

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

**Before: DR. BRR KUMAR, VICE PRESIDENT
And Shri T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA Nos. 1740 & 1916/Ahd/2024
Assessment Year. 2014-15**

Jay Chemical Industries Pvt. Ltd. Jay House, Near Panchvati Circle, Ambawadi, Ahmedabad-380006 Gujarat PAN: AAACJ7628J	Vs	The Dy.CIT, Circle-2(1)(1), Ahmedabad
The Dy.CIT, Circle-2(1)(1), Ahmedabad (Appellant)	Vs	Jay Chemical Industries Pvt. Ltd. Jay House, Near Panchvati Circle, Ambawadi, Ahmedabad-380006 Gujarat PAN: AAACJ7628J (Respondent)

**Assessee Represented: Shri Nimesh Vayawala, A.R.
Revenue Represented: Shri B.P. Srivastava, Sr. D.R.**

Date of hearing : 04-02-2025
Date of pronouncement : 28-02-2025

आदेश/ORDER

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

These cross appeals are filed by the Assessee and the Revenue as against the appellate order dated 09.09.2024 passed by the Commissioner of Income Tax (Appeals), National Faceless

Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2014-15.

2. Brief facts of the case is that the assessee is a Company engaged in the Manufacturing and exporter of dyes and chemicals, intermediates and trading activity. For the Asst. Year 2014-15, assessee filed its Return of Income on 28-11-2014 declaring total income of Rs.63,30,63,520/-. The return was taken for scrutiny assessment and made the following disallowances:

(i) Travelling expenses	Rs.4,12,026/-
(ii) Commission paid to Non Resident	Rs.4,43,18,315/-
(iii) Disallowance u/s. 14A r.w. Rule 8D	Rs. 10,84,214/-
(iv) Late payment of PF & ESI	Rs.55,71,595/-
(v) Disallowance of Consultancy charges	Rs. 2,80,900/-

3. Aggrieved against the assessment order, assessee filed an appeal before Ld. CIT(A) who has partially deleted and partially confirmed the additions made by the A.O.

4. Aggrieved against the appellate order, both the Assessee and Revenue are in appeal before us raising the following Grounds of Appeal:

ITA No. 1740/Ahd/2024 (Assessee Appeal)

1. The Ld. CIT(A) has disallowed the amount of Rs. 7,94,113/- paid to Altoteks Tekstil. In fact the amount is in nature of discount through claimed as commission and is allowable.
2. The Ld. CIT(A) has erred in not admitting additional evidence in respect of Consultancy claim. He ought to have allowed the claim of Rs.2,80,900/-.

ITA No. 1916/Ahd/2024 (Revenue Appeal)

1."Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in deleting addition of Rs.4,43,18,315/- an account of disallowance of commission paid to non-residents, without appreciating the facts of the case?"

2. Whether on the facts and in the circumstances of the case and in law. the Ld.CIT(A) was justified in deleting addition of Rs.10,84,214/- on account of disallowance u/s 14A r.w.r 8D, without appreciating the facts of the case?"

3. The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary."

4. It is, therefore, prayed that the order of Ld. CIT(A) may be set aside and that of the Assessing Officer be restored?"

5. First we will deal with Department Appeal in ITA No. 1916/Ahd/2024. Ground No. 1 namely deleting addition of Rs.4.43 crores on account of disallowance of commission paid to non-residents. From perusal of Ld. CIT(A)'s order as against 19 foreign agents 16 agents are old parties which are deleted for the very same disallowance relating to the earlier Asst. Years 2012-13 and 2013-14 which were confirmed by the ITAT and Hon'ble High Court. Thus Ld. CIT(A) deleted the addition by observing as follows:

".....(c) The underlying issues have been carefully examined and it is noted that this issue of disallowance of commission payment to non-resident foreign parties/agents in terms of provisions of section 37 as well as provisions of section 40(a)(i) (on without prejudice basis) is a recurring issue in case of the assessee-appellant and the same is covered in its favour by the orders of-

First Appellate Authority for AY 2010-11, AY 2011-12, AY 2012-13 and AY 2013-14.

Hon'ble ITAT, Ahmedabad for AY 2010-11 & AY 2011-12 (in ITA Nos. 2693/Ahd/2013 and 305/Ahd/2015 & CO Nos. 01 & 41/2015] and AY 2012-13 & AY 2013-14 [in ITA No. 1724 & 2256/Ahd/2016 & 1725 & 2257/Ahd/2016)

Hon'ble High Court, Gujarat for AY 2010-11 in R/Tax Appeal No. 610/2019 (decision dated 24.09.2019] and for AY 2011-12 in R/Tax Appeal No. 620/2020 (decision dated 17.02.2020] .”

.....

At this juncture it is pertinent to note that during the year under consideration there were 19 foreign agents to whom commission of Rs. 4,43,18,315/- has been paid and there is no dispute on these issues. Out of these 19 parties, barring three parties as mentioned above, remaining 16 parties are old parties i.e., parties which are covered in A.Y. 2012-13 & A.Y. 2013-14 and such 16 parties cover aggregate amount of Rs.4,25,37,348/-. The deliberation w.r.t. these old parties is as under

(i) 16 Old parties which are covered in AY 2012-13 & AY 2013-14: In the orders for AY 2010-11 to AY 2013-14 the underlying issues in terms of provisions of section 40(a)(i) have been held in favour of the appellant by the First Appellate Authority as well as the Hon'ble ITAT, Ahmedabad after detailed discussion in the respective appellate orders. Similarly, the issues relating to provisions of section 37 have also been decided in favour of the appellant for AY 2012-13 and AY 2013-14 by the First Appellate Authority as well as the Hon'ble ITAT Ahmedabad after detailed discussion in the respective appellate orders. The Hon'ble High Court has also decided the appeals for AY 2010-11 and AY 2011-12 in favour of the appellant vide judgments dated 24.09.2019 and 17.02.2020 respectively. On the other hand, in the present year while making subject disallowance the Ld. AO has not brought on record any divergent factor as compared to the earlier years and contents of remand report [supra] also indicate that the same are in the nature of reiteration of the contents of impugned order and the same does not bear any material comments on the evidences available on record in the form of credit notes, payment details, emails details of respective foreign agents, etc. even though the decisions of the FAA and the Hon'ble ITAT, Ahmedabad in earlier years [supra) had duly considered such details while deciding the underlying issues in favour of the assessee w.r.t. provisions of section 37 and section 40(a)(i) of the Act. It has further been noticed that the Ld. AO has not brought anything on

record to show that the foreign agents/parties were having any permanent establishment in India or business connections in India.

.....

Hence, in absence of any divergent factors for the year under consideration and appreciating the fact that the Ld. AO has not doubted the corresponding payments made during the year under consideration to these 16 parties, as discussed above and after carefully considering the details available on record, respectfully following the binding decisions (supra) of the Hon'ble ITAT, Ahmedabad and Hon'ble High Court, Gujarat in appellant's own cases, the Ld. AO is directed to delete the disallowance w.r.t. commission payment made to the above mentioned 16 parties which are old parties.

5.1. Whereas the Ld. CIT(A) against remaining three parties, the commission amount aggregating Rs. 17,80,967/- was confirmed with detailed reasons. Thus the Ground No. 1 raised by the Revenue is devoid of merit and liable to be dismissed.

6. Ground No. 2 deleting the addition of Rs.10,84,214/- on account of disallowance u/s. 14A r.w.r. 8D of the Act. The findings of the Ld. CIT(A) that there is no dividend income earned by the assessee thereby deleted the addition by observing as follows:

“.....It has been recorded by the Ld. AO that the assessee had shown investment of Rs.4,51,81,510/- at the beginning of the year and Rs.4,52,32,143/- at the end of the year, hence he had show caused the assessee as to why disallowance u/s 14A should not be made. It has been further recorded that the assessee by relying on the decision of the Hon'ble ITAT in its own case for AY 2008-09 submitted that it had no exempt income and so there was no application of provisions of section 14A as per the decision of Hon'ble High Court, Gujarat. The impugned order indicates that the Ld. AO was not convinced and after recording the dissatisfaction, he proceeded to make disallowance u/s 14A as per Rule 8D.

.....

The appellant submitted the copy of the Acknowledgement of the ITR filed for the year under consideration and the complete set of ITR is still awaited. Nevertheless, respectfully following the binding decisions of the Hon'ble High Court, Gujarat in the cases of the appellant as mentioned above, the Ld. AO is directed to delete the disallowance u/s 14A of Rs.10,84,214/- if the claim of the assessee that there was no exempt income during the year under consideration is found to be correct from its ITR filed for the year under consideration. Last but not the least, on the issue of whether the amendment by virtue of Finance Act, 2022 to the provisions of section 14A is prospective in nature and would be applicable for AY 2022-23 and onwards or it is retrospective in nature, the Hon'ble ITAT, Guwahati in the case of ACIT v. Williamson Financial Services Ltd. [2022] 140 taxmann.com 164 (Guwahati Trib.) has held it to be retrospective in nature. However, the Hon'ble Delhi High Court in the later decision in the case of PCIT (Central) v. Era Infrastructure (India) Ltd. [2022] 141 taxmann.com 289 (Delhi) has held it to be prospective in nature. Similarly, the Hon'ble ITAT, Mumbai has held it to be prospective in nature in the case of ACIT Vs. K Raheja Corporate Services Pvt. Ltd. in ITA Nos. 2521 to 2527/Mum/2021."

6.1. We do not find any infirmity in the above order, it is undisputed fact that the assessee has not received any dividend during the Financial Year. The Ld. CIT(A) has considered that the amended provisions of Section 14A will be applicable prospectively and relied upon various case laws. Therefore the order passed by the Ld. CIT(A) does not require any interference. Thus the Ground raised by the Revenue is devoid of merit and liable to be dismissed.

7. In the result, **the appeal filed by the Revenue in ITA No. 1916/Ahd/2024 is hereby dismissed.**

8. Now we coming to the Assessee Appeal in ITA No. 1740/Ahd/2024. Ground No. 1 disallowance of Rs.7,94,113/- paid to M/s. Altoteks Tekstil, Turkey. The assessee claims it has been wrongly mentioned as commission payment to Altoteks Tekstil.

Whereas the transaction was actually in the nature of direct sale to the foreign party. The Ld. CIT(A) has considered the above submissions of the assessee and held as follows:

“.....In addition to this it is noted that the appellant has itself submitted that the underlying transaction actually represents direct sale and captioned amount represented discount expense and hence, as a corollary it was incumbent upon the appellant that the very claim of the amount of Rs.7,94,113/- as an expenditure item needed to be adequately substantiated by adducing relevant details duly backed by supporting evidences. However, the details on record clearly indicate that the appellant has merely mentioned that the same is nature of discount and no further specific details and evidences have been provided in support of such claims which would have enabled the process of ascertaining the correctness and veracity of such claim. Hence, in view of the above, the claim of expenditure of Rs.7,94,113/- hereto shown as Commission payment and now claimed as Discount on direct sale remains to be substantiated and hence CANNOT be accepted. Resulting in upholding the addition to the extent of Rs.7,94,113/-.”

8.1. Before us, Ld. Counsel filed a compilation of Paper Book running to 18 pages, whereas Ledger Account of M/s. Altoteks Tekstil, Copy of Invoices, Credit Notes and Form No. 15CA and 15CB filed by the Chartered Accountant are placed on record which were very much available before the lower authorities. However Ld. CIT(A) held that no documents are produced to substantiate the claim made by the assessee. Therefore in the Interest of Justice, we deem it fit to set aside the issue back to the file of Assessing Officer to verify the above documents and allow the same in accordance with law by providing opportunity of hearing to the assessee. Thus the Ground raised by the Assessee is partly allowed.

9. Regarding Ground No. 2 in respect of Consultancy Charges of Rs. 2,80,900/-. During the appellate proceedings, the assessee filed

additional evidences, therefore Ld. CIT(A) called for a Remand Report from the Assessing Officer. In the Remand Report, the A.O. after comparison of the copy of the bill amounting to Rs.2,80,900/- in the name of IDO Design Solution is found in parity with the amount of expenditure claimed by the assessee and not disputed the same. However Ld. CIT(A) held that First Appellate Authority has no jurisdiction to entertain additional ground on an issue which is agreed by the assessee during assessment proceedings, relying upon Bombay High Court judgment in the case of Rameshchandra & Co. vs. CIT reported in [1987] 35 taxmann.com 153 (Bombay).

9.1. This judgment is clearly distinguishable since the assessee has filed additional evidences in support of the agreed addition made before lower authorities. Perusal of the additional evidences clearly makes out a case that the addition is not sustainable as confirmed by the Ld. A.O. in his Remand Report.

9.2. The Hon'ble Supreme Court in the case of Roop Kumar vs. Mohan Thedani AIR 2003 SC 2418 held as follows:

"....That it is not open to a party to turn around and take a plea that no concession was given, which would amount to a case of sitting on the fence, which should not be encouraged. It was again stated that if really there was no concession, the only course open to the party was to move the concerned Court and not by approaching the appellate court.

15. In the decision reported in AIR 1982 SC 1249, the Hon'ble Supreme Court, while reiterating the said position, however, carved out an exception, which reads as under-

"4. Of course a party may resile and an Appellate Court may permit him in rare and appropriate cases **to resile from a concession was**

made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment." (Emphasis added)

16. The principles that emerge from the above decisions are:-

- a) Any concession made by a Counsel against the statutory provisions would be unauthorised and any order based on such erroneous concession should be recalled. (AIR 1998 SC 465);
- b) A wrong concession on a question of law made by a counsel is not binding on his client. Such concession cannot constitute a just ground for a binding precedent. (AIR 1998 SC 1681);
- c) If the learned counsel has made an admission or concession inadvertently or under a mistaken impression of law, it is not binding on his client and the same cannot enure to the benefit of any party,
- d) Courts are not to act on the basis of concessions but with reference to the applicable provisions;
- e) Any concession would have no acceptability or relevance while determining the rights and liabilities incurred or acquired in view of the axiomatic principle without exception, that there can be no estoppel against statute;
- f) Any wrong concession made by a counsel before the Court cannot bind the parties when statutory provisions clearly provide otherwise;
- g) A party may be allowed to revile and an Appellate Court may permit in rare and appropriate cases to resile from a concession made on a wrong appreciation of the law and had led to gross injustice though one may not call in question the very fact of making the concession as recorded in the judgment."

9.3. Respectfully following the above judicial precedents, there is no adverse comment given by the Ld. A.O., the addition on account of Consultancy Charges is hereby deleted.

10. In the result, **the appeal filed by the Assessee in ITA No. 1740/Ahd/2024 is partly allowed.**

Order pronounced in the open court on 28-02-2025

Sd/-
(DR. BRR KUMAR)
VICE PRESIDENT

Ahmedabad : Dated 28/02/2025

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

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

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

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद