

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "A", अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**" A " BENCH, AHMEDABAD**

**सुश्री सुचित्रा कम्बले, न्यायिक सदस्य एवं**  
**श्री मकरंद वसंत महादेवकर, लेखासदस्य के समक्ष।**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**  
**AND**  
**SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER**

Sl. No(s)	आयकर अपील सं/ ITA No(s)/ IT(SS)A No(s)	निर्धारण वर्ष/ Assessment Year(s)	Appeal(s) by :	
			अपीलकर्ता / Appellant बनाम /vs.	प्रत्यर्थी / Respondent
1.	<b>ITA Nos:</b> 2815/Ahd/2011	2007-08	JMC Projects (India) Ltd. A-104, Sapath-IV Opp: Karnavati Club S.G. Highway Road Ahmedabad-380 051 <b>PAN: AAACJ 3814 E</b> (Assessee)	The ACIT (OSD)-1 Range-4 Ahmedabad/ ACIT/DCIT Cent.Cir.1(1), Ahmedabad (Revenue)
2.	3269/Ahd/2011	2007-08	Revenue	Assessee
3.	2603/Ahd/2013	2007-08	Assessee	Revenue
4.	2604/Ahd/2013	2008-09	Assessee	Revenue
5.	2036/Ahd/2011	2008-09	Assessee	Revenue
6.	2353/Ahd/2011	2008-09	Revenue	Assessee
7.	1746/Ahd/2016	2009-10	Assessee	Revenue
8.	1747/Ahd/2016	2010-11	Assessee	Revenue
9.	1748/Ahd/2016	2011-12	Assessee	Revenue
10.	1749/Ahd/2016	2012-13	Assessee	Revenue
11.	796/Ahd/2018	2013-14	Revenue	Assessee
12.	797/Ahd/2018	2014-15	Revenue	Assessee
13.	1528/Ahd/2018	2015-16	Revenue	Assessee

14.	<b>IT(SS)A Nos:</b> 245/Ahd/2016	2008-09	Revenue	Assessee
15.	246/Ahd/2016	2009-10	Revenue	Assessee
16.	247/Ahd/2016	2010-11	Revenue	Assessee
17.	248/Ahd/2016	2011-12	Revenue	Assessee
18.	249/Ahd/2016	2012-13	Revenue	Assessee

Assessee by :	Shri S.N. Soparkar, Sr. Advocate & Shri Parin Shah, AR
Revenue by :	Shri R.N. Dsouza, CIT-DR

सुनवाई की तारीख / **Date of Hearing** : 23/10/2024  
घोषणा की तारीख / **Date of Pronouncement:** 22/11/2024

**आदेश/ORDER**

**PER MAKARANAND V. MAHADEOKAR**

This bunch of 18 appeals by the Assessee and the Revenue are directed against the separate orders of the Commissioner of Income Tax (Appeals)-11, Ahmedabad (hereinafter referred to as "the CIT(A)") for the Assessment Years (AYs) 2007-08 to 2015-16, arising out of the assessment orders passed by the Assessing Officer (AO) under Section 143(3) r.w.s. 153A(1)(b) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. Although these appeals pertain to different assessment years, the primary issues are identical except for the assessment years and quantum. Therefore, all these appeals were heard together. For the sake of convenience, we proceed to dispose of all these appeals of the Assessee and the Revenue by a consolidated order.

**Facts of the case:**

3. The assessee is a limited company engaged in the business of civil construction focused on infrastructure development. The assessee filed its return of income for the respective assessment years. Some of the returns were also revised. A search proceedings u/s .132 of the Act was conducted on the assessee on 17-11-2011 at the registered premises and proceedings u/s.153A of the Act were initiated. The summary of return of income filed and assessment completed are tabulated below:

A.Y.	Date of Filing Original Return of Income	Date of Filing Revised Return of Income	Section under which AO passed the order	Date of Order of AO	Date of Order of CIT(A)
2007-08	31/10/2007	10-01-2008, 04-06-2008, 19-03-2009	143(3)	21/12/2009	05/10/2011
2008-09	29/09/2008	20-03-2009, 09-04-2009	143(3), 144 r.w.s. 153A(1)(b)	27-12-2010, 29- 03-2014	07/07/2011
2009-10	29/09/2009	28/09/2010	143(3) r.w.s. 153A(1)(b)	28/03/2014	16/05/2016
2010-11	09/10/2010	28/09/2011	143(3) r.w.s. 153A(1)(b)	28/03/2014	17/05/2016
2011-12	29/09/2011	26/11/2012	143(3) r.w.s. 153A(1)(b)	28/03/2014	18/05/2016
2012-13	29/09/2012	24/11/2012	143(3) r.w.s. 153B(1)(b)	28/03/2014	19/05/2016
2013-14	29/11/2013	NA	143(3)	23/03/2016	17/01/2018
2014-15	29/11/2014	NA	143(3)	20/05/2016	17/01/2018
2015-16	25/11/2015	NA	143(3)	19/04/2017	29/03/2018

3.1. The assessee filed its return of income in response to Notice u/s.153A of the Act for the A.Y. 2009-10, A.Y. 2010-11 and A.Y. 2011-12 on 07-11-2012 declaring the same income as per original or revised return of income for the

respective assessment years. In case of A.Y.2007-08 and A.Y. 2008-09 assessment u/s.143(3) was completed before the date of search making some additions by the AO. The AO also made various disallowances and additions during the course of proceedings 153A of the Act for the respective assessment years.

4. The assessee filed appeals before the CIT(A), who gave part or full relief in case of some additions/disallowance and in some cases, they were confirmed. These additions or disallowances and decision of the CIT(A) thereon are summarized in a table below:

<b>Disallowance/Addition by AO</b>	<b>Description of Disallowance/Addition and Relief by CIT(A)</b>
<b>Deduction u/s 80IA</b>	The AO disallowed the deduction claimed by the assessee under Section 80IA for infrastructure development, asserting that the eligibility conditions were not met. The CIT(A), however, found that the assessee had complied with the conditions and allowed the deduction in favour of the assessee.
<b>Provision for Defect Liability</b>	The AO considered this as a contingent liability that had not crystallized and disallowed the provision. The CIT(A) accepted the assessee's argument that this was an ascertained liability related to defect rectification and allowed the deduction.
<b>Leave Encashment Provision</b>	The AO disallowed the provision based on the Supreme Court's judgment in Exide Industries, treating it as an unascertained liability. The CIT(A) partially allowed the deduction to the extent of actual payments made during the year, while retaining disallowance for unpaid amounts.

<b>Gross Profit Addition</b>	The AO made gross profit additions based on the estimation of inflated subcontractor expenses, questioning the genuineness of these transactions due to lack of confirmations. The CIT(A) provided partial relief, restricting additions only to amounts where confirmations from subcontractors were unavailable.
<b>Arbitration Award</b>	The AO treated an arbitration award as income. The CIT(A) deleted this addition, holding that it was not revenue in nature and thus not taxable.
<b>Bad Debts Written Off</b>	The AO disallowed the bad debt write-off, arguing that the conditions under Section 36(1)(vii) were not met. The CIT(A) allowed the write-off, finding that the debt had indeed become irrecoverable.
<b>Bogus Purchases</b>	The AO disallowed certain purchases, considering them bogus transactions without supporting documentation. The CIT(A), however, allowed the purchases as genuine after reviewing evidence submitted by the assessee.
<b>Gift, Boni, and Chandla Expenses</b>	The AO disallowed these expenses as non-business in nature. The CIT(A) partially allowed the expenses as promotional in nature but confirmed a portion as non-business.
<b>U/S 40(a)(i) for Non-deduction of TDS</b>	The AO disallowed expenses under Section 40(a)(i) for non-compliance with TDS provisions, which require tax deduction on certain payments. The CIT(A) upheld the disallowance for payments where TDS was not deducted as per the provision.
<b>U/S 14A for Expenses related to Exempt Income</b>	The AO disallowed expenses that were related to income exempt from tax under Section 14A. The CIT(A) deleted the disallowance for certain years, finding insufficient grounds for the AO's action in those cases.

5. Aggrieved by the orders of the CIT(A), both the assessee and revenue are in appeals before us with respective grounds, which are tabulated as below for the sake of convenience consolidating the common grounds:

<b>Common Issue / Disallowance</b>	<b>A.Y.</b>	<b>ITA No.</b>	<b>Amount (Rs.)</b>	<b>Type of Appeal</b>	<b>Ground No.</b>
Deduction u/s 80IA	2007-08	ITA 3269/Ahd/2011	43,35,594	Revenue	2
	2009-10	ITA 246/Ahd/2016	2,09,00,080	Revenue	3
	2010-11	ITA 247/Ahd/2016	72,94,641	Revenue	3
	2011-12	ITA 248/Ahd/2016	14,44,88,979	Revenue	3
	2012-13	ITA 249/Ahd/2016	9,26,51,229	Revenue	3
	2013-14	ITA 796/Ahd/2018	14,46,99,134	Revenue	1
	2014-15	ITA 797/Ahd/2018	8,32,03,602	Revenue	1
	2015-16	ITA 1528/Ahd/2018	8,92,09,090	Revenue	1
Gross Profit Addition related to Vendor/Subcontractor Transactions	2008-09	ITA 245/Ahd/2016	24,43,00,129	Revenue	4 & 5
	2009-10	ITA 246/Ahd/2016	24,00,14,120	Revenue	1 & 2
	2009-10	IT(SS) A 1746/Ahd/2016	Confirmation of addition on account of 7 parties	Assessee	1 & 2
	2010-11	ITA 247/Ahd/2016	10,57,78,781	Revenue	1 & 2
	2010-11	IT(SS) A 1747/Ahd/2016	Confirmation of addition on account of 7 parties	Assessee	1 & 2

	2011-12	ITA 248/Ahd/2016	84,23,956	Revenue	1 & 2
	2011-12	IT(SS) A 1748/Ahd/2016	Confirmation of addition on account of 7 parties	Assessee	1 & 2
	2012-13	ITA 249/Ahd/2016	42,91,02,036	Revenue	1 & 2
	2012-13	IT(SS) A 1749/Ahd/2016	Confirmation of addition on account of 7 parties	Assessee	1 & 2
Disallowance of Purchases / Expenses considering non-genuine	2013-14	ITA 796/Ahd/2018	2,25,05,524	Revenue	2
Provision for Defect Liability (Warranty Expenses)	2007-08	ITA 3269/Ahd/2011	3,56,48,498	Revenue	1
	2008-09	ITA 2353/Ahd/2014	6,12,08,221	Revenue	2
	2009-10	ITA 246/Ahd/2016	7,99,10,015	Revenue	4
Disallowance of Leave Encashment	2007-08	ITA 2815/Ahd/2011	77,12,196	Assessee	2
	2008-09	ITA 2036/Ahd/2011	81,81,115	Assessee	3
	2009-10	ITA 1746/Ahd/2016	33,34,815	Assessee	2.1
	2011-12	ITA 1746/Ahd/2016	18,34,735	Assessee	3.1
Penalty for Leave Encashment	2007-08	ITA 2603/Ahd/2013	25,59,312	Assessee	1
	2008-09	ITA 2604/Ahd/2013	28,51,368	Assessee	1
Disallowance under Section 14A	2008-09	ITA 2036/Ahd/2011	2,07,727	Assessee	1
	2011-12	ITA 248/Ahd/2016	82,86,127	Revenue	4

Disallowance of Gift/Boni/Chandla Expenses	2007-08	ITA 2815/Ahd/2011	3,00,000	Assessee	1
Addition u/s 40(a)(ia) for Import of Materials	2010-11	ITA 1747/Ahd/2016	1,26,97,906	Assessee	2.1

6. The assessee also raised following additional ground of appeal in case of A.Y. 2009-10 and A.Y. 2010-11 (ITA No. 1746 and 1747/Ahd/2016):-

*Appellant craves leave to raise this additional ground of appeal before the Hon'ble ITAT. This is a legal ground and therefore as per the decision of Hon'ble Supreme Court in the case of National Thermal Power (229 ITR 383) & in case of Sinhgad Technical Education Society (397 TR 344) can be raised before the Hon'ble ITAT.*

1. *Both the lower authorities erred in law and on facts in framing assessment under section 143(3) r.w.s. 153A ignoring fact that there was no incriminating material and impugned year is falls in the category of unabated assessment year.*

*Appellant also craves leave to add, amend, alter, change, delete and edit the above ground of appeal before or at the time of the hearing of the appeal.*

7. Before dealing with each individual common ground of respective appeals, we first deal with this additional legal ground of appeals in case of A.Y. 2009-10 and A.Y. 2010-11.

8. During the course of hearing before us, the Ld.Sr.Advocate for the assessee (Authorised Representative - AR), stated that the search u/s 132 of the Act was conducted on 17-11-2012 and therefore the A.Y. 2008-09, A.Y. 2009-10 and A.Y. 2010-11 are unabated years. The AR presented a chart showing date of filing return of income and last date of issuing notice u/s 143(2) of the Act details of which are:

<b>ITA No(s).</b>	<b>Assessment Year</b>	<b>ROI filed on</b>	<b>Last date of issuing notice u/s 143(2)</b>
245/Ahd/2016	2008-09	27-09-2008	30-09-2009
246/Ahd/2016	2009-10	29-09-2009	30-09-2010
247/Ahd/2016	2010-11	09-10-2010	30-09-2011

8.1. The AR further stated that during the course of search proceedings, no incriminating material was found. The AR also stated that in the order of AO there is no reference of any material or statement recorded during the course of search proceedings is made. The AR further stated that the remand report called for by the CIT(A) is also not having mention of any statement or material found during the course of search. Therefore, the AR argued that, where no incriminating material is found during the search, addition made during the assessment under section 153A of the Act of regular items which were disclosed by the assessee in regular books is not valid. The AR placed reliance on the judgement of Hon'ble High Court of Jurisdictional High Court in case of **PCIT Vs. Friends Salt Works and Allied Indus (Tax Appeal No. 66 of 2024) reported at [224] 160 taxmann.com 676.**

9. The Departmental Representative (DR), on the other hand, stated that the vendors who are not verifiable itself is incriminating material. These vendors have not responded to the notices of AO issued u/s 133 of the Act. The DR further stated that such denials suggest consciousness of guilt or an attempt to obscure the truth. The DR also stated that evasive denials or ambiguous statements can be perceived as incriminating as they may indicate an attempt to conceal wrongdoing or mislead investigators. The purchases from vendors who are not verifiable are bogus purchases and therefore the AO has made an addition on the basis of comparable gross profits.

9.1. In the rejoinder, the AR stated that not a single party, from the number of suppliers, came forward and stated that they have issued bogus bills which indicate that the AO has assumed that these parties have issued bogus bills. The AR reiterated that there is no mention of any such list of vendors who issued bogus bills in the material founds during the course of search. The DR agreed to the fact that such list as mentioned by the AO in his order was not founds during the course of search and there is no mention of any incriminating material or statement in the orders of AO.

9.2. The DR pointed out that the assessee has filed revised return hence the date of filing revised return should be a decisive date to determine whether the particular year is abated or unabated. The DR also argued that intimation u/s 143(1) is not an assessment order therefor there was no assessment and hence the respective years are abated. The AR, on the other hand, stated that the time limit specified u/s 143(2) of the Act to issue notice will determine the status of the year and not the date of filing return. Since on the date of search time limit to issue notice u/s.143(2) of the Act was expired, as argued by the AR, the respective years are to be construed as unabated years. The AR relied on the decision of Co-ordinate Bench in case of **Vijaykumar D. Agarwal Vs. Dy.CIT, Central Circle -1(3), Ahmedabad (ITA No. 153,154,155 & 156/Ahd/2012 dated 29-04-2016)**.

10. We have heard the rival contentions and perused the material on records. The additional ground raised by the assessee for A.Y. 2009-10 and A.Y. 2010-11 challenges the validity of assessments framed under section 143(3) read with section 153A of the Act, in the absence of incriminating material for unabated years. The essence of the dispute is whether, in cases

where no incriminating material was discovered during a search, completed or "unabated" assessments can be reopened or whether such assessments should remain undisturbed. This position has been addressed and upheld in a number of judicial precedents.

10.1. In the case of *Friends Salt Works (supra)*, the Hon'ble Gujarat High Court held that for an assessment to be disturbed under section 153A of the Act in an unabated year, there must be incriminating material found during the course of a search. The court observed that the purpose of section 153A of the Act is to facilitate assessments based on new findings or "incriminating material" uncovered during a search, which affects the total income of the assessee. Absent such incriminating evidence, assessments already completed under regular proceedings should remain undisturbed. The Hon'ble High Court emphasized that additions under section 153A of the Act cannot be arbitrary and must directly relate to evidence found during the search. This ruling is highly relevant here, as in the present case, the AR asserted that no incriminating material was found during the search, nor was any such material referenced in the Assessing Officer's order, or the remand report called by CIT(A). This lack of incriminating evidence aligns with the court's holding in the case of *Friends Salt Works(supra)*, validating the assessee's claim that the section 153A of the Act assessments in unabated years are not justified.

10.2. The Hon'ble Supreme Court in the case of **Abhisar Buildwell (454 ITR 212)** affirmed the principle that, in cases of completed or "unabated" assessments, additions under section 153A must be founded on incriminating evidence discovered during the search. The Hon'ble Apex Court ruled that

section 153A of the Act proceedings allow reassessment of completed assessments only when new material indicating undisclosed income is unearthed in a search. In the absence of such material, the completed assessments remain valid and cannot be disturbed solely based on routine information previously disclosed by the assessee. This precedent is directly applicable, as the DR in this case failed to demonstrate any incriminating material found during the search that would justify reassessment. The DR's argument that non-responsive vendors constitute incriminating material is speculative, as no specific evidence of bogus transactions was cited. The findings in the case of **Abhisar Buildwell (supra)**, thus, reinforce the AR's position that completed assessments should remain intact when no new incriminating material is discovered.

10.3. In the case of *Vijaykumar D. Agarwal (supra)*, the Co-ordinate Bench dealt with the scope of section 153A if the Act assessments where no incriminating material was discovered in a search. The Bench held that completed assessments for years where section 143(2) of the Act notices were not issued (rendering them "unabated") cannot be disturbed under section 153A of the Act unless incriminating evidence is found. In this case, gift deeds and other routine documents were discovered, which were already disclosed in the returns filed by the assessee. The ITAT ruled that such documents do not qualify as incriminating material, as they do not indicate any undisclosed income or irregularities that warrant reassessment. The case of *Vijaykumar D. Agarwal(supra)* is especially pertinent here, as it involved a similar scenario where no new incriminating evidence was found during the search. In the present case, the AR demonstrated that the purchases and vendors in question were part of the regular accounting, and no list of unverified or

bogus vendors was discovered during the search. Following the *Vijaykumar D. Agarwal(supra)* decision, the lack of such incriminating evidence strengthens the case for allowing additional ground.

10.4. In the case of *Saumya Construction (387 ITR 529)*, the Hon'ble Gujarat High Court examined the jurisdiction under section 153A of the Act and reiterated that for reassessment in unabated years, additions must be based on specific incriminating material found during the search. The court held that in the absence of such evidence, additions to income disclosed in the regular books cannot be made. The court emphasized that the jurisdiction under section 153A of the Act is contingent on the existence of incriminating material discovered during a search. This precedent further validates the AR's stance that, without incriminating material, the assessments for A.Y. 2009-10 and A.Y. 2010-11 (including assessment made u/s 153A of the Act relating to A.Y. 2008-09) should remain intact. The DR's reliance on alleged non-verifiable vendors is insufficient without supporting evidence from the search documents, making *Saumya Construction (supra)* a binding authority favouring the assessee.

10.5. Based on the detailed discussion of these judicial precedents, it is clear that the additional ground raised by the assessee is well-founded. The consistent judicial view from the Hon'ble Supreme Court and various High Courts, particularly the Hon'ble Gujarat High Court, confirms that in the absence of incriminating material, completed or unabated assessments under section 153A of the Act cannot be reopened solely based on routine or previously disclosed information.

10.6. Accordingly, we find that the section 153A of the Act assessment for A.Y. 2009-10 and A.Y. 2010-11, where no incriminating material was found, is invalid. The assessments for these unabated years are quashed, and the additional ground raised by the assessee is allowed.

11. The Revenue has also raised legal grounds relating to section 153A of the Act in IT(SS)A No.245/Ahd/2016, which are consolidated as below -

11.1. Whether the CIT(A) erred in law and on facts in restricting the assessment under Section 153A of the Act to incriminating material found during the search, despite the provision requiring assessment of the total income without restriction and the presence of incriminating material from search and post-search investigations, which revealed that the vendors and sub-contractors were non-genuine, forming the basis of the assessment.

11.2. Upon persusal of the CIT(A)'s order, we note that the CIT(A) allowed the appeal on the basis that no assessment proceedings were pending on the date of the search, thereby resulting in non-abatement of the assessment for the relevant assessment year, as per the second proviso to Section 153A(1) of the Act. The CIT(A) further observed that the AO had not based the addition on any incriminating material seized during the search. This is corroborated by the AO's Remand Report, which remained silent on whether any seized material substantiated the addition. The CIT(A), relying on the principles established by the jurisdictional ITAT and High Court, held that the AO's action was not justified, allowing the appeal accordingly. Consequently, since the addition was not grounded in seized incriminating material, the CIT(A)

deemed it unnecessary to address the merits of the addition, maintaining that the assessed income would remain unaltered post the CIT(A)'s order.

11.3. Based on the detailed analysis in preceding paras, we uphold the CIT(A)'s decision. Section 153A of the Act assessments for non-abated years are limited to additions based on seized incriminating material. As no such material was cited to justify the additions, the CIT(A) acted within legal boundaries by allowing the assessee's appeal. Accordingly, the revenue's consolidated legal ground lacks merit and is dismissed.

12. Now we deal with each common ground of appeals of both revenue and assessee.

**Grounds relating to deduction u/s 80IA of the Act**

12.1. Following is the tabulated deduction u/s 80IA as a ground of appeal under respective appeals: -

<b>Assessment Year</b>	<b>Amount Disallowed (Rs.) by AO and allowed by CIT(A)</b>	<b>ITA (Assessee) No.</b>	<b>ITA (Revenue) No.</b>
<b>2007-08</b>	43,35,594	ITA 2815/ Ahd/2011	ITA 3269/ Ahd/2011
<b>2008-09</b>	4,31,66,071	ITA 2036/ Ahd/2011	ITA 2353/ Ahd/2014
<b>2009-10</b>	2,09,00,080	ITA 1746/ Ahd/2016	IT(SS)A 246/ Ahd/2016
<b>2010-11</b>	27,72,94,641	ITA 1747/ Ahd/2016	IT(SS)A 247/ Ahd/2016
<b>2011-12</b>	14,44,88,979	ITA 1748/ Ahd/2016	ITA 1748/ Ahd/2016

<b>2012-13</b>	9,26,51,299	ITA 1749/ Ahd/2016	ITA 1749/ Ahd/2016
<b>2013-14</b>	14,46,99,134	-	ITA 796/ Ahd/2018
<b>2014-15</b>	8,32,03,602	-	ITA 797/ Ahd/2018
<b>2015-16</b>	8,92,09,090	-	ITA 1528/ Ahd/2018

12.2. Under the grounds relating to deduction u/s 80IA of the Act, the Revenue has consistently argued that the assessee does not qualify for the deduction under Section 80IA of the Act as their activities fall under works contracts rather than infrastructure development, which is an essential eligibility criterion. The Revenue asserts that the assessee's role is primarily contractual and does not meet the requirements of a developer under Section 80IA of the Act. They refer to the Explanation to Section 80IA of the Act, which explicitly excludes entities engaged solely in works contracts from claiming the deduction. For each relevant assessment year, the Revenue has challenged the CIT(A)'s decision to allow the Section 80IA of the Act deduction, claiming that CIT(A) failed to recognize the contractual nature of the assessee's work and incorrectly interpreted the law in allowing the deduction.

12.3. The assessee contends that it meets the necessary developer criteria under Section 80IA of the Act, as its projects involve infrastructure development and are not limited to mere contractual work. In cases where CIT(A) partially upheld the deduction, the assessee argues that CIT(A) erred in not allowing the deduction on the entire income of eligible undertakings. The assessee maintains that the deduction should be calculated based on the

total income assessed after accounting for any additions or disallowances. The assessee emphasizes compliance with Section 80IA of the Act provisions, such as maintaining separate books of accounts and fulfilling other operational and statutory criteria, positioning itself as a qualifying infrastructure developer.

12.4. The core dispute lies in the interpretation of whether the assessee's role constitutes infrastructure development or merely a works contract. The Revenue relies on the contractual nature of certain agreements to classify the assessee as ineligible, while the assessee counters that its activities qualify under the broader definition of development for infrastructure projects.

13. During the course of hearing before us, the Departmental Representative (DR) reiterated that the assessee is a contractor and not a developer and section 80-IA(4) of the Act was intended to benefit only developers who assume full responsibility, risk, and reward of infrastructure development. The DR stated that the work executed by the assessee is not a Build-Operate-Transfer (BOT) project and it was purely execution of contract against the running bills raised by the assessee. The DR further stated that the assessee company is not planning the project but is carrying out part of activities and raising the detailed RA bills to the developer and getting the payment for the same on supervision and certification by the developer. The DR relied on the order of the AO and pointed out following points from the order of AO -

- The AO established the basic structure of the agreement between the assessee and Madhya Pradesh State Highway (MPSH). The AO stated that the assessee merely executed work under contract and was not the owner of the infrastructure project.

- The AO emphasized that the ownership of the infrastructure project remained with MPSH, and the assessee was neither involved in the project's conception nor responsible for its development and operation. The assessee's involvement was restricted to executing pre-defined tasks in accordance with the specifications laid out by MPSH.
- The AO pointed out that the assessee filled tenders and obtained work contracts as a contractor, not as a developer which highlighted that the assessee's role was limited to completing pre-defined tasks specified in a contract, rather than undertaking comprehensive development responsibilities. This distinction, according to the AO, disqualified the assessee from claiming deductions intended for infrastructure developers.
- The AO highlighted that the assessee executed specific, well-defined civil construction activities according to the project plans and specifications created by MPSH. Moreover, MPSH supervised the work, suggesting that the assessee had no role in planning or designing the project. The AO interpreted this as further evidence that the assessee was merely a contractor rather than a developer responsible for the entire infrastructure project.
- The AO referenced a contractual clause in the agreement (Volume-II, Section VI - Technical Specifications), which required the assessee to seek clarification on specifications from MPSH engineers before proceeding with any work. According to the AO, this clause confirmed that the assessee's role is purely executory, with limited autonomy, thus reinforcing the classification of the assessee as a contractor rather than a developer.
- The AO contended that the assessee failed to prove involvement in the project's design, planning, or financing. The AO emphasized that these responsibilities are essential characteristics of a developer. Instead, the assessee merely executed tasks based on instructions from MPSH.
- The AO highlighted that the income derived by the assessee was in the nature of contract receipts, as evidenced by the Profit and Loss Account and further affirmed by the assessee's registration with the sales tax authorities as a "work contractor" in both Gujarat and Madhya

Pradesh. Such contract receipts, in the view of the AO, did not qualify for deduction under section 80-IA(4) of the Act, which is intended for entities deriving income directly from the development, operation, and maintenance of infrastructure projects.

- The AO noted that the assessee did not make any significant financial investment in the project, as shown by the RA bills and TDS certificates. The lack of financial risk or investment suggested that the assessee did not assume the typical risks associated with a developer's role. The AO observed that payments received by the assessee were subject to tax deduction under section 194C of the Act, which applies to payments to contractors which further indicated that the assessee was operating as a contractor, not as a developer.
- The AO referred to a contractual clause specifying that the assessee was responsible only for rectifying defective work at its own cost. This limited liability indicated that the assessee did not bear the full risk of project development, as would be expected of a developer.
- The AO cited the Finance Act of 2007, which retrospectively amended section 80-IA(13) of the Act to clarify that persons executing works contracts do not qualify for section 80-IA benefits. The amendment made it explicit that only developers, not contractors, are eligible.
- The AO referenced the Finance Minister's clarification in the Finance Bill, 2007, which stated that the tax benefit was intended to encourage private sector investment in infrastructure development, not to provide deductions to contractors merely executing construction.
- The AO cited *M/s. B.T. Patil & Sons Belgaum Construction Private Limited vs. ACIT*, (ITA No.1408 & 1409/PN/2003) where the Tribunal clarified that the benefit under section 80-IA(4) applies to those developing the entire infrastructure project, not merely executing a part of it.

13.1. The DR further stated that the tender documents are important source of identifying the scope of work which are not placed on record by the assessee. The DR placed reliance on the decision of co-ordinate bench in case

of ACIT(OSD)-I, Circle -4 Ahmedabad Vs. M.S.Khurana Engineering Ltd. (ITA No. 2308/Ahd/2011 dated 19-04-2024). The DR also placed reliance on the decision of the co-ordinate bench in case of M/s NEC NCC Maytas – JV Vs. DCIT, Circle 6(1), Hyderabad (ITA No. 430 to 432/Hyd/2018 dated 12-05-2021)

13.2. The Authorised Representative (AR) of the assessee, submitted the list of projects executed by the assessee during the assessment years under consideration. The same is reproduced hereunder for the sake of clarity: –

<b>Sr. No.</b>	<b>Assessment Year</b>	<b>Projects</b>
1	2007-08	- Madhya Pradesh Road Sector
		- Storm Water Drainage System
2	2008-09	- Madhya Pradesh Road Sector
		- Storm Water Drainage System
3	2009-10	- M.P. State Highway- Badnawar to Thandla
		- Pimpri Chhindwad Municipal Corporation Flyover
4	2010-11	- Supplying, Laying, Jointing, Testing and Commissioning of Distribution Network in Bhopal
		- RCC Storm Water Drainage System
		- Flyover at Bhosari
		- Madleshwar-Karwad Maharashtra Border Road
5	2011-12	- Pipeline Project of Bhopal Municipal Corporation
		- Pimpri Chhindwad Municipal Corporation Flyover
		- IMC-3 Indore Municipal Corporation
		- Water Pipeline Project
		- Flyover at Panvel Bus Depot
6	2012-13	- IMC-2 Indore Municipal Corporation
		- Pune Nasik Highway

		- Flyover at Panvel Bus Depot
		- Pimpri Chhindwad Flyover
		- Nagar Sevasadan, Nadiad Water Supply
7	2013-14	- Flyover at Panvel Bus Depot
		- Spine Road at Pimpri Chhindwad New Town Authority
		- Mumbai Metropolitan Region Development Authority for flyover at Bhiwandi
8	2014-15	- Flyover at Panvel Bus Depot
		- Spine Road at Pimpri Chhindwad New Town Authority
		- Mumbai Metropolitan Region Development Authority for flyover at Bhiwandi
9	2015-16	- Flyover at Jalgaon
		- Spine Road at Pimpri Chhindwad New Town Authority
		- Mumbai Metropolitan Region Development Authority for flyover at Bhiwandi

13.3. The AR pointed out that some of the projects executed by the assessee were executed under JnNURM Programme and as a condition of tender the assessee was required to pay Security Deposit. To support the AR pointed out the copy of Letter Of Intent (LOI) from Ahmedabad Municipal Corporation requiring the assessee to give security deposit of Rs.1,67,29,120/-, (being 5% of contract value) in the form of Unequivocal Bank Guarantee issued by approved banker. The AR further pointed out that the LOI also specified 2% retention money. The AR placed on record various letters of intent /allotment of projects relating to the above tabulated projects along with the agreements. The AR pointed out that the Bank Guarantee issued by the assessee itself is investment in the project assuming the risk for the reward, therefore the AO's contention that the assessee has not assumed any risk is not correct. The AR relied on the order of CIT(A) and pointed out

that the CIT(A) in his order has dealt with various points observed by the AO. We note those points observed by the CIT(A) and for the sake of clarity we summarise them as follows -

- The CIT(A) began by explaining the intent behind Section 80IA of the Act, which was introduced to encourage investment in infrastructure by offering deductions on profits from qualifying projects. This section provides the statutory framework for claiming deductions, focusing on projects that develop, operate, or maintain infrastructure facilities like roads, bridges, and water systems.
- A substantial part of the order addresses the difference between "developer" and "contractor" within the context of Section 80IA(4). The CIT(A) emphasised that an entity involved in developing an infrastructure facility qualifies as a "developer" and is therefore eligible for the deduction. The CIT(A) asserted that the term "developer" should be broadly interpreted and includes entities that may not operate or maintain the project but have taken on significant responsibilities in developing it.
- The CIT(A) outlined the legislative history of Section 80IA, discussing how successive Finance Acts (notably in 2000 and 2001) expanded the deduction to benefit enterprises only engaged in developing, not necessarily operating or maintaining, infrastructure projects. The 2000 amendment, in particular, introduced flexibility by making the terms "developing," "operating," and "maintaining" mutually exclusive, allowing entities to qualify for the deduction even if they only perform one of these activities.
- The CIT(A) acknowledged the assessee's contention that the projects undertaken by the assessee, such as road rehabilitation and stormwater drainage systems, etc. required the assessee to deploy significant resources, undertake planning, mobilize equipment, and ensure quality control. The CIT(A) concluded that this showed the assessee's active involvement in infrastructure development, going beyond a mere contractual execution. The CIT(A) also acknowledged that the assessee bore substantial risks, including performance guarantees, liquidated damages for delays, and retention money until the project was completed satisfactorily. The CIT(A) noted that these factors

indicate that the assessee is assuming responsibilities that align more with a developer than a contractor.

- The CIT(A) referred CBDT Circular No. 4/2010, which supports the view that widening existing roads (as the assessee did) constitutes a new infrastructure facility under Section 80IA.
- The CIT(A) addressed amendments introduced in 2009, specifically Explanation 13, which excluded entities executing works contracts from Section 80IA deductions. The CIT(A) noted assessee's contention that the retrospective application of this amendment unfairly revokes a right they previously relied on, breaching the principle of promissory estoppel. The CIT(A) acknowledged this argument, noting that legislative amendments should not unfairly penalize taxpayers who have already acted based on the prior interpretation of the law.

13.4. The AR referred the decision of Rajkot Bench in case of M/s. Tarmat Bel (JV) vs. ITO (ITA 1111/RJT/2010 dated 23-09-2010) which the CIT(A) acknowledged along with other judicial precedents. These decisions collectively emphasized that the taxpayer, who is actively engaged in development work through mobilizing resources and taking on construction responsibilities, qualified as a developer.

13.5. The AR also referred to the written submission made by the assessee wherein the assessee explained its role, responsibility and assumed risk in executing the projects with reference to the para 13.1 of the decision of Rajkot Bench in case of **Katira Construction Ltd. Vs. ACIT (ITA No. 88 & 89/RJT/2015 and ITA No. 555/RJT/2012 dated 30-07-2020)**.

The AR placed reliance on the decision of **ACIT Central Circle - 1(1) Vs. Montecarlo Construction Ltd. (ITA No. 1892/Ahd/2013 dated 28-06-2023)**, where the Co-ordinate Bench decided in favour of the assessee and the

Hon'ble Jurisdictional High Court dismissed the appeal of the Revenue (Tax Appeal No. 786 of 2023).

13.6. The DR, in rejoinder, stated that the decision in the case of *M S Khurana Engineering Industries Ltd. (supra)* dealt with the decision in the case of *Montecarlo Construction Ltd.(supra)*.

14. After thoroughly examining the submissions of both the Departmental Representative (DR) and the Authorized Representative (AR), as well as noting the judicial precedents presented, including *Katira Construction Ltd. v. ACIT*, *M.S. Khurana Engineering Ltd. v. ACIT*, and *Montecarlo Ltd. v. Principal CIT*, we are tasked with determining whether the assessee qualifies for the deduction under Section 80IA(4) of the Act. The primary point of contention is whether the assessee acted as a “developer” within the meaning of the section, thus eligible for the deduction, or merely as a “contractor,” which would disqualify it from this benefit. Both the Departmental Representative (DR) and the Authorized Representative (AR) presented judicial precedents, including *Katira Construction Ltd. v. ACIT (supra)*, *M.S. Khurana Engineering Ltd. v. ACIT*, and the Hon'ble Gujarat High Court's decision in the case of *Montecarlo Ltd. v. Principal CIT (supra)*. A thorough analysis of these cases is necessary to assess the responsibilities, risks, and controls borne by the assessee, especially in light of the jurisdictional precedent set by *Montecarlo Ltd.*, which aligns closely with the principles established in *Katira Construction Ltd.*

14.1. In *Katira Construction Ltd.*, the Co-ordinate Bench delineated specific criteria to determine the eligibility for deduction under Section 80IA(4) of the

Act, which are particularly relevant in distinguishing a developer from a contractor. We evaluate the assessee's operations in the Madhya Pradesh State Highway (MPSH) **as a lead project** against these criteria and analyze them with respect to *Montecarlo Ltd.*, where similar principles were applied.

**14.2. Full Responsibility for Execution and Completion (Clause 13.1(a) in *Katira*):** According to *Katira*, a developer must assume comprehensive responsibility for the project, encompassing all stages from inception through completion. In *Montecarlo Ltd.*, the Co-ordinate Bench and the Hon'ble Gujarat High Court emphasized that the developer's role includes end-to-end responsibility, requiring the entity to manage and execute work beyond construction. Here, the assessee's responsibilities in the MPSH project extended to all aspects of project design, execution, and handover, mirroring the obligations seen in *Montecarlo Ltd.*, where the court upheld that an entity with such overarching responsibilities qualifies as a developer.

**14.3. Operational Autonomy and Approval Requirements (Clause 13.1(a) in *Katira*):** *Katira* states that developers may require limited government approvals without negating their status as developers. In *Montecarlo Ltd.*, the Hon'ble Gujarat High Court reinforced this, noting that operational autonomy within government contracts does not disqualify an entity from developer status. The assessee here maintained autonomy, bearing control over all phases of execution, despite needing certain government approvals. This autonomy, coupled with significant managerial duties, aligns with both *Katira* and *Montecarlo Ltd.*, supporting the developer classification.

**14.4. Development of Pre-Existing Infrastructure (Clause 13.1(b) in *Katira*):** The *Katira* decision highlights that developers often redevelop or upgrade existing facilities. Similarly, in *Montecarlo Ltd.*, the Co-ordinate Bench allowed deduction under Section 80IA(4) of the Act for rehabilitation work that transformed infrastructure. The MPSH project's scope of work entailed rehabilitating an existing highway, thereby transforming it into a new infrastructure facility—consistent with the development activities recognized in *Montecarlo Ltd.*.

**14.5. Employment and Management of Skilled Workforce (Clause 13.1(c) in *Katira*):** Both *Katira* and *Montecarlo Ltd.* emphasize that developers must recruit and manage skilled personnel. In this case, the assessee engaged project managers, engineers, and other skilled professionals, taking responsibility for all manpower requirements. This mirrors the approach upheld in *Montecarlo Ltd.*, where the Co-ordinate Bench observed that managing personnel indicated significant managerial control—characteristics of a developer.

**14.6. Technical Know-How and Expertise (Clause 13.1(d) in *Katira*):** The *Katira* and *Montecarlo Ltd.* decisions both require that developers possess technical expertise, deploying skills essential to infrastructure development. The assessee's experience in similar projects and its use of technical knowledge in the MPSH project aligns well with the standards set in these decisions, showing that it actively contributed specialized expertise to the project.

**14.7. Financial Responsibility and Risk Bearing (Clause 13.1(e) in Katira):**

As outlined in both *Katira* and *Montecarlo Ltd.*, developers assume entrepreneurial and financial risks. The assessee here arranged financing independently, managed delays, and assumed liability for project risks, including property damage. The Gujarat High Court in *Montecarlo Ltd.* explicitly noted that a developer's financial risk-taking is central to eligibility under Section 80IA(4). By assuming such risks, the assessee demonstrates alignment with the financial responsibilities defined for developers.

**14.8. Supply and Testing of Materials (Clause 13.1(f) in Katira):**

In *Katira* and similarly in *Montecarlo Ltd.*, developers are expected to source quality materials independently, without reliance on government supply. The assessee complied with quality standards under **Clause 36.1 of the Scope of Work**, sourcing materials and overseeing quality control, much like the operations in *Montecarlo Ltd.*, where the Co-ordinate bench observed material procurement as an indicator of developer status.

**14.9. Provision and Use of Machinery (Clause 13.1(g) in Katira):**

*Katira* and *Montecarlo Ltd.* require developers to supply necessary equipment. The assessee in this case used its machinery, including specialized equipment, fulfilling the developer's responsibility of machinery provision. This approach resonates with *Montecarlo Ltd.*, where similar machinery use supported the court's conclusion in favour of developer status.

**14.10. Insurance and Comprehensive Risk Coverage (Clause 13.1(h) in Katira):**

The *Katira* guidelines mandate insurance and risk management, as supported by *Montecarlo Ltd.*, where the court noted that developers must

bear all project risks. The assessee's insurance coverage throughout the project meets this requirement, reinforcing its role as a developer.

14.11. **Liability for Quality and Defects (Clause 13.1(i) in *Katira*):** *Katira* and *Montecarlo Ltd.* indicate that developers bear responsibility for defects within the liability period. Here, the assessee was accountable for quality assurance, mirroring the obligations in *Montecarlo Ltd.* and further supporting the claim to developer status.

14.12. **Timely Completion and Liquidated Damages (Clause 13.1(j) in *Katira*):** As both *Katira* and *Montecarlo Ltd.* decisions emphasize, developers bear risks for delays. The assessee in the MPSH project faced penalties for untimely completion, demonstrating adherence to the responsibilities outlined in these decisions.

14.13. **Public Safety and Environmental Standards (Clause 13.1(k) and 13.1(l) in *Katira*):** Both *Katira* and *Montecarlo Ltd.* mandate safety and environmental compliance, which the assessee fulfilled through extensive safety protocols and environmental protections, aligning with the standards expected of a developer.

15. The DR relied on two key decisions: *M.S. Khurana Engineering Ltd. v. ACIT and NEC NCC Maytas JV*. However, these decisions are distinguishable from the present case, and neither restricts the applicability of Section 80IA(4) of the Act in light of the jurisdictional precedent established in *Montecarlo Ltd. v. Principal CIT*, which adopts a broader interpretation in favour of infrastructure development. In *M.S. Khurana Engineering*, the

Co-ordinate Bench restored the matter to the CIT(A) due to incomplete consideration of facts by the CIT(A), who had not fully analyzed the roles and risks undertaken by the assessee. The CIT(A) had classified the assessee as a contractor without examining its managerial responsibilities, financial risks, or control over project execution, leading the Co-ordinate Bench to require a re-evaluation. Unlike *Khurana Engineering*, the CIT(A) in the present case conducted a comprehensive review of the assessee's obligations, financial risks, and control, confirming that the assessee met the developer criteria under Section 80IA(4) of the Act. The Hyderabad bench in *NEC NCC Maytas JV* held that the JV performed a works contract, with the government directing the scope, funding, and progress. The Co-ordinate Bench found that the JV operated under strict government control, received lump-sum payments and mobilization advances, and bore minimal financial and operational risks, disqualifying it from Section 80IA(4) of the Act as a developer. In contrast, the present assessee bears substantial entrepreneurial and financial risks, including performance guarantees, liquidated damages, and retention money, assuming the obligations and risks typically associated with a developer. The decisions in *M.S. Khurana Engineering Ltd.* and *NEC NCC Maytas JV* are not applicable in this case due to their factual and procedural distinctions, as well as the jurisdictional clarification in *Montecarlo Ltd.* that supports a broader interpretation of developer status under Section 80IA(4) of the Act. The present assessee's comprehensive control, significant financial risk, and managerial responsibilities align with the characteristics of a developer as outlined in *Montecarlo Ltd.*, rendering the DR's reliance on these cases misplaced.

16. We have perused the order of CIT(A) in detail. The CIT(A)'s order provides an in-depth examination of the eligibility criteria for deductions under Section 80IA(4) of the Act, specifically analyzing whether the assessee qualifies as a "developer" rather than merely a "contractor." The CIT(A) applied several interpretative principles, statutory provisions, and relevant judicial precedents to arrive at its decision. The CIT(A) thoroughly examined the definitions of "developer" and "contractor" and clarified that merely executing a construction contract does not automatically disqualify an entity from claiming deductions under Section 80IA(4) of the Act. The order emphasized that the legislative intent behind Section 80IA of the Act was to incentivize infrastructure development, and, thus, the term "developer" should be interpreted broadly. This includes entities undertaking significant public infrastructure projects, such as the assessee's work on roads and drainage systems. The CIT(A) held that the assessee's active involvement in infrastructure projects aligned with the statutory objective of creating new facilities benefiting the public, confirming its status as a developer. The CIT(A) highlighted that the assessee bore significant financial and operational risks, including providing performance guarantees, facing potential liquidated damages for delays, and being liable for retention money. These elements evidenced the assessee's entrepreneurial risk, a hallmark of developer activities under Section 80IA. The CIT(A) referenced the legislative history and amendments to Section 80IA of the Act, particularly the Finance Act of 2000, which progressively liberalized the section to encourage private sector participation in infrastructure. Notably, this amendment clarified that "developing," "operating and maintaining," or any combination of these functions qualifies for deductions. The CIT(A) found that this liberalization intended to include entities like the assessee,

whose activities contribute directly to public infrastructure creation. Emphasizing the entrepreneurial and operational risks borne by the assessee, the CIT(A) concluded that the assessee's responsibilities aligned more closely with those of a developer rather than a contractor. The assessee's involvement in project outcomes, liability for delays, and management of quality control processes indicated that it functioned as an independent developer under Section 80IA of the Act. Additionally, the CIT(A) cited *M/s. Tarmat Bel (JV) vs. ITO (Rajkot Bench)* and *Om Metals Infra Projects Ltd. vs. CIT (Jaipur Bench)*, which held that contractors managing substantial project responsibilities qualify as developers eligible for Section 80IA of the Act deductions. These judicial precedents reinforced the CIT(A)'s position, supporting the assessee's developer status.

16.1. After perusing the CIT(A)'s comprehensive analysis, we find that the CIT(A) rightly interpreted the assessee's role as a developer under Section 80IA(4) of the Act. The CIT(A)'s reliance on Circular No. 4/2010, along with precedents from rulings of various Benches of the Tribunal and Hon'ble Supreme Court guidance, provides a robust legal basis to affirm the developer status of the assessee.

16.2 The financial statements of the assessee, spanning Assessment Years (AYs) 2007-08 to 2015-16, provide a comprehensive view of the business's financial and operational profile, reflecting the nature, scope, and risk involved in its activities. The financial parameters across these years serve as indicators of the business's state of affairs, highlighting the responsibilities, risk assumptions, and commitments undertaken by the assessee in infrastructure projects. Analyzing these parameters aids in understanding

the overall risk profile of the assessee and substantively differentiating a developer from a contractor. The following tabulated financial parameters across AYs 2007-08 to 2011-12 (to the extent comparable data is available in the paper book) underscore the risk elements characteristic of the assessee:-

<b>A.Y. - &gt; Parameter</b>	<b>2007-08</b>	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>
<b>Total Income (Rs. in Lacs)</b>	50,627.44	94,493.99	1,29,840.91	1,31,493.67	1,39,384.92
<b>Net Profit After Tax (PAT)</b>	1,605.47	3,071.59	3,676.12	3,970.17	4,179.23
<b>PAT to Total Income (%)</b>	3.17%	3.25%	2.83%	3.02%	3.00%
<b>Total Debt (Secured + Unsecured)</b>	6,286.70	11,279.60	19,643.82	16,990.93	18,666.31
<b>Debt-to- Equity Ratio</b>	0.51	0.65	0.96	0.68	0.5
<b>Current Ratio</b>	1.58	1.3	1.45	1.44	1.35
<b>Net Block of Fixed Assets</b>	9,765.32	18,795.92	22,021.67	20,966.14	22,604.22
<b>Capital Work in Progress (CWIP)</b>	0	148.87	203.07	778.33	511.67
<b>Inventory Turnover (Times)</b>	17.23	8.88	16.19	19.58	10.56
<b>Receivables Turnover (Times)</b>	2.99	3.3	3.03	2.65	2.11
<b>Cash and Bank Balance</b>	4,156.87	1,626.06	1,174.60	1,551.94	2,717.37

16.3. The financial parameters above reflect the overall business risk associated with the business of the assessee. Given the characteristics of a developer, the business risk profile illustrates the following critical points:-

**Financial and Leverage Risk:**

- The company's debt-to-equity ratio, peaking at 0.96 in 2009, demonstrates substantial leverage, indicative of a developer taking on significant financial obligations to fund long-term projects. This high leverage level aligns with the financial risk a developer assumes, as developers typically engage in substantial upfront investment and long project cycles. The subsequent decrease in leverage suggests strategic risk management, reinforcing the financial commitment typical of developers.

**Operational Risk:**

- Low profit margins, fluctuating between 2.83% and 3.25%, highlight the cost-intensive nature of infrastructure projects and the narrow margins within which developers operate. The company's low profitability indicates a commitment to long-term project sustainability rather than short-term gains, consistent with a developer's operational profile.
- The inconsistency in inventory turnover and high receivables suggest challenges typical of developers, who often face delayed payments linked to project milestones and demand cycles. This delay in cash inflows impacts liquidity but is an inherent risk in large-scale infrastructure development projects.

**Liquidity Risk:**

- Moderate liquidity risk is evident from the current ratio trends and fluctuating cash balances. As a developer, the company's liquidity is impacted by the cyclical nature of project payments, reflecting the working capital constraints associated with extended project timelines and staggered cash flows.
- The rising receivables turnover time, declining cash balances, and high current liabilities also indicate reliance on project completions and customer payments, a common characteristic of developers with substantial liquidity requirements.

**Market and Profitability Risk:**

- The company's primary income is derived from contract receipts i.e the projects, which are contingent on project completion and client certification. This dependency exposes the company to market and client-related risks, such as changes in demand, government policies, and competitive pressures in the infrastructure sector.
- Low profitability margins further suggest sensitivity to cost fluctuations and competitive pricing pressures, which is common among developers in a highly competitive sector.

16.4. We have also noted the off-balance sheet items of liabilities i.e. Contingent liabilities and observe that there's a significant increase in contingent liabilities, especially in guarantees for joint ventures and disputed tax and royalty demands, which indicate growing exposure to financial and operational risks.

16.5. From a business risk and reward perspective, contingent liabilities are critical considerations for a developer aiming to maximize returns and maintain financial stability. Bank guarantees represent a significant cash flow risk; if invoked, they could strain liquidity, disrupt project timelines, and delay revenue recognition, ultimately affecting project profitability. Similarly, guarantees provided to subsidiaries expose the developer to financial risk if a subsidiary encounters difficulties, creating unplanned liabilities that can reduce overall project profitability and erode return on investment. Joint venture guarantees add an additional layer of risk by tying the developer's financial health to that of its partners; any default or underperformance by a joint venture partner could disrupt project financing and jeopardize the project's timeline, impacting expected returns.

16.6. Based on the financial parameters and business risk elements, it is apparent that the assessee operates as a developer rather than merely a contractor. The risk profile—characterized by substantial leverage, operational responsibility, liquidity constraints, and market dependency—supports the classification of the assessee as a developer under Section 80IA of the Act. By assuming extensive financial, operational, and market risks, the assessee aligns with the statutory definition of a developer, undertaking comprehensive responsibilities in infrastructure creation.

16.7. The financial statements serve as indicators of the business's nature, scope, and the substantive responsibilities borne by the assessee, which collectively affirm that the assessee's activities qualify under the broader framework of infrastructure development as envisaged under Section 80IA of the Act. This analysis will provide the foundation for determining eligibility and distinguishing the assessee's role in alignment with legislative intent, statutory provisions, and relevant judicial precedents, ultimately supporting the assessee's position for developer status.

16.8. Furthermore, in line with the Hon'ble Gujarat High Court's decision in the case of *Montecarlo Ltd. v. Principal CIT*, we note that Section 80IA(4) of the Act should be interpreted liberally to support the infrastructure development mandate. *Montecarlo Ltd.* affirmed that an entity operating under a government contract does not lose developer status if it assumes the independent roles and responsibilities associated with developing infrastructure. The assessee's case here mirrors *Montecarlo Ltd.*, where the Hon'ble Gujarat High Court upheld deductions for infrastructure developers who mobilized resources, bore risks, and undertook comprehensive

development duties. Given the binding nature of this jurisdictional precedent, we respectfully follow *Montecarlo Ltd.*, concurring with the CIT(A) that the assessee qualifies as a developer entitled to deductions under Section 80IA(4) of the Act.

16.9. In view of the above, we find that the CIT(A) rightly allowed the assessee's claim under Section 80IA(4) of the Act based on its function as a developer in infrastructure projects. The CIT(A)'s reliance on statutory interpretation, judicial precedents, and CBDT guidance provides a sound basis for affirming the assessee's eligibility for the deduction.

16.10. Accordingly, the Revenue's appeals on the s relating to deduction u/s. 80IA of the Act are dismissed, and the orders of the CIT(A) granting the assessee deductions under Section 80IA(4) of the Act are upheld.

16.11. Under the s related to 80IA of the Act, the assessee contended that the CIT(A) erred in not directing the AO to allow the deduction under Section 80IA of the Act based on the "total income of the eligible business as finally computed and assessed by the AO," which includes adjustments arising from additions or disallowances made during assessment.

16.12. The AR argued that under Section 80IA of the Act, the deduction should be computed based on the *final* income of the eligible undertaking after all adjustments, additions, and disallowances are made by the AO. The AR also contended that this interpretation aligns with the legislative intent of providing deductions based on the "total income" as assessed, rather than on the income computed prior to adjustments.

16.13. Under Section 80IA(1) of the Act, the deduction is allowed in respect of "profits and gains derived from the eligible business." Section 80IA(5) of the Act further stipulates that for computing the deduction, the eligible business is treated as the "only source of income," and income attributable to the eligible undertaking should be calculated in isolation. However, judicial interpretations have clarified that the term "total income" for deduction purposes is often based on the *final assessed income*, reflecting the eligible business's actual income post-assessment adjustments.

16.14. Upon examining the provisions and judicial precedents, we agree with the assessee's interpretation that Section 80IA of the Act deductions should apply to the total income of the eligible unit as assessed by the AO, including any additions or disallowances made during the assessment process. The legislative intent of Section 80IA of the Act is to incentivize infrastructure development and industrial growth by providing deductions on income attributable to eligible undertakings. This objective is best achieved by allowing deductions on the income computed as per the final assessment, which captures the true profits of the eligible business. The CIT(A) should have directed the AO to allow the deduction under Section 80IA based on the final assessed income of the eligible undertaking, after considering all additions or disallowances. Accordingly, the AO is directed to recompute the Section 80IA deduction on the final assessed income of the eligible industrial undertaking. This ensures that the deduction accurately reflects the undertaking's profits, consistent with statutory provisions and judicial interpretations.

17. The assessee's respective grounds in ITA No.1749/Ahd/2016 for AY 2012-13 are allowed.

**Grounds Relating to Addition on the basis of Gross Profit Margin due to rejection of books of accounts -**

18. The grounds are summarized in the following table:-

<b>Common Issue / Disallowance</b>	<b>A.Y.</b>	<b>ITA No.</b>	<b>Amount (Rs.)</b>	<b>Type of Appeal</b>	<b>Ground No.</b>
Gross Profit Addition related to Vendor/Subcontractor Transactions	2008-09	ITA 245/Ahd/2016	24,43,00,129	Revenue	4 & 5
	2009-10	ITA 246/Ahd/2016	24,00,14,120	Revenue	1 & 2
	2009-10	IT(SS) A 1746/Ahd/2016	Confirmation of addition on account of 7 parties	Assessee	1 & 2
	2010-11	ITA 247/Ahd/2016	10,57,78,781	Revenue	1 & 2
	2010-11	IT(SS) A 1747/Ahd/2016	Confirmation of addition on account of 7 parties	Assessee	1 & 2
	2011-12	ITA 248/Ahd/2016	84,23,956	Revenue	1 & 2
	2011-12	IT(SS) A 1748/Ahd/2016	Confirmation of addition on account of 7 parties	Assessee	1 & 2
	2012-13	ITA 249/Ahd/2016	42,91,02,036	Revenue	1 & 2
		2012-13	IT(SS) A 1749/Ahd/2016	Confirmation of addition on account of 7 parties	Assessee

18.1. Several appeals across AYs 2009-10, 2010-11, 2011-12, and 2012-13 feature the ground related to gross profit addition. The Revenue challenged the CIT(A)'s decision to delete the gross profit additions made by the AO on the grounds that the assessee did not provide sufficient evidence to verify transactions with subcontractors and vendors. The Revenue maintained that the AO's estimated gross profit additions were justified due to the lack of verifiable documentation. The assessee argued that they had adequately supported these transactions through documentary evidence and that the CIT(A) was correct in deleting the additions. In some cases, the assessee also argued that any addition, if warranted, should be limited only to the gross profit element. Disallowance of purchases was primarily noted in AY 2013-14 and other subsequent years. The Revenue contended that the purchases were not substantiated by sufficient documentation and treated some purchases as bogus. The AO disallowed the expenses related to these purchases, questioning their authenticity and alleging that the transactions lacked the necessary supporting evidence. The assessee argued that all purchases were genuine, backed by proper documentation, and were necessary for its business operations. The assessee also provided 'account payee cheques' and other records as evidence of these transactions to counter the Revenue's claims.

18.2. During the course of assessment proceedings u/s.153A of the Act, the AO detailed the suspected method of expense inflation through fictitious payments to subcontractors. The AO suspected this inflation occurred via "bogus expenses," especially through subcontractors, many of whom could not be verified or traced. The AO analysed data from systems, such as, ITDMS, AST (Assessment Information System), and TDS records, cross-

referencing this data with other government records (e.g., Ministry of Corporate Affairs). This analysis raised concerns that several subcontractors had failed to report income from the assessee or had not filed returns at all, questioning their legitimacy. The AO further pursued verification through questionnaires and physical summons issued under Section 131. The findings for A.Y. 2008-09 were grouped as follows:

- **Non-verifiable Vendors:** Of 102 vendors, only 46 were presented with partial documentation, leaving 56 subcontractors (listed in Annexure C-1) as non-verifiable. These vendors accounted for substantial subcontracting costs amounting to Rs.20.69 crores.
- **Non-filers and PAN Issues:** Of 411 vendors, 92 failed to file income tax returns or present PAN details, accounting for another Rs.36.08 crores in expenses (Annexure D-1).
- **Non-responsive to Summons:** Another set of vendors, including those in Annexure F-1, were either non-responsive to summons or claimed to have no dealings with the assessee. Notable subcontractors explicitly denied doing any work for the assessee, casting further doubt on the authenticity of transactions amounting to Rs.11.87 crores.
- **Specific Cases of False Claims:** Notably, vendors like M/s Top Bricks and Sand Suppliers were implicated in a separate investigation by the Mumbai Sales Tax Department, where the vendor admitted to providing only accommodation entries rather than actual material supplies. This added to suspicions of bogus purchases, totalling to Rs.17.78 lakhs.

18.3. The assessee submitted bills, TDS details, and some vendor confirmations. They argued that the listed vendors were authentic and had received payments for legitimate subcontracting work. For some vendors, discrepancies were attributed to identical vendor names or errors in record-keeping. The AO found these explanations inadequate, emphasizing that legitimate businesses would have established records, PAN, and tax returns.

The AO rejected these documents, noting that many vendors' tax filings, addresses, and business activities could not be validated, and that claimed transactions lacked independent corroboration. For A.Y. 2008-09 the AO noted that with Rs.105.36 crore in unverified expenses (covering 176 sub-contractors and Rs.1.78 crore in bogus purchases), the assessee's books did not meet the statutory standards for completeness and accuracy. The AO invoked section 145(3) of the Act on the grounds that the expenses listed could not be verified as genuine and concluded that the books were unreliable, and it would be inappropriate to compute income based on these accounts. Given the rejection of the assessee's accounts, the AO applied a comparative approach using Gross Profit (GP) margins from similar companies. Six companies in the same field reported average GP margins of 22.89%, against which the AO estimated a revised GP of 22.89% for the assessee. This estimation approach resulted in an additional GP for each assessment year enlisted initially.

18.4. The CIT(A), for the A.Y. 2008-09, noted that the AO failed to distinguish between vendors that were partially compliant and those that were not. For example, while the AO acknowledged that 319 out of 411 vendors (Annexure-D) filed returns, he still labelled this entire group as suspicious. The CIT(A) identified that the AO considered some compliance from vendors as adequate evidence but dismissed other comparable evidence without justification. The CIT(A) explained that rejecting books of accounts under Section 145(3) of the Act requires the AO to pinpoint specific defects that make the accounts unreliable. However, in this case, the AO's rejection was based primarily on suspicion and unverified documentation rather than clear accounting discrepancies or statutory non-compliance. The CIT(A)

highlighted that the books had been audited under Section 44AB of the Act and followed standard accounting principles. Given these facts, the CIT(A) questioned the AO's authority to reject the books merely because the AO suspected inflated expenses. The CIT(A) examined the legality of additions made under Section 153A of the Act, which applies when assessments are completed based on incriminating material found during search and seizure operations. The CIT(A) observed that in this case, the assessment year in question was not "abated" (pending) at the time of search, meaning that any additions made must have been based solely on incriminating evidence found during the search. After reviewing the AO's records, the CIT(A) found no reference to any incriminating material obtained during the search that could substantiate the addition. Without such material, the CIT(A) concluded that the AO lacked a legal basis for revising the income under Section 153A of the Act. The CIT(A) supported its conclusions by citing various judgments, including **Kabul Chawla** and **Saumya Construction P. Ltd.**, which underscore that completed assessments cannot be disturbed under Section 153A of the Act unless supported by incriminating evidence unearthed during a search. The CIT(A) obtained a remand report from the AO to verify whether the assessment was based on any seized material. The AO's report did not indicate any reliance on seized or incriminating material, leading the CIT(A) to affirm that the assessment revisions were speculative and unsupported. The CIT(A) ultimately concluded that the AO's assessment was unjustified both procedurally and substantively, as it was based neither on specific defects in accounting practices nor on incriminating materials from the search. The CIT(A) indicated that, without prejudice to its findings on the legal framework, the AO's approach also disregarded ample evidence provided by the assessee, including TDS records, payment proofs, and

vendor confirmations. Thus, even on factual grounds, the AO's rejection appeared unreasonable.

18.5. For the Assessment Years 2009-10 onwards, the CIT(A) focused on the inconsistencies observed in the AO's treatment of evidence furnished by the assessee. The CIT(A) observed that the AO accepted confirmations and refund status for 33 vendors as genuine, along with refund evidence for 286 vendors from the NSDL website. Despite this, for a subset of vendors, the AO rejected similar types of evidence without providing adequate reasoning or distinguishing factors, creating inconsistency in the assessment process. The CIT(A) observed that the AO's approach was arbitrary as similar evidence was accepted for some vendors but rejected for others, often without providing clear justification. The CIT(A) found that if evidence was accepted for certain vendors, identical evidence for other vendors should logically be treated similarly, unless the AO had specific reasons for differentiation. After reviewing the evidence provided, the CIT(A) upheld the gross profit addition for certain vendors due to the lack of satisfactory evidence supporting the transactions with these parties. The addition was confirmed for the following parties where the assessee either failed to provide adequate evidence or the AO found the transactions unverifiable:

- Subramani
- Saroj Kumar Sinha
- Khandelwal Traders
- Ajaykumar Ganesh Yadav
- Top Bricks and Sand Suppliers
- Jyoti K. Chakraborty

- Kumar Khanderao Thite

18.6. For these vendors, either the assessee did not furnish confirmations or refund statuses, or the evidence was not considered sufficient to establish the genuineness of the transactions.

19. During the course of hearing before us, the DR reiterated that the books of accounts are not reliable as concluded by the AO and therefore the AO has rejected the books and adopted estimation basis for making additions relating to non-verifiable vendors. The DR relied on the orders of AO and pointed out the detailed analysis carried out by the AO. The DR also submitted that no proof of services offered by these vendors was provided by the assessee to the AO. The DR also submitted that the CIT(A) has misinterpreted the remand report of AO and concluded that the transactions are genuine. The AR, on the other hand, relied on the order of CIT(A) and stated that the addition was not made on the basis of any incriminating material found during the search proceedings and AO has relied on the post-search analysis. The AR further stated that the remand report is also silent on any list founds during the course of search proceedings. The AR relied on various judicial precedents which are discussed in detail while dealing with additional grounds of appeal of the assessee.

20. The AR stated that at various stage of the assessment proceedings the assessee submitted various details like bill copies, vouchers giving nature of services provided, ledger copy, confirmation of accounts along with the detailed list of parties including names, addresses, PANs, amount of transaction, mobile No., etc. The AR also stated that the list of vendors who are regularly submitting return of income was submitted to the AO and

refunds have also been issued to some of the vendors. The AR submitted that out of 595 vendors the assessee has submitted details of 571 parties as required by the AO. The AR further submitted that the assessee is a listed company having huge vendor base and the AO issued notices to only few parties and considering the total number of parties this number is very miniscule. The AR took us through the details submitted to AO during the assessment proceedings.

20.1. Regarding the additions confirmed by the CIT(A) on account of vendors enlisted above, the AR submitted that the assessee has already submitted detailed submission relating to these parties. In case of Saroj Kumar Sinha, it was submitted that this person with PAN - BPKPS4715K has never worked for the assessee company and in case of 'Subramani' the details like copy of work order, bills, ledger copies, copy of PAN and address were submitted during the course of assessment proceedings on 29-11-2013, 20-12-2013 and 20-01-2014. Regarding Khandelwal Traders, the AR explained that the notice was sent to party with same name from Ratlam and details have been submitted in case of Khandelwal Traders from Delhi from whom steel was purchased by the assessee. The AR further clarified that the assessee submitted details of status of refund issued in case of other parties along with other details. The AR took us through the various lists and confirmed that the names of these parties are appearing in the list of details already provided.

21. Upon a comprehensive perusal of submissions, evidence, and legal precedents, we addressed each ground raised by both the Revenue and the Assessee across multiple appeals and assessment years. The key issues involve Gross Profit (GP) additions based on alleged unverifiable vendor

transactions, the rejection of books of account, and the validity of additions in unabated assessments under Section 153A of the Act. We also examined the additional grounds raised by the Assessee, which challenge the legal basis of additions for completed (unabated) assessments, asserting that such additions are valid only if they are based on incriminating material found during the search.

21.1. The AO rejected the books of account under Section 145(3) on the grounds of unverifiable vendor/subcontractor transactions and applied an estimated GP margin of 22.89%, resulting in significant GP additions. However, we find that the AO's rejection was based primarily on suspicion rather than identified defects in the accounting records. There are many Judicial precedents which clearly mandate that books of accounts cannot be rejected solely on suspicion; specific and concrete accounting defects must be demonstrated. The CIT(A) appropriately deleted the additions, noting that the AO's approach lacked consistency, as he accepted similar evidence for some vendors while rejecting identical evidence for others without clear justification.

21.2. For Assessment Years 2008-09, 2009-10 and 2010-11, which were unabated at the time of the search, additions under Section 153A of the Act are permitted only if they are based on incriminating material found during the search operation. Judicial precedents establish that completed assessments cannot be reopened or disturbed under Section 153A of the Act in the absence of new, substantive evidence discovered during the search. In this case, the remand report from the AO confirmed that the additions were based on post-search analysis rather than on any incriminating material

found during the search. We hold that the AO's additions in these unabated assessment years are legally unsustainable. We uphold the CIT(A)'s deletion of these additions, as they lack a legal basis.

21.3. The assessee raised grounds challenging the confirmation of additions by the CIT(A) for transactions with 7 specific vendors. The AO had disallowed these expenses, alleging that transactions with these vendors were unverifiable, and therefore inflated the assessee's expenses by adding the corresponding amounts to the Gross Profit (GP). The CIT(A) upheld this addition on the grounds that the evidence provided by the assessee was inadequate to substantiate the authenticity of transactions with these parties. We have considered the arguments presented by both the Revenue and the Assessee in relation to these transactions. The assessee submitted various documents to support the genuineness of transactions with these 7 vendors, which included bills and invoices for the services provided by the vendors, payment proofs, such as bank statements evidencing payments made via 'account payee cheques', Tax Deducted at Source (TDS) records to establish that tax was deducted on payments made to these vendors, PAN details, addresses. We observe that these documents were crucial evidence supporting the assessee's claim that these were genuine business expenses. The AO accepted similar types of evidence (such as invoices, TDS, and confirmations) for certain vendors but rejected identical documentation for the 7 vendors in question without providing a clear or cogent reason for this distinction.

21.4. We note that selective acceptance and rejection of evidence for vendors without valid justification is arbitrary and lacks a consistent approach,

especially when the nature of evidence provided was identical across vendors. In this case, the AO did not present any such incriminating material to substantiate the disallowance of expenses for these 7 vendors. The AO's findings were instead based on a general suspicion that the vendors were non-genuine. The rejection of the expenses related to these 7 vendors was based on assumptions rather than concrete evidence of inflated or fictitious expenses. Judicial precedents emphasize that additions based on GP estimation or disallowance of expenses require clear defects or discrepancies in the books, which were absent in this case.

21.5. We find that the assessee's submissions, including payment proofs, TDS records, and confirmations, sufficiently established the genuineness of the transactions with the 7 vendors. We conclude that the CIT(A) erred in confirming the AO's addition, as the evidence provided by the assessee met the threshold for substantiating these expenses. We, thereby, delete the additions confirmed by the CIT(A) for these 7 vendors and fully allows the assessee's grounds on this issue, dismissing the Revenue's contentions.

**Disallowance of Purchases/ Expenses considering non-genuine amounting to Rs.2,25,05,524/- for the A.Y. 2013-14 (Revenue's Ground No. 2 in ITA No. 796/Ahd/2018)**

22. This ground deal with the disallowance made by the AO amounting to Rs.2,25,05,524/-, which was added back to the income of the assessee. The disallowance was on account of payments made to four contractors/vendors, namely:-

- |                                  |                   |
|----------------------------------|-------------------|
| 1. Vishala Glazers               | - Rs. 95,261/-    |
| 2. Vishala Glazers Pvt. Ltd.     | - Rs. 12,85,383/- |
| 3. Balaji Construction (Hathras) | - Rs. 46,77,783/- |

**4. AMG Infrastructure Pvt. Ltd. - Rs.1,64,37,097/-**

22.1. The AO stated that the assessee failed to provide adequate documentary evidence to prove that these transactions were genuine. The AO questioned the credibility of the transactions due to the absence of corroborative details proving that these vendors genuinely carried out work for the assessee. The AO took the view that the transactions lacked credibility and considered them doubtful due to insufficient evidence. The AO issued notices under Section 133(6) of the Act to verify these transactions but claimed that they either received no response or the responses were inadequate. In the case of AMG Infrastructure Pvt. Ltd., for instance, notices were returned unserved, and thus the AO doubted the existence of the entity itself. The AO pointed out that in some cases, such as AMG Infrastructure Pvt. Ltd., the assessee failed to provide a verified address or reliable contact details. This added to the AO's suspicion, as the existence of these entities could not be independently verified through address confirmation. Although the payments were made through 'account payee cheques', the AO did not consider this alone as sufficient evidence of the genuineness of transactions. The AO argued that even with such payments, there was no proof that these amounts were not returned in cash to the assessee, implying that the cheques could be a façade for non-genuine transactions. The AO noted that while the assessee submitted TDS certificates, Form 16, and other related documents, these alone were not conclusive proof of genuine transactions. The AO maintained that TDS deductions and their claims for refunds did not independently substantiate the genuineness of the underlying work or transactions claimed to have been done by these vendors. The AO disallowed

the expenditure claimed by the assessee under Section 37(1) of the Act, on the basis that the assessee failed to prove that these were incurred for business purposes and were wholly and exclusively for the business.

