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

BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

I.T.A. No. 348/Ahd/2020
(Assessment Year: 2016-17)

Gujarat State Fertilizers & Chemicals Ltd., PO Fertilizernagar, Vadodara, Gujarat-391750 [PAN : AAACG 7996 C]	Vs.	The Assistant Commissioner of Income-tax, Circle-1(1)(1), Vadodara

I.T.A. No.538/Ahd/2020 & CO No. 9/Ahd/2021
(Assessment Year: 2016-17)

The Deputy Commissioner of Income-tax, Circle 1(1)(1), Vadodara	Vs.	Gujarat State Fertilizers & Chemicals Ltd., PO Fertilizernagar, Vadodara, Gujarat-391750 [PAN : AAACG 7996 C]
(Appellant)	**..**	**(Respondent & Cross-Objector)**

Assessee by :	Shri Manish J. Shah, Shri Jimi Patel and Shri Rushin Patel, ARs
Revenue by:	Shri Durga Dutt, CIT (DR) & Shri B.P. Srivastava, Sr. DR

Date of Hearing	27.11.2024
Date of Pronouncement	17.12.2024

O R D E R

PER DR. B.R.R. KUMAR, VICE-PRESIDENT :

These two appeals - one filed by the assessee being ITA No.348/Ahd/2020 and other filed by the Revenue being ITA No.538/Ahd/2020, are cross appeals which are directed against the order of learned Commissioner of Income-tax (Appeals)-1, Vadodara ("CIT(A)" in short) dated 04.03.2020 for Assessment Year 2016-17 and the same are

being disposed of along with Cross Objection filed by the assessee being CO No.9/Ahd/2021.

ITA No. 348/Ahd/2020 – Assessee's appeal

2. The Assessee has taken following grounds of appeal:-

"1. The order passed by the learned CIT(A) is erroneous and contrary to the provisions of law and facts and therefore requires to be suitably modified. It is submitted that it be so held now.

2. The learned CIT(A) erred on facts and in law in upholding disallowance of administrative expenditure of Rs. 2,50,39,551 made by the Assessing Officer ("AO") in accordance with Rule BD of the Income-tax Rules, 1962 ("the Rules") read with Section 144(2) of the Income-tax Act, 1961 ("the Act"). It is submitted that it be so held now.

3. The learned CIT(A) erred on facts and in law in confirming the disallowance/ capitalization of interest of Rs. 25,22,37,355 as allegedly attributable to Capital Work- in-Progress (CWIP) made by the AO. It is submitted that it be so held now.

4. The learned CIT(A) erred on facts and in law in confirming the disallowance of Rs. 40,21,000 under Section 35(2AB) of the Act. It is submitted that it be so held now.

5. The learned CIT(A) erred on facts and in law in confirming the disallowance of amount of Rs. 1,51,29,735 as expenses incurred on Corporate Social Responsibility. It is submitted that it be so held now.

6. The learned CIT(A) erred on facts and in law in upholding the action of AO in not allowing contribution of Rs. 2,85,00,000 to GSFC Education Society under Section 80G of the Act. It is submitted that it be so held now."

ITA No. 538/Ahd/2020 – Department's appeal

3. The Revenue has raised following grounds of appeal:-

"1. (1) (a) Whether on the facts and in the circumstances of the case, the learned CIT(A) erred in deleting the disallowance of Rs.1,78,76,443/- under section 8D(2)(ii) without appreciating the fact that the assessee could not link its investment with its own fund?

(1)(b) On the facts and in the circumstances of the case, the learned CIT(A) erred in deleting the disallowance of part of interest under section 14A by not following the decision of Hon'ble Supreme Court in the case of Maxopp Investment Ltd. v. CIT(Civil Appeal No.104-109 of 2015) wherein it is held that when funds utilized by the assessee are mixed funds, then principles of apportionment is applicable.

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

4. The brief facts of the case are that the Assessee is engaged in the business of manufacturing and selling of fertilizers and chemicals. The Assessee filed its return of income on 29.11.2016 declaring income of Rs.4,53,30,15,020/- and book profit of Rs. 5,38,85,05,347/- and paid tax on normal income while filing return of income. The Assessing Officer has passed the assessment order under Section 143(3) of the Act making several additions in the normal computation of total income and book profit which resulted into a total disallowance of Rs. 54,57,00,943/- under normal provisions of the Act, and accordingly calculated tax liability of the assessee.

5. Aggrieved by the order of the Assessing Officer, the assessee filed appeal before the Ld. CIT (A) who has given partial relief to the assessee.

6. Aggrieved by the order of the Ld. CIT(A), the assessee and Revenue, both are in appeal before the Tribunal. The Revenue is in appeal against the

reliefs allowed by the Ld. CIT(A) while the assessee is in appeal against the additions sustained by the Ld. CIT(A).

7. Heard both the parties and perused the material available on record.

ITA No. 348/Ahd/2020 – Assessee's appeal

Disallowance u/s 14A :

8. On going through the record, we find that in respect of disallowance of interest expenditure under Section 14A read with Rule 8D, the Hon'ble Gujarat High Court, in assessee's own case, for AY 2009-10 & 2010-11 in Tax appeal No. 901/2018 & No. 99/2019 held that where interest free own funds substantially exceed the investment in exempt income yielding securities, there was no justification in making disallowance of interest expenditure. In respect of disallowance of administrative expenditure, Hon'ble Gujarat High Court has deleted the disallowance computed in accordance with Rule 8D and has restricted the disallowance of administrative expenditure to Rs. 15,00,000/-. In the absence of any change in the facts and the legal position, respectfully following the decision of the Hon'ble High Court, we hold that no disallowance on account of expenditure on interest is called for. With regard to the disallowance on account of administrative expenditure, when pointed out, the Ld. AR fairly submitted that there has been slight rise in the administrative expenses owning to the rise in the salary of staff, the administrative expenses disallowable could be Rs.17,50,000/-. The Ld. DR could not controvert the proposition. Hence, the disallowance is restricted to Rs.17,50,000/-.

Appeal of the assessee on this ground is partly allowed.

Capitalization of interest-WIP :

9. The Assessing Officer computed the amount of capitalization of interest expenditure to be Rs. 48,41,34,214/- in excess of actual interest by taking into account notional interest rate 12% on the closing balance of CWIP of Rs. 40,344.52 lakhs. The Ld. CIT(A) upheld the disallowance made by the AO on account of disallowance of interest debited treating the same as capitalization of interest attributable to Capital Work in Progress.

9.1 The Ld. AR submitted that the assessee had closing balance of Capital Work in Progress amounting to Rs. 40,344.52 lakhs as on 31/03/2016 and had incurred total interest amounting to Rs. 25,22,37,355/- during the year under consideration. The interest expenditure debited to the statement of Profit and Loss comprises of interest on short-term borrowings and interest on term loan, being External Commercial Borrowings. It was argued that External Commercial Borrowing (ECB) are taken only for the purpose of acquisition of shares of a foreign company which are not secured by charge on immovable properties, movable assets and hypothecation of movable properties, both present and future. It was submitted that the assessee had already disallowed the interest on term loan while computing the income under head 'Profits and gains from business or profession' and had claimed the same while computing income under head 'Income from Other Sources'. Disallowing the interest on ECB once again will lead to double disallowance.

9.2 Ld. AR argued that the assessee only has a cash credit facility which is secured by hypothecation of stock of raw materials, finished products, packing materials, general stores, spares, book debts etc. and not against

the immoveable properties of the assessee and the Assessing Officer has not provided any basis in respect of disallowance on interest on such short-term borrowings. It was argued that the total interest received by the Company exceeds the total amount of interest paid, thereby there is no net interest expenditure incurred by the assessee that should be allocated to CWIP. The Ld. AR submitted that where own funds exceed the amount of investments/capital expenditure, the presumption is that own funds have been utilized for making investments/capital expenditure.

9.3 Reliance is placed on the decision of the jurisdictional High Court in Tax Appeal No. 900 of 2018 in assessee's own case for AY 2008-09. We find that the judgment was delivered in the context of 14A.

9.4 On the other hand, Ld. DR, Shri Durga Dutt vehemently argued that the provisions of the Act are very clear with regard to capitalization of interest. The Ld. DR argued that the loans taken by the assessee and funds available with the assessee are mixed one and there is no nexus established by the assessee with regard to loans and utilization. Hence, the Revenue Authorities have rightly capitalized interest on Capital Work in Progress. The Ld. DR argued that assessee didn't deny the fact of having mixed funds. With regard to placing of reliance on the decision of Hon'ble Supreme Court in the case of Reliance Utilities (supra) and other decisions for the proposition that if own funds are more than the investments the presumptions should be that the same funds were used, it was argued that the decision rendered were in the contest of Sec.36(1) (iii) of the Act. It was argued that the assessee was projecting the net increase in working capital and short-term borrowings to claim that there was no interest cost to

capital work in progress which cannot be accepted. Concluding his arguments, the Ld. DR submitted that the assessee failed to prove the fact of not borrowing funds or not utilizing the funds for capital work in progress with any evidence, hence the addition made by the Assessing Officer be upheld.

9.5 We have gone through the facts on record. We find that the assessee had term loan of External Commercial Borrowing (ECB) taken for acquisition of shares of a foreign company, namely, Kamalyte Resources Inc., Canada and the loan is secured by pledge on shares of the said company. The Assessee also had as short-term loan from Gujarat State Financial Services Ltd. for a period of 90 days for the purpose of financing working capital. Further, it can be found from the record that the assessee had cash credit account, overdraft facility, commercial paper, buyers' credit, bill discounting, etc. for the purpose of financing working capital.

9.6 We have examined the details of the loans taken, nature & purpose of utilization and the payment of interest by the assessee. The details are as under:

Particulars of Interest Expense	Amount in Rs.	Nature and Purpose
Interest - Inter Corp. Deposit (Short Term - 90 days)	3,83,60,656	For Working Capital
Interest - Short Term Deposit	1,05,34,019	Overdraft Interest for working capital
Interest On Cash Credits Charged	6,13,06,364	CC Interest for working capital
Interest - Sales Bill Discount	21,84,045	Interest on Bill Discounting - working capital

Interest - Purchase Bill Discount	2,65,75,802	Interest on Bill Discounting - working capital
Interest on C.P.	3,22,20,500	Interest on Commercial papers - working capital
Interest Rate Swap - Loss A/c	1,28,14,287	External Commercial Borrowing Interest
Interest Rate Swap - Floating Interest A/c	5,48,45,719	External Commercial Borrowing Interest
Total Interest on borrowings	23,88,41,392	
Interest On Income Tax Payment	5,93,080	Disallowed in computation of Income
Interest - Others	1,28,02,883	Majority is Interest on security deposit paid to customers
Total Interest on others	1,33,95,963	
Total Interest cost	25,22,37,355	

9.7 The provisions of the Act pertaining to capitalization of interest are as under:

> *"36(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in Section 28 –*
>
> *(i) &*
> *(ii)** ** ***
>
> *(iii) the amount of the interest paid in respect of capital borrowed for the purpose of the business or profession:- Provided that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset for extension of existing business or profession (whether capitalized in the books of account or not) for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use,* ***shall not be allowed*** *as deduction."*

9.8 From the detailed examination of the borrowings of the assessee and payment of interest since no loan amount has been raised and utilized for the purpose of Capital Work in Progress, no addition is called for in this account. The notional interest calculated by the Assessing Officer computing 12% on the closing balance of CWIP cannot stand test of legal scrutiny.

In the result, this ground of appeal of the assessee is allowed.

Disallowance of CSR Expenses:

10. The Assessing Officer disallowed expenses of Rs.1,51,29,735/- on account of CSR Expenses on the grounds that the provisions of Income-tax Act, section 37(1) cannot be invoked for claiming such expenses. The said expenses consist of following items :-

Particulars	Amount (Rs.)
Rejuvenation of Ajwa Garden	44,83,461
Cultural events, film screening and awareness	23,83,000
Digging of pits and soil refilling	9,41,350
Education and related activities in surrounding areas	3,82,110
Upliftment of farmers	4,82,075
Other miscellaneous expenditure	64,57,739
Total	1,51,29,735

10.1 Before us, the Ld. AR argued that if there was to be an outright exclusion of CSR expenses from the scope of section 37(1), then the language of Explanation 2 would have been "*any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall be deemed to be not an*

expenditure incurred by the assessee for the purpose of the business or profession."

10.2 The Ld. AR succinctly argued that unlike Explanation 1, there is no phrase in Explanation 2 stating "*and no deduction or allowance shall be made in respect of such expenditure."* The Ld. AR submitted that the assessee is not in the business of making gardens, event organizing, education, etc. but are incurred for the purpose of its business. Therefore, the expenditure is also not adversely hit by Rule 4(1) of the Companies (Corporate Social Responsibility) Rules, 2014 as alleged by the Assessing Officer.

10.3 On the other hand, the Ld. DR relied on the order of the Ld. CIT(A). For the sake of ready reference, the operative portion of the relevant part of the order of the Ld. CIT(A) is reproduced hereunder:

> *"I have carefully considered the material facts of the case and the submissions of the assessee. First of all, the assessee claimed the entire expenditure being donations and contributions and debited the P & L Account. However, a major part of it was disallowed and added back by the assessee. The amount which was spent for the above was treated as the expenditure for business purpose and claimed as deduction before the AO. It is clear that the amounts were contributed or donated and hence claimed as incurred by the company. It is not made clear that the expenditure narrated above were spent by the company itself or contributed to other persons. The submissions given by the assessee are in general in nature and not established how such expenditure helped in business prospect of the company. No comparative study or report giving the improvement in business before and after the expenditure was met by the company was furnished to establish that the said expenditure was in fact helped the assessee in its business. The expenditure claimed to have been incurred were not incurred in the vicinity of the assessee company or in the residential complex of employees of the assessee company. It is fairly admitted by the*

company that the case laws relied upon by it were rendered before insertion of explanation 2 of section 37 of the Act. I have also gone through the decisions and found that they are not squarely applicable to the facts of the present case. The Hon'ble ITAT Mumbai in the case of Nicholas Piramal India Ltd. considered the fact of spending money for providing street lights on the road which leads to the assessee's factory, providing ambulance for meeting medical emergencies for residents of village Tarsadi and public garden improvement. The Hon'ble Tribunal followed the decision of the Hon'ble High Court of Madras in the case of Madras Refineries Ltd. and allowed such expense as expense for business purpose u/s 37(1) of the Act. The Hon'ble Madras High Court considered the expenditure of providing drinking water and establishing or improving schools meant for the residents of the locality in which the business was situated and held the same was allowable u/s 37(1) of the Act. The Hon'ble Tribunal considering the same fact allowed the deduction in the above said case. These facts are distinguishable compared to the facts of the present case. The expenditure claimed to have been incurred by the assessee was not in the vicinity/precinct of the business premises of the assessee. The assessee neither established not proved that the Ajwa Garden is abutting the factory premises or otherwise. The assessee also failed in giving the details of miscellaneous expenditure which is a major component and also digging of pits and soils and where such activity was undertaken. In view of these facts, the decisions of the Hon'ble Madras High Court and also the Hon'ble ITAT Mumbai cannot be applied to the facts of the case. Similarly, I have also perused the decision of the Hon'ble ITAT Chennai in the case of Velumanickam Lodge on which the assessee placed reliance and found the same is also not applicable to the facts of the case. In that case, the Ld. CIT(A) during the appellate proceedings, found some evidence as filed by the assessee with regard to getting contracts soon after the assessee agreed to construct the hockey stadium. Hence, the allowance was given by the Hon'ble Tribunal. In the present case, there is no such evidence, as stated above, filed by the assessee to prove that the business of the assessee increased subsequent to the said expenditure incurred by the assessee. Hence, this ratio is also not applicable to the facts of the case and all these case laws are rendered before insertion of explanation 2 of section 37(1) of the Act and hence, on this count also, these ratios cannot be applied to the facts of the case. Section 37(1) r.w. Explanation 2 clearly speaks that any amount spent by the

company towards CSR is not to be considered as the expenditure for the purpose of the business. The expenditure incurred by the assessee is in the nature of CSR and as per section 37(1) the same is not allowable as deduction. The Hon'ble ITAT Chennai in the case of Hyundai Motor India Ltd. (62 taxmann.com 42) held that the expenditure incurred by car-manufacturer on gifts of cars to State police department was held not an eligible expenditure under section 37(1) as it was found not incidental to carrying on business and there was no commercial expediency in incurring this expenditure.

The Hon'ble High Court of Kerala in the case of Wipro Ltd. (41 taxmann.com 190) held that where assessee claimed expenditure incurred for community development, in view of fact that it had not placed any materials on record in support of its claim of expenditure so as to apply test of commercial expediency, expenses incurred by assessee for community development was not allowable under section 37(1) of the Act. The relevant head note is as under:

> *"I Section 37(1) of the Income-tax Act, 1961-Business expenditure - Allowability of [community development) - Assessment years 1986-87 1987-88 and 1992-93- Assessee claimed expenditure incurred for community development in a backward area where their factory was situated Assessing Officer disallowed expenditure on ground that those were in nature of charity and was not connected with business Whether expenditure towards religious funds, charitable institutions, social clubs or for charity did not stand to test of commercial expediency Held, yes Whether since assessee had not placed any other materials on record in support of their claim of expenditure over community development, so as to apply test of commercial expediency, expenses incurred by assessee for community development was not allowable under section 37(1)- Held, yes*

The assessee has failed in establishing the facts to consider the said expenditure was meant for the purpose of business and hence, respectfully following the above decisions and material facts, the addition made by the AO is hereby confirmed and the ground raised by the assessee is dismissed."

10.4 We have gone through the facts of the issue and the legal position thereof. The Explanation 2 to section 37(1) provides that, *"any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013* ***shall not be deemed to*** *be an expenditure incurred by the assessee for the purpose of the business or profession."* It states that, CSR expenses shall not be deemed to be expenditure for the purposes of business. The language of the Act is very clear and unambiguous hence does not call for any interpretations of the statute or inferences contrary to the legislative intention.

In the result, the appeal of the assessee on this ground is dismissed.

Disallowance u/s 35(2AB) :

11. During the year, the assessee claimed weighted deduction under Section 35(2AB) of the Act on the revenue expenditure of Rs. 366.36 lakhs. However, as evident from Form 3CL dated 15.03.2017, the DSIR approved revenue expenditure of Rs. 326.15 lakhs. The Assessing Officer disallowed the amount of Rs.40,21,000/-, the difference between the revenue expenditure and the expenditure approved by the DSIR.

11.1 The Rule 6(7A)(b) of the Income-tax Rules, 1962 reads as under:-

[(7A) Approval of expenditure incurred on in-house research and development facility by a company under sub-section (2AB) of section 35 shall be subject to the following conditions, namely :—
.....
.....

(b) The prescribed authority shall submit its report in relation to the approval of in-house Research and Development facility in Form No.3CL to the Director General (Income-tax Exemptions) within sixty days of its granting approval:'

11.2 It was argued by the Ld. AR that owing to smallness of amount, the assessee did not approach the DSIR requesting for reason/justification as to why the revenue expenditure incurred for the approved DSIR facility is lower than that actually incurred by the company. It was argued that the provisions in respect of quantification of expenditure eligible for deduction under Section 35(2AB) were prescribed by modifying Rule 6(7A)(b) of the Income-tax Rules, 1962 by the IT (Tenth Amendment) Rules, 2016 w.e.f. 01.07.2016. Accordingly, the provision of the said rule is applicable from AY 2017-18 and onwards. The Ld. AR placed reliance on the orders of the Tribunal in the case of CIT v. Crompton Greaves [2019] 111 taxmann.com 338 (Mum.) & Cummins India Ltd vs. DCIT [2018] 96 taxmann.com 576 (pune).

11.3 On the other hand, Ld. DR relied on the order of the Ld. CIT(A).

11.4 We find that the orders quoted by the Ld. AR pertained to the period before the amendment brought with effect from 01.07.2016. Hence cannot be considered to be applicable to the present case as it pertains to AY 2016-17. We have examined the adjudication of the ld. CIT(A) on this issue which is as under:-

> *"This ground relates to the disallowance of an amount of Rs.40,21,000/- by holding that the DSIR has not confirmed such expenditure to be in the nature of scientific research eligible for deduction under section 35(2AB) of the Act.*

The AO allowed 100% of the expenditure and not allowed the weighted deduction.

The appellant submitted that for the AY 2016-17, there is no need or requirement to get certificate from DSIR on expenditure incurred towards scientific research. Rule 6(7A) (b) of IT Rules as amended were effective 01.07.2016 and hence, the certificate from the DSIR regarding expenditure is not mandated for the assessment year under consideration. The facility was already approved by DSIR which is the requirement for granting deduction including weighted deduction prior to the amendment and the appellant company fulfilled the said condition and hence, requested to delete the addition made by the AO. The appellant relied on the decision of the Hon'ble ITAT Mumbai and Pune as referred in its submission and stated that the addition made by the AO is not warranted.

I have carefully considered the facts of the case and provisions on the issue. Section 35(2AB) of the Act was amended by Finance Act 2015 and the amendment was with effect from 01.04.2016. As per sub section 3 of that section, from 01.04.2016, the company has to fulfill conditions with regard to maintenance of accounts and audit thereof and also furnish reports in the prescribed manner. Prior to the amendment, sub section 3 speaks about audit of accounts maintained for the facility. Rule 6 of IT Rules were amended with effect from 01.07.2016 to enable the provisions amended in section 35(2AB) of the Act were carried. Amendment to section 35(2AB) of the Act was a substantive amendment and the appellant was put to notice the requirement of the law to claim deduction under that section by virtue of Finance Act, 2015 w.e.f. 01.04.2016 well in advance. The requirement of maintenance of accounts and getting it audited and also furnishing report was brought in the statute and this in the knowledge of the appellant. Rules are procedural one and the enabling Rule was put in place w.e.f. 01.07.2016 and thereby the appellant was having enough time to adhere to the Rule and to claim the deduction as per that section. As per the amended Rule the appellant has to get the certificate even on the expenditure incurred on in house research and development facility from DSIR to claim deduction. The report is required to be submitted by the appellant to the concern authority before the due date for filing of return. In view of these facts, the expenditure claim of the appellant for the year under consideration has to be seen from the certificate given by the competent authority regarding the expenditure incurred and eligible to claim deduction including weighted deduction. Simply because the rules were notified on 01.07.2016, the appellant cannot take the stand that the expenditure incurred by it has to be allowed in toto

ignoring the expenditure certified by DSIR. The procedural law/rules must be applied to the pending assessment and hence, the Rules prescribed under Rule 6(7A) (b) of the Rule being a procedural one and the same is available during the pendency of assessment order, it is incumbent upon the AO to follow and apply the same while discussing the issue of allowability of deduction u/s 35(2AB) of the Act. The Hon'ble High Court of Punjab & Haryana in the case of Mrs. Manjula Sood(227 ITR 873) held that where there are any amendments or alterations in procedural law in course of assessment proceedings, altered procedural law would be applicable. Respectfully following the above decision and also having regard to the facts of the case, it is held that the appellant is not entitled to claim weighted deduction and the addition made by the AO is hereby confirmed. The ground raised by the appellant is hereby dismissed.

Having gone through the order of the Ld. CIT(A) in detail, we find no reason to interfere with the order of the Ld. CIT(A).

In the result, the appeal of the assessee on this ground is dismissed.

GSFC – Donation 80G / 37(1) :

12. The assessee has paid an amount of Rs.2,85,00,000/- to GSFC Education Society and claimed deduction u/s 80G, now would like to claim the same as business expenditure. A donation cannot be treated as business expenditure and the business expenditure do not partake the character "donation". The donations under 80G, the CSR expenses and the business expenses u/s 37(1) operate under different arena. Hence, we hold that the assessee is rightly eligible for claim of deduction under 80G as claimed and accounted in the books of accounts as per the final accounts drawn.

In the result, the appeal of the assessee is partly allowed.

ITA No. 538/Ahd/2020 – Revenue's appeal

13. **Disallowance u/s 14A :**

This ground has been dealt along with Ground No.1 of the assessee's appeal. In the result, the appeal of the Revenue on this ground is dismissed.

14. **Re-computation 115JB and 14A**

By now it has been settled by the order of the Special Bench of the ITAT in the case Vireet Investments Pvt. Ltd. (82 Taxman 415) that the disallowance made u/s 14A cannot be considered for calculating book profit u/s 115JB of the Act. Hence, the appeal of the Revenue on this ground is dismissed.

In the result, appeal of the Revenue is dismissed.

15. In the result, appeal of the assessee is partly allowed, appeal of the Revenue is dismissed and the Cross-Objection of the assessee is dismissed as infructuous.

Order is pronounced in the open Court on 17.12.2024

Sd/-	**Sd/-**
(SIDDHARTHA NAUTIYAL)	**(DR. B.R.R. KUMAR)**
JUDICIAL MEMBER	**VICE-PRESIDENT**

Ahmedabad; Dated 17/12/2024

***bbk*

आदेश की प्रतिलिपि ग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

True Copy

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