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

**BEFORE DR. BRR KUMAR, VICE PRESIDENT &**
**SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.954/Ahd/2016
(Assessment Year: 2011-12)

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| Ambalal Sarabhai Enterprises Ltd.<br>Wadi Wadi,<br>Baroda-390023 | Vs. | Deputy Commissioner of Income Tax,<br>Circle-1(1)(1),<br>Vadodara |
| [PAN No.AABCA6893K] | | |
| **(Appellant)** | .. | **(Respondent)** |

I.T.A. No.1315/Ahd/2016
(Assessment Year: 2011-12)

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| Deputy Commissioner of Income Tax,<br>Circle-1(1)(1),<br>Vadodara | Vs. | Ambalal Sarabhai Enterprises Ltd.<br>Wadi Wadi,<br>Baroda-390023 |
| [PAN No.AABCA6893K] | | |
| **(Appellant)** | .. | **(Respondent)** |

I.T.A. No.1807/Ahd/2017
(Assessment Year: 2012-13)

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| Ambalal Sarabhai Enterprises Ltd.<br>Wadi Wadi,<br>Baroda-390023 | Vs. | Deputy Commissioner of Income Tax,<br>Circle-1(1)(1),<br>Vadodara |
| [PAN No.AABCA6893K] | | |
| **(Appellant)** | .. | **(Respondent)** |

I.T.A. No.2033/Ahd/2017
(Assessment Year: 2012-13)

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| Assistant Commissioner of Income Tax,<br>Circle-1(1)(1),<br>Vadodara | Vs. | Ambalal Sarabhai Enterprises Ltd.<br>Wadi Wadi,<br>Baroda-390023 |
| [PAN No.AABCA6893K] | | |
| **(Appellant)** | .. | **(Respondent)** |

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| **Appellant by :** | Shri Bandish Soparkar, A.R. |
| **Respondent by:** | Shri Alpesh Parmar, CIT DR &<br>Shri B.P. Srivastava, Sr. DR |

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| **Date of Hearing** | 19.06.2025 |
| **Date of Pronouncement** | 08.07.2025 |

O R D E R

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

These are appeals filed by the Assessee and Department against the order passed by the Ld. Commissioner of Income Tax (Appeals)-1 (in short "Ld. CIT(A)"), Vadodara vide orders dated 29.02.2016 & 05.06.2017 passed for Assessment Years 2011-12 and 2012-13. Since common facts and issues for consideration are involved for both the years under consideration, appeals for both the assessment years are being taken up together.

**We shall first deal with the assessee's appeal for Assessment Year 2011-12 in ITA No. 954/Ahd/2016**

2. The assessee has raised the following grounds of appeal:

*"1. Disallowance of other expenses of Rs. 1,46,692/- being 10% of total other expenses of Rs.14,66,923/-.*

*2. Book profit u/s. 115JB – Addition to Book profit in respect of disallowance u/s. 14A.*

*3. Salaries and wages of packart press division- Rs. 28,79,209/-.*

*4. Set off of unabsorbed brought forward business loss of earlier years against income from short term capital gains on depreciable assets computed u/s. 50 of the IT Act.*

*5. Debit balances written off of Rs. 21,90,554/-.*

*6. Adjustments for past provisions representing booking of expenditure of Rs. 36,39,473/-.*

*7. DPCO Liability of Rs. 5,24,57,203/-."*

**Ground Number 1: CIT(Appeals) erred in confirming the disallowance of 10% of "other expenses" of ₹ 1, 46, 692/-**

3. The brief facts of the case are that during assessment proceedings Assessing Officer's made ad hoc disallowance amounting to ₹6,64,656/-, which comprised ₹1,46,692/- being 10% of the total "other expenses" of ₹14,66,923/-, and the entire amount of telephone and vehicle expenses amounting to ₹3,82,083/-. Upon examination, the Commissioner (Appeals) referred to the earlier appellate order for the Assessment Year 1998-99 in the assessee's own case (Appeal No. CAB/I-67/2001-02), wherein a similar disallowance out of miscellaneous expenses had been upheld, but the disallowances made on account of telephone and vehicle expenses due to alleged use by the Directors were directed to be deleted. Relying on the rationale and consistency of the appellate orders from earlier years, the Commissioner (Appeals) upheld the disallowance out of miscellaneous expenses ₹1,46,692/- (being 10% of the total "other expenses" of ₹14,66,923/-) for the current year, while directing deletion of the disallowances relating to telephone and vehicle expenses.

4. Before us, the counsel for the assessee submitted that this issue has been decided in favour of the assessee in assessee's own case by Ahmedabad Tribunal in ITA No. 1772/Ahd/2015, and accordingly, in light of the decision in assessee's own case, the issue may be decided in favour of the assessee.

5. It would be useful to reproduce the relevant extracts of the judgement passed by ITAT Ahmedabad in assessee's own case in ITA number 1772/Ahd/2015, for ready reference:

*"26. The issue under these grounds involve the adhoc disallowances made by the AO for expenses claimed by the assessee, which were partly upheld or deleted by the CIT(A). The disallowed expenses include general administrative costs, such as vehicle, telephone, business promotion, conveyance, and other minor expenses. The assessee is in appeal against the ad hoc disallowance and the revenue is in appeal against the deletion of remaining disallowance made by the AO. The amounts involved in these appeals are tabulated as under:*

| *ITA No(s).* | *Assessment Years(A.Ys.)* | *Nature of Disallowed Expenses* | *Amount Disallowed by AO (Rs.)* | *Amount Challenged in the appeal (Rs.)* | *Type of Appeal* |
|---|---|---|---|---|---|
| *1290/Ahd/2016* | *2004-05* | *Other Expenses (5% adhoc)* | *457103* | *41,723* | *Assessee* |
| *1594/Ahd/2016* | *2004-05* | *Miscellaneous Expenses (5% adhoc)* | *457103* | *4,15,380* | *Revenue* |
| *1782/Ahd/2016* | *2005-06* | *Other Expenses (5% adhoc)* | *521826* | *1,73,973* | *Assessee* |
| *2066/Ahd/2016* | *2005-06* | *Miscellaneous Expenses (5% adhoc)* | *521826* | *3,47,853* | *Revenue* |
| *1291/Ahd/2016* | *2006-07* | *Other Expenses (5% adhoc)* | *1010079* | *5,09,192* | *Assessee* |
| *1783/Ahd/2016* | *2007-08* | *Other Expenses (5% adhoc)* | *757187* | *1,31,538 Assessee* | *1,31,538 Assessee* |
| *2067/Ahd/2016* | *2007-08* | *Miscellaneous Expenses (5% adhoc)* | *757187* | *6,25,649* | *Revenue* |

*27. The AO disallowed a portion of the expenses claimed under the Profit and Loss account on the grounds that they were either non-business in nature or lacked sufficient evidence to establish that they were incurred wholly and exclusively for*

*business purposes. The assessee claimed certain expenses under the head "Miscellaneous Expenses," but could not provide detailed break-up or evidence to substantiate that these expenses were wholly and exclusively for business purposes. The AO specifically highlighted that some expenses, such as Diwali expenses, distribution of sweets, and boni, were of a personal or non-business nature. The AO determined that 5% of the miscellaneous expenses, amounting to Rs.1,31,538, were not verifiable or relatable to business purposes. The AO also identified some expenses on telephones and on vehicle running and maintenance expenses. While the assessee provided a broad break-up of these expenses, detailed records, such as logbooks or other supporting evidence, were not maintained to establish the business purpose. Additionally, the AO noted that the Directors and Managing Director used the telephones and vehicles for personal purposes as conceded by the assessee. The assessee also submitted details identifying the Directors' telephone and vehicle expenses for each year under consideration.*

*28. The CIT(A) upheld the AO's disallowance of 5% of Miscellaneous Expenses and deleted the disallowance relating to Directors' telephone and vehicle expenses. The CIT(A) relied on the appellate order for the Assessment Year (A.Y.) 1998-99, where an identical issue had been raised, and the disallowance of 5% was upheld.*

*29. During the course of hearing before us the AR stated that the CIT(A) has relied on the appellate order for the A.Y. 1998-99, whereas the Coordinate Bench has decided in favour of the assessee in assessee's own case in ITA No.1461/Ahd/2001 (A.Y. 1996-97), ITA No.1597/Ahd/2001 (A.Y. 1998-99), ITA No. 933/Ahd/2016 (A.Y. 1999-2000).*

*30. The DR relied on the order of AO and argued that the expenditure claimed under these heads included personal or non-business elements, as the assessee failed to maintain records, such as logbooks, to substantiate exclusive business usage of telephone and vehicles and a portion of these expenses was not wholly and exclusively incurred for business purposes.*

*31. We have carefully considered the submissions of both parties and perused the materials available on record. The issue pertains to the disallowance of two components of expenses, Telephone and Vehicle Expenses relating to Directors and Miscellaneous Expenses, where 5% of the claimed amount has been disallowed on an ad hoc basis.*

*31.1. As regards to Telephone and Vehicle Expenses, we observe that the AO disallowed these expenses purely on assumptions without bringing any specific evidence on record to substantiate personal use of telephones or vehicles by the Directors. The Co-ordinate Bench, in the assessee's own case*

*31.2. The AO disallowed 5% of miscellaneous expenses on an ad hoc basis, citing unverifiability of some components such as Diwali expenses, distribution of sweets, and bonuses. The AO concluded that these expenses were not wholly and exclusively*

*for business purposes. The CIT(A) upheld the disallowance, relying on the appellate order for A.Y. 1998-99, where a similar disallowance was sustained.*

*32. We note that the issue of disallowance of telephone and vehicle expenses, as well as miscellaneous expenses, has been adjudicated in the assessee's favour by the Co-ordinate Bench in the ITA No. 1461/Ahd/2001 (A.Y. 1996-97), ITA No. 1597/Ahd/2001 (A.Y. 1998-99), ITA No. 933/Ahd/2016 (A.Y. 1999-2000).*

*32.1. We reproduce the relevant paras of the order of the Co-ordinate Bench in case of ITA No. 1461/Ahd/2001 for the A.Y. 1996-97 –*

> *"41. The Revenue's eleventh ground of appeal relates to disallowance effected @ 5% out of the assessee's. claim of expenditure on account of tapes and floppies (Rs.1.10 lacs), miscellaneous expenses (Rs.27.45 lacs), telephone expenses (Rs.70.88 lacs) and vehicle expenses (Rs.52.88 lacs), i.e.. at an aggregate of Rs.152.31 lacs. The expenditure stands disallowed on account of its un-verifiably. so that a pan thereof is inferred by the A.O as being not laid out for business purposes, estimating the non-business user at five per cent. In appeal, the same stood allowed by the Ld. CIT(A) on the basis of the assessee having properly substantiated the said expenditure, and following the decision by Tribunal cited before him.*
>
> *42. We have heard the parties and perused the material on record. The A.O. has we find adopted a global approach in the matter and brought about the instances where the assessee was unable to substantiate its claim of the relevant expenditure being incurred only and exclusively for business purposes. No presumption it is trite, can hold, and it is only on a determination of the discrepancies in the assessee's claim can be proceed to estimate the same by applying a percentage that he considers justified, also delineating the reason for the same, so that the appellate authority would while adjudicating on quantum, i.e., where required to do so, be aware of the same, and consider it on merits. Under the circumstances, we find no infirmity in the order of the Ld. CIT(A) and uphold the same on this ground."*

*33. The DR has been unable to point out any distinguishing features in the facts of the current year compared to the earlier years. Consistency in judicial decisions must be maintained, and there is no reason to deviate from the wellsettled findings in earlier years.*

*34. The appeal of the Revenue, challenging the deletion of disallowance of telephone and vehicle expenses relating to Directors, is dismissed and the appeal of the assessee, challenging the disallowance of 5% of miscellaneous expenses, is allowed."*

6. In view of the above, Ground No. 1 of the assessee's appeal is allowed.

**Ground Number 2: Disallowance under Section 14A**

7. Before us, the counsel for the assessee submitted that he shall not be pressing for this ground of appeal and accordingly, Ground No. 2 of the assessee's appeal is dismissed.

**Ground Number 3: CIT(Appeals) erred in upholding disallowance of salary and wages of employees of Packart Press Unit**

8. Before us, at the outset, the counsel for the assessee submitted that this issue may be set aside to the file of assessing officer, for de novo consideration, in light of similar observations made by Ahmedabad Tribunal in assessee's own case in ITA No. 1772/Ahmedabad/2015, vide order dated 03-12-2024.

9. It would be useful to reproduce the relevant extracts of the judgement passed by ITAT Ahmedabad in assessee's own case in ITA No. 1772/Ahd/2015, for ready reference:

> *"17. The assessee has challenged the disallowance of salary and wages paid to employees of the Packart Press Unit, which the AO and the CIT(A) disallowed on the grounds that the unit was closed and not operational. The disallowance of salary and wages for the Packart Press Unit has been raised across multiple appeals, as summarized below:*

| *ITA No.* | *Assessment Years (A.Ys.)* | *Salary and Wages Disallowed (Rs.)* |
|---|---|---|
| *1772/Ahd/2015* | *2002-03* | *41,92,427* |
| *1773/Ahd/2015* | *2003-04* | *39,47,285* |
| *1290/Ahd/2016* | *2004-05* | *33,86,757* |
| *1782/Ahd/2016* | *2005-06* | *32,79,890* |
| *1783/Ahd/2016* | *2007-08* | *30,71,067* |

| | | |
|---|---|---|
| *1291/Ahd/2016* | *2006-07* | *32,99,000 (Rs. 7,65,865/- claimed as other expenses relating to the said units is also part of the ground)* |

*17.1. The AO noted that the Packart Press Unit had been closed as per the order of the Specified Authority (Labour Commissioner). The statutory audit report indicated that no provision for salary, wages, or other expenses was made in the books of account since the unit was closed. The AO observed that the closure of the unit had been challenged by the employees' union before the Industrial Tribunal and while the Labour Commissioner's order approving the closure was set aside by the Tribunal, the matter was pending before the Hon'ble Gujarat High Court.*

*17.2. The AO concluded that no business activity was carried out by the Packart Press Unit during the relevant year. This conclusion was supported by the fact that the unit did not report any sales or services during the year and merely showed a profit in the computation of income. The AO relied on the principle that expenses can only be claimed as a deduction under Section 37(1) of the Act, if they are incurred "wholly and exclusively for the purposes of business or profession." Since the unit was closed and no business activity occurred, the expenses were deemed to lack a nexus with the business operations.*

*18. The CIT(A) noted that the Packart Press Unit was not entirely closed, as per the assessee's submission, but had no active sales or business operations during the year. The unit was kept in a ready-to-operate condition with fixed costs incurred for maintaining assets like rent, insurance, and bank accounts. The CIT(A) found that the closure had not been finalized, and thus the liability toward salary, wages, and other expenses could not be denied outright. The CIT(A) allowed the expenses for rent and insurance, recognizing them as necessary for maintaining the unit's assets and keeping it operational. Salary, wages, bonus, and PF contributions were disallowed due to the lack of evidence, non-crystallization of liabilities, and absence of any business operations in the Packart Press Unit during the relevant year.*

*19. The AR pointed out the facts argued before the co-ordinate bench in assessee's own case in earlier years which noted that the Packart Press Unit was not completely closed and continued to provide indirect support to other units by maintaining readiness to manufacture cartons, labels, and other packaging materials. It was further noted that the liability for salaries and wages, although contested by the employees' union, had arisen and was essential for maintaining the unit's operations. It was also stated that the matter relating to the unit's closure was sub judice before the Hon'ble Gujarat High Court, and the liability for salaries and wages should be allowed on the basis of accrual. The AR relied on the decisions of the Co-ordinate Bench's decision in the assessee's own case for earlier A.Ys., wherein similar issues were remanded to the AO for verification of facts and proper adjudication.*

*20. The DR relied on the orders of the AO and CIT(A), contending that there was no evidence to substantiate the claim that salaries and wages were paid or that liability for these expenses had crystallized during the relevant year.*

*21. We noted the Co-ordinate Bench's decision in earlier years which did not conclusively establish the allowability of the expenses but only remanded the matter for further verification. However, it was observed by the coordinate bench that the Packart Press Unit was not a distinct line of business but functioned as part of the assessee's overall operations, supporting other units. It was also observed that the allowability of salary and wage expenses depended on whether the liability had accrued during the relevant year based on contractual obligations and whether it was substantiated by evidence. The Co-ordinate Bench also concluded that assessee has not conclusively demonstrated that the liability for salaries and wages was accrued or crystallized during the relevant year and the assessee has not furnished sufficient evidence, such as salary registers or employee details, to establish the identity of the employees or the actual payment of salaries and wages. The CIT(A)'s observation that no such liability was accounted for in the books of account remains uncontested.*

*21.1. Considering the identical facts and the Co-ordinate Bench's decisions in earlier years, the issue is remanded back to the AO for verification of the facts whether the liability for salaries, wages, and related expenses accrued during the relevant year and whether the liability is supported by contractual obligations and substantiated by adequate evidence.*

*21.2. The AO is directed to give the assessee a reasonable opportunity of being heard and to decide the matter afresh in accordance with law, following the principles of natural justice. The ground of appeal is* ***partly allowed for statistical purposes.****"*

10. Accordingly, Ground No. 3 of the assessee's appeal is allowed for statistical purposes and the matter is directed to be set-aside to the file of Assessing Officer for de-novo consideration.

**Ground Number 4: CIT(Appeals) brought forward depreciation against income from short-term capital gains**

11. Before us, the counsel for the assessee submitted that this ground is relevant only if ground number 14A and ground related to brokerage charges are allowed in favour of the Revenue, in the appeal filed by the Department.

12. Since in the succeeding part of the judgement, we have dismissed the Department's appeal, relating to these Grounds of appeal, we are not adjudicating on this ground of appeal, being academic.

**Ground Number 5: CIT(Appeals) erred in not allowing balance written off of ₹ 21,90,554/-**

13. Before us, at the outset, the counsel for the assessee submitted that identical ground has been decided in favour of the assessee in assessee's own case by Ahmedabad Tribunal in ITA No. 1772/Ahd/2015. Accordingly, it was submitted that this ground of appeal may be decided in view of the observations made by Ahmedabad Tribunal in assessee's own case, as referred to above.

14. It would be useful to reproduce the relevant extracts of the judgement, for ready reference:

> *"55. The assessee has challenged the disallowance of a claim for bad debts amounting to Rs.1,48,66,928, which was upheld by the CIT(A]. The assessee has also raised an alternate claim for treating the write-off as a business loss under Section 28 of the Act. The amounts written off pertains to outstanding on account of sales of goods, deposits, and other transactions undertaken by the assessee in the course of business. The claim was disallowed by the AO and upheld by the CIT(A) on the grounds of insufficient evidence and nonfulfilment of conditions under Section 36(1)(vii) for bad debt deduction.*
>
> *56. During the course of hearing before us the AR stated that it is absolutely wrong on part of CIT(A) to hold that the assessee did not provide the details to show that these amounts were offered to tax in earlier years. The AR pointed out from the paper book that the details were submitted to both AO and CIT(A) which include list of amounts written off supported by ledger accounts in which narration clearly indicate invoice numbers, list of depot-wise details of amounts. The AR alternatively claimed the deduction as a business loss under Section 28, arguing that the outstanding*

*balances arose from regular business transactions. The AR Placed reliance on following judicial precedents for the alternate claim:*

- *Jackie Shroff Vs. ACIT, Range 16(1) – [2019] 101 taxmann.com 455 (Mumbai)*

- *Angel Commodities Broking [P.] Ltd. Vs. DCIT, Central Circle 46 – [2013] 40 taxmann.com 234 (Mumbai)*

- *Harshad J.Choksi Vs. CIT, Bombay City- VII [2012] 25 taxmann.com 567 (Bombay HC)*

*57. On the other hand, the DR placed reliance on the orders of lower authorities.*

*58. We have considered the contentions of the parties. The CIT(A) concluded that the conditions laid down under Section 36(1)(vii) read with Section 36(2) were not fulfilled as details of the parties associated with the debts were not furnished, the assessee failed to provide evidence that these amounts were offered to tax in earlier years. The alternate claim under Section 28 was denied as there was no evidence to substantiate that the loss occurred in the relevant assessment year.*

*58.1. The provisions of Section 36(1)(vii) of the Act, post-amendment w.e.f. 1.4.1989, require only that the debts be written off as irrecoverable in the books of accounts. The necessity to establish that the debt has become bad is no longer applicable. The Hon'ble Supreme Court in the case of T.R.F. Ltd. v. CIT [2010] 323 ITR 397 (SC) clarified that the write-off suffices to claim the deduction. The assessee demonstrated that the debts were written off in the books of accounts, fulfilling the primary condition under Section 36(1)(vii). Additionally, the condition under Section 36(2) of the Act, requiring that the debts be included as income in earlier years, is satisfied as some of the amounts represent outstanding balances arising from revenue transactions already taxed in prior years.*

*59. We have considered the judicial precedents relied on by the assessee. In case of Angel Commodities Broking (P.) Ltd. v. DCIT (supra), it was decided that the year of write-off, and not the year in which the debt becomes bad, is decisive for allowing the deduction. It was also decided in case of Harshad J. Choksi v. CIT (supra) that if bad debts are disallowed due to technical issues under Section 36(2), they may still qualify as a business loss under Section 28 of the Act.*

*59.1. The assessee's alternate plea to allow the deduction as a business loss under Section 28 was rejected by the CIT(A) on the grounds that the loss was not substantiated as having occurred in the relevant assessment year. The Coordinate Bench has decided in case of Jackie Shroff v. ACIT (supra) that Irrecoverable advances, if made for business expediency, may be allowed as business loss under Section 28 or Section 37(1) of the Act.*

*60. Considering the facts and circumstances, judicial precedents relied on, we conclude that the assessee has provided sufficient evidence to establish that the amount of Rs.1,48,66,928 was written off as irrecoverable in the books of accounts. The details submitted, including ledger accounts and depot-wise narrations, clearly indicate the amounts related to business transactions and were part of the income offered to tax in earlier years. Post-amendment (w.e.f. 1.4.1989), the act of writing off debts in the books is sufficient to claim deduction under Section 36(1)(vii) of the Act. The necessity to prove that the debts became bad is no longer applicable. The year of write-off determines the allowability of the deduction, irrespective of when the debt became bad. Wherever the amounts were not relating to income of earlier years and written off it is evident that the write-off pertains to outstandings arising out of regular business transactions, including sales of goods and deposits, which are incidental to the business. Hon'ble Bombay High Court in Harshad J. Choksi v. CIT (supra) observed that if bad debts are disallowed for technical reasons under Section 36(2) of the Act, they may still qualify as a business loss under Section 28. Similarly, the Mumbai bench of the tribunal in Jackie Shroff vs. ACIT(supra) held that irrecoverable advances made for business expediency may be allowable under Section 28 as business loss. The CIT(A)'s conclusion that the conditions under Section 36(1)(vii) of the Act were not met is factually and legally incorrect. The details and evidence provided by the assessee were not given due consideration, despite being placed on record. The rejection of the alternate claim under Section 28 on grounds of lack of evidence is also unsustainable, as the nature of the transactions clearly demonstrates their nexus to the business."*

15. In the result, Ground No. 5 of the assessee's appeal is allowed.

**Ground Number 6: CIT(Appeals) erred in not allowing adjustment for past provision arising or non-receipt of invoice/advice/intimation of ₹36.39 lakhs**

16. The brief facts of the case are that in this ground of appeal, the assessee has contested the Assessing Officer's decision to disallow adjustments for past provisions amounting to ₹36,39,473/-, which were made in earlier years due to non-receipt of advices, intimations, invoices and the like, but were actually received in the current year. The assessee submitted that these past provisions represented bona fide liabilities and had been disclosed for

disallowance in the return of income, alongwith notes to return of income. However, CIT(Appeals) was of the view that since the assessee had disallowed these expenses in the return of income filed for the impugned assessment year, it was an undisputed fact that the expenses had not materialized during the relevant year. Accordingly, the Commissioner (Appeals) held that no adjustment was warranted. On this basis, the assessee's claim was rejected and the additional ground of appeal was dismissed.

17. Before us, the counsel for the assessee drew our attention to relevant pages of the paper book to show/demonstrate that the expenses had in fact materialised/crystallised during the impugned assessment year.

18. Accordingly, looking into the assessee's facts and the evidence placed on record, in the interest of justice, the matter is hereby restored to the file of CIT(Appeals) for de novo consideration, in light of any evidence/material which the assessee would like to place on record.

19. In the result, Ground No. 6 of the assessee's appeal is allowed for statistical purposes.

**Ground Number 7: CIT(Appeals) erred in not allowing DPCO liability of Rs. 5,24,57,203/-**

20. The brief facts of in relation to this ground of appeal are that the assessee, a company in which the public is substantially interested and engaged in the manufacture and marketing of bulk drugs and formulations, filed its return of income for the relevant assessment year declaring a loss

under the normal provisions and a positive income under section 115JB of the Act. Along with the return, the assessee submitted documentation alongwith a note claiming a liability of ₹5,24,57,203/- under the Drugs (Prices Control) Order, 1995 (DPCO), arising from Government demand notices. The AO however omitted to deal with the DPCO liability claim in the assessment order. In appeal before CIT(Appeals), the assessee submitted that the DPCO liability related to alleged excess realization over ceiling prices fixed by the Government on scheduled drugs, specifically Oxyphenbutazone and Amoxycillin, during periods going back to the 1980s. The Government issued two demand orders-one dated 25.02.1999 for ₹84.13 lakh and another dated 27.01.2006 for ₹6.76 crore-demanding recovery of the alleged overcharge along with interest, and subsequently initiated recovery proceedings. The assessee challenged both demands before the Gujarat High Court, where interim orders were passed in 2008 and 2011 staying the recovery, subject to payment of ₹2.05 crore and ₹30.30 lakh in one case, and ₹2.62 crore along with a bank guarantee for a similar amount in the other. These payments were made and the liabilities were duly recognized in the books of account. The assessee submitted that it has consistently maintained that the liability is enforceable under the mercantile system of accounting, being based on quantifiable Government demand orders which have not been quashed or set aside. The High Court's interim relief only suspended recovery; it did not nullify the demands, which remained valid and enforceable, pending final adjudication. The assessee submitted that liability under DPCO, though disputed, has accrued and is allowable as per settled judicial precedents, including judgments from the Gujarat High Court and

Supreme Court, which have held that the accrual of liability under the mercantile system does not require final adjudication, nor is it contingent merely because it is under dispute. The assessee submitted that its Statutory auditors and tax auditors have not qualified the accounts in any manner regarding this liability, and the liability was booked based on judicial and Statutory developments. It was also argued before CIT(Appeals) that the mere challenge to the demand by filing petitions does not negate the accrual of liability. Therefore, the assessee submitted that the DPCO liability of ₹5.24 crore, having been crystallized in view of Government orders and compliance with High Court directives, should be allowed as a deduction.

21. However, CIT(Appeals) did not agree with the arguments of the assessee and dismissed the appeal of the assessee and noted that the Assessing Officer had not dealt with the issue of the DPCO liability in the assessment order. Upon examining the assessee's submissions, CIT(Appeals) found that the demand raised under the Drugs (Prices Control) Order (DPCO) had originated from financial years 1998-99 and 2005-06, amounting to ₹84.13 lakh and ₹6.76 crore, respectively. During financial year 2008–09, the assessee made part payments towards these demands as directed by the Hon'ble Gujarat High Court. Following these payments, an outstanding balance of ₹5.24 crore remained. In December 2011, the High Court ordered the assessee to pay 50% of this outstanding balance and furnish a bank guarantee for the remaining 50%. While the assessee claimed deduction of the entire outstanding amount in the computation of income for the current assessment year, it failed to specify when the balance payment was actually

made. The Commissioner observed that the assessee's position rested on the argument that since the DPCO demands had not been quashed by any Court and were thus enforceable, the liability had accrued and should be allowable under the mercantile system of accounting. The assessee relied on the Gujarat High Court's decision in the case of I.G. Gandhi Silk Mills Ltd. to support this claim. However, the Commissioner rejected this contention, holding that if the liability under DPCO were to be treated as a Statutory liability, then as per the judgments of the Supreme Court in *Bharat Carbon and Ribbon Manufacturing Co. Pvt. Ltd.* and the Gujarat High Court in the aforementioned case, the liability would have accrued in the years in which the demand was actually raised-namely, FY 1998-99 and FY 2005-06 and not in the current year. Hence, it could not be allowed as a deduction in the assessment year under appeal. Further, the Commissioner (Appeals) held that the liability in question was not in the nature of a Statutory liability eligible for deduction. Instead, it arose from the assessee's alleged violation of the DPCO by charging prices above the Government-mandated ceiling. Therefore, the demand was penal in nature, and under section 37 of the Income Tax Act, any expenditure incurred for a purpose prohibited by law cannot be treated as incurred for business purposes and thus is not allowable. Finally, even if the liability were assumed to be allowable and non-Statutory in nature, the Commissioner noted that it was still not deductible in the current assessment year because the dispute regarding the demand was still pending before the High Court. Relying on the Ahmedabad Bench of the ITAT's decision in the case of *State Bank of Saurashtra*, the Commissioner held that in cases involving contractual or disputed liabilities, deduction can only be

claimed upon final resolution—either through an amicable settlement or a judicial determination. Therefore, under all possible interpretations, the deduction claimed by the assessee was held to be inadmissible in the relevant assessment year, and the ground of appeal was dismissed.

22. The assessee is in appeal before us against the order passed by CIT(Appeals) dismissing the appeal of the assessee. On going through the submissions of the assessee and the Ld. DR before us, we observe that the present appeal by the assessee is directed against the order of CIT(Appeals) in relation to the disallowance of ₹5,24,57,203/- claimed by the assessee as liability under the Drugs (Prices Control) Order, 1995 ("DPCO"). The assessee, along with its return of income, furnished a note claiming deduction of ₹5.24 crore as accrued liability under DPCO, arising from Government demands issued for alleged overcharging of prices on sale of scheduled drugs, namely Oxyphenbutazone and Amoxycillin, sold during the years 1981 to 1987. Two specific demand orders were issued by the Department of Chemicals and Petrochemicals: one dated 25.02.1999 for ₹84.13 lakh and another dated 27.01.2006 for ₹6.76 crore. These demands were challenged by the assessee before the Hon'ble Gujarat High Court through Special Civil Applications (SCA No. 9066/2008 and SCA No. 9067/2008), and recovery was stayed by interim orders dated 24.07.2008 and 31.12.2011, subject to partial payments and furnishing of bank guarantees. The assessee paid ₹2.05 crore and ₹30.30 lakh against the demands in 2008, and later a sum of ₹2.62 crore in 2011, along with a bank guarantee for the remaining amount. These transactions were duly accounted for in the books and reflected in the audited

financial statements. The Assessing Officer, however, did not discuss this claim at all in the assessment order despite the assessee having placed on record relevant details. In the appellate proceedings before us CIT(Appeals), the assessee submitted that under the mercantile system of accounting, once a liability is determinable and enforceable, it accrues irrespective of whether it is disputed or finally adjudicated. The assessee relied on several judicial precedents including *IG Gandhi Silk Mills Ltd.*, *National Newsprint & Paper Mills Ltd.* [1978] 114 ITR 172 (MP), *Ballarpur Industries Ltd.* [2017] 84 taxmann.com 295 (Bom), and *Om Metals & Minerals* [2015] 373 ITR 406 (Raj.), to argue that where the sale proceeds have been taxed at full value, any consequential enforceable liability must also be allowed in the same or corresponding year to ensure a fair and just computation of income. The assessee also cited the case of *CIT v. Shree Digvijay Cement Co.* and *CIT v. Excel Industries Ltd.* to argue that booking of liability on the basis of High Court directions and binding demand orders constitutes accrued liability, even when disputed. Despite this, the CIT(A) dismissed the assessee's claim, holding that the liability, if at all allowable, accrued in the years in which the demands were raised (i.e., FY 1998–99 and FY 2005–06), and not in the current year. The CIT(A) further opined that the demand was penal in nature, arising from alleged violations of DPCO, and hence hit by the Explanation to section 37(1) of the Act. Lastly, it was held that even if the liability were not penal, it remained disputed and hence not allowable unless finally adjudicated. On going through the facts of the assessee's case, we are unable to concur with the findings of the CIT(A). Firstly, the consistent position in law, as affirmed in multiple decisions including **Bharat Earth Movers v.**

**CIT [2000] 245 ITR 428 (SC),** is that a liability becomes allowable when it accrues, i.e., when the assessee incurs an enforceable obligation. In the present case, we note that the liability is backed by Government demand notices and further confirmed through interim High Court directions. Though disputed, the liability is neither unascertainable nor contingent in nature. The payments made and bank guarantees furnished constitute sufficient crystallization of the liability. Secondly, the characterization of the DPCO liability as penal is unacceptable. The demand is not for breach of law in the criminal or punitive sense but for recovery of amounts that the Government alleges were realized in excess of controlled prices. Courts have distinguished such restitutionary demands from penal levies. This distinction has been upheld in Bombay High Court in **CIT v. GlaxoSmithKline Pharmaceuticals Ltd. [2014] 49 taxmann.com 320**, where DPCO liabilities were allowed as deductible expenses. Thirdly, the assessee has been following the mercantile system of accounting, under which liabilities are recognized when they accrue, not when they are paid. The timing of payments or final judicial resolution does not affect the accrual of the liability when it is otherwise enforceable. The Department has not brought on record any evidence to suggest that the liability is bogus, contingent, or not incurred wholly and exclusively for business. Lastly, we find merit in the assessee's submission that the Revenue cannot on the one hand tax the gross sales including the overcharged price and on the other disallow the consequential liability imposed by the same statute (DPCO) governing such pricing. The doctrine of real income and principles of matching expenditure with income must be applied in a rational and fair manner. In view of the above discussion

and considering the facts, documents, judicial precedents, and Statutory accounting principles, we hold that the liability of ₹5,24,57,203/- claimed by the assessee under DPCO has validly accrued during the relevant assessment year and is allowable as a deduction under section 37(1) of the Act.

23. In the result, Ground No. 7 of the assessee's appeal is allowed.

**Now we shall come to Department's appeal in ITA No. 1315/Ahd/2016**

24. The Department has raised the following Grounds of Appeal:

> *"1. "On the facts and circumstances of the case and in law, the Ld, CIT(A) erred in allowing various expenses aggregating to Rs.382083/- without appreciation the findings brought by the AO in the assessment order and also ignoring the fact that the assessee failed to corroborate the claims with supporting evidences."*
>
> *2. The Ld. CIT(A) erred in deleting the disallowance made by the AO u/s. 14A Rs.18945957/- without appreciating the fact that the disallowance was right computed as per rule 8D of IT, Rules,1962."*
>
> *3. The Ld. CIT(A) erred in deleting the disallowance made by the AO out of brokerage charges claimed by the assessee of Rs, 9692860/- without appreciating the findings brought by the AO in the assessment order and also ignoring the fact that the assessee incurred such expenses for non-business purposes.*
>
> *4. The appellant craves leave to add to, amend or alter the above grounds as may be deemed necessary."*

**Ground No. 1: CIT(Appeals) erred in allowing expenses claim of Rs. 3,82,083/-**

25. Before us, the Counsel for the assessee has submitted that the issue has been decided in favour of the assessee by the ITAT Tribunal in assessee's own case in ITA No. 1772/Ahd/2015 vide order dated 03.12.2024.

26. It would be useful to reproduce the relevant extract for the ruling for ready reference:

> *"26. The issue under these grounds involve the adhoc disallowances made by the AO for expenses claimed by the assessee, which were partly upheld or deleted by the CIT(A). The disallowed expenses include general administrative costs, such as vehicle, telephone, business promotion, conveyance, and other minor expenses. The assessee is in appeal against the ad hoc disallowance and the revenue is in appeal against the deletion of remaining disallowance made by the AO. The amounts involved in these appeals are tabulated as under:*

| *ITA No(s).* | *Assessment Years(A.Ys.)* | *Nature of Disallowed Expenses* | *Amount Disallowed by AO (Rs.)* | *Amount Challenged in the appeal (Rs.)* | *Type of Appeal* |
|---|---|---|---|---|---|
| *1290/Ahd/2016* | *2004-05* | *Other Expenses (5% adhoc)* | *457103* | *41,723* | *Assessee* |
| *1594/Ahd/2016* | *2004-05* | *Miscellaneous Expenses (5% adhoc)* | *457103* | *4,15,380* | *Revenue* |
| *1782/Ahd/2016* | *2005-06* | *Other Expenses (5% adhoc)* | *521826* | *1,73,973* | *Assessee* |
| *2066/Ahd/2016* | *2005-06* | *Miscellaneous Expenses (5% adhoc)* | *521826* | *3,47,853* | *Revenue* |
| *1291/Ahd/2016* | *2006-07* | *Other Expenses (5% adhoc)* | *1010079* | *5,09,192* | *Assessee* |
| *1783/Ahd/2016* | *2007-08* | *Other Expenses (5% adhoc)* | *757187* | *1,31,538 Assessee* | *1,31,538 Assessee* |
| *2067/Ahd/2016* | *2007-08* | *Miscellaneous Expenses (5% adhoc)* | *757187* | *6,25,649* | *Revenue* |

> *27. The AO disallowed a portion of the expenses claimed under the Profit and Loss account on the grounds that they were either non-business in nature or lacked sufficient evidence to establish that they were incurred wholly and exclusively for business purposes. The assessee claimed certain expenses under the head "Miscellaneous Expenses," but could not provide detailed break-up or evidence to substantiate that these expenses were wholly and exclusively for business purposes.*

*The AO specifically highlighted that some expenses, such as Diwali expenses, distribution of sweets, and boni, were of a personal or non-business nature. The AO determined that 5% of the miscellaneous expenses, amounting to Rs.1,31,538, were not verifiable or relatable to business purposes. The AO also identified some expenses on telephones and on vehicle running and maintenance expenses. While the assessee provided a broad break-up of these expenses, detailed records, such as logbooks or other supporting evidence, were not maintained to establish the business purpose. Additionally, the AO noted that the Directors and Managing Director used the telephones and vehicles for personal purposes as conceded by the assessee. The assessee also submitted details identifying the Directors' telephone and vehicle expenses for each year under consideration.*

*28. The CIT(A) upheld the AO's disallowance of 5% of Miscellaneous Expenses and deleted the disallowance relating to Directors' telephone and vehicle expenses. The CIT(A) relied on the appellate order for the Assessment Year (A.Y.) 1998-99, where an identical issue had been raised, and the disallowance of 5% was upheld.*

*29. During the course of hearing before us the AR stated that the CIT(A) has relied on the appellate order for the A.Y. 1998-99, whereas the Coordinate Bench has decided in favour of the assessee in assessee's own case in ITA No.1461/Ahd/2001 (A.Y. 1996-97), ITA No.1597/Ahd/2001 (A.Y. 1998-99), ITA No. 933/Ahd/2016 (A.Y. 1999-2000).*

*30. The DR relied on the order of AO and argued that the expenditure claimed under these heads included personal or non-business elements, as the assessee failed to maintain records, such as logbooks, to substantiate exclusive business usage of telephone and vehicles and a portion of these expenses was not wholly and exclusively incurred for business purposes.*

*31. We have carefully considered the submissions of both parties and perused the materials available on record. The issue pertains to the disallowance of two components of expenses, Telephone and Vehicle Expenses relating to Directors and Miscellaneous Expenses, where 5% of the claimed amount has been disallowed on an ad hoc basis.*

*31.1. As regards to Telephone and Vehicle Expenses, we observe that the AO disallowed these expenses purely on assumptions without bringing any specific evidence on record to substantiate personal use of telephones or vehicles by the Directors. The Co-ordinate Bench, in the assessee's own case*

*31.2. The AO disallowed 5% of miscellaneous expenses on an ad hoc basis, citing unverifiability of some components such as Diwali expenses, distribution of sweets, and bonuses. The AO concluded that these expenses were not wholly and exclusively for business purposes. The CIT(A) upheld the disallowance, relying on the appellate order for A.Y. 1998-99, where a similar disallowance was sustained.*

*32. We note that the issue of disallowance of telephone and vehicle expenses, as well as miscellaneous expenses, has been adjudicated in the assessee's favour by the Co-ordinate Bench in the ITA No. 1461/Ahd/2001 (A.Y. 1996-97), ITA No. 1597/Ahd/2001 (A.Y. 1998-99), ITA No. 933/Ahd/2016 (A.Y. 1999-2000).*

*32.1. We reproduce the relevant paras of the order of the Co-ordinate Bench in case of ITA No. 1461/Ahd/2001 for the A.Y. 1996-97 –*

> *"41. The Revenue's eleventh ground of appeal relates to disallowance effected @ 5% out of the assessee's. claim of expenditure on account of tapes and floppies (Rs.1.10 lacs), miscellaneous expenses (Rs.27.45 lacs), telephone expenses (Rs.70.88 lacs) and vehicle expenses (Rs.52.88 lacs), i.e.. at an aggregate of Rs.152.31 lacs. The expenditure stands disallowed on account of its un-verifiably. so that a pan thereof is inferred by the A.O as being not laid out for business purposes, estimating the non-business user at five per cent. In appeal, the same stood allowed by the Ld. CIT(A) on the basis of the assessee having properly substantiated the said expenditure, and following the decision by Tribunal cited before him.*
>
> *42. We have heard the parties and perused the material on record. The A.O. has we find adopted a global approach in the matter and brought about the instances where the assessee was unable to substantiate its claim of the relevant expenditure being incurred only and exclusively for business purposes. No presumption it is trite, can hold, and it is only on a determination of the discrepancies in the assessee's claim can be proceed to estimate the same by applying a percentage that he considers justified, also delineating the reason for the same, so that the appellate authority would while adjudicating on quantum, i.e., where required to do so, be aware of the same, and consider it on merits. Under the circumstances, we find no infirmity in the order of the Ld. CIT(A) and uphold the same on this ground."*

*33. The DR has been unable to point out any distinguishing features in the facts of the current year compared to the earlier years. Consistency in judicial decisions must be maintained, and there is no reason to deviate from the wellsettled findings in earlier years.*

*34. The appeal of the Revenue, challenging the deletion of disallowance of telephone and vehicle expenses relating to Directors, is dismissed and the appeal of the assessee, challenging the disallowance of 5% of miscellaneous expenses, is allowed."*

27. In view of the decision of ITAT Ahmedabad in assesse's own case, the relevant extracts which have been reproduced above, Ground No. 1 of the Department's appeal is dismissed.

**Ground No. 2: Ld. CIT(A) erred in deleting addition made under Section 14A of the Act amounting to Rs. 1,89,45,957/-**

28. Before us, at the outset, the Counsel for the assessee submitted that since for the impugned year under consideration since no exempt income was earned by the assessee, there is no question of making any disallowance under Section 14A of the Act. The Counsel for the assessee placed reliance on several judicial precedents in respect of this proposition.

29. In response, Ld. DR did not dispute that in the instant case no exempt income had been earned by the assessee.

30. It is a well-settled law on the subject that no disallowance can be made under section 14A in case the assessee has not earned any exempt income. The Hon'ble Supreme Court in the case of **State Bank of Patiala [2018] 99 taxmann.com 286 (SC)** held that where High Court took a view that amount of disallowance under section 14A could be restricted to amount of exempt income only, SLP filed against said order was to be dismissed. The Hon'ble Supreme Court in the case of **Chettinad Logistics (P.) Ltd. [2018] 95 taxmann.com 250 (SC)**dismissed SLP against High Court ruling that section 14A cannot be invoked where no exempt income was earned by assessee in relevant assessment year. The Gujarat High Court in the case

of **Dipesh Lalchand Shah [2022] 143 taxmann.com 419 (Gujarat)** held that where in relevant assessment year, assessee-individual earned profits from partnership firm and made investments in shares of a company, since its income from partnership was negative and no exempt income was earned, in such case disallowance under section 14A could not be made. In the case of **Corrtech Energy (P.) Ltd. [2014] 45 taxmann.com 116 (Gujarat)**, the Gujarat High Court held that where assessee did not make any claim for exemption of any income from payment of tax, disallowance under section 14A could not be made. The Delhi High Court in the case of **Delhi International Airport (P.) Ltd. [2022] 144 taxmann.com 80 (Delhi)** held that section 14A would not be applicable if no exempt income was received or receivable during relevant previous year. The Delhi High Court in the case of **Amadeus India (P.) Ltd. [2022] 145 taxmann.com 311 (Delhi),** held that section 14A envisages that there should be an actual receipt of income which is not includible in total income; hence, section 14A will not apply where no exempt income is received or receivable during relevant previous year. The Ahmedabad ITAT in the case of **Edelweiss Financial Advisors Ltd. [2021] 124 taxmann.com 361 (Ahmedabad - Trib.)** held that disallowance of expenses under section 14A read with rule 8D could not exceed amount of exempted income. The Ahmedabad ITAT in the case of **Addlife Investments (P.) Ltd. [2021] 124 taxmann.com 572 (Ahmedabad - Trib.)** held that disallowances made under section 14A read with rule 8D could not exceed amount of exempt income earned by assessee during year. In the case of **Asian Grantio India Ltd [2020] 113 taxmann.com 445 (Ahmedabad - Trib.)**, the Ahmedabad ITAT held

that Disallowance of expenses under section 14A read with rule 8D of 1962 Rules cannot be made in absence of exempt income.

31. In view of the above decisions, and the facts of the assessee's case, we are of the considered view that Ld. CIT(Appeals) has not erred in facts and in law in deleting the addition made under section 14A of the Act.

32. In the result, Ground No. 2 of the Department's appeal is dismissed.

**Ground No. 3: Ld. CIT(A) erred in deleting brokerage charges of Rs. 96,92,860/-**

33. The brief facts of the case are that the assessee, a company engaged in the manufacture and marketing of pharmaceutical products, scientific instruments, and bulk drugs, has been facing significant financial difficulties for several years, and having limited access to formal banking credit facilities due to its financial track record and accumulated losses. To sustain its business operations, the company resorted to raising unsecured loans from private parties through brokers, to whom it paid brokerage charges amounting to ₹96,92,860/- during the relevant assessment year. This amount was duly accounted for in the books, with brokerage payments made via account payee cheques, tax deducted at source, and supported by debit notes, ledgers, agreements, and confirmations filed before the Assessing Officer. The AO, however, disallowed the brokerage expenditure, primarily on the grounds that such expenses had not been claimed in the preceding assessment year, that the assessee failed to establish the specific nature of financial assistance

arranged, and that brokerage payments appeared to be ongoing monthly commissions rather than one-time charges. The AO also questioned the business expediency of these payments, noting that some of the brokers, including M/s. PP Estate Pvt. Ltd., had both arranged loans and directly lent funds to the assessee. The AO further contended that brokerage was paid despite the assessee having made investments in shares of group companies during the year, which in the AO's view contradicted the claim that funds were raised for business exigencies. In proceedings before CIT(Appeals), the assessee submitted that brokerage was paid solely for loans arranged by brokers and not for loans personally extended by them, and reiterated that the financing was essential for survival of the business, given the lack of institutional support. The assessee submitted that the brokerage liability was genuine, accrued during the year, and incurred wholly and exclusively for business purposes, thus meeting the conditions for deductibility under the Act. The assessee emphasized that the mere fact that such expenditure was not incurred in the prior year was irrelevant, and the brokerage was not in the nature of a personal expense or capital expenditure, nor was there any double claim of interest and brokerage. It was further contended that the nomenclature of "brokerage" for monthly commission was immaterial for tax purposes, and that the payments were made in accordance with contractual terms duly, backed by documentation, with no personal benefit to Directors or misuse of borrowed funds. Accordingly, the assessee sought allowance of the brokerage expenditure as a legitimate business outlay.

34. In appeal, Ld. CIT(A) allowed the appeal of the assessee with the following observations:

> *"4.3.2. I have considered the appellant's submission and the AO's observations. The appellant has submitted evidences that it has arranged loans through broker. The AO has nowhere held that the broker is a fictitious person. As per the agreement, the payments are being made every month. Such monthly payment cannot be ground of disallowance as done by the AO. The appellant is making payments through account payee cheques and has also made tax deductions at source on such payments. Under such circumstances, the disallowance made by the AO is not proper. It is a settled law that expenses incurred on arranging finances are allowable as deduction in the computation of income as revenue expenditure. In the decision in the case of [2003] 132 TAXMAN 116 (GUJ.), Patel Filters Ltd., The court has held that in view of the decision of the Supreme Court in India Cements Ltd. v. CIT [1966] 60 ITR 52, it was to be held that the expenditure incurred by the assessee for obtaining the loan amount could not be treated as capital expenditure because its direct nexus was with acquiring loan and not with acquiring of any asset. Hence, the disallowance made by the AO of the brokerage expenses is directed to be deleted and this ground of appeal is allowed."*

35. The Department is in appeal before us against the aforesaid order passed by Ld. CIT(A). Before us, the Ld. DR placed reliance on the observations made by the Assessing Officer in the assessment order. The Ld. DR submitted that the said loans for which the brokerage was paid was not used by the assessee for it's own business, but was utilized by the assessee to make investment in shares of group companies. Accordingly, in light of these facts, the Assessing Officer has correctly held that these loans were not utilized for the purpose of expanding the business of the assessee company.

36. In response, the Counsel for the assessee reiterated the submissions made before Ld. CIT(A). The Counsel for the assessee submitted that the aforesaid brokerage was not paid to the said parties for acting as a guarantor but it was for services provided by these parties for arranging loans to meet the working capital requirement of the assessee.

37. We have heard the rival contention and perused the material on record.

38. On going through the facts of the instant case, we observe that the fact that the said loans were not utilized by the assessee in it's own business, but were used by the assessee to make investments in shares to it's group companies has not been disputed by either of the parties. Further, the Counsel for the assessee has not been able to demonstrate as to how such investments of shares of group companies provided any benefit to the assessee's business. We observe that the submission that the loans were used for meeting the working capital requirement of the assessee's own business also lacks substance. In light of the above facts, we find no infirmity in the order of the Assessing Officer and we are of the considered view that the assessee has not been able to demonstrate as to the purpose behind availing such loans and how the payment of such brokerage amounts was justified as an allowable deduction.

39. In the result, Ground No. 3 of the Department's appeal is allowed.

**Assessment Year 2012-13**

**We shall first take up Department's appeal in ITA No. 2033/Ahd/2017**

40. The Department has raised the following grounds of appeal:

> *"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing various expenses aggregating to Rs.3,17,190/- without appreciating the findings brought by the AO in the assessment order and also ignoring the fact that the assessee failed to corroborate the claims with supporting evidences.*

*2. The Ld. CIT(A) erred in deleting the disallowance made by the AO u/s. 14A of Rs.1,63,99,235/- without appreciating the fact that the disallowance was rightly computed as per rule 8D of I.T. Rules, 1962.*

*3. The Ld. CIT(A) erred in deleting the disallowance made by the AO out of brokerage charges claimed by the assessee of Rs. 1,26,61,635/- without appreciating the findings brought by the AO in the assessment order and also ignoring the fact that the assessee incurred such, expenses for non-business purposes.*

*4. The appellant craves leave to add to, amend or alter the above grounds as may be deemed necessary."*

**Ground No.1: Ld. CIT(A) erred in allowing expenses amounting to Rs. 3,17,190/-**

41. Before us, at the outset the Counsel for the assessee submitted that this issue has been decided in favour of the assessee by ITAT Ahmedabad in assessee's own case for A.Y. 2001-02 in ITA No. 1762/Ahd/2015.

42. It would be useful to reproduce the relevant extract of the Ahmedabad Tribunal for ready reference:

*"30. As regards to Ground No. 2 of Revenue's appeal relating to festival allowance, Misc. expenses, Telephone expenses, Vehicle expenses, the Ld. DR submitted that the CIT(A) erred in allowing these expenses.*
*31. The Ld. AR submitted that this issue is covered in favour of the Assessee for A.Y. 1998-99 being ITA No. 1956/Ahd/2001 order dated 29.08.2008 and A.Y. 1999-2000 being ITA No. 933 & 1313/Ahd/2016 order dated 17.01.2019.*

*32. We have heard both the parties and perused all the relevant material available on record. The Tribunal in A.Y. 1998-99 held as under:*

> *"9. Ground No. 3:- So far as issue involved in ground No. 3 is concerned, the same has been decided by the CIT(appeals) as per his findings contained in paragraph No. 6.2. of the appellate order, which are in the following terms:-*
>
> > *"6.2 After hearing the appellant's counsel and on verification it is found that the addition made on account of similar disallowance has*

*been deleted by me in the appellant's own case for the assessment year 1996-97 in Appeal No. CAB/I-127/98-99 and, therefore, following the said order the addition of Rs. 5,56,982/- on account of disallowance of Festival Allowance is deleted and the appellant gets relief of Rs. 5,56,982/- ".*

*10. The ld. DR has supported the order of the Assessing Officer, whereas the ld. Counsel for the Assessee submitted that the issue raised in this ground of Revenue's appeal stands covered in favour of the Assessee and against the Revenue by the decision of ITAT Ahmedabad Bench "B" in assessee's case, i.e. in ITA No. 1086/Ahd/2001 for Asstt. Year 1995-96 (Revenue's appeal), dated 14/12/2007, wherein the Tribunal has decided the issue in assessee's favour as per its findings contained in paragraph No. 7, which read as under:-*

*7. We have heard the parties, and perused the material on record. We find that the ground for the disallowance of the assessee's claim in respect of the 'Provision for Festival Allowance' (Rs. 19,84,342/-) by the A.O. is his inferring the same to be only in the nature of bonus, named differently, and to which therefore, the provision of section 43B would apply. Similar argument stood also raised on the Revenue's behalf for the preceding years, with the Appellate Authorities finding the same as without basis on facts, so that the said impugned disallowance could not be said to be a bonus as contemplated u/s 36(1)(ii) of the Income-tax Act, 1961 ('the Act' hereinafter), so as to be covered by the provision of Section 43B of the Act. The facts for the current year being no different, we find no reason for any interference with the Order of the Ld. CIT(A) and, resultantly, uphold the same, following the decision of the Tribunal in the assessee's case for the preceding years."*

*11. After careful consideration of the rival submissions and the facts and circumstances of the case, we are of the opinion that the Revenue having not brought to our notice any decision contrary to the aforesaid decision of Tribunal in assessee's case, the issue raised by the Revenue in this ground is decided in favour of the Assessee and against the Revenue, after following the order of the Tribunal in assessee's case for Asstt. Year 1996-97 (supra). Revenue's this ground is rejected."*

*The facts in the present assessment year is also identical to these disallowance related to festival allowance under section 43B of the Act. No distinguishing facts were submitted by the Ld. DR in the present assessment year. Hence, festival allowance is properly allowed by the CIT(A). Now as regards to Misc. expenses, Telephone expenses, Vehicle expenses, the Tribunal observed as under:*

> *"24. Ground No.8:- So far as issue involved in ground No. 8 is concerned, the same has been decided by the CIT(Appeals) as per his findings contained in paragraph No. 7.5 of the appellate order, which are in the following terms:*
>
> > *"7.5 After hearing the learned counsel for thee appellant and after going through the material on record, I find considerable force in the appellant's arguments and after taking into consideration the Tribunal decisions relied upon by the appellant referred to above I restrict the disallowance to 5% of miscellaneous expenses of Rs. 45,38,660/- amounting to Rs. 2,26,933/- as done in earlier years and delete the disallowance of Rs. 2,81,435/- made on adhoc basis out of Rs. 5,08,368/-. Thus the appellant gets relief of Rs. 2,81,435/-. As regards the disallowance out of telephone and vehicle expense, the same are deleted relying on the above mentioned decisions of Hon'ble ITAT, Ahmedabad."*

*25. The ld. DR has supported the order of the Assessing Officer, whereas the ld. Counsel for the Assessee submitted that the issue raised in this ground of Revenue's appeal stands covered in favour of the Assessee and against the Revenue by the decision of ITAT Ahmedabad Bench "B" in assessee's case, i.e. in ITA No. 1461/Ahd/2001 for Asstt. Year 1996-97(Revenue's appeal), dated 14/12/2007, wherein the Tribunal has decided the issue in assesse's favour as per its findings contained in paragraph No. 42, which read as under:*

> *"42. We have heard the parties, and perused the material on record. The A.O. has, we find, adopted a global approach, in the matter and not brought about the instances where the assesse was unable to substantiate its claim of the relevant expenditure being incurred only and exclusively for business purposes. No presumption, it is trite, can hold, and it is only on a determination of the discrepancies in the assessee's claim can he proceed to estimate the same by applying a percentage that he considers justified, also delineating the reason for the same, so that the appellate authority would, while adjudicating on quantum, i.e., where required to do so, be aware of the same, and consider it on merits. Under the circumstances, we find no infirmity in the Order of the Ld. CIT(A), and uphold the same on this ground."*

*26. After careful consideration of the rival submissions and the facts and circumstances of the case, we are of the opinion that the Revenue having not brought to our notice any decision contrary to the aforesaid decision of Tribunal in assessee's case, the issue raised by the Revenue in this ground is decided in favour of the Assessee and against the Revenue, after following the order of the Tribunal in assessee's case for Asstt. Year 1995-96(supra). Revenue's this ground is rejected."*

> *The facts in the present assessment year is also identical to these disallowance related to Misc. expenses, Telephone expenses and Vehicle expenses. No distinguishing facts were submitted by the Ld. DR in the present assessment year. Hence, Misc. expenses, Telephone expenses and Vehicle expenses are properly allowed by the CIT(A). Ground No. 2 of Revenue's appeal is dismissed."*

43. In view of the above observation by ITAT Ahmedabad in assessee's own case, we find no infirmity in the order of Ld. CIT(A) so as to call for any interference.

44. In the result, Ground No. 1 of the Department's appeal is dismissed.

**Ground No. 2: Ld. CIT(A) erred in deleting disallowance of Rs. 1,63,99,235/- made under Section 14A of the Act**

45. Before us, at the outset, the Counsel for the assessee submitted that since during the impugned year under consideration, no exempt income was earned by the assessee, there is no question of making any disallowance under Section 14A of the Act.

46. In view of our observations made in the Department's appeal for A.Y. 2011-12, while dealing with the similar issue Ground No. 2 of the Department's appeal is dismissed.

**Ground No.3:- Ld. CIT(A) erred in disallowance of Rs. 1,26,61,635/- as brokerage expenses**

47. We note that the facts in relation to this ground of appeal has been dealt with while dealing with Ground No.3 of the Department's appeal for A.Y. 2011-12.

48. In light of our observations made in the preceding part of our judgment, Ground No. 3 of the Department's appeal is allowed.

**Now we shall deal with assessee's appeal for A.Y. 2012-13 in ITA No. 1807/Adh/2017**

49. The assessee has taken the following grounds of appeal:

> *"1. Salaried and wages of packart press division – Rs. 28,78,876/-*
>
> *2. Long Term Capital Gains – sale of factory land rejection of fair market value as at 1.4.1981 adopted as per valuer's report."*

**Ground No.1:- Ld. CIT(A) erred in upholding salary and wages of packart press division of Rs. 28,78,876/-**

50. We observe that while dealing similar ground of appeal for A.Y. 2011-12, we have set-aside the matter to the file of Assessing Officer for de-novo consideration. Accordingly, Ground No. 1 of the assessee's appeal is hereby restored to the file of Assessing Officer for de-novo consideration.

51. In the result, Ground No. 1 of the assessee's appeal is allowed for statistical purposes.

**Ground No. 2: Ld. CIT(A) erred in rejecting FMV as on 01.04.1981 adopted for LTCG on sale of factory land**

52. The brief facts in relation to this ground of appeal are that during the relevant assessment year, the assessee sold a portion of its factory land located at the Baroda campus to Mr. Ketanbhai B. Shah through an agreement to sell dated 14.02.2012, for a total consideration of ₹12,11,05,269/-. In its return of income, the assessee opted for the benefit available under section 55(2)(b) of the Act and adopted ₹437/- per square meter as the fair market value (FMV) of the land as on 01.04.1981, which had been accepted in earlier years by the CIT(A) in the assessee's own case for AY 2009-10. Based on this FMV, the assessee computed and offered long-term capital gains of ₹8,95,21,116/- for AY 2012-13. However, after electronically filing the return, the assessee submitted a letter dated 31.01.2013 requesting that the FMV be adopted as ₹2,050/- per square meter as per a Government-Approved valuer's report. This request was not considered by the Assessing Officer, who did not discuss the issue in the assessment order. Subsequently, during appellate proceedings before CIT(Appeals), the assessee argued that the FMV of ₹2,050/- per square meter should be accepted, citing prior decisions by the Hon'ble ITAT in the assessee's favor in AYs 2008-09 and 2009-10. Alternatively, the assessee proposed that a more reasonable FMV, such as the average of ₹1,550/- (claimed in earlier years) and ₹533/- (adopted by the

Department in other cases), totaling ₹1,041.50/- per square meter, may be adopted. The assessee contended that even if the valuation report was rejected, a rate higher than ₹533/- should be considered. The CIT(A), however, held that since the assessee had voluntarily adopted ₹437/- per square meter in the return filed by it and this had been accepted by the AO, there was no scope under the Act to revise the FMV upwards, especially when the assessee had exercised its Statutory option. As a result, CIT(Appeals) dismissed the assessee's claim for a higher FMV.

53. The assesse is in appeal before us against the aforesaid order passed by Ld. CIT(A).

54. Having considered the submissions of both parties and perused the material available on record, we are of the view that the issue of determination of FMV as on 01.04.1981 requires re-examination. In the instant case, the assessee had submitted a request to the AO during the assessment proceedings along with a Government-Approved Valuer's report claiming FMV at ₹1,550/- per square meter. This material evidence was not considered or discussed in the assessment order. Considering that the assessee has produced a valuation report and raised the issue before the Tax Department, albeit under protest, the proper course of action would have been for the AO to seek expert opinion or refer the matter to the DVO. We also note that the ITAT in assessee's own case for AY 2009-10 has accepted the FMV at ₹980/- per square meter and that the matter is now sub judice before the Hon'ble High Court. Given the legal and factual background, and in the interest of justice, we hereby set aside the issue to the file of the Assessing Officer with

a direction to consider the valuation report submitted by the assessee and also obtain the opinion of the Department Valuation Officer on the FMV of the land as on 01.04.1981. The AO shall then adjudicate the issue afresh in accordance with law after granting a reasonable opportunity of being heard to the assessee.

55. In the result, the appeal is allowed for statistical purposes.

56. In the combined result, the appeal filed by the assessee is partly allowed for statistical purposes for A.Y. 2011-12 and allowed for statistical purposes for A.Y. 2012-13 and the appeals filed by the Department for both the assessment years are partly allowed.

| **This Order pronounced in Open Court on** | **08/07/2025** |
|---|---|

| **Sd/-** | **Sd/-** |
|---|---|
| **(DR. BRR KUMAR)** | **(SIDDHARTHA NAUTIYAL)** |
| **VICE PRESIDENT** | **JUDICIAL MEMBER** |

Ahmedabad; Dated 08/07/2025

*TANMAY, Sr. PS* ***TRUE COPY***

**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, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

**आदेशानुसार**/ BY ORDER,

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