IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

Before: Shri Ramit Kochar, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member

ITA Nos: 166/Ahd/2022 & 231/Ahd/2024
Assessment Years: 2017-18 & 2020-21

Gujarat Urja Vikas Nigam Ltd., Sardar Patel Vidyut Bhavan, Race Course Circle, Baroda-390007 **PAN: AACCG2861L** **(Appellant)**	Vs	The ACIT/DCIT, Circle-1(1)(1), Vadodara **(Respondent)**

ITA Nos: 223/Ahd/2022 & 293/Ahd/2024
Assessment Years: 2017-18 & 2020-21

The JCIT (OSD)/DCIT, Circle-1(1)(1), Vadodara **(Appellant)**	Vs	Gujarat Urja Vikas Nigam Ltd., Sardar Patel Vidyut Bhavan, Race Course Circle, Baroda-390007 **PAN: AACCG2861L** **(Respondent)**

Assessee Represented: Shri Manish J. Shah, A.R.
Revenue Represented: Shri Akhilendra Pratap Yadaw,CIT-DR
& Ms. Bhavnasingh Gupta, Sr. D.R.

Date of hearing : 31-07-2024
Date of pronouncement : 08-08-2024

आदेश/ORDER

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

These cross appeals are filed by the Assessee and the Revenue as against separate appellate orders dated 06.04.2022 and 20.12.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the assessment orders passed under section 143(3) r.w.s. 144B of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Years (A.Ys) 2017-18 & 2020-21.

2. In both the appeals common grounds are raised by the Assessee and the Revenue, for the sake of convenience, the same are disposed of by this common order. First we will take up Assessee's appeal in ITA No.166/Ahd/2022 relating to Asst. Year 2017-18.

3. The brief facts of the case is that the assessee is a Public Sector Undertaking engaged in purchase, sale and distribution of electricity. For the Assessment Year 2017-18, the assessee filed its Return of Income on 18-10-2017 declaring total income of Rs.90,92,02,810/- after setting off Brought Forward Losses of Rs.75,45,22,135/-. The assessee shown book profit u/s. 115JB of Rs.165,54,21,963/-. The return was taken up for scrutiny assessment and various disallowances made by the Assessing Officer namely:

(i) Disallowance u/s. 14A of Rs. 154,61,81,000/-

(ii) Interest capitalization of CWIP of Rs.6,97,664/-

(iii) Interest income on IT Refund of Rs.10,49,47,929/-

(iv) Interest income treated as "other sources" of Rs.13,36,99,000/-

(v) Dividend Income exempt u/s. 10(34/35) of Rs.12,07,96,095/-

(vi) Adjustment in Book Profit under 115JB including the disallowance u/s. 14A.

4. Aggrieved against the assessment order, the assessee filed an appeal before Ld. CIT(A). Regarding the first issue of disallowance u/s. 14A, the Ld. CIT(A) considered the appellate orders passed by his predecessors for the Asst. years 2008-09 to 2014-15 and observed as under:

"…..In the current assessment year, the appellant has claimed to have paid 1.59 lacs as interest on working capital. There is no fresh investment during the year under consideration. Hence, the AO is directed to recompute the disallowance u/s 14A as per Rule 8D according to the following directions:

1. The interest paid on working capital borrowing of Rs.1.59 lacs will not be considered for making disallowance out of interest expenses.

2. If the disallowance u/s14A r.w.r. 8D computed in view of above directions comes to less than the dividend income of 1207.96/- crores treated as exempt by the AO, then instead of making disallowance, the dividend income shall be treated as taxable as shown by the appellant in the return of income."

