

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

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

आयकर अपील सं./I.T.A. Nos. 306 & 307/Ahd/2023  
(निर्धारण वर्ष / Assessment Years : 2017-18 & 2020-21)

<b>Goyal and Co. (Construction) Pvt. Ltd.</b> 10th Floor, Commerce House IV, Beside Reliance Petrol Pump, 100Ft. Road, Satellite, Ahmedabad	<b>बनाम/ Vs.</b>	<b>DCIT</b> Circle-2(1)(1), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCG5459R		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Assessee by :</b>	Shri Biren Shah & Shri Dhrunal Bhatt, A.Rs.
<b>Revenue by :</b>	Shri Rajdeep Singh, Sr. DR

सुनवाई की तारीख / <b>Date of Hearing</b>	09/11/2023
घोषणा की तारीख / <b>Date of Pronouncement</b>	05/02/2024

**ORDER**

**PER Ms. MADHUMITA ROY - JM:**

The instant appeals have been filed at the instance of the assessee are directed against the orders dated 07.03.2023 & 09.03.2023 passed by Ld. Commissioner of Income Tax (Appeals)-11, Ahmedabad (in short ‘CIT(A)’) arising out of the orders dated 12.12.2019 & 29.03.2022 passed by the DCIT, Circle-2(1)(1), Ahmedabad & ACIT, Central Circle 1(2), Ahmedabad, respectively; under Section 143(3) of the Income Tax Act, 1961, (hereinafter referred to as ‘the Act’) for Assessment Years 2017-18 & 2020-21.

2. Since both the appeals filed by the same assessee relate to similar issue, these are heard analogously and are being disposed of by a common order for the sake of convenience. We take ITA No.306/Ahd/2023 for A.Y. 2017-18 as a lead case.

3. The brief facts leading to the case is this that the assessee filed its return of income on 31.10.2017 declaring total income at Rs.14,28,86,060/- also made suo moto disallowances of expenses of Rs.4,62,259/- under Section 14A of the Act. The appellant's main business activity is construction and development of various projects. It made investments in partnership firm which are strategic investments and not for earning any exempt income. The appellant has identified specific expenditure pertaining to those investments which had earned exempt income and made disallowance of Rs.4,62,259/- under Section 14A of the Act in the following manner:

<b>Particulars</b>	<b>Amount (Rs.)</b>
Salary paid to Employee	1,95,000/-
Director Remuneration	1,50,000/-
PF attributable to employee	21,600/-
10% of Office, Insurance, Stationary and Telephone Expenses (9,56,586 * 10%)	95,659/-
<b>Total disallowance under section 14A of the Act</b>	<b>4,62,259/-</b>

4. Relevant to mention that the suo moto disallowance made above was duly audited and certified by Chartered Accountant as the same amount of Rs.4,62,259/- is disclosed in tax audit report for A.Y. 2017-18 in respect of expenses disallowed under Section 14A of the Act. On the contrary, the Ld. AO, however, disallowed

expenditure to the extent of Rs.85,61,316/- under Section 14A of the Act upon application of Rule 8D of Income Tax Rules. Finally, upon reducing the suo moto disallowance of Rs.4,62,259/- made by the assessee the ultimate disallowance under Section 14A read with Rule 8D remains at Rs.80,99,057/- which stood confirmed by the First Appellate Authority. It is a trite law that in the event the Ld. AO is not satisfied with the suo moto disallowance made by the assessee under Section 14A of the Act, he simply cannot reject the same without assigning any reason for the dissatisfaction to that effect which is also not reflecting in the order passed by the Ld. AO in the instant case.

5. It is the case of the assessee that the Ld. AO has not found that other expenditure debited in Profit & Loss Account is attributable to earning of exempt income and even if the appellant would not have made such investments, such expenditure was found to be incurred. Hence, there was no reason on the part of the Ld. AO to apply Rule 8D. The assessee relied upon the judgment passed by Hon'ble Supreme Court in the case of PCIT vs. Hero Corporate Service Ltd., reported in [2019] 103 taxmann.com 200 (SC), wherein it has upheld the decision made by the Tribunal in deleting disallowance made under Section 14A of the Act holding that explanation of the assessee and amount offered to tax under said section could not have been rejected by the Ld. AO in arbitrary manner.

6. The Ld. DR has failed to controvert such submission made by the Ld. AR, neither been able to cite any other judgment contrary to the judgment passed by the Hon'ble Supreme Court as cited hereinabove. Thus, respectfully relying upon the ratio laid down by the Hon'ble Supreme Court, we find that the addition made by the Ld. AO by making impugned disallowance under Section 14A read with Rule 8D is not sustainable and thus deleted.

7. In the result, appeal preferred by the assessee is allowed.

8. The decision in ITA No. 306/Ahd/2023 for A.Y. 2017-18 shall also apply mutatis mutandis in ITA No. 307/Ahd/2023.

9. In the result, both appeals preferred by assessee are allowed.

**This Order pronounced on 05/02/2024**

Sd/-  
(WASEEM AHMED)  
**ACCOUNTANT MEMBER**  
Ahmedabad; Dated 05/02/2024

Sd/-  
(MADHUMITA ROY)  
**JUDICIAL MEMBER**

S. K. SINHA

*True Copy*

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :**

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

आदेशानुसार/ BY ORDER,

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