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

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

I.T.A. No. 318/Ahd/2020
(Assessment Years: 2016-17)

Gujarat Urja Vikas Nigam Ltd., Sardar Patel Vidyut Bhuvan, Race Course Circle, Vadodara-390007	Vs.	Assistant Commissioner of Income Tax, Circle-1(1)(1), Vadodara
[PAN No.AACCG2861L]		
(**Appellant**)	..	(**Respondent**)

I.T. A. No. 414/Ahd/2020
(Assessment Year: 2016-17)

Deputy Commissioner of Income Tax, Circle-1(1)(1), Vadodara	Vs.	Gujarat Urja Vikas Nigam Ltd., Corporate Office, Race Course Circle, Vadodara-390007
[PAN No. AABCD8912C]		
(**Appellant**)	..	(**Respondent**)

Appellant by :	Shri M. J. Shah, A.R. & Shri Jimi Patel , A.R.
Respondent by :	Shri Sudhendu Das, CIT DR

Date of Hearing	15.02.2024
Date of Pronouncement	29.02.2024

O R D E R

PER MADHUMITA ROY, JM:

The cross appeals preferred by the assessee and the Revenue are directed against the orders dated 10.02.2020 passed by the Ld. CIT(Appeals)-1, Vadodara arising out of the orders passed by the ACIT, Circle-1(1)(1), Vadodara dated 22.12.2018 under Section 143(3) of the Income Tax Act, 1961(hereinafter referred to as "the Act") for A.Y. 2016-17. Since the issues involved in these appeals are identical, these are heard analogously and are being disposed of by a common order for the sake of convenience.

2. Beth the appeals are barred by limitation for 55 days and 76 days filed by the Assessee and the Revenue respectively, however, taking into consideration the difficulties faced by the assessee and / or Department and particularly in view of the Supreme Court Judgments order dated 23.09.2021 in M.A. No. 665 of 2021 we condone such delay in preferring appeal before us. Both appeals are, therefore admitted.

ITA No. 318/Ahd/2020 (A.Y. 2016-17):-

3. The Grounds of appeal raised by the assessee are as under:

"1.0 The learned Commissioner of Income Tax (Appeals) erred in law and on facts has held to consider the interest on loans raised by erstwhile GEB for the purpose of disallowance under section 14A of the I T Act, 1961. It is submitted that the disallowance is uncalled for and be directed to be deleted.

1.1 The learned Commissioner of Income Tax (Appeals) further erred in law and on facts has held that the specific interest paid on term loans and working capital and also the guarantee fee cannot be reduced from the total interest while working out the disallowance under section 14A of the Act.

The learned Commissioner of Income Tax (Appeals) ought to have appreciated the fact that in all the earlier years the matter was examined at length and considering the facts of the appellant's case it was held that such interest cannot be considered for disallowance under this section.

2.0 The learned Commissioner of Income Tax (Appeals) erred in law and on facts has dismissed the ground relating to the initiation of penalty proceedings under section 271(1)(c) of the I T Act.

3.0 The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in confirming the charging of interest under section 234A, 234B, 234C and 234D of the Income Tax Act, 1961.

4.0 The appellant craves leave to add to, alter, delete or modify any of the grounds of appeal either before or at the time of hearing of this appeal."

4. **Ground No.1:-** This ground relates to disallowance under Section 14A of the Act.

5. The Ld. A.O. disallowed a sum of Rs. 77,58,44,809/- on account of expenditure attributable to exempt dividend income invoking the provision of Section 14A of the Act.

6. At the time of hearing of the instant appeal the Ld. Counsel appearing for the assessee submitted before us that the issue is duly covered by assessee's own case for A.Y. 2015-16 by the Coordinate Bench in ITA No. 406/Ahd/2019 which has been remanded to the Assessing Officer for fresh adjudication a copy whereof has been filed before us.

7. We find that the Coordinate Bench on the identical issue disposed of the ground by remitting the same to the file of the Ld. AO to adjudicate de novo with the following observation:

> *"4.1. Regarding grounds no. 1.0 to 1.2 namely disallowance u/s. 14A. Both the parties submitted that this issue is squarely covered in assessee's own case by Co-ordinate Bench of this Tribunal in ITA Nos. 11 & 37/Ahd/2013 dated 22.10.2020 wherein the Hon'ble ITAT remanded the matter back to the Assessing Officer for fresh adjudication by directing as follows:*
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> > *10. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, there is no ambiguity that the Learned CIT (A) has decided the issue on hand after relying on the order of his predecessor for the Assessment Year 2008-09 which was subsequently set aside by the ITAT for fresh adjudication. The relevant finding of the ITAT reads as under:*
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> > > *"8. On the other hand, ld. DR supported the orders of lower authorities.*
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> > > *9. We have heard the rival contentions and perused the material on record. In these grounds raised by the assessee and the Revenue challenge the action of ld. CIT(A). We observe that an addition of Rs.152.46 crores was sustained, made by ld. Assessing Officer which was sustained to Rs.61.46 crores by ld. CIT(A) and, therefore, assessee has raised the ground against the sustained addition of Rs.61.46 crores whereas Revenue has challenged the deletion of Rs.91 crores out of the disallowance u/s 14A of the Act.*

10. In ITA No.1874/Ahd/2010 vide its order dated 20.6.2014 the Tribunal adjudicated the issue relating to disallowance u/s 14A and held as under :-

7. We have heard the rival submissions and perused the orders of lower authorities and materials available on record. The undisputed facts of the case are that the Assessing Officer found that the assessee has earned tax free dividend income of Rs 1283.95 lakhs and that the assessee has claimed interest expenditure of Rs 18,325.41 lakhs. The assessee has not attributed any expenditure towards earning of exempt dividend income. Therefore, by invoking the section 14A read with Rule 8D he made disallowance of Rs 197.80 crores. We find that a similar issue had come up before this Tribunal in assessee's own case in the immediately preceding Assessment Year 2006-07 wherein the Tribunal restored the matter back to the file of the Assessing Officer for adjudication afresh by observing as under:

> *"2. At the outset, our attention has been drawn on an additional ground of appeal raised by the Revenue Department reads as under:*
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> *"1(a) On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in deleting the addition ofRs.187.97 crores u/s 14A of the Act on account of interest attributable to investment in shares without appreciating the fact that in view of Section 106 of the Indian Evidence Act, it was up to the assessee company to adduce evidence that all the borrowings were used for the purposes of business and its is assessee' s own surplus fund that were invested in the shares and deposits earning exempted income, and, even in case of mixed funds, the disallowance of interest could be made."*
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> *1(b) As an alternate plea, the Id. CIT(A) erred in not upholding the addition u/s. 14A on account of interest attributable to investment in shares to the extent in view of provisions of section 14A read with Rule 8D. "*
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> *3. Learned DR has pleaded that an addition of Rs. 187.97 crores which was made u/s 14A was deleted by learned CIT(A), however, it was not adjudicated as per the grounds of appeal. Learned DR has also argued that the assessee was required to adduce evidence that all the borrowings were used for the purpose of the business and the assessee's own surplus funds were invested in the shares. Learned DR has also informed that in A.Y. 2007-08, the addition of similar nature was upheld by learned CIT(A). He has thus*

pleaded that the issue being legal in nature which has emerged from the facts already on record, therefore, the additional ground deserves to be admitted for adjudication.

4. After hearing both the sides, the additional ground of the Revenue Department is hereby admitted for adjudication. At the outset, it is worth to mention that the impugned addition of Rs.18796.82 lacs was made by the AO without having any discussion in respect of the applicability of Section 14A of the IT Act. Likewise, learned CIT(A) has also not discussed the applicability of the provisions of Section 14A of IT Act, however, after considering the merits of the case, deleted the addition. With this clarification, we have examined the facts and the issue as emerged from the corresponding assessment order passed u/s. 143(3), dated 26.12.2008. It was noted by the AO that the assessee had claimed a huge amount of interest expenditure of Rs. 19360.59 lacs, as per the following bifurcation.

	(Rs. in lacs)
Particulars	*Amount*
Interest on Term Loans	*8981.35*
Working Capital	*8184.50*
Others	*677.63*
Bank Charges & Guarantee Fees	*591.65*
19435.13	
Less: Interest Capitalized	*74.54*
	19360.59

4.1 At the same time, it was also found by the AO that the assessee had made the investment of Rs.5,47,709.74 lacs on which dividend earned was at Rs.508.18 lacs. The AO's objection was that on one hand the assessee has diverted the huge funds towards such investment having exempted income and on the other hand borrowed huge funds of Rs.3,46,272.51 lacs on which claimed interest of Rs. 19360.59 lacs. Therefore, the AO was of the view that the assessee had diverted the borrowed funds for earning exempted income. The assessee's contention was that the investment during the year was only Rs.102.32 lacs and rest of the investment was made in the earlier years. According to the AO, if the assessee had not made such investment either in the year under consideration or in earlier years then the assessee would not have been required to borrow interest bearing loans. The AO has placed reliance upon the case of H.R Sugar Factory, 187 ITR 366 (Aid) for the legal proposition that the assessee could have otherwise avoided its liability of interest by not giving interest free funds to its

group concerns. The addition in the question was thus made by the AO in the following conclusion.

> *"In view of the above discussion and provision of law, the interest attributable to the investment is not allowable expenditure. The assessee was required to give the rates of interest paid to various sources. The assessee vide its reply did not furnish the rates of interest paid. It simply submitted that loans from various banks with varying interest rates were obtained. During the year under consideration, the market rate of interest was 12%. Therefore, interest at the rate of 12% works out to Rs.65725.17 lacs on investments of Rs.547709.74 lacs. However, the assessee has claimed interest expenditure of Rs.19360.59 lacs and has shown interest income of Rs.55.59 lacs and dividend income of Rs.508.18 lacs. Hence, against the interest expenditure of Rs.19360.59 lacs assessee has grown interest and dividend income of Rs.563.77 lacs. Thus, net disallowance is made of Rs.18796.82 lacs."*

5. Being aggrieved the matter was carried before the First Appellate Authority who has decided the issue in assessee's favour in the following manner:

> *"Thus, the only test to be applied is that of "commercial expediency". In the instant case, it is seen that no investment was made by the assessee company by using borrowed funds.The entire investment, except minor investment of Rs.11.25 lacs was inherited in the demerger exercise. The investment in shares was due to the restructuring carried out at the behest of GOG. The investments were in the form of shares of subsidiary companies as pan of the financial restructuring plan approved by the Government of Gujarat which was integral to the demerger. This was clearly commercially expedient for the appellant company. The business itself was viable only under the plan of restructuring, which required the company to have cross-holdings in the unbundled companies of GEB. In fact, the appellant became the holding company of the generating and transmission companies. Looking to the facts and circumstances of the case, I am of the opinion that there was no diversion of borrowed funds for non-business purposes.*

Accordingly, the addition of Rs. 18796.82 lacs is directed to be deleted."

6. With this factual background, we have heard both the sides. Learned DR has primarily placed reliance on a decision of respected Special Bench of ITAT Mumbai in the case of ITO V/s. Daga Capital Management Pvt. Ltd., 117 ITD 169 (Mum) (SB). Learned DR has also pleaded that in one of the assessment year, i.e., in A.Y. 2007-08 learned CIT(A) had sustained the same nature of addition. From the facts of the case, we have noted that there was re-structuring according to which erstwhile GEB was demerged into seven different companies. Post restructuring; the assessment year under consideration is the first year of operation of the assessee company. On one hand, those were the facts which were relied upon by the learned CIT(A). However, on the other hand, the AO has reproduced some of the replies of the assessee through which it was claimed that the said investment was not made by the assessee company out of the borrowed funds but from the consumers, contribution and subsidiaries. There was a reference of the annual accounts of the year 2005-06. The assessee has also informed that during the year under consideration the assessee company had invested only a sum of Rs.11.25 lacs. Rest of the investments were the share capital of the subsidiary companies as per the terms of the Financial Restructuring Plan approved by the Government of Gujarat. We have noted that the learned CIT(A) has granted relief only on the ground that the assessee company had become the holding company and the investments were in the form of shares of subsidiary companies which was an integral part of the demerger arrangement. Therefore, it was nothing but commercial decision.

6.2 According to us, the issue has been mixed up by the Revenue Department. The first step should be to examine the scheme of demerger and thereafter the issue could have been streamlined. As per the definition of "demerger" prescribed u/s.2(19AA) means; the transfer pursuant to a scheme of arrangement by a demerged company of its one or more undertakings to any resulting company in such a manner that all the property of the undertaking/unit being transferred by the demerged company immediately before the demerger, which becomes the property of the resulting company by virtue of the demerger. Therefore, it was necessary for the AO to examine the balance sheet of the demerged company and the position of the accounts of the undertaking which is demerged with the resulting company.

The AO has to examine the liabilities related to the said undertaking whether being transferred under the scheme of arrangement which were in existence immediately before the demerger. The AO has to examine the value of the property in the books of accounts immediately before the demerger which was transferred. The AO has also to examine the financial position of the "resulting company", as defined u/s.2(41A) of IT Act. In general, an undertaking of the demerged company is transferred in a demerger scheme and as a result a resulting company comes into existence. The resulting company in consideration of such transfer of an undertaking ofthe demergerd company issues shares to the share holders of the demerged company. Therefore, the responsibility of the "resulting company" was also required to be ascertained by the AO. This is the first aspect, which was not examined by the AO and the order of the Revenue Authorities are silent on this subject.

6.3 Next question is about the huge amount of interest expenditure claimed by the assessee. The AO is required to examine first the correctness of the claim. Whether the interest on term loans, bank charges and guarantee fees were in respect of the business of the assessee. Thereafter, the AO is also required to give a clear finding about the borrowings made by the assessee on which the said interest was paid. The next step is that the AO has to examine the sources of the funds which were invested for earning the dividend income. If the source of such investment is out of the interest bearing borrowings, then only the question of disallowance of interest would arise, otherwise not. On the other hand, the claim of the assessee is that there were sufficient non interest bearing reserves or surplus available. The AO is required to investigate the correctness of the claim that whether the assessee had sufficient non interest bearing fund available and in what form those were utilized by the assessee. If the assessee is in a position to demonstrate that the non-interest bearing funds have actually been invested to earn exempted income then the assessee's claim is legally correct. Thereafter, the question of the invocation of Section 14A comes into play. As far as the applicability of the decision of Special Bench is concerned the same now stood covered by the decision of Hon'ble Bombay High Court pronounced in the case of Godrej and Boyce, 328 ITR 81 (Bom). For the sake of completeness herein below reproduced a portion of an ITAT order viz., Aditya Midcals as follows:

"5. With this brief background, we have examined the facts of the case as also the law pronounced in this regard.

6. As far as the Assessing Officer's action is concerned, the disallowance has been made on the basis of a calculation of the proportionate interest alleged to be attributable to the investment earning exempted dividend income. It is also to be noted that while doing so for the years under consideration the A.O. has not followed the past method of calculation of the disallowance. As per AO it was seen that the working of disallowance was wrong because while calculating the proportionate interest attributable to dividend income the ratio of dividend income and total sales have been taken though there was no direct relation between the two. The Assessing Officer had thus made the calculation after taking into account the proportion of the interest on the ratio between the investment in shares and total assets including investment in shares. Apart from this, there is nothing in the assessment order which can establish the nexus of utilization of borrowed interest-bearing funds diverted towards investment in debentures. But there are other discussions in this very assessment order wherein the provisions of section 36(l)(iii) of the Act have also been touched upon. The Assessing Officer was expected to correlate the said discussion with the exempted dividend income u/s. 10(33) of the Act. As far as the law pronounced in this regard is concerned, first of all, we have to follow a latest decision of Hon'ble Bombay High Court pronounced in the case of Godrej & Boyce Mfg. Co.Ltd. Mumbai vs. Dy.CIT in Income tax Appeal No.626 of 2010 and Writ Petition No.758 of 2010 order dated 12/08/2010, { now reported as 328 ITR 81(Bom) } wherein the Hon'ble High Court has upheld the constitutional validity of section 14A of the I.T. Act, 1961 and held that the Assessing Officer should determine as to whether the assessee has incurred any expenditure (direct or indirect) in relation to dividend income and/or income from mutual fund which do not form part of the total income as contemplated U/S.14A of the I.T. Act, 1961. It has also been directed that the Assessing Officer can adopt a reasonable basis for effecting the apportionment. It has also been observed by the Hon'ble Court that while making that determination, the Assessing Officer should provide a reasonable opportunity to the assessee of producing its accounts and material having a bearing on the facts and circumstances of the case.

6.1. In this judgement at the end, the Hon'ble Court has also recapitulated the conclusion and pronounced that a finding

is required whether the investment in shares is made out of own funds or out of borrowed funds. A nexus is required to be established between the investments and the borrowings. In section 14A of the Act expenditure incurred in relation to exempted income is to be disallowed only if the Assessing Officer is satisfied with the expenditure claimed by the assessee pertaining to the said exempt income. Rather, the Court was very specific that in case, no such exercise was carried out by the Assessing Officer then the matter is to be remanded back for afresh investigation. It has also been made clear that the proviso to section 14A of the Act was effective from 2001-02. The Hon'ble Court has also pointed out the importance of Rule 8D of the I.T.Rules, 1962. It was made clear that sub-section (1) to section 14A was inserted with retrospective effect from 01/04/1962, however, sub-sections (2) & (3) were made applicable with effect from 01/04/2007. The proviso was inserted with retrospective effect from 11/05/2001 , however Rule 8D was inserted by the Income Tax (Fifth Amendment), Rules, 2008 by publication in the Gazette dated 24/03/2008; reproduced below:-

"a) The ITAT had recorded a finding in the earlier assessments that the investments in shares and mutual funds have been made out of own funds and not out of borrowed funds and that there is no nexus between the investments and the borrowings. However, in none of those decisions was the disallow ability of expenses incurred in relation to exempt income earned out of investments made out of own funds considered. Moreover, under Section 14A, expenditure incurred in relation to exempt income can be disallowed only if the assessing officer is not satisfied with the correctness of the expenditure claimed by the assessee. In the present case, no such exercise has been carried out and, therefore, the Tribunal was justified in remanding the matter.

b) Section 14A was introduced by the Finance Act 2001 with retrospective effect from 1 April 1962. However, in view of the proviso to that Section, the disallowance thereunder could be effectively made from assessment year 2001-2002 onwards. The fact that the Tribunal failed to consider the applicability of Section 14A in its proper perspective, for assessment year 2001 -2002 would not bar the Tribunal from considering disallowance under Section 14A in assessment year 2002-2003.

c) The decisions reported in Sridev Enterprises (supra), Munjal Sales Corporation (supra) and Radhasoami Satsang (supra) holding that there must be consistency and definiteness in the approach of the revenue would not apply to the facts of the present case, because of the material change introduced by Section 14A by way of statutory disallowance in certain cases. There, the decisions of the Tribunal in the earlier years would have no relevance in considering disallowance in assessment year 2002-2003 in the light of Section 14A of the Act.

73. For the reasons which we have indicated, we have come to the conclusion that under Section 14A(1) it is for the Assessing Officer to determine as to whether the assessee had incurred any expenditure in relation to the earning of income which does not form pan of the total income under the Act and if so to quantify the extent of the disallowance. The Assessing Officer would have to arrive at his determination after furnishing an opportunity to the assessee to produce its accounts and to place on the record all relevant material in support of the circumstances which are considered to be relevant and germane. For this purpose and in light of our observations made earlier in this section of the judgment, we deem it appropriate and proper to remand the proceedings back to the Assessing Officer for a fresh determination.

Conclusion:

74. Our conclusions in this judgment are as follows;

i) Dividend income and income from mutual funds falling within the ambit of Section 10(33) of the Income Tax Act 1961, as was applicable for Assessment Year 2002-03 is not includible in computing the total income of the assessee. Consequently, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to such income which does not form part of the total income under the Act, by virtue of the provisions of Section 14A(1);

ii) The payment by a domestic company under Section 115O(1) of additional income tax on profits declared, distributed or paid is a charge on a component of the profits of the company. The company is chargeable to tax on its profits as a distinct taxable entity and it pays tax in discharge of its own liability and not on behalf of or as an agent for its shareholders. In the hands of the shareholder as the recipient of dividend, income by way of dividend does

not form part of the total income by virtue of the provisions of Section 10(33). Income from mutual funds stands on the same basis;

iii) The provisions of sub sections (2) and (3) of Section 14A of the Income Tax Act 1961 are constitutionally valid;

iv) The provisions of Rule 8D of the Income Tax Rules as inserted by the Income Tax (Fifth Amendment) Rules 2008 are not ultra vires the provisions of Section 14A, more particularly sub section (2) and do not offend Article 14 of the Constitution;;

v) The provisions of Rule 8D of the Income Tax Rules which have been notified with effect from 24th March, 2008 shall apply with effect from Assessment Year 2008-09;

(vi) Even prior to Assessment Year 2008-09, when Rule 8D was not applicable, the Assessing Officer has to enforce the provisions of sub section (1) of Section 14A. For that purpose, the Assessing Officer is duty bound to determine the expenditure which has been incurred in relation to income which does not form part of total income under the Act. The Assessing Officer must adopt a reasonable basis or method consistent with all the relevant facts and circumstances after furnishing a reasonable opportunity to the assessee to place all germane material on the record;

vii) The proceedings for Assessment year 2002-03 shall stand remanded back to the Assessing Officer. The Assessing Officer shall determine as to whether the assessee has incurred any expenditure (direct or indirect) in relation to dividend income / income from mutual funds which does not form part of the total income as contemplated under Section 14A. The Assessing Officer can adopt a reasonable basis for effecting the apportionment. While making that determination, the Assessing Officer shall provide a reasonable opportunity to the assessee of producing its accounts and relevant or germane material having a bearing on the facts and circumstances of the case."

6.4 Due to the decision of the Hon'ble Bombay High Court, it is legally correct to refer this issue back to the stage of the AO to be decided de novo as per the guidelines of the Hon'ble Court. The outcome of the above discussion is that the "Additional Ground" raised by the Revenue may be treated as allowed but only for statistical purpose."

8. In the absence of any distinguishing features pointed out by the Departmental Representative, facts being identical, respectfully following the precedent we restore this issue back to the file of the Assessing Officer for adjudication afresh with the same directions as given by the Tribunal in the Assessment Year 2006-07 in the above quoted order. Needless to mention that he shall allow reasonable and proper opportunity of hearing to the assessee before adjudicating the issue. Thus, this ground is allowed for statistical purpose.

11. We further observe that Rule-8D of the IT Rules came into effect from Asst. Year 2008-09 with respect to provisions of section 14A of the Act which reads as follows :-

Sec. 14A. Expenditure incurred in relation to income not includible in total income.—(1)For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.
(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.
(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act:
***Provided** that nothing contained in this section shall empower the Assessing Officer either to reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year beginning on or before the 1st day of April, 2001.'*

*2. **New Rule 8D :***

2.1 In exercise of the powers given in S. 14A(2) C.B.D.T. has issued a Notification No. S.O. 547(E) on 24-3-2008 (299 ITR (ST) 88). This notification amends the Income-tax Rules by insertion of a new Rule 8D providing for a "Method for determining amount of expenditure in relation to income not includible in total income". Reading this Rule it is evident that the Rule provides for disallowance of not only direct expenditure incurred for earning the exempt income but also for disallowance of proportionate indirect expenditure. This is

clearly contrary to the main objective with which S. 14A was enacted.

2.2 Broadly stated, the new Rule 8D provides as under :

(i) The method prescribed in the Rule is to be applied only if the AO is not satisfied with :

(a) The correctness of the claim of expenditure incurred for earning the exempt income made by the assessee or

(b) The claim made by the assessee that no expenditure has been incurred for earning exempt income.

(ii) The method prescribed in the Rule states that the expenditure in relation to income which does not form part of the total income shall be the ***aggregate of the following amounts*** *:*

(a) The amount of expenditure directly relating to income which does not form part of total income.

(b) In the case of interest on borrowed funds which is not directly attributable to any particular income or receipt, the amount computed in accordance with this following formula :

$$A \times \frac{B}{C}$$

A = Amount of interest, other than the amount of interest which is directly attributable to the exempt income stated in (a) above.

B = The average of value of investment, income from which ***does not or shall not form part*** *of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the relevant accounting year.*

C = The average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the relevant accounting year. The term 'Total Assets' means total assets as appearing in the balance sheet excluding the increase on account of revaluation of assets but including the decrease on account of revaluation of assets.

(c) An amount equal to ½ % of the average of the value of investment, income from which ***does not*** *or* ***shall not form part*** *of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the relevant accounting year.*

12. We also observe that ld. Assessing Officer applied the facts and figures of the assessee company into the method provided under Rule 8D of the IT Rules because assessee was having an average investment of Rs.5529.57 crores , interest paid during the year at Rs.131.22 crores and exempt income of Rs.249 crores. Going through these figures ld. Assessing Officer felt appropriate to

applying the method of Rule 8D but did not look into the following facts :-

(i) As on 1.7.205 when the company was given a balance sheet duly notified by the State Govt., the company had total investment of Rs.5580.20 crores considering all investment in subsidiary companies at Rs.5336.43 crores, investment in other companies at Rs.243.69 crores and balance in petty investment.

(ii) Opening balance of investment as on 1.4.2007 stood at Rs.5477.16 crores.

(iii) Few investments were made during Financial Year 2005-06 to 2007-08 and in subsidiary companies and funds for the same were partly received from State Government as equity and remaining from net profit earned.

(iv) Interest expenditure of Rs.131.32 crores represents mostly the interest paid on bill discounting of IPPs and working capital loan from banks which are specifically meant for the business purpose; and

(v) Total exempt income earned by assessee during the year stood at Rs.249 crores.

13. We observe that ld. Assessing Officer has made disallowance u/s 14A of the Act without examining the facts referred above which were very crucial to reach at the final disallowance u/s 14A of the Act. There are series of judgments of the co-ordinate benches that the disallowance u/s 14A of the Act should not exceed the exempt income earned during the year and also decisions wherein the disallowance u/s 14A of the Act on account of interest expenditure are held to be incorrect if the assessee has sufficient equity and general reserve to cover the investments.

14. We are, therefore, of the view that applying the decision of the co-ordinate bench in assessee's own case in ITA No.1874 & 1821/Ahd/2010 for Asst. Year 2007-08 is dated 20.6.2014 the matter is set aside to the file of Assessing Officer to examine the facts and figures of the case in the light of our observations made above in order to arrive at a final conclusion as to whether disallowance u/s 14A is to be made and if so, then the amount thereof which in no case should exceed the exempted income earned by assessee during the year under appeal. It is needless to mention that ld. Assessing Officer shall allow reasonable and sufficient opportunity of hearing to the assessee before adjudicating the same. These grounds of assessee and the Revenue are allowed for statistical purposes.

> *15. Now we take ground no.3 of assessee's appeal which reads as below :-*
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> *3.0 The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in confirming the enhancement of Book Profit computed under section 115JB of the Income Tax Act, 1961 by Rs.61,45,72,000/- on account of disallowance made under section 14A of the Income Tax Act, 1961.*
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> *16. At the outset ld. AR submitted that this ground relates to the disallowance under section 14A of the Act due to which book profit u/s 115JB was enhanced by ld. Assessing Officer and the fate of this ground depends on the decision to be taken for ground no.1 raised by them."*
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> *10.1 As the facts of the case on hand are identical to the facts of the case as discussed above which has been set aside to the file of the AO for fresh adjudication as per the provisions of law by the ITAT as discussed above. Respectfully following the order of this Coordinate Bench in the own case of the assessee, we set aside the issue on hand to the file of the AO for fresh adjudication in terms of the finding of the ITAT in its own case for the Assessment Year 2008-09 (Supra) as well as in accordance to the provisions of law. Hence, the ground of appeal of the assessee and the Revenue are allowed for the statistical purposes.*
>
> *4.2. Respectfully following the above decision of our Co-ordinate Bench, for this assessment year 2015-16, we set aside the matter back to the file of Assessing Officer for fresh adjudication by examining the facts and figures and calculate the disallowance u/s. 14A of the Act."*

8. Respectfully relying upon the order perused by the Coordinate Bench we are disposing of the ground by setting aside the issue to the file of the Ld. AO for de novo adjudication in the light of the observation made by the Co-ordinate Bench as reproduced hereinabove upon giving an opportunity of being heard to the assessee and upon considering the evidence which the assessee may choose to file at the time of hearing of the matter. This ground is allowed for statistical purposes.

9. In the result, Ground No. 1 of the assessee's appeal is allowed for statistical purposes.

10. Ground Nos. 2, 3 & 4 of the assessee's appeal are general in nature and does not require any specific adjudication.

ITA No. 414/Ahd/2020 for A.Y. 2016-17

11. The Revenue has raised the following grounds of appeal:-

"(a)(i) Whether on the facts and in circumstances of the case, the learned CIT(A) has erred in law and on facts in holding that the disallowance made under section 14A read with Rule 8D cannot exceed the exempt income, in the absence of any such restriction being there in the relevant section or rule?

(a)(ii) Whether on the facts and in circumstances of the case, the learned CIT(A) has erred in law and on facts in holding that the disallowance made under section 14A read with Rule 8D cannot exceed the exempt income, despite Circular No. 5/2014 (F.No.225/ 182/2013-ITA.II) dt. 11-2-2014 issued by the CBDT which clarifies that ***Rule 8D read with section 14A of the Act provides for disallowance of the expenditure even where taxpayer in a particular year has npt earned any exempt income.***

(a)(iii) Whether on the facts and in circumstances of the case, the learned CIT(A) has erred in law and on facts in holding that the disallowance made under section 14A read with 'Rule 8D cannot exceed the exempt income, despite the fact that as per the Explanatory Memorandum to FA 2006, under section 14A it is ***mandatory*** *for the AO to determine the amount of expenditure incurred in relation to exempt income in accordance with the prescribed method, which provided in Rule 8D and the AO shall be required to adopt the prescribed method if he is not satisfied with the correctness of the claim of the assessee, which fact is confirmed by the CIT(A).*

(a)(iv) Whether on the facts and in circumstances of the case, the learned CIT(A) has erred in law and on facts in holding that the disallowance made under section 14A read with Rule 8D cannot exceed the exempt income, despite the fact that the Section 14A of the Income-lax Act, 1961 provides for disallowance of expenditure in relation to income not "includible" in total income. The CIT(A) also failed to appreciate that the legislative intent is to allow only that expenditure which is relatable to earning of income and it therefore follows that the expenses which are relatable to earning of exempt income have to be considered for disallowance, irrespective of the fact whether any such income has been earned during the financial year or not. The CIT(A) also failed to appreciate that the usage of term 'includible[1] in the Heading to section 14A of the Act and also the Heading to Rule 8D of IT Rules, 1962 which indicates that it is not necessary that exempt income should necessarily be included in a particular year's income, for disallowance to be triggered. Also, section 14A of the Act does not use the words "income of the year" but "income under the Act", which also indicates that for invoking disallowance

under section 14A, it is not material that assessee should have earned such exempt income during the financial year under consideration.

(b) On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in directing the Assessing Officer to treat the interest income on loan/advances and miscellaneous receipts of Rs. 76.05 lacs as business income instead of income from other sources without appreciating that the nature of the income is of purely interest and not from any activities of business or profession of the assessee.

(c) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in holding that adjustment made on account of disallowance u/s 14A of the Act in computation of Book Profit u/s 115JB of the Act is not as per law without appreciating that the amount disallowable under section 14A is covered under clause (f) of Explanation 1 to section 115JB(2) and it is required that any expenditure in relation to the exempt income also to be taken into consideration while computing the book profit under section 115JB, thus, said amount has to be added back while computing amount of book profits?

(d) The appellant craves leave to add to, amend or alter the above grounds as may be deemed necessary."

12. **Ground No.1:-** We observe that Ground No. 1 of the Revenue's appeal is similar to Assessee's Ground No. 1 for A.Y. 2016-17. Accordingly, in light of our observations made for A.Y. 2016-17 in assessee's appeal, Ground No. 1 of the Revenue's appeal for A.Y. 2016-17 is dismissed.

13. **Ground No. 2:-** Treatment of interest income from staff loans and advances of Rs.33.36 lacs, interest income from other loans and advances of Rs. 33.23 lacs and miscellaneous income of Rs. 9.46 lacs.

14. The interest income from staff loans and advances of Rs. 33.36 lakhs under consideration, though disallowed by the Ld. AO the same was subsequently allowed by the Ld. CIT(A) on the basis of the order passed by the Coordinate Bench in assessee's own case. In this respect, the assessee further relied upon the judgment passed in the matter of Dakshin Gujarat

Vij Co. Ltd. vs. DCIT in ITA No. 2858/Ahd/2015 and 05 others wherein similar ground was allowed in favour of the assessee, a copy whereof was also submitted before us. We find that the Ld. AO while dealing with the matter the observations made by him is as follows:-

"The assessee submitted its reply vide letter dated 05.12.2018. The relevant portion is produced as under:

"It is submitted that, the interest received from Staff Loans & Advances during the year amounting to 33.36 lakhs under consideration does not fall in any of the incomes which are taxable under the head "Income from Other Sources" as per Section 56(2) of the I T Act. Such interest on loans is ordinary business income and cannot be treated as Income from Other Sources. This is particularly because the employees are retained to run the business of the Company and accordingly the loans given to them are out of such business expediency(in line with approved HR policies)and hence the interest earned thereon is business income.
Details of such interest is as under:

Particulars	***Amount (in Rs.)***
Interest on HBA to Staff	*25,57,592*
Interest on Other Loans & Advances to Staff	*7,78,338*
TOTAL	***33,36,130***

Interest on Other Loan & Advances

The details of Interest on other Loan & Advances amounting to Rs. 33.24 lakhs are as under:

Particulars	***Amount (in Rs.)***
Receivable (after TDS) from Chhatisgarh Surguja Power Ltd. on deposits with them	*33,23,630*
TOTAL	***33,23,630***

From the above, it can be seen that the Company was mandatorily required to place a Deposit with M/s. Chhattisgarh Surguja Power Ltd. towards Gujarat's share of power in Chhattisgarh Ultra Mega Power Project. Hence, interest on the same has been earned in the normal course of business and is exclusively incidental to the business activities.

Miscellaneous Income

The details of Miscellaneous Income aggregating to Rs. 9.46 lakhs are as under:

Particulars	***Amount (in Rs.)***
Income from Staff Welfare Activities	*47,250*
Income from Rentals-staff quarters	*1,43,123*
Income from water charges received from employee contribution	*9,332*
Recovery for Transport & Vehicle Exp. (other than Staff)	*31,917*
Sale of tender forms	*60,500*
Registration fees – suppliers, Contractors	*2,00,000*
Penalty against ADV for Employees	*28,802*
Other Miscellaneous Receipts	*4,03,491*
Ins. Premium recovered from HBA Loan	*21,260*
Total	***9,45,675***

Considering the nature of income which has purely arisen out of routine business activities, the same cannot be treated as Income from Other Sources.

The entire interest income is miniscule in terms of proportion to the entire Income of the Company. Undoubtedly, such income is incidental to the business activities of the Company and hence cannot be treated as Income from Other Sources.

Bases on our above submission, you are requested to consider our explanations positively

In respect of Interest on Staff Loans and Advances, the assessee has contended that the interest income from employees is business exigency as the loans are provided to them for retaining them.

In respect of Interest on Other Loans and Advances, the assessee has contended that the giving the advances was business exigency.

The above contentions of the assessee are not acceptable, in view of the fact that the nature of these income is not from business activities of assessee and there is separate head for interest income in the Return of income, which is required to be included in Other Income.

Further, in respect of Miscellaneous Income, the; assessee has contended that these incomes are from routine business activities. However, the assessee failed to note that the Income, which is not Revenue from Operation, is required to be treated in the other heads, which includes, Income from Other Sources and Capital Gain.

In view of the above, the Interest Income as well as Miscellaneous Income totaling to 76.06 lacs are treated as Income from Other Sources"

15. We have considered the judgment relied upon by the Ld. AO in the case of Dakshin Gujarat Vij Co. Ltd. (supra), wherein we find that the order passed by the Hon'ble Orissa High Court was taken into consideration. In fact, the Orissa High Court on the issue in question observed as follows:-

> *"12. The Assessee offered an explanation regarding interest income earned by it, from advances given to its employees as well as provision of electricity and water charges collected from water through its employees and contractors for facilities in the township, receipt from transit hostel, sale of scrap, insurance claim etc. The facilities were given to its employees for better conditions of employment. This was to improve the overall efficiency of the undertaking which is devoted to the single purpose of generation of power. The Court, therefore, has no difficulty in accepting the submission of the Assessee that the interest received on advances and loans given to its employees are receipts in normal course of carrying its business and should be considered as income derived from its essential business activities. Likewise, the late payment by GRIDCO for the electricity supplied, is sought to be made up by GRIDCO by issuing bonds on which the Assessee earns interest. This also therefore, has a direct nexus with the essential business activity of the Assessee."*

16. The case made out by the assessee therein is not akin to the case made out by the assessee before us. Though interest on other loans and advances has been contended as was of business exigencies on the assessee, it has not been able to be demonstrated by the assessee that the nature of this income is from business activities particularly when separate head for interest income in the return of income has been shown which is to be included in other income. Neither the miscellaneous income has been able to be shown from routine business activities of the assessee. The assessee failed to demonstrate that the income which is not revenue from operations as required to be treated in the other heads which includes income from other sources and capital gain. In that view of the matter, the impugned amount of 33.23 lakhas on account of interest income from other loans and advances and miscellaneous income of 9.46 lakhs are rightly been treated as income from other sources. We, therefore, quash the order passed by the

Ld. CIT(A) in granting relief to the assessee and confirm the order passed by the Ld. Assessing Officer. Hence, this ground of appeal raised by the Revenue is allowed.

17. In the result, Ground No. 2 of the Revenue appeal is allowed.

18. **Ground No. 3:-** This Ground relates to the deletion of adjustment made to the Book Profit computed under Section 115JB of the Act on account of disallowance under Section 14A of the Act.

19. The brief facts leading to the issue is this that the Ld. AO made addition of Rs. 77,58,44,809/- to the Book Profit under Section 115JB of the Act on account of disallowance under Section 14A of the Income Tax Act.

20. Before the First Appellate Authority the assessee submitted that in assessee's own case for A.Y. 2015-16 the Ld. CIT(A) has deleted the addition. In that view of the matter considering the order dated 18.01.2019 passed by his predecessor, the Ld. CIT(A) hold that the said addition cannot be made to the Book Profit as this item has not been mentioned in any of the Clauses of the Explanation to Section 115JB of the Act. He, therefore, directed the Ld. AO to delete such addition.

21. At the time of hearing of the matter the Ld. DR relied upon the order passed by the Ld. AO.

22. On the other hand the Ld. Counsel appearing for the assessee submitted before us that the identical issue of adjustment in respect of disallowance under Section 14A of the Act is decided in favour of the assessee by the Hon'ble Jurisdictional High Court in the case for A.Y. 2010-11 in Tax Appeal Ni. 63 of

2020 vide order dated 17.022020. The Coordinate Bench has also followed the aforesaid judgment of Hon'ble Gujarat High Court in assessee's own case for A.Y. 2015-16 in ITA No. 569/Ahd/2019 vide order dated 31.08.2023.

23. While dismissing the appeal filed by the Revenue, on identical issue of addition under Section 115JB for disallowance under Section 14A of the Act, the Coordinate Bench has made the following observation:-

> *"21. Ground No.5 relates to adjustment in book profit under Section 115JB of the Act for the disallowance under Section 14A of the Act.*
>
> *22. Ld. Counsel appearing for the assessee submitted that the impugned issue is covered in favour of assessee by the judgment of Hon'ble Gujarat High Court in Assessee's own case for A.Y. 2010-11 in Tax Appeal No.63 of 2020, judgment dated 17.02.2020.Recently, the ITAT by following the aforesaid judgment of Hon'ble Gujarat High Court, in assessee's own case for Asst. Years 2013-14& 2014-15 in ITA Nos.281& 282/Ahd/2018 & 323 & 324/Ahd/2018 has deleted the addition made on the aforesaid issue of adjustment in book profit under Section 115JB for disallowance made under Section 14A of the Act.*
>
> *23. Such contention made by the Ld. AR has not been controverted by the Ld. DR with all his fairness.*
>
> *24. We have perused the order passed by the Co-ordinate Bench in ITA Nos.281& 282/Ahd/2018 & 323 & 324/Ahd/2018 in assessee's own case, wherein issue has been discussed and decided in favour of the assessee upon deleting the addition made by the Ld. AO. The relevant portion whereof is as follows:*
>
> > *"16. Ground no. 5 namely adjustment made on account of disallowance u/s. 14A to be added in the computation of book profit u/s. 115JB of the Act. Ld. Counsel submitted that this issue is also held against the Revenue by the High Court of Gujarat in Tax Appeal No. 63 of 2020 as follows:*
> >
> > > *"….4 The question No.2[b] proposed by the Revenue is with regard to deleting the addition under Section 14A of the Act, 1961 while computing book profit under Section 115JB of the Act, 1961. The Assessing Officer while computing taxable income under Section 115JB of the Act, 1961 also added addition made under Section 14A of the Act, 1961 to the book profit.*
> > >
> > > *5. The assessee being aggrieved by the addition made by the Assessing Officer under Section 14A while computing book profit of the assessee under Section 115JB of the Act, 1961*

preferred an appeal before the CIT(A). The CIT(A), however, deleted addition made in the book profit on the ground that no addition could have been made in view of the decision of this Court in the case of Alembic Ltd (Tax Appeal No.1249 of 2014) and the provisions of sub - sections (2) and (3) of Section 14A cannot be made applicable to clause (f) of Explanation to Section 115JB of the Act, 1961.

6. The Revenue, therefore, went in appeal before the Tribunal and the Tribunal relying upon the decision of the Special Bench of the ITAT in the case of ACIT vs. Vineet Investment vide 165 ITD 27 (Delhi) and the decision in Alembic Ltd upheld the order passed by the CIT(A).

7. The issue as to whether the addition made under Section 14A of the Act, 1961 while computing book profit under Section 115JB of the Act, 1961 is no more res integra. Accordingly, this Court in the case of Principal Commissioner of Income Tax vs. Gujarat Fluorochemicals Ltd [Tax Appeal No.28 of 2019 decided on 17th June 2019] has dismissed the appeal filed by the Revenue by holding as under:

> *"22. The third question proposed by the revenue is in context with the adjustment made on account of the disallowance under section14A in computing the book profit. In this context, the findings recorded by the ITAT are as follows:*
>
> *17. Next common issue involved in both years is, whether the amount disallowed under section 14A read with rule 8D deserves to be added back in the book profit for the purpose of section 115JB. In other words, whether the additions which have been confirmed by the Tribunal at Rs.1.55 crores in the assessment year 201213 and Rs.75 lakhs in the assessment year 201314, deserves to be added back in the book profit computed for the purpose of section 115JB.*
>
> *17.1 The ld. Counsel for the assessee at the very outset contended that this issue is covered in favour of the assessee by the judgment of Hon'ble Gujarat High Court in the case of CIT Vs. Alembic Ltd. in Tax Appeal No.1249 of 2014 as well as decision of Hon'ble Bombay High Court in the case of CIT Vs. Bengal Finance & Investment P. Ltd. in Tax Appeal No.337 of 2013. He placed on record copies both these decisions. Apart from the above, he placed upon reliance Special Bench decision of the ITAT in the case of CIT Vs. Vireet Investment P. Ltd. 165 ITD 27. On the other hand, ld. CITDR relied upon the order of DRP.*

18. We have duly considered rival contentions and gone through the record carefully. We find that ld. DRP has relied upon the order of the ITAT, Mumbai in the case of DCIT Vs. Viraj Profiles Ltd., (2016) 46 ITR (Trib) 0626 (Mum) and held that addition required to be made in the book profit could be calculated as per Rule 8D of the Income Tax Rules. The ld. DRP thereafter made reference to decision of Hon'ble Delhi High Court in the case of CIT Vs. Geotze India Ltd., 361 ITR 505. According to the ld. DRP, this decision has been considered by the Special Bench in the case of Vireet Investment P. Ltd. (supra) but placed reliance upon Hon'ble Bombay High Court in the case of Vodafone India Services P. Ltd. ACIT, 361 ITR 0531 (Bom) and held that DRP is not bound by the ratio laid down by the Special Bench. The discussion made by the DRP on this issue in the assessment year 201314 reads as under:

"10.3 In the case of Viraj Profiles Ltd. [2015] 64 taxmann.com 52 (Mum Trib), the Hon'ble Bench has elaborately discussed the issue and held that the disallowance is liable to be calculated as per Rule 8 D of the Rules. After discussing the decisions which have also been relied on by the appellant, the Hon'ble Bench has concluded that; "In view of our foregoing discussion, we find no infirmity with the orders of the AO and we hold that the AO has rightly disallowed the expenditure of Rs.73,07,018/by invoking the provisions of Section 14a of the Act read with the Rule 8D of Income Tax Rules, 1962 for computing book profit u/s.115JB(2) of the Act read with clause (f) to Explanation 1 to clause 115JB(2) of the Act. We, therefore, set aside the orders of the CIT(A) and restore the orders of the AO. We order accordingly. In the case of CIT (Central-II) Vs. Goetze (India) Limited, the Hon'ble Delhi High Court has in ITA No.1179/2010 vide order dated 09.12.2013, held that the disallowance u/s.14A is to be taken into consideration for the purposes of calculating book profits u/s.115JB. The relevant paras of the judgment are reproduced below.

"36. By order dated 16th May, 2012, the following substantial questions of law were framed in the present appeals:"

(i) Whether the Income Tax Appellate Tribunal was right in holding that while computing book profit under Section 115JA (sic. Section

115JB) of the Income Tax Act, 1961, no disallowance under Section 14A was required to be made? Learned counsel for the respondents-assessee, during the course of hearing, has fairly conceded that the first question has to be answered in favour of the Revenue and against the assessee in view of specific provisions in the Explanation 1 below Section 115JB(2) clause (f).
The Assessing Officer it is stated had made an addition of Rs.88,292/- to the book profits towards expenditure incurred having nexus with dividend income, which were exempt under Section 10(33). Recording the said statement, the first question is answered in favour of the appellant-Revenue and against the respondent-assessee."

The assessee has relied upon the judgment of ITAT special bench in the case of Vireet Investment Pvt. Ltd. In this regard, it is pertinent to mention that Hon'ble Bombay High Court in the case of Vodafone India Services Pvt. Ltd. Vs. Additional Commissioner of Income Tax & Ors. (2014) 264 CTR 0030 (Bom) : (2013) 96 DTR 0193 (Bom) : (2014) 361 ITR 0531 (Bom) : (2014) 221 Taxman 0166 (Bom); has held that the proceedings before DRP are extension of assessment proceedings. Therefore, they are not bound by the decision of Tribunals unlike CIT(A) as long as the issue is not acceptable on merit and/or the issue is being contested by the department. In this case, the decision of Hon'ble Delhi High Court in the case of Goetze (India) Ltd cited above is also in favour to the department on this issue which also shows that the view of AO confirmed by the Panel is a plausible view.

19. There were contradictory orders at the end of the Tribunal. Therefore, Special Bench was constituted to consider the following question:

"Whether expenditure incurred to earn exempt income computed under section 14A could not be added while computing book profit under section 115JB of the Act."

20. When the Special Bench has considered this question, it was confronted with two decisions of the Hon'ble Delhi High Court diagonally opposite to each other. One referred by the ld. DRP also in the present case, rendered in the case of CIR Vs. Goetze India Ltd. (Supra) and other in the case of Pr. CIT Vs. Bhushan Steel. ITAT, Special Bench has reproduced both these orders in Vireet Investment P. Ltd. (supra) and thereafter it

considered as to which decision ought to be followed by a subordinate authority. The department advanced an argument that in the case of Bhushan Steel, Hon'ble Delhi High Court failed to consider subsequent decision of CIT Vs. Goetze India Ltd. (supra). However, the Tribunal after placing reliance upon the decision of Hon'ble Supreme Court in the case of CIT Vs. Vegetable Products Ltd., 88 ITR 192 (SC) and other decisions has held that it is incumbent upon it follow the decision of Hon'ble Delhi High Court in the case of Bhushan Steel. In this case, Hon'ble Delhi High Court has held as under:

" However, Ld. Senior Counsel has relied on the decision in the case of Bhushan Steel Ltd. (supra) wherein it has been held as under:

" ITA 593/2015

PR. CIT .....Appellant

Through: Mr. N.P. Sahni, Senior Standing Counsel with Mr. Nitin Gulati, Advocate Versus

BHUSHAN STEEL LTD. ...Respondent

Through: Ms. Kavita Jha, Advocate with Ms. Roopali Gupta, Advocate.

ORDER 29.09.2015

** ** **
** ** **

7. Question No.6 concerns deletion of addition of Rs.89,00,000 made by the AO for computation of the income for the purposes of Minimum Alternate Tax (MAT) under section 115JB of the Act. This pertained to the expenditure incurred for earning exempt income under section 14A read with Rule 8D. The ITAT has rightly held that this being in the nature of disallowance, and with Explanation 115JB not specifically mentioning Section 14A of the Act, the addition of Rs.89,00,000 was not justified. The view taken by the ITAT cannot be faulted with. It is consistent with the decision in Apollo Tyres Ltd. V. Commissioner of Income Tax 255 ITR 273 (SC) which held that "the Assessing Officer does not have the

jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation to Section 115J." The Court declines to frame a question on the above issue."

21. Apart from the above, we have a binding precedent before us – one from Hon'ble jurisdictional High Court and other from the Hon'ble Bombay High Court. The question considered by the Hon'ble Gujarat High Court in the case of Alembic Ltd. (supra) is as under:

" Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in holding that adjustment made on account of disallowance u/s.14A of the Act in computation of book profit u/s. 115JB of the Act is not as per law without appreciating that the amount disallwable under section 14A is covered under clause (f) of Explanation to section 115JB(2) and, thus, said amount has to be added back while computing amount of book profit?

22. The Hon'ble Gujarat High Court has replied this question as under:

7. So far as issue Nos.(iii) and (iv) are concerned, the learned counsel for the assessee has relied on the decision of this court in the case of Commissioner of Income tax-I v. Gujarat State Fertilizers & Chemicals Ltd., reported in (2013) 358 ITR 323 (Gujarat) Where this court has held in paragraph Nos.6 to 6.5 this court has observed as under:

6. So far as the fourth question is concerned, it pertains to addition of Rs.1,14,43,040/under Section 115JB of the Act being the expenditure estimated on earning of dividend income under Section 14A of the Act.

6.1 The Assessing Officer on referring to the said provision of Section 115JB(2) of the Act added the said amount considering that any amount of expenditure relatable to the income exempted under Section 10 of the Act shall need to be added in the profit shown in the 'Profit and Loss Account'.

When the matter travelled to the CIT (Appeals), since it deleted the addition of Rs.1,14,43,040/while deciding the question No.1, it consequently deleted such addition under

Section 115JB of the Act on the ground that this would not serve any purpose.

The Tribunal decided the said issue as follows:

"94. We have considered the rival submissions and we find that similar issue was raised by Revenue as per ground No.3 above in respect of regular assessment of income and while deciding that ground, we have already upheld that disallowance of Rs.5 lakh in respect of administrative expenses will meet the ends of justice and no disallowance is called for in respect of interest expenditure.

Hence, for the purpose of computing book profit u/s.115JB of the Act also, we hold accordingly and confirm the addition of Rs.5 lakh.

This ground of Revenue's appeal is partly allowed."

As rightly held by both, the CIT (Appeals) and the Tribunal, this issue has a direct correlation with the first question. It was argued by the Revenue that while computing the book profit under Section 115JB of the Act, the disallowance of interest expenditure on exempt income was wrongly negatived by both the authorities on the ground that it was not the liability for expenses, but a liability relating to assets.

We find no fault in the approach adopted by both the authorities. The addition under section 115JB of the Act of a sum of Rs.1,14,43,040/-when was made as an expenditure estimated on earning of dividend income under Section 14A of the Act, without reiterating the rationale of confirming deletion of such amount as has been elaborately done at the time of deciding question No.1, this deletion requires to be confirmed."

8. Taking into consideration the evidence on record and considering the decision of this court in the case of Commissioner of Income tax-I vs. Gujarat State Fertilizers & Chemicals Ltd. (supra), we are of the opinion that issue Nos.(iii) and (iv) required to be answered in favour of the assessee and against the revenue. In that view of the matter, we answer questions (iii) and (iv) referred to us in favour of the assessee and against the revenue. The appeal ofrevenue is dismissed.

23. Similarly, Hon'ble Bombay High Court has formulated following question in the case of Bengal Finance & Investments P. Ltd. (supra) and replied as under:

(b) Whether on the facts and in the circumstances of the case, and in law, the ITAT is justified in deleting the addition of Rs.78,84,387/- under clause (f) of Explanation 1 to Section 115JB relying upon the decision in the case of Goetze (India) Ltd. Vs. CIT (2009) 32 SOT 101 (Del.), which has been followed by ITAT, Mumbai in the cases referred to in para 5 of the impugned order without appreciating that the above decision in the case of Goetze (India) Ltd. was rendered by the ITAT, Delhi Bench on completely distinguishable set of facts, peculiar to the said case?"

…...

4. So far as question (b) is concerned, the impugned order of the Tribunal followed its decision in M/s. Essar Teleholdings Ltd. Vs. DCIT in ITA No.3850/Mum/2010 to held that an amount disallowed under section 14A of the Act cannot be added to arrive at book profit for purposes of Section 115JB of the Act. The Revenue's Appeal against the order of the Tribunal in M/s. Essar Teleholdings (supra) was dismissed by this Court in Income Tax Appeal No.438 of 2012 rendered on 7th August, 2014. In view of the above, question (b) does not raise any substantial question of law.

24. Respectfully following the above decision, we hold that no addition in the book profit would be made on the basis of calculations worked out under section 14A of the Act. We allow this ground of appeal in both the years and delete the additions."

23. We take notice of the fact that in context with the third proposed question, the ITAT placed reliance on the following decisions:

(1)CIT Vs. Alembic Ltd. (Tax Appeal No.1249/2014)

(2)CITI Vs. Gujarat State Fertilizers & Chemicals Ltd. (2013) 358 ITR 323

24. The issue is squarely covered and in our opinion, no error could be said to have been committed by the ITAT in taking the view that no addition in the book profit can be made on the basis of the calculations worked out under section14A of the Act."

> *8. In view of above, this Tax Appeal stands dismissed so far as question No.2[b] is concerned."*
>
> *16.1. Respectfully following the Jurisdictional High Court judgment, the ground raised by the Revenue to include the disallowance u/s. 14A for the purpose of computation of book profit u/s. 115JB of the Act is hereby deleted and the Ground no. 5 raised by the Revenue is hereby dismissed."*
>
> *25. In view of the above, we do not find any reason to interfere with the order passed by the Ld. CIT(A) in deleting such addition made by the Ld. AO. This ground of appeal found to be devoid of any merit and thus dismissed."*

24. We have heard the rival submissions made by the respective parties, and we have also perused the relevant materials available on record.

25. Having regard to the facts and circumstances of the case and having regard to the identical issue allowed by the Jurisdictional High Court which was subsequently followed by the Coordinate Bench we find that the order passed by the Ld. CIT(A) in deleting the addition made by the Ld. A.O. which in our considered opinion is just and proper so as to warrant interference. This ground of appeal is, therefore, dismissed.

26. Ground No.4 of the Revenue's appeal is general in nature and does not require any specific adjudication.

27. In the result, the appeal of the assessee is allowed for statistical purposes and the appeal filed by the Revenue is partly allowed for statistical purposes.

This Order pronounced in Open Court on	**29/02/2024**

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad; Dated 29/02/2024
TANMAY, Sr. PS ***TRUE COPY***

आदेश की प्रतिलिपि अग्रेषित/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