5. Aggrieved against the appellate order the Grounds of Appeal raised by the Assessee in ITA No.166/Ahd/2022 are as follows:

"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 IT 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 in the event the disallowance under section 14A of the Act computed as per the directions comes out to be lesser than the dividend income, then such dividend income shall be treated as taxable income.*
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> *1.2 The learned Commissioner of Income Tax (Appeals) has also erred in law and on facts in not considering the order passed by the Hon'ble Commissioner of Income Tax (Appeals) in the immediately preceding year viz., Asst. Year 2016-17 in the appellant's own case, which was already on record. As per the said order, a totally different view has been taken to compute the disallowance under section 14A of the IT Act by restricting the disallowance under section 14A to the extent of dividend income of the Company. The learned Commissioner (Appeals) has thus failed to take any cognizance whatsoever of the order already on record.*
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> *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 270A of the IT Act.*
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> *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.*
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> *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.*

5.1 At the outset, Ld. Counsel Shri Manish J. Shah appearing for the assessee submitted that the disallowance made u/s.14A of the Act is squarely covered by assessee's own case vide ITA Nos. 281 & 282/Ahd/2018 dated 31.07.2023 relating to Asst. Years 2013-14 & 2014-15, wherein similar disallowance u/s. 14A was remanded back to the file of Assessing Officer for fresh adjudication by the Co-ordinate Bench of this Tribunal by following earlier Asst. Year 2008-09 by observing as follows:

> *".....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.*
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> ....
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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."*

6. Respectfully following the above decisions of our Co-ordinate Bench, for this assessment year 2017-18, 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 as applicable for the present assessment year. **Thus the Grounds of Appeal filed by the assessee is partly allowed.**

7. Ground No. 2 is initiation of Penalty proceedings and Ground No. 3 is charging of Interest u/s. 234A, 234B, 234C and 234C of the Act which are consequential in nature, therefore the same does not require any specific adjudication.

7.1 In the result, the appeal filed by the **Assessee in ITA No. 166/Ahd/2022 is partly allowed for statistical purpose**.

<u>Revenue's appeal in ITA No. 223/Ahd/2022 for A.Y. 2017-18</u>

8. The Grounds of Appeal raised by the Revenue reads as under:

[i] On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in directing the Assessing Officer to treat the interest income from staff loans and advances, interest income from advances to others and miscellaneous receipts of Rs. 129.03 lacs as business income instead of income from other sources without appreciating the fact that the nature of the income is of purely interest and not from any activities of business or profession of the assessee.

[ii] On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition of Rs.6,97,664/- made by the Assessing Officer on account of capitalization of interest on capital work-in-progress without appreciating the fact that the assessee has failed to furnish necessary evidence to prove that no borrowed fund has been utilized for the work-in-progress of Rs.58,13,869/- shown during the year under consideration and accordingly as per the proviso to Section 36(1)(iii) of the I.T. Act the interest expenditure attributable to the capital work-in- progress is not allowable as deduction for computing the total income.

[iii] On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) has erred in deleting the addition made by the Assessing Officer in computing the Book Profit u/s 115JB of the I.T. Act on account of disallowance u/s 14A read with Rule 8D without appreciating the fact that the amount disallowable under section 14A of the I.T. Act is covered under Clause (f) of Explanation 1 to Section 115JB(2) of the I.T. Act and accordingly the disallowance made u/s 14A of the I.T. Act is required to be added in computing the Book Profit u/s 115JB of the I.T. Act.

[iv] It is, therefore, prayed that the order of the Ld. CIT (A) may be set aside and that of the Assessing Officer may be restored to the above extent.

[v] The appellant craves leave to add, alter, amend and/or withdraw any grounds of appeal either before or during the course of appellate proceedings.

9. Ground No. 1 of the Revenue appeal namely Interest income from staff loans and advances of Rs.119.88 lacs and Misc. Income of Rs.9.15 lacs as 'business income' instead of 'Income from other sources'.

9.1. Ld. Counsel Shri Manish J. Shah appearing for the assessee submitted that this issue is covered against the Revenue's appeal before the High Court of Gujarat in Tax Appeal No. 63 of 2020 wherein it was held as follows:

> *"… 13 With regard to question No.2[d], the Assessing Officer noticed that as per Schedule 14, the assessee has shown other income consisting of interest on loan and advances, incentives from CPSU, etc. The Assessing Officer was of the view that this income was to be assessed as income from other sources instead of business income shown by the assessee.*
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> *14 On appeal, the CIT(A) as well as the Tribunal held that the interest income is required to be treated as business income instead of income from other sources. The Tribunal in its order observed as under:*
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>> *"10 We have heard the rival contentions and perused the material on record on this issue. The assessing Officer has treated the aforesaid income under the head income from other sources without controverting the submission of the assessee on the basis of which it was claimed that these income were of the nature of business income as elaborated in para seven of this order. The ld. CIT(A) has decided the issue in favour of the assessees taking that this issue was decided in favour of the assessee for assessment year 2009-10. During the course of appellate proceedings, the Revenue has failed to controvert the aforesaid contention and the findings of the ld. ClT(A), therefore after considering the material fact that interest earned on loan and advances from deposit placed with Mega Power Project toward sits sharing of power and interest of UL pool account received from M/s.Power Grid Corporation India Ltd were directly related to the business of the assessee, therefore, this ground of appeal of the Revenue stands dismissed."*
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> *15 In view of above findings of acts arrived at by the Tribunal that* ***interest earned by the assessee was directly related to the business of the assessee, no question of law much less substantial question of law arises. Therefore, appeal stands dismissed qua question No.2[d]. "***

9.2. Ld Counsel further submitted that the Co-ordinate Bench followed the above Jurisdictional High Court judgement and dismissed the Ground raised by the Revenue in its appeal for the Asst. Years 2013-14 & 2014-15 in ITA Nos. 281 & 323/Ahd/2018 dated 31.07.2023. Therefore the present ground raised by the Revenue is liable to be dismissed.

10. Per contra Ld. CIT-DR Shri Akhilendra Pratap Yadaw appearing for the Revenue drawn our attention to the order passed by the Co-ordinate Bench of this Tribunal in assessee's own case for the subsequent Asst. Year 2018-19 in ITA No.178/Ahd/2023 dated 15.03.2024 wherein Revenue Ground was allowed by observing as follows:

> *"…13. The interest income from staff loans and advances of Rs. 26.74 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 DCIT vs. Gujarat Urja Vikas Nigam Ltd. in ITA No. 569/Ahd/2019. wherein similar ground was allowed in favour of the assessee, a copy whereof was also submitted before us.*
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> *……………..*
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> *14. 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 demonstrate 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 26.74 lakhs on account of interest income from other loans and advances and miscellaneous income of 186.61 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."

11. In reply Ld. Counsel Shri Manish J. Shah appearing for the assessee drawn our attention to the very recent judgment passed by Hon'ble High Court of Gujarat in the case of Uttar Gujarat Vij Co. Ltd. Vs. ITO in Special Civil Application No. 20400 of 2023, 20427 of 2023 and 20444 of 2023 dated 01.04.2024 wherein it was held as follows:

"… 8. Having heard learned advocates for the parties it appears that it is not in dispute that the petitioner has relied upon the decision of this Court in case of Gujarat Urja Vikas Nigam Ltd vs. DCIT in Tax Appeal No. 63/2020 wherein, the Tax Appeal was preferred by the Revenue on the aspect as to whether interest received on staff loan is business income or not for the purpose of consideration of disallowance under section 14A of the Act. The facts of the case of Gujarat Urja Vikas Nigam Ltd vs. DCIT and the facts of the case of the petitioner are identical and not different and as such, the Tribunal could not have relied upon the decision of Orissa High Court while distinguishing the facts of the case of the petitioner by ignoring the decision of the Jurisdictional High Court. More particularly, when the CIT and the Tribunal in case of the Gujarat Urja Vikas Nigam Ltd vs. DCIT have held **that interest income on staff loans is required to be treated as 'business income' instead of 'income from other sources' which is confirmed by this Court in the aforesaid Tax Appeal.**

9. In case of Gujarat Energy Transmission Corporation Ltd (supra) in ITA No. 633/2013, **the Coordinate Bench of the Tribunal, after considering the decision of this Court, has held that the interest on staff loans and advances are part of the 'business income' only.** In such circumstances, the decision of the Co-ordinate Bench of the Tribunal as well as this

Court were binding upon the Tribunal resulting into the mistake apparent on record.

10. The Tribunal therefore ought to have considered such aspect while deciding the Misc. Application under section 254(2) of the Act.

… … … … … … … … …

12. From the above observation of the Tribunal it is clear that though the Tribunal has referred to the decision of the Coordinate Bench as well as the binding decision of this Court which is a Jurisdictional High Court and has relied upon the decision of the Hon'ble Orissa High Court on the ground that as per the view of the Tribunal, the interest earned on the staff loan and advances incidental to the assessee's business is factually incorrect as the loan advances given to the employees are not mandatory incentive given to the staff and cannot be termed as incidental to the business. The Tribunal could not have taken different view than what was already taken by the Coordinate Bench which is confirmed by this Court in Tax Appeal No. 63/2020. Thus, there is a mistake apparent on the face of the record in the order dated 24.08.2022 passed by the Tribunal which ought to have been considered by the Tribunal and the Misc. Application preferred by the petitioner could not have been dismissed.

… … … … … … … … …

14. Thus, in view of the above, when the Tribunal has not followed the decision on the identical facts by the Coordinate Bench which is confirmed by this Court, there is mistake apparent on the record which ought to have been considered by the Tribunal when it is pointed out being a mistake apparent on record. The Hon'ble High Court in case of Air Conditioning Specialities (P.) Ltd. Vs. Union of India reported in (1996) 221 ITR 739 (Guj) has held as under:

> "Having given anxious and thoughtful consideration, we are of the opinion that petition requires to be allowed. It is not disputed even by the Revenue that the point is concluded by a pronouncement of this court in the case of Bharat Textile Works [1978] 114 ITR 28.

Mr. Thakore frankly admitted that above view is reiterated subsequently by this court in the case of Chimanlal Patel v. CIT [1994] 210 ITR 419.

In view of the above legal position, the petition requires to be allowed and the order passed by the second respondent which is clearly contrary to law, requires to be quashed and set aside.

We may, however, add that it was not open to the second respondent to ignore the law laid down by this court when it was an inferior Tribunal subject to the supervisory jurisdiction of this court. It was not proper on his part not to follow a binding decision of this court on the ground that the Department had not accepted that decision and had filed an appeal and the matter was pending in the Supreme Court. It cannot be disputed and is not disputed that the second respondent is a "Tribunal" subject to the supervisory jurisdiction of this court under article 227 of the Constitution. Hence, he is bound to obey the law declared by this court.

The apex court of the country in no uncertain terms held that the law declared by a High Court is binding on all subordinate courts and Tribunals within the territory to which it exercises the jurisdiction. In Bhopal Sugar Industries Ltd. v. ITO[1960] 40 ITR 618 (SC), the Income-tax Officer (subordinate authority) refused to carry out clear and unambiguous directions of the Income-tax Appellate Tribunal (superior authority). Deprecating it, their Lordships of the Supreme Court observed (page 622):

"Such refusal is in effect a denial of justice, and is furthermore destructive of one of the basic principles in the administration of justice based as it is in this country on a hierarchy of courts. If a subordinate Tribunal refuses to carry out directions given to it by a superior Tribunal in the exercise of its appellate powers, the result will be chaos in the administration of justice....

A direct question arose before the Supreme Court in East India Commercial Co. Ltd. vs Collector of Customs, AIR 1962 SC 1893. In that case, proceedings were initiated by the Collector of Customs against the petitioner-company on allegations that it had violated conditions of licence and illegally disposed of goods and thereby committed an offence punishable under the

Customs Act. The High Court confirmed the order of acquittal passed by the trial court holding that it cannot be said that "a condition of the licence amounted to an order under the Act" and, therefore, no offence was committed by the company. The High Court also passed an order directing the seized/goods to be sold and the sale proceeds to be deposited in the court. After those proceedings, a notice was issued by the Collector on the company to show cause why the amount should not be confiscated and penalty should not be imposed. It was contended on behalf of the company that once the High Court decided that the breach of condition of licence could not be said to be a breach of order, the Collector had no jurisdiction to issue show-cause notice. It was submitted that the decision of a High Court on a point was binding on all subordinate courts and inferior Tribunals within its territorial jurisdiction. The notice was, therefore, liable to be quashed. The precise question before the Supreme Court was as to whether or not the decision rendered by a High Court would bind all subordinate courts and inferior Tribunals within its territorial jurisdiction. It was argued that there was no provision similar to article 141 of the Constitution making the law declared by a High Court binding on all courts and Tribunals within its territorial jurisdiction. Considering relevant provisions of the Constitution and the power of High Court, Subba Rao J. (as he then was), observed (page 1905):

> "This raises the question whether an administrative Tribunal can ignore the law declared by the highest court in the State and initiate proceedings in direct violation of the law so declared. Under article 215, every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Under article 226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government, within its territorial jurisdiction. Under article 227 it has jurisdiction over all courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. It would be anomalous to suggest that a Tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violation of it. If a Tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of the Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision

> conferred on a superior Tribunal that all the Tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise, there would be confusion in the administration of law and respect for law would irretrievably suffer. We, therefore, hold that the law declared by the highest court in the State is binding on authorities or Tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding."

The above view has been reiterated by the Supreme Court in a number of subsequent decisions (see M. Padmanabha Setty v,K.P. Papiah Setty, AIR 1966 SC 1824; Kausalya Devi Bogra v. Land Acquisition Officer, AIR 1984 SC 892 and Bishnu Ram Borah v.Parag Saikia, AIR 1984 SC 898).

In our opinion, the submission of learned counsel for the petitioner, is well-founded and deserves to be upheld. It is not even the case of the Department that the decision of this court in Bharat Textile Works' case [1978] 114 ITR 28 has been stayed by the Supreme Court. Hence, so far as this court is concerned, the point is concluded. It is settled law that unless and until the decision is reversed by a superior court, it holds the field. It also cannot be gainsaid that the second respondent is an inferior Tribunal subject to supervisory jurisdiction of this court and this court can exercise jurisdiction over him by invoking article 227 of the Constitution. In our considered view, therefore, it was not open to the second respondent to ignore the decision of this court or to refuse to follow, it on a specious plea of verdict being not accepted by the Department and that the matter was carried further and was pending before the Supreme Court.

In Baradahanta Mishra v. Bhimsen Dixit, AIR 1972 SC 2466, when a member of the superior judicial service functioning as the Commissioner of Hindu Religious' Endowments, Orissa, refused to follow the decision of the High Court, contempt proceeding had been initiated against him and he was punished by the High Court. When the matter was carried by the appellant to the Supreme Court, dismissing the appeal and extending further the principle laid down in the decision of East India Commercial Co. Ltd.'s case, AIR 1962 SC 1893, the court held (page 2469):

> "The conduct of the appellant in not following the previous decision of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court."

In this connection, we may emphasise that it would indeed be appropriate to keep in mind the following observations of Lord Diplock in Cassell no Co. Ltd. v. Broome [1972] 1 All ER 801, 874 (HL):

> "It is inevitable in a hierarchical system of courts that there are decisions of the supreme appellate tribunal which do not attract the unanimous approval of all members of the judiciary. When I sat in the Court of Appeal I sometimes thought the House of Lords was wrong in overruling me. Even since that time there have been occasions, of which the instant appeal itself is one, when, alone or in company, I have dissented from a decision of the majority of this House. But the judicial system only works if someone is allowed to have the last word and if that last word, once spoken, is loyally accepted."

We are very clear and we have no doubt in our minds that when a point is concluded by a decision of this court, all subordinate courts and inferior Tribunal within the territory of this State and subject to the supervisory jurisdiction of this court are bound by it and must scrupulously follow the said decision in letter and spirit. Since the second respondent has not decided the matter in accordance with law laid down by this court in the case of Bharat Textile Works [1978] 114 ITR 28 , the order passed by him requires to be quashed and set aside."

15. IN view of the above conspectus of law, the decision of the jurisdictional High Court is binding up on the Tribunal. In such circumstances, not following the binding decision is mistake apparent on record. The impugned orders are accordingly quashed and set aside. The matter is remanded back to the Tribunal to pass fresh orders in Misc. Application preferred by the petitioner in view of the observation made in this order. Rule is made absolute to the aforesaid extent.

No order as to costs."

11.1. In the above case Hon'ble High Court categorically observed the order passed by the Tribunal by not following the decisions of the Co-ordinate Bench on the identical facts, which is confirmed by the Hon'ble High Court is binding up on the Tribunal. Not following the Judgement passed by Jurisdictional High Court is clear mistake apparent on the record and against the Judicial discipline, and such orders are liable to quashed. Thus respectfully following the Jurisdictional High Court judgment which has confirmed Tribunal's decision in assessee's own case, we hereby held that the interest income and miscellaneous income earned by the assessee are **directly related to the business of the assessee and assessable as "business income" only and not as "income from other sources". Thus the Ground no.1 raised by the Revenue is hereby rejected.**

12. Ground No. 2 disallowance of interest expenses of Rs.6,97,664/-. The Ld AO made disallowance of interest expenses at 12% of capital work-in-progress (CWIP) of Rs.58,13,869/- on the ground that despite booking of capital work-in-progress in the books of account, no interest expenses were capitalized by the assessee. The Ld. Counsel submitted that the AO failed to note that the assessee had huge amount of interest free fund in the form of equity capital and profits of current year, which is sufficient to cover the CWIP of Rs.58,13,869/-. Further the assessee has recorded profit after tax of Rs.13,001.53 lacs and also has increase in equity capital of Rs.2,95,989 lacs which is far more in excess than aforesaid CWIP. Thus, there is no independent disallowance can be made u/s.36(1)(iii) of the Act, in view of the judgment of

Hon'ble Gujarat High Court in case of CIT Vs. Amod Stamping Pvt. Ltd. reported in 223 Taxman 256 [Guj] wherein it was held as follows:

> "… 12.1. Similar observations are made by the learned ITAT with respect to the assessment years 2005-06 and 2006-07. In the case of Reliance Utilities & Power Ltd. (supra), the Bombay High Court has held that if there are funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest-free funds generated or available with the company, if the interest free funds were sufficient to meet the investments and therefore, interest was deductible. Similar view has been taken by the Division Bench of this Court in the case of CIT v. Gujarat State Fertilizers & Chemicals Ltd. [2013] 358 ITR 323/36 taxmann.com 230/217 Taxman 229 (Guj.). Applying the ratio/law laid down by the Bombay High Court in the case of Reliance Utilities & Power Ltd. (supra) as well as Division Bench of this Court in the case of Gujarat State Fertilizers & Chemicals Ltd. (supra) to the facts of the case on hand and when it has been found that the assessee was having interest-free funds far in excess of investments and therefore, it can be said that the investments are made out of interest-free funds and therefore, the AO was not justified in making additions and/or making disallowance under section 36(1)(iii) of the IT Act. Under the circumstances, no error and/or illegality has been committed by the learned ITAT in deleting the disallowance made by the AO under section 36(1)(iii) of the IT Act. No question of law much less substantial question of law arise with respect to deletion of the disallowance made by the AO under section 36(1)(iii) of the IT Act. "

13. Per contra Ld. D.R. appearing for the Revenue supported the order passed by the A.O.

14. We have carefully considered the facts on the records, the submission of the assessee and that of the Department. We find force in the contentions of the assessee, the Ld. Assessing Officer

failed to understand the concept of "Capitalization of Borrowing Costs". The Ld. A.O. has made addition of Rs. 6,97,664/- out of the interest expenditure treating the same as attributable to the CWIP without appreciating the facts that the expenditure was in respect of existing building which was already put to use in earlier years and hence there was no question of capitalization any interest on account of the same. The interest on borrowed capital is capitalized to correctly account the cost of asset in the books. This interest is added to the cost of the long-term asset, so that the interest is not recognized in the current period as interest expense. Instead, it is now a fixed asset, and is included in the depreciation of the long-term asset. Thus, it initially appears in the balance sheet, and is charged to expense over the useful life of the asset; the expenditure therefore appears on the income statement as depreciation expense, rather than interest expense. **Thus the Ground No. 2 raised by the Revenue is dismissed**.

15. Ground no. 3 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.*
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> *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.

> *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:*
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> *" 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 disallowable 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

15.1. Respectfully following the Jurisdictional High Court judgment in assessee's own case, 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. 3 raised by the Revenue is hereby dismissed**.

16. Ground Nos. 4 & 5 of the Revenue are general in nature which does not require any adjudication.

17. In the result, the appeal filed by the Revenue **in ITA No. 223/Ahd/2022 is dismissed**.

18. ITA No.231/Ahd/2024 is filed by the Assessee for the Asst. Year 2020-21 wherein the assessee has raised identical grounds except change in figures of disallowance u/s. 14A of the Act. Thus our decisions made in ITA No. 166/Ahd/2022 wherein the issue was set aside to the file of A.O. to calculate the disallowance u/s. 14A as applicable to the present Asst. Year. The same direction is applicable for the present appeal in **ITA No. 231/Ahd/2024 relating to Asst. Year 2020-21 and the assessee appeal is partly allowed**.

19. **ITA No. 293/Ahd/2024** filed by the Revenue for the Asst. Year 2020-21. Ground No. 1 is whether Ld. CIT(A) is justified in restricting the disallowance u/s. 14A only to the extent of exempt income earned by the assessee. This issue is already set aside to the file of Ld. A.O. to calculate the disallowance u/s. 14A as applicable to the present Asst. Year. **Thus the Ground No. 1 raised by the Revenue is partly allowed.**

20. Ground No. 2 of the Revenue is relating to Interest Income and Misc. Income to be treated as "Income from Other Sources". This ground is already dealt by us in Para 9 to 11.2 of this order in ITA No. 223/Ahd/2022 wherein it is held Interest income and Misc. Income earned by the assessee are directly related to the business of the assessee and assessable as "business income" only. **Thus Ground N. 2 raised by the Revenue is hereby rejected.**

21. Ground No. 3 is adjustment made on account of disallowance u/s. 14A to be added in the computation of book profit u/s. 115JB of the Act. This issue is directly covered against the Revenue by Hon'ble High Court of Gujarat in assessee's own case in Tax Appeal No. 63 of 2020 which was considered by us in Para 15 to 15.1 of this order in ITA No. 223/Ahd/2022. **Respectfully following the same, this Ground No. 3 raised by the Revenue is hereby dismissed**.

22. Ground No. 4 is general in nature which does not require separate adjudication.

23. **In the result, the appeal filed by the Revenue in ITA No. 293/Ahd/2024 is partly allowed**.

18. In the combined result, **the appeal filed by the Assessee in ITA No. 231/Ahd/2024 and the appeal filed by the Revenue in ITA No. 293/Ahd/2024 are partly allowed.**

Order pronounced in the open court on 08 -08-2024

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER ***True Copy***

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad : Dated 08/08/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad

6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद