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

BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER
AND SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER

ITA Nos. 1006 & 1007/Ahd/2023
Assessment Years : 2018-19 & 2020-21

Urmin Products Pvt. Ltd., 48, Changodar Industrial Estate, Nr. Besan Factory, Tal. Sanand, Changodar, Gujarat-382213 PAN : AAACU 4489 Q	Vs	The Deputy Commissioner of Income-Tax, Central Circle-1(3), Ahmedabad
अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)
Assessee by :	Shri Aseem L. Thakkar, AR	
Revenue by :	Shri V.K. Mangla, Sr. DR	

सुनवाई की तारीख/**Date of Hearing : 29/04/2024**
घोषणा की तारीख /**Date of Pronouncement : 14/06/2024**

आदेश/O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

These two appeals are filed by the assessee as against the appellate orders dated 17.10.2023 and 18.10.2023 passed by the Commissioner of Income-Tax (Appeals), Ahmedabad-11 (hereinafter referred to as the "CIT(A)" in short), arising out of the assessment orders passed under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "the Act" in short), relating to the Assessment Years (AYs) 2018-19 and 2020-21 respectively.

2. Since common issue of disallowance u/s 14A of the Act read with Rule 8D of Income-tax Rules, 1962 is involved in both the cases, these appeals were heard together and are being disposed of by this consolidated order for the sake of convenience. ITA No.1006/Ahd/ 2022 for AY 2018-19 is being taken as the lead case for the purpose of narrating the facts.

ITA No.1006/Ahd/2022 : AY 2018-19

3. The brief facts of the case are that the assessee is a company engaged in the business of manufacturing and sale of chewing tobacco. For the AY 2018-19, the assessee filed its return of income on 29.03.2019 declaring total income of Rs.120,74,05,980/-. The return was taken up for complete scrutiny for verification of (i) refund claim, (ii) Duty Drawback and (iii) expenses incurred for earning exempt income, and thereafter the assessment was completed by making a disallowance u/s 14A r.w.r. 8D of Rs.83,35,408/-.

4. Aggrieved against the assessment order, the assessee filed an appeal before the ld. CIT(A). The assessee submitted before the ld. CIT(A) that the Assessing Officer has not recorded his dissatisfaction as to why the disallowance u/s 14A r.w.r. 8D should be invoked, when the assessee itself made *suo moto* disallowance of Rs.6,05,457/-. The ld. CIT(A) held that the assessee had not provided any separate books of accounts maintained for making investments and the assessee must have incurred administrative expenditure for earning such exempt income; hence, the Assessing Officer applied Rule 8D, as can be seen from paragraph Nos. 3 & 5 of the assessment order, thereby rejected the contention of the assessee. Further, the ld. CIT(A) held that the Assessing Officer applied new Rule 8D while computing the disallowance u/s 14A, which requires 1% of average investment as expenditure incurred for earning exempt income and new Rule 8D is applicable from Assessment Year 2017-18 which does not provide any bifurcation between proportionate interest disallowance and other expenditure as was the case involved in old Rule 8D. He, accordingly, confirmed the addition made by the Assessing Officer and dismissed the appeal filed by the assessee.

5. Aggrieved against the appellate order passed by the ld. CIT(A), the assessee is now in appeal before us challenging the disallowance made by the Assessing Officer u/s 14A r.w.r. 8D of the Income-Tax Rules, 1962.

6. The ld. Counsel Shri Aseem L. Thakkar, appearing for the assessee, drawn our attention to the assessment order, wherein the Assessing Officer has not recorded his dissatisfaction while computing the disallowance u/s 14A r.w.r. 8D. When the Assessing Officer did not record his satisfaction as per Section 14A(2) of the Act, then he could not invoke Rule 8D of the Income-tax Rules for computation of amount of expenditure to be disallowed u/s 14A of the Act. In support of the same, he relied upon the judgements of Hon'ble Jurisdictional High Court in the case of PCIT Vs. CIMS Hospital (P.) Ltd., reported in [2021] 125 taxmann.com 227 (Gujarat) and PCIT Vs. Gujarat Flurochemicals Ltd., reported in [2023] 155 taxmann.com 135 (Gujarat). Thus, the ld. Counsel for the assessee pleaded that the disallowance made by the Assessing Officer, without recording his satisfaction, the addition is liable to be deleted.

7. Per contra, the ld. Sr. DR., Shri V.K. Mangla, appearing for the Revenue, supported the orders passed by the lower authorities and requested to uphold the same.

8. We have given our thoughtful consideration to the above factual position and perused all the material available on record. It is seen from the assessment order, the Assessing Officer has noted that on perusal of the balance-sheet, the assessee has made substantial investments in shares and mutual funds, and the income of which is exempt from tax. The assessee has earned dividend income of Rs.6,49,37,133/- which is exempt u/s 10(34) of the Act. However,

the assessee has made disallowance of Rs.6,05,457/- only u/s 14A of the Act; therefore, the assessee was asked to explain as to why all the investments in shares and mutual funds as shown in the balance-sheet should not be considered for working out the disallowance u/s 14A of the Act read with Rule 8D of the Rules. In response, the assessee filed his submissions as follows:-

> "We have been directed to furnish the details with respect to investments in shares. The same is already furnished in point no 13 of the reply dated 26.05 2020. At the outset, it is submitted that from the perusal of the Balance Sheet, it would be revealed that the investment in shares is Rs. 12,50,000/- is with respect to Kalupur Commercial Co-operative Bank Ltd. **It is also pertinent to note that the dividend received on such shares is taxable in nature and does not generate any income which does not part of total income.** Therefore, there is no exempt income generated by making investment in shares of Kalupur Commercial Co-operative Bank Ltd In any case, the assessee company has already made a disallowance of Rs.6,05,457/- while filing the return of income. The basis of such disallowance u/s. 14A of the Act has also been furnished in point no. 11 of the reply dated 26.05.2020, Further, **it is also submitted that even presuming the investments in mutual funds amounting to Rs.284,18,82,951/- are capable of generating exempt income the assessee company is enjoying share capital and reserves & surplus to the extent of Rs.357,54,77,072/-. Such interest free funds are far in excess of the investments which are capable of generating exempt income not forming part of total income. It is a settled proposition of law that where such funds are in excess of the eligible investments, disallowance u/s. 14A of the Act cannot be made.**
>
> Therefore, it is respectfully submitted that once the interest free funds available with the assessee company are far in excess of the investments capable of generating exempt income disallowance u/s 14A r.w.r. 8D of the I.T. Rules 1962 cannot be made. It is also further submitted that the perusal of the Profit & Loss account would reveal that there is no finance cost incurred by the assessee company and therefore any direct expenses associated with the disallowance u/s 14A of the Act does not arise. The details of other direct/indirect expenses incurred for earning exempt income on the basis of which disallowance u/s 14A of the Act has been made is once again attached for your kind reference."

9. The ld. Assessing Officer considered the above submissions and held that, in view of specific provisions of Section 14A r.w.r. 8D, the

working given by the assessee is not found correct. Thus, he computed the disallowance by invoking Rule 8D as follows:-

> "Working of expenses attributable to exempt income as per Rule 8D of the Income-tax Rules, 1962:-

(i)	The amount of expenditure directly relating to income which does not form part of total income	0
(ii)	An amount equal to one percent of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income	89,40,86,521/-
	1% of annual average of monthly averages @ 1% of Rs 89,40,86,521/-	89,40,865/-
	Total Disallowance u/s.14A (shall not exceed the total expenditure claimed by the assessee)	89,40,865/-

> 5. From the above working, the attributable expenses for investment as per Rule 8D of the Income-tax Rules 1962 is at Rs.89,40,865/-which need to be disallowed as per section 14A of the I. T. Act. Since, the assessee has already disallowed an amount of Rs.6,05,457/-, a difference of Rs. 83,35,408/- is hereby disallowed u/s 14A r.w.t. 8D and same is added back to the total income of the assessee. I am satisfied that the assessee has wrongly calculated disallowance of expenditure related to exempt income u/s 14A w.r.t. rule 8D. Since, the assessee has under reported income in view of provisions of section 270A(2)(a) of Income Tax Act 1961. (Addition of Rs.83,35,408/-)"

10. It is also seen from the assessment order that the Assessing Officer has not recorded his dissatisfaction as prescribed under Section 14A(2) of the Act. For better understanding, the provisions of Section 14A is reproduced as follows:-

> "Expenditure incurred in relation to income not includible in total income:—
>
> 14A. (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."

10.1 As per sub-section (2) of Section 14A of the Act, if the Assessing Officer having regard to the accounts of the assessee is not satisfied with the correctness of the claim made by the assessee, in respect of such expenditure, in relation to income which does not form part of the total income under the Act, he has to record his satisfaction and then compute under Rule 8D of the Rules. From the perusal of the assessment order, it is clearly seen that the Assessing Officer has not recorded his dissatisfaction on the computation made by the assessee and invoked Rule 8D and made disallowance of Rs.83,35,408/-.

11. The Hon'ble jurisdictional High Court in the case of SIMS Hospital (P.) Ltd. (supra) held as under:-

"7. On perusal of the aforesaid provisions, it is clear that to determine the amount of expenditure incurred by the assessee in relation to the income which does not form part of the total income under the Act-1961, the Assessing Officer can apply the method to calculate such expenditure as provided under Rule 8D of the Rules-1962 only if the Assessing Officer having regard to accounts of the assessee is not satisfied with the correctness of the claim made by the assessee in respect of such expenditure in relation to the exempted income under the Act-1961. **Thus, pre-condition for applying rule 8D of the Rules-1962, the Assessing Officer is required to be satisfied as provided in sub-section 2 of section 14A of the Act-1961.**

8. In the aforesaid context, we may refer recent pronouncement of this Court in the case of Pr. CIT v. Gujarat State Fertilizer & Chemicals Ltd [2019]

108 taxmann.com 560/416 ITR 13 (Guj), wherein this Court has observed as under:—

> "17. This Court, in Shreno Limited (supra), has taken the view that Maxopp Investment Limited (supra) cannot be seen or understood to be fundamentally changing the understanding and interpretation of section 14A and Rule 8D. It went on to hold that the judgment of the Supreme Court does not lay down the proposition that, the requirement of sub-rule (1) of rule 8D of recording the satisfaction by the Assessing Officer before applying the formula given in sub-rule (2) of rule 8D is done away with. It clarifies that the judgment in the case of Maxopp Investment Limited does not lay down a proposition that the moment it is demonstrated that the assessee had availed of mixed funds and utilized them for making investment into securities earning tax free income, Section 14A read with rule 8D would be attracted automatically. The assessee has further relied on the judgment in the case of Principal Commissioner of Income-tax v. Gujarat State Financial Services Limited in the Tax Appeals Nos.1252, 1253 and 1255 of 2018 decided on 15th August 2018, which has followed the decision in the case of Shreno Limited (supra) dealing with the same issue and also an identical argument taken by the department.
>
> **18. The language of section 14A of the Act is plain and clear Before invoking rule 8D, the Assessing Officer is obliged to indicate that having regard to the accounts of the assessee, he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to the income which does not form part of the total income under the Act. To put it in other words, the condition precedent of recording the requisite satisfaction which is a safeguard provided in section 14A should not be overlooked before going to rule 8D**. In such circumstances we are not impressed by the submission canvassed on behalf of the Revenue that once there are mixed funds, rule 8D would be attracted automatically."

9. The Tribunal has arrived at finding of fact that as the Assessing Officer did not record any satisfaction under section 14A(2) of the Act-1961 prior to invoking rule 8D, he could not have made any disallowance by applying rule 8D of the Rules-1962."

11.1 In the case of Gujarat Flurochemicals Ltd (supra), the Hon'ble Gujarat High Court held as follows:-

> "**……**
> ……
> ……

15. In Maxopp Investment Limited (supra), the Supreme Court has clarified that the satisfaction has to be recorded by the Assessing Officer to show that the voluntary disallowance of the expenditure made by the assessee on the expenditure incurred for earning exempt income is not in order. The Assessing Officer, in such circumstances, is obliged to assign reasons for he not being satisfied having regard to the accounts maintained by the assessee and the suo motu disallowance made by the assessee under section 14A of the Act. We may reproduce the relevant observations of the Supreme Court in this regard thus:

> "**Having regard to the language of section 14A(2) of the Act, read with Rule 8D of the Rules, before applying the theory of apportionment, the Assessing Officer needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under section 14A was not correct.** It will be in those cases where the assessee in his return has himself apportioned the expenditure but the Assessing Officer did not accept the assessee's apportionment. **In that eventuality, he will have to record its satisfaction to this effect. Further, while recording such a satisfaction, the nature of the loan taken by the assessee for purchasing the shares or making the investment in shares is to be examined by the Assessing Officer.**"

16. We also refer to and rely upon a decision of this Court in the case of Principal Commissioner of Income-tax v. Shreno Limited, reported in (2018) 409 ITR 401 (Gujarat), more particularly paragraphs 16 and 17, which read thus :

> "16. The primary question which the Supreme Court considered in case of Maxopp Investment Ltd., (supra) was whether disallowance of expenditure under section 14A of the Act would be applicable in a case where shares or stocks of a company were purchased for the purpose of gaining control over the said company and incidentally tax free dividend income was generated. The assessee had contended that the dominant intention for purchasing the shares was not for earning the dividend but to gain control over the business in the company in which the shares were purchased. The Supreme Court held that the purpose for which the shares were purchased was inconsequential. As long as such investment generated tax free income, disallowance of expenditure for making such investment would be justified. This issue does not arise in the present case. However, it is true that while disposing of bunch of appeals by the said judgment the Supreme Court also considered the correctness of the view of the Punjab & Haryana High Court in case of Avon Cycles Ltd. It was the case in which the Assessing Officer had invoked Section 14A read with Rule 8D and apportion the expenditure between investments made for earning tax free income and the rest. The CIT (Appeals) had deleted the entire disallowance upon which in the appeal filed by the Revenue the Tribunal restored portion of the disallowance observing that

the funds utilized by the assessee being mixed funds, the disallowance is confirmed in view of the provisions under Rule 8D(2) of the Rules. This decision of the Tribunal was challenged before the High Court. The Court held that the funds utilized by the assessee were mixed funds and the interest paid by the assessee is also an interest on the investments made, was the finding of fact and therefore, no substantial question of law arises. This judgment was carried in appeal by the assessee. The Supreme Court dismissed the appeal confirming the decision of the High Court.

17. We do not find that this portion of the judgment of the Supreme Court in case of Maxopp Investment Ltd., can be seen as fundamentally changing the understanding and interpretation of Section 14A and Rule 8D of the Rules adopted by this Court and various Courts, noted above. This judgment does not lay down a proposition that the requirement of sub-rule (1) of Rule 8D of the satisfaction to be arrived by the Assessing Officer before applying the formula given in sub-rule (2) of Rule 8D is done away with. In other words, the judgment in case of Maxopp Investment Ltd., does not lay down a proposition that the moment it is demonstrated that the assessee had availed of mixed funds i.e. interest free as well as interest bearing funds and utilized them for making investments into securities earning tax free income and the rest applicability of the Section 14A read with Rule 8D would be automatic. We are conscious that neither in M/s. Max India Ltd., Punjab & Haryana nor in Gujarat State Fertilizer and Chemicals case, this High Court had noticed the judgment of the Supreme Court in case of Maxopp Investment Ltd. Nevertheless in view of the discussion above, in our opinion the situation would not change on account of the said judgment of the Supreme Court."

17. This Court, in Shreno Limited (supra), has taken the view that Maxopp Investment Limited (supra) cannot be seen or understood to be fundamentally changing the understanding and interpretation of section 14A and Rule 8D. It went on to hold that the judgment of the Supreme Court does not lay down the proposition that, the requirement of sub-rule (1) of Rule 8D of recording the satisfaction by the Assessing Officer before applying the formula given in sub-rule (2) of Rule 8D is done away with. It clarifies that the judgment in the case of Maxopp Investment Limited does not lay down a proposition that the moment it is demonstrated that the assessee had availed of mixed funds and utilized them for making investment into securities earning tax free income, Section 14A read with Rule 8D would be attracted automatically. The assessee has further relied on the judgment in the case of Principal Commissioner of Income-tax v. Gujarat State Financial Services Limited in the Tax Appeals Nos. 1252, 1253 and 1255 of 2018 decided on 15th August 2018, which has followed the decision in the case of Shreno Limited (supra) dealing with the same issue and also an identical argument taken by the department.

> **18. The language of Section 14A of the Act is plain and clear. Before invoking Rule 8D, the Assessing Officer is obliged to indicate that having regard to the accounts of the assessee, he is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to the income which does not form part of the total income under the Act. To put it in other words, the condition precedent of recording the requisite satisfaction which is a safeguard provided in Section 14A should not be overlooked before going to Rule 8.** In such circumstances we are not impressed by the submission canvassed on behalf of the Revenue that once there are mixed funds, Rule 8 would be attracted automatically.
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> 18. We are of the view that the ITAT rightly relied on the decision of the Bombay High Court in the case of CIT v. Reliance Utilities & Power Ltd. [2009] 313 ITR 340/178 Taxman 135 (Bom.)."

11.1 It is seen that the assessee made investments of Rs. 12,50,000/- in Kalupur Commercial Co-operative Bank Ltd. and the dividend received on such shares is taxable in nature and does not generate any exempt income. Further, the assessee had share capital, Reserve & Surplus to the extent of Rs.357 crores, whereas the investments in mutual funds is to the extent of Rs.284 crores. Thus, the interest free funds are far in excess to the investments made by the assessee, which are generating exempt income not forming part of the total income.

12. Respectfully following the above judicial precedent, we hold that, the Assessing Officer having not recorded his dissatisfaction u/s 14A(2) of the Act before invoking Rule 8D, he could not have made any disallowance u/s 14A of the Act. Thus, the disallowance made by the Assessing Officer is not sustainable in law and the same is liable to be deleted.

13. In the result, the appeal filed by the assessee bearing ITA No.1006/Ahd/2023 is hereby allowed.

ITA No. 1007/Ahd/2023 : AY-2020-21

14. The grounds of appeal raised by the assessee are as under:-

> "1. The Ld. CIT(A) has erred in confirming the addition of Rs.1,49,88,540/- made by the Assessing Officer in respect of deduction claimed u/s 37 of the IT Act, 1961 for the education cess and higher secondary education cess paid by the appellant during the year applying the amendment made to Sec.40(a)(ii) of the I.T. Act, 1961 by the Finance Act, 2022 retrospectively.
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> 2. The Ld. CIT(A) has erred in confirming the disallowance of Rs.1,21,09,866/- made by the Assessing Officer u/s. 14A of the I.T. Act, 1961 r.w.r.8D of the I.T. Rules, 1962."

15. For the AY 2020-21, the assessee filed its return of income on 13.02.2021 declaring total income of Rs.164,23,69,320/- and claimed Education Cess of 1,49,88,540/- as allowable business expenditure. The Assessing Officer held that the Education Cess being an additional surcharge on income-tax partakes the same character and it is not allowable expenditure as per the amendment of Section 40 in Finance Bill 2022; thereby, the Assessing Officer disallowed the Education Cess of Rs. 1,49,88,540/- claimed as business expenditure and added to the total income of the assessee. The Assessing Officer also made disallowance u/s 14A of the Act of Rs.1,21,09,866/-, wherein the assessee had made *suo moto* disallowance of Rs.7,03,990/- in its computation of total income.

16. Aggrieved against the assessment order, the assessee filed appeal before the ld. CIT(A) who confirmed both the additions and dismissed the appeal filed by the assessee.

17. Aggrieved against the appellate order passed by the ld. CIT(A), the assessee is now in appeal before us raising the grounds as stated above.

18. The ld. Counsel Shri Aseem L. Thakkar, appearing for the assessee, submitted that the assessee has been visited with additions on the ground that though the claim of the assessee was legitimate at the time of the filing of the return of income, however, because of the retrospective introduction of the *Explanation (3) to* the Act, the same becomes an inadmissible expenditure. However, the provisions of Section 155(18) which came to be introduced with effect from 01.04.2022 provided that where the assesse is desirous of withdrawing the claim, he can do so subject to the payment of taxes. Further, as per Rule 132, the assessee is liable to file application in Form No.69 on or before 31.03.2023; however, Form No.69 has come to be notified with effect from 01.10.2022, i.e. subsequent to the date of passing of the assessment order i.e. 02.09.2022. But, the assessee company filed Form No.69 electronically on 02.12.2022 i.e. before the due date of 31.03.2023. Therefore, the assessee has duly complied with the provisions of the Act and no communication has been received from the Assessing Officer with respect to the above application filed by the assessee. The ld. CIT(A) has also not adjudicated the detailed submission filed before him. Therefore, in the interest of justice, the matter may be set aside to the file of the Assessing Officer with appropriate direction to dispose of the application made u/s 155(18) r.w.r. 132 of the I.T. Rules.

19. Per contra, the ld. Sr. DR, appearing for the Revenue, supported the orders passed by the authorities below and requested to confirm the additions made by the Assessing Officer and confirmed by the ld. CIT(A).

20. We have given our thoughtful consideration to the above factual position and perused all the material available on record. The provisions of Section 155(18) of the Act and Rule 132 read as under:-

Section 155(18) of the Act:

"[(18) Where any deduction in respect of any surcharge or cess, which is not allowable as deduction under section 40 has been claimed and allowed in the case of an assessee in any previous year, such claim shall be deemed to be under reported income of the assessee for such previous year for the purposes of sub-section of section 2704. notwithstanding anything contained in sub-section (6) of section 1704 and the Assessing Officer shall recompute the total income of the assessee for such previous year and make necessary amendment, and the provisions of section 154 shall so far as may be, apply thereto, the period of four years specified in sub-section (7) of section 154 being reckoned from the end of the previous year commencing on the 1st day of April, 2021:

Provided that in a case where the assessee makes an application to the Assessing Officer in the prescribed form and within the prescribed time, requesting for recomputation of the total income of the previous year without allowing the claim for deduction of surcharge or cess and pays the amount due thereon within the specified time, such claim shall not be deemed to be under-reported income for the purposes of sub-section (3) of section 270A."

Rule 132 of the Rules:

"[Application for recomputation of income under sub-section (18) of section 155.

132. (1) An application requesting for recomputation of total income of the previous year without allowing the claim for deduction of surcharge or cess, which has been claimed and allowed as deduction under section) 40 in the said previous year, shall be made in Form No. 69 on or before the 31st day of March, 2023.

(2) Form No. 69 shall be furnished electronically to the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) or the person authorized by the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems).

(3) Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) shall lay down the procedures and standards for furnishing and verification of Form No. 69 and to

forward the application received in Form No. 69 to the Assessing Officer.

(4) The Assessing Officer shall, on receipt of the application in Form No. 69, recompute the total income by amending the relevant order and issue notice under section 156 specifying the time period within which amount of tax payable, if any, is to be paid.

(i) for the assessment year relevant to the previous year referred to in sub-rule (1); and

(ii)for the assessment year's subsequent to the assessment your referred to in clause 10. if the order for such assessment year results in variation in carry forward of loss or allowance for unabsorbed depreciation or credit for tax under section 115JAA or section 115JD

(5) The assessee shall after making the payment of the tax determined under sub-rule (4), furnish the details of payment of tax in Form No 70 to the Assessing Officer within thirty days from date of making the payment."

21. The above provision of Section and Rule makes it very clear that where the application in Form No.69 has been made in the prescribed format and within the prescribed period, the claim would not be deemed to be under-reported income for the purpose of Section 270(A)(3) of the Act. Copy of the acknowledgement of receipt of the IT Form No.69 was furnished by the assessee before ld. CIT(A) so as to ascertain this fact as mentioned in the order of the ld. CIT(A); however, no orders have been passed by the Assessing Officer regarding the application made by the assessee and the ld. CIT(A) has also not addressed this issue. Thus, the ground No.1 raised by the assessee is hereby allowed with the direction to the Assessing Officer to dispose of the application in Form No.69 made by the assessee and pass the order in accordance with law.

22. Regarding Ground No.2, this issue is already held in favour of the assessee for not recording dissatisfaction before making

disallowance u/s 14A r.w.r. 8D, in foregoing paragraphs of our order, i.e. paragraph Nos. 10 to 13, in ITA No. 1006/Ahd/2023. Respectfully following the same, ground of appeal No.2 raised by the assessee is hereby allowed.

23. In the result, the appeal filed by the assessee bearing ITA No.1007/Ahd/2023 is hereby allowed for statistical purposes.

24. In the combined result, the appeal of the assessee in ITA No. 1006/Ahd/2023 is allowed, while the appeal filed by the assessee in ITA No. 1007/Ahd/2023 is allowed for statistical purposes.

Order pronounced in the open Court on 14th June, 2024 at Ahmedabad.

Sd/- Sd/-

(NARENDRA PRASAD SINHA) **(T.R. SENTHIL KUMAR)**
ACCOUNTNAT MEMBER **JUDICIAL MEMBER**

Ahmedabad, Dated 14/06/2024
**Bt*

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 प्रतिनिधिअधिकरण अपीलीय आयकर ,/DR,ITAT, Ahmedabad,
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आदेशानुसार/ BY ORDER,

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