23. The CIT(A) evaluated the AO's conclusions critically and found that the AO's decision relied heavily on presumptions, assumptions, and generalizations without concrete evidence. The CIT(A) stated that the AO did not make a proper effort to verify or investigate the documents submitted by the assessee and did not substantiate the suspicion that payments to these vendors were returned to the assessee. The CIT(A) noted that the assessee had furnished detailed documentation during the assessment proceedings, which included -

- Names, PAN numbers and addresses of the parties.
- TDS certificates and copies of payments made via 'account payee cheques'.
- Work orders, agreements, refund status, bank details and ledger copies from the books of the assessee.
- Details of the vendors from the Registrar of Companies (ROC).

23.1. The CIT(A) highlighted that the above evidence was enough to discharge the initial burden of proving the genuineness of the transactions. The CIT(A) referenced various judicial precedents, including decisions from the Gujarat High Court, which held that payments made through 'account payee cheques' and supported by documentation should not be doubted solely due to suspicion. Cases cited by the CIT(A), such as, **CIT v. M.K. Brothers [1987] 163 ITR 249 (Guj. HC)** and **CIT v. Adinath Industries [2001] 252 ITR 476 (Guj. HC)** emphasized that without concrete evidence of cash

withdrawals or circular transactions, the genuineness of payments made by cheque cannot be disputed. The CIT(A) pointed out that there is no statutory requirement for the assessee to provide confirmations from third-party vendors as per Section 37(1) of the Act. The assessee's responsibility is limited to substantiating expenses incurred with adequate documentation, which the CIT(A) believed had been satisfied. The CIT(A) criticized the AO for failing to make independent enquiries or verification. For instance, even though the AO could have contacted the bank or requested additional information from other sources, there was no evidence that any proactive steps were taken. The CIT(A) noted that the AO's approach, relying solely on the return of unserved notices, was insufficient grounds to question the genuineness of large-scale transactions. The CIT(A) took into account the scale of the assessee's business operations, which involved over Rs.2200 crore in turnover and approximately 2000 contractors across various sites. The CIT(A) acknowledged that managing a large number of vendors might lead to logistical issues, and failing to get responses from some does not automatically imply that the transactions were non-genuine. Given the evidence and supporting case laws, the CIT(A) concluded that the AO's disallowance was not justified. The CIT(A) allowed the assessee's ground of appeal and directed that the disallowance of Rs.2,25,05,524/- be deleted.

24. We have carefully considered the rival contentions, perused the orders of the AO and the CIT(A), as well as the submissions made by the DR and the AR who relied on the orders of respective lower authorities. Upon an independent evaluation of the records and rival contentions, we are inclined to concur with the findings of the CIT(A) as the AO's disallowance is primarily grounded in assumptions, without any definitive evidence proving

that the payments were routed back to the assessee. The AO has not brought on record any tangible evidence, such as cash withdrawals or other indicators, to substantiate the claim that payments made to the vendors were fictitious or returned to the assessee in cash. The assessee has submitted extensive documentation, including TDS certificates, 'account payee cheque' payments, work orders, PAN and address details, and confirmations from the Registrar of Companies. In light of this, it is clear that the assessee has discharged its initial onus to prove the genuineness of the transactions. The mere fact that some notices remained unserved does not, in itself, invalidate the authenticity of the transactions, especially given the scale of the assessee's business, which involved numerous contractors spread across various locations. The CIT(A) rightly referred to judicial precedents that establish that payments made via 'account payee cheques' and substantiated by proper documentation cannot be disallowed merely based on suspicion or absence of confirmations from third parties. In the case of **CIT v. M.K. Brothers (supra)**, it was held that such payments, without specific evidence to the contrary, should be accepted as genuine. The AO's reliance on presumptive grounds, without any independent corroborative evidence, is contrary to these principles. It is also noted that the AO, despite having the opportunity, did not conduct any further inquiry or verification with the banks or other independent agencies. The AO's reliance solely on unserved notices without further efforts undermines the principle of natural justice, as the assessee was not given a fair opportunity to substantiate its case in the face of doubts raised by the AO.

24.1. In light of the above, we find that the AO's disallowance was based on assumptions and lacks any substantive evidence to prove that the payments

to the four vendors were non-genuine. The CIT(A) has rightly observed that the documentation provided by the assessee is adequate to substantiate the genuineness of these transactions. Therefore, we find no infirmity in the order of the CIT(A) in allowing the appeal of the assessee.

24.2. Accordingly, the addition of Rs.2,25,05,524/- made by the AO is hereby deleted, and the ground of appeal is decided in favour of the assessee.

**Grounds on Provision for Defect Liability (Warranty Expenses)**

25. The grounds are summarized in the following table: -

<b>Common Issue/ Disallowance</b>	<b>Assessment Year</b>	<b>ITA No.</b>	<b>Amount (₹)</b>	<b>Type of Appeal</b>	<b>Ground No.</b>
Provision for Defect Liability (Warranty Expenses)	2007-08	ITA 3269/Ahd/2011	3,56,48,498	Revenue	Ground 1
	2008-09	ITA 2353/Ahd/2014	6,12,08,221	Revenue	Ground 2
	2009-10	ITA 246/Ahd/2016	7,99,10,015	Revenue	Ground 4

The Revenue in all above appeals argued that the Provision for Defect Liability represented a contingent liability that had not crystallized during the year. The Revenue contends that the provision does not meet the criteria of an allowable expense since it is uncertain and could or could not arise, thus treating it as contingent and disallowable. The assessee defended the Provision for Defect Liability as an ascertained liability, arguing that it relates to obligations for warranty expenses associated with infrastructure projects. The assessee posited that these costs are reasonably estimated based on prior experience and contractual obligations, therefore qualifying as a legitimate deduction. The assessee also argued that the provision is necessary for maintaining the quality and durability of infrastructure, an integral part of its

business operations, justifying the allowance of this provision as an expense under the Act. The nature of liability (whether it is contingent or ascertained) remains the central issue. The Revenue views it as uncertain, whereas the assessee considers it a reasonable estimate based on predictable expenses. CIT(A) sided with the assessee in all noted years, allowing the defect liability provision as an expense. This decision has been appealed by the Revenue, who argues that CIT(A) misjudged the contingent nature of the liability.

26. During the course of hearing before us, the AR took us through the submission of the assessee before AO and CIT(A) according to which the assessee is contractually bound to a "Defect Liability Period" typically spanning 12-18 months, extendable to five years in certain projects. During this period, the assessee is responsible for rectifying defects and providing remedies for poor workmanship at its own cost. The contracts mandate a Performance Bank Guarantee and retention of 5%-10% of the contract value by the client until the defect liability obligations are satisfied. Given the ongoing nature of rectification work during the defect liability period and the history of incurred expenses, the assessee has consistently made provisions in the accounts to cover such future expenses. This approach is supported by accounting standards and the mercantile accounting system, which requires recognition of known liabilities based on past trends and reasonable estimates, even if the exact expense is indeterminate at year-end. Unutilized provisions are credited to the Profit & Loss account post the defect liability period, subject to conditions such as final bill certification, completion of defect liability period, release of performance guarantees, and return of withheld receivables by clients.

26.1. The AO concluded that the assessee's provision for defect liability expenses does not qualify as an allowable deduction. The AO found the provision to be contingent, unascertained, and lacking a present obligation, as its realization depends on uncertain future events, such as potential client complaints. The AO observed significant excess provisioning, with actual expenditures being minimal compared to the provisions made, suggesting the provision may be used to reduce taxable profits. Additionally, since the contract already provides for defect liability coverage through retention money or bank guarantees, the AO deemed the provision redundant. Citing the Hon'ble Supreme Court's guidelines in *Rotork India (P) Ltd. [2009] 314 ITR 62 (SC)* and other judicial precedents, the AO determined that the provision lacks the required certainty and reliable estimation, disallowing the amount and initiating penalty proceedings for inaccurate reporting.

26.2. The AR placed reliance of the order of the CIT(A), who relied on the order of his predecessor on identical facts in A.Y. 2006-07. The CIT(A) deleted the addition made by the AO regarding the provision for defect liability expenses, citing consistent treatment in prior years (A.Y. 2005-06 and A.Y. 2006-07), where similar additions had been deleted. In A.Y. 2006-07, the CIT(A) observed that the assessee's contracts included a defect liability clause, requiring the assessee to rectify post-construction defects. The assessee created provisions for these liabilities at 0.75% of turnover, which were utilized as claims arose, and the CIT(A) deemed this method reasonable and based on past experience. The CIT(A) referenced judicial precedents, including *Bharat Earth Movers v. CIT (245 ITR 428, SC)*, which upheld that if a business liability has arisen, it should be allowed as a deduction even if its quantification is deferred. Accordingly, following the prior year's decision

and observing that the provision was neither excessive nor tax-motivated, the CIT(A) deleted the disallowance, concluding that the assessee's method was justified, with liability estimation being fair and in line with accepted commercial practices.

27. During the course of hearing before us, the AR placed reliance on the decision of Co-ordinate Bench in assessee's own case of A.Y. 2006-07 (ITA No.86/Ahd/2008) which was challenged by the revenue in the jurisdictional high court and the same was dismissed by Hon'ble High Court of Gujarat (**Tax Appeal No. 194 of 2017**).

28. The DR relied on the order of AO and stated that the assessee has not demonstrated that any expenditure is debited to such provision.

29. Based on the factual matrix and judicial principles affirmed by higher courts, including the Hon'ble Gujarat High Court in the case of *Principal Commissioner of Income Tax v. JMC Projects India Ltd. (Tax Appeal No. 194 of 2017)*, we find no merit in the Revenue's appeals regarding the disallowance of the defect liability provision. The crux of the Revenue's argument centres on the assertion that the provision represents a contingent liability, lacking crystallization and therefore ineligible for deduction. However, both the CIT(A) and the Tribunal have repeatedly upheld the provision as an allowable business expense, finding it to be based on a scientific estimation reflective of foreseeable obligations under defect liability clauses within the assessee's construction contracts. The Co-ordinate Bench's reliance on *Rotork Controls India Pvt. Ltd. v. CIT (314 ITR 62)* is well-founded, as it establishes that warranty-related provisions, when estimated

based on past experience and the nature of the business, qualify as deductible liabilities under Section 37 of the Act. Moreover, the Hon'ble Gujarat High Court in the aforementioned case confirmed that such provisions, being tied to contractual obligations and industry practices, cannot be classified as merely contingent, given the contractual retention requirements and the historical necessity of rectifying defects post-project completion. The High Court dismissed the Revenue's contention, underscoring that the absence of tax motivation further justified the assessee's approach.

29.1. In light of the Hon'ble High Court's judgements, the scientific basis and established practice adopted by the assessee, and the accepted commercial principles underpinning the defect liability provision, we hold that the Revenue's appeal lacks substantive grounds. Therefore, the appeals on this ground are dismissed, affirming the position that the provision for defect liability is a legitimate deduction under the Act.

### **Grounds relating to disallowance of Leave Encashment**

30. The grounds of assessee are tabulated below:-

<b>Common Issue / Disallowance</b>	<b>A.Y.</b>	<b>ITA No.</b>	<b>Amount (Rs.)</b>	<b>Type of Appeal</b>	<b>Ground No.</b>
Disallowance of Leave Encashment	2007-08	ITA 2815/Ahd/2011	77,12,196	Assessee	2
	2008-09	ITA 2036/Ahd/2011	81,81,115	Assessee	3
	2009-10	ITA 1746/Ahd/2016	33,34,815	Assessee	2.1

	2011-12	ITA 1748/Ahd/2016	18,34,735	Assessee	3.1
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30.1. Under these grounds, the assessee contested the disallowance of the leave encashment provision made by the AO, arguing that it is a legitimate and ascertained liability associated with employee benefits, accrued based on employee service and thus should be allowable as an expense. The assessee claimed amounts of provision made in accordance with the actuarial valuation but could not give the details of payment of expenses against the same. The AO emphasized that Section 43B of the Act mandates deductions for certain expenses only when actual payment is made, regardless of the accounting method. Section 43B(f) of the Act explicitly covers “any sum payable by the employer in lieu of leave at the credit of his employee,” thus requiring actual payment for the allowance of leave encashment provisions. The AO referenced this to argue that no deduction is permissible for leave encashment unless the sum has been paid within the relevant financial year. The AO highlighted that the section includes a *non-obstante* clause, which overrides other provisions that might otherwise allow deduction based on accrual. The AO argued that, per the statute, deductions for leave encashment must strictly follow an “actual payment” criterion, dismissing any reliance on judicial pronouncements that favour an accrual basis, as they cannot override the specific legislative intent of Section 43B. The AO concluded that by merely provisioning for leave encashment without actual payment, the assessee’s claim for deduction is not allowable under the Act. Accordingly, the AO disallowed the amounts for respective years and added it back to the total income, asserting that this treatment aligns with the statute’s aim of ensuring compliance through actual payment.

31. In the appellate order, the CIT(A) addressed the assessee's claim for deduction regarding leave encashment provisions under Section 43B of the Act, with specific reference to the judicial decision and the assessee's arguments. The assessee argued, before CIT(A), that the provision for leave encashment should be allowed as a deduction based on the Hon'ble Calcutta High Court's judgement in the case of *Exide Industries Ltd. vs. Union of India (292 ITR 470)[Cal.]*. In that case, the Hon'ble High Court held Section 43B(f) of the Act as ultra vires, declaring it unconstitutional. The assessee further asserted that, in the absence of any contrary ruling by the Hon'ble Jurisdictional High Court, this decision should govern the interpretation of Section 43B(f) of the Act in their case, effectively allowing the deduction on an accrual basis. The CIT(A) noted that the Supreme Court subsequently stayed the Calcutta High Court's judgment in **Exide Industries**, requiring that Section 43B(f) of the Act be treated as still effective, although taxpayers could raise a claim for deduction in their return. This meant that the assessee was required to comply with the actual payment criterion of Section 43B(f) of the Act, pending a final resolution from the Hon'ble Supreme Court. However, the CIT(A) allowed a partial deduction for payments made before the due date for filing the return in case of A.Y. 2008-09, aligning with the statutory exception in Section 43B of the Act.

31.1. During the course of hearing before us, the AR conceded that the issue is decided by the Hon'ble Apex Court against the Assessee in case of **Exide Industries Ltd. [425 ITR 1 (SC)]**.

32. We have carefully considered the submissions made by the assessee, the findings of the AO, and the appellate order of the CIT(A). In addition, we have examined the relevant judicial pronouncements, including the authoritative decision of the Hon'ble Supreme Court in case of **Exide Industries Ltd. [425 ITR 1 (SC)]**, which directly addresses the applicability of Section 43B(f) of the Act regarding provisions for leave encashment. The Hon'ble Supreme Court upheld the constitutional validity of Section 43B(f) of the Act, explicitly stating that this provision does not infringe upon the assessee's autonomy in choosing a particular accounting method or in claiming legitimate deductions. Rather, Section 43B(f) of the Act imposes an additional statutory condition—that deductions for leave encashment liabilities are allowable solely upon actual payment, irrespective of the assessee's chosen accounting method or the timing of liability accrual. This interpretation reinforces the legislative intent to mandate payment-based deductions for specified expenses.

32.1. In view of the above, and considering the AR's acknowledgment of these judicial developments, we uphold the disallowances in respect of the unpaid provision for leave encashment. The appeal filed by the assessee is, therefore, dismissed, as the legislative requirement of Section 43B(f) of the Act mandates actual payment for allowance, which the assessee has not met.

#### **Grounds relating to Disallowance u/s 14A**

33. These grounds highlight the main points of contention on Section 14A of the Act disallowance, focusing on the assessee's arguments for reasoned allocation of expenses and Revenue's stance on mandatory application of

Rule 8D of Income Tax Rules, 1962 ('the Rules') for calculating disallowances. Following is the tabulated summary of the grounds:-

<b>Common Issue / Disallowance</b>	<b>A.Y.</b>	<b>ITA No.</b>	<b>Amount (Rs.)</b>	<b>Type of Appeal</b>	<b>Ground No.</b>
Disallowance under Section 14A	2008-09	ITA 2036/Ahd/2011	2,07,727	Assessee	1
	2011-12	ITA 248/Ahd/2016	82,86,127	Revenue	4

33.1 The assessee disputed the AO's computation under Rule 8D of the IT Rules, contending that the formulaic disallowance led to an excessive and arbitrary allocation of expenses to exempt income. The assessee argued that it had submitted reasonable explanations and evidence regarding its expenses, which the AO did not consider. They argued that only specific expenses directly linked to exempt income, if any, should be disallowed, rather than an arbitrary proportion as calculated by Rule 8D of the Rules. In case of A.Y. 2011-12, the CIT(A) provided relief by accepting the assessee's argument against the blanket application of Rule 8D, while in case of A.Y. 2008-09, the CIT(A) upheld the AO's disallowance on procedural grounds.

34. During the assessment proceedings, the AO observed that the assessee has earned a variety of exempt income like dividend, exempt income from JV companies and Income from projects earning exempt income u/s 80IA of the Act. The AO interpreted that because these incomes are exempt from tax, the assessee is likely incurring expenses to generate this income. Therefore, the AO questioned the absence of a disallowance under Section 14A of the Act and concluded that the assessee has not demonstrated that no expenses were incurred to earn this exempt income. The AO also observed that the

assessee has not provided the necessary nexus between the interest-free funds and exempt income. The AO noted that expenses such as bank charges and guarantee fees could be attributed to the investments made for earning exempt income, thereby justifying a Section 14A of the Act disallowance. The AO detailed the application of Rule 8D of the Rules to compute the disallowance and followed the same. The assessment year wise disallowance is tabulated as follows:-

<b>Components</b>	<b>A.Y. 2008-09</b>	<b>A.Y. 2011-12</b>
<b>Direct Expenses Attributable to Exempt Income</b>	Nil	Nil
<b>Indirect Interest Expenses (Rule 8D(2)(ii))</b>	Rs. 1,82,152	Rs. 62,73,105
<b>0.5% of Average Investment Value (Rule 8D(2)(iii))</b>	Rs. 25,575	Rs. 20,13,022
<b>Total Disallowance under Section 14A</b>	Rs. 2,07,727	Rs. 82,86,127

35. The assessee, before CIT(A), claimed that the funds for the investments came from a temporary surplus within the company, not from interest-bearing borrowings. The assessee further stated that investments were made in short-term mutual funds, and there were no recurring expenses directly attributable to these exempt investments. The assessee asserted that the AO's use of Rule 8D of the Rules is arbitrary and unwarranted. In this case, as the opening and closing balances of investments in mutual funds were nil.

36. In case of A.Y. 2008-09, the CIT(A) agreed with the AO that the assessee could not substantiate a direct link between interest-free funds and the exempt income. The CIT(A) concurred that the assessee's investments likely

reduced available liquid funds, creating a potential need for borrowing which indirectly supported the AO's view that borrowed funds may have been partially used for investments leading to exempt income. The CIT(A) also found that maintenance and management of these investments involve administrative expenses and therefore, the disallowance under Section 14A of the Act is justified based on the need for such indirect expenses. The CIT(A) supports the AO's application of Rule 8D by referencing the decisions of **Cheminvest Ltd. vs. ITO (ITA No.87/Del/2008)** and **Daga Capital Management Pvt. Ltd. (ITA No. 8057/Mum/03)**, which confirmed that a Section 14A of the Act disallowance is warranted even if no direct income is earned from the investments.

37. In case of A.Y. 2011-12, however, the CIT(A) allowed the assessee's appeal. The CIT(A) found that the AO was not justified in applying Section 14A of the Act, as the assessee's investments were made in subsidiaries for business purposes rather than for generating exempt income. The CIT(A) held that the assessee's investments did not attract Section 14A of the Act disallowance, as no proximate cause was established between the expenditure and the exempt income.

38. During the course of hearing before us, the AR stated that the assessee had sufficient own funds during the year under consideration and the amount of investment is much lower than such own funds. The pointed out the amounts of own funds from the financial statements which are tabulated as:-

Particulars	Amount (Rs. in Lakhs)	
	A.Y. 2008-09	A.Y. 2011-12
Share Capital	4339.03	2611.83

Reserves and Surplus	12989.51	34850.41
<b>Total</b>	<b>17328.54</b>	<b>37462.24</b>
<b>Investments</b>	<b>51.15</b>	<b>8690.14</b>

38.1. The AR, considering the availability of sufficient own funds, argued that there should not be any disallowance on account of interest. The DR, on the other hand, relied on the order of AO and stated that the AO has reasoned the disallowance on of interest stating that the assessee's investments likely reduced available liquid funds, creating a potential need for borrowing.

38.2. The AR placed reliance on various judicial precedents including the decision of Hon'ble Jurisdictional High Court in case of **PCIT - 2, Vadodara Vs. Shreno Ltd. [2019] 102 taxmann.com 129**, where it was held that the application of section 14A of the I.T. Act, 1961 read with Rule 8D of the Income Tax Rules, 1962 is not automatic when the assessee used mixed funds for investment in securities earning tax free income.

39. Upon considering the contentions of rival parties and perusal of the material available on record, we find that the primary issue in these appeals is the applicability of Section 14A of the Act, and the automatic application of Rule 8D of the Income Tax Rules in disallowing expenses attributed to exempt income.

39.1. In both the A.Y. 2008-09 and A.Y. 2011-12, the assessee's financials clearly indicate that own funds far exceeded the investments. The Hon'ble Gujarat High Court in the case of **PCIT vs. Shreno Ltd.** has emphasized that when sufficient own funds are available, no disallowance under Section 14A should be made on account of interest expenses. Applying this principle, we

find that in both years, the assessee's substantial own funds negate the need for disallowance on account of interest under Rule 8D(2)(ii) of the Act.

39.2. The Hon'ble Supreme Court and various Hon'ble High Courts have established that disallowance under Section 14A of the Act requires a proximate cause between the expenditure and exempt income. In A.Y. 2011-12, the CIT(A) correctly found that the investments in subsidiaries were made to fulfil business obligations with NHAI, without an intent to earn exempt income. Applying the same principle to A.Y. 2008-09, we find no proximate cause connecting any interest expense or administrative cost to the exempt income. Both the purpose and the availability of own funds indicate that the AO's blanket application of Rule 8D was unjustified in A.Y. 2008-09 as well. The Hon'ble Jurisdictional High Court in **PCIT vs. Shreno Ltd.** and the Hon'ble Supreme Court in **Maxopp Investment Ltd. vs. CIT (402 ITR 640)** have emphasized that Rule 8D should not be applied automatically and without examining the actual nature and purpose of investments. Since the assessee demonstrated substantial own funds and justified the business necessity behind the investments, we hold that the CIT(A)'s reliance on blanket application of Rule 8D in A.Y. 2008-09 was misplaced.

39.3. In light of the above findings, we conclude as follows:-

- **A.Y. 2008-09 (ITA No. 2036/Ahd/2011):** The appeal of the assessee is **allowed**. We delete the disallowance of Rs.2,07,727/- under Section 14A of the IT Act, as the application of Rule 8D of the IT Rules was not justified given the availability of substantial own funds and the absence of proximate cause linking expenses to exempt income.
- **A.Y. 2011-12 (ITA No. 248/Ahd/2016):** The appeal of the Revenue is **dismissed**. We uphold the CIT(A)'s decision to delete the disallowance of Rs.82,86,127/-, finding that the investments were driven by business

purposes, funded by own surplus, with no proximate connection to earning exempt income.

40. We allow the appeal of the assessee for A.Y. 2008-09 and dismisses the appeal of the Revenue for A.Y. 2011-12. Accordingly, the grounds raised by the assessee in A.Y. 2008-09 and by the Revenue in A.Y. 2011-12 are decided in favour of the assessee.

**Ground on disallowance Gift/Boni/Chandla Expenses - Assessee's appeal  
ITA 2815/Ahd/2011 for A.Y. 2007-08**

41. During the relevant assessment year, the assessee claimed expenses totaling Rs.16,32,609/- under the heads gift, boni, and chandla. The AO required the assessee to provide vouchers, receipts, and additional supporting documents to justify the amounts claimed, as well as to identify the parties to whom these expenses were paid. In response, the assessee submitted some account details. However, the AO found that the documentation was incomplete, and no clear evidence was provided showing to whom the payments were made and how these expenses related to business needs. Given the incomplete documentation, the AO viewed the expenses with caution, disallowing 50% of the total claimed amount. The assessee argued that these expenses were consistent with prior years' claims, where the CIT(A) had allowed similar expenses in full for earlier years, specifically for Assessment Year 2005-06. The assessee asserted that this continuity should be recognized, suggesting that the expenses, though not fully documented, were genuine business costs.

42. Upon reviewing the case, CIT(A) adopted a balanced approach, CIT(A) noted that in A.Y. 2005-06, the CIT(A) fully allowed the expenses claimed by the assessee under the heads of gift, boni, and chandla. After reviewing the nature of these expenses, CIT(A) accepted the assessee's contention that such expenditures were essential for business purposes, possibly related to employee rewards or client relations. For A.Y. 2006-07, the CIT(A) adopted a more cautious approach. While considering the precedent from A.Y. 2005-06, CIT(A) noted the AO's concerns about the lack of full documentary evidence to substantiate the claimed expenses and disallowed Rs.1,50,000/- out of total expenses under this head of Rs.7,05,818/-.

42.1. Considering the facts that total expenses in A.Y. 2007-08 increased to Rs.16,32,610/- the CIT(A) allowed Rs.300,000/-.

43. During the course of hearing before us, the AR stated that the CIT(A) has deleted total disallowance in A.Y. 2005-06 and the facts and circumstances are identical therefore total disallowance should be deleted. The DR on the other hand stated that the CIT(A) has already given relief and restricted disallowance to Rs.300,000/-.

44. After considering the submissions of both sides and examining the facts of the case, we observe that the CIT(A) has taken a consistent and judicious approach by referencing the past assessment years while also taking into account the increase in the amount claimed in the current year. The CIT(A)'s disallowance of Rs.3,00,000 out of Rs.16,32,609 for A.Y. 2007-08 appears to strike a reasonable balance, granting the assessee partial relief while also recognizing the AO's concerns regarding insufficient

documentation. Given the substantial increase in the claimed expenses compared to previous years and the assessee's inability to furnish complete evidence, we find no reason to interfere with the CIT(A)'s decision.

44.1. Accordingly, we uphold the CIT(A)'s decision, confirming the disallowance of Rs.3,00,000/-, and dismiss the ground raised by the assessee.

**Ground Related to Addition u/s 40(a)(ia) for Import of Materials of Rs.1,26,97,906/- for A.Y. 2010-11 in ITA 1747/Ahd/2016**

45. During the course of assessment proceedings, the AO observed that the assessee contracted with Bemo Project Engineering LLC for the design, supply, and installation of roofing for an indoor cycling Velodrome at the Indira Gandhi Stadium in New Delhi. As per the terms of the Memorandum of Understanding (MoU), Bemo Project Engineering LLC was solely responsible for the entire scope of work, which included designing, supplying materials, and installation services. The contract was indivisible and could not be split into material and service components. The AO further observed that, according to the Double Taxation Avoidance Agreement (DTAA) between India and UAE, a permanent establishment could be deemed to exist if a construction site or project exceeded nine months. Since Bemo Project Engineering LLC was engaged in India for more than one and a half years, the AO concluded that it had a PE in India. This finding would make the non-resident entity subject to Indian tax laws for this project, necessitating TDS on payments made by the assessee. The AO invoked Section 40(a)(i), which disallows deductions for payments to non-residents if tax has not been deducted under Section 195. The AO held that the assessee failed to deduct tax on Rs.12,69,79,006, leading to disallowance under Section

40(a)(i) of the Act. The AO did not specifically address Section 195 in terms of the assessee's obligations to deduct tax, focusing instead on the applicability of Section 40(a)(i) of the Act due to non-compliance with TDS requirements. The assessee contended that the payment to Bemo Project Engineering LLC was predominantly for the import of materials and accessories, which would not attract TDS under Section 40(a)(i) of the Act.

46. The CIT(A) carefully noted the provisions of Section 40(a)(i) of the Act and Section 195 of the Act in conjunction with the DTAA between India and UAE and concurred with the AO's view that Bemo Project Engineering LLC constituted a permanent establishment in India, given the project duration exceeded nine months. This created a tax liability for the non-resident company under Indian tax laws, thereby triggering the assessee's obligation to withhold tax under Section 195 of the Act. In the absence of TDS compliance by the assessee, the CIT(A) upheld the disallowance made by the AO under Section 40(a)(i) of the Act, concluding that the payment made to Bemo Project Engineering LLC attracted TDS under Section 195. Therefore, the CIT(A) dismissed the appeal filed by the assessee on this ground.

47. Considering the facts on record and the legal submissions made, it is observed that the assessee raised an additional ground challenging the validity of the assessment under section 153A of the Act, contending that no incriminating material was found during the search to justify such an assessment. We have already adjudicated upon this additional ground in favour of the assessee, holding that in the absence of incriminating material, the assessment under section 153A of the Act was invalid. Consequently, without delving into the merits of the disallowance under section 40(a)(i) of

the Act amounting to Rs.1,26,97,906/, the appeal on this ground is allowed on the legal ground of invalid assessment.

**Grounds relating to Penalty u/s 271(1)(c) of the Act**

48. Under these grounds the assessee disputed various penalties imposed under Section 271(1)(c) of the Act, specifically relating to claims for leave encashment, disallowance under Section 14A of the Act, and disallowance due to TDS default. The AO levied the penalty for furnishing inaccurate particulars on various disallowances details of which along with grounds of appeal are tabulated below:-

<b>Details</b>	<b>Nature of Disallowance</b>	<b>Amount of Disallowance (Rs.)</b>
A.Y. 2007-08, ITA No. 2603/Ahd/2013, Penalty Amount Levied: Rs. 25,59,312, Ground No. 1	Disallowance of Gift/Boni/Chandla Expenses	3,00,000
	Leave Encashment	72,66,336
	Non-deduction and Short Deduction of TDS	37,088
A.Y. 2008-09, ITA No. 2604/Ahd/2013, Penalty Amount Levied: Rs. 28,51,368, Ground No. 1	Disallowance under Section 14A	2,07,727
	Leave Encashment	81,81,115

49. In the appellate proceedings for A.Y. 2007-08, the CIT(A) confirmed the penalty levied by the AO. The CIT(A) scrutinised the assessee's accounting practices, particularly the creation of provisions for leave encashment. He observed that the assessee only provided for leave encashment in the year under consideration based on an actuarial valuation, which appears to be done for the first time. CIT(A) found discrepancies in the assessee's

accounting for leave encashment and a lack of proper disclosure in the balance sheet. The CIT(A) interpreted this as an attempt to manipulate the accounts to claim deductions and deems it as a failure on the assessee's part to fully disclose information to the AO. The CIT(A) noted that the assessee has relied on the decision of the Hon'ble Kolkata High Court in **Exide Industries Ltd. v. CIT (292 ITR 470)** for non-levy of penalty. However, the CIT(A) highlighted that the facts in *Exide Industries* are distinguishable from the present case.

50. The CIT(A) found that the assessee has not followed consistent accounting policies for leave encashment and that its practice does not align with the requirements laid down in the case of *Bharat Earth Movers v. CIT (245 ITR 428, SC)*, where the Supreme Court allowed provisions for ascertained liabilities. The CIT(A) relied heavily on the Hon'ble Supreme Court's ruling in *Union of India v. Dharmendra Textiles Processors (306 ITR 277)*, which established that penalty under section 271(1)(c) of the Act is a civil liability, meaning that *mens rea* (intent to evade tax) need not be proven for its imposition. The CIT(A) applied this interpretation, indicating that since the assessee did not make accurate disclosures, penalty under section 271(1)(c) of the Act is justified.

51. The assessee had relied on the Hon'ble Delhi High Court's judgment in *Nalwa Sons Investments Ltd.*, which held that penalty is not leviable when book profits are assessed under section 115JB of the Act. However, CIT(A) dismissed this argument based on the ITAT Chennai Bench's decision in the case of *Sri Gokulam Hotels India Pvt Ltd.*, which upheld the penalty under section 271(1)(c) of the Act despite the *Nalwa Sons* decision.

52. In case of A.Y. 2008-09, while confirming the penalty the CIT(A) reiterated that since the penalty is civil in nature, it does not require *mens rea*. Penalty is attracted based on the presence of inaccurate particulars or concealment. The CIT(A) found that the assessee had not made full disclosure, especially concerning leave encashment provisions, despite knowing they lacked merit. This omission, along with the inaccurate particulars regarding Section 14A of the Act disallowance, justified the penalty.

52.1. The assessee argued that the disallowance was not warranted, relying on the Supreme Court's decision in *Reliance Petro Products Pvt. Ltd. [230 CTR 320 (SC)]*, contending that no penalty under Section 271(1)(c) of the Act should apply as no inaccurate particulars were furnished in the return of income. The CIT(A) observed that the Supreme Court decision in *Reliance Petro Products* was distinguishable as it applied to AY 2001-02, when Rule 8D of the IT Rules, was not yet in force. In the present case (AY 2008-09), Rule 8D of the IT Rules was applicable, and the assessee had made substantial investments that generated exempt income, which warranted allocation of expenses under Section 14A of the Act.

52.2. The assessee claimed a deduction for a provision of leave encashment, citing past actuarial valuation and judgments including *Exide Industries Ltd.* by the Hon'ble Calcutta High Court [292 ITR 470]. The CIT(A) noted that the Hon'ble Supreme Court had admitted a Special Leave Petition (SLP) against the *Exide* decision, indicating that its applicability was in question. Additionally, the CIT(A) highlighted that the facts of *Exide* differed

significantly as no proper disclosure was made in the books for leave encashment provisions by the assessee.

53. During the course of hearing before us, the AR asserted that the assessee had clearly disclosed the leave encashment provision in the financial statements and as a note in the return. They maintained that there was no concealment or misstatement of income related to this provision. The AR further stated that the assessee, during the penalty and appellate proceedings related to quantum, cited Hon'ble Calcutta High Court's decision in *Exide Industries Ltd.* to support the deductibility of the leave encashment provision and contended that any penalty was therefore unwarranted since the claim was based on an established precedent. The AR sought relief on the grounds that their claims were made in good faith and based on reasonable interpretations. The AR claimed that the CIT(A) erred by not adhering to binding judicial precedents, specifically:

- **CIT vs. Exide Industries Ltd.:** The Hon'ble Calcutta High Court held that provisions for leave encashment could be allowed as a deduction. Although an SLP was admitted against this decision, the assessee argues that the CIT(A) should have followed this precedent.
- **CIT vs. Nalwa Sons Investments Ltd.:** The Hon'ble Supreme Court held that where tax is paid under Minimum Alternate Tax (MAT) provisions (Section 115JB of the Act), penalty under Section 271(1)(c) of the Act may not apply, as adjustments under MAT do not involve concealment or furnishing of inaccurate particulars.
- **CIT vs. Reliance Petro Products Ltd.:** The Hon'ble Supreme Court ruled that mere disallowance of a claim does not constitute furnishing of inaccurate particulars of income.

54. The assessee argues that the CIT(A) failed to follow these judgments, disregarding settled legal principles. The AR placed reliance on the

judgement of Hon'ble Delhi High Court in the case of **CIT Vs. Nalwa Sons Investment Ltd. [2010] 194 taxmann.com 387**. The AR also placed on record the decision of Hon'ble Supreme Court which dismissed the petition against this judgement of Delhi High Court in the case of Nalwa Sons Investment Ltd. **[2012] 21 taxmann.com 184 (SC)**. The AR also placed reliance on the circular issued by the CBDT having No.25/2015 dated 31-12-2015 which clarified that penalty u/s 271(1)(c) cannot be imposed with reference to additions / disallowances made under normal provisions of the Act.

55. The DR relied on the order(s) of CIT(A).

56. Upon careful consideration of the facts and arguments presented, it is evident that the penalties imposed under Section 271(1)(c) of the Act, by the AO and subsequently confirmed by the CIT(A) do not stand on firm legal grounds. The assessee's claims, particularly regarding leave encashment, disallowance under Section 14A of the Act, and TDS defaults, are based on bona fide interpretations of legal provisions, and the reliance on established judicial precedents further strengthens the case.

56.1. The assessee had made full disclosure of the leave encashment provision in its financial statements and as a note in the return of income. The records show that the provision was calculated based on actuarial valuation, indicating a genuine attempt to recognize this liability in the accounts rather than any intent to evade taxes. The assessee's reliance on the Hon'ble Calcutta High Court's decision in *CIT vs. Exide Industries Ltd. [292 ITR 470]* to support the deductibility of the leave encashment provision was reasonable and in good faith. Although an SLP was admitted against this decision, it

remains a binding precedent until the Hon'ble Supreme Court rules otherwise. Therefore, the assessee's claim was based on a plausible interpretation of law, which should not attract a penalty under Section 271(1)(c) of the Act.

57. The CIT(A) erred in not following the principles laid down in key judicial precedents, which clarify that a mere disallowance of a claim does not automatically lead to the levy of a penalty under Section 271(1)(c) of the Act. In case of **Reliance Petro Products Ltd. [322 ITR 158 (SC)]**, the Hon'ble Supreme Court held that disallowance of a claim, by itself, does not imply furnishing of inaccurate particulars. The assessee's reliance on this judgment supports its contention that penalty should not be imposed simply due to a disallowance. In case of **Nalwa Sons Investments Ltd. [194 taxmann.com 387 (Delhi HC) and 21 taxmann.com 184 (SC)]**, the Hon'ble Supreme Court upheld the Delhi High Court's decision that penalties under Section 271(1)(c) of the Act are not leviable in cases, where tax liability is computed under the MAT provisions of Section 115JB of the Act. Since the assessee is subject to MAT, any adjustments made under normal provisions should not lead to a penalty, in line with the precedent set by **Nalwa Sons**. The assessee's reliance on CBDT Circular No. 25/2015 dated 31-12-2015, which clarifies that penalty under Section 271(1)(c) of the Act should not be imposed with reference to disallowances made under normal provisions when income is assessed under MAT, is valid and directly applicable. This circular supports the assessee's argument that the penalty is not warranted under the circumstances of the case, as the tax liability is ultimately governed by the MAT provisions.

57.1. While the CIT(A) has emphasized that Section 271(1)(c) of the Act imposes a civil liability without the need to establish *mens rea*, it is important to note that the imposition of penalty requires the presence of “inaccurate particulars” or “concealment of income.” In the present case, the disallowances for leave encashment, Section 14A of the Act, and TDS were not due to any concealment or furnishing of inaccurate particulars but rather due to differing interpretations of law. The Hon’ble Supreme Court in the case of *Reliance Petro Products Ltd.* has clarified that mere rejection of a legal claim does not constitute inaccurate particulars. Thus, the civil nature of the penalty does not automatically justify its levy in situations where the claims were made in good faith and were supported by judicial precedents.

57.2. The CIT(A) applied the decision in the case of *Sri Gokulam Hotels India Pvt. Ltd.*, which upheld the penalty under Section 271(1)(c) of the Act despite the *Nalwa Sons* ruling. However, this decision does not apply here, as the facts and the legal position under MAT in the present case are distinct. The reliance on *Sri Gokulam Hotels* by the CIT(A) was, therefore, misplaced and does not override the binding Hon’ble Supreme Court decision in the case of *Nalwa Sons*.

57.3. The AO’s basis for the penalty under Section 271(1)(c) of the Act rests on the assumption of inaccurate particulars or concealment. However, the records reflect that the assessee consistently disclosed its claims in the financial statements and made provisions in a transparent manner. The CIT(A) has not demonstrated that the assessee’s claims were without merit or intended to mislead. The claims for deductions, though disallowed, do not

amount to concealment or inaccuracy under the standards set by the Hon'ble Supreme Court.

58. In light of the above findings and the judicial precedents supporting the assessee's case, it is concluded that the penalty under Section 271(1)(c) of the Act is unjustified in both AY 2007-08 and AY 2008-09. The appeals are allowed in favour of the assessee, and the penalties levied for these years are directed to be deleted.

59. In the combined result, the appeals are decided as tabulated below:

<b>A.Y.</b>	<b>ITA No.</b>	<b>Type of Appeal</b>	<b>Result</b>
2009-10	IT(SS) A 1746/Ahd/2016	Assessee	Partly Allowed
2010-11	IT(SS) A 1747/Ahd/2016	Assessee	Allowed
2011-12	IT(SS) A 1748/Ahd/2016	Assessee	Partly Allowed
2012-13	IT(SS) A 1749/Ahd/2016	Assessee	Allowed
2015-16	ITA 1528/Ahd/2018	Revenue	Dismissed
2008-09	ITA 2036/Ahd/2011	Assessee	Partly Allowed
2008-09	ITA 2353/Ahd/2014	Revenue	Dismissed
2008-09	ITA 245/Ahd/2016	Revenue	Dismissed
2009-10	ITA 246/Ahd/2016	Revenue	Dismissed
2010-11	ITA 247/Ahd/2016	Revenue	Dismissed
2011-12	ITA 248/Ahd/2016	Revenue	Dismissed
2012-13	ITA 249/Ahd/2016	Revenue	Dismissed

2007-08	ITA 2603/Ahd/2013	Assessee	Allowed
2008-09	ITA 2604/Ahd/2013	Assessee	Allowed
2007-08	ITA 2815/Ahd/2011	Assessee	Partly Allowed
2007-08	ITA 3269/Ahd/2011	Revenue	Dismissed
2013-14	ITA 796/Ahd/2018	Revenue	Dismissed
2014-15	ITA 797/Ahd/2018	Revenue	Dismissed

Order pronounced in the Open Court on 22<sup>nd</sup> November, 2024 at Ahmedabad.

Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER

Sd/-  
(MAKARAND V. MAHADEOKAR)  
ACCOUNTANT MEMBER

अहमदाबाद/Ahmedabad, दिनांक/Dated 22/11/2024

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

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 , राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad