 capacity Water Treatment Plant on Turnkey basis with three year</i>	<i>Tender for work of (1) Design Construction, testing and MLD commissioning of 90 MLD on capacity Water Treatment Plant on Turnkey Basis under</i>
<i>Type of Contract</i>	<i>Extract from AY 2011-12/AY 2012-13 work orders</i>	<i>2017-18 work order</i>
	<i>Operation & Maintenance of the proposed 78 MLD plant at Dindoli, Surat under JnNURM Scheme</i>	<i>JnNuramat Sarthana-Simada, Surat (ii) at 3 years operation & maintenance of proposed 90 MLD capacity Water Treatment Plant at Sarthana-Simada, Surat under JnNURM Scheme</i>
	<i>Page no. 3</i>	<i>Page no.4</i>
	<i>For this part, the tender shall quote a lump-sum price at the specified place in Volume-III (Price-Bid) of the tender.</i>	<i>For this part, the tenderer shall quote a Lump-sum price at the specified place in Volume-II (Price-Bid) of the tender.</i>
	<i>Page no.3</i>	<i>Page no.4</i>
	<i>2.1.4 Submission by Contractor:</i>	<i>2..3 Submission of Contractor:</i>
	<i>The successful contractor shall be required to submit following for approval of Surat Municipal Corporation</i>	<i>The successful contractor shall be required to submit the following for approval of Surat Municipality</i>
	<i>Page no.3</i>	<i>Page no.4</i>

	<i>2.1.4 Submission by Contractor:</i>	<i>2.1.3 Submission of Contractor:</i>
	<i>The successful contractor shall be required to submit following for approval of Surat Municipal Corporation</i>	<i>The successful contractor shall be the required to submit the following for approval of Surat Municipal Corporation</i>
	<i>Page no.5</i>	<i>Page no.6</i>
<i>STP</i>	<i>Design, Construction, Erection, Testing, Trial Run and Commissioning of 84 MLD capacity Sewage Treatment Plant at Variav including Operations-Maintenance the period of five years under JnNURM.</i>	<i>Construction of 53 MLD capacity Tertiary Sewage Treatment Plant (TSTP) at Gavier including Design, Construction, Erection, Testing and Commissioning and successive Operation and Maintenance for the period of the Ten Year and construction of Water Quality Monitoring Laboratory Building under Pollution Abetment of Mindhola River, NRCP</i>
	<i>Page no.1</i>	<i>Page no.1</i>
<i>CETP</i>	<i>Work order for the work of EPC tender for Design, construction, erection testing and Commissioning of 15 MLD capacity CETP on Turnkey Basis at Agreement "C" of 2011-12</i>	<i>Work order for EPC Contract Design, Drawing, Procurement and Construction of 40 MLD (20+20) Capacity Common Effluent Treatment Plant-Civil Work and Supplying Installing, Testing and Commissioning (SITC) Mechanical, Electrical &</i>
<i>Type of Contract</i>	<i>Extract from AY 2011-12/AY 2012-13 works order</i>	<i>2017-18 work order</i>
		<i>Instrumentation etc., complete including Six months Trial-run and One year operation, Maintenance and Repairs Totaling to 36 months of the Plant at Dahej Industrial Estate PCPIR (Re-invited)</i>
<i>Above mentioned work order are also attached herewith as Annexure-1 for your kind reference, on going through the same your honour may appreciate that there is no change in nature of work 2011-12/AY 2012-13, wherein Hon'ble ITAT has allowed the claim and AY 2017-18"</i>		

4.4 It is noted that the identical issue of allowability of deduction u/s 80IA(4) has been decided in favour of the assessee by the Ld. Commissioner of Income Tax, (Appeals)-1, Surat for AY 2014-15 vide order dated 22.12.2017. The relevant portion of the said order of the Commissioner of Income Tax (Appeals)-1, Surat is reproduced as under:

“6.1.2. Similar issue arose in assessee’s own case for A Y 2002-03 to 2011-12 and the issue was decided by Hon. ITAT, Ahmedabad as under:

Assessment Year	ITA Number	ITAT order Date
2003-04 & 2004-05	1681& 1682/Ahd/2006 and 210 & 211/Ahd/2006	20-03-2009
2005-06 to 2007-08 & 2009-10	3454/Ahd/08, 3698/Ahd/08/ 2369/Ahd/11, 2589/Ahd/09, 2817/Ahd/09, 2794/Ahd/11, 783/Ahd/10, 1021/Ahd/10, 2795/Ahd/11, & 2083/Ahd/12	30-04-2013
2008-09	1259/Ahd/2011	16-11-2016
2010-11	1888/Ahd/2013	24-07-2017
2011-12	2679/Ahd/2014	15-06-2017

6.1.3 The issue raised in the grounds of appeal under consideration is squarely covered in favour of the assessee by the decisions of Hon'ble ITAT, Ahmedabad for the various assessment years (Asst. Year 2003-04 to Asstt Year 2011-12), as per the chart above, in its own case, and the same is a binding precedent. Hence, in view of the above, facts, addition maybe the Assessing Officer of Rs.12,01,82,331/- by disallowance u/s 80IA(4) of the Act, is deleted and the grounds of appeal are allowed.”

4.5 The Ld. Commissioner of Income Tax (Appeals)-I, Surat deleted the addition made by the AO on account of disallowance u/s 80IA(4) of the Act. It is further noted that the Hon'ble ITAT Surat Bench has decided the above issue in favour of the assessee 2012-13 also vide order dated 29th May, 2018 in ITA No.41/AHD/2016/SRT. The assessee has furnished copy of the aforesaid order of the ITAT

4.6 I have gone through the order of the Ld. CIT(A) in the case of the assessee for AY 2014-15 I have also gone through the orders of the Hon'ble ITAT Surat in the case of the assessee 2011-12 and 2012-13. On careful consideration of the facts and issue involved in this appeal and those of the AY 2014-15 and of AY 2012-13, which was decided by the Hon'ble ITAT in favour of the assessee, I find the facts and issues involved are identical in respect of allowability of claim of deduction u/s 80IA(4). Respectfully following the decision of the jurisdictional Hon'ble ITAT Surat Bench in the case of the assessee 2011-12 and 2012-13 and also in view of the ordered of the Ld. CIT(A)-1, Surat, I hold that the assessee is eligible for deduction u/s 80IA(4) amounting to Rs.23,64,79,700/-. In view of the above, the addition made by the AO u/s 80IA(4) of Rs.23,64,79,700/- is deleted. Accordingly, Ground no. 1, 2 & 3 of the assessee are allowed.

5. Ground No.4 relates to Negative claim of deduction of Rs.17,56,526 u/s 80-IA for 11th year for one of its undertaking at 'PMC Naidu'. It is noticed that the said claim was neither made in the return of income on perusal of facts on record, I do not find any cogent reason to allow the above claim of the assessee. In view of the above ground no. 4 is dismissed.

6. Ground no. 5 is with regard to general in nature and does not require any specific adjudication.

7. In the result, the appeal is partly allowed.”

16. After going through the order of Ld. CIT(A), we note that Ld. CIT(A) has adjudicated the issue based on the order of Hon'ble Co-ordinate Benches of Ahmedabad in assessee's own case (supra). We note that there is no change in facts and law and Ld. CIT-DR for the Revenue has failed to bring any cogent evidence to distinguish the judgments of Coordinate Benches of Ahmedabad in assessee's own case (supra) in earlier years and also failed to distinguish the Judgment of Coordinate Bench of ITAT Surat in assessee's own case in ITA No.2679/Ahd/2014 (supra). Therefore, respectfully following the binding precedents of the Co-ordinate Benches of Ahmedabad in assessee's own case (supra) and Coordinate Bench of ITAT Surat in assessee's own case in ITA No.2679/Ahd/2014 (supra), we concur the findings of Ld. CIT(A). Therefore, this Revenue's appeal is hereby dismissed.

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

18. In combined result, both appeal of Revenue are dismissed.

Registry is directed to place one copy of this order in all appeals folder / case file(s).

Order is pronounced in the open court on 18/01/2023 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 18/01/2023

Dkp Outsourcing Sr.P.S.

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS